



INVESTIGATION INTO SILICON METAL EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

ANTI-DUMPING REVIEW PANEL REVIEW

ANTI-DUMPING COMMISSION INVITATION TO COMMENT

1. BACKGROUND

After considering the findings and recommendations of the Commissioner of the Anti-Dumping Commission (the Commissioner) contained in Anti-Dumping Commission Report 237 (REP 237), the Parliamentary Secretary to the Minister for Industry and Science (the Parliamentary Secretary) decided to publish a dumping duty notice and a countervailing duty notice in relation to silicon metal exported from the People's Republic of China (China). Notification of this decision was made on 3 June 2015.

Following this decision, the Anti-Dumping Review Panel (ADRP) received an application for review of aspects of the Parliamentary Secretary's decision from Pacific Aluminium on behalf of Rio Tinto Aluminium (Bell Bay) Limited (Pacific Aluminium).

The ADRP has accepted this application for review and is currently undergoing a review of the matters raised.

As part of its review, the ADRP has invited the Anti-Dumping Commission (the Commission) to comment on the matters raised in the application. The Commission's assessment of the claims is below.

2. Summary of grounds for review

Pacific Aluminium has requested the ADRP review the Parliamentary Secretary's decision to impose countervailing duties on silicon metal under subsections 269TJ(1) and 269TJ(2) of the *Customs Act 1901* (the Act). Specifically, Pacific Aluminium submits that the Commissioner should not have found, or made recommendations, that uncooperative and all other exporters:

- were in receipt of benefits from subsidies under 38 countervailable subsidy programs; and
- had a subsidy margin of 37.6%.

3. Identification of irrelevant information

The Commission has not identified any information in Pacific Aluminium's application that is not 'relevant information' as defined in subsection 269ZZK(6) of the Act.

4. Disputed factual claims

- At paragraph 6.9(a), Pacific Aluminium states that '*...the Commissioner provides no explanation as to why he has determined that all uncooperative and other exporters were eligible for, accessed and received benefits under all 38 programs...*'. The Commissioner's reasons for this approach are set out at pp104-105 of REP 237.
- At Paragraph 6.10, Pacific Aluminium states:

'Indeed, there is similarly no explanation as to why the Commissioner applied:

(a) the total volume of sales for Program 1; and

(b) turnover for the remaining 37 programs,

to apportion the amount of subsidy per unit of silicon metal.'

This is an inaccurate description of the methodology applied by the Commission. Page 106 of REP 237 states that '*(i)n attributing the amount of subsidy to each unit of silicon metal...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.'*

5. Commentary on grounds and additional background information

General

The Commission's methodology and approach to the determination of subsidisation for uncooperative and all other exporters is set out in REP 237. The Commission considers the approach is consistent with section 269TAACA of the Act, which sets out how the Commissioner and Parliamentary Secretary may determine whether a countervailable subsidy has been received, and the amount of the countervailable subsidy received, in the circumstances where exporters do not cooperate with a subsidy investigation.

The Commission does not agree with Pacific Aluminium's reading of section 269TAACA of the Act. Pacific Aluminium does not appear to be interpreting section 269TAACA of the Act but rather relying on Appellate Body decisions relating to Article 12.7 of the SCM Agreement. The ordinary meaning of section 269TAACA should be given primacy over the Appellate Body decisions. Further, the Commission notes that the wording of Article 12.7 of the SCM Agreement differs from the wording of section 269TAACA of the Act, with Article 12.7 of the SCM being narrower in scope.

Specific observations

At paragraph 6.11, Pacific Aluminium state that '*...even a cursory look at the names of the programs indicates the fact that the "best information" available to [the Commissioner] was that certain programs simply could not apply to all uncooperative and other exporters. In Pacific Aluminium's submission, the Commissioner would*

have had considerable other public material available to him in respect of each of the programs to come to this conclusion.'

At paragraph 6.12(a), by way of example, Pacific Aluminium state that the names of the subsidy programs indicate that certain programs are limited to entities in particular regions of China. The Commission acknowledges this fact. At p105 of REP 237, it states:

'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 this information the Commission considers it reasonable to assume that uncooperative and all other exporters were eligible for these programs.

Similarly, at paragraphs 6.12(b), (c) and (d), Pacific Aluminium states that certain programs are limited by the reputation, size or age of the exporter.

The Commission wrote to every identified exporter of silicon metal during the investigation period, and the Government of China, seeking information relevant to the determination of subsidisation. Certain exporters chose not to respond to the questionnaire. Having given all exporters the opportunity to cooperate, the Commission does not undertake independent research into each of those exporters individual circumstances. In the absence of cooperation the Commission had regard to the nature of each of the subsidy programs, for example the eligibility criteria, in making reasonable assumptions about the likelihood of exporters being eligible and in receipt of such programs, in accordance with subsection 269TAACA(1)(d) of the Act.

Pages 103 to 106 of REP 237 set out the Commission's consideration of the assessment and receipt of subsidies.

6. Relevant information to ground of review

The calculations of the subsidy margins for all exporters and groups of exporters in REP 237 were emailed to the ADRP Secretariat by the Commission on 23 July 2015.

The Commission does not have any policy statements or guidelines which further explain the methodology for calculating subsidy margins for uncooperative exporters.