



Australian Government
Department of Industry, Science,
Energy and Resources

PUBLIC RECORD

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS NO. 524

**INQUIRY INTO THE CONTINUATION
OF ANTI-DUMPING AND COUNTERVAILING MEASURES
APPLYING TO SILICON METAL EXPORTED TO AUSTRALIA
FROM THE PEOPLE'S REPUBLIC OF CHINA**

27 February 2020

CONTENTS

CONTENTS.....	2
ABBREVIATIONS.....	4
1 SUMMARY AND RECOMMENDATIONS	6
1.1 INTRODUCTION.....	6
1.2 LEGISLATIVE FRAMEWORK.....	6
1.3 PRELIMINARY FINDINGS.....	6
1.4 PROPOSED RECOMMENDATIONS	7
1.5 RESPONDING TO THIS SEF	7
1.6 FINAL REPORT	8
2 BACKGROUND.....	9
2.1 INITIATION.....	9
2.2 REP 237 AND THE CURRENT ANTI-DUMPING MEASURES.....	9
2.3 NOTIFICATION AND PARTICIPATION IN THE INQUIRY	10
3 THE GOODS AND LIKE GOODS.....	11
3.1 PRELIMINARY FINDINGS.....	11
3.2 LEGISLATIVE FRAMEWORK.....	11
3.3 THE GOODS	11
3.4 LIKE GOODS	12
3.5 CONCLUSION	13
4 THE AUSTRALIAN INDUSTRY	14
4.1 PRELIMINARY FINDINGS.....	14
4.2 LEGISLATIVE FRAMEWORK.....	14
4.3 AUSTRALIAN INDUSTRY	14
4.4 AUSTRALIAN PRODUCTION	14
5 THE AUSTRALIAN MARKET	16
5.1 FINDING.....	16
5.2 MARKET SIZE.....	16
5.3 MARKET CHARACTERISTICS	16
6 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY	18
6.1 APPROACH TO ANALYSIS.....	18
6.2 FINDINGS IN ORIGINAL INVESTIGATION	18
6.3 VOLUME EFFECTS.....	18
6.4 PRICE EFFECTS.....	20
6.5 PROFITS AND PROFITABILITY	21
6.6 OTHER ECONOMIC FACTORS.....	22
7 REVIEW OF VARIABLE FACTORS	23
7.1 PRELIMINARY FINDINGS.....	23
7.2 LEGISLATIVE FRAMEWORK.....	23
7.3 EXPORTER QUESTIONNAIRES RECEIVED	23
7.4 CHINA	24
8 LIKELIHOOD THAT DUMPING AND MATERIAL INJURY WILL CONTINUE OR RECUR.....	27
8.1 PRELIMINARY FINDINGS.....	27
8.2 LEGISLATIVE FRAMEWORK.....	27
8.3 IS DUMPING AND SUBSIDISATION LIKELY TO CONTINUE OR RECUR?	27
8.4 IS MATERIAL INJURY LIKELY TO CONTINUE OR RECUR?	29

PUBLIC RECORD

9	NON-INJURIOUS PRICE AND LESSER DUTY RULE	33
9.1	PRELIMINARY FINDINGS.....	33
9.2	INTRODUCTION.....	33
9.3	CALCULATION OF THE NON-INJURIOUS PRICE	33
9.4	SUBMISSIONS RECEIVED	33
9.5	THE COMMISSION'S ASSESSMENT	34
9.6	EFFECTIVE RATE OF DUTY	34
10	FORMS OF DUTY	35
10.1	PRELIMINARY FINDINGS.....	35
10.2	LEGISLATIVE FRAMEWORK.....	35
10.3	CONSIDERATION OF FORM OF MEASURES.....	35
10.4	EXISTING MEASURES	35
10.5	SUBMISSIONS RECEIVED	35
10.6	THE COMMISSION'S ASSESSMENT	36
11	APPENDICES AND ATTACHMENTS	37
	NON-CONFIDENTIAL APPENDIX 1 – ASSESSMENT OF MARKET SITUATION	38
	NON-CONFIDENTIAL APPENDIX 2 – ASSESSMENT OF COUNTERVAILABILITY OF SUBSIDIES (INV 237)	43
	NON-CONFIDENTIAL APPENDIX 3 – ASSESSMENT OF COUNTERVAILABILITY OF SUBSIDIES	60

ABBREVIATIONS

ABF	Australian Border Force
ACBPS	Australian Customs and Border Protection Service
the Act	<i>Customs Act 1901</i> (Cth)
ADN	Anti-Dumping Notice
Simcoa or the applicant	Simcoa Operations Pty Ltd
CBSA	Canadian Border Services Agency
China	the People's Republic of China
combination duty method	the combination of fixed and variable duty method
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
DDP	Delivered Duty Paid
the Direction	Customs (Extensions of Time and Non-cooperation) Direction 2015
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i> (Cth)
EPR	electronic public record
FOB	Free on Board
GOC	Government of China
the goods	silicon metal – the goods the subject of the application
the Guidelines	Guidelines on the Application of Forms of Dumping Duty November 2013
IDD	interim dumping duty
the Injury Direction	Ministerial Direction on Material Injury 2012
inquiry period	1 July 2018 to 30 June 2019
the Manual	Dumping and Subsidy Manual
MCC	model control code
the measures	the anti-dumping and countervailing measures currently applicable to exports of silicon metal to Australia from the People's Republic of China that are due to expire on 3 June 2020
the Minister	the Minister for Industry, Science and Technology
NIP	non-injurious price
the Notice	the dumping duty and countervailing notice published on 3 June 2015

PUBLIC RECORD

OCOT	ordinary course of trade
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 237	<i>Anti-Dumping Commission Report No. 237</i>
REQ	response to the exporter questionnaire
SEF	statement of essential facts
SG&A	selling, general and administrative
TCO	Tariff Concession Order
Tomago	Tomago Aluminium Company Pty Ltd
USP	unsuppressed selling price
VAT	value-added tax
WTO	World Trade Organization

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This statement of essential facts (SEF) concerns an inquiry into whether the continuation of the anti-dumping and countervailing measures, in the form of a dumping duty and countervailing duty notice (the notices) applying to silicon metal (the goods) exported to Australia from the People's Republic of China (China) is justified. An application was made under section 269ZHC of the *Customs Act 1901* (the Act)¹ by Simcoa Operations Pty Ltd (Simcoa) for the continuation of the measures.

This SEF sets out the findings and conclusions on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Minister for Industry, Science and Technology (the Minister).

The anti-dumping measures currently applicable to exports of the goods to Australia from China are due to expire on 3 June 2020.

1.2 Legislative framework

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

Section 269ZHE(1) requires that the Commissioner publish a SEF on which he proposes to base his recommendations to the Minister concerning the continuation of the measures. Section 269ZHE(2) requires that in doing so the Commissioner must have regard to the application and any submissions received within 37 days of the initiation of the inquiry, and may have regard to any other matters that he considers relevant.

Section 269ZHF(1) provides that the Commissioner must, after conducting his inquiry, give the Minister a report recommending that the relevant notice:

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

The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent (section 269ZHF(2)).

1.3 Preliminary findings

For the reasons set out in this SEF, the Commissioner is satisfied that the expiration of the anti-dumping measures on silicon metal exported from China would be likely to lead,

¹ All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

to a continuation of, or a recurrence of, the dumping and subsidisation and the material injury that the anti-dumping measures are intended to prevent.

1.4 Proposed recommendations

The Commissioner proposes to recommend that the notice have effect in relation to exporters generally from China, as if different variable factors had been ascertained, pursuant to section 269ZHF(1)(a)(iii). This would result in the Minister taking steps to secure the continuation of the Notice on and after 3 June 2020 in respect of the goods.

1.5 Responding to this SEF

This SEF states the essential facts on which the Commissioner proposes to base his final recommendations to the Minister. This SEF informs interested parties of the facts established to date and allows them to make submissions in response.

This SEF may not represent the final views of the Commissioner. The final report will recommend whether or not the anti-dumping measures should continue to apply.

Interested parties are invited to make submissions to the Commissioner in response to the SEF within 20 days of the SEF being placed on the public record. The due date to lodge written submissions in response to this SEF is **18 March 2020**.

The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.²

Please email submissions to investigations2@adcommission.gov.au.

Alternatively, interested parties may post submissions to:

Director, Investigations 2
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked as confidential and a non-confidential version of any submission is required for the public record. Information in relation to making submissions is available at the Anti-Dumping Commission's (Commission's) website.³

The public record contains non-confidential submissions from interested parties, non-confidential versions of the Commission's verification reports and other publicly available documents.

Interested parties should read this SEF in conjunction with other documents on the public record.

² Section 269ZHF(4).

³ <https://www.industry.gov.au/regulations-and-standards/anti-dumping-and-countervailing-system/submissions-to-an-anti-dumping-or-countervailing-case>

1.6 Final report

The Commissioner's final report and recommendations must be provided to the Minister within 155 days after the publication of a notice under section 269ZHD(4) or such longer period as the Minister allows.⁴ The current due date for the final report is 12 April 2020.⁵

⁴ Section 269ZHF(1). On 14 January 2017 the powers and functions of the Minister under section 269ZHI were delegated to the Commissioner, see Anti-Dumping Notice No. 2017/10.

⁵ As this is a Sunday, the effective due date is 13 April 2020, being the next business day.

2 BACKGROUND

2.1 Initiation

The Commissioner initiated this inquiry on 5 September 2019, following his consideration of an application lodged by Simcoa seeking continuation of the anti-dumping and countervailing measures relating to the goods exported to Australia from China. Anti-Dumping Notice (ADN) No. 2019/112 on the electronic public record (EPR) sets out the Commissioner's reasons for initiating this inquiry.

2.2 REP 237 and the current anti-dumping measures

The then Parliamentary Secretary to the Minister for Industry and Science imposed the current anti-dumping measures on the goods on 3 June 2015 following consideration of *Anti-Dumping Commission Report No. 237* (REP 237).

The anti-dumping and countervailing measures currently applying to silicon metal exported to Australia from China are set out in table 1:

Country	Exporter	Interim dumping duty (IDD)	Interim countervailing duty (ICD)	Form of measures
China	Hua'an Linan Silicon Industry Co. Ltd supplied through Xiamen K Metal Co. Ltd	12.0%	6.3%	Ad Valorem
	Guizhou Liping Linan Silicon Industry Co. Ltd supplied through Xiamen K Metal Co. Ltd	12.0%	6.3%	Ad Valorem
	All other exporters	20.7%	32.3%	Ad Valorem

Table 1: Current measures applying to silicon metal

2.2.1 Other cases

There have been no cases in relation to the operation of the measures applying to silicon metal exported from China since the measures were imposed.

2.2.2 Previous cases

Investigation 81 into the alleged dumping of silicon metal from China resulted in the imposition of anti-dumping measures. Notice of the then Minister for Justice and Customs' decision was published on 16 February 2005.⁶ On 13 February 2006 the Trade Measures Branch completed reinvestigation 103 which affirmed the original findings but clarified the definition of like goods.⁷

These measures on silicon metal from China expired in February 2010.

⁶ Australian Customs Dumping Notice No. 2005/11.

⁷ Australian Customs Dumping Notice No. 2006/04.

2.3 Notification and participation in the inquiry

On 5 September 2019, a notice advising the initiation of this continuation inquiry was published on the Commission website,⁸ in relation to silicon metal exported to Australia from China. The Commission established an inquiry period of 1 July 2018 to 30 June 2019.

2.3.1 Australian industry

Simcoa, the sole manufacturer of the goods in Australia, provided financial data to the Commission. The Commission visited Simcoa's premises from 10 to 12 September 2019 to verify the information and data provided in its application. The report in relation to this visit is available on the EPR.⁹

2.3.2 Importers

The Commission examined the Australian Border Force (ABF) import database and found that Simcoa had been identified as the importer for the majority of imports of the goods from China during the inquiry period. As a result, the Commission requested that Simcoa complete an importer questionnaire and the information provided in this questionnaire was verified.¹⁰

Tomago Aluminium Company Pty Ltd (Tomago) was the other key entity identified in the ABF database as an importer during the inquiry and completed an importer questionnaire. Due to the minor volume of imports, the Commission did not undertake a verification visit. The Commission sought to verify selected imports via desktop verification however, despite several requests, Tomago did not cooperate by providing further information.

2.3.3 Exporters

The Commission found several entities from China in the ABF import database who had been identified as suppliers, and sent exporter questionnaires to these entities. The Commission did not receive a complete response to the exporter questionnaire (REQ) from any entity from China.¹¹

The Commission received the following submissions from interested parties prior to publishing this SEF and has had regard to submissions in table 2 below in formulating this SEF.¹² Non-confidential versions of these submissions are available on the EPR.¹³

EPR document	Interested party	Date published on EPR
003	Simcoa Operations Pty Ltd	27 November 2019
004	Simcoa Operations Pty Ltd	13 December 2019

Table 2: Submissions considered in the SEF

The matters raised in these submissions have been addressed in the relevant chapters of this SEF.

⁸ ADN No. 2019/112 refers.

⁹ EPR 524, document 006.

¹⁰ Ibid. Please see section 7.4.1.1 for further consideration about the relevant importers of the goods.

¹¹ Please see section 7.3 for further consideration about the relevant exporters of the goods.

¹² Section 269ZHE(2).

¹³ Submissions are available on EPR 524.

3 THE GOODS AND LIKE GOODS

3.1 Preliminary findings

The Commissioner considers that silicon metal manufactured by the Australian industry¹⁴ are like goods, as defined in section 269T(1).

3.2 Legislative framework

In assessing whether the expiry of measures on imported goods would lead, or would be likely to lead, to a continuation or recurrence of dumping and the material injury the measures are intended to prevent, the Commissioner must first assess whether there is an Australian industry which continues to produce goods that are “like” to the imported goods. Section 269T(1) defines like goods as:

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

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

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

3.3 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.

3.3.1 Tariff classification of the goods

The goods are generally, but not exclusively, classified to the following tariff subheading of Schedule 3 to the *Customs Tariff Act 1995*:¹⁵

Tariff Subheading	Statistical Code
2804.69.00	14

¹⁴ Please see chapter 4 for the Commissioner’s consideration and conclusion of the Australian industry producing like goods.

¹⁵ 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.

3.3.2 Model Control Codes

As announced in ADN No. 2018/128 published on 9 August 2018, the Commission has commenced using a model control code (MCC) structure for model matching when comparing export prices and normal values.

The Commission proposed the following model matching using the MCC structure in order to identify key characteristics that was used to match models of the goods exported to Australia and like goods sold domestically in the country of export.

The MCC structure for silicon metal is detailed in table 3.

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			

Table 3: Model control code for silicon metal

Due to the lack of cooperation from exporters in this inquiry, the Commission did not utilise the MCC structure.

3.4 Like goods

The following analysis outlines the Commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods the subject of the application and are therefore like goods. In making this assessment, the Commission has considered the application, the findings of the previous investigation and publicly available information.

3.4.1 Physical likeness

The goods and locally produced goods have identical physical characteristics, notwithstanding slight variations in technical specifications based on customer needs. Silicon is a chemical element, of metallic appearance and steel grey in colour. It is often referred to as a metal, although silicon possesses characteristics of both metals and non-metals (silicon is a metalloid). It is generally sold in lump form to the metallurgical

industry, and in powder form to the chemicals industry. The type and level of impurities influences the end-use application.¹⁶

3.4.2 Commercial likeness

The goods and locally produced goods compete in the same market sector, are interchangeable and use similar distribution channels. Silicon metal is sold and distributed across Australia, sourced either from Simcoa or imports. There is no geographic segmentation for silicon metal, nor is there product segmentation other than identifying whether product is sold to primary or secondary aluminium end-users.¹⁷

3.4.3 Functional likeness

The goods and locally produced goods are functionally alike as they have similar end-uses. Silicon metal is sold to primary aluminium and secondary aluminium end-users as an alloying agent and by the chemical industry to produce silicones and photovoltaics.¹⁸

3.4.4 Production likeness

The goods and locally produced goods are produced in the same manner, using the same raw material inputs and manufacturing processes. Silicon metal is manufactured from inputs including quartz or silica, charcoal, coal and wood chips involving a high endothermic process.¹⁹

3.5 Conclusion

For these reasons, the Commissioner is satisfied that there is an Australian industry, being Simcoa, which continues to produce goods that are like to the goods under consideration. That is, goods that are although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

¹⁶ REP 237

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

4 THE AUSTRALIAN INDUSTRY

4.1 Preliminary findings

The Commissioner is satisfied that there is an Australian industry, consisting wholly of Simcoa, which produces goods that are like to the goods under consideration (section 269T(4)). The Commissioner is satisfied that Simcoa wholly manufactures the goods in Australia (section 269T(2)).

4.2 Legislative framework

The Commissioner must assess whether there is an Australian industry (section 269T(4)) in respect of the like goods and whether the like goods continue to be produced in Australia. Sections 269T(2) and (3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered partly manufactured in Australia, at least one substantial process²⁰ in the manufacture of the goods must be carried out in Australia.

The Commission considers that a substantial process must add some essential or vital quality or character to the goods.²¹

4.3 Australian industry

Simcoa is the sole manufacturer of silicon metal in Australia. The company has three furnaces at its manufacturing site in Bunbury, Western Australia.²²

Simcoa was recognised as the sole manufacturer of silicon metal in the original investigation. The Commission has not found any evidence to suggest that there are other manufacturers of like goods in Australia, and no other parties have made submissions claiming the existence of other industry members. The Commission remains satisfied that there is an Australian industry consisting only of Simcoa that produces like goods in Australia.

4.4 Australian production

Silicon metal is produced by the carbothermic reduction of silica, presented as either quartz or quartzite. Since the original investigation, Simcoa has continued to produce silicon metal. The company sells the goods directly to end users, not via distributor or retailer.²³

The Commission completed an Australian industry verification visit and undertook a tour of Simcoa's manufacturing plant, observing the production process as follows:²⁴

- i. A mix of quartz, carbonaceous reducing agents (being charcoal, coal, petroleum coke) and wood chips are prepared and placed in a furnace;

²⁰ The term "substantial process" is not defined in the legislation.

²¹ Manual at section 1.2.

²² EPR 524, document 006.

²³ Ibid.

²⁴ Ibid.

PUBLIC RECORD

- ii. A high electrical current is passed through electrodes within the furnace creating extreme heat;
- iii. The heat causes the raw materials to combine into a liquid silicon metal;
- iv. The liquid silicon metal is poured into a mould to cool and set;
- v. The solid silicon metal is broken down into lumps, granules or powder; and
- vi. The silicon metal is packed for sale.

Based on the above, the Commission remains satisfied that Simcoa wholly manufactures the like goods in Australia.

5 THE AUSTRALIAN MARKET

5.1 Finding

The Commission has found that, during the inquiry period, the Australian market for the goods was supplied by Simcoa, imports from China and imports from other countries not subject to measures.

The Commission estimates that the size of the Australian market for silicon metal has remained consistent in the last three years, following a sharp decline in the 2015/16 year, the year immediately following the imposition of measures.

5.2 Market size

The Australian market for silicon metal is supplied by the Australian industry and imported goods, primarily from China. The Commission has estimated the size of the Australian market using Simcoa's verified sales volumes and import data from the ABF import database. The Commission observes (Figure 1) that since the imposition of the measures, the silicon metal market decreased in the financial year of 2015/16 before returning to, and maintaining, similar volumes to the 2014/15 year.

The Commission's market analysis is at **Confidential Attachment 1**.

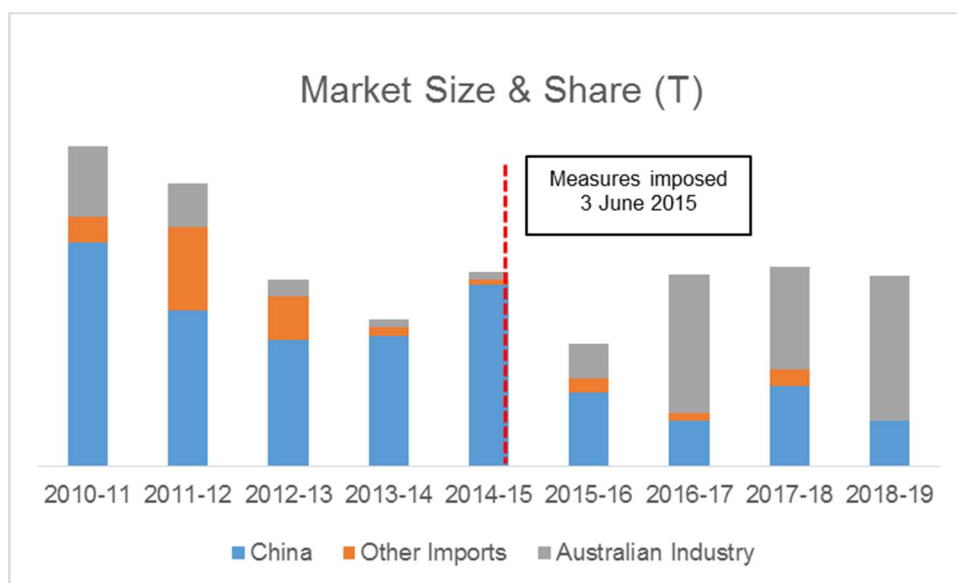


Figure 1: Estimated Australian market size of silicon metal since 2010
(red line depicts the imposition of measures; years are financial years from 1 July to 30 June)

5.3 Market characteristics

Simcoa explained that silicon metal is sold to primary and secondary aluminium end-users. As a result, demand for silicon metal is largely dependent on the demand for aluminium products.

PUBLIC RECORD

The 'Resources and Energy Quarterly March 2019' report from the former Department of Industry, Innovation and Science's Office of the Chief Economist²⁵ details Australia's level of production, pricing and exports of aluminium, alumina and bauxite.²⁶ Figure 2, extracted from the report, highlights the stability of Australia's aluminium production in the past few years.

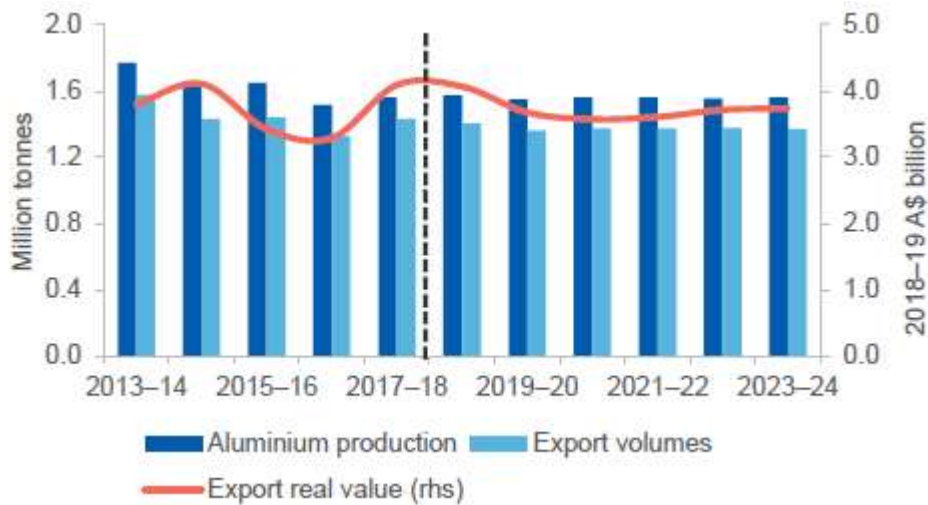


Figure 2: Aluminium production and export volumes²⁷

Given the consistent production volumes of aluminium over a number of years, this supports the consistent size of the Australian market for silicon metal, besides the 2015/16 year in which Simcoa outlined the following factors had contributed to reduced demand:

- The shutdown of automotive production in Australia; and
- The closure of several aluminium smelters.

²⁵ As it was then known.

²⁶ Office of the Chief Economist, Department of Industry, Innovation and Science, [Resources and Energy Quarterly – March 2019](#).

²⁷ Sourced from ABS (2019) International Trade in Goods and Services, 5368.0; Department of Industry, Innovation and Science (2019).

6 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

6.1 Approach to analysis

The Commission has examined the Australian market and the economic condition of the Australian industry from 2010 for the purposes of its analysis.

The analysis detailed in this chapter is based on verified financial information submitted by Simcoa as well as data from the ABF import database.

The data and analysis on which the Commission has relied to assess the economic position of the Australian industry is at **Confidential Attachment 2**.

Consideration of whether the expiration of the anti-dumping and countervailing measures would lead, or would be likely to lead, to a continuation of, or recurrence of, material injury caused by dumping and/or countervailing (as opposed to other factors) is discussed in Chapter 8 of this report.

6.2 Findings in original investigation

In REP 237 the Commissioner found that, during the investigation period, the Australian industry had experienced injury in the form of:

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

6.3 Volume effects

6.3.1 Sales volume

Figure 3 below illustrates the Australian industry's total Australian sales volume for silicon metal from 2010 onwards. Since the measures were imposed on 3 June 2015, domestic sales of silicon metal have increased significantly, coinciding with a reduction in the volume of imports from China.

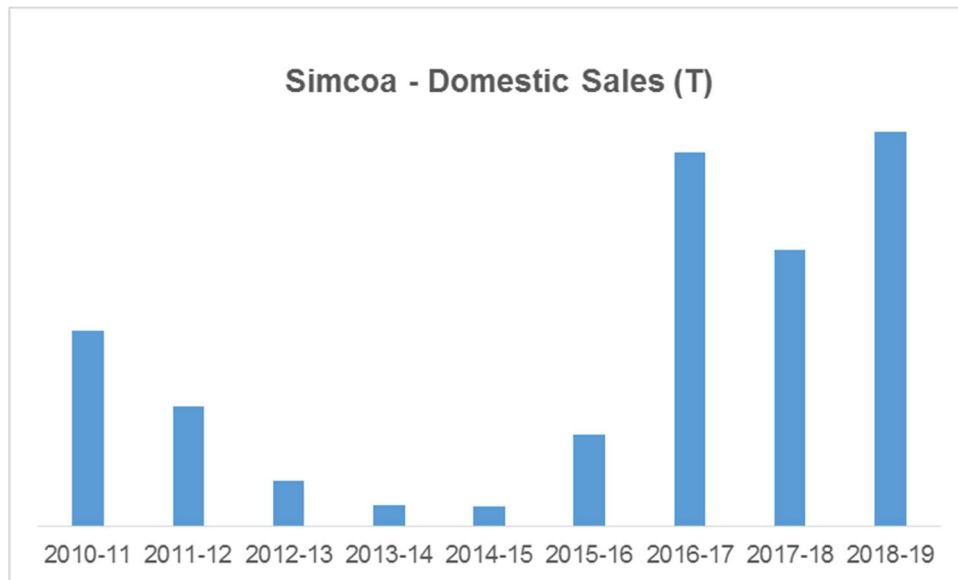


Figure 3: Simcoa domestic sales volume of silicon metal since 2010

Simcoa outlined that in addition to selling silicon metal in the Australian market, it continues to export silicon metal. Export sales represent the majority of its business in relation to silicon metal, and the respective volumes of export sales compared to domestic sales is illustrated in Figure 4 below.

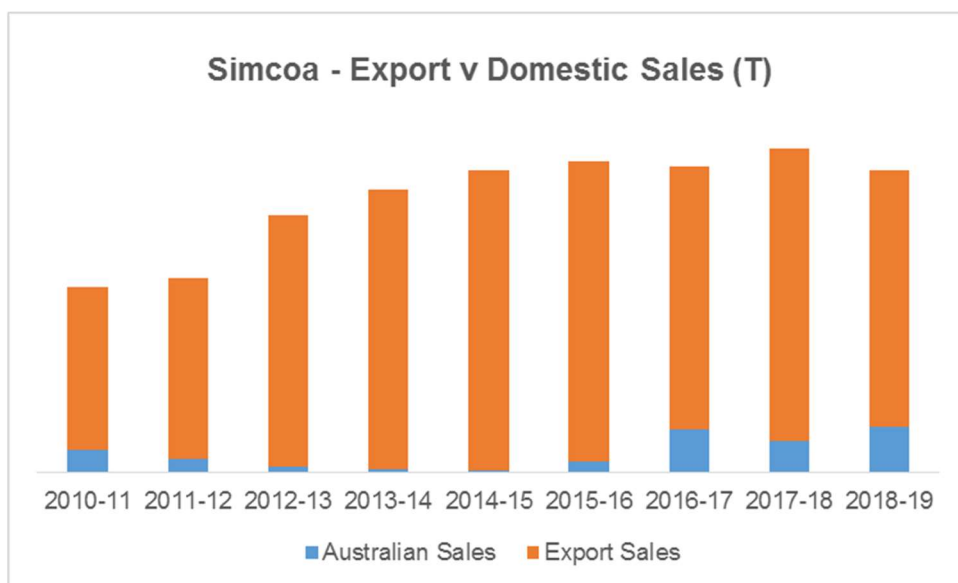


Figure 4: Simcoa sales volume by market

Since 2013/14, the total sales volume of silicon metal (both export and domestic) has remained generally consistent, with the imposition of measures on 3 June 2015 leading to an increase in the volume of Australian sales.

6.3.2 Market size and market share

Figure 5 below shows the estimated changes in the Australian market share between Simcoa and imported goods using data from the ABF import database and Simcoa's own sales data during the period from 2010. Since the imposition of the measures, Simcoa's market share has increased and remained relatively stable during the last five years.

It can also be observed that the share of imports from China has decreased significantly from 2015 onwards. Export volumes from countries not subject to measures have largely ceased.



Figure 5: Estimated Australian market share for silicon metal since 2010

6.4 Price effects

6.4.1 Price Suppression

Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

In determining whether price suppression has occurred, the Commission may assess:

- whether prices have increased at the same rate as costs over time (e.g. the injury analysis period) or within a specified period (e.g. the inquiry period); and/or
- whether prices for the Australian industry's product are lower than prices that may have been achieved absent dumping.

Figure 6 below shows the trends in Simcoa's unit price and cost to make and sell (CTMS) for domestic sales from 2010. Both costs and prices have continued to rise with a narrowing of the margin being achieved, particularly over the last four years, driven by increases in costs.

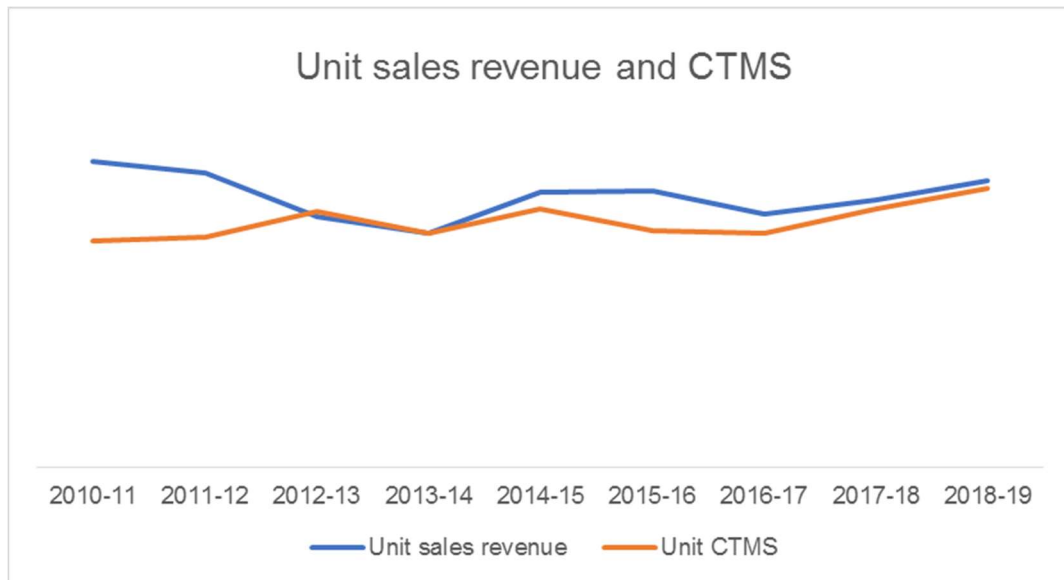


Figure 6: Unit sales revenue and CTMS

6.5 Profits and profitability

Simcoa's profit and profitability from 2010 onwards is shown in Figure 7. Simcoa's profit and profitability declined considerably following the expiry (in February 2010) of the previous measures on silicon metal from China. There was an increase in profits and profitability around the time the current measures were imposed (in June 2015) before a subsequent decline again through to the end of the inquiry period. This is despite an increase in sales volume in the Australian market, and a stronger market share.²⁸

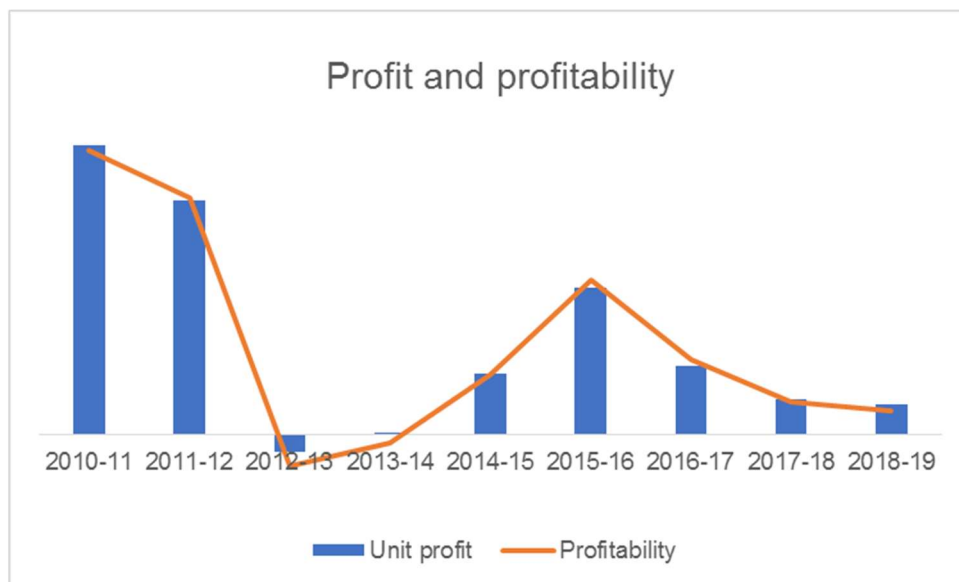


Figure 7: Simcoa's profit (left axis) and profitability (right axis)

²⁸ The Commission notes that this chart has been altered to the profit and profitability chart in the Australian Industry Verification Visit report. The analysis in the verification visit report was by calendar years from 2010 to 2013, and then by year ending 30 June from the 2015/16 year onwards. This has now been revised to be the year ending 30 June from 2010/11 onwards.

6.6 Other economic factors

In relation to other economic factors, in its application Simcoa did not claim other economic factors had adversely affected its performance. However, the Commission examined the data provided by Simcoa and made the following observations for the period from 2015/16 onwards:

- both capacity and capacity utilisation have remained consistent;
- asset value has declined slightly;
- revenue has fluctuated - declining in the 2016/17 year and then improving in each of the two years since;
- employment and wages have both remained stable with slight increases; and
- for both capital investment and research and development expenses there have been fluctuations, with significant reductions in the 2018/19 year (the inquiry period).

7 REVIEW OF VARIABLE FACTORS

7.1 Preliminary findings

The Commissioner finds that the export price and normal value, variable factors relevant to the determination of dumping duties payable under the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act), have changed. The Commissioner finds that the amount of countervailable subsidy, another variable factor, has not changed. This has the effect of changing both the dumping margin and the countervailing margin, as set out in Table 4 below.

Country	Exporter	Dumping Margin	Countervailing Margin
China	Uncooperative and all other rate	20.7%	34.8%

Table 4: Dumping and countervailing margins in inquiry period

7.2 Legislative framework

If the Commissioner determines that expiration of the anti-dumping measures would lead, or would be likely to lead to a continuation or recurrence of dumping and material injury, the Commissioner may recommend a change in the variable factors in the notice with respect to a particular exporter or exporters generally.²⁹ The relevant variable factors are the export price, the normal value, the amount of countervailable subsidies received and the non-injurious price (NIP).³⁰

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. Section 269TACB is used to work out whether dumping has occurred and the levels of dumping by comparing the export price and normal value of the goods. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively.

The term ‘subsidy’ is defined under section 269T(1) of the Act. A ‘countervailable subsidy’ is defined in section 269TAAC. Section 269TACD provides that if the Minister is satisfied that a countervailable subsidy has been received in respect of the goods, the Minister must, if the amount of the subsidy is not quantified by reference to a unit of the goods, work out how much of the subsidy is properly attributable to each unit of the goods.

The Commission considers that the existence of dumping and subsidisation during the inquiry period may indicate that dumping and subsidisation is likely to occur in the future.

7.3 Exporter questionnaires received

7.3.1 Uncooperative and all other exporters

Section 269T(1) provides that an exporter is an uncooperative exporter where the Commissioner is satisfied that the exporter did not give the Commissioner information that the Commissioner considered relevant to the inquiry, within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that the exporter significantly impeded the inquiry.

²⁹ Under section 269ZHF(1)(a)(iii) the Commissioner may recommend that the notice have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

³⁰ Section 269T(4D). Refer to chapter 9 for discussion of the NIP.

Section 8 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction) provides that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that relevant information was not provided in a reasonable period, if that exporter fails within the legislated period to provide a response or to request a longer period to do so.

The Commissioner has determined that any exporters that did not provide a sufficiently completed REQ as an exporter that did not provide information relevant to the case³¹ and are therefore uncooperative exporters and non-cooperative entities under section 269TAACA, for the purposes of this inquiry.

At the initiation of the inquiry the Commission contacted major suppliers of the goods from China during the inquiry period, as identified through the ABF import database, and requested they complete an exporter questionnaire. The Commission received only one response, from CellMark – Metal Division, however the information provided related only to Australian sales and provided no other relevant information. CellMark did not address the major deficiencies contained in its initial response, and no complete REQ was otherwise received.

Due to the absence of information the Commissioner considered relevant to the inquiry, including information to determine the exporters of the goods, the Commissioner is satisfied that all exporters from China are uncooperative exporters for the purposes of determining the dumping margin. The Commissioner is also satisfied that all exporters from China are non-cooperative entities for the purposes of determining the countervailable subsidy.

7.4 China

7.4.1 All exporters

As stated above in section 7.3.1, the Commissioner has determined all exporters from China to be uncooperative exporters. Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters.

7.4.1.1 Export Price

The Act specifies that for uncooperative exporters, export prices are to be calculated under section 269TAB(3). The Commission has therefore established an export price pursuant to section 269TAB(3), having regard to all relevant information.

As outlined in section 7.3.1 above, the Commission received responses to the exporter questionnaire from one Chinese entity, which included data in relation to Australian sales. However, given that the response contained major deficiencies, which were not addressed, the Commissioner was unable to determine whether this entity was an exporter and, in the alternative, was satisfied that the entity did not provide the Commissioner information he considered relevant to the inquiry.

With respect to identifying the importer of the goods exported from China, the Commission is satisfied that Simcoa was the beneficial owner of the goods at the time of their arrival within the limits of the port in Australia, and therefore an importer. The Commission arrived at the conclusion for the following reasons:³²

³¹ Section 8(b)(ii) of the Direction.

³² EPR 524, document 006.

- Simcoa was listed as the purchaser of the goods on the relevant shipping documents;
- Simcoa took physical ownership of the goods when it arrived at the Australian border;
- Simcoa was listed as the importer of the goods on the Customs Import Declarations; and
- Simcoa was listed as the liable entity on the invoice.

The Commission considers that, in ascertaining a weighted average export price for the goods exported from China during the inquiry period, in relation to Simcoa's imports, Simcoa's verified information and the ABF import database is reliable. With respect to the other imported goods, for which there was no cooperation, the Commission is satisfied that the ABF import database contains a complete listing of all imports of the goods.

Therefore, the Commission has calculated the export price based on the weighted average Free on Board (FOB) export price declared by importers of the goods over the inquiry period from China from the ABF import database and verified data provided by Simcoa.

7.4.1.2 Normal value

The Act specifies that for uncooperative exporters, normal values are to be calculated under section 269TAC(6).³³ The Commission has therefore established the normal value under section 269TAC(6), having regard to all relevant information.

As outlined in section 7.3.1 above, the Commission received a response to the exporter questionnaire from one Chinese entity in relation to the goods. However, the response did not contain critical data to enable the Commission to ascertain normal values, namely domestic sales and cost to make and sell data. The Commission considered the information provided by the applicant in their application to continue the measures, noting that although data from the CRU International Limited³⁴ was utilised for domestic production costs in China, the data did not extend to estimates for overheads, SG&A expenses and profit.

The Commission considers that the most reliable and relevant information it possesses in relation to the normal value of the goods in China over the inquiry period is the verified normal value information from the original investigation (REP 237 refers). Therefore, the Commission has calculated the normal value based on the normal value for "all other exporters" from China in REP 237 and has made an adjustment for the movement in export prices between the original investigation period and the current inquiry period. The Commission considers this provides the most accurate assessment of current normal values in China.

7.4.1.3 Dumping margin

The dumping margins for all exporters from China was established in accordance with section 269TACB(2)(a) by comparing the weighted average export price and weighted average normal value.

The dumping margin for all exporters from China is 20.7 per cent.

³³ Section 269TACAB(1)(e).

³⁴ For further information refer to <https://www.crugroup.com/>.

7.4.1.4 Amount of countervailable subsidy

The Commission did not receive a response to the questionnaire issued to the Government of China (GOC). There were no entities that provided a REQ nor any information from other interested parties. The Commission has therefore considered other available sources of information to determine whether the amount of countervailable subsidy has changed.

In Investigation 237 the Commission assessed 44 subsidy programs and whether these programs were countervailable. This analysis has been included at Non-Confidential Appendix 2.

The Commission's assessment of these 44 programs, for the purposes of this inquiry, is contained in Non-Confidential Appendix 3. The available information indicates that the GOC continues to have subsidy programs that are available and which may be utilised by exporters of the goods. In the absence of cooperation by exporters and the GOC, and noting the receipt of the subsidies in the past, the Commission considers the exporters are likely to continue benefiting from these programs. In these circumstances, the Commission also considers it is reasonable and preferable to determine the amount of countervailable subsidies received by non-cooperative entities would likely remain the same. When expressed as a percentage of the export price, the countervailable margin is 34.8 per cent.

The calculation of variable factors in relation to all exporters from China is contained in **Confidential Attachment 3**.

7.4.2 Market situation assessment

The Commission notes that in REP 237 a market situation finding was made such that domestic sales of silicon metal in China were not suitable for use in determining normal values under section 269TAC(1). In its application for the continuation of measures, Simcoa referred to the market situation finding and claim that for this reason, normal values must be constructed under section 269TAC(2)(c).

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, the Commissioner considers that because of the situation of the market in China, it is such that sales in the market are not suitable for use in determining a price under section 269TAC(1).

8 LIKELIHOOD THAT DUMPING AND MATERIAL INJURY WILL CONTINUE OR RECUR

8.1 Preliminary findings

On the basis of the evidence currently available, the Commissioner is satisfied that the expiration of the anti-dumping measures on silicon metal exported from China would be likely to lead to a continuation of, or a recurrence of, the dumping and subsidisation and the material injury that the anti-dumping measures are intended to prevent

8.2 Legislative framework

In accordance with section 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measures are intended to prevent.

The Commission notes that its assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. This view has been supported by the Anti-Dumping Review Panel, which noted that the Commission must consider what will happen in the future should a certain event, being the expiry of the measures, occur. However, the Commissioner's conclusions and recommendation must be based on facts.³⁵

8.3 Is dumping and subsidisation likely to continue or recur?

8.3.1 Australian industry's claims

In its application,³⁶ Simcoa claims that:

- exports of silicon metal from China to Australia have continued following the imposition of measures;
- Chinese exporters of silicon metal have maintained distribution links into the Australian market;
- available evidence indicates that Chinese exporters of silicon metal possess excess production capacity that could be used to supply exports to Australia should the measures be allowed to expire;
- estimated normal values, constructed in the application, suggest that dumping has continued during the inquiry period; and
- it is not aware that the GOC has withdrawn or minimised the impact of any of the confirmed subsidy programs identified in REP 237.

³⁵ ADRP Report No. 44.

³⁶ EPR 524, document 001.

8.3.2 Submissions received

The Commission did not receive submissions from interested parties challenging the claims of the applicant.

8.3.3 Commission's Assessment

As outlined in Chapter 7 above, the Commission has found that exports from China have continued at dumped prices during the inquiry period, and that these exports were in receipt of countervailable subsidies. Figure 7 below illustrates the estimated export volumes from China from 2009 onwards. The Commission notes that while the applicant was responsible for the majority of imports of the goods during the inquiry period, other customers in Australia continued to import the goods. This demonstrates that distribution links with exporters in China have continued since 2015.

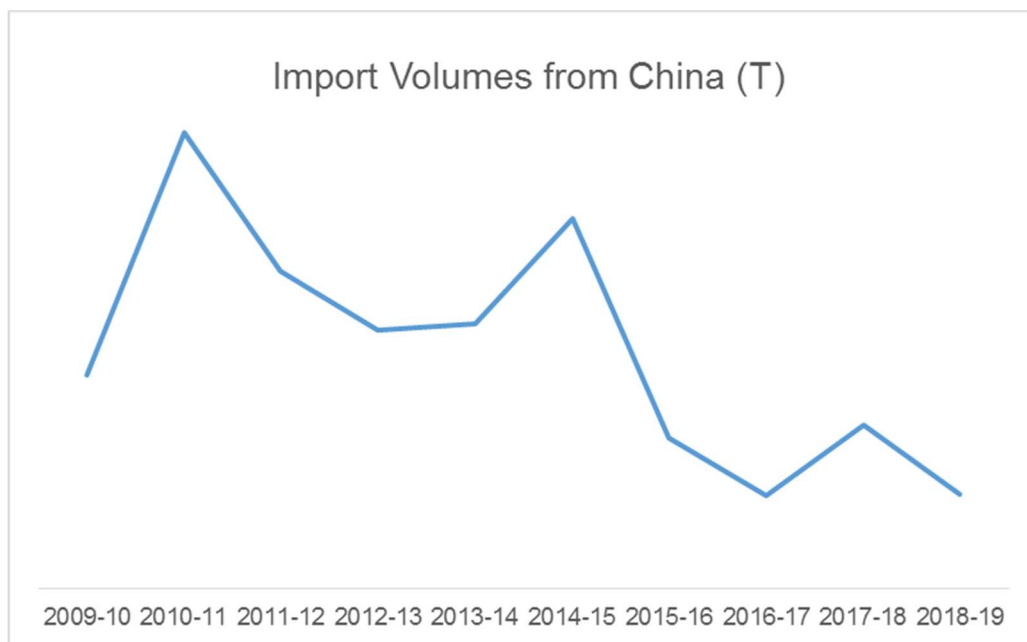


Figure 7: Estimated export volumes to Australia from China

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 Canadian 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.³⁷

In addition, as outlined in Non-Confidential Appendix 3, the Commission has considered the available evidence regarding the countervailable 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.

8.4 Is material injury likely to continue or recur?

8.4.1 Australian industry's claims

As part of its application, Simcoa submitted that, if the dumping and countervailing measures on silicon metal from China were allowed to expire, material injury to Simcoa will recur.³⁸ The specific claims include:

- Chinese exporters retain the production capacity and capability to supply demand on the Australian market;
- global demand is currently in decline resulting in lower prices, and in the absence of anti-dumping measures exports from China to Australia will be dumped;
- Simcoa has been able to improve its share of the Australian market since the measures were imposed in 2015;
- exports of the goods from China are likely to continue; and
- the previous expiry of the measures (in 2010) demonstrated the impact on the level of Simcoa's domestic sales, and this is indicative of the outcome if the measures were to expire.

8.4.2 Submissions received

The Commission did not receive submissions from interested parties challenging the claims of the applicant.

8.4.3 The Commission's assessment

8.4.3.1 Volume effects

Following the imposition of measures in 2015, the volume of imports from China decreased significantly (see Figure 7 in section 8.3.3 above).

The Commission analysed the Australian industry's market share using the Australian industry's verified data and import data from the ABF import database (as shown in Figure 5 in section 6.3.2 above). 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 measure was a result of

³⁷ Canadian Border Services Agency, Statement of Reasons (29 March 2019) paragraph [98] onwards.

³⁸ EPR 524, document 001.

the anti-dumping duties increasing the price of the goods exported from China entering the Australian market.

Excluding those exports from China to the Australian industry, during the inquiry period exports of the goods from China to Australia continued despite the imposition of measures, at dumped and subsidised prices and would be likely to continue in the future.

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.

8.4.3.2 Price effects

Simcoa outlined, during the Australian industry verification visit, that market participants give consideration to market prices from several global services providing indicative market rates for silicon metal. Simcoa explained that its key customer in Australia is aware of this data, considers this in the course of their negotiations, and that sales to this key customer are now conducted via tender (from late 2019 onwards). Simcoa did not provide evidence that they had been competing with imported goods based on price during the inquiry period. The Commission considered the price differences between imports of the goods from China by Simcoa's key customer and the Australian industry's price of the goods (to all customers).

Simcoa's key customer continued to import the goods from China following the imposition of dumping and countervailing measures imposed in 2015, based on data obtained from the ABF import database, albeit at a much lower volume. As this key customer did not cooperate with this continuation inquiry, for the purposes of a price undercutting assessment the Commission used the 'line VOTI'³⁹ prices from the ABF import database then added a cost for port service charges and delivery⁴⁰ to ensure an accurate comparison for price undercutting purposes.

Figure 8 illustrates the price of Simcoa's domestic sales from the fourth quarter of 2015 onwards, compared to the delivered price of the Chinese imports to the key customer of Simcoa.

³⁹ Line Value of taxable importation (VOTI) is the sum of: Line CVAL amount + line duty amount + line dumping duty amount + line transport & insurance amount. Line CVAL refers to the Customs value – this is the value of the goods on which duty will be charged (generally the free on board (FOB) value of the goods).

⁴⁰ From data provided by the applicant, verified for the inquiry period.

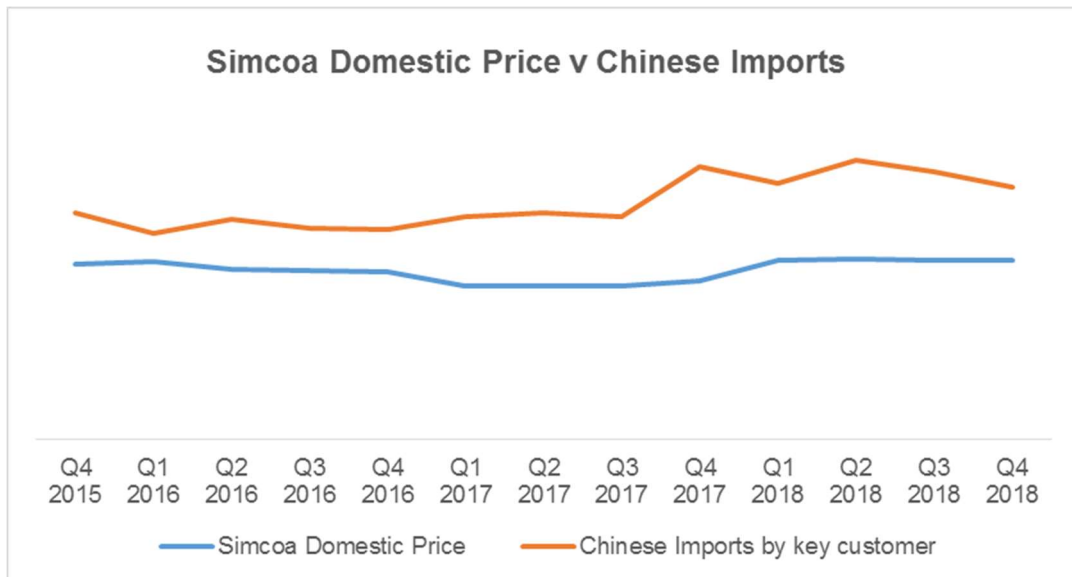


Figure 8: Comparison of Simcoa domestic prices and price of Chinese imports

The Commission notes that the imports considered in Figure 8 above had both dumping and countervailing duties applied, at the “all other exporter” rate. The price of the imported goods is therefore considerably higher than the price at which Simcoa sells its goods to this customer.

8.4.3.3 Factors other than dumping

Simcoa’s application did not indicate any injurious factors other than dumping and subsidisation. The Commission did not receive submissions from interested parties concerning other factors that may have caused injury to the Australian industry for silicon metal. Notwithstanding this, the Commission has considered the below factors as part of its assessment.

Imports of the goods from countries not subject to measures

The Commission examined the volumes of goods exported from countries that were not subject to measures. In each year since 2015, imports of the goods from China have represented at least 89 per cent of total imports of the goods into Australia. The Commission does not consider that the imports from other countries is of sufficient volume to have caused material injury to the Australian industry. Simcoa did not provide evidence to suggest that it was required to compete with exports from other countries since the measures had been imposed.

Australian market conditions for silicon metal

The Commission considered potential influencing factors to the market, noting that the key driver of the silicon metal market in Australia is the alumina sector. As observed in Figure 2, the alumina sector has been reasonably consistent since 2015. The Commission does not consider that the Australian market conditions have been injurious to Simcoa.

8.4.4 The likelihood of material injury continuing or recurring

The evidence outlined above highlights that following the imposition of measures in June 2015, Simcoa significantly increased its share of the domestic market for silicon metal, which coincided with a reduction in the volume of imports of the goods from China. This

PUBLIC RECORD

increased domestic sales volume resulted in material increases in profit and profitability for Simcoa.

During the inquiry period, the volume of imports from China (not imported by Simcoa) were dumped and subsidised. If the measures were allowed to expire the Commission considers that the scenario that arose following the expiry of the original measures in 2010 would recur. That is, the price of these imports would likely fall given the factors noted at section 8.3.3 above and this would result in the volume of imports from China increasing. The Commission considers that it therefore would be likely that the dumped and subsidised goods would then displace the Australian's industry's domestic sales volumes, injuring the Australian industry in terms of revenue, profit 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.

Accordingly, the Commission 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.

9 NON-INJURIOUS PRICE AND LESSER DUTY RULE

9.1 Preliminary findings

The Commissioner has found that due to the operation of subsection 269TAC(2)(a)(ii), the normal value of silicon metal exported to Australia from China cannot be ascertained under subsection 269TAC(1). As such, the Minister is not required to have regard to the desirability of fixing a lesser rate of duty. However the Minister may still consider and apply the lesser duty rule. In this instance, the Commissioner considers that due to the lack of cooperation from the exporters it is appropriate that the Minister not have regard to the desirability of fixing a lesser rate of duty.

9.2 Introduction

The NIP is defined in section 269TACA of the Act as “the minimum price necessary to prevent the injury, or a recurrence of the injury” caused by the dumped or subsidised goods the subject of a dumping duty notice or a countervailing duty notice.

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the Dumping Duty Act. The lesser duty rule requires the Minister to have regard to the desirability of specifying a lesser amount of duty than the full dumping margin where the imposition of that lesser amount is adequate to remove injury.

Pursuant to subsection 8(5BAA) of the Dumping Duty Act, the Minister is not required to have regard to the desirability of fixing a lesser amount of duty if she is satisfied that either or both of the following apply in relation to the goods the subject of the notice:

- a) the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii);
- b) there is an Australian industry in respect of like goods that consists of at least two small-medium enterprises, whether or not that industry consists of other enterprises.

9.3 Calculation of the Non-injurious Price

The Commission will generally derive the NIP from an unsuppressed selling price (USP). The USP is a selling price that the Australian industry could reasonably achieve in the absence of dumping. The Commission’s approach to establishing the USP is set out in Chapter 24 of the Manual and observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the USP, the Commission then calculates a NIP by deducting relevant costs to obtain a price at the Free on Board point (or another point if appropriate).

9.4 Submissions received

The Commission did not receive any submissions from interested parties regarding the NIP and the application of the lesser duty rule.

9.5 The Commission's assessment

9.5.1 Unsuppressed selling price

The Commission considers that the most appropriate method of determining the USP is having regard to Simcoa's selling prices during the inquiry period. The Commission notes that the volume of dumped imports during this period has declined, and that the majority of these dumped imports were purchased by Simcoa themselves for use in their production process. The Commission does not consider that Simcoa's selling prices were affected by dumping during this period.

The USP calculation is contained in **Confidential Attachment 4**.

9.5.2 Non-injurious price

In calculating a NIP in relation to the goods imported from China, the Commission considered the importation costs incurred by Simcoa for their imports of the goods. These costs were verified as part of the Australian industry verification. The Commission notes that although another importer provided a response to an importer questionnaire, they did not respond to enquiries for the purposes of verification of that response.

The Commission further notes that the goods imported by Simcoa were for use in their own internal production, rather than on-sold into the Australian market. Therefore, there is no verified SG&A rate and profit applicable to the sale of the imported goods.

The Commission made deductions from the USP based on verified information from Simcoa. Specifically, the Commission made the following deductions:

- Australian delivery expenses;
- importation costs;
- customs duty; and
- the cost of ocean freight and marine insurance.

The NIP calculation is contained in **Confidential Attachment 4**.

9.6 Effective rate of duty

As discussed at section 7.4.2 of this report, the Commission has found the normal value of silicon metal exported to Australia from China cannot be ascertained under subsection 269TAC(1) because the situation in the Chinese market is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1). As such, pursuant to subsection 8(5BAA) of the Dumping Duty Act, the Minister is not required to have regard to the desirability of fixing a lesser rate of duty.

The Commissioner notes that the Minister may still consider and apply the lesser duty rule. In this instance, the Commissioner considers that due to the lack of cooperation from the exporters it is appropriate that the Minister not have regard to the desirability of fixing a lesser rate of duty.

10 FORMS OF DUTY

10.1 Preliminary findings

The Commission is proposing to recommend that the Minister continue anti-dumping duties on China in the form of the ad valorem duty method.

10.2 Legislative framework

Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013*, in accordance with section 8(5BB) of the Dumping Duty Act, prescribes the methods for working out the amount of interim dumping duty payable on goods the subject of a notice under section 269TG.

The forms of duty available to the Minister when imposing anti-dumping measures are:

- fixed duty method (e.g. \$X per tonne);
- floor price duty method;
- combination of fixed and variable duty method (combination duty method); or
- ad valorem duty method (i.e. a percentage of the export price).⁴¹

10.3 Consideration of form of measures

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances more so than others. In considering which form of duty to recommend to the Minister, the Commissioner will have regard to the *Guidelines on the Application of Forms of Dumping Duty November 2013*⁴² and relevant factors in the market for the goods.

Relevantly, key considerations for imposing a combination method where there are complex company structures with related parties and where circumvention of measures is likely.

On the other hand, an ad valorem duty method has an advantage where there are many models or types, however, has a potential disadvantage in that export prices might be lowered to avoid the effects of this duty.

10.4 Existing measures

The method of interim dumping duties currently applied to the goods exported from China is the ad valorem duty method.

10.5 Submissions received

The Commission did not receive any submissions in relation to the form of measures.

⁴¹ Section 5 of the *Customs Tariff (Anti- Dumping) Regulation 2013*.

⁴² Available on the Commission website.

10.6 The Commission's assessment

The Commission considers that it is appropriate to continue with the ad valorem duty method for the goods exported from China. The Commission notes that the Australian industry has been able to increase its domestic market share following the imposition of measures. The Commission considers it unlikely that export prices might be lowered to avoid the effects of duty given the global market for silicon metal moves largely in step with the aluminium sector.

11 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Market analysis
Confidential Attachment 2	Economic condition of Australian industry
Confidential Attachment 3	Variable factors
Confidential Attachment 4	USP & NIP analysis

NON-CONFIDENTIAL APPENDIX 1 – ASSESSMENT OF MARKET SITUATION

PART I BACKGROUND

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

PART II APPLICABLE LEGISLATION, POLICY AND PRACTICE

II(i) THE ACT

Section 269TAC(2)(a)(ii), which provides that where the Minister is satisfied that:

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

the normal value for goods exported to Australia cannot be ascertained under section 269TAC(1).

Where such a market situation exists, normal value cannot be established on the basis of domestic sales. Instead, the normal value may be determined on the basis of a cost construction⁴³ or third country sales.⁴⁴ Therefore, a determination as to whether there is a market situation has potential consequences for the assessment of normal value and dumping margins.

II(ii) POLICY AND PRACTICE

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

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

- *whether the prices are artificially low; or*
- *whether there are other conditions in the market which render sales in that market not suitable for use in determining prices under s. 269TAC(1).*

Government influence on prices or costs could be one cause of "artificially low pricing". Government influence means influence from any level of government.

In investigating whether a market situation exists due to government influence, the Commission will seek to determine whether the impact of the government's involvement in the domestic market has materially distorted competitive conditions.

⁴³ Section 269TAC(2)(c)

⁴⁴ Section 269TAC(2)(d)

PUBLIC RECORD

A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market.

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

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

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

The assessment as to whether a market situation exists in a market constitutes a positive test. That is, before actual selling prices are rejected, the Commission needs to be satisfied that there is a 'market situation' that renders the sales of like goods in the domestic market not suitable for normal value purposes. Where there is influences in the market, but the sales of like goods in that market are not considered to be rendered unsuitable for determine section 269TAC(1) normal values, then section 269TAC(2)(a)(ii) does not apply.

PART III ASSESSMENT

As outlined above, in investigation 237 the Commission made a market situation finding in relation to the Chinese domestic market for silicon metal. This finding was based on information from the following sources:

- An investigation by the Canadian Border Services Agency into silicon metal exported from China to Canada; the findings for which were released in November 2013;
- Information provided by the Australian industry;
- Information provided via submission by the GOC; and
- Other information obtained by the Commission.

In summary, the Commission's finding of a market situation was based available evidence indicating the presence of the following factors:

PUBLIC RECORD

- GOC export control measures;
- Government influence on the price of inputs used in the production of silicon metal;
- Government policies and regulations at production levels and participants; and
- Government restrictions on the use and supply of inputs.

The Commission notes that no information regarding a market situation has been provided by interested parties to this inquiry. The Commission did not receive a response to the GOC questionnaire, no Chinese exporters of the goods cooperated with this inquiry, and no other interested party provided information in relation to a market situation in China. The Commission's assessment of the available evidence with regard to a market situation is below.

GOC Export Control Measures

1. Export tariff

The Commission has obtained evidence indicating that the Government of China has maintained export tariffs on ferro-silicon. The rate of this tariff was changed in 2017 but remains present in 2020.⁴⁵

2. Zero refund of VAT on exports

Information available to the Commission indicates that the GOC abolished the VAT export refund on silicon and non-ferrous metals from September 2006 onwards.⁴⁶

GOC influence on cost of inputs

1. Cost of coal

The *13th Five-Year Plan (2016-2020)* refers to a number of cuts to coal consumption and a restructure of the domestic coal market. Information obtained by the Commission indicates there are specific guidelines regarding ceasing the manufacture of coal mines, the closure of existing coal mines and restrictions on the use of coal-fired power plants.⁴⁷

Further, information indicates that specific provinces in China have either closed or renovated coal mines based on the annual capacity.⁴⁸

Together, the above impacts on the cost of coal. The Commission notes that following verification of a Chinese exporter in the original investigation, coal represents approximately 8% of the cost to manufacture silicon metal.

⁴⁵ Refer to <https://www.argusmedia.com/en/news/2023442-china-to-maintain-ferrosilicon-export-tariff-in-2020>.

⁴⁶ Refer to <https://www.lehmanbrown.com/peeling-the-onion/revison-chinese-vat-export-refund/>.

⁴⁷ Refer to https://thecoalhub.com/wp-content/uploads/attach_155.pdf.

⁴⁸ Refer to http://www.xinhuanet.com/english/2019-05/14/c_138057701.htm.

2. Cost of electricity

Information obtained by the Commission indicates that provinces in China have reduced electricity costs in key silicon production zones. This is specifically to ensure the competitiveness of silicon manufacturers and ensure output.⁴⁹

The Commission notes that following verification of a Chinese exporter in the original investigation, energy costs represents approximately 50% of the cost to manufacture silicon metal.

Investment in silicon industry

1. Further investment

Information obtained by the Commission indicates provinces in China continue to support silicon projects. In 2018 the Yunnan province agreed to a further 100,000 tonne silicon industrial silicon project.⁵⁰

*13th Five-Year Plan (2016-2020)*⁵¹

The Government of China note a plan to catch up and exceed international energy efficiency standards with a focus on six major energy-intensive industries, one of them being the non-ferrous metal industry. This includes the support of comprehensive energy efficiency improvement efforts, organisation and implementation of projects to upgrade systems, reduce coal consumption and consider alternative energy sources. The Five Year Plan specifically notes the establishment of systems including budgetary management, investment and financing for these industries.

The Five Year Plan also notes the encouragement of China's equipment, technology, standards and services to go global by engaging in international cooperation. This is through overseas investment, project contracting, technology cooperation, equipment exporting and other means, specifically referring to a focus on industries including non-ferrous metals (which includes silicon metal). The Plan notes the Government of China will put in place mechanisms that will involve the participation of enterprises, financial institutions, local governments, chambers of commerce and industry associates, with a view to improving services such as taxation, financial, insurance, investment and financial platforms.

PART IV CONCLUSION

Based on the information available to it, the Commission has determined that the GOC has continued to exert influences on the Chinese silicon metal industry, which have substantially distorted competitive market conditions in the industry in China. These were in the form of broad, overarching GOC macroeconomic policies and plans that outline aims and objectives for the Chinese silicon industry, in addition to various taxes, VAT

⁴⁹ Refer to <https://www.spglobal.com/platts/en/market-insights/latest-news/metals/090117-china-urges-repositioning-its-silicon-sector-as-strategic-raw-material-source-cnja>.

⁵⁰ Refer to <https://en.imsilkroad.com/p/122074.html>.

⁵¹ Refer to https://en.ndrc.gov.cn/newsrelease_8232/201612/P020191101481868235378.pdf.

PUBLIC RECORD

refund policies and export quotas applicable to both silicon metal itself and the cost inputs in the production of the finished goods under investigation. The Commission considers these combined factors have led to a distortion in the domestic selling prices of silicon metal.

The Commission's assessment and analysis of the available information indicates that prices of silicon metal in the Chinese market are not substantially the same as they would have been without the influences by the GOC. The Commission considers that GOC influences in the silicon metal industry have created a 'market situation' in the domestic market, such that sales of silicon metal in China are not suitable for determining normal value under subsection 269TAC(1) of the Act.

NON-CONFIDENTIAL APPENDIX 2 – ASSESSMENT OF COUNTERAVAILABILITY OF SUBSIDIES (INV 237)

PART I OVERVIEW

I(i) INTRODUCTION AND SUMMARY OF FINDINGS

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

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

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

PUBLIC RECORD

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

PUBLIC RECORD

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
41	Reducing pollution discharging and environment improvement assessment award	Grant	Yes
42	Comprehensive utilization of resources - VAT refund upon collection	Tariff & VAT	Yes
43	Grant of elimination of out dated capacity	Grant	Yes
44	Grant from Technology Bureau	Grant	Yes

I(ii) RELEVANT LEGISLATION

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

"subsidy" , in respect of goods exported to Australia, means:

(a) a financial contribution:

(i) by a government of the country of export or country of origin of the goods; or

(ii) by a public body of that country or a public body of which that government is a member; or

(iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

(iv) a direct transfer of funds from that government or body; or

(v) the acceptance of liabilities, whether actual or potential, by that government or body; or

(vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or

(vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or

(viii) the purchase by that government or body of goods or services; or

(b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.

This reflects Article 1.1 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement).

S.269TAAC defines a countervailable subsidy as follows:

PUBLIC RECORD

(1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.

(2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:

- (a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or*
- (b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or*
- (c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or*
- (d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.*

(3) Subject to subsection (4), a subsidy is not specific if access to the subsidy:

- (a) is established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and*
- (b) those criteria or conditions do not favour particular enterprises over others and are economic in nature; and*
- (c) those criteria or conditions are strictly adhered to in the administration of the subsidy.*

(4) Despite the fact that access to a subsidy is established by objective criteria, the Minister may, having regard to:

- (a) the fact that the subsidy program benefits a limited number of particular enterprises; or*
- (b) the fact that the subsidy program predominantly benefits particular enterprises; or*
- (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or*
- (d) the manner in which a discretion to grant access to the subsidy has been exercised;*

determine that the subsidy is specific.

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

Under Section 269TJ of the Act, one of the matters that the Minister must be satisfied of to publish a countervailing duty notice is that a countervailable subsidy has been received in respect of the goods.

PART II INFORMATION CONSIDERED BY THE COMMISSION

I(iii) INFORMATION PROVIDED BY EXPORTERS

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

I(iv) INFORMATION PROVIDED BY THE GOVERNMENT OF CHINA

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

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

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

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

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

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

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

I(v) OTHER INFORMATION CONSIDERED AS PART OF THIS ASSESSMENT

The Commission also considered as part of this assessment:

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

- findings from other subsidy investigations conducted by the Commission.

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

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

BACKGROUND

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

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

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

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

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

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

LEGAL BASIS

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO NOTIFICATION

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

ELIGIBILITY CRITERIA

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

IS THERE A SUBSIDY?

Financial contribution

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

By a government or public body?

Introduction

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

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

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

Previous consideration

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

- REP 177 – the Commission's finding in relation to the subsidisation of hollow structural sections (HSS) exported from China;
- REP 203 – the Commission's reinvestigation of certain findings in REP 177, one of which was whether SIEs that supplied hot rolled coil (HRC) to manufacturers of HSS were public bodies;
- REP 193 – the Commission's findings in relation to the subsidisation of aluminium zinc coated steel and galvanised steel (collectively 'coated steel') exported from China. The Commission found that SIEs that supplied hot rolled coil (HRC) to manufacturers of coated steel were public bodies;
- REP 238 – the Commission's finding in relation to the subsidisation of deep drawn stainless steel sinks exported from China;
- ADRP Report (15 November 2013) in relation to REP 193 – the ADRP disagreed with the Commission's finding that SIE HRC suppliers were public bodies. The Parliamentary Secretary accepted the ADRP's finding in relation to this issue;

PUBLIC RECORD

- *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (DS379) – this Appellate Body finding considered the meaning of ‘public body’ in accordance with Article 1.1(a)(1) of the SCM Agreement. This report is considered to be one of the most definitive references to date on the matter of public bodies;
- *United States – Carbon Steel (India)* (DS 436) – this WTO Panel finding further considered the requirements for finding an entity to be a public body; and
- *United States – Countervailing Measures (China)* (DS437) – this dispute involved a number of decisions of the US in relation to multiple investigations and again considered the factors that determine whether an entity is a public body.

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

In DS379 the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):⁵²

- **Indicia 1** - where a *statute or other legal instrument* expressly vests government authority in the entity concerned;
- **Indicia 2** - where there is evidence that an entity is, *in fact, exercising governmental functions* may serve as evidence that it possesses or has been vested with governmental authority; and
- **Indicia 3** - where there is evidence that a government exercises *meaningful control* over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

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

Decisions of the Commission

In REP 177 the Commission assessed whether SIE suppliers of HRC were public bodies according to each of the three indicia. The Commission concluded that Indicia 1 was not met. However, evidence exists to show that both Indicia 2 (evidence that an entity is, in fact, exercising governmental functions) and Indicia 3 (evidence that a government exercises meaningful control over an entity and its conduct) are satisfied in relation to

⁵² Appellate Body report DS379 at [318]

Chinese HRC and/or narrow strip manufacturers. This conclusion was based on an assessment of a number of factors including policy documents issued by the GOC and statements by SIE steel manufacturers in public reports. The Commission considered that the evidence 'show(ed) that these entities are still constrained by, and abiding by, multiple GOC policies, plans and measures, and in some circumstances acting as an important means by which these GOC policies and plans are implemented.'

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

In REP 193, relating to coated steel, the Commission relied on its findings in REP 203 to find that SIE suppliers of HRC were public bodies. The GOC appealed this finding to the ADRP. In disagreeing with the Commission's finding, the ADRP made the following observations:

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

Commission's consideration

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

The Panel considered this issue in DS437, a decision that was handed down after the ADRP's report in relation to coated steel. The Panel stated in its report that '(it) was not persuaded by China's argument that... "[a] public body, like government in the narrow

sense, thus must itself possess the authority to ‘regulate, control, supervise or restrain’ the conduct of others”.’ The Appellate Body’s view was that this was not supported by the findings in DS379. It stated that:

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

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

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

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

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

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

During the Commission’s investigation into the dumping and subsidisation of aluminium road wheels exported from China⁵³ the GOC provided the Commission, in response to a questionnaire, a copy of the Electric Power Law of the People’s Republic of China⁵⁴ (Electric Power Law). The Electric Power Law contains, inter alia, the following provisions:

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

...

⁵³ The findings and recommendations for this investigation are contained in REP 181.

⁵⁴ Non-confidential Attachment A43 to the GOC questionnaire response

PUBLIC RECORD

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

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

...

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

...

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

...

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

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

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

For power generated by locally-funded enterprises that form independent power networks in different areas of a province or that generate power for their own use, the rates shall be under the control of the people's government of the province, autonomous region or municipality directly under the Central Government.

Article 39 With regard to the rates of electricity mutually supplied between the networks spanning different provinces, autonomous regions or municipalities directly under the Central Government and independent power networks, or between provincial networks and independent networks, a plan shall be proposed through consultation by the two parties and shall be examined for approval by the

PUBLIC RECORD

department in charge of price control under the State Council or other department authorized by the said department.

...

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

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

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

...

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

Also provided during the ARWs investigation was the *Catalog of Price Regulated by the State Development Planning Commission and Other Department under the State Council*⁵⁵. This document states that electric power is one of the goods or services subject to price regulation.

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

Conclusion

The Appellate Body in DS379 observed that in some cases the features of an entity may be mixed and the challenge of determining whether an entity is a public body may be complex. It stated that authorities 'are called upon to engage in a careful evaluation of the entity in question' and 'give due consideration to all relevant characteristics of the entity and...avoid focusing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant.'

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

Conferral of benefit on the goods

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

Where the financial contribution involves a direct transaction between the public bodies and the exporters of the goods, the Commission considers that this financial contribution

⁵⁵ Non-confidential attachment 18 to the GOC questionnaire response

PUBLIC RECORD

confers a direct benefit to the extent that the goods were provided at less than adequate remuneration, as determined by the Commission.

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

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

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

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

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

For this reason the subsidy is determined to be specific.

AMOUNT OF SUBSIDY IN RESPECT OF THE GOODS

Linan Group

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

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

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

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

Uncooperative and all other exporters

For the uncooperative and all other exporters, no information was provided by either the GOC or the individual exporters themselves to identify whether a financial contribution has been received under this program. The Commission considers that these entities

have not given the Commissioner information considered to be relevant to the investigation within a reasonable period.

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

Considering the fact that:

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

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

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

PART IV ASSESSMENT OF SUBSIDY PROGRAMS – ALL OTHER PROGRAMS

ASSESSMENT OF EXISTENCE OF COUNTERVAILABLE SUBSIDY

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

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

"This program does not exist.

The GOC notes that in response to the government questionnaire in the hollow structural sections investigation (i.e. in relation to program 10), the GOC has pointed out that the alleged subsidy will be in operation until the end of 2012. The GOC reiterates that the alleged program does not exist anymore as the relevant law, i.e. the Income Tax Law of the People's Republic of China for Enterprises with Foreign

PUBLIC RECORD

Investment and Foreign Enterprise 1991, which granted the subsidy has been repealed and superseded by the Enterprise Income Tax Law of the People's Republic of China 2008. (Attachment 4). The Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax 2007 (Attachment 5) clearly provides that “enterprises enjoying the preferential policies in respect of enterprise income tax under the former tax law, administrative regulations and documents with the effects of administrative regulations shall be subject to a transition” by which at the end of 2012 they will be subject to the normal tax rate of 25%.

Accordingly, the GOC believes that there is no evidence demonstrating that the alleged program exists.”⁵⁶

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

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

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

ASSESSMENT OF RECEIPT

Linan Group

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

Uncooperative and all other exporters

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

- Program 14 (patent award of Guangdong province) – the Commission understands that to be eligible for this award enterprises must establish that the relevant product is ‘innovative with high creation and technical level’ or that ‘the industrial design has reached high level at shape, pattern and colour’⁵⁷. Based on the Commission’s understanding of silicon metal it is unlikely production of silicon metal would qualify for such awards; and
- Program 32 (VAT refund on domestic sales by local tax authority) – the Commission understands that this award was specifically designed for achieving timely targets for the production and export of automotive steel sheets⁵⁸. It is

⁵⁶ This text and the supporting GOC documents are available on the Public Record (www.adcommission.gov.au/cases/EPR237.asp).

⁵⁷ Refer to Program 16, Investigation 193

⁵⁸ Refer to Program 34, Investigation 193 – Subsidisation of aluminium zinc coated steel and galvanised steel.

PUBLIC RECORD

therefore not considered that this program would have benefitted exporters of silicon metal.

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

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

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

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

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

AMOUNT OF SUBSIDY IN RESPECT OF THE GOODS

Programs 6 and 8 – income tax programs

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

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

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

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

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

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

PUBLIC RECORD

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

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

NON-CONFIDENTIAL APPENDIX 3 – ASSESSMENT OF COUNTERAVAILABILITY OF SUBSIDIES

The Commission undertook further analysis regarding the countervailable programs noted in Non-Confidential Appendix 2, above. This includes consideration of publicly available information to conclude:

- whether the countervailable subsidy exists;
- an assessment of receipt of the countervailable subsidy; and
- the amount of the subsidy in respect of the goods.

ASSESSMENT OF EXISTENCE OF COUNTERVAILABLE SUBSIDY

Programs 1 to 44 have previously been investigated by the Commission (or its predecessor, ACBPS). The Commission has determined that the programs were countervailable subsidies. Details of these can be found in the Commission's subsidy register.⁵⁹

The Commission also considered China's most recent subsidy notification filed with the World Trade Organization (WTO) in July of 2019.⁶⁰ The Commission noted that Programs 6, 8 and 42 are still operating:

- Preferential tax policies in the western regions. This program has been available from 2001 and provides reduced income tax rates and exemptions of value-added tax (VAT) on imported equipment for enterprises in encouraged industries located in specific regions. As no exporters cooperated with the inquiry the Commission cannot determine whether exporters of the goods to Australia are located within these regions. However, the Commission notes the recent findings of the Canadian Border Services Agency (CBSA), in March 2019, stating that these specific regions include the largest silicon metal producing provinces of Sichuan, Yunnan and Xinjiang.⁶¹
- Preferential tax policies for high or new technology enterprises. This program is available from 2008 and provides a reduced income tax rate to high or new technology enterprises.
- Comprehensive utilization of resources - VAT refund upon collection. This program appears to have been succeeded by an identical program, *Preferential tax treatment for products produced with integrated utilisation of resources*. Available from 2015, this provides a VAT refund to promote integrated utilisation of resources, energy conservation and emission reduction.

In relation to Program 11 (Matching Funds for International Market Development for Small and Medium Enterprises), the Commission has recently investigated this program as part of its accelerated review into aluminium zinc coated steel exported from China by Zhejiang Huada New Materials Co.,Ltd. During this review, the company indicated that it received a benefit which falls under the program.⁶² The Commission therefore considers it

⁵⁹ [ADC Subsidy Register](#)

⁶⁰ [G/SCM/N/343/CHN: New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures.](#)

⁶¹ Canadian Border Services Agency – Statement of Reasons (29 March 2019).

⁶² [AR 500: Exporter Verification Report](#)

PUBLIC RECORD

reasonable to conclude that the program was an operable subsidy during the inquiry period.

In relation to Programs 2, 3, 4 and 5, the Commission concluded in the original investigation that these were not operable subsidies during the investigation period due to changes to the income tax laws applicable to enterprises with foreign investment. For the same reasons, the Commission considers it reasonable to conclude that these subsidies were also not operable during the inquiry period.

For all other programs, the Commission was not able to find publically available information. However, in the absence of cooperation from either the GOC or the individual exporters themselves, the Commission considers it reasonable to conclude that these programs were operable subsidies during the inquiry period.

ASSESSMENT OF RECEIPT OF COUNTERAVAILABLE SUBSIDY

In the original investigation, the Commission concluded that exporters of silicon metal to Australia would not have benefitted from Programs 14 (Patent award of Guangdong province) and 32 (VAT refund on domestic sales by local tax authority). The Commission also verified that none of the entities in the Linan Group were in receipt of benefits from any of subsidy programs 6 to 44. However, the Commission considered it likely that uncooperative exporters met the eligibility criteria for all other programs, accessed these programs and therefore received financial contributions under these programs.

In the absence of cooperation from either the GOC or the individual exporters themselves, the Commission considers it reasonable to conclude that the eligibility and access of these programs continued and exporters therefore received financial contributions under these programs during the inquiry period.

AMOUNT OF SUBSIDY IN RESPECT OF THE GOODS

In the absence of cooperation from either the GOC or the individual exporters themselves, the Commission considers it reasonable to calculate the amount of subsidy attributable during the inquiry period as the same as that which was attributed in the original investigation period.