



ANTI-DUMPING NOTICE NO. 2019/112

Customs Act 1901 – Part XVB

Silicon Metal

Exported from The People’s Republic of China

**Initiation of a Continuation Inquiry No. 524 into
Anti-Dumping Measures**

Notice under section 269ZHD(4) of the Customs Act 1901

I, Dale Seymour, the Commissioner of the Anti-Dumping Commission (Commissioner), have initiated an inquiry into whether the continuation of anti-dumping measures, in the form of a dumping duty notice and a countervailing duty notice, in respect of silicon metal (the goods) exported to Australia from the People’s Republic of China (China) is justified.

The anti-dumping measures are due to expire on 3 June 2020 (specified expiry day).¹

1. The goods

The goods subject to the anti-dumping measures and this inquiry are silicon metal containing:

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

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

The goods are generally, but not exclusively, classified to the following tariff subheading of Schedule 3 to the *Customs Tariff Act 1995*:²

Tariff Subheading	Statistical Code
2804.69.00	14

¹ On and from 4 June 2020, if not continued, the anti-dumping measures would no longer apply.

² This tariff classification and statistical code may include goods that are both subject and not subject to the anti-dumping measures. The listing of this tariff classification and statistical code is for convenience or reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to the anti-dumping measures.

2. Background to the anti-dumping measures

The anti-dumping measures were initially imposed by public notice on 3 June 2015 by the Parliamentary Secretary to the Minister for Industry and Science (the Parliamentary Secretary).³ This followed the Parliamentary Secretary's consideration of the Commissioner's recommendation in *Anti-Dumping Commission Report No. 237* as a result of Investigation No. 237 (original investigation).

The original investigation and the imposition of the anti-dumping measures resulted from an application made under section 269TB of the *Customs Act 1901*⁴ by Simcoa Operations Pty Ltd (Simcoa) representing the Australian industry producing like goods to the goods under consideration.

Further details on the goods and existing measures is available on the Dumping Commodity Register on the Anti-Dumping Commission (the Commission) website (www.adcommission.gov.au).

3. Application for continuation of the anti-dumping measures

Division 6A of Part XVB sets out, among other things, the procedures to be followed in dealing with an application for the continuation of anti-dumping measures.

In accordance with section 269ZHB(1), I published a notice on the Commission's website on 17 June 2019.⁵ The notice invited the following persons to apply for the continuation of the anti-dumping measures:

- the person whose application under section 269TB resulted in the anti-dumping measures;⁶ and
- persons representing the whole or a portion of the Australian industry producing like goods to the goods covered by the anti-dumping measures.⁷

On 16 August 2019, an application for the continuation of the anti-dumping measures was received from Simcoa. A non-confidential version of the application is available on the Commission's public record.

Having regard to the application and the original investigation, I am satisfied that Simcoa is the person under section 269ZHB(1)(b)(i) because Simcoa's application under section 269TB resulted in the existing anti-dumping measures.

4. Consideration of application under section 269ZHD(1)

Pursuant to section 269ZHD(1), I must reject an application for the continuation of anti-dumping measures if I am not satisfied of one or more of the matters referred to in section 269ZHD(2). These are:

- whether the application complies with section 269ZHC;⁸ and
- whether there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates

³ Anti-Dumping Notice No. 2015/71.

⁴ All legislative references in this notice are to the *Customs Act 1901*, unless otherwise stated.

⁵ Anti-Dumping Notice No. 2019/77.

⁶ Section 269ZHB(1)(b)(i).

⁷ Section 269ZHB(1)(b)(ii).

⁸ Section 269ZHD(2)(a).

might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.⁹

5. Assessment under section 269ZHD(2)(a) – compliance with section 269ZHC

I consider that the application complies with the requirements of section 269ZHC because I am satisfied that it is in writing, in a form approved by me for the purposes of this section, contains the information that the form requires, is signed in the manner indicated by the form, and was lodged in a manner approved under section 269SMS, being by email to the Commission's email address provided in the instrument under section 269SMS.¹⁰

6. Assessment under section 269ZHD(2)(b) – reasonable grounds

Applicant's claims

In its application, Simcoa claims, among other things, that:

- The Government of China has not altered its policies since measures were imposed in 2015 and that a market situation in respect of silicon metal sold in China continues to apply;
- Exporters from China have maintained their distribution channels to Australia and have continued to export the goods under consideration to Australia;
- Evidence indicates that dumping and subsidisation will continue based on Simcoa's estimates of the normal value for silicon metal in China;
- Exporters from China possess excess production capacity that could be used to supply exports to Australia should the measures be allowed to expire;
- Following the imposition of measures in June 2015, Simcoa has been able to improve its market share and volume of sales in Australia, but has suffered a deterioration in profit and profitability due to increased production costs; and
- If the measures applicable to silicon metal from China are allowed to expire, it is likely that the Australian industry producing like goods would suffer a recurrence of the material injury that the measures are intended to prevent.

As part of its application, Simcoa provided sales and costs data to evidence the increase in sales volume and revenue, and the corresponding reduction in profit and profitability due to increased production costs. Simcoa also provided information to demonstrate that exporters from China continue to export the goods to Australia. The Commission also considered importation data (specifically in relation to volumes and price) it obtained from the Australian Border Force (ABF) import database.

7. The Commission's consideration

The Commission has examined the information it obtained from the ABF database and has found that exporters from China have continued to export the goods to Australia since the imposition of the anti-dumping measures. This confirms that

⁹ Section 269ZHD(2)(b).

¹⁰ A copy of the instrument can be found on the Commission's website at www.adcommission.gov.au.

manufacturers in China have maintained distribution links into the Australian market. In considering ABF data, the Commission observed that import volumes of the goods from China declined following the imposition of measures in June 2015 but has remained relatively consistent in the following years. The Commission also considered the evidence provided in relation to dumping and subsidisation. From this evidence, the Commissioner considers that Simcoa's argument that the expiration of anti-dumping measures would be likely to lead to dumping and subsidisation appears to be reasonable.

In its application, Simcoa states that the capacity utilisation for Chinese manufacturers of silicon metal is low. Simcoa considers that in the absence of measures the excess production capacity available to Chinese manufacturers of silicon metal could be used to supply Australian customers. Simcoa notes that since the imposition of measures it has increased its domestic sales volume, and that the expiry of measures may lead to the displacement of those volumes. The Commission has considered the evidence provided by Simcoa in relation to the capacity utilisation of Chinese manufacturers and considers the expiry of measures might lead, or might be likely to lead, to a continuation of, or recurrence of the material injury that the measures are intended to prevent.

8. Conclusion

Having regard to the application, Simcoa's claims and other relevant information set out in this notice, and in accordance with sections 269ZHD(1) and (2), I am satisfied of the following:

- (a) that application complies with section 269ZHC; and
- (b) that there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

Based on the above findings, I have therefore decided to not reject the application.

9. This continuation inquiry

For the purposes of this inquiry, I will examine the period from 1 July 2018 to 30 June 2019 (the inquiry period) to determine whether the goods exported from China have been dumped and/or subsidised. I will examine the period from 1 July 2010 to assess the economic condition of the Australian industry. Following my inquiries I will recommend to the Minister whether the anti-dumping measures should:¹¹

- (i) remain unaltered; or
- (ii) cease to apply to a particular exporter or to a particular kind of goods; or
- (iii) have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained; or
- (iv) expire on the specified expiry day.

¹¹ Section 269ZHF(1)(a).

10. Proposed model control code structure

On 9 August 2018, the Commission advised in Anti-Dumping Notice No. 2018/128 that a model control code (MCC) structure would be implemented in new investigations, reviews of exporters generally or continuations for cases initiated after this date.¹²

Attachment 1 to this notice outlines the Commission's proposed MCC structure. Proposals to modify the MCC structure should be raised as soon as is practicable, but no later than **12 October 2019**, the day submissions concerning the continuation of the measures are due.¹³

Interested parties are encouraged to make submissions on whether proposed modifications to the MCC structure should be accepted by the Commission. Any changes to the MCC structure will be considered by the Commission and reported in verification reports or in the statement of essential facts.

11. Public record

I must maintain a public record for this inquiry. The public record must contain, among other things, a copy of all submissions from interested parties. Documents included in the public record are accessible via www.adcommission.gov.au or at the Commission's office by contacting the case manager on the details provided below.

12. Submissions

Interested parties, as defined in section 269T(1), are invited to lodge written submissions concerning the continuation of the measures, no later than the close of business on **12 October 2019**, being 37 days after publication of this notice.¹⁴ The Commission's preference is to receive submissions by email to investigations2@adcommission.gov.au.

Submissions may also be addressed to:

The Director, Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

or faxed to +61 3 8539 2499.

Interested parties wishing to participate in the inquiry must ensure that submissions are lodged promptly. Interested parties should note that I am not obliged to have regard to a submission received after the date indicated above if to do so would, in my opinion, prevent the timely placement of the statement of essential facts (SEF) on the public record.

Interested parties claiming that information contained in their submission is confidential, or that the publication of the information would adversely affect their business or commercial interests, must:

¹² Full guidance regarding the Commission's MCC structure is provided in Anti-Dumping Notice No. 2018/128 on the Commission's website.

¹³ The due date is 12 October 2019. However, as this falls on a Saturday, the effective due date is the next business day, 14 October 2019.

¹⁴ 37 days after the publication of the notice is 12 October 2019. However, as this falls on a Saturday, the effective due date is the next business day, 14 October 2019.

- (i) provide a summary containing sufficient detail to allow a reasonable understanding of the substance of the information that does not breach that confidentiality or adversely affect those interests, or
- (ii) satisfy me that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

Submissions containing confidential information must be clearly marked "FOR OFFICIAL USE ONLY". Interested parties must lodge a non-confidential version or a summary of their submission in accordance with the requirement above (clearly marked "PUBLIC RECORD").

13. Statement of essential facts

The dates specified in this notice for lodging submissions must be observed to enable me to report to the Minister for Industry, Science and Technology (Minister) within the legislative timeframe. I will place the SEF on the public record on or before **24 December 2019**, that is, within 110 days after the publication of this notice, or by such later date as I may allow in accordance with section 269ZHI.¹⁵ The SEF will set out the essential facts on which I propose to base a recommendation to the Minister concerning the continuation of the anti-dumping measures.¹⁶

Interested parties are invited to lodge submissions in response to the SEF within 20 days of the SEF being placed on the public record. Submissions received in response to the SEF within 20 days of the SEF being placed on the public record will be taken into account in completing my report and recommendation to the Minister.

14. Report to the Minister

I will make a recommendation to the Minister in a report on or before **7 February 2020**, that is, within 155 days after the date of publication of this notice, or such later date as I may allow in accordance with section 269ZHI.¹⁷

The Minister must make a declaration within 30 days after receiving the report, or if the Minister considers there are special circumstances, such longer period, ending before the specified expiry day, as the Minister considers appropriate. If the Minister receives the report less than 30 days before the specified expiry day, the Minister must make the declaration before that day.

15. The Commission Contact

Enquiries about this notice may be directed to the Case Manager on telephone number 03 8539 2477 or via email at investigations2@adcommission.gov.au.

Dale Seymour
Commissioner
Anti-Dumping Commission

5 September 2019

¹⁵ On 14 January 2017, certain powers and functions of the Minister under section 269ZHI were delegated to the Commissioner of the Anti-Dumping Commission; see ADN No. 2017/10.

¹⁶ See section 269ZHE.

¹⁷ See section 269ZHF.

ATTACHMENT 1 TO ADN 2019/112**PROPOSED MODEL CONTROL CODE STRUCTURE**

Item	Category	Sub-category	Identifier	Sales Data	Cost Data	Key category
1	Grade	441	A	Mandatory	Mandatory	Yes
		2202	B			
		3303	C			
		3301	D			
		1101	E			
2	Packaging	10kg (box/bag)	1	Mandatory	Mandatory	Yes
		250kg bag	2			
		500kg bag	3			
		1000kg bag	4			
		1250kg bag	5			