

ATTACHMENT A
Application for Continuation of a Dumping Duty Notice
Silicon Metal exported from the People's Republic of China

The application must include a detailed statement setting out reasons for seeking continuation of the anti-dumping measure. Applicants must provide evidence addressing whether, in the absence of measures, dumped or subsidised imports would cause material injury to the local industry producing like goods.

Introduction

Simcoa, as the only manufacturer of silicon metal in Australia, is seeking the continuation of anti-dumping measures on silicon metal exported from China.

It is Simcoa's firmly held view that if the measures applicable to silicon metal exports from China are allowed to expire, it is likely that the Australian industry producing the like goods would experience a recurrence of material injury that the measures are intended to prevent.

Simcoa is therefore seeking the Anti-Dumping Commission (**the Commission**) to commence an investigation into the continuation of the anti-dumping measures on silicon metal exported from China. Simcoa contends that the expiration of the measures will likely lead to a recurrence of the material injury that the measures are intended to prevent and is therefore seeking the Commissioner to recommend to the Minister for Industry that the measures not be allowed to expire.

i. Will the dumping or subsidisation continue, or recur?

Simcoa submits that sufficient evidence exists for the Commission to conclude that the expiration of the measures would likely lead to a continuation or recurrence of dumping of the goods exported to Australia China. Expiration of the measures would likely lead to the continuation or recurrence of dumping of the Chinese subject goods into the Australian market, at margins at least equal to those found in the original investigation, if not higher (as confirmed in the subsequent continuation inquiry).

In Continuation Inquiry No. 524 (**CON 524**), the Commission concluded as follows on the likelihood of dumping and subsidisation continuing or recurring:¹

The Commission has found that the goods exported from China during the inquiry period were dumped, and there is no evidence to suggest, nor any claim that has been made, that exporters would adjust their behaviour such that goods exported in the future would no longer be dumped.

The Commission notes the findings of the Canada Border Services Agency (CBSA) who, in March 2019, highlighted the following points in its findings in relation to dumping in an expiry review:

- *there was excess production capacity for silicon metal in China and information to indicate significant further capacity expansions;*
- *China's volume of production and its reliance on exports to address the oversupply of silicon metal in the Chinese market;*
- *recent pricing data which suggests that Chinese exporters are selling at low and potentially dumped prices in other markets and well below Canadian import prices; and*
- *anti-dumping measures in place in both the United States of America and the European Union against silicon metal from China.*

¹ REP 524, p. 26-27.

In addition, as outlined in Non-Confidential Appendix 3, the Commission has considered the available evidence regarding the countervailing programs identified in investigation 237. No information was provided by the GOC or exporters of the goods from China. The available evidence indicates that certain programs are still in place, or no evidence was identified to indicate that certain programs had ceased.

Based on the above assessment, the Commission is satisfied that the expiration of the measures would be likely to lead to a continuation of the dumping and subsidisation of goods exported from China to Australia.

In assessing the likelihood of dumping continuing or recurring, the Commission's Dumping and Subsidy Manual outlines several relevant factors and considerations. Such factors may include exporters' dumping margins, the volume of exports before and after the measures were imposed, the effect of the measures, the level of dumping compared with the level of measures, and any change in those measures (e.g., as a result of a review).² Simcoa addresses certain of these factors below.

- **Anti-dumping actions by other countries**

According to the World Trade Organisation (WTO) *Integrated Trade Intelligence Portal*, a total of twenty-two anti-dumping and countervailing measures are currently imposed by WTO member countries on silicon metal, as classified to the six-digit tariff subheading for 2804.69.³

Major Jurisdictions

Anti-Dumping Measures – United States

On 29 November 2023, the U.S. Department of Commerce (DOC) and the U.S. International Trade Commission (ITC) announced the final result of the sunset review on exports of silicon metal from China. The investigating bodies concluded that revocation of the antidumping duty (AD) order on silicon metal from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping and material injury to the United States industry.⁴

With the likelihood of further material injury affirmed by the United States *International Trade Commission* (discussed further below) this decision has continued to levy a weighted average dumping margin of 139.49 percent against all Chinese exporters.⁵

Anti-Dumping Measures – Canada

On 29 March 2019, the Canada Border Services Agency (CBSA) made its final expiry review determination on silicon metal originating in or exported from China. With the likelihood of further material injury affirmed by the *Canadian International Trade Tribunal* (discussed further below), the CBSA concluded that expiry of the measures was likely to result in a continuation or resumption of dumping and subsidisation of the goods from China.⁶

² Dumping and Subsidy Manual, December 2021, p. 137.

³ Non-Confidential Attachment 1: WTO Integrated Trade Intelligence Portal; Silicon metal trade remedies in place (extract made 02/05/2024).

⁴ Non-Confidential Attachment 2: United States Federal Register, 29 November 2023.

⁵ Non-Confidential Attachment 3: DOC Issues and Decision Memorandum for the Final Results of the Expedited Fifth Sunset Review: Silicon Metal from the People's Republic of China. August 24, 2023.

⁶ Non-Confidential Attachment 4: CBSA Statement of Reasons – Expiry Review for Certain Silicon Metal Originating in or exported from China. March 29, 2019.

Anti-Dumping Measures – European Union

On 12 August 2022, the European Commission (EC) continued its definitive anti-dumping duties on Chinese exports of silicon metal.⁷ On the likelihood of continued dumping, it concluded that:

Based on the significant spare capacity in China and the attractiveness of the Union market for the Chinese exporting producers the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures would result in an increase of dumped exports.

In view of its findings on the continuation of dumping during the RIP and on the likely development of Chinese exports should the measures lapse, the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures on imports from China would result in the continuation of dumping in significant quantities.

The EC continued to imposed measures against Chinese exporters of between 16.3 and 16.8 percent.⁸

- **Current normal values in the exporting countries**

In CON 524, the Commission determined that the variable factors for China had changed from the original investigation, and ascertained the following dumping and countervailing margins:

Country	Exporter	IDD	IDC	Form of measure
China	All exporters	20.7%	34.8%	Ad valorem

Non-Confidential Table 1: CON 524 Dumping Margins Summary⁹

In CON 524, the Minister accepted the Commission's recommendation that a market situation applied to silicon metal sold in China. The Commission concluded:¹⁰

The GOC did not provide a response to the questionnaire issued at the initiation of the inquiry and no information has been provided by other interested parties in relation to the GOC influence on the domestic market for silicon metal.

The Commission has considered the available evidence regarding the influence the GOC has on the silicon metal market in China. This evidence is contained in Non-Confidential Attachment 1. On the basis of this evidence and the fact no information to the contrary has been submitted as part of this inquiry, the Commissioner considers that because of the situation of the market in China, it continues that sales in the market are not suitable for use in determining a price under section 269TAC(1).

The Commission hence calculated normal values under section 269TAC(6),¹¹ assessing that the most relevant information was the verified normal value information from Investigation no. 237 (**INV 237**). The Commission calculate the normal value based on the normal value for all other exporters, with an adjustment for the movement in export prices between INV 237 and CON 524.¹²

⁷ Non-Confidential Attachment 5: COMMISSION IMPLEMENTING REGULATION (EU) 2022/1394, of 11 August 2022 imposing a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China, as extended to imports of silicon consigned from the Republic of Korea and from Taiwan, whether declared as originating in the Republic of Korea or Taiwan or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and the Council. Section 4.3, p. 23.

⁸ Ibid, Section p, p. 40.

⁹ REP 524, p. 21.

¹⁰ Ibid, p. 24.

¹¹ All legislative references are reference to the *Customs Act 1901*, unless otherwise specified.

¹² REP 524, p. 23.

Simcoa understands that the Government of China's (**GOC**) policies specific to silicon metal have not waned over the intervening period following the publication of REP 524. If anything, the GOC's prevalence and influence in its manufacturing industries has and continues to intensify. This will be further articulated below. Simcoa therefore submits that a market situation in respect of silicon metal sold in China continues to apply.

Domestic selling prices for silicon metal sold in China cannot therefore be relied upon for the purposes of assessing normal values. Simcoa subscribes to *CRU* for global silicon market reporting and has obtained cost of production data for Chinese silicon metal manufacturers. China is the world's largest supplier of silicon metal accounting for approximately two-thirds of the approximate 3 million tonnes of global production.

Silicon metal producers in China adjust production to meet demand. The cost to manufacture silicon metal is therefore variable dependent upon the cost of electricity (established by the local provincial government) and demand (domestic and global). During 2023/24 the cost of production for silicon metal produced in the Fujian and Guizhou provinces (where cooperative exporters in Investigation No. 237 were located) ranged between US\$[XXX] and US\$[XXX] per metric tonne (or AU\$[XXX] to AU\$[XXX] per metric tonne). These production cash-costs only, and do not include plant overheads, depreciation, selling & general administration (**SG&A**) expenses or profit. Depreciation and SG&A costs are estimated at approximately AU\$[XXX] per tonne,¹³ and an amount of profit of [XX] per cent would be required for a high capital investment such as silicon metal manufacture.

The constructed selling price for silicon metal during 2023/24 in China is estimated at between AU\$[XXX] to AU\$[XXX] per metric tonne. Refer Confidential Attachment 17 for CRU production cost extracts for silicon metal in China.¹⁴

▪ **Whether exports have continued post the imposition of measures, and estimates of export price**

The volume of subject imports was minimal during the proposed continuation period, under the disciplining effect of the measures. Official import statistics demonstrate that the measures have had an effect on imports of silicon metal from China. Simcoa provides at Confidential Appendix A-2 an estimate of these Chinese volumes and consequent export prices.

▪ **Whether exporters have maintained distribution links in Australia**

In CON 524, the Commission found that the presence of Chinese imports in the Australia market evidenced the existence and maintenance of distribution links.¹⁵

The existence of ongoing Chinese export trade to the Australian market, albeit in small volumes during the proposed inquiry period, indicates the presence of well-utilised distribution links. The continued export activity via these established export pathways presents an opportunity for Chinese exporters to quickly increase sales volume of dumped and injurious silicon metal if the measures are removed.

▪ **Whether exporters retain excess capacity for direction to Australia**

Simco submits that China remains the world's largest producer of silicon metal, and that the subject industry's capacity and production continues to increase.

A large number of Chinese companies have the capability to produce large quantities of the subject goods. For example, the website of one Chinese silicon metal producer states that *...there are more than 200 metal silicon*

¹³ Refer Simcoa's Confidential Appendix A2.

¹⁴ Refer Fujian and Guizhou data tabs.

¹⁵ Ibid, p. 25.

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manufacturers in China... as compared to the ...less than 50 silicon metal manufacturers... in the ten countries in the rest of the world that produce silicon outside of China.¹⁶ This website further states that:¹⁷

China has a large number of silicon metal production enterprises, which continuously supply different types of silicon metal to the world, which are widely used in steelmaking, casting, aluminum smelting and other industries. China's silicon metal production enterprises not only have low prices, but also good quality and professional services. At present, China is a big exporter of silicon metal.

Another website describes China as having ...a dominant position in Silicon metal production..., and notes that China's production of silicon metal ...is not only well above the domestic consumption but also well above the total world demand for Silicon metal.¹⁸ Moreover:¹⁹

...China is expected to continue to increase its market share among global producers in the next 5 years, following the same trend observed in the past years. This trend may be explained by recurrent dumping practices favored by production overcapacity.

And further:²⁰

...growth in the silicon metal market is expected to continue in the coming years, led by increased demand from regular aluminum and chemical applications, fast growing solar industry, and promising battery market demand.

Similarly, a third website projects that ...the global silicon metal market is expected to increase...²¹ in 2022-2023, with ...China being the key silicon metal producer.²² The article states that Chinese silicon metal production output experienced an 18.1 percent increase from January 2022 to October 2022 as compared to the same period in 2021.²³ In October 2022, monthly silicon metal production in China ...increased by 16.4 percent and total 291,500t.²³

This projection is supported by another article published in September 2022, which provides information regarding new silicon metal projects in China.²⁴ The article included the following chart, which shows that silicon metal production capacity in China increased in 2022:

Silicon metal capacity commissioning progress in 2022 (10,000 mt/year)				
Province	City	Company	New capacity in 2022E	Note
Xinjiang	Turpan	Xinjiang East Hesheng Silicon Industry Co.	30.0	More than 20 facilities by end of 2022
Inner Mongolia	Baotou	Inner Mongolia Xinyuan Silicon Material Technology Co.	15.0	2 facilities are running, with an estimate of 10 running by end of 2022
Xinjiang	Changji	Xinjiang GCL Silicon Technology Co.	10	Commissioning by October
Xinjiang	Hami	Xinjiang Jingheyuan New Materials Co.	6.0	2 facilities are running, with an estimate of 4 running by end of 2022
Xinjiang	Hami	Xinjiang Xintao Silicon Industry Co.	3	Construction completed
Xinjiang	Yili	Xinjiang Yugui Technology Co.	1.5	Already in production
Total			65.5	—

¹⁶ Website of Hensfate Metal Co., Ltd., available at <https://www.hsimetal.com/silicon-metal-company-of-china/> (accessed 3 May 2024). Refer Non-Confidential Attachment 6.

¹⁷ Ibid.

¹⁸ Confidential Attachment 7.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Confidential Attachment 8.

²² Ibid.

²³ Ibid.

²⁴ Confidential Attachment 9.

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The above evidence demonstrates that China's capacity to produce silicon metal has not waned during the past five-year period. To the contrary, it appears that China's capacity has likely increased. Given that China's silicon metal industry is highly export-oriented, such capacity increases pose a significant risk of injury to the Australian industry were the measures allowed to expire.

On the Chinese market generally, Simcoa highlights with the Commission recent economic analysis and commentary suggesting that the GOC's industrial interventions continue to increase, as industrial policy is seen as vital to reducing China's economic dependence on other countries, while increasing their dependence on China.²⁵

According to the Centre for Strategic and International Studies (CSIS), Beijing's industrial initiatives have become more ambitious in recent years. In a recent study, the CSIS concluded that:²⁶

- China's industrial policy spending is enormous, totalling at least 1.73 percent of GDP in 2019. This is equivalent to more than US\$248 billion at nominal exchange rates and US\$407 billion at purchasing power parity exchange rates. This is higher than China's defence spending for 2019, estimated at US\$240 billion.
- China is an outlier; it spends far more on supporting its industries than any other economy. As a share of GDP, China spends over twice as much as South Korea, which is the second-largest relative spender. In dollar terms, China spends more than twice as much as the U.S.
- China's approach to industrial policy is exceptional, as Beijing is sustaining or increasing vertical industrial policy at a level of development when other economies have dialled back. China stands out in terms of both quantifiable spending as well as non-quantifiable policy tools.

In June 2022, The Australian Strategic Policy Institute (**ASPI**) assessed that:²⁷

China's trade surplus hit an extraordinary US\$292 billion in the first five months of the year—more than double its pre-pandemic level—and its aggressive pursuit of export markets is likely to become a flashpoint in a slowing world economy.

The Chinese export surge includes Australia, despite Beijing's continuing campaign of illegal trade sanctions against Australian exports.

China's exports to Australia over the last reported five months were up 44% from a year ago, while Australia's shipments in the other direction were down 5%, despite soaring commodity prices.

There is no hint of a concerted Western response to China's mercantilist strategy, which treats trade surpluses as a manifestation of national power. The World Trade Organization's rules place no restriction on either the preponderance of state-owned enterprises in the Chinese economy or the subsidies China extends to its private sector, which are fuelling its export boom.

On 23 February 2024, The Office of the United States Trade Representative (**USTR**) released its 2023 Report to the United States Congress on China's WTO Compliance, which details an assessment of China's membership in the World Trade Organisation (**WTO**). It has found that China remains the biggest challenge to the

²⁵ Non-Confidential Attachment 14: *China spends far more than others to help favoured industries, report finds*. The Wall Street Journal, 23 May, 2022.

²⁶ Non-Confidential Attachment 15: *Red Ink, Estimating Chinese Industrial Policy Spending in Comparative Perspective*. Centre for Strategic & International Studies. May 2022. Accessible at <https://www.csis.org/analysis/red-ink-estimating-chinese-industrial-policy-spending-comparative-perspective>

²⁷ Non-Confidential Attachment 16: *China's relentless export machine*. Australian Strategic Policy Institute, The Strategist. 21 June, 2022.

international trading system, and, notwithstanding its WTO membership, it continues to embrace a state-directed, non-market approach to the economy and trade, running counter to the norms and principles embodied by the WTO.²⁸ In summary:²⁹

As has been previously documented, China has a long record of violating, disregarding and evading existing WTO rules. China has also sought to frustrate WTO oversight and accountability mechanisms, such as through its poor record of adhering to its WTO transparency obligations. In addition, and more critically, after more than two decades of WTO membership, China still embraces a state-led, non-market approach to the economy and trade, despite other WTO Members' expectations – and China's own representations – that China would transform its economy and pursue the open, market oriented approach endorsed by the WTO. In fact, China's embrace of a state-led, non-market approach to the economy and trade has increased rather than decreased over the past decade, and the mercantilism that it generates has harmed and disadvantaged U.S. companies and workers, as well as companies and workers of other WTO Members, often severely.

The vast majority of the harm that China inflicts upon other WTO Members is attributable not to China's periodic non-compliance with existing WTO rules, but rather to the daily impact of China's state-led, non-market approach to the economy and trade, which relies heavily on interventions in the market by the Chinese government and, increasingly in recent years, the Chinese Communist Party (CCP or the Party). As is well-documented, the Chinese government and the CCP routinely intervene in the market using a wide array of non-market policies and practices, both to provide artificial competitive advantages to Chinese industries and enterprises and to actively disadvantage foreign industries, enterprises and workers.

China's decision to continue pursuing a state-led, non-market approach to the economy and trade after acceding to the WTO takes on significantly added importance because China is the second largest economy in the world and the largest trader among WTO Members. As a result, as time has borne out, the policies and practices that it pursues can have a tremendous impact on bilateral and global trade.

The USTR have found that the non-market policies and practices that China has deployed as it seeks to achieve and maintain the dominance of Chinese industries and enterprises are numerous and extensive. They are also constantly evolving.³⁰ The USTR have identified the following most common (non-exhaustive) non-market policies and practices:

- adopting and pursuing industrial plans that target specific industries for domination by Chinese enterprises, including by establishing capacity, production and export levels or market share targets;
- directing, pressuring or otherwise acting to ensure that Chinese enterprises adhere to the objectives set forth in the state's industrial plans;
- placing CCP officials in state-owned enterprises and private Chinese enterprises in management positions in order to monitor, direct, pressure or otherwise influence commercial decision making;
- deploying massive and frequently non-transparent subsidies relentlessly in pursuit of industrial plan objectives, including via policy banks, state-owned commercial banks and government investment and guidance funds at all levels of government;
- transferring risk to the state through loan guarantees and loan rollovers for Chinese enterprises in targeted industries;

²⁸ Non-Confidential Attachment 12: Notice advising of USTR China annual report release.

²⁹ Non-Confidential Attachment 13: 2023 Report to Congress on China's WTO Compliance, United States Trade Representative, February 2024. Executive Summary (beginning p. 10).

³⁰ Ibid.

- directing, pressuring or otherwise acting to ensure that Chinese enterprises purchase Chinese-made products over imported products in accordance with the state's industrial plan objectives;
- directing, pressuring or otherwise acting to ensure that Chinese enterprises invest in and secure access to raw materials outside of China for the sole use of Chinese enterprises producing downstream products in accordance with the state's industrial plan objectives; and
- creating or maintaining persistent non-market excess capacity in industries through state-owned enterprises and private Chinese enterprises, to the detriment of competing foreign enterprises in the China market and in global markets around the world;

On 10 April 2024, the European Commission (EC) released its working document detailing its current views on significant market distortions in China, for the purposes of trade defence investigations.³¹ The EC defines significant distortions as *..those which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces because they are affected by substantial government intervention.*³² In assessing significant distortions, the EC has regard to one or more of the following elements:³³

- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
- State presence in firms allowing the State to interfere with respect to prices or costs;
- public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;
- the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
- wage costs being distorted;
- access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the State.

The EC's current assessment has examined distortions across three fronts:

1. by an examination of the core features of the Chinese economy, including the concept of a 'socialist market economy', the role of the Chinese Communist Party in relation to the economy, the extensive system of plans issued and followed by various levels of government under the leadership of the CCP, the State-owned sector with its numerous state-owned enterprises including the various supervision and control mechanisms, the financial market, the procurement market, and the system of investment screening;³⁴
2. by a detailed assessment of factors of production on the provision of land, energy, capital, material inputs (e.g. raw materials) and labour in China;³⁵ and

³¹ Non-Confidential Attachment 13: COMMISSION STAFF WORKING DOCUMENT ON SIGNIFICANT DISTORTIONS IN THE ECONOMY OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE PURPOSES OF TRADE DEFENCE INVESTIGATIONS. Brussels, 10.4.2024.

³² Ibid, p. 2.

³³ Ibid.

³⁴ Ibid, p. 3.

³⁵ Ibid.

3. by an examination of industry sectors, including steel, aluminium, chemicals, ceramics, telecommunications, semiconductors, railway equipment, environmental goods and new energy vehicles.³⁶

The EC concludes that the GOC exerts a decisive influence on the allocation of resources and their prices, that the allocation and pricing of factors of production are influenced by the GOC in a very significant manner, and that distortions result from the specific features of the Chinese economy in relation to those factors of production.³⁷

The silicon-metal-specific articles and examples provided above — which represent merely a sampling of China's silicon metal production capacity and recent increases — and the very recent trade-remedy specific economic assessment of Chinese manufacturing markets, serve as evidence that Chinese producers currently subject to the measures would be poised to export silicon metal to Australia at dumped and subsidised prices should the measures expire. Allowing expiration would remove any obstacle to a return to their past pricing practices in the Australian market, and would invite substantial shipments of low-priced subject goods.

ii. Will material injury recur?

- **Volume and value of imports, and sources of imports**

Simcoa has provided Confidential Appendix A-2 with this application.

- **Sales and market shares of all suppliers**

Simcoa has referenced Australian import statistics from the *TradeData International* in estimating sales volumes, values, and consequent market shares for both China and non-subject countries in Confidential Appendix A-2.

- **Performance of the local industry (profits, price trends, investment and employment)**

Simcoa has provided Confidential Appendix A-6 and Confidential Appendix A-7 as part of this application.

- **Likelihood of material injury in the absence of anti-dumping measures**

Summary

Simcoa submits that in the event the anti-dumping measures applicable to silicon metal exports from China are allowed to expire on 3 June 2025, the Australian industry will suffer, and be threatened with a recurrence of, material injury that the measures are intended to prevent.

In CON 524, the Commission concluded as follows:³⁸

During the inquiry period, the imports from China were dumped and subsidised. If the measures expired, the Commission considers that the scenario that arose following the expiry of the original measures in 2010 would recur. That is, the price at which these imports enter the Australian market would likely fall to a price lower than the Australian industry's prices and therefore result in increased volumes of like goods being imported from China, displacing the Australian's industry's domestic sales volumes. The Commission considers this would result in injury to the Australian industry in terms of revenue, profit and profitability. When comparing the difference in sales volumes in the years prior to and following the imposition of measures in 2015, and the consequential impact on revenue, the

³⁶ Ibid. The sectors were selected based on a number of criteria, such as their frequent occurrence in the EC's trade defence investigation practice, or for their particular economic or strategic importance.

³⁷ Ibid, p. 3.

³⁸ REP 524, p. 28.

Commission considers the likely increase in the sales volume of dumped and subsidised goods would result in a material decrease of sales volume of the goods by the Australian industry, and consequently a material decrease in revenue, profit and profitability.

For these reasons, the Commissioner is satisfied that the expiration of the measures would be likely to lead to a continuation of, or recurrence of, the material injury that the anti-dumping measures are intended to prevent.

The Commission’s assessment of the impact following expiry of the original measures in February 2010 is critical to a contemporary assessment of the likelihood of material injury on expiration of the current measures. Expiration of the measures in 2010, following their original imposition under Investigation 81 in 2001 and reaffirmed for continuation in 2006, explicitly highlighted the behaviour and trade flows of Chinese exporters of silicon metal at points in time when the measures were imposed, and then when they weren’t.

Throughout the period between February 2010 and the time of Simcoa’s application for measures leading to INV 237 (January 2014), Chinese exports of silicon metal surged unabated into the Australian market. The injury experienced by Simcoa during this period was substantial. In its application for measures in 2014, Simcoa claimed that it had incurred material injury from dumped and subsidised Chinese exports across the following fronts:³⁹

- a loss in sales volume of more than [XX] per cent since 2009/10;
- a reduction in market share of approximately [XX] per cent since 2009/10;
- price depression in 2012/13 (of [XX] per cent);
- loss of profits and profitability in 2012/13 (as well as lost profits and profitability in 2010/11 and 2011/12 from falling domestic sales volumes that, if the volumes had been sold in Australia, would have generated higher returns than the lower margin export sales); and
- reduced returns on investment declining from above [XX] per cent in 2009/10 to negative returns in 2012/13.

The impact on the Australian industry from the dumped and subsidised goods over the 2010-2013 assessment period was stark, as confirmed by the Commission’s assessment of the Australian industry’s economic condition in REP 237:⁴⁰

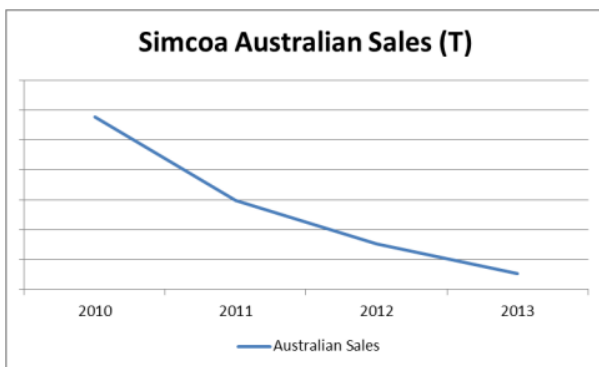


Figure 2: Australian Industry domestic sales volume (T)

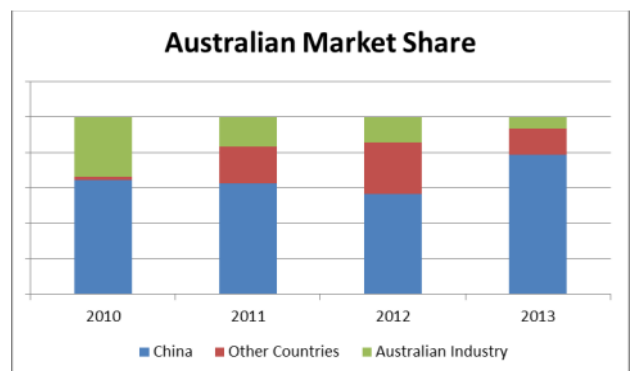


Figure 3 Australian market share (T)

³⁹ Simcoa’s Public File application to INV 237, p. 25.

⁴⁰ REP 237, p. 49-54.

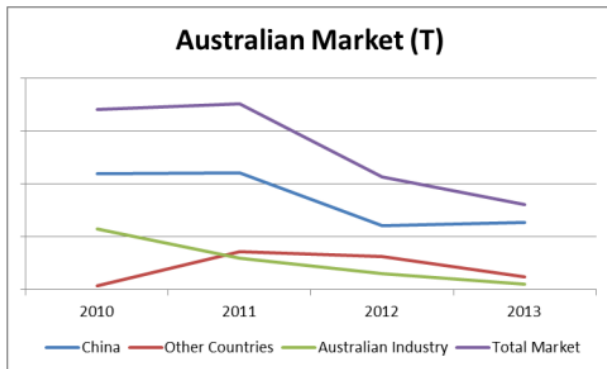


Figure 4: Australian market for silicon metal (T) by calendar year

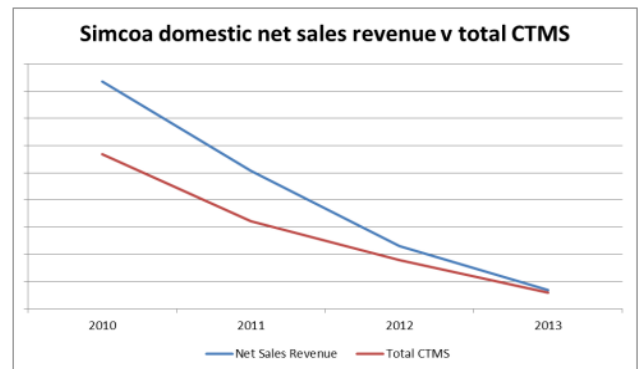


Figure 5: Simcoa total domestic sales revenue v total CTMS

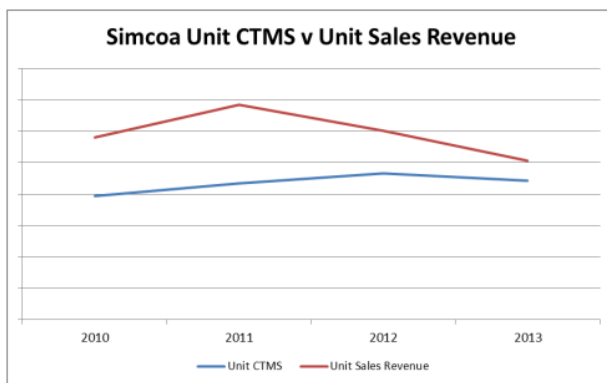


Figure 6: Simcoa unit CTMS v unit sales revenue

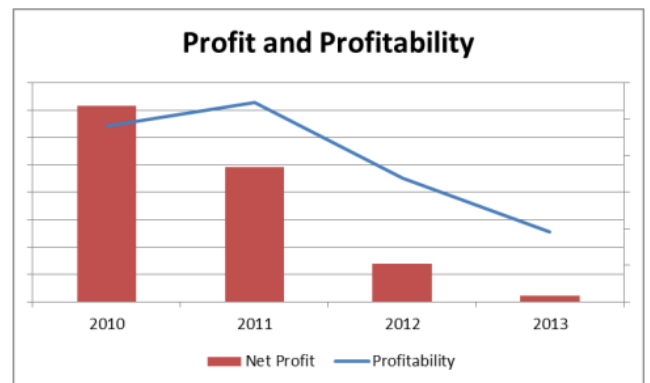


Figure 7: Simcoa's domestic sales profit and profitability

The Commission hence made the finding that silicon metal exported at dumped and subsidised prices had caused material injury to the Australian industry, that a continuation of price competition from dumped and subsidised imports from China were likely to have a continuing adverse impact on the Australian industry, and that *...the Commission finds that exports of silicon metal from China in the future may be at dumped or subsidised prices and that continued dumping or subsidisation may cause further material injury to the Australian industry.*⁴¹

What the Commission can establish from this earlier-investigation assessment is that, as a matter of probability, Chinese imports of silicon metal will be materially injurious to the Australian industry in the absence of measures – there is an evidenced track record of Chinese exporter behaviour when the measures are removed.

The likely volume of imports would be significant in the absence of measures

In evaluating the likely effects of subject imports, the Commission looks to assess whether the likely volume of the subject goods would be significant and therefore materially injurious if the measures were to expire. The Commission also considers all economic factors relevant to the inquiry in making this assessment, such as production capacities (and existing unused capacity), market size and share, changes in the structure and operation of the market since the measures were imposed, and the extent to which subject producers are export oriented.⁴² As shown below and above, taken together, these factors indicate that the likely volume of silicon metal exports from China would be significant if the measures lapse.

⁴¹ Ibid, p. 62-63.

⁴² Dumping and Subsidy Manual, December 2021, p. 137-138.

Continuation 524

The Commission's volume-related injury assessment concluded that:

Since the measures were imposed in 2015, the Australian industry experienced a significant increase in sales volume and market share in Australia. Prior to the imposition of measures in 2015, the volume of Australian sales by Simcoa was negligible. The Commission considers that the increase of market share and volume by the Australian industry following the imposition of the measures was a result of the anti-dumping duties increasing the price of the goods exported from China entering the Australian market.

...

The Commission notes that, as identified in Figure 3 above, the expiry of measures on the goods from China in 2010 (prior to investigation 237) had a significant impact on Simcoa's domestic sales volumes. Figure 3 highlights the subsequent reduction in Simcoa's domestic sales, while Figure 7 identifies the import volumes of the goods from China. Based on the available information, including observed behaviours following the expiry of measures in 2010, the Commission considers the impact on Simcoa's domestic sales volumes and market share, in the years following 2010 when measures expired, is likely to be repeated if the current measures are allowed to expire.

Current Inquiry

Simcoa considers that the expiration of measures would likely lead to material injury to the Australian industry in the form of reduced sales and a reduced market share. In the absence of measures, exporters from China are likely to increase export volumes to Australia.

As shown above, China's silicon metal production capacity continues to expand, and it maintains excess capacity and inventories which would be used to increase exports to Australia should the measures lapse. The information available also indicates that the Chinese industry is a large exporter. According to *ITC Trade Map* data, China is the leading global exporter of silicon metal under harmonized system subheading 2804.69, accounting for approximately [XX] percent of global exports in 2022.⁴³ This data also indicates that exports of silicon metal from China totalled [XXX] metric tonnes in 2022.⁴⁴

The Australian market therefore remains attractive to subject producers. While under the disciplining effect of the measures, subject imports maintained a small presence in the Australian market, indicating that subject producers have maintained customers in the Australian market.

Trade measures on silicon metal from China in third-country markets would also make the Australian market relatively more attractive should the measures lapse.

Given the above, including the behaviours of Chinese exporters during the original investigation and subsequent periods, the continued presence of subject imports in the Australian market during the proposed inquiry period under the disciplining effect of the order, the Chinese industry's substantial and expanding production capacity, and China's status as the leading global exporter of silicon metal, Simcoa submits that the volume of subject goods from China would likely be significant, both in absolute terms and relative to Australian consumption, if the measures are permitted to expire. This will cause material injury to the Australian industry.

⁴³ Confidential Attachment 10: ITC Trade Map, 280469 Silicon containing <99.99% by weight of silicon.

⁴⁴ Ibid.

The likely price effects would be significant in the absence of measures

In considering the likely price effects of subject imports, the Commission considers whether there is likely to be significant undercutting by the subject imports, and whether the subject imports are likely to enter the Australian market at prices that otherwise would have a significant depressing or suppressing effect on domestic like product prices. In this continuation review, the evidence relating to these factors demonstrates that the likely price effects of Chinese silicon metal imports on the domestic like goods would be significant.

Original Investigation – Investigation 237

The Commission's consideration of its injury determinations in the original investigation, reflecting the industry's condition prior to the imposition of measures, is important because that period was the most recent time during which imports from China competed in the Australian market free of the discipline of interim dumping duties.

Investigation 237, with an inquiry period ending December 2013 and an injury assessment period spanning 2010 – 2013, found that the Australian industry had suffered material injury, and that there was a causal link between the injury experienced and the dumped goods imported from China. The Commission found that due to the dumped imports, Simcoa suffered injury in the form of loss of sales volumes, price depression, price suppression, and reduced profits and profitability.⁴⁵

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The Commission determined that its affirmative finding of the likelihood of volume-related injury would injure the Australian industry in terms of revenue, profits and profitability. *The Commission further considered the average volume of goods imported from China by a key common customer since 2014/15, and when considering Simcoa's unit sales price during the inquiry period the total revenue that this average import volume represents is material.*⁴⁶

Current Inquiry

Given the substitutability of the domestic like goods and subject imports and price-based competition for silicon metal in the Australian market, if the measures expire, a significant volume of the dumped goods from China would again substantially undersell the domestic like goods to gain market share. In turn, this would depress and suppress domestic like goods prices to a significant degree. With Chinese exporters no longer bound by the measures, a recurrence of the price injury experienced by the Australian industry in the original investigation period is highly likely.

Conclusion

The Commission needs to appropriately consider the period beyond the life of the current measures to determine if it is likely that dumped and injurious silicon metal exports China will likely recommence. The Commission's recommendations must be based on judgements about future probabilities. Demonstrated commercial behaviors relating to an inquiry period are essential pointers in determining what would be more likely or less likely to happen in that future.

The above indicates that the likely impact of silicon metal imports from China on the domestic industry would be significant if the measures were discontinued. Should the discipline of the measures be removed, subject producers will likely export a significant volume of silicon metal to the Australian market. Those unfairly traded imports would likely take sales from the Australian industry and depress and/or suppress Australian prices. These developments would then likely cause Australian industry's output, sales, market share, profits,

⁴⁵ REP 237, p. 61.

⁴⁶ SEF 524, p. 32.

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productivity, return on investments, and capacity utilisation to decline. They would also likely have significant negative effects on other aspects of the industry's performance, such as employment, wages, growth, and investment.

Simcoa has detailed in this application that the expiration of the measures on silicon metal exported from China will likely lead to a recurrence of the material injury that the measures are intended to prevent. Simcoa is seeking the Commissioner to commence an investigation into the continuation of the anti-dumping measures and recommend to the Minister that the measures not be allowed to expire on 3 June 2025.