



Australian Government
Australian Customs and
Border Protection Service

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244

CUSTOMS ACT 1901 - PART XVB

REPORT TO THE MINISTER NO.181

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

12 JUNE 2012



Australian Government
Australian Customs and
Border Protection Service

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243

Customs Act 1901 - Part XVB

Certain aluminium road wheels (ARWs)

exported to Australia from

The People's Republic of China

Findings in relation to a dumping investigation

Notice under section 269TG (1) and (2) of the Customs Act 1901

The Australian Customs and Border Protection Service (Customs and Border Protection) has completed its investigation into the alleged dumping of certain aluminium road wheels (ARWs) (the goods), classified to tariff subheading 8708.70.91/ 78, 8708.70.99/ 80 and 8716.90.00/ 30 in Schedule 3 of the *Customs Tariff Act 1995* exported to Australia from the People's Republic of China (China).

In International Trade Remedies Report No. 181 (REP 181) Customs and Border Protection recommended the publication of a dumping duty notice in respect of the goods. REP 181 outlines the investigations carried out by Customs and Border Protection, a statement of the reasons for the recommendations contained in REP 181, material findings of fact or law on which Customs and Border Protection's recommendations were based and particulars of the evidence relied on to support the findings.

Particulars of the dumping margins established for exporters and an explanation of the methods used to compare export prices and normal values to establish each dumping margin are set out in the following table:

CITIC Dicastal Wheel Manufacturing Co. Ltd	6.3%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period in terms of subsection 269TACB(2)(a) of the <i>Customs Act 1901</i> .
Pilotdoor Wheel Co. Ltd	19.9%	
Zhejiang Jinfel Kaide Wheel Co. Ltd	5.6%	
Zhejiang Yuefeng Co. Ltd	9.9%	
Selected non- cooperating exporters	29.3%	

I, JASON CLARE, Minister for Home Affairs, have considered, and accepted, the recommendations of Customs and Border Protection, the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in REP 181. I am satisfied, as to the goods that have been exported to Australia, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods might have been caused if the security had not been taken. Therefore under s.269TG(1) of the *Customs Act 1901* (the Act), I DECLARE that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) applies to:

- the goods; and
- like goods that were exported to Australia after 31 May 2012 (when the Chief Executive Officer made a Preliminary Affirmative Determination under s.269TD(4)(a) of the Act that there appeared to be sufficient grounds for the publication of a dumping duty notice) but before publication of this notice.

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused. Therefore under s.269TG(2) of the Act, I DECLARE that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from China to Australia other than Zhejiang Shuguang Industrial Co. Ltd.

The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on prices in the Australian market in the form of price suppression and the consequent impact on the Australian industry including loss of sales volume, loss of revenue, loss of profits and profitability, reduced capacity utilisation, reduced employment and reduced return on investment. In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of dumped goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

Interested parties may seek a review of this decision by lodging an application with the Trade Measures Review Officer, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Particulars of the export prices, non-injurious prices, and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published as they may reveal confidential information.

Enquiries concerning this notice may be directed to the case manager on telephone number (02) 6275 5849, fax number (02) 6275 6990 or email ltrops2@customs.gov.au.

Dated this 27 day of June, 2012



JASON CLARE
Minister for Home Affairs



Australian Government
Australian Customs and
Border Protection Service

PUBLIC
FILE **241**

Customs Act 1901 - Part XVB

Certain aluminium road wheels (ARWs)

exported to Australia from

The People's Republic of China

Findings in relation to a subsidisation investigation

Notice under section 269TJ(1) and (2) of the Customs Act 1901

The Australian Customs and Border Protection Service (Customs and Border Protection) has completed its investigation into the subsidisation of certain aluminium road wheels (ARWs) (the goods), classified to tariff subheading 8706.70.91/ 78, 8706.70.99/ 80 and 8716.90.00/ 39 in Schedule 3 of the Customs Tariff Act 1995 exported to Australia from the People's Republic of China (China).

In International Trade Remedies Report No. 181 (REP 181) Customs and Border Protection recommended the publication of a countervailing duty notice in respect of the goods. REP 181 outlines the investigations carried out by Customs and Border Protection, a statement of the reasons for the recommendations contained in REP 181, material findings of fact or law on which Customs and Border Protection's recommendations were based and particulars of the evidence relied on to support the findings.

Particulars of the subsidy programs and level of subsidisation established for exporters are set out in the following table:

Piltdoer Wheel Co. Ltd	Programs 1, 32, 41, 42, 43, 44	4.4%
Zhejiang Jintai Kaida Wheel Co. Ltd	Programs 1, 4, 11, 31, 35, 50, 51, 53, 55	2.8%
Zhejiang Yueling Co. Ltd	Programs 1, 4	5.1%
Selected non-cooperating exporters	Programs 1, 4-9, 11, 13, 14, 21, 29, 31, 32, 35-44, 46-48, 50, 51, 53, 55	58.8%

* The names and details of each of the above countervailable subsidy programs are contained within REP 181.

I, JASON CLARE, Minister for Home Affairs, have considered, and accepted, the recommendations of Customs and Border Protection, the reasons for the recommendations and the material findings of fact on which the recommendations are based. I am satisfied, as to the goods that have been exported to Australia, that countervailable subsidies have been received in respect of the goods and because of that, material injury to the Australian industry producing like goods might have been caused if security had not been taken. Therefore under s.269TJ(1) of the Customs Act 1901 (the Act), I **DECLARE** that section 10 of the Customs Tariff (Anti-Dumping) Act 1975 (the Dumping Duty Act) applies to:

- the goods; and
- like goods that were exported to Australia after 31 May 2012 (when the Chief Executive Officer made a Preliminary Affirmative Determination under s.269TD4(a) of the Act in respect of the goods) but before the publication of this notice.

I am also satisfied that a countervailable subsidy has been received in respect of the goods that have already been exported to Australia; and that a countervailable subsidy may be received in respect of like goods that may be exported to Australia in the future; and because of that, material injury to the Australian Industry producing like goods has been caused. Therefore under s.269TJ(2) of the Act, I **DECLARE** that section 10 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from China to Australia (other than CITIC Dicastal Wheel Manufacturing Co. Ltd and Zhejiang Shuguang Industrial Co. Ltd (also known as PDW)).

The considerations relevant to my determination of material injury to the Australian industry caused by subsidisation are the size of the subsidy margins, the effect of subsidised imports on prices in the Australian market in the form of price suppression and the consequent impact on the Australian industry including loss of sales volume, loss of revenue, loss of profits and profitability, reduced capacity utilisation, reduced employment and reduced return on investment. In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of subsidised goods, and have not attributed injury caused by other factors to the exportation of those subsidised goods.

Interested parties may seek a review of this decision by lodging an application with the Trade Measures Review Officer, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Particulars of the non-injurious prices of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice as they may reveal confidential information.

Enquiries concerning this notice may be directed to the case manager on telephone number (02) 6275 5649, fax number (02) 6275 6990 or email itrops2@customs.gov.au.

Dated this 27 day of June, 2012



JASON CLARE
Minister for Home Affairs

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ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
the Applicant	Arrowcrest Group Pty Limited
Australian industry	the Australian industry producing aluminium road wheels
Arrowcrest	Arrowcrest Group Pty Limited
AM	Aftermarket
ARWs	Aluminium Road Wheels
CEO	Chief Executive Officer of the Australian Customs and Border Protection Service
China	People's Republic of China
CITIC Dicastal	CITIC Dicastal Wheel Manufacturing Co., Ltd
CTMS	cost to make and sell
Customs and Border Protection	the Australian Customs and Border Protection Service
Dragway	Dragway Performance Engineering Pty Ltd
EU	European Union
FIE	foreign invested enterprise
FOB	free on board
GM Holden	GM Holden Ltd
GOC	Government of China
GQ	Government questionnaire
GUC	goods under consideration (also referred to as the goods, and aluminium road wheels)
Jinfei Kaida	Zhejiang Jinfei Kaida Wheel Co., Ltd
LME	London Metal Exchange
Minister	The Minister for Home Affairs
NIP	non-injurious price
OEM	Original Equipment Manufacture
PAD	preliminary affirmative determination
PDW	Zhejiang Shuguang Industrial Co. Ltd also known as PDW International Co.
Performance	Performance Wheel Nominees Pty Ltd trading as Performance Industries
Pilotdoer	Pilotdoer Wheel Co., Ltd
Primal	Primal Alloy Wheels and Tyres
SEF	Statement of Essential Facts
SGQ	Supplementary Government Questionnaire
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
Versus	Kelso Group Pty Ltd as trustee for The Kelso Family Trust trading as Versus Wheels Australia
YHI	YHI Manufacturing Co. Ltd
Yueling	Zhejiang Yueling Co. Ltd

PUBLIC RECORD

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 report (REP 181) sets out the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service's (Customs and Border Protection) recommendations to the Minister for Home Affairs (the Minister) in relation to the investigation.

1.1. Recommendation

The delegate of the CEO recommends 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 (PDW); and
- 2) a countervailing duty notice be published in respect of ARWs exported to Australia from China by all exporters, other than CITIC Dicastal Wheel Manufacturing Co., Ltd (CITIC Dicastal) and PDW.

If the Minister accepts this recommendation to give effect to the decision, the Minister must sign the relevant notices and schedules, under s.269TG(1), 269TG(2), 269TJ(1) and 269TJ(2) of the *Customs Act 1901*¹ (the Act), and s.8 and s.10 of the *Customs Tariff (Anti Dumping) Act 1975* (the Dumping Duty Act).

1.2. Application of law to facts

1.2.1. Authority to make decision

Division 2 of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the 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

On 26 September 2011, Arrowcrest, on behalf of the Australian industry manufacturing ARWs, lodged an application requesting that the Minister

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.

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 (referred to as Australian Customs Dumping Notice (ACDN) 2011/54).

1.2.4. Statement of essential facts

On 27 April 2012, the delegate of the CEO placed on the public record a statement of essential facts (SEF181) on which the delegate proposed to base a recommendation to the Minister concerning the publication of a dumping duty notice and a countervailing duty notice in this investigation.

Interested parties were invited to lodge responses to SEF181 by no later than 17 May 2012. Non-confidential versions of all submissions considered are available on the public record for this investigation.

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of Customs and Border Protection's visit reports and other publicly available documents. It is available by request in hard copy in Canberra (phone (02) 6275 6547 to make an appointment), or online at <http://adpr.customs.gov.au/Customs/>.

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

1.2.5. Preliminary Affirmative Determination

On 31 May 2012, the delegate, after having regard to the application and

² Section 269TB

³ Subsection 269TC(1)

⁴ Subsection 269TC(4)

submissions, was satisfied that there were sufficient grounds for the publication of a dumping and countervailing duty notice in respect of ARW exported to Australia from China and made a preliminary affirmative determination (PAD)⁵ to that effect (PAD181).

Following this PAD, Customs and Border Protection decided to require and take securities⁶ in respect of any interim dumping and countervailing duty that may become payable in respect of ARW from China that were entered into home consumption on or after 31 May 2012.

1.3. Report 181

Within 155 days after the initiation of an investigation, or such longer period as the Minister allows⁷, the CEO must give the Minister a report in respect of the goods the subject of the application.

The Minister granted an extension to the date by which SEF 181 had to be placed on the public record. This report was provided to the Minister on 12 June 2012.

In formulating the final report the CEO must have regard to the application concerned, any submissions concerning publication of the notice to which the delegate of the CEO has had regard for the purpose of formulating SEF181, any submission in response to SEF181 received by Customs and Border Protection within 20 days after the day that statement was placed on the public record, and any other matters considered relevant.⁸

1.4. Findings and conclusions

Customs and Border Protection has made the following findings and conclusions based on available information provided during the course of the investigation.

1.4.1. 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

⁵ S.269TD

⁶ S.42

⁷ If the date by which the SEF must be placed on the public record is extended, this extends the date by which the final report is due to the Minister by a corresponding period – s269TC(4)(bf).

⁸ Subsection 269TEA(3)

Australian manufacturers were contacted and their volumes considered too small to be considered separately.

1.4.2. Dumping investigation (Chapter 6 of this report)

Customs and Border Protection 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

CITIC Dicastal	19.9%
PDW	<2%
Pilotdoer	19.9%
Jinfel Kaide	5.6%
Yueling	9.9%
Selected non-cooperating exporters	29.3%

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 exporter.

The delegate terminated the dumping investigation as it related to PDW on 8 June 2012. TER181, available on the public record, sets out the details of the termination.

1.4.3. Subsidy investigation (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 finding that the following 34 programs are countervailable subsidies:

⁹ Section 269TDA(1)

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 equipment
32	100% refund of VAT to FIEs on purchasing unused domestic equipment 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

[REDACTED]	
CITIC Dicastal	<2%
PDW	2%
Pilotdoer	4.8%
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 terminated the countervailing investigation as it related to CITIC Dicastal and PDW on 8 June 2012. TER181, available on the public record, sets out the details of the termination.

1.4.4. Economic condition of the industry (Chapter 8 of this report)

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.

**1.4.5. Have dumping and subsidisation caused material injury?
(Chapter 9 of this report)**

Customs and Border Protection found the dumping and subsidisation caused material injury to the Australian industry.

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

Customs and Border Protection found:

- 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.

1.4.7. Proposed recommendation

Based on these findings the delegate recommends to the Minister that:

- a dumping duty notice be published in respect of ARWs exported to Australia from China by all exporters, other than PDW; and
- a countervailing duty notice be published in respect of ARWs exported to Australia from China by all exporters, other than CITIC Dicastal and PDW.

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 2012¹⁰. ACDN 2012/06 was issued on 24 February 2012 notifying of the Minister's decision. Interested parties were also separately notified.

The investigation period¹¹ for the purpose of assessing any dumping margins¹² 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. Statement of essential facts

On 27 April 2012, Customs and Border Protection placed SEF181 on the Public Record, on which the delegate of the CEO proposed to base her recommendation to the Minister concerning the publication of a dumping duty notice and a countervailing duty notice in this investigation.

Interested parties were invited to lodge responses to SEF181 by no later than 17 May 2012. Non-confidential versions of all submissions received are available on the Public Record for this investigation.

¹⁰ Section 269ZHI

¹¹ Section 269T(1)

¹² Subsection 269TC(4)(bf)

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of Customs and Border Protection's visit reports, and other publicly available documents.

It is available by request in hard copy in Canberra (phone (02) 6275 6547 to make an appointment), or online at <http://adpr.customs.gov.au/Customs/>.

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

2.3. Preliminary affirmative determination 181

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

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

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

On 31 May 2012, following the publication of SEF181, the CEO was satisfied that there were sufficient grounds for the publication of:

- a dumping duty notice in respect of ARWs exported to Australia from China by all exporters except PDW; and
- a countervailing duty notice in respect of ARWs exported to Australia from China by all exporters except PDW and Dicastal,

and made a PAD to that effect (PAD181).

Following this PAD, Customs and Border Protection decided to require and take securities¹³ in respect of any interim dumping duty that may become payable in respect of ARWs from China that were entered into home consumption on or after 31 May 2012.

2.4. Report 181

Within 155 days after the initiation of an investigation, or such longer period as the Minister allows¹⁴, the CEO must give the Minister a final report in respect of the goods the subject of the application (this report).

¹³ S.42

¹⁴ If the date by which the SEF must be placed on the Public Record is extended, this extends the date by which the final report is due to the Minister by a corresponding period – s269TC(4)(bf).

The Minister extended the date by which SEF181 had to be placed on the Public Record, and this subsequently extended the period of time for provision of this report to the Minister. This report was provided to the Minister on 12 June 2012.

The due date for submissions in response to SEF181 was 17 May 2012.

In accordance with s.269TEA(3), the CEO is not obliged to have regard to submissions received after 17 May 2012 if to do so would, in the CEO's opinion, delay the timely preparation of this report to the Minister.

Having regard to the above, the CEO has not had regard to any submissions received in response to SEF181 after 1 June 2012, as the CEO considered to do so would delay the timely preparation of this report.

In addition, following the publication of SEF181, Customs and Border Protection held requested meetings with:

- Ford; and
- Dicastal.

Records of these meetings are available on the Public Record.

2.5. Previous cases

There have been no previous cases concerning ARWs.

3. THE GOODS AND LIKE GOODS

3.1. Findings

The Australian industry produces ARWs that have characteristics closely resembling those of ARWs manufactured in China and exported to Australia, and therefore ARWs manufactured by the Australian industry are like goods¹⁵.

3.2. The goods

The goods the subject of the application (the goods) are aluminium road wheels for passenger motor vehicles, including wheels used for caravans and trailers, in diameters ranging from 13 inches to 22 inches. For clarification, the goods include finished or semi-finished ARWs whether unpainted, painted, chrome plated, forged or with tyres and exclude aluminium wheels for go-carts and All-Terrain Vehicles.

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/ 20	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 vehicles¹⁶ and caravans¹⁷ classified to a tariff sub-heading other than 8708.70.91/ 78.

¹⁵ In terms of section 269T

¹⁶ Hunt & Hunt lawyers on 22 December 2011

¹⁷ PWC on 21 December 2011

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 8706.90.00/ 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, OTIC 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 an issue considered is whether those

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

Some interested parties have claimed that there should be two separate investigations, one for OEM goods and one for AM goods. They 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 investigations of other commodities, such as toilet paper and linear low density polyethylene, even though there were separate markets for the goods, they were considered together for the purpose of recommending whether a dumping and/or countervailing duty notice should be published. This is noted in order to demonstrate that each investigation is considered on the basis of the facts and circumstances relevant to the commodity being investigated. No single approach is applicable to all ensuing investigations.

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, as was the case in toilet paper and linear low density polyethylene.

Submissions to SEF:

In response to the SEF both Ford and Holden re-stated their objections in relation to Customs and Border Protection's treatment of the OEM and AM markets.

Holden states that Arrowcrest does not produce like goods to those exported from China, and that the criteria set out in the SEF are not sufficient to warrant treating exported and locally manufactured OEM ARWs as like goods. Customs and Border Protection considers that the evidence gathered and presented in this report clearly establishes that Arrowcrest's OEM wheels are like to the OEM wheels exported from China.

Ford repeats its earlier objections to Customs and Border Protection's consideration of the OEM and AM markets in one investigation. In Ford's view there should be two separate investigations, one for each market. Customs and Border Protection considers that undertaking the injury analysis separately for each market is sufficient to take into account the differences in the way each market operates, and any segmentation by customer in the Australian market.

Ford claims that there is no evidence that the statement made in the EU investigation that manufacturers produce for both segments and that OEM and AM wheels are produced on the same production line, is true in Australia. Jinfei Kaida manufactures wheels for both the OEM and AM markets. As evidenced in the visit report for Jinfei Kaida, Customs and Border Protection asked Jinfei Kaida whether there were any differences in the production method for the different markets and it said there were not. Specific tests may be required to be carried out for OEM market customers, but this did not materially affect the production of the ARW. Customs and Border Protection inspected the manufacturing facility and observed the same casting machines were used to produce ARWs for both markets. Some robotic machinery was used post-casting for OEM ARWs as opposed to manual labour for AM ARWs but this was solely due to the larger volumes produced for the OEM market, which makes robotics more efficient.

Ford claims that Arrowcrest's statement that it fitted AM ARWs to Tickford vehicles is irrelevant because it occurred in 2002, and the ARWs were tested by Ford to meet OEM standards. It also states that there is evidence that there are no sales of AM to the OEM market. Customs and Border Protection disagrees that an event in 2002 is irrelevant to the like goods issue as to Customs and Border Protection's knowledge there has been no substantial change to the nature of the OEM and AM markets since that time. In any case, Ford's statements do not provide support to a finding that the two markets are so distinct because they appear to rely on the mere naming of an ARW as OEM or AM according to its end use. That is, Ford claims there is no evidence of sales of AM to the OEM market however it appears that Arrowcrest's 'AM' sales to Tickford are deemed to be 'OEM' because they met Ford's OEM testing requirements. Customs and Border Protection does not have evidence that all AM ARWs exported to or manufactured in Australia could meet the requirements of OEM customers, but similarly there is no evidence that they could not.

Similarly, Ford's statement that car manufacturers do not switch between OEM and AM ARWs relies on the pre-classification of an ARW as such. That is, Ford's own submission appears to say that if an OEM customer was presented with a wheel labelled as 'AM' but it in fact met its testing requirements it would be considered an OEM wheel.

In summary, Customs and Border Protection considers that the submissions to the SEF provide no new evidence that would warrant a change to the preliminary finding. The alleged dumping and subsidisation of OEM and AM ARWs can be considered in one investigation, with separate injury and causation analysis to take into account any differences in the markets.

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 industry¹⁸. 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:

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

lodged submission 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).

¹⁸ 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.

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. Findings - 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 19" 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.

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 found 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 ARWs, it is open to the Minister to exclude that subset from a dumping duty notice and countervailing duty notice.

Submission to the SEF:

In response to the SEF, Motor Sport Wheels & Tyres submitted that Arrowcrest has never produced ARWs that could satisfy its requirements or those of its customers, and therefore its imports of ARWs should be exempt from any measures imposed.

Motor Sport Wheels & Tyres had not participated in the investigation until the time it made this submission. In the short time available between the SEF and the preparation of the final report to the Minister it is difficult to carry out a proper assessment of whether particular goods should be exempt from any notice, it not having been raised before. Notwithstanding this, Arrowcrest has reviewed the specifications of the imported wheels and submitted that there is nothing unique about the requirements of Motor Sport Wheels & Tyres' wheels and it is capable of producing ARWs to these specifications. Arrowcrest has provided brochures demonstrating its ability to produce ARWs for European vehicles.

Customs and Border does not recommend the Minister exclude the subset of goods suggested by Motor Sport Wheels & Tyres from the dumping duty notice or countervailing duty notice.

4. AUSTRALIAN INDUSTRY

4.1. Finding

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 Australia¹⁹:

- 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, where the visit team witnessed both AM and OEM ARWs being manufactured on the same production line. 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

¹⁹ In terms of subsections 269T(2) and 269T(3)

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

4.4. Conclusion – Australian Industry

Based on the information available, Customs and Border Protection considers that:

- the ARWs manufactured or produced by Australian are like goods (see Chapter 3);
- the like goods were wholly manufactured in Australia; and
- there is an Australian industry consisting of one main manufacturer, Arrowcrest.

PUBLIC RECORD

5. AUSTRALIAN MARKET

5.1. 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.

Submission to SEF

Holden submitted that Customs and Border Protection's above description of the market "reveal(s) a fundamental error" in the understanding of the market because HSV is a separate legal entity to Holden and operates separately to

Holden. Customs and Border Protection has acknowledged this fact in the report of its visit to HSV. Notwithstanding this, HSV is considered part of the OEM market because the vehicle is not available for purchase by an end user between Holden's manufacturing of the vehicle, HSV carrying out modifications (including the fitment of ARWs) and the return to Holden for sale through the Holden retail network.

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 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.

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 ARW market²⁰:

- 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.

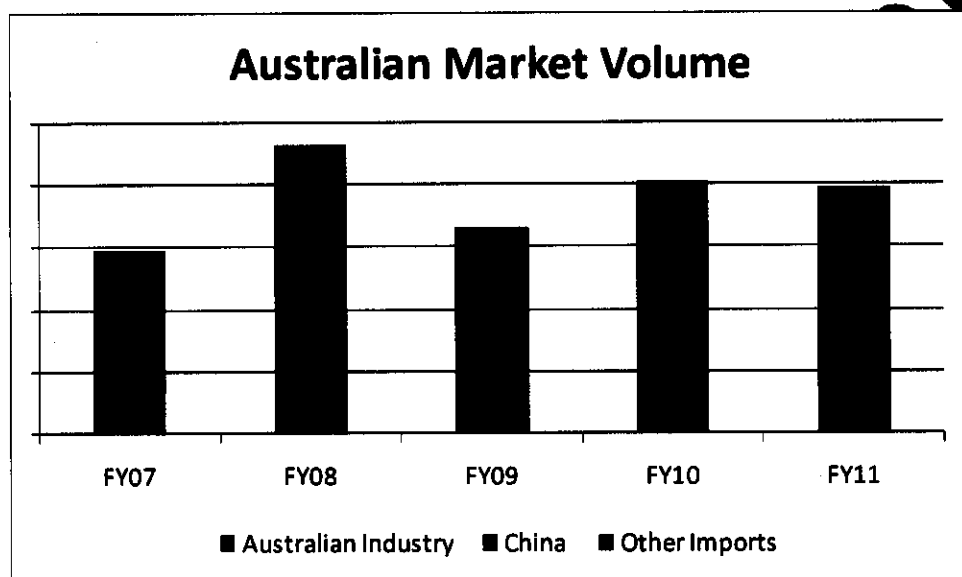
²⁰ GM Holden is both an importer and an end user of ARWs. GM Holden was not forwarded an user questionnaire as the issues were discussed in the context of Customs and Border Protection's importer visit to GM Holden.

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.

Graph 1



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

6. DUMPING INVESTIGATION**6.1. Findings**

ARWs were exported to Australia from China at dumped prices during the investigation period. The dumping margins determined for exporters are outlined in the table below:

Dumping Margins

CITIC Dicastal	6.3%
PDW	<2%
Pilotdoer	19.9%
Jinfei Kaide	5.6%
Yueling	9.9%
Selected Non-cooperating Exporters	29.3%

Source: Confidential Attachment 1

The dumping investigation has been terminated so far as it relates to PDW²¹.

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 price²² and the normal value²³.

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 negligible²⁴. The volume of dumped goods is negligible if this figure is less than 3% of the total Australian import volume²⁵.

²¹ TER181 refers

²² Section 269TAB

²³ Section 269TAC

²⁴ Section 269TDA(3)

²⁵ Section 269TDA(4)

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

6.2.1. Number and categorisation of exporters

Customs and Border Protection found there were 117 entities²⁶ 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.²⁷

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 ARW. 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.

²⁶ 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.

²⁷ 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."

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 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 (Yuleing), 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 of 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.

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 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 all domestic sales of ARWs in China are unsuitable for determining normal value under s.269TAC(1) in all circumstances, and consequently 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.

Submissions in response to the SEF in relation to Customs and Border Protection's assessment of market situation are discussed in detail in Appendix A.

6. 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).

Customs and Border Protection therefore replaced the costs of aluminium and aluminium alloy for each Chinese exporter, as recorded by these exporters, with a reasonably competitive market cost for these inputs when constructing normal values for these exporters. 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 China. 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 costs 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.

Submissions to SEF

In its submissions to SEF 181, Arrowcrest makes the following three statements in relation to electricity costs in China:

- (i) Customs and Border Protection did not indicate whether it investigated subsidised electricity prices in China;
- (ii) The domestic price of electricity in China is lower than what it otherwise would be due to the GOC's control of prices; and
- (iii) Customs and Border Protection should examine the impact of GOC control on electricity prices and determine whether ARW manufacturers costs in aggregate should be considered unreliable and normal values be based on selling prices in a surrogate country.

In relation to the first point, Arrowcrest's 'Subsidy Menu' attached to its application for a countervailing duty notice did not include the subsidisation of electricity as an alleged program. Customs and Border Protection did not initiate a subsidy investigation in respect of this program and no questions were asked of the Government of China in relation to a subsidy for electricity. In relation to the second point, the GOC was asked about the mechanism for setting electricity prices in China in the GQ. The GOC advised that the price of electricity is subject to government price setting but the government will only intervene subject to the strict requirements of Article 18 of the Price Law. The GOC submitted that Article 18 protects market pricing other than in exceptional circumstances.

The GOC also provided a copy of the Electric Power Law of the People's Republic of China²⁸. Article 26 of that document states that the establishment of electricity rates shall be based on "...the principles of reasonable compensation of cost and reasonable determination of profits, legal incorporation of taxes...". Article 47 of that document states that a preferential policy shall be adopted to provide support to areas inhabited by minority nationalities, in outlying areas and in poverty-stricken areas. Customs and Border Protection has no evidence to suggest that manufacturers of ARWs would benefit from such a policy.

During this investigation and previous investigations concerning exports from China, Customs and Border Protection has observed that arrangements for the supply of electricity in China vary from province to province. Customs and Border Protection is also aware that some manufacturers generate their own electricity and sell the surplus to the national electricity grid at various rates.

Customs and Border Protection verified electricity costs for all co-operating exporters and did not find any evidence that the price of electricity during the investigation period reflected anything other than competitive market prices. While Arrowcrest referred to a statement in Chalco's Form 20-F for 2007 to the effect that aluminium producers were afforded low electricity rates by the

²⁸ Attachment A43 to the GQ

GOC, that document also contains a statement that preferential rates ceased in 2008. Arrowcrest also referred to other documents in the public arena that contain discussion about the influence of the GOC on electricity prices in China. These documents are dated 2009 or earlier and no evidence has been provided to establish these conditions existed during the investigation period.

Arrowcrest provided information about actual electricity tariffs for one particular province in China and a comparison to its own electricity prices. No evidence has been provided in relation to what the electricity prices in China would be in the absence of the alleged government regulation to assist in determining whether prices do not reflect market costs.

Based on the information gathered during the course of the investigation Customs and Border Protection considers there is insufficient evidence that the electricity costs reflected in the records of the verified cooperating exporters do not reasonably reflect competitive market prices.

There is no basis for Customs and Border Protection to consider ARW manufacturers' costs in aggregate should be considered unreliable.

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.

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.

In reviewing the dumping calculations for this report, Customs and Border Protection observed an error in its calculation of profit for the preliminary SEF findings. Profit was measured as a percentage of the exporters' domestic selling prices, however was applied at that same percentage to the constructed cost to make and sell. Customs and Border Protection has amended this by calculating the inverse of the profit percentage to arrive at an appropriate mark-up on costs, as opposed to selling price.

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

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 6.3%.

Submission to SEF:

In response to the SEF Dicastal submitted that a separate market situation analysis should have been carried out in relation to the OEM and VM markets in China. Because Customs and Border Protection found that the entire market for aluminium in China was distorted by Government influences it is not considered necessary to conduct separate analyses. Dicastal provides no evidence why this is necessary.

Dicastal also submitted that there is no evidence that a lower aluminium price would translate to a lower price for ARWs. There is ample evidence from the exporter verification reports that the price of aluminium is a key factor in exporters' decisions in relation to price.

Other submissions by Dicastal in relation to the calculation of its dumping margin are dealt with below:

Amount of profit

Dicastal submits that the profit used in its contract negotiations with customers should be used in place of the actual profit used on domestic sales. It also claims that profit should be calculated in accordance with Regulation 181A(3)(c) and that Regulation 181A(4) should be invoked to disregard any amount of profit that exceeds profit realised by other exporters.

No evidence has been provided by Dicastal as to why actual profit realised on domestic sales, which is the first method in the hierarchy in the Regulations, should not be used to construct Dicastal's normal value. Customs and Border Protection has, however, re-calculated the profit based on the weighted average of all domestic sales of like goods regardless of finish. The level of profit using this method is not considered unreasonable having regard to the level of profit found for other cooperating exporters.

Customs and Border Protection has also re-calculated Dicastal's profit based on sales made in the ordinary course of trade, as required by the Regulations, rather than profitable sales only.

Inland transport

Customs and Border Protection used the delivery costs for one exporter to calculate the into-store cost of aluminium in the raw material uplift calculation. Dicastal provided evidence of its actual cost for two suppliers of aluminium. Customs and Border Protection has substituted these costs for the cost used in the SEF and re-calculated the raw material uplift.

Commission and level of trade comparisons

Dicastal made submissions on what it said was the incorrect calculation of the constructed normal value due to the treatment of commissions and level of trade. Customs and Border Protection has reviewed its calculation and does not consider it has made any errors in these areas.

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 made in the ordinary course of trade. 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 -2.0%.

The dumping terminated the dumping investigation so far as it related to PDW on 8 June 2012. Changes to the dumping margin from the preliminary findings in the SEF to the termination are set out in TER181.

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 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 19.9%²⁹.

Submission to SEF:

In response to the SEF Pilotdoer submitted that given Customs and Border Protection's reservations in relation to the verification of Pilotdoer's costs, profit should be based on 'other exporters', and suggested a particular percentage. The amount suggested by Pilotdoer was reflective of Jinfei Kaida's profit only, not an average of other verified exporters' profits which Customs and Border Protection considers more appropriate in the circumstances.

Arrowcrest submitted that Pilotdoer's dumping margin should be calculated in the same way as selected non-cooperators. As noted in the visit report for Pilotdoer, Customs and Border Protection was satisfied that it cooperated with the investigation and was able to satisfy Customs and Border Protection in relation to specific elements of its data. It is therefore not appropriate to treat Pilotdoer in the same manner as those interested parties that did not cooperate at all.

6.6.4. Jinfei Kaida

Export prices were 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.

²⁹ Pilotdoer's dumping margin has changed from that disclosed in SEF181 due to the detection of an error in the calculation of the profit applied to the constructed cost to make and sell.

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 5.6%³⁰.

Submission to SEF:

In response to the SEF Arrowcrest submitted that Customs and Border Protection should ensure that Jinfei Kaida's manufacturing costs were allocated on the basis of weight and not quantity. Customs and Border Protection was satisfied at the verification visit that Jinfei Kaida's use of 'parameters' in its allocation method ensures that all manufacturing costs were allocated to wheel size on the basis of weight and not quantity.

Arrowcrest also made a submission in relation to the adjustments applied to Jinfei Kaida's normal value. Customs and Border Protection is satisfied that all appropriate adjustments to ensure fair comparison have been taken into account.

6.6.5. Yueling

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

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

³⁰ Jinfei Kaida's dumping margin has changed from that disclosed in SEF181 due to the detection of an error in the calculation of the profit applied to the constructed cost to make and sell

normal values over the whole of that period. The dumping margin for Yueling is 9.9%.

Submission to SEF:

In response to the SEF Yueling submitted that Customs and Border Protection had incorrectly uplifted its selling, general and administrative costs in the process of calculating the raw material uplift. On review of the calculation this was found to be correct and has been adjusted for in the calculation of Yueling's dumping margin for this report.

Yueling's submission that only the aluminium purchased from SIs should have been used to calculate the uplift is rejected, because Customs and Border Protection found that the cost of all aluminium purchased in China – from SIEs and private enterprises – did not reflect competitive market costs.

Yueling also submitted that it is not logical to use the actual profit on domestic sales to construct a normal value because after the cost uplift the profit that could be achieved by Yueling would be different.

The assessment of an amount of profit used for the purpose of constructed normal values is made on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export. Customs and Border Protection verified profit amounts applicable to such sales made by Yueling during the investigation period.

The fact that such amounts were measured as a profit achieved after recovering costs to make and sell determined prior to replacing the Yueling's aluminium costs with benchmark aluminium costs does not preclude such a measure of profit being applied to a different cost base for constructed normal value. Rather, Customs and Border Protection consider it is appropriate to do so in the circumstances.

Customs and Border Protection considers it is reasonable to expect that if aluminium costs were increased to the level of the benchmark, and assuming all other things remained equal in the investigation period, the operations of supply and demand factors in the Chinese market for ARWs may settle at or around a new equilibrium price that reflects a similar return on investment for the ARW manufacturers. Customs and Border Protection considers that to maintain the profit levels achieved on ARWs prior to the aluminium cost replacement, and to apply this to the adjusted costs, is a reasonable means to calculate the new equilibrium price, which in turn provides for a reasonable constructed normal value.

In response to the SEF Arrowcrest claimed that Yueling's normal values are based on 14" ARWs. This is incorrect. Some benchmarking was carried out

on the basis of 14" ARWs however Yueling's normal values, including profit, were based on actual data for all domestic sales of like goods.

In reviewing Yueling's dumping margin calculation certain errors were detected in relation to the calculation of profit, which have now been corrected.

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.

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*)³¹ at page 43, Customs and Border Protection considers that where there are cooperating and non-cooperating exporters, the most directly relevant and therefore best information would be that obtained from those cooperating.

³¹ Available online at <http://www.customs.gov.au/site/page5719.asp>

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 6.5.6.

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 dumping margin for selected non-cooperating exporters is 29.3%.

7. SUBSIDY INVESTIGATION**7.1. Findings**

ARWs exported from China to Australia were subsidised during the investigation period. The subsidy margins determined for exporters are:

Subsidy Margins

CITIC Dicastal	<2%
PDW	<2%
Pilotdoer	4.4%
Jinfel Kalda	2.8%
Yueling	5.1%
Selected Non-cooperating Exporters	58.8%

Source: Confidential Attachment 2

The subsidy investigation was terminated so far as it extends to CITIC Dicastal and PDW on 8 June 2012³²

The total volume of subsidised goods exported to Australia is not negligible.

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

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.

³² TER181 refers

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.

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 zones 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 Economic Zone, ie Shanghai, Zhejiang and Jiangsu;	No
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 (NHE) 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 Park), 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 to 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
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 contributions that have conferred a benefit under all programs found to be countervailable in relation to ARWs.

Submission to the SEF

In its submission to the SEF dated 25 May 2012, the GOC *firstly* submitted that the above statement that the GOC limited its response to 'respondents' and selected cooperating exporters is incorrect. The GOC *"firstly point(s) out that Australian Customs only identified five cooperating exporters. The responding companies included details of seven ARW exporters..."*. It is unclear how this statement evidences that Customs and Border Protection's description of the information supplied by the GOC is incorrect. It remains a fact that the GOC did not provide the information requested in relation to all Chinese ARW producers and/or exporters that applied for, accrued, or received benefits under Program 1 – 5¹ during the investigation period.

The GOC submits that the method by which Customs and Border Protection calculated the subsidy benefit for selected non-cooperating exporters was made without express legislative power and not done so having regard to the available relevant facts. The GOC claims that the address and ownership details it supplied for some exporters of ARWs during the investigation period should have been sufficient for Customs and Border Protection to establish that certain programs dependent on region or ownership were not received by those exporters. The GOC also submits that Customs and Border Protection should have had regard to the information in its import database, despite the concerns expressed by Customs and Border Protection.

In relation to the address details supplied by the GOC, without cooperation from the exporters concerned Customs and Border Protection cannot be certain that those exporters did not have offices or manufacturing operations in other regions that the identified subsidy programs were available in. The address supplied by the GOC is one fact, but there are many other facts about the operations of each exporter, which are important to the determination of the receipt of a subsidy, that are unknown.

Customs and Border Protection outlined in the SEF the reasons why it considered information in the import database to be unreliable for the purpose of calculating individual subsidy margins for non-cooperating

exporters. Customs and Border Protection disagrees with the GOC's statement that *"it is better to rely on information which might not be "certain" rather than to adopt a methodology which is unquestionably inaccurate"*. Customs and Border Protection does not consider the import database to be relevant factual information about the operations of every exporter of the goods to Australia.

7.4.3. Subsidy margins

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

CITIC Dicastal	<2%
PDW	<2%
Pilotdoer	4.4%
Jinfel Kaide	2.8%
Yueling	37.9%
Selected Non-cooperating Exporters	58.1%

Source: Confidential Attachment 2

Customs and Border Protection's findings in relation each 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**.

8. ECONOMIC CONDITION OF THE INDUSTRY

8.1. Finding

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.

The causes of this injury are discussed in Chapter 9 of this report.

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 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 and only data from the injury analysis period has been used for injury analysis calculations.

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. This data was verified during Customs and Border Protection's visit to Arrowcrest. The visit report, available on the public record for the investigation, sets out the detail of the verification conducted.

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

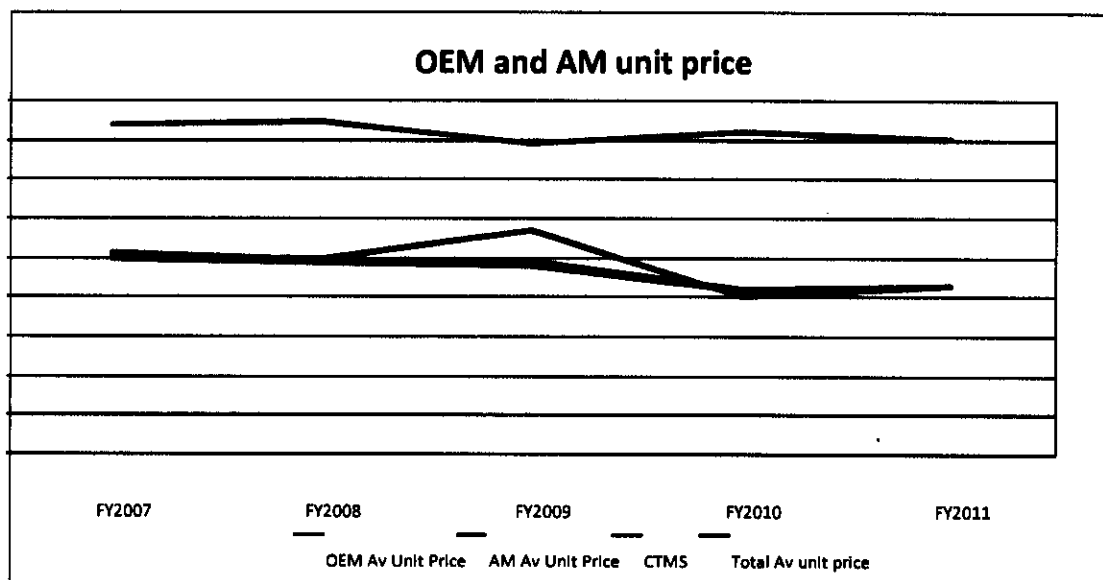
Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases for the applicant's product, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

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 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.

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 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 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 8708.70.99/80³³. 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.

³³ 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.

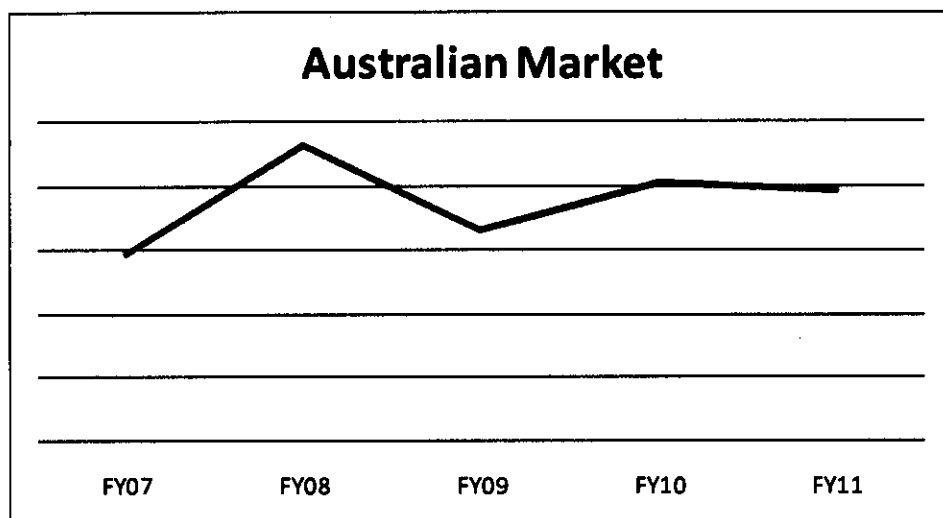
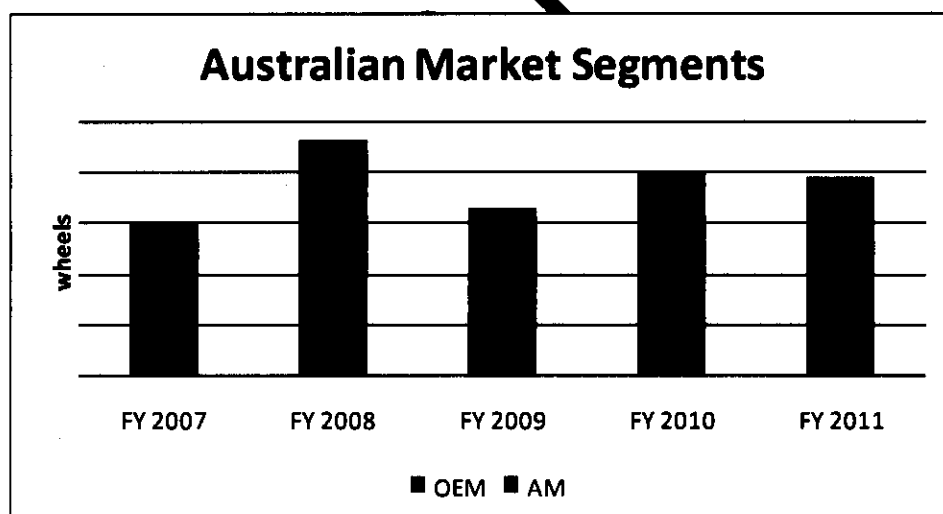
Diagram 2: Australian ARW market volume

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

- 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	273.9	265.9
Other imports	100	147.2	82.0	83.1	84.7
TOTAL	100	157.4	112.7	116.2	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	106	106	115	128
Total	100	157	112	136	133

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

MARKET SEGMENT	FY 2007	FY 2008	FY 2009	FY 2010	FY 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
- The volume from imports other than from China appears to be relatively stable over the period FY 2009 to FY 2011.

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 period³⁴. Sales volume to Toyota decreased in the investigation period which corresponds with a period of decreased total local production by Toyota.

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 seen until after the investigation period. Arrowcrest has provided sales reports that show volume to HSV decreasing significantly shortly after the investigation period³⁵. Whilst a smaller percentage (less than 10%) of sales volume to HSV was lost in the investigation period, a further 21.3% of sales volumes to HSV were lost in the quarter following the end of the investigation period.

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 by around 20% between 2009 and 2011, while Arrowcrest's sales volume to this segment decreased by around 21% in the same period.

Overall

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

8.3 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.

³⁴ 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.

³⁵ Arrowcrest visit report November 2011 – confidential attachment CAUSATION 2

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%	32%	42%	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.

Submission to SEF:

Mullins Wheels submitted that Arrowcrest's share of the AM sector is so insignificant to its overall operation that volume loss, price undercutting and injury effects within this sector of the market cannot cause material injury to the Australia Industry.

Response:

Arrowcrest does not view the AM sector as insignificant to its operations, given the large size of the market available and the larger profit margins on individual sales. The fact that Arrowcrest retains such a small proportion of the total after previously holding a larger share in prior years is an indicator of

injury. Detailed analysis of Arrowcrest sales volumes and values to four major AM sector customers shows a decrease in sales volumes of 82% over the injury analysis period. This represents a significant amount in revenue to Arrowcrest.

Arrowcrest claims it previously competed successfully in the AM sector prior to Chinese imports entering the market and provided evidence of its larger AM market sales volumes and market share in previous years³⁶. Given the size of the decrease in sales volumes over the injury analysis period, it can be concluded that but for low cost Chinese imports, it is likely that Arrowcrest would obtain and maintain a great proportion of the increasing AM sector, and in doing so would increase its revenue and profitability to a more competitive level.

8.9. Revenue effects

Arrowcrest's verified data shows a decrease in sales revenue over the investigation period in line with the lost sales volumes. Arrowcrest also provided further evidence in subsequent submissions that its AM sales revenues decreased significantly and consistently over the injury analysis period.

The following table shows Arrowcrest's indexed revenue figures separated into OEM and AM sectors for the investigation period.

Table 6 – Arrowcrest Indexed Revenue

	2006	2007	2008	2009	2010
OEM	100	144	84	129	123
AM	100	30	20	17	15
TOTAL	100	111	66	97	92

Table 6 shows that Arrowcrest lost revenue in the investigation period.

8.10 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.

³⁶ While data prior to 2006 was not subject to verification, based on Customs and Border Protection's verification of other data supplied by Arrowcrest this earlier data is considered reasonably reliable for the purpose of examining trends.

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

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

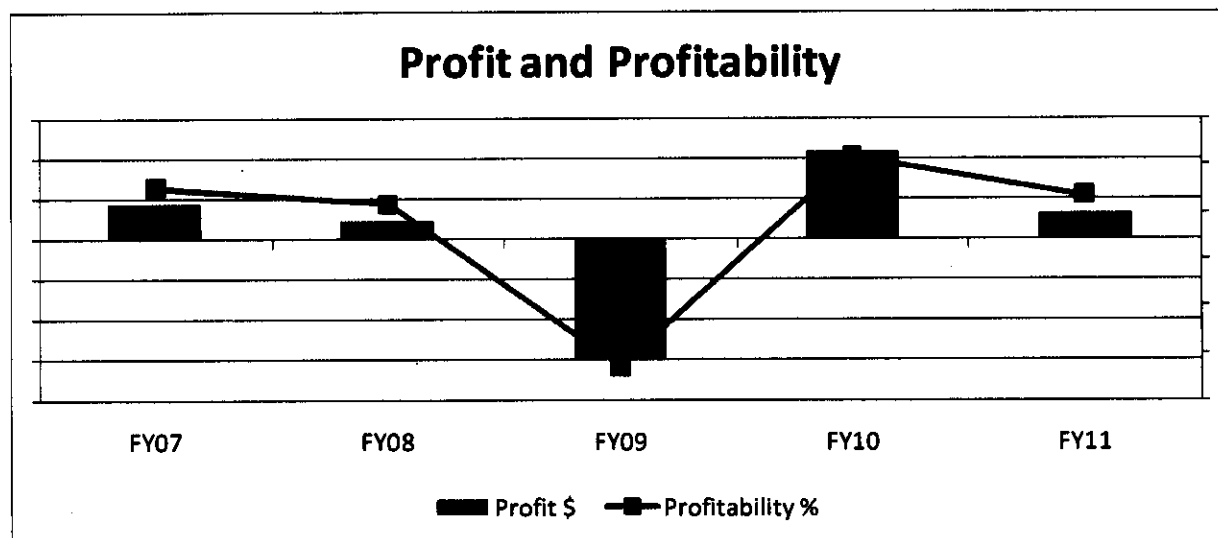


Diagram 4

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 after the prior year's substantial loss, before declining again in the investigation period.

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

8.11. 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.

8.11.1. 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, Arrowcrest claims, 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.

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 view that Arrowcrest experienced injury in the form of reduced capacity utilisation.

8.11.2. 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.

During the verification visit Customs and Border Protection was provided with evidence showing the reduction in employee numbers within its warehousing and sales offices in the investigation period. 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 view that the Australian industry has experienced injury in the form of reduced employment.

Submission to SEF:

Customs and Border Protection's finding of injury in the form of reduced capacity utilisation and employment has been further supported in subsequent submissions by other Australian industry members. In its submission dated 15 May 2012, Dragway provided details of staff lay offs and noted plant and equipment currently sits idle within its manufacturing plant. Dragway attributes these losses directly to low cost ARWs imported from China and the inability to compete against them in the market. Dragway has further noted it has had to take on non-related ARWs work to keep the business running, however these alternate paths have not created sufficient revenue streams to recover what has been lost as a result of low cost ARWs from China which are keeping employment and capacity levels at a reduced level. Customs and Border Protection notes that the information and data supplied by Dragway has not been verified and therefore has not been factored into the injury analysis.

8.11.3. Assets

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

8.11.4. Capital investment

Arrowcrest provided a summary of all capital expenditure activities from 2003 to 2011³⁷. 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 on to Toyota in order to retain their business.

8.11.5. Research and development

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

8.11.6. Return on Investment

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

8.11.7. Productivity

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

8.11.8. Stocks

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

8.11.9. Cash flow measures

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

8.11.10. Wages

Total and average wages have remained stable during 2011.

8.11.11. Findings in relation to other injury factors

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

³⁷ Arrowcrest visit report Nov 2011 – confidential attachment INJURY 1

9. HAVE DUMPING AND SUBSIDY CAUSED MATERIAL INJURY?

9.1. Finding

Customs and Border Protection found 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 margin³⁸ and the particulars of the countervailable subsidy³⁹ 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 13 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-minimis to 29.3%. After taking into the overlap described above dumping margins range up to 25.4%.

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-minimis to 58.8%.

³⁸ S. 269TAE(1)(aa)

³⁹ S. 269TAE(1)(ab)

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.

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.⁴⁰
2. Correspondence between Arrowcrest and a customer concerning a Chinese exporter's proposed pricing.⁴¹
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.⁴²

'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 ARWs⁴³. The reason for both considerations is that chrome finished ARWs

⁴⁰ Arrowcrest Visit Report November 2011 – confidential attachment CAUSATION 10

⁴¹ Arrowcrest Visit Report November 2011 – confidential attachment CAUSATION 1

⁴² Arrowcrest Visit Report November 2011 – confidential attachment CAUSATION 9

⁴³ 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.

cost significantly more than other finishes, and are priced accordingly. The chrome finish therefore had the ability to distort the results. Both importers 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.

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%.

Finding – Price undercutting

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 prices 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.

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 Toyota that began in November 2009 but carried through to September 2011, which 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.

Submission to SEF:

Mullins and Ford submitted that price suppression during the investigation period is not possible in the OEM sector as contract prices were set prior to the investigation period.

Response:

Despite having contract prices set prior to the investigation period, copies of OEM contracts examined by Customs and Border Protection included allowances for variances in price over the duration of the contract. These variation allowances were factored in to cover fluctuations in the cost of aluminium, manufacturing costs and currency prices. However, evidence was provided by Arrowcrest of negotiations with Toyota involving the use of comparative rates of Chinese imports to suppress Arrowcrest's proposed price increases to cover its increased costs during the investigation period. Therefore, despite contract prices being set in advance, evidence of price suppression was found during the investigation period in the OEM market. Given the large proportion of sales volumes affected by this negotiation, the subsequent impact on Arrowcrest's revenue was significant.

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 by around 2.5%, Arrowcrest's sales volume decreased to a greater extent. Arrowcrest's loss of sales volume in the investigation period accounted for approximately 52% of the total reduction in the Australian market for ARWs.

9.5.1. AM market

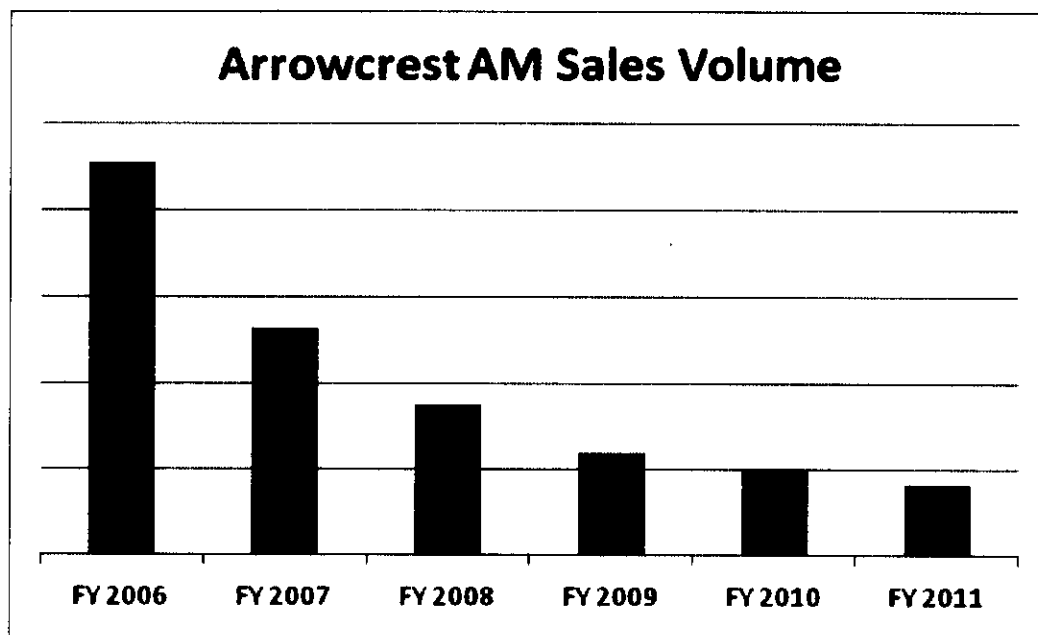
Customs and Border Protection is aware of major customers of Arrowcrest that have multi-sourced their ARWs requirements from both the Australian industry and Chinese manufacturers in the injury analysis period.

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. This conclusion is supported by submissions made on behalf of other Australian industry members, who claim to have suffered loss due to dumped ARWs imports.

Price undercutting is most prevalent in the AM sector. As discussed earlier in this report, 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 any 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% on an individual basis, and 16.5% overall. The AM market, on the other hand, grew in the investigation period. Diagram 6 shows the total sales volume trends for Arrowcrest's four major AM customers over the injury analysis period.

Diagram 6 : Total AM Sales Volumes of Four Major AM Customers



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 AM sales 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 GM Holden in recent times. It has also provided evidence of its quote to supply GM 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 the recent tender was not solely due to pricing. Further evidence of the tender process was requested by Customs and Border Protection from Holden subsequent to the verification visit in order to establish the reasons that Arrowcrest's bid was not successful, but no further detail was provided. In the absence of this information, Customs and Border Protection considers it reasonable to conclude 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.

Submission to SEF

GM Holden submitted that the contact between it and Arrowcrest in relation to the quote has been misrepresented. GM Holden claims that the client only issued a "Request for Interest to Supply" and any discussion in relation to price would only have taken place once Arrowcrest had advanced beyond a point "where assessment was based on criteria other than price, which did not occur." Arrowcrest has provided Customs and Border Protection with contemporaneous correspondence that clearly shows that a quote for supply – including price – was requested by GM Holden.

GM Holden also submitted that Arrowcrest's supply of ARWs to GM Holden in recent times was only to meet a requirement to support spare parts, and the purchases were "relatively minor". It seems reasonable to conclude that if GM Holden had any concerns with the quality of Arrowcrest's product it would not fit them to its vehicles regardless of maintenance contracts or order quantity.

9.5.3. Finding

Arrowcrest's loss of volume in the AM segment in the investigation period was caused by dumped and subsidised ARWs exported from China.

Arrowcrest's reduction in OEM sales volume in the investigation period is indicative of reduced motor vehicle production by Toyota, and Customs and Border Protection has not attributed this loss of volume to dumping or subsidisation. Arrowcrest did, however, lose a tender during the investigation period to Chinese imports at dumped prices.

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 AM 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 in both the AM and OEM sectors.

Volume lost to Chinese exports by the Australian industry and price suppression had a significant effect on profits and profitability in the injury analysis period. Higher fixed unit costs due to lower production volumes would also reduce profits and profitability.

Customs and Border Protection therefore finds 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 imports⁴⁴.

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.

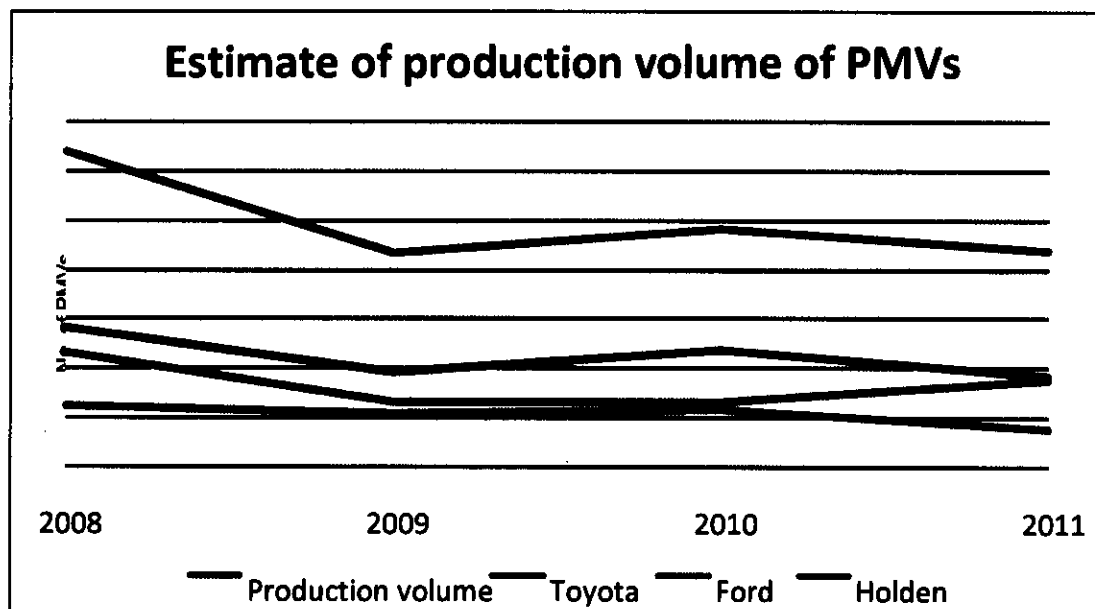
The sales process in the OEM segment is driven by the PMV manufacturers. It is typical for a wheel production contract to be awarded up to two years prior to the production phase of a new model vehicle. The typical life-cycle of a model is between two and five years. The size of the OEM segment is therefore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

Changes in the production volume of PMVs (excluding performance vehicles) during the period 2008 to 2011⁴⁵ are shown in Diagram 5.

⁴⁴ Subsection 269TAE(2A)

⁴⁵ In calendar years

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, and was experienced mainly in the AM segment. 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,
- 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, advised⁴⁶ 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 new 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.

Submission to SEF:

Mullins Wheels submitted that, amongst other things, insufficient style releases by Arrowcrest contributed to the Applicant's injury.

⁴⁶ HSV visit report – March 2012

Response:

After analysing the available data, Customs and Border Protection does not consider that offering a large number of styles is indicative of increasing the likelihood of sales; rather, careful selection of a small range of models is more likely to contribute to increased sales and revenue.

Mullins Wheels' own data indicates the majority of all ARW styles offered in both the passenger motor vehicle and 4 x 4 ranges represented a minimal sales volume during the investigation period, with a small number of 'popular' models contributing the majority of revenue during the investigation period.

Customs and Border Protection considers Mullins Wheels' submission that offering several hundred styles increases sales volumes is not reflective of its own sales data, and Customs and Border Protection does not view the number of styles offered by Arrowcrest as a more significant injury factor than dumped or subsidised imports.

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 2007 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 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 HSV 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 HSV 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

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 proffered by interested parties do not detract from the assessment that dumping and subsidisation, in isolation, has caused material injury to the Australian industry.

Submissions to SEF

1. Materiality of injury was not quantified in the SEF (Mullins)
2. OEM market represents such a large proportion of Arrowcrest's sales that any occurrence of injury in the AM sector could not be viewed as material to Arrowcrest. (Mullins)
3. Other injury causes were not properly considered by Customs and Border Protection, such as GFC, restocking, drop in production of motor vehicles, disaster in Japan. (Mullins, Holden, Ford)
4. The decrease in Toyota production has not been properly considered as an injury factor. (Mullins)
5. There is no dumping in OEM market therefore the OEM market customers are being unfairly affected by AM market findings. (Holden)
6. There can be no finding of price undercutting in the OEM market. (Ford)

Response to Claims:

Details of the movement in market size and share were provided in indexed tables within the SEF. Certain financial detail is not able to be released as it would constitute a release of confidential information provided by the Australian industry. Customs and Border Protection has examined the materiality of each established injury factor and determined that the combined effect is substantial enough to cause material injury to the Australian industry.

The Australian AM market increased in volume by approximately 28% whilst the OEM market increased in volume by approximately 52% over the investigation period. Over that same period Arrowcrest's share of the AM sector decreased from 5% to 1% and its share of the OEM market reduced by 12%.

Given the size of the available AM market, this loss of business represents significant amounts to Arrowcrest in terms of revenue and profitability given the larger profit margins to be had in this sector. Also contributing to the injury to the Applicant's recorded losses is their inability to regain AM market share due to evidence of price undercutting and the inability to compete to increase business. This failure to regain AM sector sales due to price undercutting by imported products has been incurred by Arrowcrest and other members of the Australian industry. While AM sector sales account for a small proportion of Arrowcrest's sales turnover in the investigation period, the AM sector sales accounts for the entire turnover of other Australian Industry members who were not visited during the investigation but provided support via submissions throughout the investigation.

Claims that there has been no injury in the OEM sector are incorrect. Customs and Border Protection has examined evidence provided by Arrowcrest showing Chinese prices being used in negotiations for allowable price variations in the Toyota contract, preventing necessary price recovery increases being utilized by Arrowcrest. Customs and Border Protection has considered the magnitude of the price suppression experienced by Arrowcrest in these negotiations and considers that the inability to recover increased costs has resulted in injury to Arrowcrest which, when combined with the loss of sales to HSV towards the end of the investigation period, constitutes material injury to Arrowcrest.

Calculations based on verified data show price undercutting in the OEM market at the macro level, details of which are included in this report. Given that the Applicant and relevant OEM exporter do not supply the same customers, micro level analysis could not be conducted. As stated above, Toyota used a Chinese price (Customs and Border Protection is not aware where this price was sourced from) to suppress a proposed price increase by Arrowcrest.

Toyota's reduced production figures have been examined and Customs considers that this has contributed to the sales volume decrease experienced

by Arrowcrest in the OEM market. Customs and Border Protection has not attributed any decrease in sales volume to Toyota to dumping or subsidisation. However, the loss of the Holden Cruze tender has prevented Arrowcrest from increasing its sales volume in an expanding OEM market sector. Whilst Holden has maintained that factors other than price form the basis of their decisions, no specific evidence of Arrowcrest's failure in the tender were provided despite the request for further information.

Other Factors

Evidence shows that during the GFC Arrowcrest's sales volumes decreased. However over that same period, as noted in SEF181, exports from China appear to have been unaffected as Chinese export volumes increased. If the GFC was a contributing factor to injury caused to the Australian industry it would be expected that sales volumes from China would also have decreased over that same period. Throughout the GFC period Chinese exporters were able to not only maintain but increase sales volumes to Australia despite the Australian market decreasing.

Submissions to SEF181 noted the disaster in Japan as a contributing factor to the Australian industry's injury. This was the first time this issue had been raised over the course of the investigation and no evidence was provided of possible effects it could have had on the Australian market or industry during the investigation period.

In a submission to SEF181 Arrowcrest provided an analysis of its revenue figures over the injury analysis period, which it claimed took into account GFC and restocking considerations, and even with these factored in, figures show consistent reductions over the injury analysis period of revenues.

10. WILL DUMPING AND SUBSIDY AND MATERIAL INJURY CONTINUE?

10.1. Finding

Exports of ARWs from China in the future may be at dumped and subsidised prices and 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 the 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-minimis to 29.3% and de-minimis to 58.8%, 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 found 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.

Based on the available evidence, Customs and Border Protection finds 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

11. NON-INJURIOUS PRICE

11.1. Finding

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. Assessment of NIP

Arrowcrest 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 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.

The construction of a USP and NIP for the goods is complex in the case of ARWs given:

- the different cost structures of AM and OEM wheels, AM wheels having higher SG&A costs;
- different profits that can be achieved in the OEM and AM markets; and
- different routes to market – AM wheels are imported via an importer that then on-sells to distributors and retailers and AM importers can generate significant profits. The OEM wheels exported to Australia during the investigation period, however, were effectively delivered directly to the end users.

SEF181

Customs and Border Protection considers it desirable, and practical, to calculate only one NIP for the purpose of the lesser duty rule. In SEF 181 Customs and Border Protection constructed a USP using a weighted average cost to make and sell which, given the greater volume of sales to the OEM segment, was weighted more towards the lower cost to make and sell OEM wheels. Customs and Border Protection applied a level of profit based on a submission from Arrowcrest that advised a minimum level required to re-invest.

In a submission to the SEF, Arrowcrest clarified that the level of profit used by Customs and Border Protection referred to a minimum return for a particular contracted sales volume and was not adequately representative of a return for Arrowcrest's entire operation.

REP181

As stated above, the NIP of the goods exported to Australia is defined as the minimum price necessary to remove the injury caused by the dumping and subsidisation. Customs and Border Protection considers that the NIP calculated for SEF 181, because it was based on a weighted average cost to make and sell, may be the minimum price necessary to remove injury in the OEM market but due to the differences outlined above, it is below the minimum price necessary to remove injury caused by dumping and subsidisation in the AM market. It is considered that the Minister, in having regard to the desirability of imposing a lesser amount of duty, should have regard to imposing a level of duty that will at least remove the injury caused by dumping and subsidisation.

For the purpose of this report Customs and Border Protection has re-calculated the USP using Arrowcrest's cost to make and sell AM ARWs. In doing so Customs and Border Protection has taken into account that Arrowcrest's unit costs in the investigation period for AM sector sales are higher than what they would otherwise be in the absence of dumping and subsidisation due to lower volumes. Arrowcrest has provided an estimate of the increased volume that might have been achieved on the same cost base in the absence of dumped and subsidised imports.

Customs and Border Protection has also taken into account Arrowcrest's submission to the SEF in relation to the profit used. Further analysis of Arrowcrest's cost and pricing data shows that the profit used in SEF181 understates the level of profit that could reasonably be achieved in the absence of dumping and subsidisation. The level of profit originally proposed by Arrowcrest is considered a conservative measure of profit taking into consideration the profits actually achieved during the investigation period, which was a period in which prices were suppressed. Based on this analysis the profit suggested by the Australian industry has been used to calculate the USP.

Customs and Border Protection has deducted the average post-exportation costs, SG&A and profit from verified information collected from importers from the USP to calculate the NIP.

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.

Recognising the different cost structures and route to market for OEM wheels, Customs and Border Protection also calculated a NIP based only on the cost to make and sell OEM wheels and a reasonable level of profit in this market. Importers' SG&A and profit was not deducted from this figure due to the fact OEM wheels are delivered directly to the end user. The NIP calculated using this method was still higher than the export prices of Dicastal, an exporter of OEM wheels to Australia during the investigation period.

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

12. DISCRETIONARY FACTORS

The following matters may be considered should the Minister choose to exercise his discretion not to impose measures.

An imposition of measures on ARWs will affect the whole supply chain – both downstream and upstream suppliers.

Parties opposed to the introduction of measures on ARWs contend that such imposition will increase costs for the importing of ARWs and for purchasers of ARWs, thereby causing injury to their businesses in Australia and its export markets. They also claim that the injury alleged by Arrowcrest will not be redressed with the imposition of such measures.

These parties include Australian importers, retailers and end users of ARWs:

- Ford;
- Holden;
- Boss Wheels Pty Ltd;
- Jayco;
- Motorsport Wheels & Tyres; and
- Mullins Wheels Pty Ltd.

And non-Australian parties:

- Government of China;
- CITIC Dicastal;
- Pilotdoer;
- Jinfei Kaidan; and
- PDW.

Of the opposing parties, Holden and the Government of China make additional comments:

- Holden claims that the introduction of measures will not result in it changing its source of supply of ARWs. It also claims that Toyota will be conferred an additional advantage as a result of the imposed measures as Toyota will be unaffected, being clients of Arrowcrest.
- The Government of China asserts that if measures are imposed as a result of finding a market situation it will pose a serious risk to trading relations between Australia and China. The Government of China claims that the country's international legal rights, and the trade benefits that are expected to be gained from these, will be nullified and impaired.

Parties supporting the imposition of measures on ARWs contend that applying the proposed measures will protect the automotive manufacturing

industry and jobs in Australia, and ensure that Chinese exports are priced fairly. One member of the Australian industry, Dragway, states that the imposition of the proposed measures will increase the demand for aluminium and related supplies from other Australian companies. This will consequently result in a more competitive market.

Support for the measures has come from both industry and its respective suppliers, including:

- Arrowcrest Group;
- Dragway;
- Australian Foundry Institute;
- AkzoNobel (Australian manufacturer and supplier of high performance paints to the Automotive Industry); and
- CAST Cooperative Research Centre Limited (Australian scientific research body that conducts research in metals technology and engineering with the objective to assist Australian companies in achieving industrial, commercial and economic growth).

PUBLIC RECORD

13. PROPOSED MEASURES

Customs and Border Protection recommends 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 recommends that a countervailing duty notice be published in respect of ARWs exported to Australia by all exporters other than CITIC Dicastal and PDW.

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 report, 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. This does not occur for any size for any exporter, therefore the normal value is the operative measure and the proposed measures are linked to the full margin of dumping.

Customs and Border Protection also compared a NIP calculated for OEM wheels only (refer section 11.4 above) to the sum of the export prices and dumping duties for Dicastal and still found that the NIP was not the operative measure for any size.

14. RECOMMENDATIONS

The delegate of the CEO is satisfied that the dumping and subsidisation of imports of aluminium road wheels exported to Australia from China caused material injury to the Australian industry producing like goods.

The delegate of the CEO recommends that the Minister impose anti-dumping and countervailing measures on aluminium road wheels exported to Australia from China.

The delegate of the CEO recommends the Minister be satisfied:

- in accordance with s.269TAAD(1), that, in relation to Jinfa Kaida, like goods are sold in the country of export in sales that are arms length transactions in substantial quantities during an extended period for home consumption:
 - at a price that is less than the cost of such goods, and
 - it is unlikely that the seller of the goods will be able to recover the cost of those goods within a reasonable period;
- in accordance with s.269TAC(2)(a), that because of the situation in the market of the country of export is such that sales in that market are not suitable for use in determining price under subsection 269TAC(1), the normal value of goods exported to Australia from China cannot be determined under s.269TAC(1);
- in accordance with s.269TAB(3), that sufficient information has not been furnished, or is not available, to enable the export price of aluminium road wheels exported to Australia from China by the category of 'selected non-cooperating' exporters be determined under s.269TAB(1)(a), (b), or (c);
- in accordance with s.269TAC(6), sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under s.269TAC(1), (2), (5C) or (5D) for 'selected non-cooperating' exporters;
- in accordance with s.269TACC(7) for selected non-cooperating exporters, that subsections 269TACC(2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred, or subsection 269TACC(6) is inappropriate for determining the total amount of subsidy attributable to a conferred benefit;
- in accordance with s.269TG(1) the amount of the export price of aluminium road wheels that have been exported to Australia from China is less than the amount of the normal value of those goods and because of that, material injury to the Australian industry producing like goods has been, or is being caused;

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

The delegate of the CEO recommends the Minister determine:

- in accordance with s.269 TAAC(4), subsidy Program 1 (Goods Provided at Less than Adequate Remuneration) is specific;
- in accordance with s.269TAAD(4), the amounts for the cost of production or manufacture of goods in the country of export and the administrative, selling and general costs associated with the sale of those goods;
- in accordance with s.269TAB(1)(c) the export prices for CITIC Dicastal be calculated having regard to all the circumstances of the exportation;
- in accordance with s.269TAB(3), the export prices for the categories of 'selected non-cooperating' exporters be determined having regard to all relevant information;
- in accordance with s.269TAC(2)(c) the cost of production or manufacture of the goods in the country of export, and the administrative, selling and general costs associated with the sale and the profit on that sale;
- in accordance with s.269TAC(6), normal values for the categories of 'selected non-cooperating' exporters having regard to all relevant information;
- in accordance with s.269TACB(1), by comparison of the weighted average of export prices during the investigation period and the weighted average of normal values during that period, that exports of aluminium road wheels from China by CITIC Dicastal, Pilotdoer, Jinfei Kaida, and Yueling and 'selected non-cooperating' exporters were dumped and;
- in accordance with s.269TACC(7), for selected non-cooperating exporters, an alternative basis for deciding whether a benefit has been conferred or for working out the amount of subsidy attributable to the benefit.

The delegate of the CEO recommends the Minister direct:

- in accordance with s.269TAC(8), the price paid or payable for like goods sold by CITIC Dicastal, Pilotdoer, Jinfei Kaida and Yueling be taken to be such a price adjusted for differences between domestic and export sales to ensure a fair comparison;

The delegate of the CEO recommends the Minister compare:

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

The delegate of the CEO recommends the Minister declare:

- in accordance with s.269TG(1), by public notice, that section 8 of the Dumping Duty Act applies to:
 - the goods exported by all exporters from China, except PDW, to the extent permitted by s.269TN; and
 - like goods that were exported to Australia by all exporters from China, except PDW, after the CEO made a PAD under s.269TD on 31 May 2012 but before publication of the notice, to the extent permitted by s.269TN
- in accordance with s.269TG(2), by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from China, except PDW, after the date of publication of the notice;
- in accordance with s.269TJ(1), by public notice, that section 10 of the Dumping Duty Act applies to:
 - the goods exported by all exporters from China, except CITIC Dicastal and PDW, to the extent permitted by s.269TN; and
 - like goods that were exported to Australia by all exporters from China, except CITIC Dicastal and PDW, after the CEO made a PAD under s.269TD on 31 May 2012 but before publication of the notice, to the extent permitted by s.269TN
- in accordance with s.269TJ(2), by public notice, that section 10 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from China, except CITIC Dicastal and PDW, after the date of publication of the notice.

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

APPENDIX A – ASSESSMENT OF MARKET SITUATION IN CHINA

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

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.

1.3. 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 Minister⁴⁷ is satisfied that:

'...because the situation in the market of the country of export is such that

⁴⁷ In this case, the Minister for Home Affairs.

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 construction⁴⁸ or third country sales.⁴⁹ 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.⁵⁰

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

48 Section 269TAC(2)(c)

49 Section 269TAC(2)(d)

50 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.

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(4) 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.⁵¹

Submission to the SEF

Dicastal submitted that there is no provision in Part XVB of the Act that authorises the use of surrogate prices in the construction of normal values. As set out above, Regulation 180 provides that the cost of production must be based on information in the exporter's records if certain conditions are met. It is Customs and Border Protection's view that where these conditions are not met, it is able to substitute a cost that reasonably reflects competitive market costs.

⁵¹ For example, in the recent investigation into aluminium extrusions from China (REP 148) – refer section 2.4 below.

⁵² Submission to the SEF dated 17 May 2012

1.4. Policy and practice

Market situation

In relation to market situation, the Customs and Border Protection's Dumping and Subsidy Manual⁵³ 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 barter 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

⁵³ Available online at <http://www.customs.gov.au/site/page5719.asp>

would be if they were determined in a competitive market.⁵⁴

[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.⁵⁵

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

⁵⁴ Customs and Border Protection Dumping and Subsidy manual June 2009, pp 26-27

⁵⁵ It is noted that Customs and Border 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 considers that significant government intervention in relevant market factors could distort prices to a degree that those prices may be unsuitable for normal value.

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.

1.5. 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 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).

1.6. 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.

1.7. Background – ARW production process and materials

1.7.1 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.

1.7.2 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.

1.7.3 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 stages⁵⁶:

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.

⁵⁶ Information obtained from the website of Comalco.

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 2006⁵⁷. 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;

⁵⁷ Provided as Attachment A1 to the GQ

- 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
- 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):

- a. Achieve domestic production of alumina of 14 million tons in 2010;
- b. Spread the Bayer mineral processing approach more widely;
- c. Change the product mix by 2010 to higher value products;
- d. Improve all equipment and facilities;
- e. Reduce energy consumption down to 900 kilograms of standard coal per tonne or less;
- f. Balance supply and demand for electrolytic aluminium;
- g. Support good enterprises and eliminate inferior ones through the market;
- h. Encourage good enterprises to increase their production up to 75% out of entire production of the whole industry;
- i. Encourage the adoption of the 160KA smelting technique of the large-scale rebaked anode aluminium reduction cell; and
- j. Increase the proportion of highly-added-value products.

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

- a. enhance the concentration of the industry;
- b. strengthen the coordination between credit policy and industrial policy;
- c. enforce the regulation that capital invested in the electrolytic aluminium construction projects is proportioned by 35% or more;
- d. 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;

- e. regulation of the reform by departments and governments at various levels to prevent enterprises from taking the chance of reform to evade bank debts;
- f. handle the examination and approval procedures to grant exploration permission and exploitation permission for newly-built bauxite mining;
- g. encourage the use of overseas bauxite resources;
- h. strengthen the coordination and monitoring over the import of alumina;
- i. control the export of electrolytic aluminium;
- j. improve the mechanisms of power price formation and power supply;
- k. export rebate rules do not apply to the electrolytic aluminium export products;
- l. prohibition of the trade of alumina process;
- m. improve the price mechanism for electrolytic aluminium, and
- n. 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)⁵⁸ 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.

⁵⁸ 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.

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*⁵⁹ (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)⁶⁰ 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'.

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'.

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

⁵⁹ GOC response to the GQ, Attachment 21.

⁶⁰ GOC response to the GQ, Attachment 20.

⁶¹ 11th National FYP, page 1.

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 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)*⁶²
- the *Directory Catalogue on Readjustment of Industrial Structure* (discussed in Section 2.5.1 of this report); and
- the State Economic and Trade Commission (SETC)⁶³ *Development Plan for the Metallurgical Industry (2001-2005)*⁶⁴

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.

⁶² GOC response to the GQ in the HSS investigation, Attachment 23.

⁶³ This entity no longer exists. The functions of SETC were absorbed by the NDRC in 2003.

⁶⁴ Although Customs and Border Protection has been able to access the text of this plan, Asla Times Online reported in its article *Execution plan for China's industrial revolution* of July 20, 2001 (<http://www.atimes.com/china/CG20Ad04.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.

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 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 GQ 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 officers 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 (REP144), 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 FYPs⁶⁵ 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.

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).⁶⁶

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.⁶⁷

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.

⁶⁵ In reference to the national-level FYP.

⁶⁶ Page 39.

⁶⁷ Customs and Border Protection's *Government of the People's Republic of China Visit Report, February 2010*, page 49.

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 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.

The most prominent of these are discussed individually below.

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'.

2.6. Nonferrous Metal Industry Adjustment and Revitalization Plan

The *Nonferrous Metal Industry Adjustment and Revitalization Plan* (Nonferrous Plan)⁶⁸ 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
- 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

⁶⁸ Provided as Attachment A47 to the GQ

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.

2.7. 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 2005 (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 in relation to the aluminium and ARWs industries (among other items)⁶⁹.

⁶⁹ At the time of the SEF the GOC had only translated parts of the 2011 Directory Catalogue that relate 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). The GOC has since provided an updated translation (response to SEF dated 25 May 2012).

	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
2011 Directory Catalogue	<ul style="list-style-type: none"> • Recycling of scrapped and miscellaneous non-ferrous metal • Comprehensive utilisation of valuable elements • Comprehensive utilisation of red mud and melting slag • Alumina extracted from high-alumina fly ash • Production of new non-ferrous metal materials for eras (<i>sic</i>) such as transportation and high end manufacturing 	<ul style="list-style-type: none"> • Electrolytic aluminium (with exceptions) 	<ul style="list-style-type: none"> • Technologies and equipment for smelting renewable aluminium alloy and secondary lead by using coke-hole • Projects of renewable aluminium alloy or secondary lead with output of less than 10 thousand tonnes

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),⁷⁰ 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 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:

⁷⁰ 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 response to SEF181 (submission of 25 May 2012), the GOC has provided clarification on the Interim Provisions and noted that these were not abolished, but rather the 2005 Directory Catalogue has been abolished and replaced with the 2011 Directory Catalogue, and that the Interim Provisions and Directory Catalogue are 'part of the same policy'. The GOC further clarified that the Interim Provisions set out the criteria under which certain processes can be categorised into the three Directory Catalogue categories, while the Directory Catalogue identifies what processes have been characterised under the Interim Provisions.

- 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.⁷¹
- The restricted category... need to be transformed or prohibited from being newly built.⁷²
- 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.⁷³

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.

The GOC also noted:

*The encouraged category enjoys some corresponding preferential treatment with regard to imported equipment.*⁷⁵

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

⁷¹ Chapter III, Article 12

⁷² Chapter III, Article 15

⁷³ Chapter III, Article 16

⁷⁴ In response to Question 32(b)(ii) of the SGQ for the HSS investigation

⁷⁵ In response to Question 32(b)(ii) of the SGQ for the HSS investigation

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.

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

⁷⁶ GOC response to the SGQ for the HSS investigation, Attachment 176.

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;
- 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 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.

2.9. 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 2010⁷⁷. The document refers to an Appendix that lists enterprises subject to elimination of backwards production capacity across a number of industries, including electrolytic aluminium. At the time of the SEF the Appendix attached to the document only contains a list for the steel industry, but the GOC has since provided a new translation of the relevant information. The document shows that in 2010, total production of around 371,000 MT was eliminated.

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,

⁷⁷ Attachment A33 to the GQ

raising product quality, and changing the product mix, as well as encouraging environmental improvements.

2.9.1. Market entry criteria and industry operating conditions

The NDRC introduced the *Requirements on Entry into the Aluminium Industry (Entry Requirements Policy)*⁷⁸ 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
- 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

⁷⁸ Attachment 6, GQ

- 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*⁷⁹ 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.

2.9.2. 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 backward production capacity and to encourage technical and environmental advancement are observed.

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

2.10. Measures to curb production capacity redundancy

2.10.1 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).⁸⁰

⁷⁹ Attachment 11, GQ

⁸⁰ GOC response to the GQ in the HSS investigation, Attachment A20.

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 downfalls 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 bankruptcies 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

...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'.

2.10.2 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.

There was no export tax on ARWs throughout July 2006 to June 2011. The export tax on aluminium 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 China⁸².

In relation to VAT export rebates, Customs and Border Protection note that bauxite and primary aluminium attracted no export rebates (zero rates) from

⁸¹ Response to the GQ, Attachment 31

⁸² Response to the GQ, Attachment 30

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.

The import and export volume data provided by the GOC in its SGQ response is summarised below (in millions of tonnes).⁸³

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	0.31	0.35
AL Import (MT)	0.24	0.28	0.26	1.74	0.31	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	20.00	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	4.40	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.

⁸³ This data was pro-rated for 2006 and 2011, as the GOC was only asked to provide data from July 2006 – June 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.

2.10.3 World Trade Organisation (WTO) Dispute DS394

China's export tariffs,⁸⁴ 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.

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.⁸⁵

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.

⁸⁴ The Panel noted that the 2010 Tariff Implementation Program did not maintain an export duty on any category of bauxite.

⁸⁵ Reports of the Appellate Body, China – Measures Related to the Exportation of Certain Raw Materials (AB201-5) at 363.

2.10.4 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.

2.11. Subsidies in the aluminium industry

2.11.1 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.

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).

2.11.2 '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.2697 (CCO) 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 ARWS manufacturers.

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

2.11.3 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 market⁸⁶.

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

⁸⁶ Preliminary Affirmative Determination 148, October 2009

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

2.11.4 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 GQ⁸⁷.

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 SGQ⁸⁸ 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.'

Subsequent to the SEF the GOC has provided further clarification of its response in the SGQ⁸⁹. The GOC advised that 36 designated cities in China will report prices of goods it produces, sells or markets. These reports are then compiled by the "local price monitoring authority" and passed to the "provincial price monitoring authority". The GOC advises that the provincial authority may produce a province-wide briefing paper and provided an attachment of one such example. Customs and Border acknowledges the receipt of this information, however maintains that its request was for the document *Monitoring Report System for Price of National Important Means of Production*, or if not this document then whatever document the GOC referred to wherein it "stipulates" the monitoring system for aluminium and alumina.

2.12. 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

⁸⁷ Attachment A7 to the GQ

⁸⁸ Question B14(i)

⁸⁹ Response to the SEF, 25 May 2012

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 government⁹⁰.

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 website⁹¹, 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 2010⁹²:

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

⁹⁰ GOC response to the GQ p 33 and Attachment 52, pg 45

⁹¹ Provided in GOC response to the GQ, Attachment 133

⁹² Accessed at

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

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 Linzhou 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 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.

2.13. 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.

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.

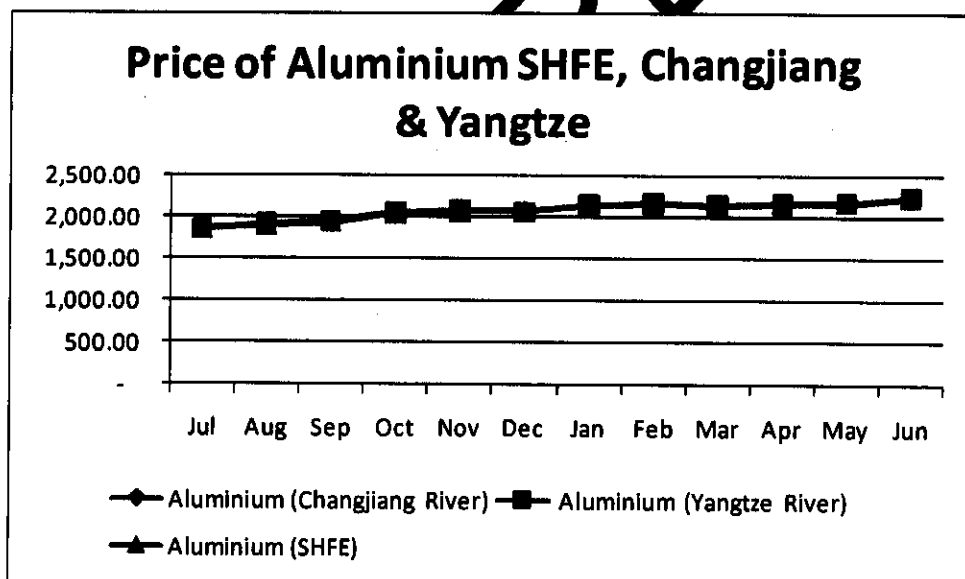
The exporters that provided questionnaire responses advised that their purchase price of aluminium and/or aluminium alloy is based on one or more of the Shanghai Futures Exchange (SHFE), the Yangtze River Exchange or the Changjiang River Exchange. None of the verified exporters imported aluminium or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

In its response to the SGQ, 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 market⁹³. 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 (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).

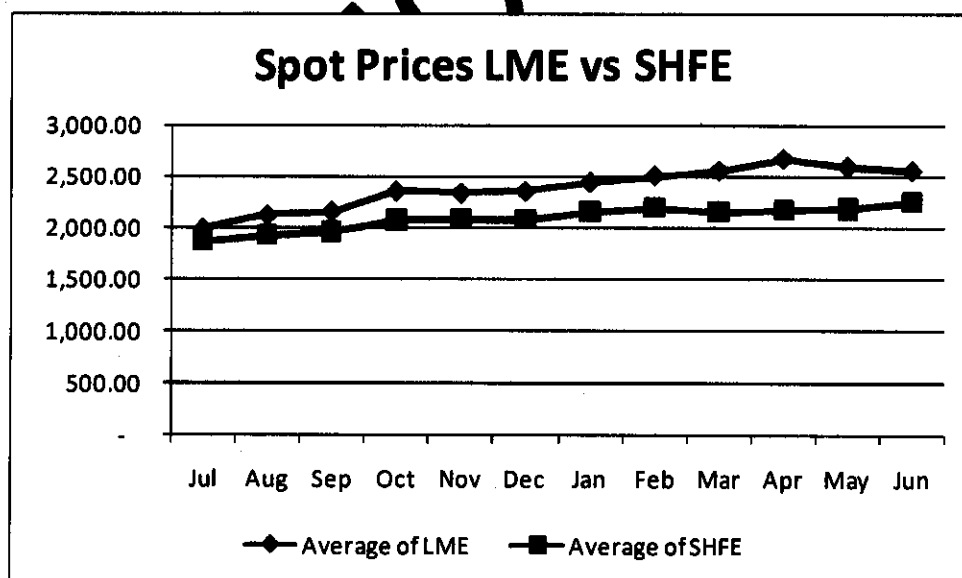
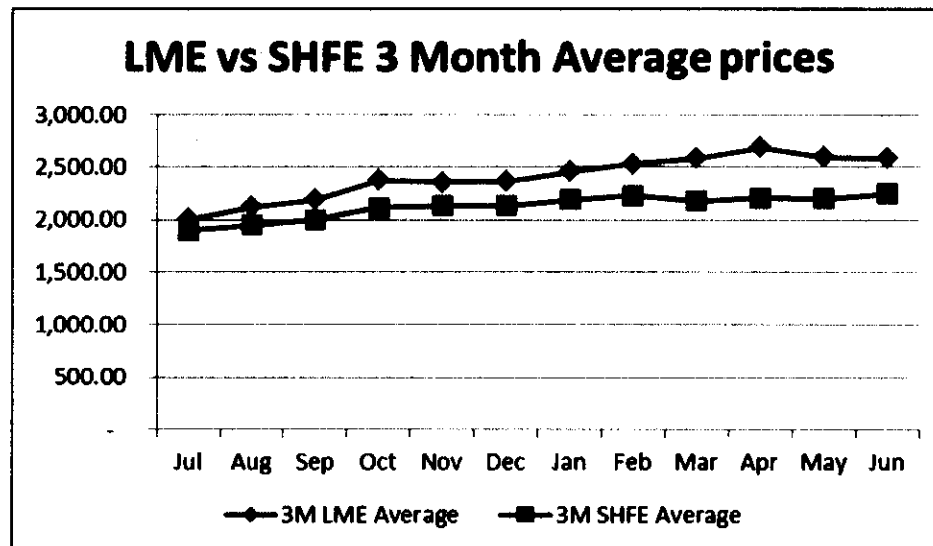


In the aluminium extrusions investigation Customs and Border Protection found that the London Metal Exchange (LME) prices could be used as a benchmark for a price in a competitive market. This is due to the LME being an open and transparent stock exchange that operates without any restrictions. The benchmark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

⁹³ GOC response to the SGQ, question B15(a)

LME prices. By contrast, the SHFE is a closed exchange and is restricted to Chinese nationals only.

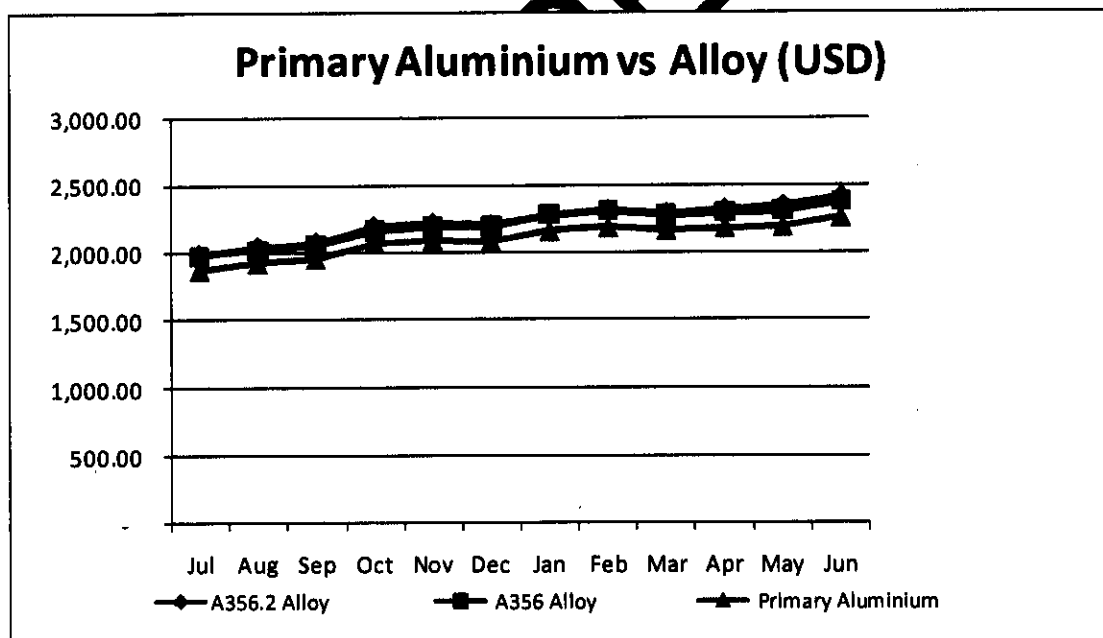
The comparative analysis of the aluminium prices between LME and SHFE, as shown in the graphs below, during the investigation period shows a variance of 13% on three month average prices and 14% using spot market prices, with SHFE prices being consistently lower than LME prices.



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 period⁹⁴. 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 aluminium and alloy during the investigation period. This data shows an average price difference over the investigation period of 1.2%, 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

⁹⁴ GOC submission dated 20 March 2012

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'⁹⁵ 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.⁹⁶

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 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.

3.2.2 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

⁹⁵ The GOC advised that this term refers to enterprises with revenue greater than RMB5 million

⁹⁶ GOC submission dated 20 March 2012

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 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 than 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 1.4, 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.

3.5. Submissions to SEF

Test applied to establish market situation

The GOC submitted⁹⁷ that Customs and Border Protection has not applied a 'proper or recognised' test to establish the existence of a market situation that did not permit the determination of normal values based on domestic sales in the meaning of Article 2.2 of the ADA, or a proper comparison within the meaning of Article 2.4 of the ADA. The GOC further submitted that the test applied by Customs and Border Protection does not conform with the requirements of s.269TAC(2)(a)(ii).

The GOC submits that Customs and Border Protection's appears to:

...believe it is sufficient to establish that prices of ARWs in the Chinese market are "different" to what they would have been without GOC influence.

However, the GOC considers that Customs and Border Protection does not make a finding of what prices of ARWs would have been without the GOC influences that Customs and Border Protection considers have created a market situation, and that a finding that prices of ARWs in China were not the same as they would have been without GOC 'regulation' of its market is

...irrelevant to determination of normal value in the economy of a WTO member.

Dicastal made a similar submission⁹⁸ that none of the evidence in the SEF identifies or established "how" the GOC's policies and their implementation influenced aluminium and alloy prices in China.

The GOC stresses that prices in every economy will be influenced by government regulation, and that ARW prices in China were at all times determined by supply and demand in a competitive market. Dicastal made a similar submission.

The GOC's position on the 'test' applied by Customs and Border Protection in its determination of the existence of a particular market situation in China is noted.

However, Customs and Border Protection respectfully disagrees with the GOC's assertion that a finding that government influence (which the GOC has identified as 'regulation') has caused prices within that economy/market to be not the same as they would have been without this influence, is not relevant to a determination of the existence of a particular market situation.

⁹⁷ GOC submission of 18 May 2012

⁹⁸ Submission to SEF dated 17 May 2012

On the contrary, Customs and Border Protection notes its policy outlined in the Dumping and Subsidy manual that specifically relates to such circumstances:

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.

99

[Emphasis added]

The analysis and conclusions within this appendix have been made in accordance with this position outlined in the Dumping and Subsidy Manual.

Economic analysis of market situation

The GOC has submitted¹⁰⁰ that:

The economic assumptions and/or constructions allegedly applied to the assessment of a particular market situation...are variously unscientific, unconventional, and unrealistic.

The GOC submits that this analysis appears to be based on a degree of economic theory, but that there is no confirmation that this reflects the experience of Chinese aluminium producers, nor the impacts of GOC policies on the inputs of ARW.

As an example, the GOC notes Customs and Border Protection's findings that certain GOC measures have likely had an impact on the domestic price of ARW, but provides 'no consideration' as to what this impact may have been.

The GOC reproduces an extract from Customs and Border Protection's 2006 REP116, in relation to an earlier investigation into HSS, in which Customs and Border Protection refers to the NDRC Steel Policy and states it:

...is unaware of the success or degree of policy implementation and cannot possibly assess the actual influence, if any, on HSS prices.¹⁰¹

99 Customs and Border Protection Dumping and Subsidy manual June 2009.

100 GOC submission of 18 May 2012

101 REP116 page 70.

The GOC submits that Customs and Border Protection's current assessment of a market situation in the Chinese ARW market does not show:

...appreciation of the impact of policy implementation, whether such policies have in fact been adhered to and to what degree, of their influence on ARW prices.

Customs and Border Protection notes the statements made in REP116 in relation to steel, and consider these reflect the best understanding and evidence available to Customs and Border Protection at the time of that investigation.

The GOC also expressed its concern at the "reversal" of a previous market situation finding in relation to the Chinese market for aluminium extrusions. The GOC states that nothing in the SEF indicates that market situation factors affected the ARW market to a greater extent than they affected the aluminium extrusions market two years previously.

The analysis in REP116 and the aluminium extrusions investigation reflected Customs and Border Protection's best assessment of available information at the time. Customs and Border Protection has undergone thorough analysis of all available information to the current investigation, as detailed throughout this appendix, which has involved specific assessments of the likely impact of the implementation of various GOC policies, examined evidence of the implementation of these policies and that they have been adhered to, and their likely influence on ARW prices (likely to be lower than if they were determined in a market without this extensive GOC influence).

In undertaking this assessment, Customs and Border Protection notes that vast volumes of information and GOC documents have been examined.

Customs and Border Protection disagrees with the GOC's submission that the economic analysis applied in the assessment of the existence of a particular market situation is unconventional. Customs and Border Protection considers that the economics of supply following a shift in the supply curve, and the resulting effect on the equilibrium price of a product are well established and broadly accepted economic principles.

Customs and Border Protection therefore considers that the application of these principles to the observed GOC influences on the Chinese aluminium industry is a solid way to arrive at the conclusion in this appendix that prices of ARWs in the Chinese market are not substantially the same (likely to be artificially low), as they would have been without the examined GOC influence.

In addition, Customs and Border Protection notes its position, as outlined earlier in this appendix, that it is considered that the pricing effect of the impact of government policies on domestic prices of ARWs does not have to be quantified. Customs and Border Protection notes that, even if it were its intention to perform this quantification, the significant volume of GOC

influence noted in the Chinese aluminium industry (as detailed throughout this appendix) would make any such quantification impossible.

Consequently, it is considered that, within this appendix, Customs and Border Protection has reasonably demonstrated that prices of ARWs in China during the investigation period were likely to be artificially lower than what they would have been in the absence of GOC influence in the Chinese aluminium industry, using detailed analysis of GOC policies, plans and implementing measures and accepted economic analysis of the effect of these GOC influences on the supply of ARWs in China.

Flow through of aluminium prices to ARWs

Dicastal submitted¹⁰² that there is no evidence that the low price of aluminium and alloy has flowed through to the selling price of ARWs and no reason why it would necessarily flow through.

As discussed above, Customs and Border Protection considers that the pricing effect of the impact of government policies on domestic prices of ARWs does not have to be quantified. This report sets out the economic analysis conducted that shows why the GOC's macroeconomic policies and implementing measures would have an impact on ARW prices in China. In addition, Customs and Border Protection notes that all exporters verified in the course of the investigation indicated that the price of aluminium and/or alloy is the main factor in the determination of prices.

Evidentiary Issues

The GOC has submitted¹⁰³ its concern over the treatment of certain evidence it has provided to the investigation, as well as the weight placed by Customs and Border Protection on certain evidence from various sources.

The GOC expresses concern that:

- Customs and Border Protection has undertaken its own interpretation of GOC laws and rejected GOC explanations of its own laws;
- Customs and Border Protection has not referred much of the evidence used in the SEF to establish a particular market situation to the GOC for clarification, nor has it been verified; and
- There are references in the SEF to obscure, irrelevant or misconstrued material obtained from third parties

Interpretation of GOC laws

Within this report and appendices, Customs and Border Protection has

¹⁰² Submission to SEF dated 17 May 2012

¹⁰³ GOC submission of 18 May 2012

assessed and analysed vast amounts of information requested of, and provided by, the GOC (including laws, regulations, policies and other GOC documents). In doing so, Customs and Border Protection has sought to reasonably interpret these documents in an impartial and reasoned manner, having regard to all available evidence.

Customs and Border Protection observes that this has necessarily involved the interpretation of the text of various GOC documents, including GOC laws. However, this has at all times been undertaken bearing in mind the context of those documents, and related information provided by the GOC (including its written responses to the GQ and SQG). This is relevant to the assessment of a market situation in the Chinese ARW market that is the focus of the appendix, but also to the assessment of the countervailability of subsidy programs in China (discussed in detail in Appendix B of this report).

This analysis of GOC information, supported by evidence provided by other parties and sourced from publicly available information, has led to the findings within this appendix and other parts of this report.

WTO dispute findings

The GOC's submits in relation to the DS 94, 95 and 398 disputes that the

...quoted recommendation did not in fact apply to many of the measures listed in the SEF because lengthy sections of the Panel's findings were declared moot and of no legal effect.

The GOC further considers that none of the findings referred to in SEF181 in relation to these disputes support a finding of particular market situation in any case.

The GOC's submissions in this matter are noted, and Customs and Border Protection does not consider it necessary to discuss the particulars of the legality of the Appellate Body's recommendations quoted in this appendix.

Customs and Border Protection notes that references made to these WTO disputes in this appendix have been applied to simply demonstrate that the GOC has imposed certain implementing measures on bauxite that are consistent with the aims of its policies in respect of the aluminium industry.

Comments by CHALCO, CITIC Group and Yunnan Aluminium Co GOC raises concerns over Customs and Border Protection's reliance on certain comments contained in documents lodged by CHALCO with the US SEC. The GOC observes that this information is unverified and taken from a different context.

The GOC further submits that companies commonly report to the SEC on matters including regulatory impacts and risks associated with their business operations, and that the views expressed by CHALCO that it is subject to

environmental and safety laws and regulations, and that compliance with these may affect costs is not prejudicial to China in any sense.

Customs and Border Protection notes that, in making final recommendations to the Minister, the CEO of Customs and Border Protection may have regard to any other matters considered to be relevant.¹⁰⁴ It is considered that the statements of CHALCO, CITIC Group and Yunnan Aluminium are such a relevant consideration.

It is noted that the comments are publicly available and are not of a nature that warrants verification (i.e. general statements in relation to business operations). In relying on these statements, Customs and Border Protection has undertaken an assessment of the context of these comments and considers that, though they are provided for different purposes, they are likely to be the true opinion of these companies in relation to the risks posed by GOC policies in China, the costs associated with compliance with GOC policies, and the implementation of GOC policies in respect of their businesses.

While Customs and Border Protection considers that these statements are indeed not 'surprising', they do serve to offer insight into the potential and actual impact of GOC policies, plans and measures in the Chinese aluminium industry on entities operating within that industry.

¹⁰⁴ S.269TEA

**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

EMBARGOED PENDING MINISTER'S DECISION

(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:

(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 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 considers 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 materials (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.

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.¹⁰⁵

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 MKWs 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.

¹⁰⁵ 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.

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 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.

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);
- 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

SCM Agreement. The Report of the Appellate Body¹⁰⁶ (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.*¹⁰⁷

[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):¹⁰⁸

- 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

¹⁰⁶ Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R

¹⁰⁷ Appellate Body Report, at 345

¹⁰⁸ *Ibid* at [318]

- 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 considered¹⁰⁹ 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 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 relevant¹¹⁰.

The Appellate Body went on to acknowledge (in the context of examining state-owned enterprises in China (referred to in this paper as SIEs))¹¹¹

...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:

¹⁰⁹ *ibid*

¹¹⁰ *ibid* at [319]

¹¹¹ *ibid* at 345

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 respectively¹¹². The GOC has submitted that the institutions performing contributors' functions are shareholders in the normal sense.¹¹³

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*¹¹⁴. As 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 enterprise¹¹⁵. For a wholly state-owned enterprise, its board of supervisors shall be appointed by the agency performing the contributor's functions¹¹⁶. 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*.

II.9.3 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

¹¹² GOC GQ Response, response to question D2.7(b)

¹¹³ GOC GQ Response, response to question, D2.7(a),

¹¹⁴ GOC GQ Response, response to question D2.8

¹¹⁵ GOC GQ Response, response to question D2.14

¹¹⁶ Law on State Owned Assets, Article 19

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.

II.9.4 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 GOC's 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 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.

In response to the SEF¹¹⁷ the GOC claimed that as the companies were privately-held companies there is no requirement to prepare or publish annual reports. Nevertheless, Customs and Border Protection considers that as a part owner the GOC would have information in relation to the companies' operations.

II.9.5 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

¹¹⁷ Submission to the SEF dated 25 May 2012

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 China¹¹⁸.

II.9.6 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 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 D2.22:

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

¹¹⁸ CHALCO Annual Report 2010, Attachment 51 to the GQ

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.

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 CHALCO¹¹⁹ 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:

¹¹⁹ GOC GQ Response, Attachment 51

- 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

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);¹²⁰ and
- the *Interim Measures for the Supervision of and Administration of the Assets of State-Owned Enterprises* (the Interim Measures);¹²¹

¹²⁰ December 5, 2006, General Office of the State Council – provided in relation to REP148, and also the HSS investigation

¹²¹ Referred to, but not provided as an attachment, in the response to the GQ. However provided as Attachment 170 to the HSS investigation

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 capital¹²².

This document indicates that SIEs have played an integral role in implementing GOC policies and plans, particularly those in relation to *'execute(ing) the spirits of the Third and Fifth Plenary Sessions of the Sixteenth CPC Central Committee, and the Opinions of the State Council about Deepening the Economic System Reform, namely:*

- *'...enhance the state-owned economy's controlling power, influence, driving force, bring the leading role of state-owned economy into play...';*
- *'...persist in strengthening supervision over state-owned assets, rigidly enforce the procedures for property right transactions and equity transfer, promote orderly flow, prevent the loss of state-owned assets and ensure the value maintenance and increase of state-owned assets';*
- *'... persist in safeguarding the legitimate rights and interests of workers, protect the workers' rights to enterprise reorganisation, restructuring and other kinds of reform, and fully mobilize and protect the initiatives of the vast majority of workers to participate in the reform and reorganisation of state-owned enterprises';*
- *'promote state-owned capital to concentrate on major industries and key fields relating to national security and national economic lifelines... and accelerate the formation of a batch of predominant enterprises with independent intellectual property rights, famous brands and strong international competitiveness';*
- *'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,

¹²² SASAC Guiding Opinion, preamble

develop and expand the State economy, and realise the preservation of and increase in the value of State-owned assets¹²³.

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 MSS investigation the GOC submitted that this is not a legally binding document (rather having the status of a research and discussion paper), and cannot override current law.

Further, the GOC submitted 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-

¹²³ Interim Measures, preamble

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.

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

2010¹²⁴:

"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."¹²⁵*

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

¹²⁴ Accessed at

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

¹²⁵ p13

*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."*¹²⁶

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

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.

II.9. 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.

¹²⁶ p45

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'.¹²⁷

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 freedom 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.

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

¹²⁷ Appellate Body Report, *ibid*, at [318]

their conduct.

As such, Customs and Border Protection preliminarily considers that these SIEs qualify as 'public bodies' under the Act.

II.9.8 Submissions to SEF

The GOC's submission of 18 May 2012¹²⁸ reiterates the GOC position that SIEs operating in the aluminium industry in China are not public bodies.

The GOC particularly takes issue with Customs and Border Protection's finding, that 'the achievement of the GOC's industrial policy is a government function. The GOC alleges this finding is based on s.30 of the Law of the People's Republic of China on the State-Owned Assets of Enterprise which provides;

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.

In SEF181, and again in this report, Customs and Border Protection has noted this Article, and observed that it 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.

The GOC questions "how compliance with a law which is an emanation of government policy can be characterised as the exercise of a government function, or can in anyway be considered to constitute the vesting of government authority". The GOC reasons that if this is the criteria for the determination of a public body, every Australian company which is required to partake in any regulatory framework could be characterised as a public body.

Customs and Border Protection clarifies that its finding that SIEs exercise government authority in the performance of a government function, namely

¹²⁸ GOC submission, 16 May 2012, 'Submission in response to Statement of Essential Facts No. 177'

the achievement of the GOC's industrial policies, is based not only on the above law, but on a significant body of evidence that suggest that SIEs play an integral and leading role in the implementation of various GOC policies and plans in relation to the aluminium industry. This evidence including the provisions of a number of policies and laws and evidence of SIEs implementing these policies is outlined in this appendix.

Customs and Border Protection highlights that it is the degree of control exhibited in a multitude of GOC industrial policies in respect of the aluminium industry that leads to the conclusion that SIEs in complying with these policies are performing a government function. This is observed in the context of the statement made in the Appellate Body's report in DS379 in relation to the existence of manifold items of evidence permitting inferences that entities are public bodies.

The GOC in its submission of 18 May 2012, also objects to the following statement made in SEF181:

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 indices 1 and 2 in particular (particular the annual report of identified SIEs), but that information was not provided.

The GOC asserts that the implication that the GOC withheld information, and the assumption that the information would have proved the case against it, are both incorrect and unfairly prejudicial. The GOC submits that the reason why no evidence can be cited of the vesting of government authority in SIEs is because there is no such vesting and no government programs to provide aluminium to ARW producers at inadequate remuneration.

Customs and Border Protection again notes that the Interim Measures for the Administration of Comprehensive Performance Evaluation of Central Enterprises, Order of the State-owned Assets Supervision and Administration Commission of the State Council (No.14) requires enterprises whose investment contribution duties are performed by the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) to undertake comprehensive performance evaluations in respect of financial and management performance.

Customs and Border Protection therefore considers that the GOC is in possession, for at least some SIEs in the aluminium sector, information relevant to the questions concerning ownership, governance, performance and profit, and enterprise functions.

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 arriving at the adequate remuneration benchmark for Program 1, Customs and Border Protection has done so with regard to the guidelines and requirements set out:

- in s.269TACC(4)(d) and (5) of the Act;
- in Article 14(d) of the SCM Agreement; and
- by the WTO Appellate Body in the WTO dispute *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada* (DS257).

II.10.1 The Act and SCM Agreement

In relation to establishing a benchmark to determine adequacy of remuneration, 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 provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

[Emphasis added]

II.10.2 Appellate Body in DS257 (use of external benchmarks)

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 Submission to the SEF

In response to the SEF, the GOC disagreed with Customs and Border Protection's interpretation of DS379. The GOC submits that there is no legal right to use an external benchmark under WTO or Australian law, either at all or in the circumstances of this case.

Dicastal made a similar submission¹²⁹ and presumed that LME data does not reflect prevailing market conditions in China.

II.10.4 Customs and Border Protection's assessment

Customs and Border Protection has examined the findings of the Appellate Body in DS257 and disagrees with the GOC's interpretation.

¹²⁹ Submission to the SEF dated 17 May 2012

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.¹³⁰

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.

Customs and Border Protection therefore respectfully disagrees with the GOC's position on this point, and continues to consider that:

- although there is a preference for the use of internal benchmarks to determine adequacy of remuneration;
- there are circumstances (not limited to the specific situation faced in DS257) where internal benchmarks will be considered inappropriate, and external benchmarks are therefore permissible.

II.10.5 Determining reasonably competitive market costs (for constructed normal value)

¹³⁰ At paragraph 90.

Customs and border Protection notes there are no corresponding provisions to s.269TACC(5) in the Act or Article 14(d) of the SCM Agreement in the *WTO Anti-Dumping Agreement* (ADA) in relation to establishing what are reasonably competitive market costs.

The extent to which s.269TACC(5) and Article 14(d) necessarily translate to the calculation of reasonably competitive market costs in constructed normal values is unclear, though it is considered reasonable that the same considerations for establishing adequate remuneration for an input to assess benefit under a subsidy program may also be applicable in determining reasonably competitive market costs for that same input.

In any case, as Customs and Border Protection considers that the benchmark established for the purposes of Program 1 should also be used to establish reasonably competitive market costs for aluminium and aluminium alloy in China, the benchmark has necessarily been determined in accordance with the requirements of arriving at a benchmark for adequate remuneration for those goods in relation to Program 1 (discussed above).

II.10.6 Benchmark established

Starting point – internal benchmarks

As outlined above, Customs and Border Protection notes the findings of the WTO Appellate Body in DS277, which indicate a preference for establishing a benchmark for adequate remuneration with reference to internal prices in China as a starting point.

Consequently, the reasonableness of internal Chinese prices for aluminium and aluminium alloy were examined as a possible source of the benchmark.

Option one: private domestic prices

In establishing a benchmark price for aluminium and/or alloy reflecting adequate remuneration, Customs and Border Protection has first considered whether domestic 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 domestic 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 domestic 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 (further to that examined in DS257) of where market distortion makes private domestic prices unsuitable for determining adequate remuneration, hence providing for the use of external benchmarks.

Option two: Import prices

Having established that domestic prices from private sellers in China are not a suitable basis for determining a benchmark for aluminium and/or alloy, 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 (internal) 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

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 Shanghai Futures 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.

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.10.7 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 the investigation period, with adjustments, should be used to compare with exporters' purchase prices of aluminium and alloy from SIEs.

PART II - 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;
- 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).

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.

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 and 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).

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%.

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.

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).

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.

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.

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.

III.14 Preferential tax policies for enterprises making little profits (Program 14)

III.14.1 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.

III.14.2 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*;
- *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)

III.14.3 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.

III.14.4 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.14.5 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 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)

III.17.1 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.

III.17.2 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;*
- *Rules for the Implementation of the Income Tax Law of the Peoples Republic of China for enterprises with Foreign Investment and Foreign Enterprise.*

III.17.3 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.

III.17.4 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 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.

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)

III.21.1 Background

The objective of this program is to increase global market access, improving the investment environment and promoting economic development.

III.21.2 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*.

III.21.3 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.

III.21.4 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 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.

III.21.5 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 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)

III.22.1 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.

III.22.2 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;*

- *Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax*

III.22.3 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.

III.22.4 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 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.

III.22.5 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.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.

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)

III.29.1 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.

III.29.2 Legal Basis

The relevant legislation under which the subsidy is provided for is the 2009 *Guangdong Patent Award Implementation Proposal*.

III.29.3 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:

- 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.

III.29.4 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.

III.29.5 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. 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.

III.31 Tariff and VAT Exemptions on Imported Materials and Equipments (Program 31)

III.31.1 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.

III.31.2 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*.

III.31.3 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;

III.31.4 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.

It is Customs and Border Protection's understanding that certain equipment used in China by ARWs manufacturers is imported.

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.

III.31.5 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. 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)

III.32.1 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.

III.32.2 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.*

III.32.3 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.

III.32.4 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.

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.

III.32.5 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 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.

III.35 Matching Funds for International Market Development for SMEs

(Program 35)**III.35.1 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.

III.35.2 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.*

III.35.3 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.

III.35.4 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.

III.35.5 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 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 Enterprises Grant (Program 36)

III.36.1 Background

This purpose of this program is to accelerate technology development in Zhejiang Province.

III.36.2 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*.

III.36.3 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.

III.36.4 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 under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

III.36.5 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, 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)

III.37.1 Background

The GOC advised that it is unaware of this program and unable to distinguish its features from the limited information provided.

III.37.2 Legal Basis

The relevant legislation under which the subsidy is provided for is *Notions Concerning Accelerating the Growth of the Non-state-owned Economy*.

III.37.3 Eligibility and effect of the program

Non-SOEs located in Yunan Province

III.37.4 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.

III.37.5 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 non-state-owned 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)

III.38.1 Background

This purpose of this program is to encourage the development of high and

new technology industry in Chongqing

III.38.2 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*.

III.38.3 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.

III.38.4 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

under this program by ARW manufacturers could be made in connection to the production, manufacture or export of ARWs.

III.38.5 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, 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)

III.39.1 Background

This purpose of this program is to encourage enterprises to achieve exceptional business performance.

III.39.2 Legal Basis

The relevant legislation under which the subsidy is provided for is *Measures for Assessment and Encouragement of Superstar Enterprises and Excellent Enterprises*.

III.39.3 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.

III.39.4 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.

III.39.5 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, 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)

III.40.1 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.

III.40.2 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".*

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.*

III.40.3 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)';

III.40.4 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,

III.40.5 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, 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.41 Technology Assist (Program 41)

III.41.1 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)

III.42.1 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.

III.42.2 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*.

III.42.3 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.

III.42.4 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.

III.42.5 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 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)

III.43.1 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.

III.43.2 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"*.

III.43.3 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;
- Have an independent qualification as a legal person, sound finance 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.

III.43.4 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.

III.43.5 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, 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)

III.44.1 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.

III.44.2 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*.

III.44.3 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.

III.44.4 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.

III.44.4 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.45 Technology Assist – New Products (Program 45)

III.45.1 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)

III.46.1 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

III.46.2 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*.

III.46.3 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.

The enterprises must also meet additional requirements to access the

reward.

III.46.4 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,

III.46.5 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, 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)

III.47.1 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.

III.47.2 Legal Basis

The relevant legislation under which the subsidy is provided is the *Circular on Printing and Distributing the Funding Regulation of China Postdoctoral Science Foundation*.

III.47.3 Eligibility and effect of the program

The Program is open to post-doctoral in the workplace.

III.47.4 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.

III.47.5 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, 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)**III.48.1 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.

III.48.2 Legal Basis

The GOC advised that the relevant document under which the subsidy is granted is not available for submission.

III.48.3 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.

III.48.4 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.

III.48.5 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 favors 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.

III.50 Patent Application Fee Subsidy (Program 50)

III.50.1 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.

III.50.2 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*.

III.50.3 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.

III.50.4 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.

III.50.5 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,

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.51 Foreign Economic and Trade Development Assistance Funds of Jinhua City (Program 51)

III.51.1 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 Kaide. 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 Kaide, 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)

III.53.1 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.

III.53.2 Legal Basis

The relevant legislation under which the subsidy is provided for is the *Measures of Jinhua City for Management of Technology Innovation Funds*.

III.53.3 Eligibility and effect of the program

The grant is available to enterprises proposing to undertake national or provincial technology projects.

III.53.4 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.

III.53.5 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, 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 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 53.

III.56 Patent Grants (Program 56)

Background

The GOC provided the following information in relation to this program:

- 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 Programs 4 and 6

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.

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.

In calculating the amount of subsidy 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.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 Kaida, 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 Kaida 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.

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 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 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.

In calculating the amount of subsidy 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.

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

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

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:

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.