



Australian Government

Australian Customs and
Border Protection Service

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FOLIO 179

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS NO.181

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

27 April 2012

PUBLIC RECORD

PUBLIC
FILE

FOLIO 178
No:

CONTENTS

ABBREVIATIONS.....		4
1.	SUMMARY AND RECOMMENDATIONS.....	5
1.1.	Proposed recommendation.....	5
1.2.	Application of law to facts.....	5
1.3.	Preliminary findings and conclusions.....	6
2.	BACKGROUND.....	11
2.1.	Initiation.....	11
2.2.	Responding to this SEF.....	11
2.3.	Previous cases.....	12
3.	THE GOODS AND LIKE GOODS.....	13
3.1.	Preliminary finding.....	13
3.2.	The goods.....	13
3.3.	Tariff classification.....	13
3.4.	Interpretation of the goods under consideration.....	13
3.5.	Like goods.....	15
3.6.	Claims Australian industry does not produce like goods.....	16
3.7.	Preliminary finding - like goods.....	16
4.	AUSTRALIAN INDUSTRY.....	18
4.1.	Preliminary finding.....	18
4.2.	Production process.....	18
4.3.	Manufacturers of ARWs in Australia.....	18
5.	AUSTRALIAN MARKET.....	20
5.1.	Preliminary finding.....	20
5.2.	Introduction.....	20
5.3.	Market Structure.....	21
5.4.	Market size.....	22
6.	DUMPING INVESTIGATION.....	24
6.1.	Preliminary findings.....	24
6.2.	Introduction.....	24
6.3.	Assessment of particular market situation.....	27
6.4.	Reasonableness of ARW costs in China.....	27
6.5.	Determination of profit for constructed normal values in China.....	28
6.6.	Dumping margins for selected cooperating exporters.....	29
7.	SUBSIDY INVESTIGATION.....	35
7.1.	Preliminary findings.....	35
7.2.	Investigated programs.....	35
7.3.	Summary of countervailable programs.....	36
7.4.	Subsidy margins.....	38
8.	ECONOMIC CONDITION OF THE INDUSTRY.....	40
8.1.	Preliminary finding.....	40
8.2.	Introduction.....	40
8.3.	Marketing and distribution.....	40
8.4.	Commencement of injury.....	40
8.5.	Approach to injury analysis.....	41
8.6.	Price depression and suppression.....	41
8.7.	Volume Effects.....	43
8.8.	Profit and Profitability effects.....	47
8.9.	Other economic factors.....	48
8.10.	Capacity utilisation.....	48

PUBLIC RECORD

**PUBLIC
FILE**

FOLIO
No: 77

8.11.	<i>Employment</i>	49
9.	HAS DUMPING AND SUBSIDY CAUSED MATERIAL INJURY?	51
9.1.	<i>Preliminary finding</i>	51
9.2.	<i>Introduction</i>	51
9.3.	<i>Dumping and subsidy margins</i>	51
9.4.	<i>Price effects</i>	52
9.5.	<i>Sales volume</i>	54
9.6.	<i>Reduced profit and profitability</i>	55
9.7.	<i>Other injury factors</i>	56
9.8.	<i>Other possible causes of injury</i>	56
9.9.	<i>Summary – Causal link</i>	59
10.	WILL DUMPING AND SUBSIDY AND MATERIAL INJURY CONTINUE?	60
10.1.	<i>Preliminary findings</i>	60
10.2.	<i>Introduction</i>	60
10.3.	<i>Customs and Border Protection's assessment</i>	60
11.	NON-INJURIOUS PRICE	62
11.1.	<i>Preliminary findings</i>	62
11.2.	<i>Introduction</i>	62
11.3.	<i>Preliminary assessment of NIP</i>	62
11.4.	<i>Comparison of NIPs and export prices</i>	63
12.	PROPOSED MEASURES	64
	APPENDICES AND ATTACHMENTS	65

PUBLIC RECORD

ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
Australian industry	the Australian industry producing aluminium road wheels
Arrowcrest	Arrowcrest Group Pty Limited
ARWs	Aluminium Road Wheels
CEO	Chief Executive Officer of the Australian Customs and Border Protection Service
China	People's Republic of China
CTMS	cost to make and sell
Customs and Border Protection	the Australian Customs and Border Protection Service
FIE	foreign invested enterprise
FOB	free on board
GOC	Government of China
GQ	Government questionnaire
GUC	Goods under consideration (also referred to as the goods, and aluminium road wheels)
LME	London Metal Exchange
Minister	The Minister for Home Affairs
NIP	non-injurious price
PAD	preliminary affirmative determination
SEF	Statement of Essential Facts
SHFE	Shanghai Futures Exchange
SOE	state-owned enterprise
Tariff Act	Customs Tariff Act 1995
the Act	Customs Act 1901
the goods	the goods the subject of the application
USP	unsuppressed selling price

PUBLIC RECORD

PUBLIC
FILE

FOLIO 175
No:

1. SUMMARY AND RECOMMENDATIONS

This investigation is in response to an application by Arrowcrest Group Pty Ltd (Arrowcrest) for publication of a dumping duty notice and a countervailing duty notice in relation to aluminium road wheels (ARWs) exported to Australia from the People's Republic of China (China).

This statement of essential facts (SEF) sets out the facts on which the delegate of the Chief Executive Officer (CEO) for the investigation (Investigation 181) proposes to base their recommendations to the Minister for Home Affairs (the Minister) in relation to the application.

1.1. Proposed recommendation

Customs and Border Protection has considered the allegations contained in the application and made enquiries of interested parties.

Customs and Border Protection has made a preliminary finding that the dumping and subsidisation of ARWs exported to Australia from China has caused material injury to the Australian industry producing like goods.

The delegate of the CEO proposes to recommend to the Minister that:

- 1) a dumping duty notice be published in respect of ARWs exported to Australia from China by all exporters, other than Zhejiang Shuguang Industrial Co. Ltd (PSW); and
- 2) a countervailing duty notice be published in respect of ARWs exported to Australia from China by all exporters

1.2. Application of law to facts

1.2.1. Authority to make decision

Division 2 of Part XVI of the *Customs Act 1901*¹ (the Act) sets out, among other matters, the procedures to be followed and the matters to be considered by the CEO in conducting investigations in relation to the goods covered by an application for the purpose of making a report to the Minister.

The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection.

1.2.2. Application

¹ 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.

PUBLIC RECORD

PUBLIC
FILE

FOLIO 174
No:.....

On 26 September 2011, Arrowcrest, on behalf of the Australian industry manufacturing ARWs, lodged an application requesting that the Minister publish a dumping duty notice and a countervailing duty notice in respect of ARWs exported to Australia from China.

The delegate of the CEO was satisfied that the application was made in the prescribed manner by a person entitled to make the application².

1.2.3. Initiation of investigation

After examining the application, the delegate of the CEO was satisfied that:

- the application was made in the manner required;
- there is an Australian industry in respect of like goods; and
- there appeared to be reasonable grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of the goods the subject of the application, or for the publication of such notices upon the importation into Australia of such goods³.

The CEO decided not to reject the application and notice of the initiation of this investigation was published on 7 November 2011⁴ (refer to Australian Customs Dumping Notice (ACDN) 2011/541).

1.2.4. Statement of essential facts

The CEO must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows⁵, place on the public record a statement of the facts on which the CEO proposes to base his recommendation in relation to that application⁶.

In formulating the SEF, the CEO must have regard to the application concerned, any submissions concerning publication of the notice that are received by Customs and Border Protection within 40 days after the date of initiation of the investigation and any other matters considered relevant⁷.

For this investigation, the Minister granted a 60 day extension to the date by which the SEF must be placed on the public record. ACDN 2012/06 was issued on 24 February 2012 notifying of the Minister's decision. This SEF is now due on or before 27 April 2012.

1.3. Preliminary findings and conclusions

² Section 269TB

³ Subsection 269TC(1)

⁴ Subsection 269TC(4)

⁵ Section 269ZHI

⁶ Subsection 269TDAA(1)

⁷ Subsection 269TDAA(2)

PUBLIC RECORD



Customs and Border Protection has made the following preliminary findings and conclusions based on available information at this stage of the investigation:

1.3.1. Australian Industry (Chapter 4 of this report)

Customs and Border Protection found:

- there is an Australian industry producing like goods;
- the like goods were wholly manufactured in Australia by Arrowcrest; and
- the Australian industry consists of one main Australian manufacturer of ARWs, being the applicant. The applicant manufactures the majority of Australian produced ARWs and as such any injury to the applicant is considered representative of overall injury to Australian industry. All other Australian manufacturers were contacted and their volumes considered too small to be considered separately.

1.3.2. Dumping (Chapter 6 of this report)

Customs and Border Protection preliminarily determines that a market situation existed in relation to the domestic market for ARWs in China during the investigation period such that selling prices in that market are not suitable for normal value purposes. Normal values have been constructed replacing exporters' costs of aluminium and/or aluminium alloy with a benchmark cost.

Following the replacement of certain costs and the construction of normal values under section 269TAC(2)(c), in relation to ARWs exported from China to Australia during the investigation period, other than those exported by PDW, Customs and Border Protection found that:

- the goods were dumped; and
- the volume of dumped goods, and the dumping margins, were not negligible.

Customs and Border Protection found the following dumping margins:

Table 1: Dumping Margins

Exporter	Dumping Margin (% of Export Price)
CITIC Dicastal	9.1%
PDW	-3.24%
Pilotdoer	21.6%
Jinfei Kaida	7.5%
YHI	32.9%
Yueling	14.62%
Selected non-cooperating exporters	32.9%

PUBLIC RECORD



Where the delegate is satisfied that the dumping margin for an exporter is less than 2%, the delegate must terminate the investigation so far as it relates to that exporter⁸.

The delegate is proposing to recommend that the dumping investigation be terminated so far as it extends to PDW.

1.3.3. Subsidy (Chapter 7 of this report)

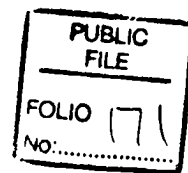
Following its investigation into 40 alleged subsidy programs, plus additional programs identified during the course of the investigation, Customs and Border Protection has made the preliminary finding that the following 34 programs are countervailable subsidies:

Table 2: Subsidy Programs

No.	Program
1	Aluminium provided by government at less than fair value
4	Preferential income tax for hi-tech enterprises
5	Preferential tax policies for western development "Go West" strategy
6	Preferential tax policies for FIEs established in the coastal economic open areas and in the economic and technological development zones
7	Reduced tax rate for productive FIEs scheduled to operate for a period of not less than 10 years
8	Preferential tax policies for FIE export enterprises whose annual output value of all export products amounted to 70% or more
9	Preferential tax policies for FIEs which are technology-intensive and knowledge-intensive
10	Preferential tax policies for enterprises which provide employment to unemployed people
11	Preferential tax policies for FIEs in State high or new technology industrial development zones, and for advanced technology enterprises invested in and operated by FIEs
13	Preferential tax policies for enterprises transferring technology
14	Preferential tax policies for enterprises making little profit
21	Grants for encouraging the establishment of headquarters and regional headquarters with foreign investment
22	Preferential tax treatments for new hi-tech enterprises (NHTE) in special zones
29	Patent award in Guangdong province
30	Termination of tax refund policies for FIEs on their purchase of domestically manufactured equipment
31	Exemption of tariff and import VAT for imported technologies and equipments;
32	100% refund of VAT to FIEs on purchasing unused domestic equipment

⁸ Section 269TDA(1)

PUBLIC RECORD



	with currency in China;
35	Matching funds for international market development for SMEs
36	Innovative experimental enterprise grant
37	Special support fund for non-State-owned enterprises (NSOEs)
38	Venture Investment Fund for Hi-Tech Industry
39	Superstar Enterprise Grant
40	One-time awards to enterprises whose products qualify for "Well-known Trademarks of China" or "Famous Brands of China"
41	Technology assist
42	Export subsidies
43	SME assist
44	Environmental subsidies
46	Government Incentives for the Top Taxpayer of the Year-Qinhuangdao City
47	Financial Support from China Postdoctoral Science Foundation
48	Foreign Trade Public Service Platform Development Fund
50	Patent Application Fee Subsidy
51	Enterprise Development
53	New Product Trial Production
56	Patent grants

Subsidy margins determined are:

Table 3: Subsidy Margins

Exporter	Subsidy Margin (% of Export Price)
CITIC Dicastal	<2%
PDW	2.0%
Pilotdoer	4.4%
Jinfei Kaida	2.8%
Yueling	5.1%
Selected Non-cooperating Exporters	58.8%

In relation to exports from China, where the delegate is satisfied that the subsidy margin is less than 2%, the delegate must terminate the investigation so far as it relates to that exporter. The delegate is proposing to recommend that the subsidy investigation be terminated so far as it extends to Dicastal.

PUBLIC RECORD

PUBLIC FILE
FOLIO 70
No:

1.3.4. Injury (Chapter 8 of this report)

Customs and Border Protection has made the preliminary finding that in the investigation period the Australian industry producing like goods experienced injury in the form of:

- lost sales volume;
- lost revenue;
- price suppression;
- lost profits and profitability;
- reduced return on investment;
- reduced employment; and
- reduced capacity utilisation.

1.3.5. Causation (Chapter 9 of this report)

Customs and Border Protection has made the preliminary finding that dumping and subsidisation caused material injury to the Australian industry.

1.3.6. Will dumping and subsidy and material injury continue (Chapter 10 of this report)

Customs and Border Protection has made the preliminary finding that:

- exports of ARWs from China in the future may be at dumped or subsidised prices; and
- continued dumping or subsidisation may cause further material injury to the Australian industry.

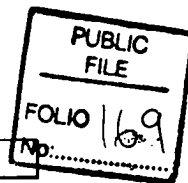
1.3.7. Proposed recommendation

Based on these preliminary findings the CEO proposes to recommend to the Minister that a dumping duty notice and a countervailing duty notice be published in respect of ARWs exported from China to Australia.

1.3.8. Final report

The CEO's final report and recommendation must be provided to the Minister by 31 June 2012.

PUBLIC RECORD



2. BACKGROUND

2.1. Initiation

On 26 September 2011, Arrowcrest on behalf of the Australian industry manufacturing ARWs, lodged an application requesting that the Minister publish a dumping duty notice and a countervailing duty notice in respect of ARWs exported to Australia from China.

The application alleged that ARWs have been exported to Australia from China at prices lower than their normal value, that ARWs exported to Australia from China have received countervailable subsidies, and that this dumping and subsidisation has caused material injury to the Australian industry producing ARWs.

Following consideration of the application and additional information, Customs and Border Protection decided not to reject the application. Public notification of initiation of Investigation 181 was made on 7 November 2011 (refer to ACDN 2011/54).

The initiation notice advised that the SEF for the investigation would be placed on the public record by 27 February 2012; however, the delegate was satisfied that the prescribed 110 days to place the SEF on the public record for the investigation was likely to be insufficient and requested an extension.

The Minister extended the deadline for the publication of the SEF to 27 April 2012⁹. ACDN 2012/06 was issued on 24 February 2012 notifying of the Minister's decision. Interested parties were also separately notified.

The investigation period¹⁰ for the purpose of assessing any dumping margins¹¹ was set as 1 July 2010 to 30 June 2011. The injury analysis period, for the purpose of determining whether material injury has been caused to the Australian industry was from 1 July 2006.

2.2. Responding to this SEF

This SEF sets out the essential facts on which Customs and Border Protection proposes to base its recommendation to the Minister. This statement represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the statement. It is important to note that the statement may not represent the final views of Customs and Border Protection.

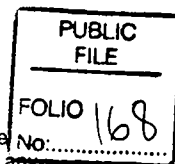
Interested parties have 20 days to respond to the statement. Customs and Border Protection will consider these responses in making its report to the

⁹ Section 269ZH

¹⁰ Section 269T(1)

¹¹ Subsection 269TC(4)(bf)

PUBLIC RECORD



Minister. The report will recommend whether or not a dumping duty notice and/or a countervailing duty notice should be published and the extent of any interim duties that are, or should be, payable. Customs and Border Protection must report to the Minister by 11 June 2012.

Responses to this SEF should be received by Customs and Border Protection no later than **17 May 2012**.

Customs and Border Protection is not obliged to have regard to any submission made in response to the SEF received after 17 May 2012 if to do so would, in the opinion of the CEO, prevent the timely preparation of the report to the Minister.

Submissions should preferably be emailed to tmops2@customs.gov.au. Alternatively they may be sent to fax number +61 2 6275 6980, or posted to:

Director Operations 2
Trade Measures Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available at the Customs website (follow the links to: Anti-Dumping > Reference Material > Guidance for Submissions).

The public record contains non-confidential submissions by interested parties, the non-confidential versions of Customs and Border Protection visit reports and other publicly available documents. It is available online at <http://adpr.customs.gov.au/Customs/>, or can be viewed by request in Canberra (phone (02) 6275 6547 to make an appointment). Documents on the public record should be read in conjunction with this SEF.

2.3. Previous cases

There have been no previous cases concerning aluminium road wheels.

PUBLIC RECORD

PUBLIC
FILE

FOLIO 167
No.

3. THE GOODS AND LIKE GOODS

3.1. Preliminary finding

Customs and Border Protection has made a preliminary finding that the Australian industry produces ARWs that have characteristics closely resembling those of ARWs manufactured in China and exported to Australia, and has therefore made a preliminary finding that ARWs manufactured by the Australian industry are like goods¹².

3.2. The goods

The applicant, Arrowcrest, provided the following description of the goods the subject of its application (the goods):

The goods the subject of this application are aluminium road wheels ("ARWs") of the motor vehicles of HTISC heading 8708709178, in diameters ranging from 13 inch to 22 inch.

The goods under consideration (GUC) are finished or semi-finished ARWs whether un-painted, painted, chrome plated or forged. Aluminium wheels for go-carts and All-Terrain Vehicles ("ATVs") are specifically excluded.

The application also contained additional information to assist in understanding the goods. Further description of the goods is included in ACDN 2011/54.

3.3. Tariff classification

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

8708.70.91/78	Road wheels of a kind used as components in passenger motor vehicles
8708.70.99/80	Road wheels other than of a kind used as components in passenger motor vehicles;
8716.90.00/39.4	Road wheels for trailers and caravans.

3.4. Interpretation of the goods under consideration

While the description of the goods under consideration (GUC) is not subject to change by Customs and Border Protection, latitude in *interpretation* of that scope exists.

For example interested parties have submitted that the definition of the goods does not include aluminium road wheels for 4WD vehicles¹³ and caravans¹⁴ classified to a tariff sub-heading other than 8708.70.91/78.

¹² In terms of section 2691

¹³ Hunt & Hunt lawyers on 22 December 2011

¹⁴ PWC on 21 December 2011

PUBLIC RECORD



Customs and Border Protection published issues paper 2012/181 to provide preliminary clarification of, and to invite submissions on, the scope of the goods that Customs and Border Protection will examine for the purposes of this investigation. Issues paper 2012/181 stated, inter alia, that:

Customs and Border Protection considers that the words 'passenger motor vehicles' in the initiation notice for the investigation are designed to be read according to their common or generic meaning, that is, vehicles that are designed to carry passengers. Customs and Border Protection acknowledges that the Tariff Act contains specific definitions of passenger motor vehicles that exclude 4WD vehicles that meet certain characteristics. This definition, however, is not the one relied on for the purpose of the investigation.

It is Customs and Border Protection's preliminary view that the definition of the goods includes:

- ARWs for passenger motor vehicles, trailers and caravans classified to tariff sub-heading 8708.70.91/ 78;
- ARWs for 4WD vehicles (other than all terrain vehicles) and trailers classified to tariff sub-heading 8708.70.99/ 80; and
- ARWs for trailers and caravans classified to 8716.90.00/ 39.

The only exclusions, as specified in the notice, are ARWs for go-karts or All Terrain Vehicles (ATVs). Oxford dictionary defines ATVs as

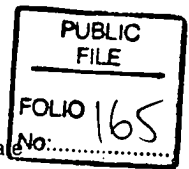
"a small open motor vehicle with one seat and three or more wheels fitted with large tyres, designed for use on rough ground."

Customs and Border Protection received submissions to issues paper 2012/181 from Ford, GM Holden, CITIC Dicastal and Arrowcrest. Non-confidential versions of these submissions were placed on the public record. The main claim submitted in relation to the goods and like goods relates to the issue of the two markets, OEM (original equipment manufacture) and AM (aftermarket). In summary interested parties, other than Arrowcrest, claimed that OEM and AM ARWs are not like goods, but two separate markets where goods do not compete with each other and are not interchangeable. The main argument related to commercial likeness.

Arrowcrest's response to the issues paper supported Customs and Border Protection's findings and noted that OEM and AM ARWs are like goods as supported by the European Union's (EU's) recent decision in relation to dumping of ARWs exported from China. In that case the EU considered similar arguments put forward by interested parties but ultimately found that although there exists two markets for the goods, OEM and AM wheels are not separate goods and are like to each other.

It should be noted that 'the goods' described in the initiation notice for an investigation cannot be changed once the investigation has commenced. The description of the goods covered by this investigation covers both OEM and AM wheels. The evidence shows that Arrowcrest manufactures ARWs for both the OEM and AM markets and one issue to determine is whether those

PUBLIC RECORD



goods manufactured by Arrowcrest are 'like' to the exported goods which are both OEM and AM wheels.

Interested parties have claimed that there should be two separate investigations, one for OEM goods and one for AM goods. Some parties have referred to a previous investigation by Customs and Border Protection in relation to canned pineapple. In that investigation Customs and Border Protection decided, subsequent to initiation, that it was dealing with two separate canned goods – goods sold into the consumer market and goods sold into the food services and industrial market.

Customs and Border Protection notes that in other investigations, even though there had been separate markets for the goods the investigation considered them together for the purpose of recommending whether a dumping and/or countervailing duty notice should be published. Examples are toilet paper and linear low density polyethylene.

Customs and Border Protection acknowledges the claims by interested parties in relation to the operation of the OEM and AM markets. In this case, although the investigation has not separated the goods into two discrete investigations, as was the case in pineapples, it should be noted that in assessing injury and causation Customs and Border Protection analysed each market segment separately.

3.5. Like goods

The Australian legislation makes references to 'the goods' and 'like goods'.

'The goods' are those exported to Australia and alleged as being the cause of material injury to the Australian industry.

'Like goods' are those produced by the Australian industry¹⁵. Subsection 269T(1) of the Customs Act 1901 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 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 identical in all respects, Customs and Border Protection assesses whether they have characteristics closely resembling each other against the following considerations:

¹⁵ The term also refers to goods which are sold on the domestic market in the exporting country, or those which may be exported to Australia in the future.

PUBLIC RECORD

PUBLIC FILE
FOLIO 164
No:.....

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

3.6. Claims Australian industry does not produce like goods

The following interested parties:

- GM Holden Ltd (Holden)
- Kelso Group Pty Ltd as trustee for The Kelso Family Trust trading as Versus Wheels Australia (Versus)
- Primal Alloy Wheels and Tyres (Primal)

lodged submissions claiming that Arrowcrest does not, or cannot, supply certain models that would fit within the goods description. Specifics of any non-confidential claims submitted, where not discussed in this report, are available in the respective submissions available on the public record.

Certain parties have acknowledged that the Australian industry currently produces, or is able to produce, equivalent models to the particular imported models in question. However, some such parties maintain that local supply is not available on agreeable terms, e.g. with regard to price, quality, or service levels.

Other parties submit that the Australian industry does not currently produce, equivalent models to those which are imported (for example, 22 inch wheels).

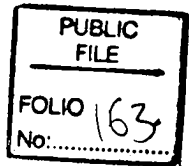
With regard to the two kinds of claims described above, even if correct, they would not enable Customs and Border Protection to alter the goods description (i.e. to exclude particular models from the investigation). However, if proven correct, such claims could contribute to undermining a finding of material injury caused by import of models for which direct substitutes are unavailable from the Australian industry.

3.7 Preliminary finding – like goods

Customs and Border Protection considers that the Australian industry produces like goods on the following grounds:

- i. Physical likeness:
 - Products made by the Australian industry have a physical likeness to the goods exported to Australia from China;
 - Arrowcrest manufactures ARWs in sizes 13" to 20". Arrowcrest has supplied sufficient evidence that 20" wheels can be substituted with 22" wheels;
 - The like goods are manufactured by Arrowcrest to meet Australian Standards.

PUBLIC RECORD



ii. Commercial likeness:

- Australian industry products compete directly with imported goods in the Australian market, both OEM and AM, as evidenced by the supply of Chinese ARWs to many customers of the Australian industry.

iii. Functional likeness:

- Both imported and Australian produced goods have comparable or identical end-uses as evidenced by Australian industry customers that source equivalent Chinese made ARWs.
- Both imported and Australian produced goods may be fitted on passenger motor vehicles and used for the same purpose.

iv. Production likeness:

- Based on evidence obtained from visits to Arrowcrest and Chinese exporters, the Australian industry products are manufactured in a similar manner to the imported goods.

The findings above lead to the conclusion that the Australian produced products, some of which are not identical, have characteristics closely resembling the imported goods. These findings are not premised on a comparison of individual imported and domestically produced models, but rather represent a global consideration.

Customs and Border Protection has therefore made a preliminary finding that the ARWs produced by the Australian industry are like goods to the goods exported from China.

If it was established that the Australian industry does not manufacture and offer for sale in Australia like goods to a particular and clearly identifiable subset of the imported HSS, it is open to the Minister to exclude that subset from a dumping duty notice and countervailing duty notice.

PUBLIC RECORD



4. AUSTRALIAN INDUSTRY

4.1. Preliminary finding

Customs and Border Protection has made a preliminary finding that there is an Australian industry producing like goods, comprising of one main manufacturer, being Arrowcrest.

4.2. Production process

For goods to be taken as produced in Australia¹⁶:

- they must be wholly or partly manufactured in Australia; or
- for the goods to be partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

Customs and Border Protection undertook a verification visit at Arrowcrest's premises. The visit included tours of the company's ARW manufacturing facilities. During the visit, Customs and Border Protection reviewed the associated production processes and costs as detailed in Australian industry visit report on the public record.

Customs and Border Protection considers that ARWs are wholly manufactured in Australia.

4.3. Manufacturers of ARWs in Australia

In its application Arrowcrest identified one other manufacturer of ARWs during the investigation period – Performance Wheel Nominees Pty Ltd trading as Performance Industries (Performance). Customs and Border Protection was contacted by Dragway Performance Engineering Pty Ltd (Dragway) during the course of the investigation, which advised that it was also an Australian manufacturer of ARWs.

Based on the data received in the application, we estimate Arrowcrest represents more than 95% of ARW production during the investigation period. Due to the small volume of ARWs produced and sold by Performance and Dragway, verification visits were not conducted. Customs and Border Protection requested further information from both Performance and Dragway, however insufficient evidence of volume and sales data was provided to allow further analysis.

Performance provided a submission to the investigation as an attachment to submissions made by Arrowcrest, which was placed on the public record. Dragway also provided a submission regarding the effect Chinese imports had on their business, noting their support of Arrowcrest's application for measures. This submission was also placed on the public record. Customs and Border Protection formed the view that due to the volume of the

¹⁶ In terms of subsections 269T(2) and 269T(3)

PUBLIC RECORD

Australian industry held by Arrowcrest, any injury found to Arrowcrest would be considered as injury to the Australian industry as a whole.

PUBLIC RECORD

PUBLIC RECORD

PUBLIC
FILE

FOLIO 160
No:.....

5. AUSTRALIAN MARKET

5.1. Preliminary finding

There is an Australian market for ARWs, which Customs and Border Protection understands to be around two million pieces during the investigation period. The market is supplied by the Australian industry and by importers.

5.2. Introduction

The Australian ARWs market is supplied by Australian manufacturers and importers. ARWs are used in passenger motor vehicles, including 4 wheel drives, and trailer vehicles including caravans and trailers.

There are two major distribution channels for ARWs: the Original Equipment Manufacture (OEM) segment and the Aftermarket (AM) segment.

The Australia industry and ARWs from China compete for sales to the OEM and AM segments.

5.2.1. OEM segment

The Australian OEM segment consists of the three Australian passenger motor vehicle (PMVs) manufacturers: Toyota Motor Corporation Australia, General Motors Holden and Ford Motor Company, together with their performance brands Holden Special Vehicles (HSV) and Ford Performance Vehicles (FPV). Toyota's performance brand TRD was discontinued in 2009.

Arrowcrest supplies OEM ARWs to Toyota and to HSV. The sales process in the OEM segment is driven by the motor vehicle manufacturers. The design of the ARW may be predetermined by the motor vehicle manufacturer (specifically the outer appearance), with the task of producing a safe and reliable ARW left to the ARW manufacturer.

Alternatively the ARW manufacturer may be given design freedom and can develop an ARW to suit the vehicle. Generally the motor vehicle manufacturer will collaborate with the ARW manufacturer to develop a new design.

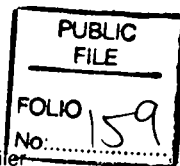
It is usual for a wheel production contract to be awarded up to two years prior to the production phase of a new model vehicle. The typical life-cycle of a model is between two and five years.

5.2.2. Aftermarket segment

Locally produced and imported ARWs compete at the same levels of trade and the predominant source of imported ARWs is China.

ARWs sold into the aftermarket segment of the market are essentially designed by the ARW manufacturers, and at times in collaboration with their customers. The various distribution channels in the Australian aftermarket

PUBLIC RECORD



are via wheel importers, tyre wholesalers, tyre retailers, PMV Customer Service Divisions (CSDs) and retailers of PMVs, and manufacturers of trailer vehicles.

Wheel importers predominantly import ARWs from China for wholesale to corporate and independent tyre wholesalers and retailers, as well as to CSDs, the retailers of PMVs, and the manufacturers of trailers and caravans.

5.3. Market Structure

5.3.1. Australian Producers

The application was lodged by Arrowcrest on behalf of the Australian industry producing ARWs. Whilst Arrowcrest has not been joined by any other Australian industry members in its application, support for their claims has been indicated in submissions by Performance and Dragway. The Australian industry is comprised of the following known manufacturers:

- Arrowcrest
- Performance Wheels
- Dragway

Arrowcrest accounted for more than 95% of the Australian production of like goods during the investigation period (1 July 2010 to 30 June 2011).

Customs and Border Protection requested and received information from the abovementioned companies, however visits were conducted with Arrowcrest only.

5.3.2. Importers

Customs and Border Protection performed a search of its database and identified 181 importers. Each of the identified importers was contacted regarding participation in the investigation.

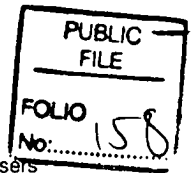
Customs and Border Protection received importer questionnaires from, and undertook visits to, the following major importers:

- Mullins Wheels;
- PDW;
- GM Holden;
- Kelso Family Trust trading as Versus Wheels;
- Primal; and
- YHI Australia

Reports from these visits were placed on the public record.

Two major importers – Bob Jane and Speedy Wheels – declined to fully cooperate with the investigation and were not visited.

PUBLIC RECORD



5.3.3. Australia based distributors

Customs and Border Protection identified the following key end users (wholesalers/ retailers) of ARWs in the AM market during the investigation:

- Bob Jane;
- Beaurepaires/ Total Tyres;
- Bridgestone;
- City Discount Tyres;
- Jax;
- Speedy Wheels; and
- Tyrepower.

Some of these entities are also importers of ARWs (see section 5.3.2 above). Customs and Border Protection forwarded an end user questionnaire to each of the above companies. A response was received from Speedy only.

5.3.4. End users

Customs and Border Protection identified the following end users of ARWs in the Australian OEM market:

- Ford;
- FPV;
- HSV;
- Toyota.

Toyota declined to participate in the investigation. Customs and Border Protection forwarded an end user questionnaire to the remaining companies listed above, which all responded to. Customs and Border Protection visited Ford and HSV to discuss the information provided in their responses and other matters related to the investigation.

5.4. Market size

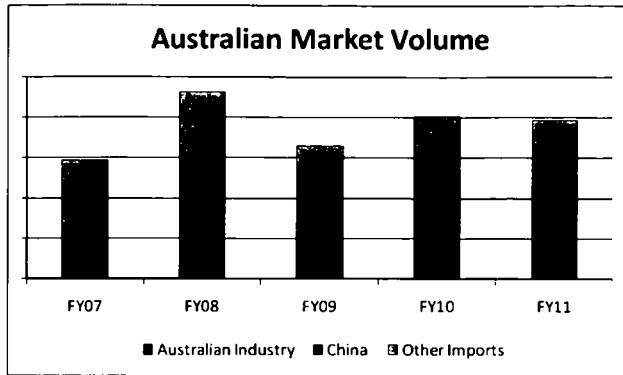
Customs and Border Protection has combined import data from its import database with Australian industry sales information to estimate the size of the Australian market for ARWs during the injury analysis period. Customs and Border Protection assessed the Australian market for ARWs to be approximately two million wheels during the investigation period. The market size fluctuated during the injury analysis period.

The following graph shows the size and proportion of Australian industry versus imports by volume and percentages over the injury analysis period.

PUBLIC RECORD



Graph 1



Chinese imports supplied both the OEM and AM markets during the injury analysis period.

PUBLIC RECORD

PUBLIC
FILE

FOLIO 156

6. DUMPING INVESTIGATION

6.1. Preliminary findings

Customs and Border Protection has made a preliminary finding that ARWs were exported to Australia from China at dumped prices during the investigation period. The preliminary dumping margins determined for exporters are outlined in the table below:

Dumping Margins

Exporter	Dumping Margin (% of Export Price)
CITIC Dicastal	9.1%.
PDW	-3.2%.
Pilotdoer	21.6%.
Jinfei Kaida	7.5%
Yueling	14.6%
Selected Non-cooperating Exporters	32.9%

Source: Confidential Attachment 1

Customs and Border Protection proposes to recommend that the dumping investigation be terminated so far as it relates to PDW.

The total volume of dumped goods is not negligible.

The volume of exports to Australia during the investigation period represented by the selected non-cooperating exporters is around 65%.

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 dumping margin is the difference between the export price¹⁷ and the normal value¹⁸.

The investigation period, for the purposes of assessing any dumping margins, is from 1 July 2010 to 30 June 2011. The investigation must be terminated so far as it relates to a particular country if the volume of dumped goods from that country is negligible¹⁹. The volume of dumped goods is negligible if this figure is less than 3% of the total Australian import volume²⁰.

This section of the SEF reports on Customs and Border Protection's determination of export prices, normal values and dumping margins for Chinese exporters.

¹⁷ Section 269TAB

¹⁸ Section 269TAC

¹⁹ Section 269TDA(3)

²⁰ Section 269TDA(4)

PUBLIC RECORD



6.2.1. Number and categorisation of exporters

Customs and Border Protection found there were 117 entities²¹ from China that exported ARWs to Australia in the investigation period.

Despite the relatively large number of exporters, Customs and Border Protection has not undertaken a sampling exercise in terms of subsection 269TACB(8).

Rather, Customs and Border Protection sought to determine exporter-specific dumping (and subsidy) margin calculations for all exporters, after investigating the exportations of all exporters in the investigation period, whether or not they cooperated with the investigation. Therefore, Customs and Border Protection regards all exporters to be 'selected exporters' in relation to section 269T.²²

In the case of those exporters that provided an adequate and timely response to the exporter questionnaire, Customs and Border Protection was able to base the dumping margin (and subsidy) calculations on the data submitted and verified. These exporters were considered to be 'selected cooperating exporters'.

In some instances, the data submitted by these exporters was verified in on-site visits to the exporters' premises. In other cases, the data was examined by Customs and Border Protection without on-site verification.

In the case of those exporters that provided inadequate responses to the exporter questionnaire, or did not make themselves known to Customs and Border Protection, Customs and Border Protection regarded these exporters as 'selected non-cooperating exporters'.

Customs and Border Protection received 6 responses to the exporter questionnaire issued in relation to the dumping and subsidy investigation on ARWs. There were 5 exporters that provided adequate and timely responses to the exporter questionnaires – four were visited for verification purposes, and data for the other exporter was examined without on-site verification.

6.2.2. Selected cooperating exporters

Exporters whose data was verified on-site

Customs and Border Protection undertook verification visits to the following four selected cooperating exporters (which collectively accounted for an estimated 30% of the volume of exports of ARWs to Australia from China in

²¹ It is difficult to estimate the number of exporters accurately because in some cases Customs and Border Protection is only aware of the identities of the suppliers, which can be trading entities or manufacturers. Customs and Border Protection usually regards the manufacturer to be the exporter. Where the supplier details for particular importations in the Customs and Border Protection import database relate to traders, this means the identities and number of the exporters (manufacturers) are unknown.

²² Section 269T(1) provides that 'selected exporter, in relation to a dumping duty notice or a countervailing duty notice in respect of goods, means an exporter of goods the subject of the application or like goods whose exportations were investigated for the purpose of deciding whether or not to publish that notice.'

PUBLIC RECORD

PUBLIC FILE
FOLIO No: 154

the investigation period), and based dumping margin (and subsidy) calculations upon that verified data.

These exporters are as follows.

- CITIC Dicastal Wheel Manufacturing Co., Ltd (CITIC Dicastal)
- Zhejiang Shuguang Industrial Co. Ltd also known as PDW International Co. (PDW)
- Zhejiang Jinfei Kaida Wheel Co., Ltd (Jinfei Kaida)
- Pilotdoer Wheel Co. Ltd (Pilotdoer)

Exporters whose data was assessed without on site verification

Customs and Border Protection received a response to the exporter questionnaire from Zhejiang Yuleing Co. Ltd (Yueling), however a verification visit was not undertaken.

Following receipt of additional information requested in order to form a view on the reliability of its data for assessing dumping, Customs and Border Protection calculated dumping (and subsidy) margins after analysing the data submitted. The analysis included some tests on the data for completeness, relevance and accuracy, and some benchmarking to verified data of a similar nature. A report of Customs and Border Protection's analysis is available on the public record.

6.2.3. Selected non-cooperating exporters

Customs and Border Protection received a response to the exporter questionnaire from YHI Manufacturing Co. Ltd (YHI). Customs and Border Protection requested additional information in order to form a view on the reliability of the data for assessing dumping and subsidy margins, however YHI declined to provide it.

Customs and Border Protection considered whether visiting YHI's related importer, YHI Australia, in combination with benchmarking to other verified data, could address its concerns in relation to the exporter questionnaire response. The visit report to YHI Australia, which can be found on the public record, disclosed that Customs and Border Protection found its data to be unreliable for the purpose of calculating an export price. Based on YHI's refusal to supply further requested information, and the unreliability of YHI Australia's data, the information provided by YHI was assessed as being materially deficient, not sufficient to warrant verification; and it is considered to be unreliable.

Customs and Border Protection regards YHI as a selected non-cooperating exporter. It also considers all those entities that exported ARWs to Australia that did not make themselves known to Customs and Border Protection to be selected non-cooperating exporters.

PUBLIC RECORD

PUBLIC
FILE

FOLIO

No. 153

The export prices and normal values (and subsidy amounts) for selected non-cooperating exporters have been determined after having regard to all relevant information.

6.3. Assessment of particular market situation

After having regard to all relevant information, Customs and Border Protection has preliminarily formed the view that it is satisfied there was a situation in the Chinese ARW market during the investigation period such that sales in that market are not suitable for use in determining normal value under section 269TAC(1). An assessment of whether a market situation existed is provided at Appendix A.

Customs and Border Protection therefore considers that the normal value in respect of ARWs exported to Australia from China should be constructed under section 269TAC(2)(c) of the Act.

It is noted that the construction of normal value under section 269TAC(2)(c) has been undertaken in accordance with the conditions of Regulations 180 and 181 of the *Customs Regulations 1926* (the *Regulations*) as required by section 269TAC(5A). The Regulations provide for an examination of the reasonableness of exporters' recorded costs. This is discussed further in section 6.4 below.

6.4. Reasonableness of ARW costs in China

In the course of making its market situation assessment for China, Customs and Border Protection noted the Government of China (GOC) significantly influenced the Chinese aluminium industry, and this influence is likely to have materially distorted competitive conditions and both directly affected the price of the main raw material used in the manufacture of ARWs, as well as likely affecting supply within that industry.

Much of the analysis that led Customs and Border Protection to the market situation finding is also relevant to assessing whether the various elements of the costs to make and sell ARWs in China, as recorded by exporters, are reasonable.

Customs and Border Protection has formed the view that the GOC influence in the aluminium industry is pronounced in the parts of that industry upstream from ARW production. In particular, Customs and Border Protection considers that GOC-driven market distortions have resulted in artificially low prices for the key raw materials used in ARW production in China – aluminium and aluminium alloy.

In these circumstances, Customs and Border Protection considers the costs incurred by ARW manufacturers in China for aluminium and aluminium alloy used in the investigation period do not reasonably reflect competitive market costs in terms of Regulation 180(2).

PUBLIC RECORD



Customs and Border Protection therefore replaced the costs of aluminium and aluminium alloy for each Chinese exporter, as recorded by these exporters, when constructing normal values. Customs and Border Protection used costs based on London Metal Exchange data, plus an adjustment for alloy manufacture where appropriate (benchmark cost). This is the same benchmark data used for the purposes of the subsidy investigation, i.e. subsidy program 1 (refer Appendix B).

This benchmark was used as it is considered to be a reasonable reflection of competitive market costs for aluminium and aluminium alloy. In each case, application of this benchmark resulted in an uplift to exporters' aluminium and/or alloy costs (i.e. the actual costs incurred by ARW exporters for aluminium and/or alloy were lower than the benchmark amount).

To arrive at this uplift amount, Customs and Border Protection applied the benchmark cost to all purchases of aluminium and aluminium alloy by selected cooperating exporters to arrive at a percentage uplift to be applied to the raw materials cost recorded in the exporters' records.

For selected non-cooperating exporters, the highest percentage uplift found in relation to the selected cooperating exporters was used, in the absence of reliable information to demonstrate this uplift would have been lower for these exporters.

Customs and Border Protection considers this benchmark to be reflective of competitive market costs for aluminium and aluminium alloy. The details of the benchmark used are outlined in Appendix B to this SEF.

The constructed normal values for Chinese exporters discussed below are based on revised costs to make and sell that take account of the uplift for benchmark aluminium and alloy costs.

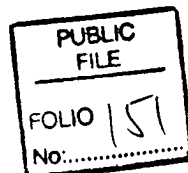
6.5. Determination of profit for constructed normal values in China

Customs and Border Protection notes Regulation 181A provides that, where reasonably possible, profit must be worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.

Accordingly, Customs and Border Protection calculated a weighted average net profit, measured as a percentage mark-up on full cost to make and sell, for each selected cooperating exporter, using the verified cost to make and sell data (i.e. prior to substitution of costs) and verified domestic selling prices from sales made in the ordinary course of trade in the investigation period.

Where the exporters made domestic sales in the ordinary course of trade, in sufficient quantities, this measure of profit was used to construct normal values that were based on revised unit costs that included substituted aluminium and alloy costs from the benchmark data.

PUBLIC RECORD



In the case of one Chinese exporter, Pilotdoer, Customs and Border Protection used the average net profit from domestic sales made in the ordinary course of trade by the other selected cooperating exporters from China. Pilotdoer made a low volume of domestic sales as it is export focussed. The few domestic sales it did make were one-off and not considered to be made in the ordinary course of trade. Customs and Border Protection therefore did not consider profit from those sales to be a reasonable basis for constructing a normal value.

The constructed normal values for Chinese exporters discussed below include the profit amounts calculated in the manner described above.

6.6. Dumping margins for selected cooperating exporters

6.6.1. CITIC Dicastal

CITIC Dicastal manufactured and exported ARWs to Australia during the investigation period. The goods were imported by two Australian importers.

It was found that for exports to GM Holden:

- The goods have been exported to Australia otherwise than by the importers and have been purchased by the importers from the exporter; and
- The purchase of the goods by the importers was an arms length transaction.

The export price for these sales were ascertained under section 269TAB(1)(a) using the invoiced price less any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

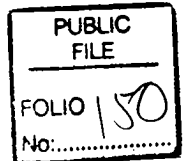
It was found that for exports where the ultimate customer was Ford:

- the goods have not been exported to Australia otherwise than by the importer CITIC Dicastal and Dicastal Australia are considered to be one exporter; and
- the transfer of the goods between these related parties were not arms length transactions.

On the basis of the above conclusions, export prices are unable to be determined under section 269TAB(1)(a) or (b). Export price was determined under section 269TAB(1)(c). Customs and Border Protection considered it appropriate, for the calculation of export price, to include a proportionate deduction reflecting the SG&A costs associated with CITIC International's role as trader in the exportation process.

Normal values were established in accordance with section 269TAC(2)(c) using Dicastal's quarterly weighted average cost to make and sell data (revised for raw material cost uplift), by wheel diameter, and an amount for profit based on domestic sales of like goods made in the ordinary course of trade. Negative adjustments were made for domestic packaging costs. A

PUBLIC RECORD



positive adjustment was made in relation to commission, export credit insurance and export packaging costs.

The dumping margin for Dicastal was established in accordance with section 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 Dicastal is 9.1%.

Submission from Dicastal

In Dicastal's visit report the dumping margin was calculated using two alternatives – one compared the export price to normal value by piece or diameter size, and the other compared a single export price per kilogram with a normal value per kilogram, ie dumping was calculated by reference to weight. Dicastal has made submissions that the most appropriate way to assess dumping is on the basis of weight.

Given the finding of market situation this submission is no longer relevant because normal values were constructed on the basis of a single domestic selling price per kilogram, ie by reference to weight, in each quarter. Constructed normal values were compared to individual export prices to calculate the dumping margin during the investigation period.

6.6.2. PDW

Export price for export sales from PDW was established under section 269TAB(1)(a), being the price paid or payable by the importer less, as appropriate, expenses that represent a charge for any matter arising after exportation.

Normal values were established in accordance with section 269TAC(2)(c) of the Act using PDW's weighted average cost to make and sell data (revised for raw material cost uplift), by product code, and an amount for profit based on domestic sales of like goods. A positive adjustment was made in relation to credit.

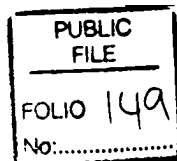
The dumping margin for PDW was established in accordance with section 269TACB(2)(a), by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The dumping margin for PDW is -3.2%.

Customs and Border Protection is proposing that the dumping investigation should be terminated so far as it relates to PDW.

6.6.3. Pilotdoer

Export price was calculated under section 269TAB(1)(a), by reference to the invoice from Pilotdoer to the Australian customer less any part of that price

PUBLIC RECORD



that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

Normal values were established in accordance with section 269TAC(2)(c) using Pilotdoer's weighted average cost to make and sell data (revised for raw material cost uplift), by wheel diameter, and an amount for profit. Regulation 181A(2) cannot be used to determine profit as Pilotdoer's volume of domestic sales is too low to be considered reasonably reflective of domestic sales of like goods. Regulation 181A(3)(a) cannot be applied for the same reason. Profit has therefore been based on the weighted average of actual amounts realised by other cooperating exporters from the sale of like goods in the domestic market (Regulation 181A(3)(b)). No adjustments were made.

The dumping margin for Pilotdoer was established in accordance with section 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 Pilotdoer is 21.6%.

6.6.4. Jinfei Kaida

Export price was calculated under section 269TAB(1)(a), by reference to:

- For exports directly by Jinfei Kaida, the invoice price from Jinfei Kaida to the Australian customer; and
- For exports by Jinfei Holdings, the invoice price from Jinfei Holdings to the Australian customer,

less any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

Normal values were established in accordance with section 269TAC(2)(c) using Jinfei Kaida's quarterly weighted average cost to make and sell data (revised for raw material cost uplift), by wheel diameter, and an amount for profit based on domestic sales of like goods made in the ordinary course of trade. Negative adjustments were made for inland freight. A positive adjustment was made in relation to freight to the port and terminal handling charges.

The dumping margin for Jinfei Kaida was established in accordance with section 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 Jinfei Kaida is 7.5%.

6.6.5. Yueling

Export price for export sales from Yueling was established under section 269TAB(1)(a).

PUBLIC RECORD

PUBLIC FILE
FOLIO 148
No:.....

PUBLIC FILE
FOLIO
No:.....

Normal values were established in accordance with section 269TAC(2)(c) of the Act using Yueling's quarterly weighted average cost to make and sell data (revised for raw material cost uplift), by wheel diameter, and an amount for profit on domestic sales of like goods made in the ordinary course of trade. A positive adjustment was made in relation to inland freight, handling loading and ancillary expense, commission expenses and bank and currency expenses.

The dumping margin for Yueling was established in accordance with section 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 Yueling is 14.6%.

6.6.6. Selected non-cooperating exporters

Selected non-cooperating exporters of ARWs comprise:

- YHI; and
- all other exporters of ARWs from China other than the selected cooperating exporters.

Export price

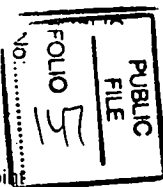
Customs and Border Protection examined and considered a range of options for determining export price for selected non-cooperating exporters, including:

- export price data from the Customs and Border Protection import database;
- export price data from importer visits where that data related to exports from the selected non-cooperating exporters;
- export price data from the application for a dumping duty notice and a countervailing duty notice;
- export price data from the selected cooperating exporters.

The import data from Customs and Border Protection's import database does not contain sufficient detail to establish whether the imported goods are ARWs or other types of wheels, nor does it contain information about wheel sizes. This means that unit export prices derived from that data are not a reliable basis for calculating export price by diameter.

The export price data verified in importer visits does not include broad and detailed coverage of the goods exported by the selected non-cooperating exporters. Rather, that data pertains mainly to the exports of selected cooperating exporters. While it may be possible to identify small volumes of the goods exported by some of the selected non-cooperating exporters, this would represent only a small proportion of the total volume of ARWs exported by those exporters.

PUBLIC RECORD



Export prices submitted in the application for a dumping duty notice and a countervailing duty notice were based on individual quotes at a specific point in time and not considered as reflective of overall export prices as verified data.

Customs and Border Protection considers the most directly relevant and therefore best information available would be the export price data obtained and verified in relation to the selected cooperating exporters.

After having regard to all relevant information, export prices for all selected non-cooperating exporters were established in accordance with s.269TAB(3) of the Act.

Specifically, Customs and Border Protection used the lowest weighted average export price for the entire investigation period from the selected cooperating exporters, by diameter, excluding any part of that price that relates to post-exportation charges.

Other than YHI, selected non-cooperating exporters did not make themselves known to Customs and Border Protection, and did not respond to the Exporter Questionnaire. In this context it cannot be assumed, and there is no reasonable basis to find, that the export prices of the selected cooperating exporters were any higher than those determined in the approaches described above.

Normal value

Customs and Border Protection examined and considered a range of options for determining normal value for selected non-cooperating exporters, including:

- normal value data from the application; and
- normal value data from the selected cooperating exporters.

The normal values submitted in the application were based on two alternatives:

1. The applicant's own research of prices in China; and
2. a constructed cost using LME prices as the basis for raw material costs, and estimates of overheads and SG&A based on the applicant's own production.

While these constructed normal values were found by Customs and Border Protection to be suitable for initiation purposes, Customs and Border Protection has since undertaken verification of exporter data in all of the nominated countries/region. As explained in Customs and Border Protection's *Dumping and Subsidy Manual* (the Dumping and Subsidy Manual)²³ at page 43, Customs and Border Protection considers that where there are

²³ Available online at <http://www.customs.gov.au/site/covcc5719.asp>

PUBLIC RECORD



cooperating and non-cooperating 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 selected non-cooperating exporters were established in accordance with s.269TAC(6) of the Act.

Specifically, Customs and Border Protection used the highest weighted average normal value for the entire investigation period from the selected cooperating exporters, by diameter.

Other than YHI, selected non-cooperating exporters did not make themselves known to Customs and Border Protection, and did not respond to the Exporter Questionnaire. In this context it cannot be assumed, and there is no reasonable basis to find, that the normal values of the selected cooperating exporters were any lower than those determined in the approaches described above. YHI's data was considered unreliable for the reasons set out at 6.6.6.

Dumping margin

The dumping margins for selected non-cooperating exporters were established in accordance with section 269TAC(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 preliminary dumping margin for selected non-cooperating exporters is 32.91%.

PUBLIC RECORD

PUBLIC
FILE

FOLIO 145

7. SUBSIDY INVESTIGATION

7.1. Preliminary findings

Customs and Border Protection has made a preliminary finding that ARWs exported from China to Australia were subsidised during the investigation period. The subsidy margins determined for exporters are:

Subsidy Margins

Exporter	Subsidy Margin (% of Export Price)
CITIC Dicastal	<2%
PDW	2.0%
Pilotdoer	4.4%
Jinfei Kaida	2.8%
Yueling	5.1%
Selected Non-cooperating Exporters	58.8%

Source: Confidential Attachment 2

The delegate proposes to terminate the subsidy investigation so far as it extends to Dicastal.

7.2. Investigated programs

7.2.1. Original 40 programs

Arrowcrest submitted that Chinese producers of the goods have benefited from a range of countervailable subsidies during the investigation period.

Following consideration of Arrowcrest's claims, Customs and Border Protection initiated investigations into 40 programs (Programs 1 – 40), for which it considered the application contained reasonable grounds for publication of a countervailing duty notice in relation to ARWs exported to Australia.

Customs and Border Protection included questions relating to each program in the Government Questionnaire (GQ), which was forwarded to the GOC.

A response to the GQ was received from the GOC on 1 February 2012.

7.2.2. Programs 41 – 56

During verification visits by Customs and Border Protection to selected cooperating exporters, 16 other potentially countervailable subsidy programs were identified (Programs 41 – 56).

Based on its investigations with the relevant exporters, Customs and Border Protection considered that the information available established reasonable grounds for the publication of a countervailing duty notice for these programs.

PUBLIC RECORD

Customs and Border Protection sent the GOC the Supplementary Government Questionnaire (SGQ) to pose questions and ask for documentation in relation to these new potential programs.



The GOC provided a response to the SGQ on 11 April 2012.

7.3. Summary of countervailable programs

After assessing all relevant information available, Customs and Border Protection has preliminarily found that countervailable subsidies have been received in respect of ARWs exported to Australia from China, under 34 subsidy programs.

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

No.	Program	Countervailable in respect of ARWs?
1	Aluminium provided by government at less than fair value	Yes
2	transitional preferential tax policies for tax resident enterprises;	No
3	preferential policies on Enterprise Income Tax;	No
4	preferential income tax for hi-tech enterprises;	Yes
5	preferential tax policies for western development "Go West" strategy;	Yes
6	preferential tax policies for FIEs established in the coastal economic open areas and in the economic and technological development zones;	Yes
7	reduced tax rate for productive FIEs scheduled to operate for a period of not less than 10 years;	Yes
8	preferential tax policies for FIE export enterprises whose annual output value of all export products amounted to 70% or more;	Yes
9	preferential tax policies for FIEs which are technology-intensive and knowledge-intensive;	Yes
10	preferential tax policies for enterprises which provide employment to unemployed people;	No
11	preferential tax policies for FIEs in State high or new technology industrial development zones, and for advanced technology enterprises invested in and operated by FIEs;	Yes
12	refund of income tax for direct reinvestment;	No
13	preferential tax policies for enterprises transferring technology;	Yes
14	preferential tax policies for enterprises making little profit;	Yes
15	preferential tax policies for enterprises with foreign investment in the border cities;	No
16	preferential tax policies for FIEs in central and western China;	No
17	preferential tax policies for FIEs established in Pudong area of Shanghai;	No
18	preferential tax policies in the western regions – domestic companies and FIEs;	No
19	preferential tax policies for FIEs in the Three Gorges of Yangtze River	No

PUBLIC RECORD

	Economic Zone, ie Shanghai, Zhejiang and Jiangsu;	
20	preferential tax policies for enterprises established in poverty stricken areas;	No
21	grants for encouraging the establishment of headquarters and regional headquarters with foreign investment;	Yes
22	preferential tax treatments for new hi-tech enterprises (NHTE) in special zones;	Yes
23	preferential policies in industrial zones in China including Economic & Technological Development Zones (ETDZ), High & New Technological Development Zones (High Tech Parks), Export Processing Zones (EPZ), Special Economic Zones (SEZ), Free Trade Cooperation Zones (FTZ), Industrial Zones (IZ) and Export Processing Zones (EPZ);	No
24	preferential policies in Xinzhuang Industrial Zone, Shanghai;	No
25	preferential policies in Shanghai;	No
26	preferential policies in Weihai Economic Development, High Tech Industry Development and Export Processing zones, Shandong province;	No
27	tax incentives for manufacturing FIEs in Jiangsu province;	No
28	preferential tax rates in Guangzhou, Guangdong province;	No
29	patent award in Guangdong province;	Yes
30	termination of tax refund policies for FIEs on their purchase of domestically manufactured equipment;	No
31	exemption of tariff and import VAT for imported technologies and equipments;	Yes
32	100% refund of VAT to FIEs on purchasing unused domestic equipment with currency in China;	Yes
33	preferential tax treatment for casting and forging products;	No
34	preferential tax treatment for dies products;	No
35	matching funds for international market development for SMEs;	Yes
36	innovative experimental enterprise grant;	Yes
37	special support fund for non-State-owned enterprises (NSOEs);	Yes
38	venture investment fund for Hi-Tech Industry;	Yes
39	Superstar Enterprise Grant	Yes
40	one-time awards to enterprises whose products qualify for "Well-known Trademarks of China" or "Famous Brands of China".	Yes
41	Technology assist	Yes
42	Export subsidies	Yes
43	SME assist	Yes
44	Environmental subsidies	Yes
45	New Products	No
46	Government Incentives for the Top Taxpayer of the Year-Qinhuangdao City	Yes

PUBLIC RECORD

**PUBLIC
FILE**

FOLIO 142
Yes
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47	Financial Support from China Postdoctoral Science Foundation	Yes
48	Foreign Trade Public Service Platform Development Fund	Yes
49	SME International marketing project funds	No
50	Patent Application Fee Subsidy	Yes
51	Enterprise Development	Yes
52	Economic Development Zone	No
53	New Product Trial Production	Yes
54	Patent Special Funds	No
55	Technological innovation products funded	No
56	Patent grants	Yes

7.4. Subsidy margins

7.4.1. Selected cooperating exporters

Customs and Border Protection has determined that the selected cooperating exporters received financial contributions in respect of the goods that conferred a benefit under certain programs.

Exporter-specific subsidy margins have been calculated for each selected cooperating exporter with reference to the specific programs that conferred a benefit on each exporter.

7.4.2. Selected non-cooperating exporters

GOC information

Within the GQ and SGQ, Customs and Border Protection requested that the GOC list all Chinese ARW producers and/or exporters that have produced and/or exported ARWs destined for Australia during the investigation period that applied for, accrued, or received benefits under Program 1 – 56.

In its responses to the GQ and SGQ, the GOC did not provide this information completely, limiting its response to the 'respondents' or 'respondent enterprises' in the GQ, and apparently limiting its response in the SGQ to the selected cooperating exporters already identified by Customs and Border Protection to have received those programs addressed in the SGQ.

In the absence of relevant information to identify enterprises that had received financial contributions under each of the investigated subsidy programs, Customs and Border Protection has had regard to the available relevant facts and determines that non-cooperating exporters have received financial

PUBLIC RECORD

PUBLIC
FILE

FOLIO

No:.....

contributions that have conferred a benefit under all programs found to be countervailable in relation to ARWs.

7.4.3. Preliminary margins

Customs and Border Protection has calculated the following subsidy margins for each selected cooperating exporter individually and for selected non-cooperating exporters collectively:

Exporter	Subsidy Margin (% of Export Price)
CITIC Dicastal	<2%
PDW	2.0%
Pilotdoer	4.4%
Jinfei Kaida	2.8%
Yueling	5.1%
Selected Non-cooperating Exporters	58.8%

Source: Confidential Attachment 2

Customs and Border Protection's findings in relation each program investigated program are outlined in Appendix B.

The calculation of the subsidy margin for each selected cooperating and selected non-cooperating exporter is at Confidential Attachment 2.

In the case of exports from China, the delegate must terminate an investigation if the subsidy margin is below 2%. Customs and Border Protection is proposing to recommend termination of the subsidy investigation so far as it extends to Dicastal.

PUBLIC RECORD

PUBLIC
FILE

FOLIO

No.

140

8. ECONOMIC CONDITION OF THE INDUSTRY

8.1. Preliminary finding

Customs and Border Protection is of the preliminary view that the Australian industry experienced material injury in the form of:

- price suppression;
- lost sales volumes;
- lost revenue;
- lost profits and profitability;
- reduced capacity utilisation.
- reduced employment; and
- reduced return on investment;

8.2. Introduction

This section reports on the economic condition of the Australian industry and provides an assessment as to whether the industry has suffered injury. The period from 1 July 2006 is being examined for injury analysis purposes. The analysis of injury to the Australian industry is primarily based on verified information from Arrowcrest. The remaining industry members – Performance and Dragway – were not visited as their volumes were considered minor relative to that of Arrowcrest. Based on the (unverified) data from Performance and Dragway, Arrowcrest's production is estimated to represent over 95% of sales by Australian manufacturers during the investigation period.

Australian Customs and Border Protection has analysed the economic performance of the Australian industry in the OEM and AM segments separately, as well as in the Australian market overall.

8.3. Marketing and distribution

Arrowcrest trades as ROH Automotive (ROHA) and ROH Wheels Australia (ROHWA).

- ROHA manufactures and supplies ARWs to Arrowcrest's OEM customers including Toyota and HSV; and
- ROHWA operates five branch warehouses, one in each capital city (except Hobart and Darwin), from which it wholesales Arrowcrest's AM ARWs to the tyre retail industry.

8.4. Commencement of injury

Arrowcrest claimed that imports of ARWs from China commenced causing material injury to the Australian industry as early as 2003, and that the injurious effects have continued.

Customs and Border Protection is reluctant to place much weight on trends observed prior to 2006 given the lack of relevant sales and cost information

PUBLIC RECORD

PUBLIC
FILE

FOLIO 139
No:.....

available for the earlier period. For the purpose of this investigation, most weight is given to the period from 1 July 2006 for injury analysis purposes.

8.5. Approach to injury analysis

Arrowcrest provided production and sale of like goods information for the entire injury analysis period, July 2006 to June 2011 – to enable analysis of the Australian industry. Arrowcrest's application included data submitted on the basis of its financial year. All references to year in this report are references to the period 1 July to 30 June.

Injury analysis has been conducted on a per piece basis by wheel diameter. Analysis has been conducted by examination of data in the following ways:

- Overall industry figures; and
- Separation of OEM and AM markets.

8.6. Price depression and suppression

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

Arrowcrest claims that its prices have been depressed and suppressed.

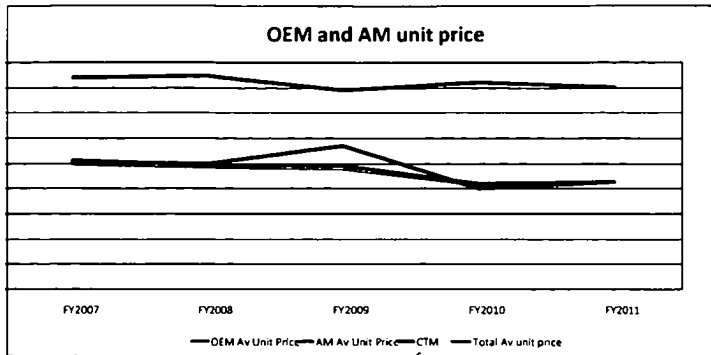
Arrowcrest claims that the average selling prices for ARWs have not tracked the rise and fall in rest-of-the-world LME prices for primary aluminium, which is the raw material for ARWs. This, Arrowcrest claims, is due to the influence of the continuously declining Chinese import prices. Arrowcrest expected the selling prices for ARW's to be at higher levels in 2010 due to the 80% increase since 2003 in the key raw material, being aluminium.

Customs and Border Protection examined Arrowcrest's external unit sales price and cost trends during the injury analysis period.

PUBLIC RECORD



Diagram 1:



Customs and Border Protection noted that:

- the overall average unit price declined to FY2010 and then increased marginally in FY2011
- the average OEM unit price followed the same trends as the overall unit price. This is because during the injury analysis period 94% of Arrowcrest's sales were to the OEM segment;
- the average AM unit price declined to FY2009, then remained reasonably stable until 2011; and
- unit costs rose significantly in 2009, however decreased similarly in 2010 and rose slightly higher in 2011. While AM unit prices were profitable throughout the injury analysis period, OEM unit prices fell below costs in 2009, and did not increase in proportion to costs in 2011.

Arrowcrest suffered some price depression in the AM segment during the investigation period. Although Arrowcrest's prices to the OEM segment of the Australian market (and hence overall prices) declined during the injury analysis period they increased during the investigation period. Arrowcrest did not suffer price depression during the investigation period in relation to its overall average unit price because its sales to the AM market are low compared to total sales.

In relation to price suppression Customs and Border Protection notes that:

- Arrowcrest's overall average price closely follows the CTMS line during the injury analysis period (except in FY2009);
- The overall average price increased in FY2011, but not to the same extent as cost increases; and
- CTMS decreased in FY2010 by 29%. Arrowcrest claims that this was due to Arrowcrest's self help initiatives. The graph shows that gains

PUBLIC RECORD

PUBLIC
FILE

FOLIO 137
No:.....

made by the company in FY2010 were unable to be sustained in the investigation period.

Given the significance of OEM sales to Arrowcrest's business during the investigation period, any price suppression in this market has a material impact on Arrowcrest's revenue, profit and profitability. Customs and Border Protection is of the preliminary view that the Australian industry suffered price suppression during the investigation period.

8.7. Volume Effects

Customs and Border Protection estimated the size of the Australian market based on:

- verified Arrowcrest sales data;
- verified import data from exporters and importers visited during the investigation; and
- import volume from the Customs and Border Protection import database.

Import volume was estimated based on the volume of imports entered under tariff sub-headings 8708.70.91/78 and 8708.70.99/80²⁴. These sub-headings also include goods that are not ARWs, in particular steel wheels and wheels for all terrain vehicles. The data was cleansed where possible to remove transactions that were obviously not the goods, however it is possible the remaining dataset includes goods other than ARWs. Despite this, we are satisfied that the data available is valid for injury analysis purposes.

8.7.1. Sales volume

Changes in the size of the Australian ARW market over the injury analysis period are illustrated in Diagram 2.

²⁴ Note:

1. the market volume includes wheels imported under tariff sub-headings 8708.70.91/78 (which covers road wheels of a kind used as components in PMVs) and 8708.70.99/80 (which covers road wheels other than of a kind used as components in PMVs). Tariff sub-heading 8716.90.00/39 has not been included as it was found to be problematic to cleanse the data.
2. Tariff sub-headings 8708.70.91/78 and 8708.70.99/80 includes both aluminium and steel wheels. Steel wheels have been excluded where the description of the goods clearly identified the goods as steel. Wheels have been excluded where the description of the goods clearly identifies the goods as not being for PMVs, 4WD vehicles, trailers or caravans. Goods have been excluded where the description of the goods clearly identifies the goods as not being wheels.

PUBLIC RECORD

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PUBLIC FILE
FOLIO 136
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Diagram 2: Australian ARW market volume

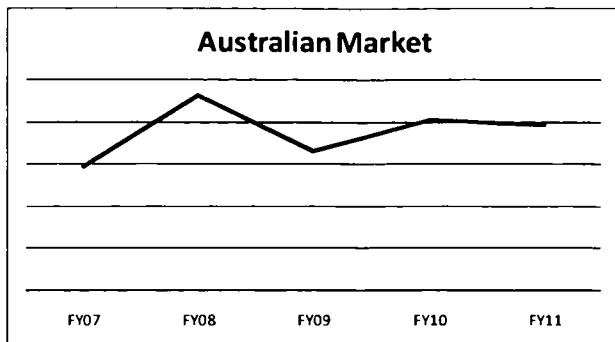
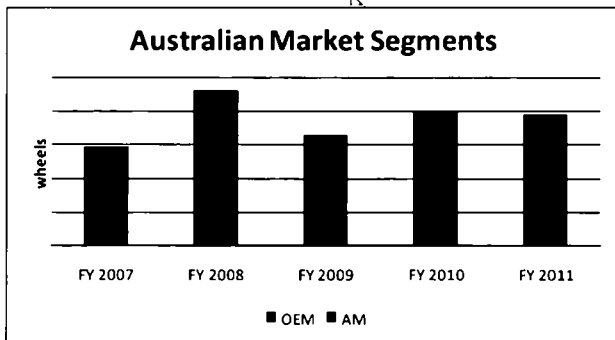


Diagram 2 shows in particular that the Australian ARW market increased significantly in 2008 before decreasing in 2009. This coincided with the onset of the global financial crisis. The market partially recovered in 2010 and remained stable in 2011.

Changes in the size of ARW market segments over the injury analysis period are shown in Diagram 3.

Diagram 3: Australian ARW Market Segments



Note: the data used in Diagram 3 was estimated based on Arrowcrest's reported sales to the OEM segment plus export volume by CITIC Dicastal (the majority Chinese supplier of ARWs to the OEM segment) extracted from the Customs and Border Protection import database. There is therefore a small discrepancy (less than 1%) in the data used in Diagrams 1 and 2. Customs and Border Protection consider this discrepancy to be insignificant.

Customs and Border Protection found that:

- changes in size of the OEM segment corresponds approximately to changes in the size of the overall market; and

PUBLIC RECORD

PUBLIC

PUBLIC
FILE

FOLIO

No:.....

135

- the AM segment represented over 70% of the Australian ARW market during the investigation period. Therefore movements in the size of the AM segment largely determined movements in the size of the Australian ARW market during the investigation period.

Trends in volume have been examined on a financial year basis over the injury analysis period. Changes in volume from Arrowcrest, China and other imports are shown in the following tables.

Table 1: Changes in volume (wheels) by source during Injury analysis period

AUSTRALIAN MARKET	FY07	FY08	FY09	FY10	FY11
Arrowcrest	100	114.6	68.9	116.2	108.7
China	100	221.6	222.8	275.9	265.9
Other imports	100	147.2	82.0	483.1	84.7
TOTAL	100	157.4	112.7	137.1	133.8

Source: confidential attachment 1: market summary

Table 2: Changes in Australian market size by segment during the injury analysis period

AUSTRALIAN MARKET	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
OEM	100	167	132	208	152
AM	100	153	106	115	128
Total	100	157.4	112	136	133

Table 3: Changes in Arrowcrest's sales to market segments during the injury analysis period

ARROWCREST	2007	2008	2009	2010	2011
OEM	100	131.4	78.2	138.1	129.5
AM	100	39.9	27.2	18.4	15.8
Total	100	114.6	68.9	116.2	108.7

In respect to Table 1, Australian Customs and Border Protection notes that:

Arrowcrest lost sales volume in 2009 and 2011. Arrowcrest's increase in volume in FY 2010 was partly due to Toyota's decision to replace steel wheels used in its production of PMVs with ARWs. This change is also reflected in the increase in the OEM market segment in 2010 in Table 2;

- Imports from China increased significantly at the commencement of the injury analysis period and remained consistent during the investigation period. Arrowcrest's significant loss of volume in FY 2009 coincides with the onset of the GFC, however the volume of imports from China does not appear to have been affected by the GFC;
- Arrowcrest lost volume in FY 2011 when the Australian ARW market appears to have stabilised; and

PUBLIC RECORD



- The volume from imports other than from China appears to be relatively stable.

In respect to Tables 2 and 3, Australian Customs and Border Protection notes that:

OEM segment

The majority of Arrowcrest's sales are to the OEM segment of the Australian market. Arrowcrest supplied Toyota with 100% of its requirements of ARWs during the investigation period²⁵. Sales volume to Toyota decreased in the investigation period

Arrowcrest was also the major supplier of ARWs to HSV during the injury analysis period. HSV began to also source ARWs from suppliers other than the Australian industry during the injury analysis period. Arrowcrest's sales volume to HSV decreased in the investigation period, however, the full impact of this loss of volume cannot be fully seen until after the investigation period. Arrowcrest has supplied sales reports that show volume to HSV decreasing significantly shortly after the investigation period²⁶.

AM segment

The AM segment makes up over 70% of the Australian market for ARWs, however Arrowcrest had only a small proportion of that market during the injury analysis period. As evidenced by Diagram 1 above, sales to the AM segment are significantly more profitable on a per unit basis than sales in the OEM segment.

The AM segment grew in size between 2009 and 2011, while Arrowcrest's sales volume to this segment decreased in the same period

Overall

The data shows that overall, Arrowcrest lost sales volume in the investigation period.

8.7.2 Market Share

Market shares held by Arrowcrest, imports from China and other imports on a financial year basis over the injury analysis period are shown in Table 4.

²⁵ Toyota declined to participate in the investigation so we have relied on Arrowcrest's statement to this effect, combined with data obtained from selected cooperating exporters.

²⁶ Arrowcrest visit report November 2011 – confidential attachment CAUSATION 2

PUBLIC RECORD

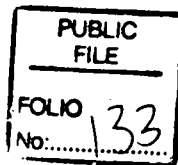


Table 4: Market shares

MARKET SHARE	FY07	FY08	FY09	FY10	FY11
Arrowcrest	23%	17%	14%	20%	19%
China	24%	34%	47%	48%	48%
Other Imports	53%	49%	39%	32%	33%
	100%	100%	100%	100%	100%

Source: confidential attachment 1: market summary

Table 4 shows, in particular, that:

- Arrowcrest's total market share declined by 4% during the injury analysis period while the market share held by imports from China increased by 24% during the same period; and
- Arrowcrest's total market share increased in FY 2010 and remained at the increased level in FY 2011.

Table 5: Market share in AM segment

	2007	2008	2009	2010	2011
ARROWCREST	5%	1%	1%	1%	1%
CHINA	26%	38%	46%	50%	54%
OTHER IMPORTS	69%	66%	53%	49%	45%
	100%	100%	100%	100%	100%

Table 5 shows, in particular, that:

- Arrowcrest lost market share in the AM segment in FY 2008. None of the lost market share was recovered during the remainder of the injury analysis period;
- Imports from China increased market share in the AM segment throughout the injury analysis period at the expense of imports from other countries.

Given the limited number of enterprises in the OEM segment of the market, disclosing market share details may reveal confidential information. However, the analysis shows that Arrowcrest's OEM market share decreased through to 2010, before increasing in 2011.

Overall, Arrowcrest did not lose market share in the investigation period.

8.8. Profit and Profitability effects

Arrowcrest submits that whilst its CTMS has closely followed its production and sales volumes, its profitability is dependent on volume particularly in regard to the recovery of fixed overheads.

Arrowcrest claims that it has managed its costs, including via restructuring, whilst its market share, sales volumes, sales turnover and profitability have all declined.

PUBLIC RECORD

PUBLIC
FILE

FOLIO 132
No:.....

The following graph illustrates Arrowcrest's total profit and profitability during the injury analysis period based on the data contained in the application.

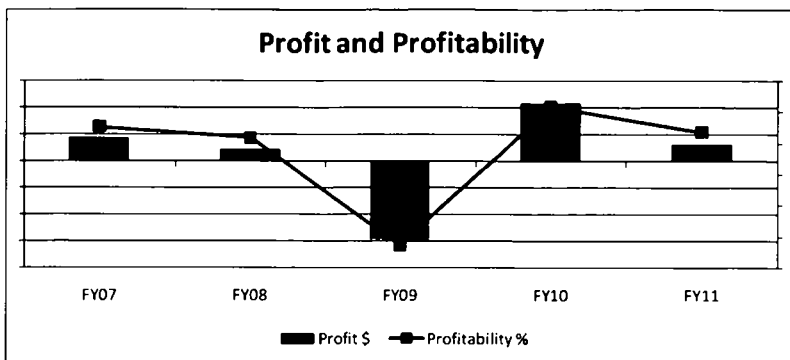


Diagram 4

The graph above shows that Arrowcrest's total profit and unit profitability fluctuated but with a downward trend towards FY2008 before declining significantly to a loss situation in FY2009. Arrowcrest's profit improved significantly in FY2010 before declining again in the investigation period.

Based on this analysis, Customs and Border Protection preliminarily concludes that Arrowcrest has suffered injury in the form of reduced profit and profitability.

8.9. Other economic factors

Arrowcrest included in its application information identifying assets, capital expenditure, research and development expenses, return on investment, capacity, capacity utilisation, productivity, cash flow measures and wages. The application also included indices of revenue variations and employment numbers. Other economic factors are discussed below in relation to Arrowcrest.

8.10. Capacity utilisation

Arrowcrest claims that it has had to reduce staff levels and is currently running at approximately 50% of capacity. Calculations provided at the verification visit show that previously Arrowcrest operated 3 shifts, 24 hours per day, 7 days per week. That has now been reduced to a 5 day working week with 3 die casting machines sitting idle due to the cessation of production for Holden and Ford. Based on current maximum capacity figures provided to Customs and Border Protection at the verification visit, assuming a 5 day working week, producing an 18" diameter wheel, Arrowcrest's level of actual unit output has been just above 50% for the 2011 financial year. This figure would be less if the maximum capacity figures for a smaller diameter wheel was used as the basis for comparison.

PUBLIC RECORD

PUBLIC FILE
FOLIO 131
No.

Arrowcrest stated that they could meet any level of demand as they had the ability to increase their maximum capacity if demand required it.

Customs and Border Protection is of the preliminary view that Arrowcrest experienced injury in the form of reduced capacity utilisation.

8.11. Employment

In 2003, Arrowcrest employed around 267 personnel in its ARW business, the majority of whom were employed in South Australia. Arrowcrest estimates that it has lost around 49% of its workforce since that time, including in its interstate sales branches, due to the influx of ARWs imported from China at dumped and subsidised prices.

Customs and Border Protection was provided with evidence showing the reduction in employee numbers within its warehousing and sales offices during the verification visit. Staff levels were further reduced in October 2011 and will remain at the current level until the need arises for extra staff to be put on to meet future orders.

Customs and Border Protection is of the preliminary view that the Australian industry has experienced injury in the form of reduced employment.

8.11.1. Assets

There has been only a minor decrease in the value of assets used in the production of ARWs.

8.11.2. Capital investment

Arrowcrest provided a summary of all capital expenditure activities from 2003 to 2011²⁷. This report showed a high level of capital investment in 2003 with reduced capital expenditure in the following years. Capital expenditure peaked again in 2006 due to the investment in Robotics for the paint system, then again in 2011 when new automated equipment was purchased that would provide cost savings to enable price concession to be passed onto Toyota in order to retain their business.

8.11.3. Research and development

Arrowcrest's investment in research and development related to production of ARWs has not changed.

8.11.4. Return on investment

Arrowcrest's return on investment in relation to ARWs has decreased by almost 50% in 2011.

²⁷ Arrowcrest visit report Nov 2011 - confidential attachment INJURY I

PUBLIC RECORD

PUBLIC FILE
FOLIO 130
No:

8.11.5. Productivity

There has been little change in productivity, due to the contractual nature of employment as discussed above.

8.11.6. Stocks

There has been no change to stock on hand as Arrowcrest generally produces to order.

8.11.7. Cash flow measures

Accounts receivable balance, receivables turnover and inventory turnover have remained stable.

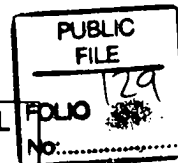
8.11.8. Wages

Total and average wages have remained stable during 2011.

8.11.9. Preliminary findings on other injury factors

The other factors show that Arrowcrest has suffered injury in the form of reduced capacity utilisation, employment and return on investment.

PUBLIC RECORD



9. HAS DUMPING AND SUBSIDY CAUSED MATERIAL INJURY?

9.1. Preliminary finding

Customs and Border Protection has made a preliminary finding that the dumping and subsidisation of the goods exported from China has caused material injury to the Australian industry producing ARWs.

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. Customs and Border Protection will examine whether the exports of ARWs to Australia, at dumped and subsidised prices, have caused material injury to the Australian industry producing like goods.

In this case, the substitution of benchmark aluminium and alloy costs in constructed normal values, and the use of benchmark aluminium and alloy costs for subsidy Program 1 leads to an assessment of dumping margins and subsidy margins that may contain some element of overlap, or double-count. To the extent that this exists, in varying degrees for each exporter, or group of exporters, Customs and Border Protection has ensured that any such overlap or double count has been removed before taking account of the size of the dumping margin²⁸ and the particulars of the countervailable subsidy²⁹ when assessing whether dumping and subsidisation has caused material injury.

Further discussion of the removal of any overlap or double-count of dumping and subsidisation, in the context of the proposed measures, is contained in Chapter 12 of this report.

9.3. Dumping and subsidy margins

Customs and Border Protection has established that exporters in China exported ARWs to Australia at dumped prices during the investigation period. The dumping margins ranged from de-minimus to 32.9%.

Customs and Border Protection has established that exporters in China exported ARWs to Australia at subsidised prices during the investigation period. The subsidy margins ranged from de-minimus to 58.8%.

The proportion of exports to Australia in the investigation period found to be dumped represented over 90% of total exports. The proportion of exports represented by dumped goods from selected non-cooperating exporters is around 65% of total exports to Australia.

²⁸ S. 269TAE(1)(aa)

²⁹ S. 269TAE(1)(ab)

PUBLIC RECORD

PUBLIC
FILE

FOLIO 128
No.

Exports from China accounted for just under 50% of the Australian market for ARWs in the investigation period.

9.4. Price effects

Customs and Border Protection considers that the magnitude of dumping and subsidies described above, even after removing any overlap or double counting, provided for exporters to offer significantly more competitive prices than would otherwise have been the case. The effects of this are discussed below.

9.4.1. Price undercutting

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

Arrowcrest claimed that it has had to reduce prices as a direct result of price pressure from the imported products from China. In support of this claim, Customs and Border Protection received the following relevant evidence that certain ARWs exported from China to Australia in the investigation period appear to have undercut prevailing prices offered by the Australian industry:

1. Correspondence between Arrowcrest and a major customer concerning a Chinese exporter's proposed pricing, and requests for Arrowcrest to provide competitive pricing.³⁰
2. Correspondence between Arrowcrest and a customer concerning a Chinese exporter's proposed pricing.³¹
3. Correspondence between Arrowcrest and Suzuki regarding quote provided for Suzuki and their subsequent decision to source from YHI at a price \$40-\$50 less than Arrowcrest offered.³²

'Macro' analysis

Using sales data obtained from importers, exporters, and from Arrowcrest, Customs and Border Protection charted weighted average prices for 14" to 22" ARWs for the purposes of price comparison between suppliers. This analysis was conducted both including, and then excluding, chrome finished ARWs.³³ The reason for both considerations is that chrome finished ARWs cost significantly more than other finishes, and are priced accordingly. The chrome finish therefore had the ability to distort the results. We do note that both importer and industry advised that the market for chrome finish now is much smaller than previously. It is no longer a popular finish choice for customers because of the new range of finishes such as shadow paint and others that are available.

³⁰ Arrowcrest Visit Report November 2011 - confidential attachment CAUSATION 10

³¹ Arrowcrest Visit Report November 2011 - confidential attachment CAUSATION 1

³² Arrowcrest Visit Report November 2011 - confidential attachment CAUSATION 9

³³ It is not possible to accurately quantify the proportion of the Australian market represented by chrome finish ARWs, however based on verified data obtained from selected cooperating exporters it is considered low.

PUBLIC RECORD

PUBLIC FILE
FOLIO 127 No:.....

Customs and Border Protection observed that Arrowcrest's prices were undercut in every size by one or more of the importers, in both the OEM and AM markets. The total undercutting margin for each importer was between 21% and 45% when analysing the data including chrome finishes.

When chrome finishes were excluded from the analysis, Customs and Border Protection observed price undercutting throughout the investigation period up to 28%.

Customs and Border Protection further analysed the OEM market in isolation. Dicastal exports wheels in sizes 16" to 19". In each of these sizes price undercutting was established, ranging from around 20% in the smaller sizes and up to 65% on the larger sizes. The exclusion of chrome from the analysis did not affect these figures as chrome is not exported for the OEM market.

'Micro' analysis

Customs and Border Protection undertook additional analysis of prices from different suppliers of identical sizes, by comparing sales made by the Australian industry with sales of Chinese ARWs to major dual-sourcing customers.

Using sales data provided by the Australian industry and importers, Customs and Border Protection compared Arrowcrest and imported ARWs prices from China for purchases by end users during the investigation period.

A chart of prices to individual customers cannot be shown as it may reveal confidential information; however analysis of the actual price reductions shows average price undercutting of between 2% and 37% (when including chrome finishes) by the Chinese ARWs relative to Arrowcrest prices during the investigation period. When chrome finish was excluded the average price undercutting was between 2% and 24%.

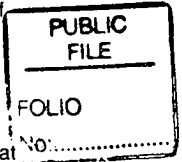
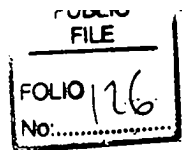
Preliminary Finding - Price undercutting

Customs and Border Protection considers that there appear to be sufficient grounds to conclude that dumped or subsidised goods exported from China undercut prices of the Australian industry during the investigation period causing injury as a result.

9.4.2. Price suppression

Despite costs increasing overall during the period 2006 to 2009, Arrowcrest's price did not match these increases. Arrowcrest advised that commencing from around 2009 it introduced cost saving measures and efficiencies aimed at reducing the impact of the rising raw material costs and falling prices. This has resulted in unit prices above unit costs in the years 2010 and 2011, although to a small degree.

PUBLIC RECORD



Some major AM customers of the Australian industry multi-source ARWs from both Chinese and Australian manufacturers. The direct comparability of suppliers afforded by this approach provides major customers considerable leverage over Australian industry.

Arrowcrest has provided evidence of its negotiations with one customer that show Chinese prices were used to reduce a price increase proposed by Arrowcrest in order to meet increased costs. Other relevant evidence, listed at section 9.4.1 above, also supports Arrowcrest's claim of price suppression caused by Chinese ARWs.

Customs and Border Protection therefore considers it has sufficient evidence to be satisfied that price suppression experienced by the Australian industry in the injury analysis period was caused by the dumped and subsidised goods exported from China.

9.5. Sales volume

The analysis shows that Arrowcrest lost sales volume in the investigation period. While the Australian market for ARWs overall decreased in the investigation period, Arrowcrest's volume decreased to a greater extent.

9.5.1. AM market

Customs and Border Protection is aware of major customers of Arrowcrest that have multi-sourced their ARWs requirements from both the Australian industry and Chinese manufacturers in the injury analysis period.

Arrowcrest has argued that the key reason for the multi-sourcing arrangements, and resultant loss of volume, is price undercutting. Given the extent of price undercutting it is reasonable to conclude that if the Australian industry was unable to match, or come close to, prices offered on Chinese imports that were dumped and subsidised it would lose volume.

Price undercutting is most prevalent in the AM sector. As discussed earlier in this SEP, the AM sector accounts for 73% of the Australian market for ARWs. Arrowcrest's share of the AM segment of the market was low throughout the injury analysis period. Customs and Border Protection found that Arrowcrest did not lose market share during the investigation period, however considers that due to the extent of undercutting found during the investigation period it was not possible for Arrowcrest to gain AM market share that was potentially available to it. Arrowcrest's share of the AM market was 5% at the beginning of the injury analysis period, and Arrowcrest has provided data which, while not verified, indicates that its sales volumes to this segment were much higher than that in 2003.

Arrowcrest provided a sales history for four key customers in the AM segment during the injury analysis period. The data shows that in the investigation period, sales volume to these customers decreased by between 8% and 36%

PUBLIC RECORD



on an individual basis, and 16.5% overall. The AM market, on the other hand, grew in the investigation period.

Arrowcrest has provided evidence of its attempts to regain or increase sales to customers in the AM segment. Arrowcrest claims that it was required to offer significant rebates in order to capture sales, which would have seriously eroded its margins. It has therefore turned down some sales on such terms. Customs and Border Protection considers that but for the dumping and subsidisation Arrowcrest's price offers to customers would have been more competitive and it would not have lost volume, and could also have regained some volume.

9.5.2. OEM market

In relation to the OEM segment Customs and Border Protection acknowledges that Ford has not been a customer of Arrowcrest for some years. It has provided reasons why it does not source ARWs from the Australian industry, none of which relate to price.

Arrowcrest has provided evidence of its sales to Holden Limited in recent times. It has also provided evidence of its quote to supply Holden ARWs for a particular model in the investigation period. It was unsuccessful in its tender, which ultimately was awarded to a Chinese manufacturer. Holden advised that the reason Arrowcrest has been unsuccessful in recent tender was not solely due to pricing. Customs and Border Protection considers it reasonable to conclude, however, that price would be an important factor in any tender process. The evidence of Arrowcrest's supply of other ARWs to Holden supports a view that Holden perceives at least some of Arrowcrest's ARWs to be of sufficient quality for its needs.

9.5.3. Preliminary finding

Customs and Border Protection makes a preliminary finding that Arrowcrest's loss of volume in both the AM and OEM segments in the investigation period was caused by dumped and subsidised ARWs exported from China.

9.6. Reduced profit and profitability

The Australian industry's reduced profit and profitability is a function of a loss of volume and suppressed prices in the investigation period.

As discussed above, Customs and Border Protection considers that lost sales volume during the investigation period was attributable to dumped or subsidised imports. Customs and Border Protection also found that Australian industry prices were suppressed as result of price competition from dumped or subsidised goods exported from China.

Volume lost to Chinese exports by the Australian industry and price suppression had a significant effect on profits and profitability in the injury

PUBLIC RECORD



analysis period. Higher fixed unit costs due to lower production volumes would also reduce profits and profitability.

Customs and Border Protection therefore makes a preliminary finding that dumping and subsidisation has caused the Australian industry to lose profits and profitability.

9.7. Other injury factors

Arrowcrest experienced injury in the form of reduced capacity utilisation during the injury analysis period. Customs and Border Protection considers that dumped and subsidised goods exported from China caused the Australian industry to lose sales volume, the consequence of which is reduced capacity utilisation and increased average fixed costs.

9.8. Other possible causes of injury

Customs and Border Protection has considered whether injury to an industry is being caused or threatened by a factor other than the dumped imports³⁴.

9.8.1. Changes in the Australian market for PMVs

During the investigation period the OEM segment consisted of three Australian PMV manufacturers: Toyota, Holden and Ford, together with their performance brands HSV and FPV.

The sales process in the OEM segment is driven by the PMV manufacturers. It is typical for a wheel production contract to be awarded up to two years prior to the production phase of a new model vehicle. The typical life-cycle of a model is between two and five years. The size of the OEM segment is therefore driven by the vehicle manufacture.

Changes in the production volume of PMVs (excluding performance vehicles) during the period 2008 to 2011³⁵ are shown in Diagram 5.

³⁴ Subsection 269TAE(2A)

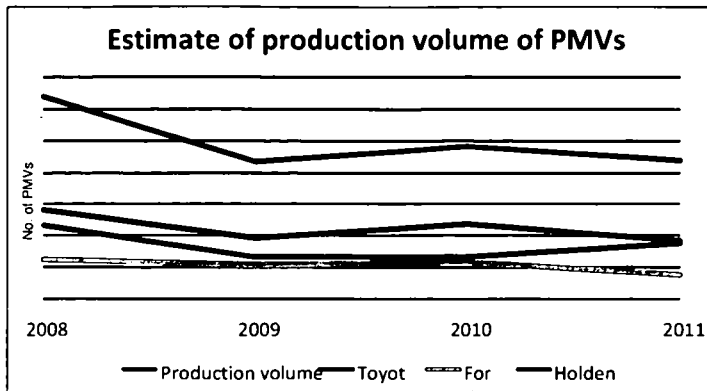
³⁵ In calendar years

PUBLIC RECORD

PUBLIC
FILE

FOLIO 123
No.

Diagram 5: Estimate of production volume of PMVs



Source: Federation of Automotive Products Manufacturers (FAPM):
Automotive Production Build Forecast, November 2011

The OEM segment also consists of trailer, caravan chassis and caravan manufacturers. The trailer and caravan OEM segment is also supplied by Arrowcrest, to a lesser extent, and imports from China. Customs and Border Protection was not able to source data specifically for trailer and caravan production, however considers it would represent an insignificant segment of the OEM market.

There was a general reduction in Australian industry sales of ARWs during the GFC-affected period – particularly during the first six months of 2009. However, this does not appear to be mirrored by a reduction in exports of the goods to Australia from China. The ARWs market started to recover in 2010 and 2011, although it is still lower than pre-GFC levels. The reduction in the size of the Australian market for ARWs during 2011 is not as great as the reduction in production of PMVs, which is due to an increase in the market share held by AM ARWs.

The reduction in Arrowcrest's sales volume during the investigation period was greater than the reduction in overall market size. Based on the evidence provided in relation to this loss of volume, the overall reduction in PMV production does not displace a finding that volume injury to the industry was caused by dumping and subsidisation.

9.8.2. Claims of poor service, or non-price factors

Some customers claimed that Arrowcrest lost business because it is a poor supplier. Customers have stated that they moved away from Arrowcrest for various reasons including, but not limited to, poor performance in:

- service delivery,
- communication,

PUBLIC RECORD

PUBLIC
FILE

FOLIO 122
No:.....

- product quality and reliability and timeliness of supply,
- ARW style releases, and
- standards required by motor vehicle manufacturers.

Arrowcrest responded that during the investigation period, it supplied more than 1,200 customers – and that during that time they had never been advised they were not meeting the required standards.

Arrowcrest's former major customers have told Customs and Border Protection that price is not generally the most important consideration in their sourcing decisions. HSV, a major Arrowcrest customer, advised³⁶ it is looking to source from China, as Arrowcrest does not have the operational ability to fulfil its requirements in the new manufacturing method it seeks to employ for its future ARWs needs, being ARWs manufactured using the flow-form casting and forged methods.

During the investigation Customs and Border Protection were advised by importers that they had experienced difficulties with timeliness of supply from Chinese exporters, however, this did not appear to affect their decision to source from those exporters.

Several importers in the AM market advised that in the past Arrowcrest set the standards for the rest of the industry to aspire to, however, in recent times they have not kept up with commercial advertising or style releases to be able to remain competitive.

Of the claims made, insufficient evidence was produced to support those claims or show how they may have directly affected Arrowcrest sales.

Therefore whilst Customs and Border Protection does concede that some of the factors outlined above could have an affect on Arrowcrest's performance, there was not enough evidence produced to conclude that these factors could have caused the level of injury experienced by the applicant.

9.8.3. Imports from other countries

ARWs are imported to Australia from countries other than China. Arrowcrest noted in its application that prior to 2003 it had been competing with imports from countries other than China without any serious economic consequence. However, when imports from China began entered the market in large volumes from 2003 onwards, it found it was unable to match price quotes being presented to it by customers looking for a cheaper option.

No interested parties that import ARWs from countries other than China, nor any Australian industry member, has suggested that ARWs imported from countries other than China have influenced prices in the Australian market. However, some importers advised during verification visits, that if measures were imposed on Chinese imports they would look to other countries for

³⁶ HSV visit report – March 2012

PUBLIC RECORD

PUBLIC FILE
FOLIO 121
No:.....

future import supplies. Customs and Border Protection is aware of at least one exporter that has manufacturing plants in countries other than China.

9.8.4. Certain models unavailable from certain Australian industry members

Interested parties claimed they were unable to source certain ARW models from the Australian industry. Ford and Holden in particular claimed that their supply agreements had moved to requiring ARWs manufactured from the flow formed or forged methods. Arrowcrest currently only manufactures wheels using the low pressure die casting method. Ford and Holden claim that the other methods produce wheels that are stronger but lighter. Arrowcrest has responded that cast flow forming and forging processes do not allow for greater flexibility in styling as claimed. In cast flow forming, the blank is cast by conventional low pressure die casting methods but with an abbreviated rim section. This section is then machined and flow formed to produce the rear rim section of the wheel. There are no advantages in terms of front face styling as the initial casting process is the same.

Arrowcrest claim they can produce lightweight ARWs of the size and fitment necessary that will meet performance and strength requirements. When consulting on style design, Arrowcrest has in the past questioned the weight of some designs and offered to redesign the style in a way to reduce weight, however has been required to proceed with designs they consider to be unnecessarily heavy at the instruction of the client.

9.9. Summary – Causal link

The other possible causes of injury discussed above highlight how the Australian industry has experienced injury that may have been in part caused by factors other than dumped or subsidised goods exported from China. However, Customs and Border Protection considers that aside from those other causes, dumped and subsidised goods exported from China were of a quantum and price which, in isolation, also caused material injury to the Australian industry.

Customs and Border Protection considers that the evidence set out in this section provides sufficient grounds to conclude that dumped and subsidised exports from China significantly undercut the prices of the Australian industry. In some instances, the Australian industry has been unable to match prices of the imported product and it has therefore lost sales volume. Additionally, customers of the Australian industry have used prices of ARWs from China to ensure the Australian industry's prices are suppressed. These factors have led to reduced volumes and suppressed prices and consequently reduced profits and profitability.

Customs and Border Protection considers that other possible causes of injury do not detract from the assessment that dumping and subsidisation, of itself, has caused material injury to the Australian industry.

PUBLIC RECORD

PUBLIC
FILE

FOLIO 120
No.

10. WILL DUMPING AND SUBSIDY AND MATERIAL INJURY CONTINUE?

10.1. Preliminary findings

Customs and Border Protection makes a preliminary finding that exports of ARWs from China in the future may be at dumped and subsidised prices and that continued dumping and subsidy may cause further material injury to the Australian industry.

10.2. Introduction

When the Minister is satisfied that material injury to an Australian industry has been caused by dumping and subsidies, anti-dumping measures and countervailing measures may be imposed on future exports of like goods if the Minister is satisfied that the dumping and subsidies and material injury may continue.

10.3. Customs and Border Protection's assessment

10.3.1. Will dumping and subsidisation continue?

Customs and Border Protection's dumping analysis shows that ARWs exported to Australia from China during the investigation period were at dumped and subsidised prices, with margins ranging from de-minimus to 32.9% and de-minimus to 88.8%, respectively.

Chinese suppliers have undercut the Australian industry's prices during the investigation period and gained volume from the Australian industry. In view of the combined effects of the transparent nature of pricing in the ARW market, the findings of market situation in relation to the domestic market in China and the subsidy finding in relation to Program 1, Customs and Border Protection considers that dumping and subsidisation will continue if anti-dumping measures are not imposed.

10.3.2. Will material injury continue?

Customs and Border Protection has reviewed the Australian industry's performance over the injury analysis period and has made a preliminary finding that ARWs exported at dumped and subsidised prices have caused material injury to the Australian industry.

Customs and Border Protection 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. Customs and Border Protection considers that this impact may be particularly evident in price undercutting, price suppression, lost sales volume, and reduced profits and profitability.

PUBLIC RECORD

Based on the available evidence, Customs and Border Protection makes a preliminary finding that exports of ARWs 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.

PUBLIC RECORD

PUBLIC RECORD

PUBLIC
FILE

FOLIO

No.

118

11. NON-INJURIOUS PRICE

11.1. Preliminary findings

Customs and Border Protection constructed unsuppressed selling prices (USPs) for ARWs using Arrowcrest's cost to make and sell during the investigation period, plus an amount for profit.

11.2. Introduction

Duties may be applied where it is established that dumped or subsidised imports have caused, or threatened to cause, material injury to the Australian industry producing like goods.

Under the *Customs Tariff (Anti-dumping) Act 1975*, the Minister must have regard to the desirability of ensuring that the amount of dumping duty and countervailing is not greater than is necessary to prevent injury, or a recurrence of the injury.

S.269TACA of the Act identifies the NIP of the goods exported to Australia as the minimum price necessary to remove the injury caused by the dumping and/or subsidisation.

Anti-dumping and countervailing duties are based on free-on-board (FOB) prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export.

Customs and Border Protection generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP).

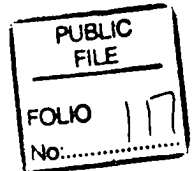
Having calculated the USP, Customs and Border Protection then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into store costs and amounts for importer expenses and profit.

11.3. Preliminary assessment of NIP

Arrowcrest has submitted that prices during the investigation period were suppressed and are therefore unsuitable for the purpose of establishing a USP. Customs and Border Protection has also made a preliminary finding of price suppression.

Arrowcrest claims that the USP should be based on Arrowcrest's cost to make and sell during the investigation period, plus profit. It submits that the profit it achieved on sales to a particular customer during the investigation period is representative of a profit that could be achieved in the absence of dumping and subsidisation. Arrowcrest also submitted an alternative, lower

PUBLIC RECORD



level of profit that represents the level of profit necessary to achieve the minimum required return on investment.

Customs and Border Protection considers Arrowcrest's alternative level of profit a more reasonable measure of profit that could be achieved overall in the absence of dumping and subsidisation, and has applied this to Arrowcrest's average cost to make and sell to determine a NIP.

Customs and Border Protection has calculated a NIP by deducting from the USP the average post-exportation costs, SG&A and profit from verified information collected from importers.

11.4. Comparison of NIPs and export prices

Customs and Border Protection compared NIPs with weighted average export prices of ARWs exported from China during the investigation period. The NIPs were higher than the weighted average export prices in all cases.

This analysis supports the conclusion that dumped and subsidised ARWs exported to Australia from China have caused material injury to the Australian industry.

PUBLIC RECORD

PUBLIC FILE	
FOLIO	116
No:	

12. PROPOSED MEASURES

Customs and Border Protection proposes to recommend to the Minister that a dumping duty notice be published in respect of ARWs exported to Australia by all exporters other than PDW. It also proposes to recommend that a countervailing duty notice be published in respect of ARWs exported to Australia by all exporters.

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. Rather, subject to the lesser duty rule (given effect through the NIP), the collective interim dumping duty and interim countervailing duty imposed, as proposed in this SEF, is the sum of:

- the subsidy rate calculated for all countervailable programs, including 'Program 1 – aluminium provided by government at less than adequate remuneration'; and
- the dumping rates calculated, less an amount for the subsidy rate applying to Program 1.

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

The lesser duty rule can only reduce the magnitude of the collective interim dumping duty and interim countervailing duty. In this case, this does not occur for any wheel diameter, for any exporter.

Therefore, the operative measure in relation to all selected cooperating and non-cooperating exporters from China is the normal value, and the proposed measures are linked to the full margin of dumping.

PUBLIC RECORD

APPENDICES AND ATTACHMENTS

Appendices	
Appendix A	Assessment of market situation
Appendix B	Assessment of countervailability of subsidies
Attachments	
Confidential Attachment 1	Calculation of dumping margins - selected cooperating and selected non-cooperating exporters
Confidential Attachment 2	Calculation of subsidy margins - selected cooperating and selected non-cooperating exporters

PUBLIC RECORD

APPENDIX A – ASSESSMENT OF MARKET SITUATION
IN CHINA

PUBLIC RECORD

PUBLIC RECORD

PUBLIC
FILE

FOLIO 113
No.

1. INTRODUCTION

1.1. Allegations of a market situation

In its application, Arrowcrest alleged that during the investigation period, a particular market situation existed in the Chinese ARWs industry and certain raw material inputs that rendered sales in that market unsuitable for determining normal values of ARWs under s.269TAC(1).

This claim focussed on allegations that the Government of China (GOC) has heavily influenced the domestic ARWs industry in China through:

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

Arrowcrest's allegations strongly relied on the findings of the European Commission (EC) in its 2010 investigation into ARWs originating from China. The cooperative Chinese exporters of ARWs that requested market economy treatment (MET), failed the Commission's required evidentiary standard concerning costs reflecting market values and that the costs of raw material aluminium was not free of GOC's influence.

It is noted that the EC test applied in the above-mentioned investigation is distinctive from that applied by Customs and Border Protection in its assessment of whether a 'market situation' exists in a particular market. However, it is considered that many considerations of the EC are relevant to Customs and Border Protection's assessment, and have been taken into account in this assessment where relevant.

In International Trade Remedies Branch Consideration Report No. 181 (CON181), it was accepted that Arrowcrest provided sufficient evidence in the application to support its claim that domestic sales of ARWs were unsuitable for the purposes of determining a normal value in China under s.269TAC(1), given the degree of government interference and the likely impact on competitive conditions on the domestic market in China.

1.2. Australian legislation, policy and practice

PUBLIC RECORD



1.2.1. China as a market economy

Australia treats China as a market economy for anti-dumping purposes and Customs and Border Protection conducts its investigation in the same manner for China as it does for other market economy members of the World Trade Organisation (WTO).

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

1.2.2. The Act

Market situation

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

However, s.269TAC(2)(a)(ii) provides that the normal value of the goods exported to Australia cannot be determined under subsection (1) where the relevant Minister³⁷ is satisfied that:

'...because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1)'.

Where such a market situation exists, normal value cannot be established on the basis of domestic sales. Instead, the normal value may be determined on the basis of a cost construction³⁸ or third country sales.³⁹ Therefore, a determination as to whether there is a market situation has potential consequences for the assessment of normal value and dumping margins.

S.269TAC(2)(c) provides that a cost construction of normal value comprises the sum of what the Minister determines to be the cost of production or manufacture of the exported goods and (on the assumption the goods were sold domestically in the ordinary course of trade rather than being exported) the administrative, selling and general costs associated with the sale and the profit on that sale.⁴⁰

³⁷ In this case, the Minister for Home Affairs.

³⁸ Section 269TAC(2)(c)

³⁹ Section 269TAC(2)(d)

⁴⁰ The inclusion of an amount for profit is conditioned by s. 269TAC(13), which provides that 'where, because of the operation of section 269TAAD, the normal value of goods is required to be determined under subsection (2), the Minister shall not include in his or her calculation of that normal value any profit component under subparagraph (2)(c)(ii)'. Section 269TAAD applies to sales deemed not to be in the 'ordinary course of trade' due to sales being at below cost prices.

PUBLIC RECORD

PUBLIC FILE
FOLIO <u>111</u>

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

Determination of costs

In constructing normal value based on costs, s.269TAC(5A) provides that these costs must be worked out in accordance with the Regulations.

In terms of costs of manufacture or production, Regulation 180(2) requires that if:

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

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

In terms of administrative, selling and general costs, Regulation 181(2) provides that if:

1. an exporter keeps records relating to like goods that are in accordance with generally accepted accounting principles (GAAP) in the country of export; and
2. those records reasonably reflect the administrative, selling and general costs associated with the sale of like goods;

the Minister must work out the cost of selling, general and administrative expenses using information set out in the exporter's records.

Where the conditions of Regulation 180(2) and 181(2) are not met, it is Customs and Border Protection's position that the cost records kept by that exporter are not required to be used in working out their costs, and Customs and Border Protection may resort to other information to calculate these costs.

⁴¹ For example, in the recent investigation into aluminium extrusions from China (REP 148) – refer section 2.4 below.

PUBLIC RECORD

PUBLIC FILE
FOLIO 110
No:

1.2.3. Policy and practice

Market situation

In relation to market situation, the Customs and Border Protection's Dumping and Subsidy Manual⁴² states:

'Sales that would otherwise be relevant for determination of normal value may be unsuitable because the price does not reflect a fair price in normal market conditions. The legislation does not define market situations that would render domestic sales as unsuitable. The investigation and analysis of each case must fully set out the reasons for the unsuitability of sales before determining normal value under succeeding provisions of section 269TAC of the Act.'

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

- whether the prices are artificially low, or*
- whether there is significant barrier trade, 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) of the Act.*

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, Customs and Border Protection 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.

[Emphasis added]

It is considered that the underlined quote partially reflects the nature of Customs and Border Protection's assessment in this report in relation to the existence of a market situation in the Chinese ARW market.⁴⁴

⁴² Available online at <http://www.customs.gov.au/site/page5719.asp>

⁴³ Customs and Border Protection Dumping and Subsidy manual June 2009, pp 26-27

⁴⁴ It noted that Customs and order Protection considers it is possible for a degree of government influence to exist in a market without rendering the situation in the market such that sales are unsuitable for establishing normal value under s.269TAC(1). However, Customs and Border Protection

PUBLIC RECORD

PUBLIC
FILE

FOLIO 109
No:

It is considered that the assessment as to whether a market situation exists in a particular market constitutes a positive test. That is, before actual selling prices are rejected, Customs and Border Protection needs to identify a 'market situation', and be satisfied that the 'market situation' renders the sales in that market not suitable for normal value purposes.

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

Determination of costs

In relation to the determination of reasonableness of costs under Regulation 180(2) and Regulation 181(2), it must be assessed:

1. whether the costs of manufacture are 'reasonably reflective of competitive market costs' associated with the manufacture of like goods; and
2. whether selling, general and administrative costs reasonably reflect costs associated with selling like goods (i.e. are these costs generally reasonable).

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

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

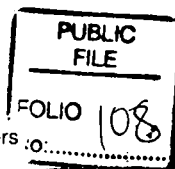
1.3. Previous relevant investigations

Customs and Border Protection's 2009 investigation into aluminium extrusions from China (REP148) involved an investigation into allegations of a particular market situation in Chinese aluminium extrusions market. During this investigation, Customs and Border Protection found significant evidence of GOC interventions in the primary aluminium market (the raw material for aluminium extrusions) in China, but limited evidence of GOC influence on the domestic market for aluminium extrusions.

In that investigation, Customs and Border Protection considered that market situation 'factors' were therefore limited (or isolated) to the market for the raw material for the investigated product, rather than the market for aluminium extrusions itself. Customs and Border Protection found that all other costs of

considers that significant government intervention in relevant market factors could distort prices to a degree that those prices may unsuitable for normal value.

PUBLIC RECORD



production and selling, general and administrative costs of Chinese exporters of aluminium extrusions were reasonable.

Consequently, Customs and Border Protection determined normal value by:

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

This was summarised in Appendix 2 of REP148 as follows:

... Customs and Border Protection considers that certain identified domestic selling prices, or constructed domestic selling prices, of aluminium extrusions in China within the investigation period were not artificially low, and are suitable as a basis for determining normal value under either s. 269TAC(1) or s. 269TAC(2)(c).

1.4. Information relied upon

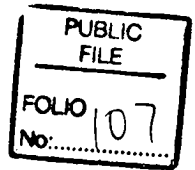
In addition to the information contained in Arrowcrest's application for this investigation, Customs and Border Protection has also received the following that provide information relevant to the assessment of the existence of a particular market situation in China, and the reasonableness of Chinese exporters' costs for the purposes of the Regulations:

- various submissions from interested parties;
- responses to the Chinese Exporter Questionnaire;
- responses from the GOC to the Chinese Government Questionnaire (GQ) and Supplementary Chinese Government Questionnaire (SGQ); and
- relevant information supplied by the GOC to Customs and Border Protection in relation to its investigation of alleged dumping and subsidisation of certain hollow structural sections exported from China (the HSS investigation).

In addition, independent research into these matters has been conducted.

This information has been analysed, assessed, and considered in arriving at the conclusions in this paper.

PUBLIC RECORD



1.5. Background – ARW production process and materials

1.5.1. Production process

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

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

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

1.5.2. ARW raw materials

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

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

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

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

PUBLIC RECORD



1.5.3. Aluminium alloy raw materials

As part of its examination of the Chinese ARW market, Customs and Border Protection has also examined the Chinese markets for aluminium alloy, and the raw materials for this product.

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

Alumina is recovered from the raw material, bauxite, using a chemical refining process. One common process is the Bayer process, which comprises four stages⁴⁵:

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

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

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

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

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

⁴⁵ Information obtained from the website of Comalco.

PUBLIC RECORD



2. GOC INFLUENCE ON CHINESE ALUMINIUM INDUSTRY

2.1. Introduction

Customs and Border Protection has identified various GOC influences that relate to the Chinese aluminium industry. These take the form of:

1. broad, overarching GOC macroeconomic policies and plans that outline aims and objectives for the Chinese aluminium industry; and
2. more specific 'implementing measures' that go towards actively executing the aims and objectives of these policies and plans.

These identified policies, plans and implementing measures are numerous, and it is considered that it is not practicable to outline and undertake detailed discussion of each identified item. Instead, Customs and Border Protection has sought to outline and assess the most prominent of these in this report.

2.2. Broad macroeconomic policies

2.2.1. Guidelines for Accelerating the Restructuring of the Aluminium Industry

The NDRC issued the *Guidelines for Accelerating the Restructuring of the Aluminium Industry* (the Guidelines) in 2008⁴⁶. The GOC submitted in response to Part C2.9 of the GQ that the Guidelines set out the 'aspirational goals of achieving greater organisation, structure and sustainability in the aluminium industry. Rather than directing how the aluminium industry will operate, the Guidelines state how the industry should ideally operate.'

The Guidelines note the importance of aluminium as a fundamental raw material for the development of the national economy. The aluminium industry comprises three sectors: alumina, electrolytic aluminium and processed aluminium.

The Guidelines note the achievements made to date in regards to restructure of the aluminium industry, such as:

- significant achievements on corporate mergers and restructure;
- termination of electrolytic aluminum enterprises which adopt backward techniques or which production cost is high. The terminated production capacity would be approximately 1,200,000 tons;
- abolition of the Soderberg cell approach due to the serious pollution to the environment;
- reduction in power consumption from main electrolytic aluminum enterprises by 347 kilo-watt hour per ton aluminum compared to the previous year;
- adjustment to the policy of the export tax for electrolytic aluminium; AND

⁴⁶ Provided as Attachment A1 to the GQ

PUBLIC RECORD

PUBLIC
FILE

FOLIO 104
No:.....

- abolition of the trade for alumina process which results in the export reduction of 21.7% in 2005.

However the Guidelines note the structural and systematic problems remaining, including over-exploitation of bauxite mining, over supply of electrolytic aluminium, the high cost of alumina production resulting in enterprise losses and low industrial concentration of aluminium processors.

Chapter II of the Guidelines set out the following objectives (among others):

- Achieve domestic production of alumina of 14 million tons in 2010;
- Spread the Bayer mineral processing approach more widely;
- Change the product mix by 2010 to higher value products;
- Improve all equipment and facilities;
- Reduce energy consumption down to 900 kilograms of standard coal per tonne or less;
- Balance supply and demand for electrolytic aluminium;
- Support good enterprises and eliminate inferior ones through the market;
- Encourage good enterprises to increase their production up to 75% out of entire production of the whole industry;
- Encourage the adoption of the 400KA smelting technique of the large-scale rebaked anode aluminium reduction cell; and
- Increase the proportion of highly-added value products.

Chapter III of the Guidelines set out the following objectives (among others):

- enhance the concentration of the industry;
- strengthen the coordination between credit policy and industrial policy;
- enforce the regulation that capital invested in the electrolytic aluminium construction projects is proportioned by 35% or more;
- financial departments should continue providing financial support to the alumina and electrolytic aluminium enterprises which conform to state industrial policy, credit policy and the industrial access conditions;
- regulation of the reform by departments and governments at various levels to prevent enterprises from taking the chance of reform to evade bank debts;
- handle the examination and approval procedures to grant exploration permission and exploitation permission for newly-built bauxite mining;
- encourage the use of overseas bauxite resources;
- strengthen the coordination and monitoring over the import of alumina;
- control the export of electrolytic aluminium;
- improve the mechanisms of power price formation and power supply;
- export rebate rules do not apply to the electrolytic aluminium export products;
- prohibition of the trade of alumina process;

PUBLIC RECORD

PUBLIC
FILE

FOLIO 103

- (xiii) improve the price mechanism for electrolytic aluminium; and
- (xiv) formulation of the new electricity price policy by taking into account of voltage grade, loading rate, and other electricity characteristics or factors.

The Guidelines also refer to other documents, being the *Industrial Development Policy of Aluminium Industry* and *Special Planning for Aluminium Industry Development*. Customs and Border Protection requested copies of these documents also, however the GOC responded that it 'has not formally published these two documents' and therefore is unable to provide them.

2.2.2. National and regional five-year plans/guidelines

At the Central Government level, the GOC develops and issues five-year plans (FYPs) for the economic and social development of the nation. The first of these national FYPs was issued in 1953, and subsequent FYPs have been issued periodically since this time.

Customs and Border Protection understands that China's National Development and Reform Commission (NDRC)⁴⁷ plays a primary role in the development of these FYPs, and they are debated and given final approval by the National People's Congress (NPC), the Chinese legislature and highest GOC body.

Further, each FYP is compiled in accordance with the 'suggestions' of the Central Committee of the Communist Party of China on the formulation of that particular FYP.

The current national FYP is the *Guidelines of the 12th Five-Year (2011-2015) Plan of the People's Republic of China for the National Economic and Social Development*⁴⁸ (the 12th National FYP), which was approved by the NPC in March 2011, a few months prior to the end of the investigation period.

The previous plan, the *Eleventh Five Year (2006 – 2010) Plan of the People's Republic of China for the National Economic and Social Development* (11th National FYP)⁴⁹ was promulgated in 2006 and relates to the years preceding, and the majority the investigation period itself. The 11th FYP is therefore considered most relevant to the investigation into ARWs.

The stated purpose of the 11th National FYP plan is to:

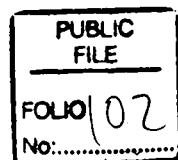
'...clarify the national strategic intention, define key emphasis in the government work, and guide the behaviour of market subject'.

⁴⁷ The GOC submitted in response to Part C1 of the GQ that the NDRC's main focus is macro-level economic and social development strategy.

⁴⁸ GOC response to the GQ, Attachment 21.

⁴⁹ GOC response to the GQ, Attachment 20.

PUBLIC RECORD



The plan's introduction notes it is:

'...the common program of action of our people...and is the important basis for the government to fulfil the responsibility of economic adjustment market control and surveillance, social management and public service'.⁵⁰

The 11th National FYP (and all other FYPs) sets out the GOC's general aims, principles and objectives for development of the Chinese economy of the following five-year period, as well as specific development aims for regions, social groups (e.g. peasants) and industries/sectors in China.

In relation to the aluminium industry, Chapter 13, of the 11th National FYP refers to the adjustment of the raw material 'structure and distribution'. Section 1 of this Chapter outlines the GOC's aims and objectives relating to the aluminium industry specifically:

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

Section 2 of Chapter 11 of the 11th National FYP refers to the automobile industry and sets out the GOC's objective to:

'Reinforce the independent innovation ability in the automobile industry and accelerate the development of...key assemblies and parts and components with independent intellectual property rights.'

Customs and Border Protection notes the existence of certain subsidies associated with applications for patents (refer to Appendix 3) that it is considered go towards the achievement of the above objective.

Further, Chapter 19 of the 11th National FYP outlines specific development goals for certain regions of China, noting that the Central regions should accelerate the structural readjustment of the non-ferrous metal industry.

These statements clearly articulate the GOC's desire to re-structure, develop and in some cases 'control' aspects of the domestic aluminium industry, and display the importance placed by the GOC on the development of its aluminium industries.

2.3. Alignment of GOC policies and importance of the aluminium industry

The 11th National FYP was issued for the period 2006 – 2010, just prior to the promulgation of the Guidelines in 2006. Each policy/plan is complimentary, and consistent in their aims and objectives for the Chinese aluminium

⁵⁰ 11th National FYP, page 1.

PUBLIC RECORD



industry, with many common aims and objectives between the three documents observed, such as to:

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

It is considered that the 11th National FYP and the Guidelines comprehensively and collectively outline the GOC's macroeconomic policy for the Chinese aluminium industry from 2005-2011, and that these policy aims and objectives have been continued past 2011 in the 12th National FYP.

It is further observed that multiple GOC policies, plans and measures issued prior to the Guidelines have similar goals and objectives to the Guidelines and 11th National FYP. These include the:

- *Tenth Five-Year Plan for the National Economic and Social Development of the People's Republic of China (2001 - 2005)*; ⁵¹
- the *Directory Catalogue on Readjustment of Industrial Structure* (discussed in Section 2.5.1 of this report); and
- the State Economic and Trade Commission's (SETC) ⁵² *Development Plan for the Metallurgical Industry (2001 - 2005)*. ⁵³

Customs and Border Protection observes that the Chinese aluminium industry has therefore been a focus of the GOC for over a decade.

In addition to outlining the GOC's aims and objectives in relation to the Chinese aluminium industry, these macroeconomic plans highlight the overall importance of the industry to the Chinese economy. As stated above the Guidelines identify the aluminium industry as fundamental to the development of the national economy.

2.4. Importance and implementation of GOC macroeconomic policies

2.4.1. GOC position

In its response to the GQ and SGQ, the GOC has indicated that the importance of its broad macroeconomic policies is limited, suggesting that

⁵¹ GOC response to the GQ in the HSS investigation, Attachment 23.

⁵² This entity no longer exists. The functions of SETC were absorbed by the NDRC in 2003.

⁵³ Although Customs and Border Protection has been able to access the text of this plan, Asia Times Online reported in its article *Execution plan for China's industrial revolution* of July 20, 2001 (<http://www.atimes.com/china/CG20Aq04.html>) that it was 'based on China's 10th Five-Year Plan ... (and) is aimed at promoting the restructuring and upgrading of the industrial sector. The article further reported the objectives of the plan include targeted output and demand rates for aluminium and concentrated effort on further processed aluminium products. It also stated that the industry will form 12 large enterprise groups, with the output of the top five of these constituting 75% for aluminium.'

PUBLIC RECORD

PUBLIC
FILE

FOLIO 100
No:

they are somewhat intangible and set out the GOC's aspirations for the aluminium industry, rather than act as enforceable plans that the GOC sets out to achieve.

In relation to its FYPs, in the HSS investigation the GOC submitted that:

An FYP is an aspirational guidance document, and does not set mandatory targets for the steel industry. Moreover, industrial policy aspirations of an FYP are relatively macroeconomic and vague, rather than being specific and quantifiable aims.

Similarly, the GOC has submitted in its response to Question C2.9 of the GO that the Guidelines are a purely aspirational document about the goals of the aluminium industry, and that it is a statement of 'ambition and proposal'. In addition, the GOC submitted that the Guidelines 'do not set up any legal structure, nor provide any legal rights or liabilities, there is no "administration" of the document' and no office or officials are responsible for ensuring that the goals of the Guidelines are met.

This is despite the fact that the Guidelines are written in such a way that indicates its importance and binding nature. Part III, Item 3 of the Guidelines states that enterprises that do not conform to the industrial policy shall not be provided financial support by financial departments.

2.4.2. Customs and Border Protection's assessment

Customs and Border Protection considers that the 'aspirational' nature of these policies/plans does not necessarily mean that the aims and objectives they establish are not attempted to be realised by the GOC, or their progress monitored.

Significant evidence has been observed to suggest that the aims, objectives and action items/measures in these policies are actively implemented and monitored by the GOC and adhered to by Chinese aluminium enterprises.

For example, during its recent investigation into aluminium extrusions from China (PER144), Customs and Border Protection undertook verification meetings with the GOC. During this verification, the GOC's NDRC was queried about FYPs in China generally.

This discussion was summarised in Customs and Border Protection's *Government of the People's Republic of China Visit Report, February 2010*, which observes:

The NDRC stated that GOC's FYPs⁵⁴ is (the) most important plan of China, like a blueprint for the next five years of development of the country. The NDRC noted that the national FYPs are the leading document in planning the economy and social development of China.

⁵⁴ In reference to the national-level FYP.

PUBLIC RECORD

PUBLIC
FILE

FOLIO 99

No:.....

However, the NDRC stressed that FYPs are only guidance documents rather than an operable documents, and there are no details for operation and implementation in the FYPs.

...

The NDRC noted that implementation of the objectives of the FYPs is at the GOC-agency level, whereby each area will release specific policies and regulations (i.e. each responsible area develops and implements its own policies to implement the FYPs).⁵⁵

Additionally, during that same verification visit, the China State Reserve Bureau (who also participated in the verification) noted the 11th National FYP was a legally binding document.⁵⁶

While the NDRC confirmed the guidance or 'aspirational' nature of these FYPs, the above is evidence that the GOC makes efforts to achieve the outcomes of the plans through various sub-policies and measures in the sphere of responsibility of each level of GOC and its relevant departments.

Specifically, it is noted that GOC has issued numerous sub-policies, directives, notices, etc. and imposed multiple measures since the promulgation of the Guidelines and the 11th National FYP that appear to go towards achieving at least some of the goals and aims outlined in these documents.

These include:

- measures to eliminate of backwards production capacity and encourage technical and environmental improvement;
- market entry criteria and industry operating conditions;
- measures to curb 'production capacity redundancy';
- import and export measures on bauxite and aluminium; and
- subsidies in the aluminium industry.

These measures are discussed separately in more detail in Section 3.3 of this report.

2.5. Implementing measures

During its investigation, Customs and Border Protection has identified numerous GOC measures that it considers go towards meeting at least some of the objectives of the above-mentioned GOC macroeconomic policies in relation to the domestic aluminium industry.

⁵⁵ Page 39.

⁵⁶ Customs and Border Protection's Government of the People's Republic of China Visit Report, February 2010, page 49.

PUBLIC RECORD

The most prominent of these are discussed individually below.

PUBLIC FILE
FOLIO 98
NO:.....

2.5.1. Measures to eliminate backwards production capacity and to encourage technical and environmental improvement

The elimination of 'backwards production' or 'backward technology' is a common theme observed in the GOC's macroeconomic policies relating to the aluminium industry.

The encouragement of certain more advanced technology or 'hi-tech' products, and environmental improvements are also common objectives of the GOC's macroeconomic policies and plans.

Specific measures that are considered to be aimed at implementing these policy objectives are discussed in this section.

Customs and Border Protection asked the GOC whether SASAC, the Ministry of Commerce or the NDRC had approved the addition or reduction of any aluminium of ARW capacity since 2006. The GOC responded that it 'does not compile a list of such projects'.

Nonferrous Metal Industry Adjustment and Revitalization Plan

The *Nonferrous Metal Industry Adjustment and Revitalization Plan* (Nonferrous Plan)⁵⁷ was issued by the State Council in 2009. The Nonferrous Plan notes that following the financial crisis in 2008, China's nonferrous industry was hit hard with falling production and weak domestic demand. At the same time, some products experienced overcapacity and elimination of backward production capacity was difficult.

The guiding ideology of the Nonferrous Plan is to stabilize and expand the domestic market, control the volume and eliminate backward production capacity, strengthen technological innovation, promote enterprise restructuring and focus on promotion of non-ferrous metals industrial restructuring and upgrading.

The basic principles include restricting exports of primary materials to encourage processing, emissions reduction, technology improvements and eliminating obstacles to corporate restructuring. On this point, the Nonferrous Plan states that aluminium enterprises will be encouraged to restructure and the implantation of large mergers and acquisitions will be supported.

Policy measures outlined in the Nonferrous Plan include:

- 1) Adjusting the export tax rebate rate structure to promote 'high capital' exports with a high value-added export tax rebate rate

⁵⁷ Provided as Attachment A47 to the GQ

PUBLIC RECORD

PUBLIC
FILE

FOLIO 97
No:.....

- 2) Further expanding the scale of the state purchasing and storage mechanism for nonferrous metals
- 3) Interest subsidies in the form of loans to support R & D and technological transformation and financial incentives to increase energy-saving technological transformation support
- 4) Elimination of backward production capacity

Two specific aims by 2011 are:

- to achieve production by the top ten aluminium producers representing 70% of national output; and
- alumina production capacity of 100 million tonnes.

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

The GOC has promulgated the *Directory Catalogue on Readjustment of Industrial Structure* (the Directory Catalogue), which is issued and updated by the NDRC.

The GOC provided the revised Directory Catalogue (issued in 2011) as Attachment A42 of the GQ, and the 2006 (original) version at Attachment A41 of the GQ.

In the Directory Catalogue, certain industry activities, products and equipment are listed into three categories:

- 'Encouraged Investment Industries';
- 'Restricted Investment Industries'; and
- 'Eliminated Investment Industries'.

Customs and Border Protection has observed the following items of note in the Directory Catalogue (original version) in relation to the aluminium and ARWs industries (among other items).

PUBLIC RECORD

PUBLIC
FILE

FOLIO 96
No:.....

and upgrading, and to keep the stable and fast development of the national economy.

The people's governments...shall take the promotion of industrial structure adjustment as an important reform and development task at present and within a period in the future, establish the liability system, lay emphasis on implementation, and shall, in accordance with the "Interim Provisions" and in light of the local situation on industrial development, formulate specific measures, rationally guide the investment directions, encourage and support the development of advanced production capacities, restrict and eliminate outdated production capacities, prevent blind investments and low-level redundant construction, and effectively propel industrial structure optimization and upgrading.

The Interim Provisions make direct reference to the Directory Catalogue, observing:

- The "Catalogue for the Guidance of Industrial Structure Adjustment" (the Directory Catalogue) is the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc.⁵⁹
- The restricted category... need to be transformed or prohibited from being newly built.⁶⁰
- The eliminated category mainly include the outdated techniques, equipment and products which do not conform to the relevant laws and regulations, seriously waste resources, pollute environment, do not meet the work safety conditions, and need to be eliminated.⁶¹

The Interim Provisions go on to state:

- financial institutions shall provide credit support to encouraged investment industries; and investments are prohibited towards projects in the restricted and eliminated categories.

In its response to the SGQ in the HSS investigation, the GOC confirmed that:

*Investments are prohibited for projects under the "restricted" or "eliminated" categories. Relevant departments shall supervise projects of the eliminated category to exit the industry within the prescribed time limit in accordance with law.*⁶²

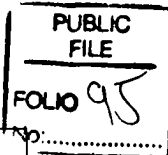
⁵⁹ Chapter III, Article 12

⁶⁰ Chapter III, Article 15

⁶¹ Chapter III, Article 16

⁶² In response to Question 32(b)(ii) of the SGQ for the HSS investigation

PUBLIC RECORD



	Encouraged Investment Industries	Restricted Investment Industries	Eliminated Investment Industries
2005 Directory Catalogue	<ul style="list-style-type: none"> Design and development of auto and their engines and key parts Precision forging and forging of key auto parts 	<ul style="list-style-type: none"> Electrolytic aluminium project (with exceptions) Secondary aluminium reverberatory furnace project of below 4 tons Wet method fluoride salt in the production of aluminium 	<ul style="list-style-type: none"> None applicable

It appears that the GOC has only translated parts of the 2011 Directory Catalogue that it considers relevant to this investigation. Customs and Border Protection notes that it has included expanded translation of item 8 of the Encouraged Investment Industries, which relates to iron and steel (relevant to the HSS investigation), but included no translation of item 9 that relates to nonferrous metals (relevant to this investigation). A similar situation occurs in relation to the Restricted and Eliminated categories.

The original and updated Directory Catalogue also categorises certain items of coal, power, and petroleum and natural gas as encouraged, restricted or eliminated.

The original (2005) Directory Catalogue was issued alongside the *Decision of the State Council on Promulgating the "Interim Provisions on Promoting Industrial Structure Adjustment" for Implementation* (the Interim Provisions),⁵⁸ which provides context to the Directory Catalogue.

The Interim Provisions note:

The formulation and implementation of the "Interim Provisions" is an important measure to implement the spirit of the fifth plenary session of the 16th CPC Central Committee, to achieve the objective of the "Eleventh Five-year" planning, and is of great significance to ensure the all-round implementation of the scientific view of development, to strengthen and improve macro-control, to further transform the ways of economic growth, to propel industrial structure adjustment, optimization

⁵⁸ Provided in relation to the HSS investigation. Customs and Border Protection notes that the GOC has submitted that the Interim Provisions are 'abolished', however the date of abolition is not clear. In any event, Customs and Border Protection merely relies on the Interim provisions in this case to demonstrate the importance of the Directory Catalogue to the GOC and the reasons for its imposition, noting the original Directory Catalogue has been in force from 2005, being updated in 2011 (i.e. in force in the years prior to and during the investigation period).

PUBLIC RECORD

PUBLIC FILE
FOLIO 94
No:.....

The GOC also noted:

*The encouraged category enjoys some corresponding preferential treatment with regard to imported equipment.*⁶³

It is observed that the Interim Provisions make direct reference to the 11th National FYP and its role in implementing the objectives of that plan. Further, Article 19 states:

If any enterprise of the eliminated category refuses to eliminate the production technique, equipment or products, the local people's government at each level and the relevant administrative department shall, in accordance with the relevant laws and regulations of the state, order it to stop production or close it, and shall take appropriate measures to resettle the employees of the enterprise, and guarantee the safety of financial institutions' credit assets, etc. If its products are subject to the administration by permit for production, the relevant administrative department shall lawfully revoke its permit for production; the administrative department for industry and commerce shall urge it to lawfully go through modification registration or nullification registration; the administrative department of environmental Protection shall revoke its permit for pollution discharge; and the electric power supply enterprise shall lawfully stop supplying electricity to it. If any enterprise violates the provisions, its persons directly held liable and the relevant leaders shall be subject to liabilities in accordance with the law.

The Interim Provisions therefore give wide-ranging powers to GOC agencies to impose the requirements of the Directory Catalogue to eliminate certain production processes, equipment and products, and encourage others.

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

Further to the Directory Catalogue, the GOC's State Council issued its *Notice of the State Council on Further Strengthening the Elimination of Backward Production Capacities*⁶⁴ (the Backward Capacities Notice) in 2010. State Council and all institutions directly under the State Council.

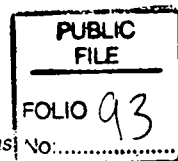
In its response to SGQ in the HSS investigation, the GOC has explained that:

"Backward production capacity" means the out-dated techniques, equipment and products which do not conform to the relevant laws and regulations; which seriously waste resources; which pollute the

⁶³ In response to Question 32(b)(ii) of the SGQ for the HSS investigation

⁶⁴ GOC response to the SGQ for the HSS investigation, Attachment 176.

PUBLIC RECORD



environment; or which do not meet work safety conditions (same as those in the "eliminated category").

Customs and Border Protection notes from the above that the concept of backwards production capacity is linked directly to the category of eliminated items on the Directory Catalogue.

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

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

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

The Backward Capacities Notice states that 'remarkable progress' has been made in China in terms of the elimination of backwards production capacities, but notes the targets for eliminating this capacity have not yet been met.

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

- strengthening the 'Policy Constraint Mechanism' – controlling market access, strengthening the 'economic and legal means', 'intensifying' law enforcement and punishment (including revising the Directory Catalogue);
- improving policy incentives – strengthening fiscal support of backwards capacity elimination, resettling employees, supporting the transformation of enterprises (science and technology upgrading);
- improving the 'supervision and inspection mechanism' – including each region and the central Ministry of Industry and Information Technology (MIIT) producing an annual list of enterprises with 'backward production capacities to be eliminated, the backward technologies and equipment, the deadlines for elimination and the overall progress' and the monitoring and reporting on the progress of the elimination of backward production capacities;
- strengthening GOC organisation and leadership of the elimination of backward production capacities;
- supporting competitive enterprises in elimination of backward production capacities through merger, acquisition or restructuring of enterprises with a backward production capacity;

PUBLIC RECORD

PUBLIC
FILE

FOLIO

No. 92

- relevant GOC agencies and government levels shall *'earnestly work out implementation plans, divide the objectives and tasks among cities and counties, assign them to specific enterprises, and timely submit lists of to-be-eliminated enterprises with a backward production capacity to the Ministry of Industry and Information Technology and the National Energy Administration'*;
- improving the regulation and control of land use plans, and prohibiting land supply for construction projects of backward production capacities and in industries with severe overcapacity;
- giving *'full play to the role of pricing mechanisms, such as differential prices for electricity and reform of prices for resource products, in eliminating backward production capacities... and raise the costs for energy, resources, environment and land used by enterprises and projects with a backward production capacity'*.

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

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

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

Customs and Border Protection's assessment

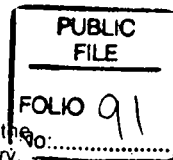
The Directory Catalogue, Interim Provisions and Backward Capacities Notice are clear examples of sub-policies and measures to GOC macroeconomic policies that are designed to implement the 'aspirational' aims of those policies.

Further, evidence exists to demonstrate that the GOC actively monitors the elimination of backwards production, and measures the success of this objective.

The GOC provided a document called the *Announcement of the 2010 List of Entities Subject to Elimination of Backward Production Capacity in Industry Sector*, issued by MIIT in 2010⁶⁵. The document refers to an Appendix that lists enterprises subject to elimination of backwards production capacity

⁶⁵ Attachment A33 to the GQ

PUBLIC RECORD



across a number of industries, including electrolytic aluminium. However, the Appendix attached to the document only contains a list for the steel industry. It is considered that the GOC may have mistakenly provided Customs and Border Protection with the document gathered for the purpose of the HSS investigation.

In response to the SGQ for the HSS investigation, the GOC emphasised that the Directory Catalogue is essentially an environmental measure:

The GOC defends its right to legislate for the Protection of its environment and the health of its people. The Directory Catalogue is not an instrument of industry intervention with the commercial intention of making Chinese industries the most competitive in the world or of forcing the industry to conduct its business as dictated by the GOC. It is a regulatory document which articulates how environmental laws are to be applied.

Customs and Border Protection agrees that certain measures of the Interim Provisions and Directory Catalogue would reasonably be considered to be environmentally-focussed, particularly those that relate to the elimination of older, environmentally harmful technologies and techniques.

However, it is considered that these measures cannot be considered to be purely environmental, particularly when the nature of some 'encouraged' items on the Directory Catalogue are observed.

In particular, the Directory Catalogue can reasonably be considered to go towards meeting the GOC's policy aims of encouraging technical innovation, raising product quality, and changing the product mix, as well as encouraging environmental improvements.

2.5.2. Market entry criteria and industry operating conditions

The NDRC introduced the *Requirements on Entry into the Aluminium Industry* (Entry Requirements Policy)⁶⁶ on 29 October 2007. The Entry Requirements Policy states that all departments should conform to the Requirements when they, inter alia, conduct reviews of approval of investment proposals, business registrations, financing concerning bauxite mining, smelting, processing and utilisation of regenerated aluminium projects.

The aims of the Entry Requirements Policy are to speed up structural reform of the aluminium industry and regulate investment behaviour, in addition to achieving environmental goals.

- The production scales of newly built bauxite mines cannot be lower than 300,000 tonnes per year
- Newly built alumina projects are subject to review and approval by the State Council

⁶⁶ Attachment 6, GQ

PUBLIC RECORD

PUBLIC
FILE

FOLIO 90
no.....

- Alumina projects using domestic bauxite must have annual production capacity of not less than 800,000 tonnes
- Alumina projects using imported bauxite must have annual production capacity not less than 600,000 tonnes
- In the near term only newly-built electrolytic aluminium projects that require environmental protection technique renovation or designed to eliminate production capacity that has become obsolete will be approved
- Production scale of newly built secondary aluminium projects must be more than 50,000 tonnes per year. For existing projects the minimum production requirement is 20,000 tonnes per year, and for reconstruction and expansion projects more than 30,000 tonnes per year.
- The Entry Requirements Policy specifies the techniques and methods that must be used by bauxite mines, alumina projects and electrolytic aluminium projects
- References certain targets to be met by the end of the 11th Five Year Plan
- Existing enterprises that meet industry policies need to improve their technologies and techniques to meet the standards that new enterprises are required to meet
- Aluminium enterprises that do not meet the requirements of entry are subject to various sanctions, such as not having their filing, application for construction on land or environmental impact assessment approved, withdrawal of credit and termination of power supply
- The NDRC will actively supervise and monitor the development of all enterprises conforming to the requirements

The *Catalogue of Investment Projects Reviewed by the Government*⁶⁷ states that electrolytic aluminium projects, aluminium projects and mine exploitation projects (with total investment more than RMB500 million) are subject to the review of the investment department of the State Council.

Customs and Border Protection's assessment

Customs and Border Protection considers that the GOC's measures for market entry and industry operation for the aluminium industry can reasonably be considered to go towards the GOC's aims of making environmental improvements, and to encourage technological and product quality advancement and structural adjustment in the Chinese aluminium industry.

The linkages between the Entry Requirements Policy and the GOC's measures to eliminate backwards production capacity and to encourage technical and environmental advancement are observed.

⁶⁷ Attachment 11, GQ

PUBLIC RECORD



Customs and Border Protection notes the potential impact these market entry and industry operation criteria may have on enterprises operating in the aluminium industries.

2.5.3. Measures to curb production capacity redundancy

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

In 2006, the State Council promulgated its *Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy* (the Redundancy Circular).⁶⁸

The Redundancy Circular notes the

...major and difficult task' of the 11th National FYP to promote the strategic restructuring of the economy as well as to elevate the international competitiveness of all sectors.

The document goes on to note that some sectors

...make such blind investment and inefficient expansion that they have incurred production capacity redundancy, which has turned into a predominant problem in the economy.

The Redundancy Circular singles out the aluminium industry as one that is particularly affected by this problem. The Redundancy Circular further outlines the observed downturns or 'aftermaths' of production capacity redundancy, and observes:

If such situation is let go at random, the conflict rooting in the binding force of resource scarcity will pop up further, the issue of structural imbalance will be worsen off, there will witness an obvious increase in enterprise bankruptcy as well as in unemployment. So we should resolutely make efforts to solve all the problems.

The Redundancy Circular continues by outlining the 'requirements and principles' and 'key measures' to accelerate the restructuring of sectors with production capacity redundancy.

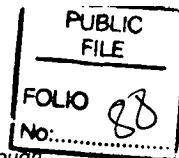
The Redundancy Circular notes:

The key to promote the restructuring...is to give full play to the fundamental role of the market in allocating resources and fully exert the market strength to promote the survival of the fittest...

but goes on to state

⁶⁸ GOC response to the GQ in the HSS investigation, Attachment A20.

PUBLIC RECORD



...we should, by means of restructuring, reform and elimination through selection, accelerate the restructuring process in the sectors with production capacity redundancy.

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

Customs and Border Protection considers that these measures are inconsistent with the notion of giving 'full play to the fundamental role of the market in allocating resources'.

2.5.4. Taxes and tariffs

The GOC has provided requested schedules of its import and export tariffs, and VAT rebate rates for bauxite, aluminium, aluminium alloy and ARWs from 1 July 2006 to 30 June 2011. The GOC also provided data on the total import and export volume of these products for that period, as well as information on export quotas, export licensing, and restrictions in processing trade.

The levels of import tariffs for ARWs remained the same throughout 2006 to 2011, at 10%. Lower rates applied to bauxite (zero) and aluminium, including pre-alloyed aluminium (between 5% and 7%). This indicates that the GOC tax policies encourage import of raw materials (such as bauxite and primary aluminium) used in the production of ARWs in preference to import of finished aluminium products.⁶⁹

There was no export tax on ARWs throughout July 2006 to June 2011. The export tax on alloy was reduced from 30% to 15% in 2007 and remained steady. The export tax on primary aluminium was reduced from 30% to 0% in 2007 but was reintroduced in 2009 at a rate of 15%, and remained at that rate through to June 2011. Export tax on bauxite was imposed at a rate of 10% in 2007, increased to 15% during 2008 and 2009, and then reduced to 0%. The export tariffs appear to discourage export of primary aluminium and bauxite indicating the high demand for aluminium (including bauxite, which is a raw material for aluminium) in China.⁷⁰

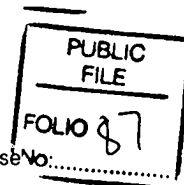
In relation to VAT export rebates, Customs and Border Protection note that bauxite and primary aluminium attracted no export rebates (zero rates) from July 2006 to June 2011. Over the same period, aluminium road wheels attracted VAT export rebates of 17%, encouraging export of processed aluminium products from China.

The GOC also advised that while there were no export restrictions in place in relation to bauxite after 2007, export licences were required throughout the period 2006 to 2011.

⁶⁹ Response to the GQ, Attachment 31

⁷⁰ Response to the GQ, Attachment 30

PUBLIC RECORD



The import and export volume data provided by the GOC in its SGQ response⁷¹ is summarised below (in millions of tonnes).

Exports and Imports of Aluminium						
	2006 (Jul- Dec)	2007	2008	2009	2010	2011 (Jan - Jun)
AL Export (MT)	0.59	0.55	0.84	0.31	0.75	0.35
AL Import (MT)	0.24	0.28	0.26	1.74	0.37	0.16
Exports and Imports of Bauxite						
	2006 (Jul- Dec)	2007	2008	2009	2010	2011 (Jan - Jun)
Bauxite Export (MT)		0.10	2.00		150.00	
Bauxite Import (MT)	5.80	23.20	25.80	19.60	30.00	20.70
Exports and Imports of Alumina						
	2006 (Jul- Dec)	2007	2008	2009	2010	2011 (Jan - Jun)
AL Export (MT)	0.01	0.03	0.04	0.07	0.06	0.04
AL Import (MT)	3.60	5.20	4.60	5.20	4.40	1.00

The data shows that exports of bauxite were almost non-existent until 2010, which coincides with the removal of the export tax.

When combined with the observation that export taxes on primary aluminium were at significant levels with no VAT export rebates, and processed aluminium products attracted lesser export taxes and considerable VAT export rebates, it seems to indicate a policy desire to minimise exports of primary aluminium and encourage exports of processed aluminium products.

Customs and Border Protection considers these observations relevant in so far as it is reasonable to expect such factors caused a significant increase to the supply of primary aluminium in China as exporters' competitiveness would have been seriously eroded by the export taxes and lack of VAT export rebate. As a result it is reasonable to consider this exerted downward pressure upon the domestic price of primary aluminium in China. These conditions appeared to be significant for the primary aluminium market in China given there was little penetration of alumina or aluminium into the Chinese market throughout the period 2006 to 2011.

Therefore, Customs and Border protection considers the GOC taxes, tariffs or VAT export rebates provide direct evidence of the GOC's intervention in the market for primary aluminium in line with its macroeconomic policies of focussing on processed aluminium products and increasing domestic demand for aluminium.

World Trade Organisation (WTO) Dispute DS394

China's export tariffs,⁷² and export quotas and licensing of bauxite (and other raw materials) has recently been subject to a WTO dispute before a WTO Panel and then the Appellate Body, the findings of which were handed down in July 2011 and January 2012 respectively.

⁷¹ This data was pro-rated for 2006 and 2011, as the GOC was only asked to provide data from July 2006 – June 2011

⁷² The Panel noted that the 2010 Tariff Implementation Program did not maintain an export duty on any category of bauxite.

PUBLIC RECORD

PUBLIC FILE
FOLIO 86
No:.....

This dispute also involved objections to the setting of minimum export prices (MEPs) for these raw materials.

Both the Panel and Appellate Body (appeal on certain matters) found that these Chinese measures were WTO-inconsistent, with the Appellate Body finding in conclusion:

The Appellate Body recommends that the DSB request China to bring its measures, found in this Report and in the Mexico Panel Report, as modified by this Report, to be inconsistent with China's Accession Protocol and the GATT 1994, into conformity with China's obligations thereunder, such that the "series of measures" do not operate to bring about a WTO-inconsistent result.⁷³

Of particular note is the fact that the Panel found that China had not demonstrated that the application of export restrictions to bauxite and is justified pursuant to Article XX(b) of the GATT 1994.

China did not demonstrate that the application of an export quota to was justified pursuant to Articles XI:2(a) or XX(g) of the GATT 1994.

Customs and Border Protection's Assessment

It is considered that the GOC's various measures on the raw materials used in the manufacture of ARWs, in the form of taxes, tariffs, VAT rebates, licences and export restrictions, can reasonably be considered to have had a significant impact on the domestic aluminium industry.

2.5.5. Subsidies in the aluminium industry

Subsidies to ARW producers

During its investigation, Customs and Border Protection has preliminarily found that ARW producers in China have benefited from 34 identified countervailable subsidy programs.

The largest of these programs (i.e. the program that is anticipated would have provided the greatest benefit to ARW producers) is Program 1, which concerns the provision of aluminium raw materials (pure aluminium and aluminium alloy) to ARW producers by state-invested enterprises (also referred to previously as state-owned enterprises) at a price that is considered to be less than adequate remuneration.

Other subsidies that have been preliminarily identified as being countervailable include grants for research and development, hi-tech industry investment, and holding specific patents, as well as tax reductions based on location and enterprise type.

⁷³ Reports of the Appellate Body, China – Measures Related to the Exportation of Certain Raw Materials (AB201-5) at 363.

PUBLIC RECORD

PUBLIC
FILE

FOLIO

No.

85

It is reasonable to consider that at least some of these subsidies will assist with the implementation of the GOC's macro-economic plans for the aluminium industry (e.g. encouraging hi-tech enterprises and product research and development).

'Upstream' subsidies

In addition to these investigated subsidies, Customs and Border Protection notes that the identified GOC macroeconomic policies and implementing measures it has examined have made multiple references to the provision of grants, financial support and other subsidies to enterprises generally (i.e. including 'upstream' enterprises to ARW manufacturers) to assist with the implementation of GOC policies and plans.

For example the Backwards Capacities Notice outlines that the GOC will strengthen 'fiscal support of backwards capacity elimination' and support the transformation of enterprises (science and technology upgrading).

Although Customs and Border Protection notes evidence of these upstream subsidies in the context of this assessment of market situation in China, it is not considered that sufficient evidence has been found that suggests that there are reasonable grounds for the publication of a countervailing duty notice in relation to these programs, as required by s.269TACC(1) when initiating investigations into alleged programs.

Specifically, sufficient evidence has not been found that suggests:

- that these subsidies could reasonably be considered to be countervailable; or
- that benefit received under these subsidies by upstream producers as passed through to ARW manufacturers.

For this reason, these subsidies have not been further investigated by Customs and Border Protection for the purposes of the concurrent countervailing investigation.

2.5.6. Direct intervention in the primary aluminium market

In its investigation of dumping and subsidisation of aluminium extrusions from China, the GOC responded to questions posed regarding activity by the Chinese State Reserve Bureau during the investigation period to purchase and stockpile large quantities of primary aluminium from the Chinese domestic aluminium market.⁷⁴

In that investigation Customs and Border Protection's analysis found that the GOC's intervention in the primary aluminium market did impact domestic aluminium prices. Although the investigation period for the aluminium extrusions investigation is different to the investigation period for the ARWs

⁷⁴ Preliminary Affirmative Determination 148, October 2009

PUBLIC RECORD

PUBLIC
FILE

FOLIO 84
No:

investigation, Customs and Border Protection notes these findings as evidence of the GOC's propensity to impact on aluminium prices generally.

2.5.7. Price Law of the People's Republic of China

The *Price Law of the People's Republic of China* (Price Law) was provided to Customs and Border Protection in response to the GQ⁷⁵.

Article 28 of the Price Law states that departments shall create a price monitoring system. In response to question C2.9(c)(i) of the GQ the GOC advised that four price monitoring reports have been issued pursuant to the Price Law. One of these is the *Monitoring Report System for Price of National Important Means of Production*. The GOC advised that aluminium and alumina are currently subject to price monitoring, stipulated in the aforementioned document. In the SGQ⁷⁶ the GOC was requested to provide a copy of the price monitoring report for aluminium and alumina. The GOC's response was that 'Price collecting/submitting entities are not required to provide a specific report to price authorities under the administrative system which is in effect.' Customs and Border Protection considers that the question in the SGQ could reasonably be inferred to be a request for the document referred to in the GOC's response to the GQ, and therefore considers that the GOC was not fully cooperative in its response to the question in the SGQ.

2.6. Evidence of implementing measures by SIEs

CITIC Group is the ultimate controlling shareholder of Dicastal Wheel Manufacturing Co. Ltd, one of the exporters of ARWs to Australia. CITIC group is wholly owned by the Government of China. CITIC Group's 2009 annual report note the role it plays in carrying out the GOC's policies:

Over the past three decades, CITIC Group has grown into China's largest conglomerate while fulfilling its historic responsibility of piloting China's economic reform and showcasing the country's opening programme. Looking into the future, we will explore and build a business model that fits our needs as a large conglomerate. We will operate in a more systematic, routinized, specialized and sophisticated way, enhancing existing strengths and creating new ones. Our shift from just being big to also being strong in pursuit of sustainability will help us better serve China's economic and social development as an enterprise directly under the central government⁷⁷.

Yunnan Aluminium Co. Ltd is a SIE involved in the manufacture of various aluminium products, including alloy. Customs and Border Protection was unable to obtain its annual reports from the English version of the website⁷⁸.

⁷⁵ Attachment A7 to the GQ

⁷⁶ Question B14(i)

⁷⁷ GOC response to the GQ p 33 and Attachment 52, pg 45

⁷⁸ Provided in GOC response to the GQ, Attachment 133

PUBLIC RECORD



however the company information states its role in implementing the objectives of the Yunnan Province 9th and 10th Five Year Plans.

CHALCO is a SIE and the largest supplier of aluminium in China. The following statements are taken from its Form 20-F filing with the SEC for 2010⁷⁹:

As a significant majority of our assets and operations are located in the PRC, we are subject to a number of risks relating to conducting business in the PRC, including the following:

- *The central and local PRC government continues to exercise a substantial degree of control and influence over the aluminum industry in China and shape the structure and development of the industry through the imposition of industry policies governing major project approvals, preferential tax treatment and safety, environmental and quality regulations. If the PRC government changes its current policies or the interpretation of those policies that are currently beneficial to us, we may face pressure on profit margins and significant constraints on our ability to expand our business operations.*
- *Although China has been transitioning from a planned economy to a market-oriented economy, a substantial portion of productive assets in China are still owned by the PRC government. It also exercises significant control over China's economic growth through the allocation of resources, control of payments of obligations denominated in foreign currencies and monetary and tax policies. Some of these measures benefit the overall economy of China, but may have a materially adverse impact on us.*

and

The annual production capacity of Liancheng branch and Lanzhou branch decreased by a total amount of 85,000 tonnes because we ceased the operation of some obsolete smelters in compliance with the energy-saving and emission reduction policy carried out by local governments in the fourth quarter of 2010.

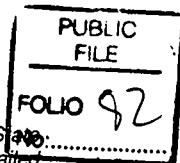
and

In order to improve the efficiency and competitiveness of the Chinese alumina industry as well as to protect the environment, NDRC published "Entrance Conditions for Aluminum Industry" (the "Entrance Conditions") in November 2007. According to the Entrance Conditions, new bauxite projects must be approved by the provincial authority or the relevant department of the State Council of China depending on the amount of total investment, and any new alumina

⁷⁹ Accessed at

<http://www.chalco.com.cn/zl/html/144/2011/20110416055559079742570/20110416055645799590983.pdf.pdf>

PUBLIC RECORD



project must be approved by the relevant department of the State Council of China. The Entrance Conditions also provide detailed requirements for capital size, service period and resource utilization rate for a new bauxite or alumina project to be approved. The Entrance Conditions has established a high entry barrier for new alumina producers in China.

and

The PRC government's encourages consolidation in the Chinese primary aluminum industry to create larger, more efficient producers that are better positioned to implement measures to reduce emissions. Accordingly, the larger smelters are granted preferential treatment, including priority in the allocation of raw materials and electricity supplies, which give them a competitive advantage over small domestic smelters. Moreover, according to the Entrance Conditions, effective from 2007, new aluminum projects must have secured a supply of alumina to seek approval from the relevant department of the State Council of China. As of the date of the annual report, the relevant department of the State Council of China is not expected to approve any new aluminum projects except those environmental protection upgrade projects and expired equipment exchange projects planned by the PRC government.

and

PRC Regulation Affecting the Aluminum and Other Non-ferrous Metal Products Industries

The central and local PRC government continues to exercise a substantial degree of control and influence over the aluminum and other non-ferrous metal product industry in China and shape the structure and development of the industry through the imposition of industry policies governing major project approvals, preferential tax treatment and safety, environmental and quality regulations, including but not limited to the "Aluminum Industry Development Policy", "Notice on Guiding Opinions for Accelerating Aluminum Industrial Restructuring", "Environmental Protection Guide for Developing Circular Economy in Aluminum Industry", "Notice of the State Council of China on Further Strengthening the Elimination of Obsolete Production Capacities" and "Non-ferrous Metals Industry Restructuring and Revitalization Planning", etc. Certain existing laws and regulations involve barriers to entry, production quotas, setting, amending or abolishing import tariffs and limitations and duties on the export of aluminum and certain non-ferrous metals and related products. If PRC government changes its current policies or the interpretation of those policies that are currently beneficial to us, we may face pressure on profit margins and significant constraints on our ability to expand our business operations.

PUBLIC RECORD

PUBLIC
FILE

FOLIO 81

No:.....

2.7. Conclusion

After reviewing the identified GOC macroeconomic policies in relation to the aluminium industry, and related implementing measures, Customs and Border Protection considers there is extensive evidence on the record to show that the GOC plays a significant role in the aluminium industry in China, through its various policies, plans and implementing measures.

For ease of analysis, it is considered that these GOC influences can be broadly categorised as follows:

1. measures to drive structural adjustment;
2. technological, efficiency and environmental development measures;
3. tariffs, taxes, rebates and licences; and
4. subsidisation of encouraged practices and products.

In categorising the above, it is noted that there is some degree of overlap between these categories (e.g. subsidisation is considered to be used to encourage technological and efficiency development).

The likely impact of these measures, and whether they have created a 'market situation' is explored in the following chapter.

PUBLIC RECORD

PUBLIC
FILE

FOLIO 80

No.

3. ASSESSMENT OF MARKET SITUATION

After identifying numerous GOC influences on the aluminium industry, Customs and Border Protection has undertaken an assessment as to whether it is reasonable to consider that a market situation existed in the Chinese ARW market during the investigation period, such that sales in that market are unsuitable for determining normal value under s.269TAC(1).

3.1. Approach to assessment

In assessing whether a market situation has been created by government influence on an industry, it is considered that several approaches may be open to Customs and Border Protection.

In examining whether a market situation existed in the Chinese ARW market, Customs and Border Protection has focussed particularly on the impact of the various GOC macroeconomic policies and plans, and their implementing measures, on the cost of inputs to the manufacture of ARWs.

3.2. Impact on price of aluminium

Customs and Border Protection accepts that the cost of primary aluminium is a major cost component in aluminium road wheels. The applicant claims that due to GOC's interference, the price of aluminium in China is less than the 'fair market' price.

The exporters that provided questionnaire responses advised that their purchase price of aluminium and/or aluminium alloy is based on one or more of the Shanghai Futures Exchange (SHFE), the Yangtze River Exchange or the Changjiang River Exchange. None of the verified exporters imported aluminium or aluminium alloy during the investigation period.

In its response to the SQG, the GOC advised that the 'Changjiang River Exchange' and 'Yangtze River Exchange' no doubt refer to the same thing because, in the Chinese language, both 'Changjiang River' and 'Yangtze' refer to the same river. In addition the GOC advised that it is not aware of any such 'exchange' – in the sense of an entity that specifically trades in aluminium futures – existing in China. The GOC obtained information that the Changjiang River Exchanges is a nonferrous metal spot market⁸⁰. For ease of reference, for the remainder of this section Customs and Border Protection will continue to refer to these as the 'Changjiang River Exchange' and 'Yangtze River Exchange' as this is the terminology used by the visited exporters.

Jinfei Kaida provided spot market prices for aluminium from the Changjiang River Exchange throughout the investigation period. Yueling provided similar data for the Yangtze River Exchange. Customs and Border Protection also purchased data from Shenzhen Zhunda Technology Development Co., Ltd

⁸⁰ GOC response to the SQG, question B15(a)

PUBLIC RECORD

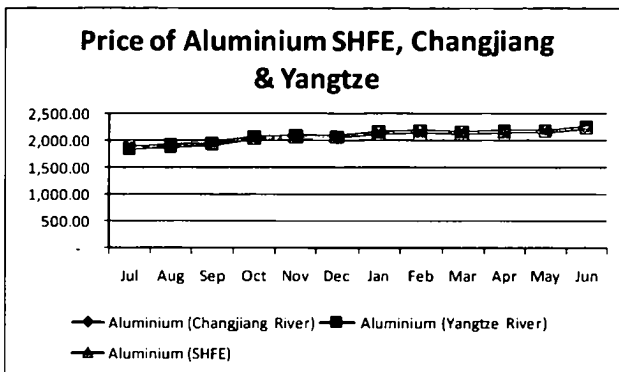
PUBLIC
FILE

FOLIO 79

No:.....

(Ometal Website) in relation to these exchanges. A comparison was made between the purchased data and the data provided by exporters, which showed very close correlation between the data sets.

As shown in the graph below, the price of aluminium on both of these markets closely resembles the monthly average spot market prices of SHFE (all prices are in USD).



In the aluminium extrusions investigation Customs and Border Protection found that the London Metal Exchange (LME) prices could be used as a benchmark for a price in a competitive market. This is due to the LME being an open and transparent stock exchange that operates without any restrictions. The benchmark price of most metals worldwide are based on the LME prices. By contrast, the SHFE is a closed exchange and is restricted to Chinese nationals only.

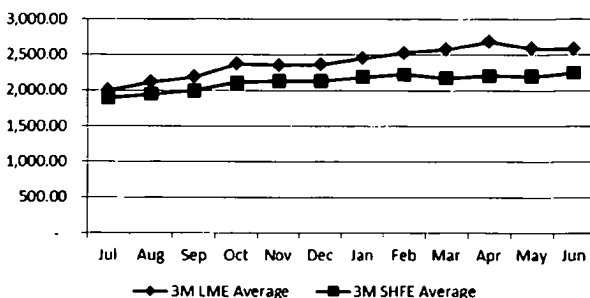
The comparative analysis of the aluminium prices between LME and SHFE, as shown in the graphs below, during the investigation period shows a variance of 13% on three month average prices and 14% using spot market prices, with SHFE prices being consistently lower than LME prices.

PUBLIC RECORD

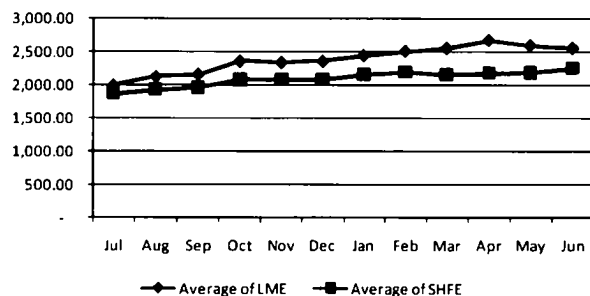
PUBLIC
FILE

FOLIO 78
No:.....

LME vs SHFE 3 Month Average prices



Spot Prices LME vs SHFE



In a submission to the investigation, the GOC included a graph that it said showed the price of aluminium on both the LME and SHFE markets during the investigation period⁸¹. That graph showed that SHFE prices were above the LME price for at least part of the investigation period. Customs and Border Protection obtained the data from the website referenced in the submission and compared it to the data used in the graphs above. It is apparent that the SHFE prices included in the graph provided in the GOC submission are inclusive of VAT, whereas VAT should be deducted for fair comparison with LME prices.

The alloy used in the manufacture of ARWs is not traded on either the LME or SHFE. The information provided in relation to the Yangtze River Exchange is the only price data Customs and Border Protection has for both primary

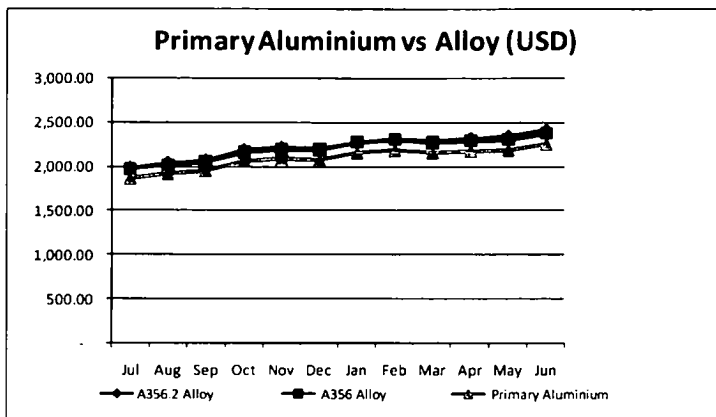
⁸¹ GOC submission dated 20 March 2012

PUBLIC RECORD

PUBLIC
FILE

FOLIO 77

aluminium and alloy during the investigation period. This data shows an average price difference over the investigation period of 6.42%, with alloy being more expensive. This contrasts with estimates supplied by Arrowcrest that show the cost of alloy should be around 10% higher than the cost of primary aluminium.



Customs and Border Protection considers the macroeconomic policies, plans and guidelines outlined in section 2 of this Appendix, combined with their implementing measures such as tariffs, taxes, rebates and subsidies, exert downward pressure on the price of aluminium and aluminium alloy in the Chinese market.

The GOC claims that the aluminium market in China operates in a competitive way. The GOC advised that in 2010 SIEs represented 28.2% of aluminium alloy production and that there were 274 'above-scale'⁸² producers of aluminium alloy in China. In a submission to the investigation the GOC referred to Customs and Border Protection's findings in the aluminium extrusions investigation and stated:

*The fact that primary aluminium was cheaper domestically in China when compared to the LME during the period of investigation is not a result of any subsidy. It is a result of active competition between low-cost and high volume producers in the Chinese domestic market.*⁸³

Customs and Border Protection considers the evidence outlined in section 3 of this paper demonstrates that it is likely the existence of low cost and high

⁸² The GOC advised that this term refers to enterprises with revenue greater than RMB5 million

⁸³ GOC submission dated 20 March 2012

PUBLIC RECORD

PUBLIC
FILE

FOLIO 76
No:.....

volume producers in China has been brought about by the GOC's policies and other measures in relation to the aluminium industry.

3.2.1. Customs and Border Protection's assessment

Customs and Border Protection considers that the GOC's actions have directly impacted the price of aluminium materials in China, causing prices to be lower than they would be without the intervention of the government.

In visits to exporters Customs and Border Protection was advised that the price of aluminium is a key determinant in pricing ARWs for sale. It is therefore reasonable to conclude that the domestic prices of ARWs are lower than they otherwise would be without the intervention of the GOC.

3.3. Economics of supply

Customs and Border Protection has also considered an economic assessment of the likely impact of these GOC influences on the determinants of supply of ARWs, and the resulting likely impact on the price of ARWs in China

It is accepted economic analysis that decreasing marginal costs of production would, all other things being equal, cause a shift in supply. This causes producers to supply more products at any given price. In this case, the equilibrium price (the price at which the quantity demanded equals the quantity supplied) will be lower than before the shift in supply.

3.3.1. Direct impact on cost of raw materials

As discussed above, Customs and Border Protection has found that the price of aluminium and aluminium alloy in China was below world prices throughout the investigation period.

Direct intervention by the GOC in the form of taxes, tariffs, export licences and other measures are likely to have impacted the supply of ARWs and the price of ARWs through the reduction of input prices through the impact of the reduced price of bauxite on the supply of alumina, and then the flow-through effects of supply in aluminium, then alloy production, then ARWs itself.

3.3.2. Subsidisation

It is noted that Customs and Border Protection has found that Chinese exporters of ARWs have been in receipt of numerous countervailable subsidies from the GOC, and that evidence exists to suggest that upstream suppliers of aluminium and aluminium raw materials have also potentially been in receipt of subsidies.

The likely impact of these subsidies on the costs of factors of production of ARWs and hence the price of ARWs through:

- improving the technology used by ARW manufacturers, decreasing the cost of production, as well as affecting the supply and hence price

PUBLIC RECORD



of aluminium enterprises (and upstream industries that are also likely to have received subsidies);

- decreasing the cost of inputs of aluminium and ARWs through the encouraged structural adjustment of aluminium and upstream industry entities; and
- directly reducing input prices of products at each stage of production if the subsidies are passed on by the recipient enterprises.

3.3.3. Conclusion – economics of supply

Customs and Border Protection preliminarily determines that the price of ARWs in China is likely to also have been influenced by changes in a determinant of supply, primarily the costs of production, in both the ARWs and upstream markets. Customs and Border Protection considers it is likely there has been a change in supply in ARWs and a consequent impact on ARW prices, brought about in a significant part by the GOC influence on the aluminium industry. It is considered that this influence has resulted in lower ARW prices that what would have been the case if the relevant markets operated without GOC intervention.

3.4. Conclusion – market situation

Customs and Border Protection preliminarily determines that the price of ARWs in China is likely to have been influenced by:

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

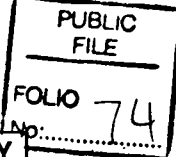
Customs and Border Protection considers that the resultant impact on ARW prices has been brought about in a significant part by the GOC influence within the aluminium industry. It is considered that this influence has resulted in significantly different ARW prices to what would have been the case if the relevant markets operated without significant GOC intervention.

Customs and Border Protection considers that the extent of the impact of these GOC influences on supply are extensive, complex and manifold, and their resulting impact on the price of ARWs is not able to be easily quantified. However, as discussed in Section 1.2.3, it is not considered that the quantification of price effects is necessary in assessing the suitability of prices for normal value under s.269TAC(1).

However, available information and Customs and Border Protection's analysis indicates that these influences are likely to have had a material impact on the domestic price of ARWs in the investigation period, such that prices of ARWs in that market are no longer suitable for determining normal value under s.269TAC(1).

Customs and Border Protection therefore preliminarily considers that GOC influences in the Chinese aluminium industry has created a 'market situation' in the domestic ARW market.

PUBLIC RECORD



APPENDIX B – ASSESSMENT OF COUNTERVAILABILITY OF SUBSIDIES

This appendix details Customs and Border Protection's assessment of the 56 subsidy programs investigated during its investigation.

PART I - INTRODUCTION

I.1 The Act

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

'subsidy', in respect of goods that are exported to Australia, means:

(a) a financial contribution:

- (i) by a government of the country of export or country of origin of those goods; or*
- (ii) by a public body of that country, or 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 is made in connection with the production, manufacture or export of those goods and that involves:

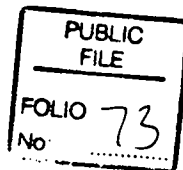
- (iv) a direct transfer of funds from that government or body to the enterprise by whom the goods are produced, manufactured or exported; or*
- (v) a direct transfer of funds from that government or body to that enterprise contingent upon particular circumstances occurring; or*
- (vi) the acceptance of liabilities, whether actual or potential, of that enterprise by that government or body; or*
- (vii) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body by that enterprise; or*
- (viii) the provision by that government or body of goods or services to that enterprise otherwise than in the course of providing normal infrastructure; or*
- (ix) the purchase by that government or body of goods provided by that enterprise; 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 in relation to those goods.

S.269TAAC defines a countervailable subsidy as follows:

PUBLIC RECORD



(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.

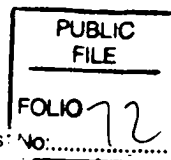
S.269TACC of the Act directs how it is to be determined whether benefits have been conferred by a subsidy and the amount of this benefit.

Customs and Border Protection makes references to these sections throughout this appendix.

1.2 Information relied upon

In addition to the information contained within Arrowcrest's application for this investigation, Customs and Border Protection has had regard to the following

PUBLIC RECORD



in arriving at the conclusions regarding countervailable subsidies in this appendix:

- the responses from the GOC to the GQ and SGQ;
- responses to the exporter questionnaire by selected cooperating exporters, and information gathered from and verified with these exporters; and
- information submitted to Customs and Border Protection's 2009 investigation into aluminium extrusions from China (REP148), and Customs and Border Protection's analysis and findings in this investigation.

Customs and Border Protection has decided for this investigation not to undertake a visit to the GOC to verify information contained in its GQ and SGQ.

Customs and Border Protection considers the responses of the GOC contain limited information that is by nature 'verifiable', and primarily consists of written responses and documentation that does not lend itself to verification.

In making this determination, Customs and Border Protection considered that, where necessary, it is more practicable in the context of the ARW investigation to pose additional questions to the GOC in the form of supplementary government questionnaires or requests for comment, rather than during face-to-face meetings with GOC officials.

PART II – ALUMINIUM AT LESS THAN ADEQUATE REMUNERATION (PROGRAM 1)

II.1 Background

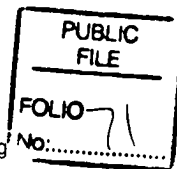
The Applicant has alleged that Chinese exporters of ARWs have benefited from the provision of raw material (in the form of aluminium and aluminium alloy) by the GOC at less than adequate remuneration.

In particular it was claimed that aluminium and aluminium alloy, the main raw materials used in the manufacture of ARWs, was being produced and supplied by SIEs in China at less than adequate remuneration.

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 produce aluminium and/or aluminium alloy 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 ARW producers constitutes a countervailable subsidy.

PUBLIC RECORD



Customs and Border Protection's assessment of whether SIEs producing aluminium and/or alloy constitute a public body within the meaning of s.269T(a)(ii) is discussed separately in this appendix.

This assessment concludes that these Chinese SIEs that produce aluminium and/or alloy are 'public bodies' for the purposes of s.269T, and the remainder of this section continues on the basis of this finding.⁸⁴

II.2 Legal Basis

Customs and Border Protection 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).

II.3 WTO Notification

Customs and Border Protection is not aware of any WTO notification in respect of this program.

II.4 Effect of the program

Under this program, a benefit to exported ARWs is conferred by aluminium and/or alloy being provided by the GOC (through SIEs) at an amount reflecting less than adequate remuneration. Having regard to prevailing market conditions in China.

Customs and Border Protection's assessment of what constitutes 'adequate remuneration' for aluminium and/or alloy in China is contained elsewhere in this appendix.

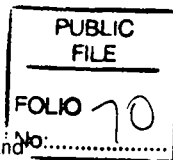
Customs and Border Protection requested information from all Chinese exporters in relation to their purchases of aluminium and/or alloy during the investigation period.

For each supplier of aluminium and/or alloy, the Chinese exporters were required to identify whether the supplier was a trader or manufacturer of the goods. Where the supplier was not the manufacturer of the goods, each exporter was asked to identify the manufacturer. As well as identifying the manufacturers of all purchased aluminium and/or alloy, the exporters were also asked to indicate whether these enterprises were SIEs.

Information presented by these exporters showed that SIEs were significant suppliers of aluminium and/or alloy to ARW exporters. The GOC was requested at questions B2(ii) to provide information about domestic production by type of enterprise in the aluminium industry, including primary aluminium and aluminium alloy. The GOC responded that as exporters indicated they only used alloy in the production of ARWs, 'for the sake of expediency' the GOC restricted its response to alloy producers only. Customs and Border Protection was therefore not provided with production

⁸⁴ If it were to be determined that these SIEs are not 'public bodies', this program would not meet the definition of a 'subsidy' in s.269T.

PUBLIC RECORD



information for aluminium producers by entity type. Two of the exporters visited by Customs and Border Protection purchased primary aluminium and produced their own alloys, therefore it is considered the GOC has not provided relevant information in relation to this line of inquiry.

During its investigation of the dumping and subsidisation of aluminium extrusions, Customs and Border Protection found that the share of total domestic aluminium production in China by SIEs was significant. Customs and Border Protection has no reason to expect that this situation has changed since the aluminium extrusions investigation.

Information provided by the GOC in relation to alloy producers showed the share of total domestic alloy production in China by SIEs was also significant.

II.5 Eligibility Criteria

There are no articulated eligibility criteria for enterprises receiving aluminium and/or alloy at less than adequate remuneration.

II.6 Is there a subsidy?

Based on the information above, Customs and Border Protection considers that this program involves a financial contribution to the extent that it was made in connection with the production of ARWs from China that involves the provision of goods (aluminium and/or alloy) by SIEs, being public bodies, at less than adequate remuneration.

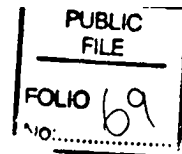
As Chinese exporters use aluminium and/or alloy in their production of ARWs, it is considered this financial contribution is made in respect of the production, manufacture or export of the goods.

Where the financial contribution involves a direct transaction between the public bodies and the exporters of ARW, Customs and Border Protection 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 Customs and Border Protection.

Where the financial contribution involves the provision of aluminium and/or alloy by public bodies to private intermediaries that then trade those inputs to the exporters of ARWs, Customs and Border Protection considers, in accordance with s.269T(2AC)(a), that an indirect benefit is conferred in relation to the exported goods to the extent that the benefits conferred to the private intermediaries are passed-through to the exporters of ARWs by way of aluminium and/or alloy being provided at less than adequate remuneration.

Where exporters of ARWs during the investigation period purchased aluminium and/or alloy at less than adequate remuneration under the program in connection with the production, manufacture or export of those goods, it would confer a benefit in relation to those goods equal to the amount of the difference between the purchased price and the adequate remuneration, and the financial contribution would meet the definition of subsidy under s.269T.

PUBLIC RECORD



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

II.7 Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in s.269TAAC(4)(a), the Minister 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 aluminium and/or alloy is a key input in the manufacture of further processed aluminium products, it is clear that only enterprises engaged in the manufacture of these processed products 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.

II.8 The amount of subsidy in respect of the goods

Selected cooperating exporters

Customs and Border Protection found that all of the selected cooperating exporters received a financial contribution that conferred a benefit under this program during the investigation period through the purchase of aluminium and/or alloy at less than adequate remuneration by SIEs (as public bodies), in accordance with s.269TACC(4)(d) of the Act.

In accordance with s.269TACC(5), 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 s.269TACC(6)(d), the amount of subsidy attributable to the benefit has been determined as the difference between adequate remuneration (as established) and the actual purchase price paid for aluminium and/or alloy incurred by the selected cooperating exporters in purchasing these goods from SIEs.

In accordance with s.269TACC(10), the amount of subsidy received in respect of ARWs has been apportioned to each unit of ARWs using the total sales volume of goods to which the benefit was attributable.

Selected non-cooperating exporters

For the selected non-cooperating 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.

However, considering the facts that:

- all ARWs exported from China are made using alloy (made from aluminium);

PUBLIC RECORD

PUBLIC FILE
FOLIO 68
No.

- a significant proportion of Chinese enterprises that produce aluminium and/or alloy are known to be SIEs; and
- selected cooperating exporters purchased a significant amount of aluminium and/or alloy from SIEs during the investigation period;

It is considered likely that selected non-cooperators purchased aluminium and/or alloy from SIEs and therefore received a financial contribution under this program.

In the absence of information that demonstrates the volume of aluminium and/or alloy purchased from SIEs by selected non-cooperating exporters, Customs and Border Protection considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to selected non-cooperating exporters under this program; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

In accordance with s.269TACC(7), Customs and Border Protection has determined that selected non-cooperating 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 highest individual subsidy rate of the five selected exporters (in the absence of other reliable information).

II.9 Do aluminium and alloy producers SIEs qualify as 'public bodies' under the Act?

As outlined earlier in this appendix, the definition of a subsidy under s.269T of the Act includes reference to a financial contribution by a government or any public body.

The application alleges that Chinese SIEs that produce aluminium and/or alloy are public bodies, such that a financial contribution in the form of less than adequate remuneration for raw material inputs of aluminium and/or alloy supplied by these SIEs constitutes a countervailable subsidy.

II.9.1 What are 'public bodies'?

Definition

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

However, the WTO Appellate Body in *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, dispute (DS379), recently considered the meaning of 'public body' within Article 1.1(a)(1) of the

PUBLIC RECORD

PUBLIC
FILE

FOLIO

67

No:.....

SCM Agreement. The Report of the Appellate Body⁸⁵ (the Appellate Body Report), circulated 11 March 2011, outlines its findings in relation to this matter.

In ACDN 2011/27, Customs and Border Protection announced that its countervailing investigations involving allegations of subsidies being granted by public bodies would be conducted in accordance with the findings of the Appellate Body in DS379.

The assessment of public bodies in this appendix therefore takes account of the DS379 findings in arriving at its conclusions.

DS379 findings

In its findings report, the Appellate Body stated:

... the determination of whether a particular conduct is that of a public body must be made by evaluating the core features of the entity and its relationship to government in the narrow sense. That assessment must focus on evidence relevant to the question of whether the entity is vested with or exercises governmental authority.⁸⁶

[Emphasis added]

The Appellate Body provided further guidance on this point as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):⁸⁷

- where a *statute or other legal instrument* expressly vests government authority in the entity concerned;
- 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
- where there is evidence that a government exercises *meaningful control* over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

The Appellate Body considered⁸⁸ that the existence of *mere formal links* (i.e. majority government ownership) between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority, because this does not automatically demonstrate that

⁸⁵ Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R

⁸⁶ Appellate Body Report, at 345

⁸⁷ *Ibid* at [318]

⁸⁸ *Ibid*

PUBLIC RECORD

PUBLIC
FILE

FOLIO 66
No:.....

the government exercises meaningful control over the conduct of that entity much less that the government has bestowed it with governmental authority.

The Appellate Body further advised that in all cases, an investigating authority must give due consideration to all relevant characteristics of the entity and avoid focussing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant⁸⁹.

The Appellate Body went on to acknowledge (in the context of examining state-owned enterprises in China (referred to in this paper as SIEs):⁹⁰

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

II.9.2 SIEs in China generally

The GOC advised, in response to D2.1(b), that the four categories of enterprises with state investment are governed by different laws. Although not provided in its response to the GQ for the ARWs investigation, in its response to exactly the same question in the HSS investigation the GOC advised that the main laws governing the establishment and operation of SIEs are:

1. the *Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People* (HSS investigation, GQ Attachment 15) for wholly-state-owned enterprises (the SOA Law); and
2. the *Company Law* (GQ Attachment 12) in relation to the other three categories of SIEs.

The GOC, as part of its GQ response, explained that the notion of the 'capital contributor' is equivalent to the term 'shareholder' of a company as used in *Company Law*. The GOC further explained that the term capital contributor is a legal notion that indicates the shareholding body comprising the State. The GOC stated that the National State-Owned Assets Supervision and Administration Commission (SASAC) and/or the provincial or local equivalents perform the role of capital contributor on behalf of the State Council or local people's government respectively⁹¹. The GOC has submitted that the institutions performing contributors' functions are shareholders in the normal sense.⁹²

The GOC has advised that SASAC is the main body responsible for the implementation of the system for the administration and supervision of state-owned assets in accordance with the *Law on State Owned Assets*⁹³. As

⁸⁹ Ibid at [319]

⁹⁰ Ibid at 345

⁹¹ GOC GQ Response, response to question D2.7(b)

⁹² GOC GQ Response, response to question, D2.7(a).

⁹³ GOC GQ Response, response to question D2.8

PUBLIC RECORD



stated above, the responsibilities of SASAC include performing the capital contributor functions for SIEs.

In accordance with the *Company Law*, a Board of Supervisors may be established to undertake functions of scrutiny and supervision of the enterprise⁹⁴. For a wholly state-owned enterprise, its board of supervisors shall be appointed by the agency performing the contributor's functions⁹⁵. Hence SASAC for some SIEs shall appoint a board of supervisors. The responsibilities of the board of supervisors are set out in Article 54 of the *Company Law*.

II9.3 The GQ and response

Customs and Border Protection sought extensive information in the GQ and SGQ concerning the core features of SIEs producing aluminium and/or alloy and their relationship to the GOC, which it considered necessary to evaluate whether Chinese aluminium SIEs are public bodies in light of the DS379 findings.

The GOC provided responses to both the GQ and SGQ, including multiple requested documents. However, Customs and Border Protection considers that the GOC did not provide detailed responses to several questions posed in the GQ and SGQ.

The GOC did respond to certain questions regarding the core features of the SIEs producing aluminium and/or alloy in a general manner with reference to legislative and regulatory provisions.

II9.4 Key information not provided

As part of the GQ, the GOC was requested to respond to a series of questions regarding:

- ownership;
- governance;
- performance and profits; and
- enterprise functions

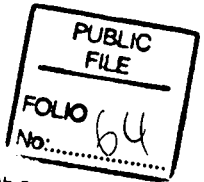
of identified SIEs that produce aluminium and/or alloy.

Included in the GQ was a request at Question D2.25 to describe the legal structure of the enterprise showing the percentage of ownership by the GOC and other entities; the ownership of all entities including subsidiaries and parent companies, and the ownership of these entities (also indicating the functions and roles of each associated entity including whether they are involved in the production of aluminium, ARWs or any other aluminium

⁹⁴ GOC GQ Response, response to question D2.14

⁹⁵ Law on State Owned Assets, Article 19

PUBLIC RECORD



product). The GOC did not provide a detailed response to this question, stating:

The ARW and aluminium sectors are diversified and dynamic, with a low concentration ratio. Unfortunately the GOC has no systematic and comprehensive and statistical data to respond to the level of detail required by this question.

Further, at C3.11, the GOC was requested to provide the annual reports of 15 aluminium enterprises that Customs and Border Protection considered were possibly SIEs. The GOC advised that only 6 of the listed enterprises were SIEs. It stated that it did not collect much of the information requested by Customs and Border Protection and searched publicly available information in order to respond to the questions. The GOC provided the requested annual reports for 3 of these entities, although the 2009 annual report for one entity was provided in Chinese only.

It is considered that this requested information, particularly the annual reports of these entities (which are at least in part owned by the GOC and it is therefore reasonably considered that the GOC would have access to these reports), would have assisted Customs and Border Protection in its analysis of this matter.

II9.5 Previous relevant investigations

In its reinvestigation of the subsidisation of aluminium extrusions exported from China (REP175), Customs and Border Protection considered the issue of whether producers of primary aluminium were public bodies for the purpose of determining whether a subsidy exists. REP175 concluded that SIE primary aluminium producers and suppliers do qualify as public bodies under the Act.

The findings of REP175 are relevant to this investigation as at least some of the suppliers of raw material to the aluminium extrusion industry are the same as suppliers to the ARW industry.

In particular, REP175 examined CHALCO, a subsidiary of a wholly state owned company, CHINALCO. Customs and Border Protection has identified that four of the seven suppliers of aluminium to the selected cooperating exporters in the ARWs investigation are CHALCO subsidiaries.

As background, CHINALCO owns 38.56% of CHALCO, and CHALCO represents the largest producer of primary aluminium in China⁹⁶.

II9.6 Indicia of the Appellate Body in DS379

In addition to having regard to the findings of REP175, in assessing for the purpose of this investigation of whether SIEs in China that produce aluminium and/or alloy are public bodies Customs and Border Protection has again had

⁹⁶ CHALCO Annual Report 2010, Attachment 51 to the GQ

PUBLIC RECORD



regard to each of the three indicia outlined as guidelines for this assessment by the Appellate Body in DS379 below.

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

Customs and Border Protection is not aware of any statute or other legal instrument which expressly vests government authority in any SIE producing aluminium and/or alloy.

As discussed above, the GOC has submitted that the key pieces of legislation that govern Chinese SIEs are the SOA Law and the *Company Law*. Customs and Border Protection has not found provisions in these laws that expressly vest SIEs with government authority.

On the contrary, the GOC submitted that these enterprises operate in line with the general principle of separating government functions from enterprise management.

The GOC observed in response to Question D22:

The principle of separation of government functions from enterprise management requests strict separation of government from the enterprise, to ensure that the enterprises themselves are the market players. The principle of separation of public administrative functions and the responsibilities of State-owned assets contributors requests that public administrative functions of government at any level be separated from the responsibilities of State-owned assets contributors of government at all levels. Both of the two principles of 'separation' request GOC entities not to interfere with the normal business activities of enterprises.

The GOC submitted that the major legal documents in this regard are the *Company Law* and the *Law of Civil Servant*. Article 6 of the SOA Law states that the capital contributors' functions in wholly-owned SIEs must be carried out

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

Article 15 further requires the capital contributor to act as a market participant:

Bodies performing the contributor's functions shall protect the rights legally enjoyed by the enterprises as the market participants, and shall not intervene in the business activities of enterprises except to legally perform the contributor's functions.

PUBLIC RECORD



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

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

The 2010 Annual Report of CHALCO⁹⁷ provides one source of evidence of the existence of a "statute or other legal instrument" vesting government authority in CHINALCO, (CHALCO's majority shareholder, and a wholly owned SIE).

It is contended that the following agreements constitute legal instruments that 'vest' CHINALCO with the authority to impose on its subsidiaries (including the CHALCO group of companies) state-prescribed pricing policies:

- the general agreement on Mutual Provision of Production Supplies and Ancillary Services;
- Provision of Engineering, Construction and Supervisory Services Agreement;
- Mineral Supply Agreement;
- Comprehensive Social and Logistics Services Agreement; and
- Mutual Supply Agreement

Many transactions are covered by the same conditions as the Comprehensive Social and Logistics Services Agreement, which subjects transactions to the following pricing policy hierarchy:

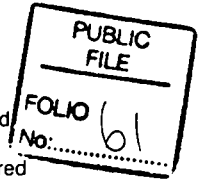
- adoption of prices prescribed by the Chinese Government (state-prescribed price);
- in the absence of a state-prescribed price, then adoption of a 'state-guidance price';
- if there is neither a state-prescribed price, nor a state-guidance price, then adoption of the market price (being the price charged to and from independent third parties); and
- if none of the above are available, then adoption of a contractual price (being reasonable costs incurred in providing the relevant services plus not more than 5% of such costs).

Although no direct evidence has been obtained of the exercise of this pricing regime, the pricing hierarchy is prescriptive and CHALCO considers itself bound by it.

Transactions for the supply of specialist or specific goods and services are subject to the following pricing prescriptions:

⁹⁷ GOC GQ Response, Attachment 51

PUBLIC RECORD



- utility services, including electricity, gas, heat and water, are supplied at the state prescribed price,
- engineering, project construction and supervisory services are covered by the Provision of Engineering, Construction and Supervisory Services Agreement, which prescribed the state-guidance price or prevailing market price,
- purchases of key and auxiliary materials (including bauxite, limestone, carbon, cement, coal) from the CHINALCO Group are covered by the General Agreement on Mutual Provision of Production Supplies and Ancillary Services and the Mineral Supply Agreement, with the effect that the pricing policy set out in the pricing hierarchy above is prescribed, and
- social services and logistics services provided by the CHINALCO Group were covered by the Comprehensive Social and Logistics Services Agreement, which prescribes the pricing hierarchy above.

The above agreements vest CHINALCO with government authority to impose state mandated pricing policies on its subsidiaries.

Indicia 2: Evidence that an entity is, in fact, exercising governmental functions

Customs and Border Protection has not encountered direct evidence to suggest that aluminium and/or alloy producing SIEs in China have expressly been granted the authority to exercise governmental functions (e.g. provided for in the entity's article of association, etc.).

However, Customs and Border Protection observes Article 36 of the SOA Law, which requires;

A state-invested enterprise making investment shall comply with the national industrial policies, and conduct feasibility studies according to the state provisions; and shall conduct a transaction on a fair and paid basis, and obtain a reasonable consideration.

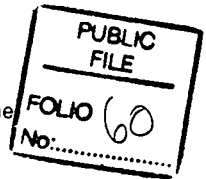
[Emphasis added]

Customs and Border Protection considers this direction requiring SIEs to comply with national industrial policies, albeit related to investments in this instance, amounts to a direction that SIEs carry out a government function, namely the achievement of the GOC's national industrial policy objectives.

Customs and Border Protection considers that there is a significant body of circumstantial evidence to suggest that SIEs play an integral and leading role in the implementation of various GOC policies and plans in relation to the aluminium industry.

Broad GOC policies and plans

PUBLIC RECORD



In Appendix A to this SEF Customs and Border Protection examined the various policies, plans and implementing measures that relate to the aluminium industry, including:

- the Guidelines;
- the Backwards Capacity Notice;
- the Directory Catalogue and the Interim Provisions; and
- the Redundancy Circular

These GOC documents comprehensively outline the GOC's aims and objectives for the aluminium industry in China (including manufacturers of aluminium and/or alloy). It is considered that the essential objective of these policies, plans and measures is to advance and improve the Chinese aluminium industry, which is clearly a government mandate and function.

Evidence of SIE role in policy compliance and implementation

In Appendix A, Customs and Border Protection outlines evidence that the GOC actively implements and monitors the progress of its policies, plans and implementing measures. It is considered this activity is in line with Article 36 of the SOA Law.

Customs and Border Protection observes the provisions of:

- the *Guiding Opinions of the SASAC of the State Council about Promoting the Adjustment of State-owned Capital and the reorganization of State-owned Enterprises* (SASAC Guiding Opinion),⁹⁸ and
- the *Interim Measures for the Supervision of and Administration of the Assets of State-Owned Enterprises* (the Interim Measures).⁹⁹

which further indicate that SIEs have played an integral role in implementing GOC policies and plans.

The purpose of the SASAC Guiding Opinion is to further economic reform through the adjustment of state-owned capital, reorganisation of state-owned enterprises as well as improvement of the mechanism of entry-withdrawal and rational movement of state-owned capital.¹⁰⁰

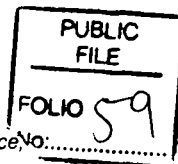
This document indicates that SIEs have played an integral role in implementing GOC policies and plans, particularly those in relation to 'execute(ing) the spirits of the Third and Fifth Plenary Sessions of the Sixteenth CPC Central Committee, and the Opinions of the State Council about Deepening the Economic System Reform, namely:

⁹⁸ December 5, 2006. General Office of the State Council – provided in relation to REP148, and also the HSS investigation

⁹⁹ Referred to, but not provided as an attachment, in the response to the GQ. However provided as Attachment 170 to the HSS investigation

¹⁰⁰ SASAC Guiding Opinion, preamble

PUBLIC RECORD



- '...enhance the state-owned economy's controlling power, influence, driving force, bring the leading role of state-owned economy into play...';
- '...persist in strengthening supervision over state-owned assets, rigidly enforce the procedures for property right transactions and equity transfer, promote orderly flow, prevent the loss of state-owned assets and ensure the value maintenance and increase of state-owned assets';
- '... persist in safeguarding the legitimate rights and interests of workers, protect the workers' rights to enterprise reorganisation, restructuring and other kinds of reform, and fully mobilize and protect the initiatives of the vast majority of workers to participate in the reform and reorganisation of state-owned enterprises';
- 'promote state-owned capital to concentrate on major industries and key fields relating to national security and national economic lifelines... and accelerate the formation of a batch of predominant enterprises with independent intellectual property rights, famous brands and strong international competitiveness';
- 'enhancing the controlling power of state-owned economy, and bringing its leading role into play'.

The purpose of the Interim Measures is to establish a State-owned assets supervision and management system that suits the needs of a socialist market economy, to better run State-owned enterprises, push forward the strategic adjustment to the layout and structure of the State economy, develop and expand the State economy, and realise the preservation of and increase in the value of State-owned assets¹⁰¹.

Article 14 of the Interim Measures vests as one of SASAC's main obligations the responsibility to:

(2) maintain and improve the controlling power and competitive power of the State economy in areas which have a vital bearing on the lifeline of the national economy and State security, and improve the overall quality of the State economy.

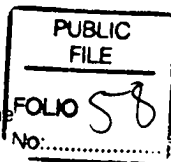
[Emphasis added]

The sentiments of Article 14 reflect those of the SASAC Guiding Opinion, although it is acknowledged that this Article discusses the responsibilities of SASAC not SIEs.

In relation to the SASAC Guiding Opinion, in the HSS investigation the GOC submitted that this is not a legally binding document (rather having the status of a research and discussion paper), and cannot override current law.

¹⁰¹ Interim Measures, preamble

PUBLIC RECORD



Further, the GOC submitted that the current law, as outlined in Article 7 of the Interim Measures, which prevents SASAC from exercising any government functions of administrative public affairs. Article 7 states:

People's governments at all levels shall strictly abide by the laws and regulations on State-owned assets management, persist in the separation of government functions of social and public administration from the functions of investor of State-owned assets, persist in the separation of government functions from enterprise management and separation of ownership from management.

The State-owned assets supervision and administration authority shall not perform the functions of social and public administration assumed by the government. Other institutions and departments under the government shall not perform the responsibilities of investor of State-owned assets of enterprises.

The contradiction between Articles 7 and 14 of the Interim Measures is observed.

Conclusion – Indicia 2

Customs and Border Protection considers that significant evidence exists to suggest that Chinese aluminium industry SIEs, including those that produce aluminium and/or alloy, play a leading and active role in implementing GOC policies and plans for the development of the aluminium industry.

This development is considered to be a 'governmental function', and it is therefore considered these SIEs are in fact exercising governmental functions.

It is noted that additional information considered likely to be in the possession of the GOC was requested of, and not provided by, the GOC (e.g. annual reports of SIEs). Customs and Border Protection considers that further evidence of this indicator may have been observed in this omitted information.

Indicia 3: Evidence that a government exercises meaningful control over an entity and its conduct

Customs and Border Protection considers that sufficient evidence exists to determine that the GOC is in fact exercising meaningful control over Chinese SIEs generally, and SIEs that produce aluminium and/or alloy.

Aluminium industry policy implementation

As discussed above, the GOC has issued a multitude of plans, policies and implementing measures aimed at realising its overall policy aims in relation to the Chinese aluminium industry. Furthermore, evidence exists to demonstrate that SIEs are leaders in the implementation of these policies and plans.

PUBLIC RECORD

PUBLIC
FILE

FOLIO 57

No:.....

The *Guidelines for Accelerating the Restructuring of the Aluminium Industry* (the Guidelines) are also considered evidence of the Chinese Government exercising meaningful control over primary aluminium producers and suppliers, whether or not they were enterprises with state investment. The scope and degree of this control, in the circumstances, amounts to evidence that primary aluminium producers and suppliers, possess governmental authority and exercise such authority in the performance of governmental functions, namely the achievement of the Chinese Government's industrial development policy. The Chinese Government provided a translated copy of the Guidelines in its response to the GQ. The government explained that the National Development and Reform Commission (NDRC) is responsible for the Guidelines.

The government explained that the Guidelines are a broad review of the performance of the aluminium sector in respect of the commitments made by the Chinese Government concerning the reduction of waste and pollution from industrial operations, and aspirational statements about the goals of the aluminium industry. Accordingly, the government submitted that the Guidelines review the past performance of the Chinese Government and of enterprises in achieving structured and sustainable performance.

The Guidelines are prescriptive in their policy direction. They prescribe which aluminium industry participants should be supported by Chinese Government departments and entities, for example:

"financial departments should continue providing financial support to ... aluminium enterprises which are conformed to the state industrial policy, credit policy and the industrial access conditions. As to the enterprises, which are not conformed to the industrial policy and market access conditions, or which have been eliminated by the laws or regulations due to backward technology or techniques, the financial departments should not provide any support in any form. If any support has been provided to the enterprises by mistake, the financial departments should withdraw it to avoid financial risk."

The directions are considered highly prescriptive and designed to achieve compliance by primary aluminium producers and suppliers, with the consequence of a withdrawal of support for non-compliance.

Additionally, the impact of GOC policies on aluminium industry SIEs is further noted in the following statements from the Form 20-F Return of CHALCO for 2010¹⁰²:

"As a significant majority of our assets and operations are located in the PRC, we are subject to a number of risks relating to conducting business in the PRC, including the following:

¹⁰² Accessed at <http://www.chalco.com.cn/zl/html/144/2011/20110416055559079742570/20110416055645799590983.pdf>

PUBLIC RECORD

PUBLIC
FILE

FOLIO 56

NO.....

* The central and local PRC government continues to exercise a substantial degree of control and influence over the aluminum industry in China and shape the structure and development of the industry through the imposition of industry policies governing major project approvals, preferential tax treatment and safety, environmental and quality regulations. If the PRC government changes its current policies or the interpretation of those policies that are currently beneficial to us, we may face pressure on profit margins and significant constraints on our ability to expand our business operations.

* Although China has been transitioning from a planned economy to a market-oriented economy, a substantial portion of productive assets in China are still owned by the PRC government. It also exercises significant control over China's economic growth through the allocation of resources, control of payments of obligations denominated in foreign currencies and monetary and tax policies. Some of these measures benefit the overall economy of China, but may have a materially adverse impact on us.¹⁰³

"PRC Regulation Affecting the Aluminum and Other Non-ferrous Metal Products Industries.

The central and local PRC government continues to exercise a substantial degree of control and influence over the aluminum and other non-ferrous metal product industry in China and shape the structure and development of the industry through the imposition of industry policies governing major project approvals, preferential tax treatment and safety, environmental and quality regulations, including but not limited to the "Aluminum Industry Development Policy", "Notice on Guiding Opinions for Accelerating Aluminum Industrial Restructuring", "Environmental Protection Guide for Developing Circular Economy in Aluminum Industry", "Notice of the State Council of China on Further Strengthening the Elimination of Obsolete Production Capacities" and "Non-ferrous Metals Industry Restructuring and Revitalization Planning", etc. Certain existing laws and regulations involve barriers to entry, production quotas, setting, amending or abolishing import tariffs and limitations and duties on the export of aluminum and certain non-ferrous metals and related products.¹⁰⁴

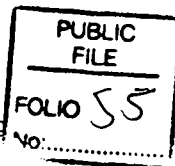
The above extracts further highlights to Customs and Border Protection the fact that GOC policies, plans and measures for the aluminium industry places constraints on SIEs, and thus meaningful control is placed over the activities, decisions and conduct of enterprises in this industry by the GOC.

Conclusion – Indicia 3

¹⁰³ p13

¹⁰⁴ p45

PUBLIC RECORD



For the reasons outlined above, it is considered that the GOC is exercising meaningful control over aluminium and/or alloy producers.

The impact of these GOC measures is assessed in Appendix A.

As with Indicia 2, it is noted that additional information considered likely to be in the possession of the GOC was requested of, and not provided by, the GOC (e.g. annual reports of SIEs). Customs and Border Protection considers that further evidence of this indicia may have been observed in this omitted information.

II9.8 Conclusion

It is considered that evidence exists to show that at least both Indicia 2 (evidence that an entity is, in fact, exercising governmental functions) and Indicia 3 (evidence that a government exercises meaningful control over an entity and its conduct) are satisfied in relation to Chinese aluminium and/or alloy manufacturers.

It is further noted that the GOC was likely to be in possession of further information that may have assisted in Customs and Border Protection's analysis of these matters and provided further evidence of indicia 1 and 2 in particular (particularly the annual reports of identified SIEs), but that this information was not provided.

Although not all 3 indicia have been satisfied in this case, it is noted that the Appellate Body in DS379 stated that 'where the evidence shows that the formal indicia of government control are manifold and there is also evidence that such control has been exercised in a meaningful way, then such evidence may permit an inference that the entity concerned is exercising governmental authority'.¹⁰⁵

The Appellate Body's statement at 345 of the Appellate Body Report is again acknowledged:

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

It is considered that the position of SIEs that produce aluminium and/or alloy in China are examples of entities that exhibit some public body characteristics and some private body characteristics.

Notably, GOC submissions and evidence suggest there is a certain degree of separation and independence of SIEs from the GOC, and that they are given certain freedoms to behave relatively independently. However, further evidence exists to show that these entities are still constrained by, and abiding by, GOC policies, plans and measures.

¹⁰⁵ Appellate Body Report, *ibid.*, at [318]

PUBLIC RECORD

PUBLIC
FILE

FOLIO 54
No:.....

In noting this, Customs and Border Protection considers that sufficient evidence exists to reasonably consider that, for the purposes of its investigation into the alleged subsidisation of ARWs from China, SIEs that produce and supply aluminium and/or alloy should be considered to be 'public bodies', in that the GOC exercises meaningful control over SIEs and their conduct.

As such, Customs and Border Protection preliminarily considers that these SIEs qualify as 'public bodies' under the Act.

II.10 ASSESSMENT OF 'ADEQUATE REMUNERATION' FOR ALUMINIUM AND/OR ALLOY IN CHINA

After determining that SIEs that produced and supplied aluminium and/or alloy in China are in fact 'public bodies' for the purposes of the Act, Customs and Border Protection has turned its attention to determining whether the provision of goods by these SIEs conferred a benefit in respect of the goods (i.e. whether this provision of aluminium and/or alloy was at less than adequate remuneration).

In doing so, Customs and Border Protection has sought to establish an appropriate benchmark for aluminium and/or alloy in China, having regard to the guidelines set out in ss.269TACC(4)(d) and (5) of the Act, and Article 14(d) of the SCM Agreement.

Customs and Border Protection has considered the reasonableness of using both an 'internal' benchmark (private prices in China) and an 'external' (out-of-country) benchmark.

II.10.1 The Act and SCM Agreement

S.269TACC(5) of the Act provides:

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

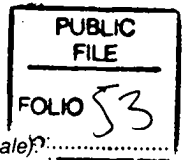
[Emphasis added]

Article 14(d) of the SCM Agreement provides:

the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of

PUBLIC RECORD

provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale):



[Emphasis added]

II.10.2 Use of external benchmarks - DS257

In the WTO dispute *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada* (DS257 dispute), the issue of the use of benchmarks for determining whether goods were provided at less than adequate remuneration in terms of Article 14(d) of the SCM Agreement was examined in detail.

In particular, DS257 examined the circumstances under which an 'external benchmark' (i.e. a benchmark established outside of the domestic market of like goods) can be used.

II.10.3 Customs and Border Protection's assessment

Customs and Border Protection has examined the findings of the Appellate Body in DS257.

Firstly, Customs and Border Protection notes the Appellate Body's position that an internal benchmark (i.e. private prices for sellers of like goods) is the 'starting point' or 'primary benchmark' for establishing an appropriate benchmark to determine the adequacy of remuneration.¹⁰⁶

Customs and Border Protection also notes the Appellate Body's position that an external benchmark may be used if:

it is first established that private prices in that country are distorted because of the government's predominant role in providing those goods

However, it is further noted that the Appellate Body in DS257 does not limit the use of external benchmarks to these circumstances. Although DS257 specifically considers a situation where private prices are distorted due to the predominant role of the government as suppliers in the market, it is considered that it does not limit the use of external benchmarks only to circumstances where this is the cause of the distortion.

Rather, Customs and Border Protection considers that the circumstances examined in DS257 are an example of where market distortion can lead to the use of external benchmarks. It is Customs and Border Protection's view that the material point is that private prices are unsuitable due to market distortion, not the reasons for this distortion.

II.10.4 Benchmark established

¹⁰⁶ At paragraph 90.

PUBLIC RECORD



Starting point – internal benchmarks

Private prices

In establishing a benchmark price for aluminium and/or alloy reflecting adequate remuneration, Customs and Border Protection has first considered whether prices from private enterprises in China were an appropriate basis for this benchmark.

However, Customs and Border Protection's assessment of the Chinese aluminium and/or alloy market has found the entire market for aluminium and/or alloy in China to be affected by significant influence by the GOC during (and prior to) the investigation period.

This assessment is outlined within Appendix A of this SEF. It is considered that the GOC influences on the Chinese aluminium and alloy market have had a distorting effect on the market overall, and hence have distorted prices throughout the entire market (it is considered this distortion is likely to have resulted in prices for aluminium and alloy that are lower than they would have been without this GOC influence – see Appendix A).

It is noted that this distortion is considered to have affected the entire Chinese aluminium and alloy market, and has therefore distorted all prices within that market, whether they be from SIEs or private enterprises. For this reason, Customs and Border Protection considers that all prices of aluminium and/or alloy in China (regardless of whether the material was manufactured by an SIE or not) to not be suitable in determining adequate remuneration for aluminium and alloy in China, as both private and SIE prices are distorted.

It is considered that the distortions observed in the Chinese aluminium and/or alloy market as a result of GOC influence is another example of where market distortion makes private domestic prices unsuitable for determining adequate remuneration, hence providing for the use of external benchmarks.

Import prices

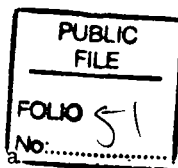
Customs and Border Protection has considered whether it would be suitable to use imported aluminium and/or alloy prices into China as an appropriate in-country benchmark.

However, Customs and Border Protection observes that China does not import significant quantities of aluminium or alloy in any case (appearing to be somewhat isolated from the global aluminium market), and none of the selected cooperating exporters imported aluminium or alloy during the investigation period.

Benchmark used – external price average

Benchmark selected

PUBLIC RECORD



After concluding that private prices in China are unsuitable for determining a benchmark for adequate remuneration for aluminium and/or alloy, Customs and Border Protection has determined that it is instead reasonable to construct benchmarks for aluminium and alloy using LME data at comparable terms of trade and conditions of purchase to those observed in China. The LME data is considered representative of prices in a truly competitive market.

As discussed in Appendix A, the aluminium alloy used in the manufacture of ARWs is not traded on the LME. In order to derive a benchmark for alloy Customs and Border Protection has calculated the average price difference between aluminium and aluminium alloy as quoted on the Yangtze River Exchange (that is, a price difference from the Chinese market), and added this amount to the LME aluminium price.

Further, Customs and Border Protection has adjusted this benchmark to take account of differences in delivery terms observed in China (ex-works delivered).

Adjustments to the benchmark

1) Differences in quality, availability, or marketability

Customs and Border Protection considers that there is not sufficient evidence on the record to consider that any adjustment needs to be made to its aluminium benchmark to account for differences in quality, availability, or marketability as evidence has not been presented to suggest significant differences between these matters in China and the LME.

2) Comparative advantage

Customs and Border Protection notes the Appellate Body's comments in DS257 at Paragraph 109 that:

It is clear, in the abstract, that different factors can result in one country having a comparative advantage over another with respect to the production of certain goods. In any event, any comparative advantage would be reflected in the market conditions prevailing in the country of provision and, therefore, would have to be taken into account and reflected in the adjustments made to any method used for the determination of adequacy of remuneration, if it is to relate or refer to, or be connected with, prevailing market conditions in the market of provision.

Customs and Border Protection considers such an adjustment is not reasonable or warranted in this case.

Firstly Customs and Border Protection notes that China does not have an unfettered comparative advantage in producing aluminium, alloy and the upstream raw materials of these products. Multiple identified GOC policies, plans and measures identify that China's aluminium industry lacks advantageous conditions.

PUBLIC RECORD

PUBLIC FILE
FOLIO 50
No.

For example, the Guidelines state that:

Even though there are some achievements made through macro control over national economy, the problems relating to structural and production of aluminum industry stand out significantly because some structural and systematic problems, which result in investment booming in aluminum industry, have not been resolved yet

The Guidelines go on to set out a number of problems in the aluminium industry. It is considered this provides evidence to suggest that, if anything, China may have a comparative disadvantage in certain areas when it comes to producing aluminium and upstream inputs.

Secondly, Customs and Border Protection considers that, in certain areas where China has developed (or is developing) a comparative advantage in producing aluminium and/or alloy, this has been heavily influenced by GOC activities in the Chinese aluminium markets (by way of policies, plans and implementing measures), which has been aimed at overcoming the comparative disadvantages outlined above.

This GOC influence is examined in detail in Appendix A.

Customs and Border Protection considers that, in this way, at least some of whatever comparative advantage Chinese aluminium and/or alloy producers may have, is likely to have been created by GOC influence (and hence should not be reasonably adjusted for in any case).

3) Delivery

The LME prices are ex-works prices, however Customs and Border Protection notes that purchase of aluminium and alloy by the cooperating exporters were made at delivered and undelivered (ex-works) terms.

To calculate an amount for delivery to add to the LME benchmark price, Customs and Border Protection has used the verified average delivery cost of alloy from one cooperating exporter (being the only exporter whose data allowed for this isolation and comparison) to arrive at a per tonne delivery cost in China.

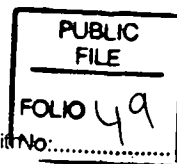
This delivery cost has been added to the adjusted benchmark prices to arrive at a delivered benchmark price.

It is considered that this delivery cost to be reasonable as it reflects verified, actual delivery costs for alloy incurred in China.

II.10.5 Conclusion

Customs and Border Protection considers that, in assessing whether the provision of aluminium and/or alloy in China by SIEs was for less than adequate remuneration an external benchmark based on LME prices during

PUBLIC RECORD



the investigation period, with adjustments, should be used to compare with the exporters' purchase prices of aluminium and alloy from SIEs.

PART III – OTHER PROGRAMS

III.1 Consideration of other programs

This section sets out Customs and Border's consideration of all other alleged subsidy programs, other than Program 1. Quantification of any benefit is discussed at Part IV.

III.2 Transitional Preferential tax policies for Tax Resident Enterprises (Program 2)

The GOC has advised that no such subsidy program exists.

Customs and Border Protection considers that the benefits alleged under this 'program' by the Applicant may be covered by other programs examined, and therefore does not consider Program 2 to be countervailable.

III.3 Preferential Policies On Enterprise Income Tax (Program 3)

The GOC submits that this is a very broad description and that it has responded to specific policies under each of the various other programs in the questionnaire provided by Customs and Border Protection.

Customs and Border Protection has preliminarily decided not to pursue this program, unless further information becomes available.

III.4 Preferential income tax for hi-tech enterprises (Program 4)

III.4.1 Background

This program is administrated by the State Administration of Taxation and is implemented by local tax authorities. It was established to encourage domestic investment and support technology upgrading of an eligible enterprise.

III.4.2 Legal Basis

The relevant legislation under which the subsidy is provided for is:

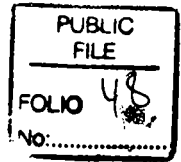
- *Enterprise Income Tax Law of the Peoples Republic of China;*
- *Regulations on the Implementation of Enterprise Income Tax Law of the Peoples Republic of China by the State Council*

III.4.3 Eligibility of the program

Enterprises which own key intellectual property rights and satisfy the following conditions are eligible:

- compliance with the scope of the Key State Supported High and New Technology Areas;
- the enterprises proportion of research and development must be no less than the prescribed proportion;

PUBLIC RECORD



- the enterprises proportion of income from high-tech technology /products/ services in the enterprises total revenue shall be no less than the prescribed proportion;
- the proportion of the technical personnel in the enterprises total employees shall be no less than the prescribed proportion

III.4.4 Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the laws governing this program mandate a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves foregoing, or non-collection, of revenue due to the GOC by eligible enterprises in China.

Where received, this financial contribution is considered to confer a benefit in relation to eligible enterprises because of the tax savings realized. Where exporters of ARW during the investigation period received tax savings under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including ARWS).

III.4.5 Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours particular enterprises, the specificity of the subsidy is not excepted by reference to s.269TAAC(3). Customs and Border Protection preliminarily determines Program 4 to be a countervailable subsidy in respect of ARWs.

III.5 Preferential Tax Policies in the Western Regions (Program 5)

III.5.1 Background

The application alleges that ARW producers/exporters are likely to have benefited from exemptions to income tax based upon the location of the industry in the Western Regions of China.

III.5.2 Legal Basis

The relevant legislation under which the subsidy is provided for is the *Circular on Deepening the Implementation of Tax Policy concerning Development of Western Regions* (Cai Shui [2011] No.58).

PUBLIC RECORD

PUBLIC
FILE

FOLIO 47

No.

III.5.3 Eligibility and effect of the program

Eligibility is limited to both domestic and foreign-invested enterprises that produce goods that are listed in the relevant catalogues. The catalogues include:

- *Guiding Catalogue for Industry Restructuring; Catalogue of Industries, Products and Technology Particularly Encouraged by the State for Development 2000;*
- *Catalogue for the Guidance of the Foreign Investment Industries, and*
- *Catalogue for the Guidance of the Advantageous Industries in Central and Western Regions for Foreign Investment.*

The programs also require that these items form the major business revenue amounting to over 70% of the total business revenue.

III.5.4 Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the laws governing this program mandate a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves foregoing, or non-collection, of revenue due to the GOC by eligible enterprises in China.

Where received, this financial contribution is considered to confer a benefit in relation to eligible enterprises because of the tax savings realized. Where exporters of ARW during the investigation period received tax savings under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

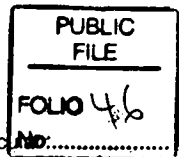
Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including ARWS).

III.5.5 Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(b) a subsidy is specific if access to the subsidy is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority.

A subsidy is also considered specific if access to the subsidy is explicitly limited to particular enterprises (s.269TAAC(2)(a)). For enterprises located in the Western Regions, only those industries which are 'encouraged' are eligible for the subsidy. Other companies in the designated geographical region (being those enterprises which are not 'encouraged') are not eligible for the subsidy.

PUBLIC RECORD



As the criteria or conditions providing access to the subsidy favours particular enterprises, being those 'encouraged' enterprises, over all other enterprises the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.6 Preferential policies for FIEs established in the coastal economic open areas and in the economic and technological development zones (Program 6)

III.6.1 Background

This program was established to encourage foreign investment in and to enhance development of coastal economic open areas and economic technological development zones.

III.6.2 Legal Basis

The relevant legislation under which the subsidy is provided for are the transitional provisions under the *Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax*.

III.6.3 Eligibility and effect of the program

For enterprises located within coastal economic open areas and economic and technological development zones, only FIEs are eligible for the subsidy.

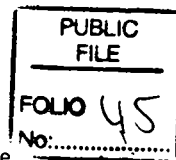
III.6.4 Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the laws governing this program mandate a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves foregoing, or non-collection, of revenue due to the GOC by eligible enterprises in China.

Where received, this financial contribution is considered to confer a benefit in relation to eligible enterprises because of the tax savings realized. Where exporters of ARW during the investigation period received tax savings under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including ARWs).

PUBLIC RECORD



III.6.5 Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(b) a subsidy is specific if access to the subsidy is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority.

A subsidy is also considered specific if access to the subsidy is explicitly limited to particular enterprises (s.269TAAC(2)(a)). As the criteria or conditions providing access to the subsidy favours FIEs over all other enterprises the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.7 Reduced Tax Rate for Productive FIEs scheduled to operate for a period of not less than 10 years: "Two years of exemption and three years fifty per cent reduction" (Program 7)

III.7.1 Background

The applicant has alleged that Chinese exporters of aluminium extrusions have benefited from preferential tax policies for foreign invested enterprises which are provided under the Foreign Invested Enterprise (FIE) and Foreign Enterprise Income Tax Law. The applicant alleged that this program exempts FIEs from income tax in their first two profitable years and requires them to pay half of their applicable tax rate for the following three years.

III.7.2 Legal Basis

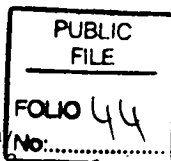
The income tax reduction and exemption for FIEs under this program is provided for in Article 8 of the *Foreign Invested Enterprise and Foreign Enterprise Income Tax Law 1991* (the FIE Income Tax Law) which came into effect on 1 July 1991. The program is administered by the State Administration of Taxation and its local Branch Offices or Bureaus. It is administered in accordance with the *Implementing Rules of the Foreign Investment Enterprise and Foreign Enterprise Income Tax Law* (the FIE Tax Regulations).

The FIE Income Tax Law and the FIE Tax Regulations were in operation through to 31 December 2007, with transitional arrangements extending the operation of the FIE Tax Law in respect of this program and other preferential tax programs in accordance with the *Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax* (State Council Notice No 39 of 2007) until 2012.

III.7.3 Effect of the program

During the investigation period (July 2010 - June 2011) the prevailing income tax rate for FIEs was 25%.

PUBLIC RECORD



Under this program, from the year an FIE begins to make a profit, they may receive a full exemption from income tax in the first and second years and a 50% reduction in income tax in the third, fourth, and fifth years. A benefit to the tax payer is conferred in the amount of the tax saving.

III.7.4 Eligibility Criteria

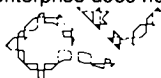
Under Article 8 of the FIE Income Tax Law to be eligible for this program the enterprise must be:

- an FIE,
- a 'production orientated' FIE,
- an enterprise which has an anticipated term of operation of at least 10 years, and
- an enterprise that has had a financial year in which it made a profit.

To be categorised as an FIE the enterprise must be a Chinese-Foreign equity joint venture, a Chinese-Foreign cooperative joint venture or a wholly foreign owned enterprise established in China.

This program begins in the first profitable year and concludes at the end of the fifth subsequent year. There is no deferral of the exemption or reduction for subsequent years where the enterprise does not make a profit.

III.7.5 Is there a subsidy?



Based on the information above, Customs and Border Protection considers that the laws governing this program mandate a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves foregoing, or non-collection, of revenue due to the GOC by eligible enterprises in China.

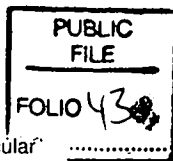
Where received, this financial contribution is considered to confer a benefit in relation to eligible enterprises because of the tax savings realized. Where exporters of ARW during the investigation period received tax savings under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including ARWs).

III.7.6 Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. Only FIEs are eligible for the subsidy. Other companies in China (being domestic invested enterprises or DIES) are not eligible for the subsidy.

PUBLIC RECORD



As the criteria or conditions providing access to the subsidy favours particular enterprises, being those eligible production orientated FIEs, over all other enterprises in China the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.8 Preferential tax policies for FIE export enterprises whose annual output value of all export products amounted to 70% or more (Program 8)

III.8.1 Background

This program is administrated by the State Administration of Taxation and is implemented by local tax authorities to encourage foreign investment.

III.8.2 Legal Basis

The relevant legislation under which the subsidy is provided for is:

- *Income Tax Law of the Peoples Republic of China for Enterprises with Foreign Investment and Foreign Enterprise;*
- *Rules for the Implementation of the Foreign Enterprise Tax Law.*

III.8.3 Eligibility and effect of the program

Eligible enterprises are export-oriented enterprises invested in and operated by foreign businesses.

III.8.4 Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the laws governing this program mandate a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves foregoing, or non-collection, of revenue due to the GOC by eligible enterprises in China.

This financial contribution is considered to confer a benefit in relation to eligible enterprises because of the tax savings realized. Where exporters of ARW during the investigation period received tax savings under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including ARWs).

PUBLIC RECORD



III.8.5 Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours FIEs over all non-FIEs, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.9 Preferential tax policies for FIEs which are technology-intensive and knowledge-intensive (Program 9)

III.9.1 Background

This program is administrated by the State Administration of Taxation and is implemented by local tax authorities. Its purpose is to encourage foreign investment and the introduction of advanced technology in the old downtown areas of cities which are located in the special economic zones, the open coastal economic areas and the technology and economic development zones.

III.9.2 Legal Basis

The relevant legislation under which the subsidy is provided for is:

- *Rules for the Implementation of the Income Tax Law of the Peoples Republic of China for enterprises with Foreign Investment and Foreign Enterprise;*
- *Circular of the State Administration of Taxation Concerning Enjoying the Preferential Taxation Policy of "the Two Intensive Enterprises" by Enterprises with Foreign Investment;*
- *Circular of the State Administration of Taxation Concerning the Tax Preferential Policy Applicable to Enterprises with Foreign Investment with Regard to Technology-Intensive and Knowledge-Intensive Projects*

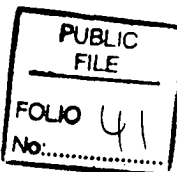
III.9.3 Eligibility and effect of the program

Eligible enterprises are FIEs engaged in technology intensive and knowledge intensive activities with central production lines in the Catalogue of High and New Technology Products of China provided that sales revenue generated by these eligible products accounts for over 50% of the total annual sales revenue in the subject year.

III.9.4 Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the laws governing this program mandate a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves foregoing, or non-collection, of revenue due to the GOC by eligible enterprises in China.

PUBLIC RECORD



This financial contribution is considered to confer a benefit in relation to eligible enterprises because of the tax savings realized. Where exporters of ARW during the investigation period received tax savings under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including ARWs).

III.9.5 Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours FIEs over all non-FIEs, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.10 Preferential tax policies for enterprises which provide employment to unemployed people (Program 10)

The GOC has advised that this program was established in 1994 under the *Interim Rules of Enterprise Income Tax* and that the Regulation was repealed on 1 January 2008 with no transitional period.

Customs and Border Protection is satisfied that this program ceased to operate in its entirety prior to the investigation period and that any benefit conferred under this program prior to its cessation was not applicable to the goods during the investigation period.

III.11 Preferential tax policies for advanced technology enterprises invested in and operated by FIEs (Program 11)

III.11.1 Background

This program was established to encourage foreign investors to invest in the fields of advanced technology projects.

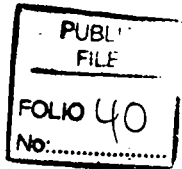
III.11.2 Legal Basis

The relevant legislation under which the subsidy is provided for is the *Income Tax Law of the Peoples Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*.

III.11.3 Eligibility and effect of the program

Eligible enterprises must be a Chinese-foreign equity joint venture recognised as an advanced-technology enterprise with an operation period exceeding 10 years.

PUBLIC RECORD



III.11.4 Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the laws governing this program mandate a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves foregoing, or non-collection, of revenue due to the GOC by eligible enterprises in China.

This financial contribution is considered to confer a benefit in relation to eligible enterprises because of the tax savings realized. Where exporters of ARW during the investigation period received tax savings under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including ARWs).

III.11.5 Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours joint venture enterprises over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.12 100% refund of income tax paid on direct reinvestment (Program 12)

The GOC has advised that this program was established in 1991 under the *Implementation Regulation of FIE Income Tax Law*, which was repealed on 1 January 2008 with no transitional period.

Customs and Border Protection is satisfied that this program ceased to operate in its entirety prior to the investigation period and that any benefit conferred under this program prior to its cessation was not applicable to the goods during the investigation period.

III.13 Preferential tax policies for enterprises transferring technology (Program 13)

The GOC submits that this is a very broad description and that a similar preferential tax policy exists in Article 27 of the *Enterprise Income Tax Law of the PRC*.

Customs and Border Protection has preliminarily determined not to pursue this program, unless further information becomes available.

PUBLIC RECORD



III.14 Preferential tax policies for enterprises making little profits (Program 14)

Background

This program is administrated by the State Administration of Taxation and is implemented by local tax authorities. Its purpose is to encourage the development of small-scale low-profit enterprises.

Legal Basis

The relevant legislation under which the subsidy is provided for is:

- *Enterprise Income Tax Law of the Peoples Republic of China;*
- *Regulations on the Implementation of Enterprise Income Tax Law;*
- *Circular on the Preferential Policy on Corporate Income Tax of Small-scale and Low-profit enterprises* (Cai Shui [2009] No. 133);
- *Circular on the Continuous Implementation of the Preferential Policy on the Corporate Income Tax of small-scale and Low-Profit enterprises* (Cai Shui [2011] No.4)

Eligibility and effect of the program

Eligible enterprises are enterprises making little profit that are not engaged in restricted and prohibited industries and that meet the following conditions:

- Industrial enterprises which have an annual taxable amount not exceeding RMB 300,000, employ not more than 100 employees and have a total asset of not more than RMB30 million;
- Any other enterprises with annual taxable not exceeding RMB300,000, employ not more than 80 employees and have a total asset of not more than RMB10 million.

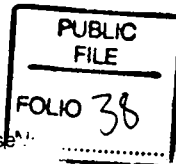
Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the laws governing this program mandate a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves foregoing, or non-collection, of revenue due to the GOC by eligible enterprises in China.

This financial contribution is considered to confer a benefit in relation to eligible enterprises because of the tax savings realized. Where exporters of ARW during the investigation period received tax savings under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to

PUBLIC RECORD



the production, manufacture or export of all goods of the recipient enterprise (including ARWs).

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours enterprises making little profit and meeting the required conditions, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.15 Preferential tax policies for enterprises with foreign investment in the border cities (Program 15)

The GOC has advised that this program was established in 1992 under a series of State Council Notices, which was repealed on 1 January 2008 with a one year transitional period. The program has ceased to be effective since 1 January 2009.

Customs and Border Protection is satisfied that this program ceased to operate in its entirety prior to the investigation period and that any benefit conferred under this program prior to its cessation was not applicable to the goods during the investigation period.

III.16 Preferential tax policies for FIEs in central and western China (Program 16)

This program appears to be a duplicate of Program 5 as it is governed by the same legislation, contains the same eligibility requirements and provides the same benefits.

Therefore, Customs and Border Protection does not intend to countervail the benefits from this program as those benefits would be countervailed under Program 5.

III.17 Preferential tax policies for FIEs established in the Pudong area of Shanghai (Program 17)

Background

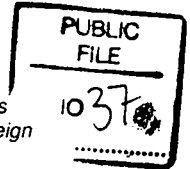
This program is administrated by the State Administration of Taxation and is implemented by local tax authorities with its purpose to encourage foreign investment and enhance development in the relevant area.

Legal Basis

The relevant legislation under which the subsidy is provided for is:

- *Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax;*
- *Income Tax Law of the Peoples Republic of China for enterprises with Foreign Investment and Foreign Enterprise;*

PUBLIC RECORD



- *Rules for the Implementation of the Income Tax Law of the Peoples Republic of China for enterprises with Foreign Investment and Foreign Enterprise.*

Eligibility and effect of the program

Eligible enterprises with foreign investment in the Pudong New Area of Shanghai and engaged in construction projects such as airports, ports, railways, highways, and power stations where the period of operation is 15 years or more.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the laws governing this program mandate a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves foregoing, or non-collection, of revenue due to the GOC by eligible enterprises in China.

This financial contribution is considered to confer a benefit in relation to eligible enterprises because of the tax savings realised. Based on the eligibility criteria and the nature of projects eligible, Customs and Border Protection considers it unlikely that ARW manufacturers would benefit from this program. Customs and Border Protection has therefore not countervailed this program.

III.18 Preferential tax policies for domestic companies and FIEs in the western regions (Program 18)

This program appears to be a duplicate of Program 5 as it is governed by the same legislation, contains the same eligibility requirements and provides the same benefits.

Therefore, Customs and Border Protection does not intend to countervail the benefits from this program as those benefits would be countervailed under Program 5.

III.19 Preferential tax policies for FIEs in the Three Gorges of Yangtze River Economic Zone (Program 19)

The GOC has advised that this program was established in 1992 under a series of State Council Notices, which were repealed on 1 January 2008 with a one year transitional period. The program has ceased to be effective since 1 January 2009.

Customs and Border Protection is satisfied that this program ceased to operate in its entirety prior to the investigation period and that any benefit conferred under this program prior to its cessation was not applicable to the goods during the investigation period.

PUBLIC RECORD

PUBLIC
FILE

FOLIO 36
No:.....

III.20 Preferential tax policies for enterprises established in poverty stricken areas (Program 20)

The GOC has advised that this program was established in 1994 under the *Notice of State Administration of Taxation*, which were repealed on 1 January 2008 with no transitional period.

Customs and Border Protection is satisfied that this program ceased to operate in its entirety prior to the investigation period and that any benefit conferred under this program prior to its cessation was not applicable to the goods during the investigation period.

III.21 Grants for encouraging the establishment of headquarters and regional headquarter with foreign investment (Program 21)

Background

The objective of this program is to increase global market access, improving the investment environment and promoting economic development.

Legal Basis

The relevant legislation under which the subsidy is provided for is the *Provisions of Guangzhou Municipality on Encouraging Foreign Investors to Set up Headquarters and Regional Headquarters*.

Eligibility and effect of the program

To be eligible, enterprises must qualify as either 'Headquarters' or 'Regional Headquarters'. 'Headquarters' requires that all operations and management of an enterprise's investments in China and internationally are controlled by one facility. There can only be one facility located in the Guangzhou Municipality.

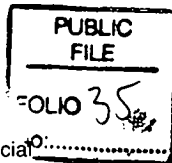
'Regional Headquarters' requires that the enterprise's facility controls operations and management of some or all of its investment located within a certain area of China.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

PUBLIC RECORD



Due to the nature of the grant, (i.e. to encourage the establishment of company headquarters that would reasonably be used to administer all or multiple activities of the company), it is reasonable to consider that a financial contribution received under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours qualifying enterprises, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.22 Preferential tax policies for FIEs in State high or new technology industrial development zones (Program 22)

Background

This program is administrated by the State Administration of Taxation and is implemented by local tax authorities with its purpose of encouraging foreign investors to invest in the fields of high or new technology and to promote the development of high or new technology industry in China.

Legal Basis

The relevant legislation under which the subsidy is provided for is:

- *Income Tax Law of the Peoples Republic of China for Enterprises with Foreign Investment and Foreign Enterprise;*
- *Rules for the Implementation of the Foreign Enterprise Tax Law;*
- *Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax*

Eligibility and effect of the program

Chinese-foreign equity joint ventures recognised as new and high technology enterprises and established in new and high technology industrial development zones approved by the State Council, with the operation period exceeding 10 years.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the laws governing this program mandate a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves foregoing, or non-collection, of revenue due to the GOC by eligible enterprises in China.

PUBLIC RECORD

PUBLIC
FILE

FBI 10

34

This financial contribution is considered to confer a benefit in relation to eligible enterprises because of the tax savings realized. Where exporters of ARW during the investigation period received tax savings under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is reasonable to consider that a financial contribution received under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours joint-venture enterprises, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.23 Preferential policies in industrial zones in China including Economic & Technological Development Zones (ETDZ), High & New Technological Development Zones (High Tech Parks), Export Processing Zones (EPZ), Special Economic Zones (SEZ), Free Trade Cooperation Zones (FTZ), Industrial Zones (IZ) and Export Processing Zones (EPZ) (Program 23)

The GOC submits that the description of this program is broad and vague.

Customs and Border Protection considers that benefits available under this program as alleged by the Applicant may be duplicated in other investigated programs.

Customs and Border Protection considers insufficient information exists to assess whether or not this is a countervailable program.

III.24: Preferential policies in Xin Zhuang Industrial Zone, Shanghai (Program 24)

The GOC submits that the description of this program is broad and vague and has difficulty understanding what program is alleged under the catch-all description of a variety of "preferential policies".

Customs and Border Protection considers insufficient information exists to assess whether or not this is a countervailable program.

III.25 Preferential policies in Shanghai (Program 25)

The GOC submits that the description of this program is broad and vague and has difficulty understanding what program is alleged under the catch-all description of a variety of "preferential policies".

Customs and Border Protection considers insufficient information exists to assess whether or not this is a countervailable program.

PUBLIC RECORD

PUBLIC
FILE

FOLIO 33

No:

III.26 Preferential policies in Weihai Economic Development, High-tech Industry Development and Export Processing zones, Shandong province (Program 26)

The GOC submits that the description of this program is broad and vague and has difficulty understanding what program is alleged under the catch-all description of a variety of "preferential policies".

Customs and Border Protection considers insufficient information exists to assess whether or not this is a countervailable program.

III.27 Tax incentives for manufacturing FIEs in Jiangsu Province (Program 27)

The GOC submits that the description of this program is broad and vague and has difficulty understanding what program is alleged under the catch-all description of a variety of "tax incentives".

Customs and Border Protection considers insufficient information exists to assess whether or not this is a countervailable program.

III.28 Preferential tax in Guangzhou, Guangdong province (Program 28)

The GOC submits that the description of this program is broad and vague and has difficulty understanding what program is alleged under the catch-all description of a variety of "preferential policies".

Customs and Border Protection considers insufficient information exists to assess whether or not this is a countervailable program.

III.29 Patent Award of Guangdong Province (Program 29)

Background

This purpose of this program is to encourage innovation and the generation of associated patents. The program is administered by the Guangdong Province Department of Intellectual Property and Department of Personnel.

Legal Basis

The relevant legislation under which the subsidy is provided for is the 2009 Guangdong Patent Award Implementation Proposal.

Eligibility and effect of the program

An application under the innovations and utility models patent head must establish that the product in question:

- is skilfully constructed and innovative with high creation and technical level;
- contributes to technical improvement and creation.
- the patent has created or have the potential to bring significant economic or social benefit;
- the patent holder has significantly protected the patent.

An application under the industrial design head must establish that:

PUBLIC RECORD



- the industrial design has reached high level at shape, pattern and colour;
- application of this industrial design has brought or has the potential to bring significant economic or social benefit; and
- the patent holder has significantly protected the patent.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of the grant, (i.e. to reward the granting of a patent for an advanced product) it is reasonable to consider that a financial contribution received under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. A grant under this program is limited to qualifying product patents.

As the criteria or conditions providing access to the subsidy favours particular enterprises, being those fund recipients, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.30 Termination of tax refund policies for FIEs on their purchase of domestically manufactured equipment (Program 30)

The GOC submits that this program was terminated on 31 December 2007 under the *Circular of the State Administration of Taxation concerning Stopping the Implementation of the Policy of Enterprises Income Tax Deduction and Exemption for Investment by Purchasing Domestically Produced Equipment*.

Customs and Border Protection is satisfied that this program ceased to operate in its entirety prior to the investigation period and that any benefit conferred under this program prior to its cessation was not applicable to the goods during the investigation period.

PUBLIC RECORD



III.31 Tariff and VAT Exemptions on Imported Materials and Equipments (Program 31)

Background

The policy objective of this program is to attract foreign investment and to encourage domestic investment, and the introduction of foreign advanced technology equipment and industry technology upgrades.

Legal Basis

The relevant legislation under which the subsidy is provided for is the *Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment*.

Eligibility Criteria

To be eligible for this program the enterprise must be an FIE:

- with the equipment relating to the project concerned must align with projects listed in the 'encouraged' category of the *Catalogue for the Guidance of the Foreign Investment Industries*;
- the equipment must be for the applicant's own use and the value of the equipment must be within the total amount of investment in the foreign project;

or the enterprise must be a DIE:

- with the equipment relating to the project concerned must be listed in the *Current Catalogue of Key Industries, Products and Technologies the Development of which is Encourage by the State*;
- the equipment must be for the applicant's own use and the value of the equipment must be within the total amount of investment in the domestic project;

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the laws governing this program mandate a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves foregoing, or non-collection, of revenue due to the GOC by eligible enterprises in China.

This financial contribution is considered to confer a benefit in relation to eligible enterprises because of the tax savings realized. Where exporters of ARW during the investigation period received tax savings under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

It is Customs and Border Protection's understanding that certain equipment used in China by ARWs manufacturers is imported.

PUBLIC RECORD



It is considered that, depending on the nature of this imported equipment, a financial contribution made under this program could be made in relation to the production, manufacture or export of ARWs.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. Customs and Border Protection concludes that FIEs constitute a set of particular enterprises.

Whilst certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program as well as certain FIEs, the reach or the particularity of enterprises is not sufficiently broadened to render the program non-specific. For these reasons the subsidy is specific.

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.32 Full refund of VAT to FIEs on purchasing unused domestic equipment with currency in China (Program 32)

Background

This program encourages foreign funded projects to use domestically-manufactured equipment and is administered by local branch offices of the State Administration of Taxation.

Legal Basis

The relevant legislation under which the subsidy is provided for is the *Notice of the State Administration of Taxation and the National Development and Reform Commission on Printing and Distributing the "Trial Implementation Measures on Tax Refund Administration for the Purchase of Home-made Equipment for Foreign-funded Projects"* No. 111 [2006] of the State Administration of Taxation.

Eligibility Criteria

To be eligible, enterprises must be considered as foreign-funded enterprises, which are defined to include Chinese-foreign joint venture enterprises, Chinese-foreign cooperative enterprises and wholly foreign-owned enterprises. Criteria relating to enterprise equipment must also be satisfied to qualify for the program.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the laws governing this program mandate a financial contribution by the GOC, to the extent that it is made in connection with the

PUBLIC RECORD



production/manufacture of ARW from China, which involves foregoing, or non-collection, of revenue due to the GOC by eligible enterprises in China.

This financial contribution is considered to confer a benefit in relation to eligible enterprises because of the tax savings realized. Where exporters of ARW during the investigation period received tax savings under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

It is Customs and Border Protection's understanding that certain equipment used in China by ARWs manufacturers is domestically-manufactured.

It is considered that, depending on the nature of this domestically-manufactured purchased equipment, a financial contribution made under this program could be made in relation to the production, manufacture or export of ARWs.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours foreign funded enterprises, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.33 Preferential tax treatment for casting and forging products (Program 33)

The GOC has advised that this program was established in 2003 under the *Interim Regulation of Enterprise Income Tax*, which was repealed on 31 December 2005 with no transitional period.

Customs and Border Protection is satisfied that this program ceased to operate in its entirety prior to the investigation period and that any benefit conferred under this program prior to its cessation was not applicable to the goods during the investigation period.

III.34 Preferential tax treatment to dies products (Program 34)

The GOC has advised that this program was established in 1997 under a series of notices of the State Administration of Taxation, which expired on 31 December 2008.

Customs and Border Protection is satisfied that this program ceased to operate in its entirety prior to the investigation period and that any benefit conferred under this program prior to its cessation was not applicable to the goods during the investigation period.

PUBLIC RECORD

PUBLIC FILE
FOLIO 28.
No.

III.35 Matching Funds for International Market Development for SMEs (Program 35)

Background

This purpose of this program is to support the development of SMEs and encourage their export-readiness through capacity building to reduce the risks confronted by SMEs.

Legal Basis

The relevant legislation under which the subsidy is provided for is the

- Circular concerning the Printing and Distributing the Measures for Administration of International Market Developing Funds of Small and Medium Sized Enterprises;
- Detailed Rules for the Implementation of the Measures for Administration of International Market Developing Funds of Small and Medium Sized Enterprises for Provisional Implementation.

Eligibility and effect of the program

SME enterprises meeting the following criteria:

- legal personality according to law;
- capacity to manage an import or export business;
- exports in the previous year of 45,000,000 US dollars or less;
- sound financial management systems and records;
- employees who specialise in foreign trade and economic business who possess the basic skills of foreign trade and economics; and
- a solid market development plan to open up new and emerging international markets.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of the grant, (i.e. a grant to enterprises who export to encourage this function) it is reasonable to consider that a financial contribution received under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

PUBLIC RECORD



Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours qualifying SMEs, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.36 Innovative Experimental Enterprise Grant (Program 36)

Background

This purpose of this program is to accelerate technology development in Zhejiang Province.

Legal Basis

The relevant legislation under which the subsidy is provided for is the *Work Implementation Scheme of Zhejiang Province on Setting Up Innovative Enterprises*.

Eligibility and effect of the program

Eligible enterprises located in Zhejiang Province and those that are:

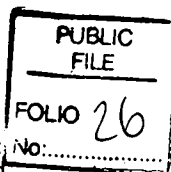
- independent economic entities with reasonable asset-liability ratios, consistent earnings over the past 3 years, with an increasing market share;
- well placed to undertake research and development activities with a provincial or new and high-tech technology centre available and proven relationships with colleges and scientific research centres;
- investing at least 5% of annual sales income;
- using intellectual property rights to protect major products; and
- strongly committed to technological innovation and protection with previous technological achievements.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

PUBLIC RECORD



Due to the nature of the grant, (i.e. to encourage technological development of products) it is reasonable to consider that a financial contribution received under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours particular enterprises, being those fund recipients, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.37 Special Support Fund for Non-State-Owned Enterprises (Program 37)

Background

The GOC advised that it is unaware of this program and unable to distinguish its features from the limited information provided.

Legal Basis

The relevant legislation under which the subsidy is provided for is *Notions Concerning Accelerating the Growth of the Non-state-owned Economy*.

Eligibility and effect of the program

Non-SOEs located in Yunnan Province

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours non-state-owned

PUBLIC RECORD

PUBLIC
FILE

FOLIO 25

enterprises, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.38 Venture Investment Fund of Hi-Tech Industry (Program 38)

Background

This purpose of this program is to encourage the development of high and new technology industry in Chongqing

Legal Basis

The relevant legislation under which the subsidy is provided for is *Circular of Chongqing People's Government Office on Temporary Administration Measures on Venture Investment Fund of Hi-tech Industry in Chongqing*.

Eligibility and effect of the program

High-tech programs of the venture investment fund must be located in the High-Tech Zone or the High-Tech Park of the new Northern District. In addition, the program must meet the following conditions:

- have a leading technological position in its field, and sufficient experience to enter the industrialisation development phase (industrialisation programs with intellectual property rights are given priority);
- the product must be of high quality and have potential economic benefit to the collective development of the Chongqing High-Tech Industry Zone;
- the department supporting the program must have good credit, excellent operation mechanisms and strong innovation abilities;
- the enterprise must have good legal standing; and
- the total investment must be RMB 100 million or more.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of the grant, (i.e. to encourage technological development of products) it is reasonable to consider that a financial contribution received

PUBLIC RECORD



under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours particular enterprises, being those fund recipients, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.39 Superstar Enterprise Grant (Program 39)

Background

This purpose of this program is to encourage enterprises to achieve exceptional business performance.

Legal Basis

The relevant legislation under which the subsidy is provided for is *Measures for Assessment and Encouragement of Superstar Enterprises and Excellent Enterprises*.

Eligibility and effect of the program

The output scale of the enterprise must meet one of the following criteria:

- business income of the current year not exceeding CNY3.5 billion and sales
 - revenue within the city exceeding CNY2 billion;
 - sales revenue within the city exceeding CNY2.5 billion;
 - sales revenue within the city exceeding CNY1.5 billion where the increase of sales revenue between 2007 and 2008 was more than 30% and the increased paid up tax between 2007 and 2008 was more than CNY10 million; or revenue from self-export of current year is more than USD150 million.
- (b) The enterprises accumulated industrial input between 2006 to 2008 must have exceeded RMB 150 million;
- (c) The enterprise must be profitable, and its paid up VAT, consumption tax, income tax, business tax, city construction tax and education supplementary tax must exceed RMB 30 million.
- (d) The enterprise must not have suffered environmental or unsafe production accidents (or other illegal incidents) in the current year.
- (e) If the enterprise is not a SOE, it must have passed the 'Five- Good Enterprises' assessment conducted by county or district.

PUBLIC RECORD



Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of the grant, (i.e. to encourage overall business performance) it is reasonable to consider that a financial contribution received under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours particular enterprises, being those fund recipients, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.40 One-time Awards to Enterprises whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China (Program 40)

Background

This purpose of this program is to foster scientific development and encourage investment by enterprises in branding and marketing. The GOC has advised that two provincial level programs exist that meet this description and have responded on the assumption that these are the intended programs.

Legal Basis

The relevant legislation under which the subsidy is provided for are:

- *Notice Concerning Printing and Distributing the Implementation Measures of Commending and/or Awarding to Industrial Enterprises of Guangxi Zhuang Autonomous Region Whose Products are Famous or Well-known;*
- *Decision Concerning Commending and/or Awarding to Enterprises of Guangdong Province Whose Products Qualify for the Title of "China Worldwide Famous Brand", "China Famous Brand", or "China Well-known Brand".*

PUBLIC RECORD



The GOC submits that the first of these was terminated in 2009 as set out in *Notice of terminating Implementation Measures of Commending and/or Awarding to Industrial Enterprises of Guangxi Zhuang Autonomous Region Whose Products are Famous or Well-known*.

Eligibility and effect of the program

Eligible enterprises are:

- enterprises whose products qualify for the title of 'China Worldwide Famous Brand';
- enterprises whose products qualify for the title of 'China well-known brand' and/or 'Famous Trademark (China famous Trademark)';

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of the grant, (i.e. to encourage scientific development and investment in branding and marketing) it is reasonable to consider that a financial contribution received under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

Where received, this financial contribution is considered to confer a benefit to recipient manufacturers of ARWs because of a direct transfer of funds from the GOC.

Where exporters of ARWS during the investigation period received grants under this program, this would therefore confer a benefit in relation to ARWs,

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours particular enterprises, being those fund recipients, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

PUBLIC RECORD



III.41 Technology Assist (Program 41)

Background

This program was established in July 2008 to:

- Enhance the capability of independent innovation;
- Accelerate the integration of informalisation and industrialisation;
- Promote the transformation of development pattern and the optimisation and upgrade of industrial structure;
- Encourage the rapid and sound development of industrial economy

This program was one of the additional programs identified through a response to the exporter questionnaire of Pilotdoer. Customs and Border Protection asked further questions of the GOC in relation to this program in the SGQ. The SGQ responded that it was unable to provide a complete response due to insufficient time.

Based on the evidence received at the visit to Pilotdoer, Customs and Border Protection makes a preliminary determination that this program is countervailable in respect of ARWs, subject to receipt of further information from the GOC.

III.42 Export credit insurance assistance (Program 42)

Background

This purpose of this program is to encourage enterprises to expand into the international market, and to help them with any exposure to exchange fluctuations.

Legal Basis

The relevant legislation under which the subsidy is provided for is the *Interim Measure for Administration of Support Development Funds of Export Credit Insurance of Ningbo City*.

Eligibility and effect of the program

Eligible enterprises are qualified export enterprises that also meet the following requirements:

- qualified as an independent enterprise legal person registered in Ningbo City, which engages in the business of export and import;
- covered by the export credit insurance from the domestic insurance agency, and paid the relevant premium;
- not having committed any unlawful act in foreign trade business, financial and taxation business, foreign exchange administration and customs supervision.

PUBLIC RECORD



Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of the grant, (i.e. to encourage export) it is reasonable to consider that a financial contribution received under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours export enterprises, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.43 Low Characteristic Industry SME Development Funds (Program 43)

Background

The purpose of this program is to support technology advancement, energy conservation and emission reduction and coordination of SMEs located within the Characteristic Industrial Cluster Areas of Ningbo City, and to promote the structural adjustment and optimisation of the industry.

Legal Basis

The relevant legislation under which the subsidy is provided for is the *Notice of Issuing "Measures for Local Characteristic Industry SME Development Funds of Ningbo City"*.

Eligibility and effect of the program

Eligible enterprises must meet the following criteria:

- Located with the recognised industry base of city level, or a key SME public service platform of city level;
- Qualified as a SME according to the relevant regulations of the State which are in effect;

PUBLIC RECORD

PUBLIC FILE
FOLIO 19
No:.....

- Have an independent qualification as a legal person, sound financial management system, correct and complete accounting information, sound credit for tax payment and good bank credit;
- The reported project must meet the requirements of Ningbo City on the structural adjustment and optimisation of the industry and must fall with the five areas to be supported;
- The reported project has not been supported by other policies of the State or Ningbo City for the same industry.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of the grant, (i.e. to encourage technological development of products, and environmental improvements) it is reasonable to consider that a financial contribution received under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours particular enterprises, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.44 Assistance for Closing Down Small Thermal Power Units in Zhejiang Province (Program 44)

Background

This purpose of this program is to encourage the closing down of small thermal power units in Zhejiang Province during the "11th five year" period, in order to eliminate the backward production capacity and to promote adjustment and optimisation of the structure of the power industry.

PUBLIC RECORD



Legal Basis

The relevant legislation under which the subsidy is provided for is the *Measures on Managing Collection of Capacity Fee for Closing Down Small Thermal Power Units in Zhejiang Province*.

Eligibility and effect of the program

Eligible enterprises must meet the following criteria:

- The enterprise must be registered in accordance with law;
- The small thermal power units to be closed down must be coal-fired power plants, generator units or fuel power plants list in the "11th five-year" closing down responsibility commitment agreement pursuant to which the enterprise promises to undertake the close-down;
- The small thermal power unit must have been originally constructed with authorisation from the relevant authority;
- The small thermal power units that are closed down must have been stopped and dismantled on-site within the time allowed, and must not have been rebuilt in a different place;
- The capacity of the units closed down must be confirmed by relevant authority and used for purpose of "Shang Da Ya Xiao", and
- The closing down requirements of the relevant provincial authorities must also be met.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

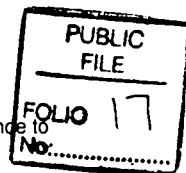
This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

The nature of the grant is to close down small thermal power units. Customs and Border Protection has observed that some ARW enterprises in China generate their own electricity to manufacture their products, therefore it is reasonable to consider that a financial contribution received under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours particular enterprises, over

PUBLIC RECORD



all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.45 Technology Assist – New Products (Program 45)

Background

This program was established in October 2010 to:

- Accelerate the adjustment of industrial structure and the transformation of development pattern;
- Optimise the development environment of industrial economy;
- Continually improve a comprehensive, competitive and sustainable development capability;
- Promote the rapid and sound development of industrial economy

This program was one of the additional programs identified through a response to the exporter questionnaire of Pilotdoer. Customs and Border Protection asked further questions of the GOC in relation to this program in the SGQ. The SGQ responded that it was unable to provide a complete response due to insufficient time.

Based on the evidence received at the visit to Pilotdoer, Customs and Border Protection makes a preliminary determination that this program is countervailable in respect of ARWs, subject to receipt of further information from the GOC.

III.46 Government incentives for the top taxpayer of the year – Qinhuangdao City (Program 46)

Background

This purpose of this program is to:

- Encourage and strengthen the development of enterprises;
- Foster a number of top taxpayers;
- Further expand the source of financial revenue;
- Promote the rapid and sound development of Haigang District in Qinhuangdao City

Legal Basis

The relevant legislation under which the subsidy is provided for is the *Trial Measures on Incentives for the Top Taxpayer Enterprises in Haigang District*.

Eligibility and effect of the program

The Program is open to all industrial, commercial, and construction and real estate development enterprises, with the incentives given to the top ten taxpayers in each year.

PUBLIC RECORD



The enterprises must also meet additional requirements to access the reward.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of the grant, (i.e. to reward enterprises based on their income tax, the liability for which is generated across all business activities) it is reasonable to consider that a financial contribution received under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

Where received, this financial contribution is considered to confer a benefit to recipient manufacturers of ARWs because of a direct transfer of funds from the GOC.

Where exporters of ARWS during the investigation period received grants under this program, this would therefore confer a benefit in relation to ARWs,

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours particular enterprises, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

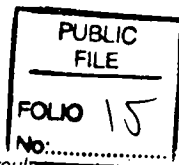
III.47 Financial Support from China Postdoctoral Science Foundation (Program 47)

Background

This purpose of this program is to:

- Fund excellent post-doctoral studies that have innovation capability and development potential;
- Promote the completion of innovative research in scientific work.

PUBLIC RECORD



Legal Basis

The relevant legislation under which the subsidy is provided for is the *Circular on Printing and Distributing the Funding Regulation of China Postdoctoral Science Foundation*.

Eligibility and effect of the program

The Program is open to post-doctors in the workplace.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of the grant, (i.e. encourage post-doctorate students in workplaces to improve innovation and research) it is reasonable to consider that a financial contribution received under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours particular enterprises, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.48 Foreign Trade Public Service Platform Development Fund (Program 48)

Background

This purpose of this program is to:

- Accelerate the transformation of the development pattern and the restructure of foreign trade;
- Promote the development quality and level of foreign trade in Hebei Province.

PUBLIC RECORD

PUBLIC FILE
FOLIO 14
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Legal Basis

The GOC advised that the relevant document under which the subsidy is granted is not available for submission.

Eligibility and effect of the program

Support funds are granted to construction projects of public service platform. The applicant must demonstrate that it has the capital, the workplace, the equipment and the personnel required to undertake the service under the project.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of the grant, (i.e. to encourage foreign trade) it is reasonable to consider that a financial contribution received under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours particular enterprises, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.49 SME International Marketing Project Funds (Program 49)

This program appears to be a duplicate of Program 35 as it is governed by the same legislation, contains the same eligibility requirements and provides the same benefits.

Therefore, Customs and Border Protection does not intend to countervail the benefits from this program as those benefits would be countervailed under Program 35.

PUBLIC RECORD



III.50 Patent Application Fee Subsidy (Program 50)

Background

This purpose of this program is to:

- Strongly implement the strategy of intellectual property right;
- Encourage invention and creation;
- Promote independent innovation;
- Promote development of patent technology and products;
- Accelerate commercialisation of patent.

Legal Basis

The relevant legislation under which the subsidy is provided for is the *Interim Measures of Jinhua City for Management of Patent Special Funds*.

Eligibility and effect of the program

The grant is available to any entity located in Jinhua City or any individual whose residence is in Jinhua City, who is engaged in patent application, implementation and management.

Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

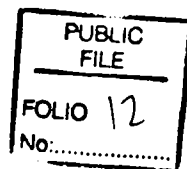
Due to the nature of the grant, (i.e. encourage patents, innovation and product development) it is reasonable to consider that a financial contribution received under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours particular enterprises, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

PUBLIC RECORD



III.51 Foreign Economic and Trade Development Assistance Funds of Jinhua City (Program 51)

Background

This program was established in January 2009 to respond to the new situation of open economy development, to accelerate the transformation of foreign economic and trade development approach and to create new advantages in global competition.

This program was one of the additional programs identified through a response to the exporter questionnaire of Jinfei Kaida. Customs and Border Protection asked further questions of the GOC in relation to this program in the SGQ. The SGQ responded that it was unable to provide a complete response due to insufficient time.

Based on the evidence received at the visit to Jinfei Kaida, Customs and Border Protection makes a preliminary determination that this program is countervailable in respect of ARWs, subject to receipt of further information from the GOC.

III.52 SME International Marketing Project Funds (Program 52)

The GOC have advised that this program is the same in nature to Program 51. Therefore, Customs and Border Protection does not intend to countervail the benefits from this program as those benefits would be countervailed under Program 51.

III.53 Foreign Trade Public Service Platform Development Fund (Program 53)

Background

This purpose of this program is to:

- Accelerate technology innovation project;
- Increase independent innovation capacity;
- Raise the level of industry competition;
- Promote the fast and good development of the economy of Jinhua City.

Legal Basis

The relevant legislation under which the subsidy is provided for is the *Measures of Jinhua City for Management of Technology Innovation Funds*.

Eligibility and effect of the program

The grant is available to enterprises proposing to undertake national or provincial technology projects.

PUBLIC RECORD

PUBLIC
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FOLIO 11

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Is there a subsidy?

Based on the information above, Customs and Border Protection considers that the grant provided under this program is a financial contribution by the GOC, to the extent that it is made in connection with the production/manufacture of ARW from China, which involves a direct transfer of funds by GOC to the recipient enterprises in China.

This financial contribution is considered to confer a benefit to recipient manufacturers of ARW because of receipt of the respective funds from the GOC. If exporters of ARW during the investigation period received monies under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Due to the nature of the grant, (i.e. to encourage foreign trade) it is reasonable to consider that a financial contribution received under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

Is the subsidy a countervailable subsidy?

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours particular enterprises, over all other enterprises, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

Based on the available information, Custom and Border Protection concludes that the program constitutes a countervailable subsidy.

III.54 Patent Special Funds (Program 54)

This program appears to be a duplicate of Program 50 as it is governed by the same legislation, contains the same eligibility requirements and provides the same benefits.

Therefore, Customs and Border Protection does not intend to countervail the benefits from this program as those benefits would be countervailed under Program 50.

III.55 Technological Innovation Projects Funded (Program 55)

This program appears to be a duplicate of Program 53 as it is governed by the same legislation, contains the same eligibility requirements and provides the same benefits.

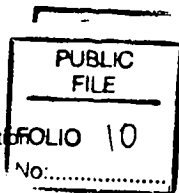
Therefore, Customs and Border Protection does not intend to countervail the benefits from this program as those benefits would be countervailed under Program 53.

III.56 Patent Grants (Program 56)

Background

The GOC provided the following information in relation to this program:

PUBLIC RECORD



- the purpose of the program is to encourage technology transformation and science and technology innovation, and to increase the core capacity of enterprises; and
- the Economic Development Bureau and Finance Bureau of Administrative Commission of Zhejiang Jinhua Economic Development Zone are responsible for administering this program. A special fund of Jinhua Economic Development Zone for intellectual property rights has been established to provide assistance for patent application and to award patent model enterprises.

This program was one of the additional programs identified through a response to the exporter questionnaire of Jinfei Kaida. Customs and Border Protection asked further questions of the GOC in relation to this program in the SGQ. The SGQ responded that it was unable to provide a complete response due to insufficient time.

Based on the evidence received at the visit to Jinfei Kaida, Customs and Border Protection makes a preliminary determination that this program is countervailable in respect of ARWs, subject to receipt of further information from the GOC.

PART IV – AMOUNT OF THE SUBSIDY – PROGRAMS OTHER THAN PROGRAM 1

IV.1 The amount of subsidy in respect of the goods for Program 4

Selected cooperating exporters

Customs and Border Protection has determined that the following selected exporters were eligible and received benefit under Program 4 - preferential income tax for hi-tech enterprises:

- Zhejiang Yueling
- PDW
- CITIC Dicastal
- Zhejiang Jinfei Kaida Wheel Co., Ltd

In each case, the respective exporter received preferential tax treatment as a result of qualifying as a high technology enterprise. The amount of tax payable by each exporter during the investigation period was an annual rate of 15%.

In the first half of the investigation period, Jinfei Kaida received benefit under Program 11, having enjoyed two years tax free and a further three years at half tax. Jinfei Kaida began receiving benefits under Program 11 commencing in 2005, and 2010 was the final year it was eligible to receive benefits under Program 11. The tax rate payable by Jinfei Kaida in 2010 was 12.5%. For the second half of the investigation period, Jinfei Kaida received benefit under Program 4.

PUBLIC RECORD



As the financial contribution under these programs takes the form of reduced tax liability (rather than a direct transfer of funds) it is determined that the financial contribution has conferred a benefit under s.269TACC(3).

In accordance with s.269TACC(6)(d) the amount of subsidy is determined to be the amount of tax revenue forgone by the GOC.

The amount of benefit for each exporter has been calculated in accordance with s.269TACC(10). The total amount of subsidy received by each selected cooperating exporter has been apportioned to each unit of the goods using that exporter's total sales volume.

Customs and Border Protection considers a zero subsidy rate is applicable to all remaining selected cooperating exporters under Programs 4 and 6.

Selected non-cooperating exporters

For selected non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs.

The GOC was asked to provide usage information and enterprise ownership information considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determining whether a benefit had been conferred to those exporters under these programs. This information was not provided.

Furthermore, it is noted that these programs are limited to FIEs in specific regions in China, or those which are high-tech enterprises. Customs and Border Protection requested the GOC provide information as to the location of all ARW exporters in China, and other information relevant to determining eligibility for preferential tax programs, but this was not provided.

Customs and Border Protection's commercial 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 that listed (e.g. the listed location could represent a central or head office of an enterprise that operates ARW manufacturing facilities in multiple locations in China). Customs and Border Protection's commercial database does not collect information about suppliers' FIE status, or whether they are considered 'high-tech' by the GOC.

In the absence of the above relevant information, Customs and Border Protection considers it is likely that selected non-cooperating exporters meet the eligibility criteria for 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 ARWs.

PUBLIC RECORD



In calculating the amount of subsidy attributable to selected non-cooperating exporters under these programs, it is noted that as:

- these programs would operate to reduce enterprises' income tax liability; but
- the maximum benefit under Program 11 (0% tax liability) has already been applied to selected non-cooperating exporters;

the maximum benefit amount available under these programs has already been countervailed in relation to Program 11.

Customs and Border Protection has therefore calculated a zero amount of subsidy under these tax programs for selected non-cooperating exporters.

IV.2 The amount of subsidy in respect of the goods for Program 11

Selected cooperating exporters

As discussed above, Customs and Border Protection has found that one selected cooperating exporter, Jinfei Kaide, received a financial contribution under this program during the investigation period, and therefore received a benefit under this program.

It is considered that this financial contribution has been made in respect of all products of this exporter, including ARWs.

Jinfei Kaide advised that it qualifies for this program due to its production of ARWs. It is therefore considered that this program has been received in respect of ARWs (and indeed in respect of all goods sold by that exporter).

As the financial contribution under this program takes the form of reduced tax liability (rather than a direct transfer of funds) it is determined that the financial contribution has conferred a benefit under s.269TACC(3).

In accordance with s.269TACC(6)(d) the amount of subsidy is determined to be the amount of tax revenue forgone by the GOC.

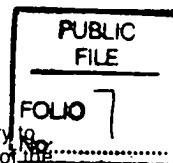
In accordance with s.269TACC(10), the total amount of subsidy received by the selected cooperating exporter has been apportioned to each unit of the goods using that exporter's total sales volume.

Customs and Border Protection considers a zero subsidy rate is applicable to all remaining selected cooperating exporters under this program.

Selected non-cooperating exporters

Neither the GOC nor the selected non-cooperating exporters provided information regarding whether benefits were conferred on these exporters under this program.

PUBLIC RECORD



The GOC was asked to provide usage information, considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determining whether a benefit had been conferred to those exporters under this program. This information was not provided.

Noting that a selected cooperating exporter received this program during the investigation period, in the absence of relevant information, Customs and Border Protection considers it is likely that certain selected non-cooperating exporters also meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

In the absence of this information, Customs and Border Protection considers that, given:

- the program operates on a national level;
- the understanding that approximately 3.2% of enterprises in China are FIEs and certain selected cooperating exporters of ARWs are FIEs; and
- Customs and Border Protection found that one selected cooperating ARW exporter was eligible for this program

it is likely that selected non-cooperating exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

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

In the absence of usage information, Customs and Border Protection considers that:

- s.269TACC(2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to selected non-cooperating exporters under this program; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(7), Customs and Border Protection determines that selected non-cooperating exporters have had benefits conferred to them under this program during the investigation period in the form of tax savings.

In calculating the amount of subsidy attributable to that benefit under s.269TACC(7), Customs and Border Protection is mindful that, under this program, the maximum benefit that can be conferred is a zero tax liability.

To ascertain the quantum of this benefit, Customs and Border Protection has calculated the maximum amount of benefit that could have been attributed to each of the selected cooperating exporters under this program during the investigation period (zero tax liability on profits, making the benefit 25% of

PUBLIC RECORD

PUBLIC FILE
FOLIO 6
No.

PUP FILE
FOLIO 6
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profit) and attributed this amount to ARWs per wheel by dividing this benefit by the total sales volume of each enterprise (in accordance with s.269TACC(10)).

A subsidy margin was then calculated (per unit benefit amount for each selected cooperating exporter as a percentage of the weighted average export price for that exporter).

Customs and Border Protection has then attributed the highest subsidy margin for this program of the selected cooperating exporter to all selected non-cooperating exporters.

IV.3 The amount of subsidy in respect of the goods for Programs 2,3,5,7,8,9, 13,14, and 22

Selected cooperating exporters

Customs and Border Protection has determined that none of the selected cooperating exporters have received financial contributions in respect of the goods under these programs during the investigation period.

Customs and Border Protection therefore considers a zero subsidy rate is applicable to selected cooperating exporters under these programs.

Selected non-cooperating exporters

For selected non-cooperating exporters, no information was provided by either the GOC or the exporters regarding whether benefits were conferred on these exporters under these programs.

The GOC was asked to provide usage information, and enterprise ownership information, considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determining whether a benefit had been conferred to those exporters under these programs. This information was not provided.

Customs and Border Protection requested the GOC provide information to assist in identifying whether any ARW exporters were eligible for these programs, but this was not provided.

Customs and Border Protection's commercial database did not provide information that would assist in determining whether any of the non-cooperating exporters received subsidy benefits under these programs.

In the absence of the above relevant information, Customs and Border Protection considers it is likely that selected non-cooperating exporters meet the eligibility criteria for 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 ARWs.

PUBLIC RECORD

PUBLIC FILE	
FOLIO	5
No.

In calculating the amount of subsidy for attributable to selected non-cooperators under these programs, it is noted that as:

- these programs would operate to reduce enterprises' income tax liability; but
- the maximum benefit under Program 11 (0% tax liability) has already been applied to selected non-cooperating exporters;

the maximum benefit amount available under these programs has already been countervailed in relation to Program 11.

Customs and Border Protection has therefore calculated a zero amount of subsidy under these tax programs for selected non-cooperating exporters.

IV.4 The amount of the subsidy in respect of the goods for Program 40

Selected cooperating exporters

Customs and Border Protection has determined that none of the selected cooperating exporters have received financial contributions in respect of the goods under this program during the investigation period.

Customs and Border Protection therefore considers a zero subsidy rate is applicable to all selected cooperating exporters under these programs.

Selected non-cooperating exporters

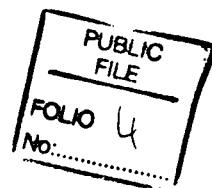
For selected non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under this program.

The GOC was asked to provide usage information considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determining whether a benefit had been conferred to those exporters under this program. This information was not provided.

Furthermore, it is noted that this program is limited to enterprises in specific regions in China. Customs and Border Protection requested the GOC provide information as to the location of all ARW exporters in China, but this was not provided.

In the absence of the above relevant information, Customs and Border Protection noted that an exporter in Investigation 177 into HSS received this benefit, and in light of this receipt of the program by a selected cooperating exporter in Investigation 177, Customs and Border Protection considers it is likely that selected non-cooperating exporters in this investigation meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

PUBLIC RECORD



In the absence of usage information, Customs and Border Protection considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to selected non-cooperating exporters under this program; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(7), Customs and Border Protection determines that selected non-cooperating exporters have had benefits conferred to them under this program during the investigation period in the form of direct transfers of funds (grants).

In calculating the amount of subsidy attributable to that benefit under s.269TACC(7), Customs and Border Protection considers that the subsidy amount calculated for selected cooperating exporters in Investigation 177 as a reasonable basis for calculating the subsidy amount attributable to selected non-cooperating ARW exporters in this investigation, and has used this information as a basis for its calculations.

In attributing the amount of subsidy to each unit of ARW under s.269TACC(10), the benefit under each subsidy program has been attributed using the lowest total sales volume of the selected cooperating exporters, in the absence of actual sales data for the selected non-cooperating exporters.

IV.5 The amount of the subsidy in respect of the goods for Programs 31, 32, 35, 41, 42, 43, 44, 46, 47, 48, 50, 51, 53 and 56

Selected cooperating exporters

Selected cooperating exporters reported receiving financial contributions under one or more of these programs during the investigation period.

In accordance with s.269TACC(2), receipt of these grants is taken to have conferred a benefit because of the direct financial payment to the exporter.

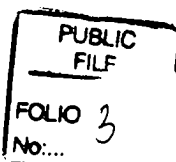
In accordance with s.269TACC(6)(a), the amount of that benefit is taken to be equal to the sum granted.

In accordance with s.269TACC(10), the total amount of subsidy received by the selected cooperating exporter under each program has been apportioned to each unit of the goods using that exporter's total sales volume.

Customs and Border Protection considers a zero subsidy rate is applicable to all other selected cooperating exporters under these programs.

Selected non-cooperating exporters

PUBLIC RECORD



For selected non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs.

The GOC was asked to provide usage information considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determining whether a benefit had been conferred to those exporters under these programs. This information was not provided.

Additionally, it is noted that some of these programs are limited to enterprises in specific regions in China. Customs and Border Protection requested the GOC provide information as to the location of all ARW exporters in China, but this was not provided.

In the absence of the above relevant information, and in light of the above receipt of the program by selected cooperating exporters, Customs and Border Protection considers it likely that selected non-cooperating exporters are eligible for these programs in their respective provinces.

In the absence of usage information, Customs and Border Protection considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to selected non-cooperating exporters under these programs; and
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(7), Customs and Border Protection determines that selected non-cooperating exporters have had benefits conferred to them under these programs during the investigation period in the form of direct transfers of funds (grants).

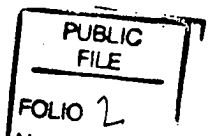
In calculating the amount of subsidy attributable to that benefit under s.269TACC(7), Customs and Border Protection considers that the subsidy amount calculated for selected cooperating exporters as a reasonable basis for calculating the subsidy amount attributable to selected non-cooperating ARW exporters in this investigation, and has used this information as a basis for its calculations.

In attributing the amount of subsidy to each unit of ARW under s.269TACC(10), the benefit under each subsidy program has been attributed using the lowest total sales volume of the selected cooperating exporters, in the absence of actual sales data for the selected non-cooperating exporters.

IV.6 The amount of the subsidy in respect of the goods for Programs 21, 29, 36, 37, 38 and 39

Selected cooperating exporters

PUBLIC RECORD



Customs and Border Protection has determined that none of the selected cooperating exporters have received financial contributions in respect of the goods under these programs during the investigation period.

Customs and Border Protection therefore considers a zero subsidy rate is applicable to all selected cooperating exporters under these programs.

Selected non-cooperating exporters

For selected non-cooperating exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs.

The GOC was asked to provide usage information considered necessary to determine whether a financial contribution has been received in respect of the goods by selected non-cooperating exporters, and determining whether a benefit had been conferred to those exporters under these programs. This information was not provided.

Additionally, it is noted that some of these programs are limited to enterprises in specific regions in China. Customs and Border Protection requested the GOC provide information as to the location of all ARW exporters in China, but this was not provided.

Furthermore, Customs and Border Protection requested from the GOC information as to the location of all ARW exporters in China, but this was not provided. Noting that at least some of these programs are limited in operation to specific areas in China, Customs and Border Protection does not have reliable information as to the location of selected non-cooperating exporters.

Having regard to the nature and eligibility criteria for each subsidy, and in light of further information, it is considered that the financial contribution received for each program was in respect of all goods sold by that exporter (including ARW).

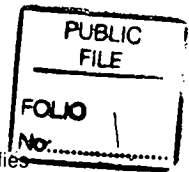
In the absence of usage information, Customs and Border Protection considers that:

- s.269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to selected non-cooperating exporters under these programs; or
- s.269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with s.269TACC(7), Customs and Border Protection determines that selected non-cooperating exporters have had benefits conferred to them under these programs during the investigation period in the form of direct transfers of funds (grants).

In calculating the amount of subsidy attributable to that benefit under s.269TACC(7), Customs and Border Protection considers that:

PUBLIC RECORD



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.

This is summarised in the below table.

Program	Financial contribution basis
Program 21	<i>Provisions of Guangzhou Municipality on Encouraging Foreign Investors to Set up Headquarters and Regional Headquarters</i>
Program 29	Program 21
Program 36	Program 21
Program 37	Program 21
Program 38	Program 21
Program 39	Notice of Huzhou Government Office Concerning Announcement of Criteria for Superstar Enterprises, Excellent Enterprises and Backbone Enterprises

In attributing the amount of subsidy to each unit of ARW under s.269TACC(10), the benefit under each subsidy program has been attributed using the lowest total sales volume of the selected cooperating exporters, in the absence of actual sales data for the selected non-cooperating exporters.