



CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS

NO. 237

and

PRELIMINARY AFFIRMATIVE DETERMINATION NO. 237

**ALLEGED DUMPING AND SUBSIDISATION OF SILICON
METAL**

EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

23 February 2015

SEF 237 and PAD 237 Silicon Metal - China

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ABBREVIATIONS

\$	Australian dollars
ACBPS	Australian Customs and Border Protection Service
ADN	Australian Dumping Notice
ADN	Ant-Dumping Notice
CBSA	Canada Border Services Agency
CFR	Cost and freight
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FOB	Free On Board
GAAP	Generally Accepted Accounting Principles
GOC	The Government of China
Guizhou Linan	Guizhou Liping Linan Silicon Industry Co. Ltd
Hua'an Linan	Hua'an Linan Silicon Industry Co. Ltd
Linan Group	For the purpose of this investigation, the collective term for the three entities Hua'an Linan Silicon Industry Co. Ltd, Guizhou Liping Linan Silicon Industry Co. Ltd and Xiamen K Metal Co. Ltd
NIP	Non-injurious Price
PAD	Preliminary Affirmative Determination
SASAC	State-owned Assets Supervision and Administration Commission of the State Council (China)
SCM Agreement	WTO Agreement on Subsidies and Countervailing Measures
SEF	Statement of Essential Facts
SG&A	Selling, general and administrative
SIE	State invested enterprise
Simcoa	Simcoa Operations Limited
the Act	<i>Customs Act 1901</i>
the applicant	Simcoa Operations Ltd
the Commission	The Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry and Science
the Regulations	<i>Customs Regulations 1926</i>
USP	Unsuppressed Selling Price

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This report includes both the statement of essential facts (SEF) and preliminary affirmative determination (PAD) in relation to the Anti-Dumping Commission's (the Commission's) investigation into allegations by Simcoa Operations Limited (Simcoa) that dumped and subsidised silicon metal exported to Australia from the People's Republic of China (China) has caused material injury to the Australian industry producing like goods.

The SEF sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base recommendations regarding this investigation, subject to any submissions received in response to the SEF.

This report also sets out the reasons for the Commissioner making a PAD under section 269TD of the *Customs Act 1901* (the Act).¹

1.2 Proposed recommendation

The Commission has found that silicon metal exported from China was exported at dumped and subsidised prices during the period 1 January 2013 to 31 December 2013 (the investigation period). The Commission further found that the volumes of dumped and subsidised goods were not negligible and that those exports caused material injury to the Australian industry.

Based on these preliminary findings, and subject to any submissions received in response to this SEF, the Commissioner proposes to recommend that the Parliamentary Secretary to the Minister for Industry and Science (the Parliamentary Secretary)² publish:

- a dumping duty notice in respect of all exports of silicon metal from China; and
- a countervailing duty notice in respect of all exports of silicon metal from China.

1.3 Preliminary affirmative determination

The Commissioner is satisfied there are sufficient grounds for the publication of a dumping duty notice and a countervailing duty notice in relation to silicon metal exported to Australia from China.

The Commissioner considers that the Australian Customs and Border Protection Service (ACBPS) should take securities under section 42 in respect of interim dumping duty and interim countervailing duty that may become payable in relation to silicon metal exported to Australia from China. The Commissioner is satisfied that securities are necessary to

¹ All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated. The terms *division*, *section* and *subsection* and *paragraph* are used interchangeably in this report as appropriate.

² The Minister for Industry and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker for this investigation.

prevent material injury to the Australian industry occurring while the investigation continues.

Securities will apply to imports of silicon metal from China entered for home consumption on or after 23 February 2015.

1.4 Application of law to facts

1.4.1 Authority to make decision

Division 2 of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application for the purpose of making a report to the Parliamentary Secretary.

1.4.2 Application

On 10 January 2014, Simcoa lodged an application requesting that the Parliamentary Secretary publish a dumping duty notice and a countervailing duty notice in respect of silicon metal exported to Australia from China.

The Commissioner was satisfied that the application was made in the prescribed manner by a person entitled to make the application³.

1.4.3 Initiation of investigation

After examining the application, the Commissioner was satisfied that:

- the application complies with subsection 269TB(4);
- there is an Australian industry in respect of like goods; and
- there appears to be reasonable grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of goods the subject of the application, or for the publication of such notices upon the importation into Australia of such goods.⁴

The Commissioner decided not to reject the application, and notice of the initiation of this investigation was published on 6 February 2014⁵.

1.4.4 Requirements for a preliminary affirmative determination

In accordance with section 269TD, the Commissioner may make a PAD if he is satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice and/or a countervailing duty notice, or that it appears that there will be sufficient grounds subsequent to the importation into Australia of the goods. In deciding whether to make a PAD, the Commissioner must have regard to the application and any submissions received within 40 days of the initiation of the investigation. The Commissioner may also have regard to any other matters that he considers relevant.

³ Section 269TB

⁴ Section 269TC(1)

⁵ Section 269TC(4)

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The Commissioner may make a PAD at any time after day 60 of the investigation. If a PAD is made, the ACBPS may require and take securities under section 42 if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues. The Commissioner must give public notice of the PAD and of a decision by the ACBPS to require and take securities.

1.4.5 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Parliamentary Secretary allows⁶, place on the Public Record a statement of the facts on which the Commissioner proposes to base his recommendation in relation to that application⁷.

In formulating the SEF, the Commissioner must have regard to the application concerned, any submissions concerning publication of the notice that are received by the Commission within 40 days after the date of initiation of the investigation, and may have regard to any other matters considered relevant⁸.

On 12 May 2014, the Parliamentary Secretary granted a 90 day extension to the date by which the SEF must be placed on the Public Record. Two further extensions of 60 days and 120 days were subsequently granted by the Parliamentary Secretary.

The due date for this SEF to be placed on the Public Record was on or before 21 February 2015 (or the next working day). Interested parties are invited to make submissions to the Commission in response to the SEF within 20 days of the SEF being placed on the public record.

1.5 Findings

The Commission has made the following findings and conclusions based on available information at this stage of the investigation.

1.5.1 The goods and like goods (Chapter 3 of this report)

Locally produced silicon metal is like to the goods the subject of the application.

1.5.2 Australian industry (Chapter 4 of this report)

There is an Australian industry producing like goods, comprising of one Australian producer of silicon metal, Simcoa.

⁶ Section 269ZHI

⁷ Section 269TDAA(1)

⁸ Section 269TDAA(2)

1.5.3 Market (Chapter 5 of this report)

The Australian market for silicon metal is predominately supplied by imported silicon metal from China, with a small volume of imports from other countries and a small quantity supplied by the Australian industry.

1.5.4 Dumping investigation (Chapter 6 of this report)

The Commission has preliminarily assessed that silicon metal exported to Australia from China during the investigation period was dumped. The volume of dumped goods, and the dumping margins, were not negligible.

The Commission has found the following dumping margins:

Manufacturer	Dumping margin
The Linan Group	14.1%
Uncooperative and all other exporters	22.5%

Table 1: Preliminary dumping margins

1.5.5 Subsidy investigation (Chapter 7 of this report)

Following its investigation into 44 alleged countervailable subsidy programs, the Commission has found that 38 programs are countervailable subsidies in relation to silicon metal. The Commission has found the following subsidy margins:

Exporter / Manufacturer	Preliminary subsidy margin
The Linan Group	3.7%
Uncooperative and all other exporters	35.0%

Table 2: Preliminary subsidy margins

1.5.6 Economic condition of the industry (Chapter 8 of this report)

The Commission is satisfied that the Australian industry suffered material injury in the form of:

- loss of sales volume;
- reduced market share;
- reduced revenue;
- price suppression;
- price depression;
- reduced profits; and
- reduced profitability.

1.5.7 Causation (Chapter 9 of this report)

The Commission is satisfied that there are grounds to find that dumping and subsidisation of silicon metal exported from China caused material injury to the Australian industry (Simcoa) producing like goods.

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1.5.8 Will dumping, subsidisation and material injury continue (Chapter 10 of this report)

The Commission is satisfied that dumping, subsidisation and material injury will continue if interim duties are not imposed in relation to silicon metal exported to Australia from China.

1.5.9 Non-injurious price (Chapter 11 of this report)

Noting the operation of s8(5BAAA) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) and the Commission's findings that:

- the normal value of the goods could not be ascertained under s269TAC(1) of the Act due to the existence of a market situation in relation to domestic sales of silicon metal in China; and
- the country in relation to which the subsidy has been provided has not complied with Article 25 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) for the compliance period,

the Commission recommends that regard should not be had to the desirability of fixing a lesser rate of duty and the full preliminarily assessed dumping and subsidy margins be applied to any interim dumping duty and interim countervailing duty taken in relation to silicon metal.

1.5.10 Proposed measures (Chapter 12 of this report)

The Commission proposes to recommend that the interim dumping duty and interim countervailing duty imposed be the:

- ad valorem rate of countervailable subsidisation; plus
- the ad valorem rate of dumping, minus an amount for the subsidy rate applying to subsidy Program 1 (where this has been received by the exporter or group of exporters).

1.5.11 Preliminary affirmative determination (Chapter 13 of this report)

For the purposes of this PAD, the Commissioner is satisfied that silicon metal exported to Australia from China has caused material injury to the Australian industry. It is likely that importations of silicon metal will occur in the future. The Commissioner is of the view that it is necessary to make a PAD under s.269TD and impose securities under s.42 to ensure that the Australian industry does not suffer further injury while this investigation is completed.

2 BACKGROUND

2.1 Initiation

On 10 January 2014, Simcoa lodged an application requesting that the Parliamentary Secretary publish a dumping duty notice and countervailing duty notice in respect of silicon metal exported to Australia from China.

Simcoa alleged that the Australian industry has suffered material injury caused by silicon metal exported to Australia from China at dumped and subsidised prices. Simcoa claims the industry had been injured through:

- Lost sales volumes;
- Reduced market share;
- Price depression;
- Price suppression;
- Loss of profits and profitability;
- Reduced return on investment; and
- Reduced capacity utilisation

Public notification of initiation of the investigation was made on 6 February 2014 in *The Australian* newspaper and by Anti-Dumping Dumping Notice No. 2014/08.

The investigation period was notified as 1 January 2013 to 31 December 2013. The injury analysis period was notified as being from 1 January 2010.

2.2 Previous cases

On 9 February 2005, the then Minister for Justice and Customs (the Minister) accepted the ACBPS recommendations made in Trade Measures Report No. 81. Simcoa was the applicant for the dumping duty notice.

On 16 February 2005, the Minister published a dumping duty notice imposing measures on primary and secondary grade silicon metal exported from China to Australia.

In March 2005, Comalco Aluminium Limited (Comalco) and Alcoa Australia Rolled Products Pty Ltd (Alcoa) separately lodged applications with the Trade Measures Review Officer (TMRO) for a review of the Minister's decision to publish a dumping duty notice in respect of silicon metal exported from China to Australia.

The TMRO accepted the applications and on 15 April 2005, a public notice of his intention to conduct a review was published.

On 11 August 2005, the Minister accepted the recommendations following a review by the TMRO and subsequently wrote to the Chief Executive Officer of ACBPS requiring him to reinvestigate ACBPS' findings in respect of:

- like goods;
- the assessment of material injury to the Australian industry;
- the assessment of normal values and dumping margins for other exporters;
- price underselling; and

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- the injury analysis period.

Following the reinvestigation, ACBPS affirmed its original findings in respect of:

- material injury;
- dumping margins;
- price underselling; and
- the injury analysis period.

ACBPS did find, however, that Australian produced primary use silicon metal was not like goods to secondary use silicon metal imported from China.

ACBPS recommended that the Minister sign a notice under s. 269ZZM(1)(b) of the Act revoking his original findings insofar as it related to like goods, and substitute a new decision.

The Minister revoked the existing notice specifying both secondary use silicon metal and primary use silicon metal and substituted a new notice which specified primary use silicon metal only.

The anti-dumping measures expired on 17 February 2010.

2.3 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base final recommendations to Parliamentary Secretary.

This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making the final report to the Parliamentary Secretary. The report will recommend whether or not a dumping duty notice and/or a countervailing duty notice should be published, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than **15 March 2015**. 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 Parliamentary Secretary.

The Commissioner must report to the Parliamentary Secretary by 7 April 2015.

Submissions should preferably be emailed to operations2@adcommission.gov.au.

Alternatively, they may be sent to fax number +61 2 6275 6990, or posted to:

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Director Operations 2
Anti-Dumping Commission
Level 5 Customs House
5 Constitution Ave
CANBERRA ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record.

A guide for making submissions is available at the Anti-Dumping Commission's web site www.adcommission.gov.au.

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available by request in hard copy in Canberra (phone (02) 6275 6547 to make an appointment), or online at www.adcommission.gov.au.

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

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Commission considers that locally produced silicon metal grades are like to the goods the subject of the application (the goods).

3.2 Legislative framework

Subsection 269TC(1) of the Act requires that the Commissioner must reject an application for a dumping duty notice and/or a countervailing duty notice if, inter alia, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are “like” to the imported goods. Subsection 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”.

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are “like” to the imported goods.

Where the locally produced goods and the imported goods are not 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 the subject of the investigation (the goods) are:

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

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

The application stated:

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The goods under consideration (GUC) includes all forms and sizes of silicon, including off-specification silicon such as silicon metal with high percentages of other elements, such as aluminium, calcium, iron, etc.

Silicon is a chemical element, of metallic appearance and steel grey in colour. It can be sold in lump, granule or powder form, and can be used in the same end-use applications whatever its form. Silicon is generally sold in lump form to the metallurgical industry and, in powder form to the chemicals industry. It is often referred to as a metal, although silicon possesses characteristics of both metals and non-metals (silicon is a metalloid).

Silicon is principally used by primary and secondary aluminium producers as an alloying agent and by the chemical industry to produce silicones and photovoltaics. The type and level of impurities in the silicon generally influence the end-use application (i.e. whether 'primary' or 'secondary' use aluminium).

3.4 Tariff classification

The goods are classified to the following tariff subheading 2804.69.00 in Schedule 3 to the *Customs Tariff Act 1995* with statistical code 14.

The general rate of duty is currently "free" for goods imported from China.

3.5 Like goods assessment

Silicon metal is produced in various grades. The grades represent the chemical composition of the product and the maximum allowed levels of the impurities of iron, aluminium and calcium. To meet the specified grade, the product should have no more than the specified amount of impurities of each of the above mentioned elements relevant to that grade.

Information gathered from Simcoa showed that it produced seven different grades of silicon metal during the investigation period. Six of the seven grades of silicon metal are used by primary aluminium smelters. Those six grades contain low iron, calcium and phosphorus levels. The remaining grade is usually sold to secondary aluminium producers. Primary and secondary uses are defined at paragraph 5.2 of this report. Simcoa also produces silicon metal for chemical use, however each user requires a specific chemical composition that is made to order. The grade of the raw material input, quartz, determines the resulting silicon metal grade, which can then be further refined by additional processing.

Data gathered from importers and exporters during the investigation shows that a number of grades of silicon metal were imported during the investigation period. One of the major cooperating importers, Pacific Aluminium, submitted that during the investigation period it shifted some of its silicon metal needs from the more purified grades to a grade known as 441. Pacific Aluminium claimed that the switch allows it to produce its product in a more cost effective way by not over loading products with high specification inputs where it isn't required.

Pacific Aluminium advised that generally there is no significant quality difference between the imported silicon metal and locally produced silicon metal *in equivalent grades*.

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However it submitted that Simcoa does not produce a like good to grade 441 silicon metal and therefore it should be excluded from the investigation.

In a submission to the investigation⁹, Simcoa submitted that it is able to supply domestically produced silicon metal for all aluminium alloy requirements in Australia. Simcoa did not manufacture grade 441 during the investigation period. Pacific Aluminium was unable to provide evidence that it had sought a quote from Simcoa for the supply of grade 441.

Notwithstanding Simcoa's ability to supply grade 441, the Commission is satisfied that Simcoa manufactures like goods to the imported goods the subject of the investigation. At the grade level some of the products manufactured by Simcoa during the investigation period are identical to the imported goods. In relation to grade 441 (which was imported during the investigation period), the Commission considers Simcoa's silicon metal is physically, commercially and functionally like to grade 441 and is produced in the same manner as grade 441.

Based on the verified information, the Commission is satisfied that the Australian industry produces like goods to the goods the subject of the application, as defined in subsection 269T and notes the following:

i. Physical likeness:

- the primary physical characteristics of the imported goods and locally produced goods are similar;

ii. Commercial likeness:

- the goods and locally produced goods are commercially alike as they are sold to common users, and directly compete in the same market;

iii. Functional likeness:

- the goods and locally produced goods are functionally alike as they have a similar range of end-uses; and

iv. Production likeness:

- the goods and locally produced goods are manufactured in a similar manner.

⁹ Dated 25 September 2014

4 THE AUSTRALIAN INDUSTRY

4.1 Finding

The Commission has found that:

- there is an Australian industry producing like goods;
- the like goods were wholly manufactured in Australia; and
- there is an Australian industry consisting of Simcoa that produces like goods in Australia.

4.2 Legislative framework

The Commissioner must be satisfied that the “like” goods are in fact produced in Australia. Subsection 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. Subsection 269T(3) specifies that in order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

4.3 Production process

Silicon is manufactured from inputs including quartz or silica, charcoal, coal and wood chips involving a high endothermic process.

The production process is the same regardless of the form of silicon metal (e.g. lump, granules, fines) required for the end product. Further processing to refine the product creates differences in the chemistry of the final product.

Simcoa provided a production flow diagram which the Commission examined, together with conducting a tour of the production facilities at both the Australian industry’s premises and the exporter’s manufacturing plant. The flow of production can be summarised as follows:

1. Raw materials are prepared.
2. Raw materials are put into the furnace.
3. A high electrical current is passed through electrodes contained within the furnaces creating extreme heat.
4. The heat causes the raw materials to combine into a liquid silicon metal.
5. The liquid silicon metal is poured into moulds to cool and set.
6. The solid silicon metal is broken down into lumps, granules or fines for sale.
7. The silicon metal is packed for sale.

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Based on the above, the Commission is satisfied that silicon metal is wholly manufactured in Australia.

Having undertaken a verification visit to Simcoa's factory, as well as to an importer of silicon metal, the Commission is satisfied that Simcoa is the sole producer of silicon metal in Australia. Accordingly, the Australian industry consists of Simcoa alone.

5 AUSTRALIAN MARKET

5.1 Finding

The Commission estimates that in the investigation period the size of the Australian market for silicon metal was approximately 8,000 tonnes. Analysis shows that the market share of Australian product versus imports has declined over the injury analysis period whilst imports from China have increased overall. The total size of the Australian market has decreased overall by approximately 60% over the injury analysis period.

5.2 Background

Silicon metal is sold to primary aluminium and secondary aluminium end-users. Silicon metal used in primary aluminium applications is combined with other elements to produce foundry and extrusion alloys which are used in the manufacture of goods such as car and truck wheels, window frames and door frames. Silicon metal used in these applications requires higher purity levels.

Silicon metal used in secondary aluminium applications generally requires lower quality requirements and is used in the manufacture of die casting alloys used in car parts, including manifolds, crank cases and other engine components.

5.3 Importers

The Commission performed a search of the Australian Customs and Border Protection Services (ACBPS) import database and identified importers of silicon metal.

The Commission visited Pacific Aluminium's head office in Brisbane. Its imports account for around 80% of silicon metal imported from China in the investigation period.

The visit examined records of the following three entities managed by Pacific Aluminium:

- Rio Tinto (Bell Bay) Company Ltd,
- Boyne Smelters Ltd and
- Tomago Aluminium Co. Ltd.

A visit report for Pacific Aluminium that incorporated the above importers can be found on the electronic public record available on the Commission website at <http://www.adcommission.gov.au>.

5.4 Market structure

5.4.1 Supply and Structure

Silicon metal is sold and distributed across Australia. 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 applications. Silicon metal is purchased by aluminium producers and sourced either from imports or from Simcoa.

5.4.2 Demand Variability

Simcoa advised that demand for silicon metal has been impacted by the global economic slowdown in the automotive, housing and solar panel industries. The flow on effect of the contraction of these industries is reduced demand for aluminium products and thereby reduced demand for silicon metal.

5.5 Market size

The Commission considers the data in ACBPS' import database, which was cross checked during the importer and exporter verification visits, and the verified sales data provided by Simcoa provide a reasonable estimate of the Australian market.

The following graph depicts the Commission's estimate of the Australian market size for silicon metal using data from ACBPS' import database and Simcoa's sales data by calendar year. The Commission estimates that in the 2013 calendar year, being the investigation period, the size of the Australian market for silicon metal was approximately 8,000 tonnes.

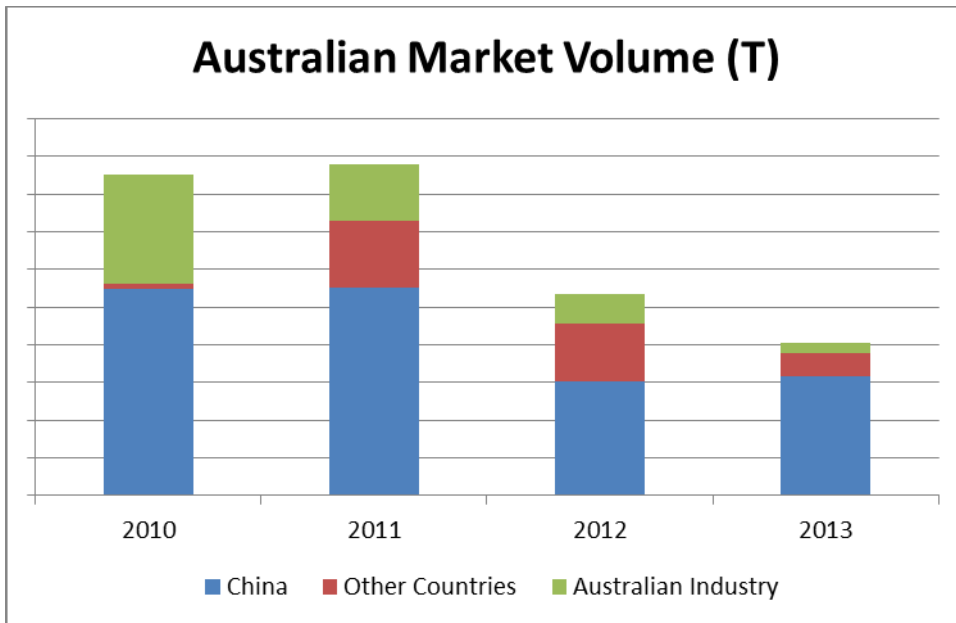


Figure 1 – Australian market for silicon metal (T)

6 DUMPING INVESTIGATION

6.1 Finding

The Commission has found that silicon metal exported to Australia from China during the investigation period was dumped. The volume of dumped goods, and the dumping margins, were not negligible.

Dumping margins for the investigation period were calculated by comparing weighted average export prices with the corresponding weighted average normal values. Dumping margins are summarised in the following table:

Manufacturer / exporter ¹⁰	Dumping margin
The Linan Group	14.1%
Uncooperative and all other exporters	22.5%

Table 3: Dumping Margins

6.2 Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC of the Act respectively.

This chapter explains the preliminary results of investigations by the Commission into whether silicon metal was exported from China at dumped prices during the investigation period.

6.3 Exporters

At the commencement of the investigation, sixteen potential exporters of silicon metal from China were identified. Questionnaires were forwarded to all known exporters. Of the sixteen potential exporters, two identified themselves as traders of the goods and provided contact details for the manufacturers. One advised that it was not an exporter of the goods, and the remaining companies did not respond.

Initially four entities indicated that they would cooperate with the investigation and provided a response to part 1 of the exporter questionnaire (REQ). Subsequent to that, only three entities completed the entire REQ and the fourth advised it no longer wished to participate.

The Commission received questionnaire responses, which were assessed by the Commission as being substantially complete, from:

- Xiamen K Metal Co., Ltd (K Metal);
- Hua'an Linan Silicon Industry Co., Ltd (Hua'an Linan); and
- Guizhou Liping Linan Silicon Industry Co., Ltd (Guizhou Linan).

¹⁰ The manufacturers / exporters listed in figure 1 may supply the goods directly or indirectly through traders.

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Based on the information in the REQs and gathered at verification visits the Commission determined that these three entities were related and accordingly prepared an exporter report incorporating the findings for all three. The three entities collectively are referred to in this report as the Linan Group.

The verification visit report for the Linan Group is available at the Commission's website <http://www.adcommission.gov.au> and provides additional detail to what is discussed below.

All other exporters of silicon metal to Australia from China during the investigation period are considered uncooperative exporters. An 'uncooperative exporter' is defined under Section 269T(1) of the Act as 'an exporter who did not provide the Commissioner information considered relevant to the investigation within a period the Commissioner considered reasonable, or an exporter that significantly impedes the investigation'. Exporters that did not submit responses to the Exporter Questionnaire were deemed to be uncooperative.

For uncooperative exporters, given that these exporters have not provided relevant information via a response to the Exporter Questionnaire, the Commission will use all relevant information and reasonable assumptions to calculate dumping margins.

6.4 Market situation assessment

6.4.1 Simcoa's claims

In its application, Simcoa referred to the findings of the Canada Border Services Agency (CBSA) into silicon metal exported to Canada from China¹¹. In the finding of 5 November 2013, CBSA found that the Government of China (GOC) measures significantly influence "*the Chinese ferroalloy sector, which includes silicon metal.*" Further, CBSA was satisfied that "*domestic prices are substantially determined by the GOC, and there is sufficient reason to believe that the domestic prices for silicon metal are not substantially the same as they would be in a competitive market*"¹².

Simcoa referred to measures found within that report to support its claim of market situation. Simcoa claim the measures impacting the Chinese silicon metal industry include:

- **GOC export control measures**

This includes the now repealed (with effect from 1 January 2013) 15 per cent export tax, the absence of a rebate of the 17 per cent VAT on export of silicon, the maintenance of minimum silicon export prices by the GOC, and the use of export quotas on silicon.

¹¹ CBSA Statement of Reasons concerning the making of final determinations with respect to the dumping and subsidizing of certain silicon metal originating in or exported from the People's Republic of China, 4214-39 AD/1400, 4218-37 CVD/136, 5 November 2013 (at Non-Confidential Attachment B-3.1.1 to Simcoa's application).

¹² *Ibid*, P. 25.

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- ***Government influence on the price of inputs used in the production of silicon metal***

CBSA was satisfied that the GOC exercises “substantial influence” over key raw material inputs in the silicon manufacturing process, including electricity and coal that account for 70 per cent of silicon production costs. The cost of electricity and coal in the total production cost of silicon metal account for 55-60 per cent and 8-10 per cent, respectively. The Canadian industry was able to demonstrate to CBSA that the electricity cost for silicon producers in Yunnan province (that accounted for 20 per cent of China’s silicon production) was 32 per cent below the rates in other provinces. In respect of coal, the GOC exercises control of the industry through “*the use of policies, laws, regulations, production caps and production ceilings*” to control the volume of coal produced and sold in China.

- ***GOC policies and regulations directed at production levels and participants***

Claims that the GOC’s industrial policies regulated the Chinese silicon industry, including prices in the industry. The CBSA referred the claims and identified the 12th Five Year Plan to the GOC for comment, however, the GOC failed to respond to the CBSA’s request for information.

Simcoa claims that the extent of the GOC’s influence on production levels within China is extensive and limits the decisions enterprises may take according to free market principles.

- ***Government Restrictions on the Use and Supply of Inputs***

CBSA was able to identify GOC restrictions on inputs in silicon metal production in the Yunnan government’s “Opinions Concerning Promoting Industrial restructuring of Industrial Silicon”.

- ***Chinese domestic selling prices for silicon***

The CBSA examined domestic prices in the US market for silicon as reported by Metal Bulletin, Platts Metals Week, Ryan’s Notes and CRU and contrasted these with published Chinese domestic prices. On average, CRU prices indicated that Chinese domestic prices were 37 per cent below US domestic prices during the period of investigation (i.e. 2012).

Simcoa submitted that the CBSA’s finding that the GOC influences the domestic selling prices of silicon metal in China is consistent with recent findings by the Commission into hollow structural sections and galvanised steel and aluminium zinc coated steel exported from China. In these cases the GOC was assessed as influencing domestic selling prices in China due to a range of factors including the elimination of backward production capacity and the range of GOC’s plans and policies for the steel industry, the same GOC policies and plans influence domestic silicon metal prices in China.

6.4.2 Applicable legislation

Subsection 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid or payable for sufficient volumes of like goods sold domestically in the ordinary course of trade in arm's length transactions.

However, subsection 269TAC(2)(a)(ii) provides that the normal value of the goods exported to Australia cannot be determined under subsection (1) where the Parliamentary Secretary 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 subsection (1).

Where such a market situation exists, normal value cannot be established on the basis of domestic sales. Instead, the normal value may be determined on the basis of a cost construction (subsection 269TAC(2)(c)) or third country sales (subsection 269TAC(2)(d)).

6.4.3 The Commission's assessment

The Commission sent a questionnaire to the GOC requesting, inter alia, the following information in relation to the silicon metal market in China:

- identification of the names of the government departments, bureaus or agencies that are responsible for the administration of any GOC measures concerning the silicon metal industry;
- details of all manufactures/traders of silicon metal in China including location, whether they are a State Invested Enterprise (SIE), production quantity and whether there is GOC representation in the business;
- a detailed description of the domestic Chinese silicon metal industry and the relevant upstream industries, including quartz, charcoal, coal, petroleum coke and wood chip industries;
- quarterly import and export data (volume and value)
- details about the operation of the *Price Law of the People's Republic of China*; and
- identification of any GOC initiatives and/or policies that affect the silicon metal industry, including raw materials used in its manufacture.

The GOC did not provide a response to any of the questions related to an assessment of market situation.

In the circumstances the Commission has relied on evidence relied on by the CBSA in its inquiry, evidence provided by Simcoa in support of its claims and evidence gathered independently by the Commission.

Non-confidential Appendix 1 summarises the factors and evidence relied on by the CBSA in its examination of the silicon metal market in China. The main factors considered by the CBSA are:

- GOC export control measures
- Government influence on the price of inputs
- Government policies and regulations
- Government restrictions on the use and supply of inputs

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- Domestic silicon price analysis

The Australian industry has supplied the Commission with some of the evidence referred to in the CBSA investigation in order for the Commission to independently examine that evidence.

The Commission considers that the GOC has had substantial influence on the silicon metal market in China, and the evidence for this finding is set out in Non-confidential Appendix 1. The imposition of export taxes (although it is acknowledged this was removed at the end of the investigation period), no VAT refund for exports and export quotas would have served to depress and/or suppress already low domestic prices, which were brought about by over-supply. The provision of preferential rates for electricity, which represents around 50% of the cost to make silicon metal, offered further advantage to domestic producers to enable domestic prices to remain low.

6.5 Establishing normal values – third country sales or construction

Following the above preliminary finding that domestic sales are not suitable for use in determining normal value due to a situation in the market, the Commission has examined the possibility of establishing normal value using either:

- sales of silicon metal to third countries by Chinese exporters (subsection 269TAC(2)(d)); or
- constructing normal values (subsection 269TAC(2)(c)).

In its responses to the Exporter Questionnaire, the Linan Group provided:

- aggregate third country sales data (not split into model or in line-by-line detail); and
- detailed domestic and export (to Australia) cost to make and sell (CTMS) data, split into month and model-level detail.

The Commission assessed the suitability of using third country sales of silicon metal by the Linan Group in determining normal values under subsection 269TAC(2)(d). The Commission determined that third country sales were not a viable option for determining normal values in relation to the goods due to its consideration that the exporter's cost of electricity does not reflect a competitive market cost (refer to section 6.7). This would in turn have affected the exporter's prices to third countries making them unsuitable for use in determining normal value.

Consequently, the Commission has undertaken the construction of normal values under subsection 269TAC(2)(c) of the Act, and has done so in accordance with the conditions of Regulation 180,181 and 181A of the *Customs Regulations 1926* (the Regulations)¹³, relevant aspects of which are outlined below.

¹³ As required by Sections 269TAC(5A) and 269TAC(5B)

6.6 Constructed normal values – outline

6.6.1 Applicable legislation, policy and practice

Subsection 269TAC(2)(c) provides that:

- (c) *except where paragraph (d) applies, the sum of:*
- (i) *such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and*
 - (ii) *on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale;*

The construction of normal values under subsection 269TAC(2)(c) is required to be undertaken in accordance with the conditions of Regulation 180, 181 and 181A of the Regulations¹⁴.

To determine costs of manufacture or production, Regulation 180(2) requires that if:

- an exporter or producer keeps records relating to like goods that are in accordance with generally accepted accounting principles (GAAP) in the country of export; and
- those records reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Parliamentary Secretary must work out the cost of production or manufacture using information set out in the exporter or producer's records.

It is the Commission's policy and practice that, where the conditions of Regulation 180(2) are not met, the cost records kept by that exporter are not required to be used in working out their costs, and the Commission may resort to other information to calculate these costs.

6.7 Reasonableness of costs in constructing normal values

6.7.1 Introduction

As outlined above, in addressing the normal value of the goods, Simcoa's application focussed on allegations that a particular market situation exists in the Chinese silicon metal market and that normal values should be constructed as a result.

Simcoa asserted that this construction of normal values should take account of the fact that the cost of electricity reflected in the records of Chinese exporters does not reasonably reflect a competitive market cost for that input and should be substituted.

¹⁴ As required by Sections 269TAC(5A) and 269TAC(5B)

6.7.2 Commission's assessment

As outlined above, Regulation 180(2) requires that if an exporter keeps records in accordance with the appropriate GAAP, and those records reasonably reflect competitive market costs associated with the production of like goods, then the cost of production must be worked out using the exporter's records.

The Commission's preliminary assessment of exporters' data has found that the records of Chinese exporters of the goods have been kept in accordance with the relevant GAAP.

However, the Commission's preliminary view is that electricity costs have been affected by preferential rates provided by SIE electricity providers for industries in the silicon manufacture sector, and hence do not reasonably reflect competitive market costs, and should be replaced by a competitive market substitute.

The Commission has determined that the most reasonable option available for a benchmark is the tariff rate for 'Other Large Industry' as indicated on the schedule of tariff rates provided by the GOC. This is considered the most reasonable benchmark as it represents a competitive market cost in China for all other industries in the relevant provinces, that is, those where the cooperating exporter conducts its manufacturing activities.

6.7.3 Calculation of uplift

To determine the competitive market costs for electricity, the Commission compared the benchmark tariff rate to tariff rates actually incurred by the Linan Group. The benchmark tariff rate was multiplied by the kWh actually used by the two manufacturing entities in the Linan Group during the investigation period, as verified by the Commission. This uplifted electricity cost was substituted for the actual cost of electricity verified by the Commission.

6.8 Determination of profit for constructed normal values in China

Regulation 181A(2) – the primary provision – requires that, where reasonably possible, profit for constructed normal values must be worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.

Accordingly, the Commission has calculated a weighted average net profit, measured as a percentage mark-up on full cost to make and sell, for the Linan Group, before performing the abovementioned amendment to the recorded costs incurred in relation to electricity.

6.9 Dumping margin assessment – the Linan Group

Export Prices

Export prices for the Linan Group were established under subsection 269TAB(1)(a) of the Act being the price paid or payable by the importer less any part of the price that represents a charge in respect of transport of the goods or in respect of any other matter arising after exportation.

Normal Value

The Commission found that Hua'an Linan and Guizhou Linan sold silicon metal grades on the domestic market that were identical to grades exported to Australia. These sales were in the ordinary course of trade and were in sufficient volumes.

Normal values were established in accordance with Section 269TAC(2)(c) of the Act using Hua'an Linan's and Guizhou Linan's quarterly weighted average cost to make and sell data (revised for electricity cost uplift), by model, and an amount for profit determined as outlined in Section 6.8 above. The following adjustments were made to the normal value in accordance with section 269TAC(8):

- Inland freight – a downwards adjustment was made for the actual cost of domestic inland freight and an upwards adjustment was made for export inland freight to the port;
- Export fees and charges – it was found that export sales incur certain fees and charges that are not incurred on domestic sales. An upwards adjustment to the normal value was made for handling and other charges, harbour service fees and terminal handling charges;
- Trader SG&A – sales made through K Metal to the Australian market incurred additional SG&A costs that are not associated with domestic sales. An upwards adjustment was made for the additional SG&A expenditure to normal values for Hua'an Linan and Guizhou Linan based on K Metal's SG&A costs; and
- Non-refundable VAT – an upwards adjustment of 17% was applied to the constructed normal value to account for the fact that the exporter was not entitled to any VAT rebate in relation to its exports of silicon metal.

The dumping margin was determined by comparing the weighted average export price over the whole of the investigation period with the weighted average normal value over the whole of the investigation period. The dumping margin for the Linan Group is 14.1%.

6.10 Dumping margin assessment – uncooperative and all other exporters

Uncooperative and all other exporters did not provide reliable information on export price or normal value to the investigation. These exporters did not make themselves known to the Commission and did not respond to the Exporter Questionnaire.

Export Prices

Export prices for uncooperative and all other exporters were established under section 269TAB(3) having regard to all relevant information. The export prices were obtained from the ACPBS import database at the FOB level.

Normal Value

The Commission examined and considered a range of options for determining normal value for uncooperative and all other exporters, including:

- normal value data from the application; and
- normal value data from the Linan Group.

The normal values submitted in the application were constructed based on information that Simcoa obtained from a company that is claimed to be an independent authority on cost economics for, amongst others, the silicon industry. This report contains cost economics data for silicon manufactured in the key provinces in China on an annual basis. The Silicon Cost Data report states that Yunnan province in China contains the highest volume of silicon metal output. Simcoa used costs relating to this province in its constructed normal value. Because the report does not include the cost of interest on fixed capital, depreciation, amortization, profit, income taxes, corporate overhead, research and development, Simcoa added these costs based on its own costs in 2012/13. Simcoa added a profit of 5% on the basis that the CBSA found that Chinese domestic profit in the silicon industry is low.

While these normal values were found by the Commission to be suitable for initiation purposes, it has since undertaken verification of exporter data in China supplied by the cooperating exporter. As explained in the Commission's *Dumping and Subsidy Manual*, the Commission considers that where there are cooperating and uncooperative exporters, the most directly relevant and therefore best information would be that obtained from those cooperating.

After having regard to all relevant information, normal values for all uncooperative and all other exporters were established in accordance with section 269TAC(6). Specifically, the Commission used the normal value established for the Linan Group.

6.10.1 Dumping margins

The dumping margin for uncooperative and all other exporters from China was established in accordance with subsection 269TACB(2)(a), by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The dumping margin for uncooperative and all other exporters is 22.5%.

6.11 Volume of dumped exports

Pursuant to section 269TDA(3), the Commissioner must terminate the investigation if satisfied that the total volume of goods that are dumped is a negligible volume. Section 269TDA(4) defines a negligible volume as 3% of the total volume of goods imported into Australia over the investigation period.

Based on the data from the ACBPS import database, the Commission is satisfied that, when expressed as a percentage of the total imported volume of the goods, the volume of dumped goods from China is greater than 3 per cent and therefore not negligible.

7 SUBSIDY INVESTIGATION

7.1 Finding

The Commission finds that countervailable subsidies have been received in respect of silicon metal exported to Australia from China during the investigation period. The subsidy margin was not negligible.

The Commission finds that the volume of subsidised goods exported to Australia during the investigation period was not negligible.

7.2 Investigated programs

Simcoa alleged in its application that Chinese producers of the goods benefited from a number of countervailable subsidies. These alleged subsidies referred to programs for the provision of electricity, grants, and beneficial taxation schemes.

7.3 Summary of countervailable programs

After assessing all relevant information available, the Commission has found that countervailable subsidies have been received in respect of silicon metal exported to Australia from China, under 38 countervailable subsidy programs.

The findings in relation each investigated program are 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

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Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
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
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

SEF 237 and PAD 237 Silicon Metal - China

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Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
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
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

Table 4 – Assessment of subsidy programs

7.4 Subsidy margins

7.4.1 Cooperating exporters

The Commission found that the Linan Group received financial contributions in respect of the goods that conferred a benefit under one program, being the provision of electricity at less than adequate remuneration.

7.4.2 Uncooperative exporters

In the absence of GOC advice regarding the individual enterprises that had received financial contributions under each of the investigated subsidy programs, the Commission has had regard to the available relevant facts and determines that uncooperative exporters have received financial contributions that have conferred a benefit under 38 programs found to be countervailable in relation to silicon metal.

7.4.3 Preliminary margins

Figure 3 below shows the Commission’s individual subsidy margin calculations for the Linan Group and for uncooperative and all other exporters:

Exporter / Manufacturer	Preliminary subsidy margin
Linan Group	3.7%
Uncooperative and all other exporters	35%

Table 5 - Subsidy margins for all exporters

SEF 237 and PAD 237 Silicon Metal - China

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The Commission's findings in relation to each program investigated (including the method of calculation of subsidy margins) are outlined in **Non-Confidential Appendix 3**.

The calculation of subsidy margins for the Linan Group and uncooperative exporters is at **Confidential Attachment 2**.

8 ECONOMIC CONDITION OF THE INDUSTRY

8.1 Finding

The Commission has assessed that, based on verified information and data, the Australian industry (Simcoa) appears to have experienced injury in respect of its sales of silicon metal in the form of:

- Lost sales volume;
- Reduced market share;
- Reduced revenue;
- Prices suppression;
- Price depression; and
- Loss of profits and profitability.

8.2 Introduction

Simcoa alleged that the Australian industry has suffered material injury caused by silicon metal exported to Australia from China at dumped and subsidised prices. Simcoa claims the industry had been injured through:

- Lost sales volumes;
- Reduced market share;
- Price depression;
- Price suppression;
- Loss of profits and profitability;
- Reduced return on investment; and
- Reduced capacity utilisation

8.3 Approach to injury analysis

The preliminary injury analysis detailed in this section is based on the verified financial information submitted by Simcoa and import data gathered from importers and from the ACBPS import database.

Simcoa provided production, cost and sales data for silicon metal (as covered by the goods description).

The Commission examined injury based on tonnes produced and sold by the Australian industry and tonnes exported to Australia. The range of products included in the investigation included different grades and finishes, being lump, granules and fines of silicon metal.

8.4 Volume effects

8.4.1 Sales Volumes

The following graph demonstrates Simcoa's domestic sales volumes for silicon metal by calendar year over the injury analysis period. Figure 4 shows the consistent decline of Australian sales volumes over the injury analysis period.

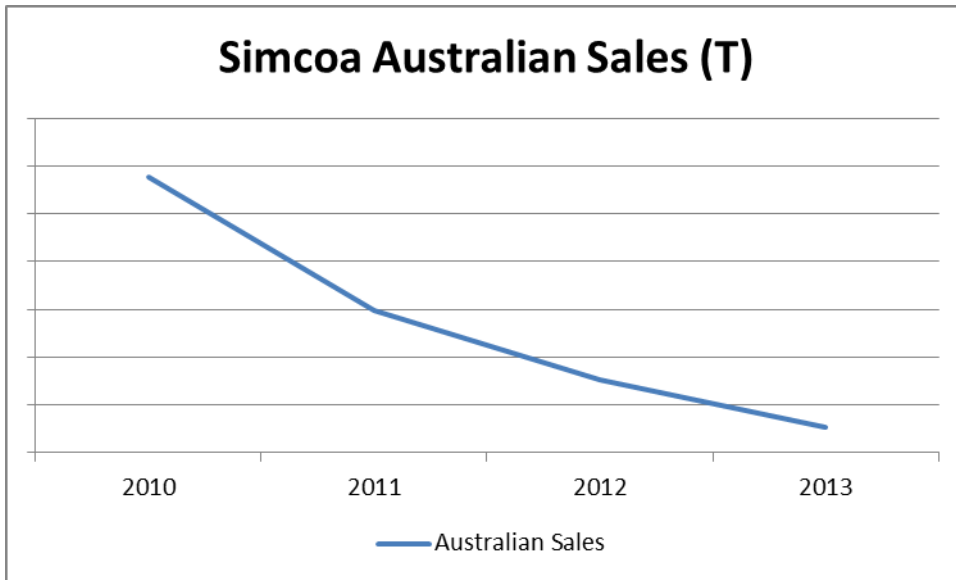


Figure 1 - Australian Industry domestic sales volume (T)

8.4.2 Market Share

The following graph shows movements in market shares, including Simcoa's market share, in the Australian market for silicon metal for the 2010 to 2013 calendar years.

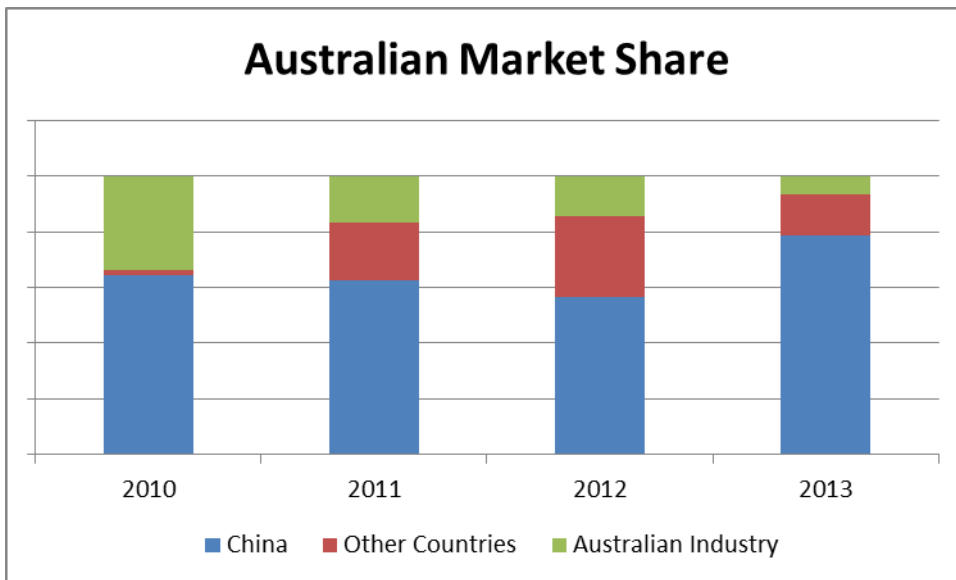


Figure 2: Australian market share (T)

Figure 3 demonstrates that Simcoa's share of the Australian market has constantly declined over the injury analysis period. Exports from China have fluctuated over the same period with a relatively large increase in market share occurring during the investigation period.

8.4.3 Market Size

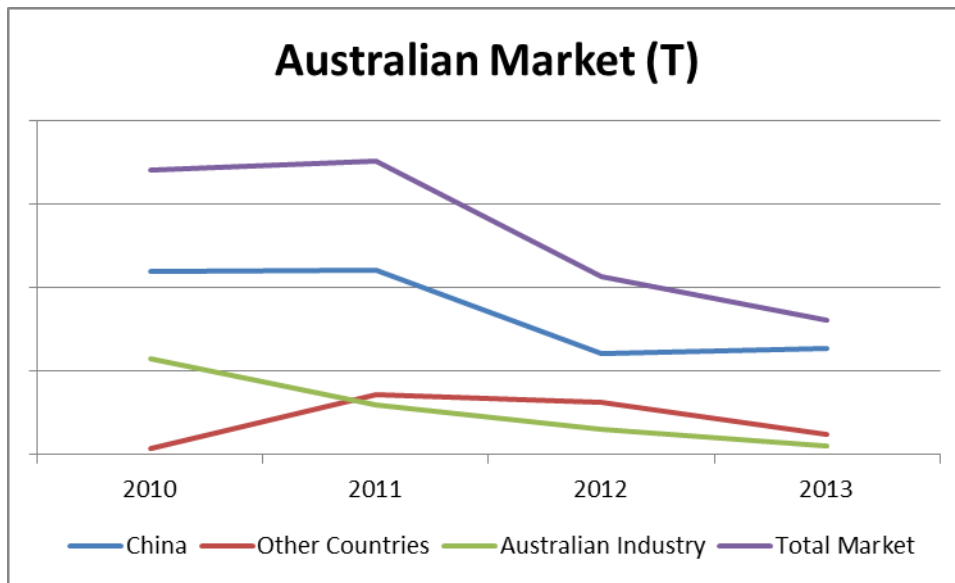


Figure 3: Australian market for silicon metal (T) by calendar year

Figure 4 shows the overall decline in the Australian market for silicon metal over the injury analysis period. Overall, the market decreased by approximately 53% over the injury analysis period and decreased by approximately 24% from 2012 to 2013.

Notwithstanding the overall market decline, exports from China increased their market share in the declining period between 2012 and 2013 while the Australian industry's market share decreased consistently over the entire injury analysis period.

8.5 Price suppression and depression

Price depression occurs when a company, for some reason, lowers its prices. 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.

The following graphs show movements in Simcoa's total and unit revenues and costs in respect of domestic sales of silicon metal for calendar years 2010 to 2013. The first graph depicts total net revenues and total CTMS, while the second shows unit prices and unit CTMS for domestic sales of silicon metal.

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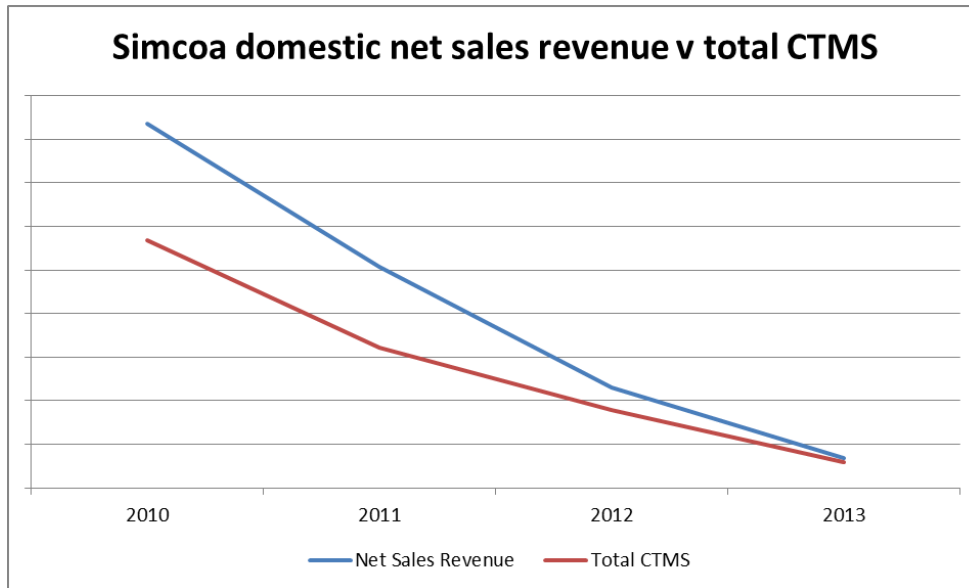


Figure 4: Simcoa total domestic sales revenue v total CTMS

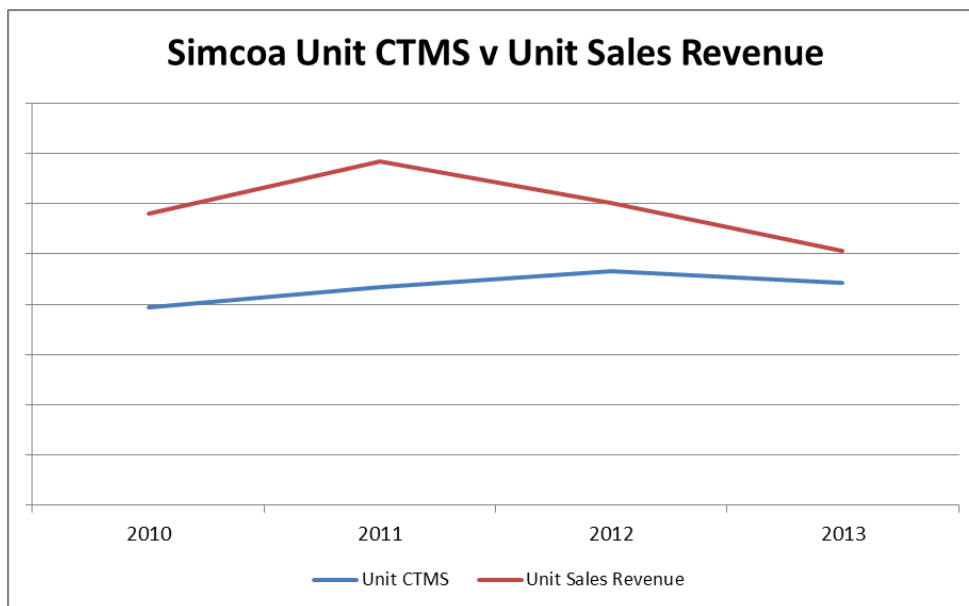


Figure 5: Simcoa unit CTMS v unit sales revenue

The graphs show that unit prices, after an initial increase in 2011, have declined overall during the injury analysis period while total net revenues have fallen. Unit costs have increased overall and total costs have decreased but at a lesser rate than revenues. The graphs support Simcoa's claims of price suppression and price depression.

8.6 Profits and profitability

The following graph shows movements in Simcoa's total profits and profitability (profits measured as a percentage of revenue) for domestic sales of silicon metal from calendar year 2010 to 2013.

SEF 237 and PAD 237 Silicon Metal - China

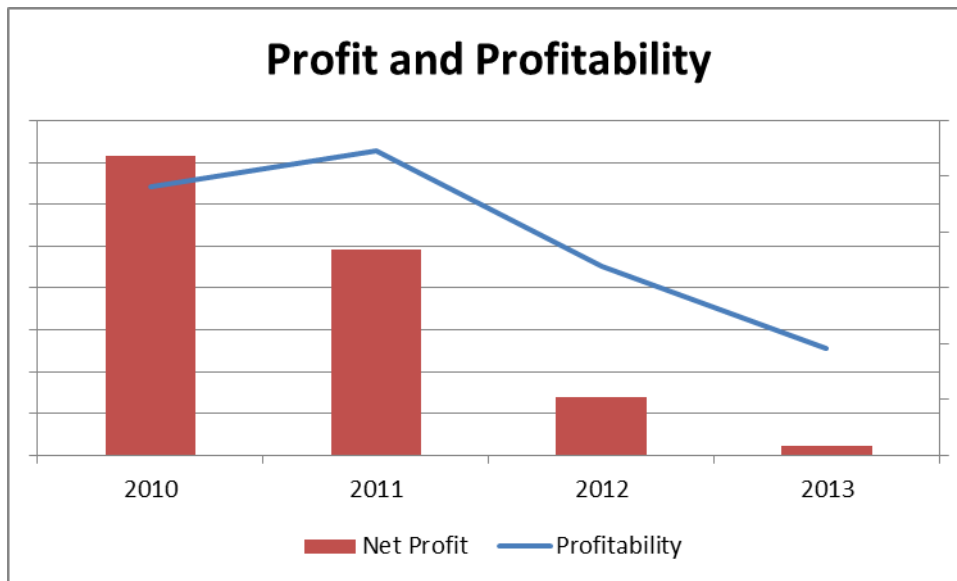


Figure 6: Simcoa's domestic sales profit and profitability

The graph shows significant decreases in profits together with a steady decline of profitability from 2011.

8.7 Other economic factors

Simcoa completed an Appendix A7 as part of its application for silicon metal from calendar years 2010 to 2013. Simcoa claims that it has experienced injury in respect of other economic/injury factors. The Commission has reviewed Confidential Appendix A7 and identified the following trends for other injury factors in respect of sales of silicon metal.

8.7.1 Assets

The value of assets increased each calendar year 2010-2013 substantially over the four year period. Accordingly the Commission found no injury has occurred in the form of reduced assets.

8.7.2 Capital investment

Capital investment in silicon metal fluctuated over the calendar years 2010-2013 with a major increase occurring in 2011. However there has been a reduction in capital investment overall.

8.7.3 Revenue

Revenue from silicon metal products increased overall, that is including both domestic and export sales, from calendar years 2010 to 2013. Revenue from domestic sales of silicon metal consistently decreased throughout the period.

8.7.4 Capacity

The production capacity of silicon metal remained constant from calendar years 2010 to 2012 however increased capacity in 2013.

8.7.5 Capacity utilisation

Capacity utilisation remained constant over the injury analysis period with the industry operating at full capacity for the entire duration.

8.7.6 Employment

Overall staffing figures have increased since 2010.

8.7.7 Stock

Stock figures increased overall over the injury analysis period.

8.7.8 Conclusion – other injury factors

In terms of other injury factors, the data indicates that Simcoa suffered injury through reduced revenue in relation to domestic sales of silicon metal.

9 HAVE DUMPING AND SUBSIDIES CAUSED MATERIAL INJURY?

9.1 Finding

The Commission finds that dumped and subsidised silicon metal exported from China has caused material injury to the Australian industry.

9.2 Background

In 2013, sales of the goods under consideration represented the majority of Simcoa's revenue. Domestic sales of silicon accounted for only a minor proportion of Simcoa's turnover in terms of both volume and value. The margin achieved on export sales in 2013, however, was lower than that achieved in the domestic market due to the higher costs incurred in export markets.

The Australian market for silicon more than halved over the injury analysis period. During the same period Simcoa increased its capacity significantly. The business case for the expansion, which was provided to the Commission, indicated that a proportion of the expansion plans was directed towards increasing the export business however it was also anticipated that additional domestic sales volume would be derived.

9.3 Size of the dumping and subsidy margins

Subsection 269TAE(1)(aa) requires the Parliamentary Secretary to have regard to the size of each of the dumping and subsidy margins, worked out in respect of goods of that kind that have been exported to Australia.

The dumping margins outlined in Chapter 6 for the only cooperative exporter, which represented around 80% of the export volume from China during the investigation period, is 14.1 per cent. The subsidy margins, outlined in Chapter 7, range between 3.7 per cent for the cooperating exporter and 35 per cent for uncooperative exporters. This dumping and subsidisation enabled importers of silicon metal to have a competitive advantage on price compared to the Australian industry.

In the case of concurrent dumping and subsidisation, where it is established that the exported goods are both dumped and subsidised, there is no need to quantify separately how much of the injury being suffered is the result of dumping or subsidisation. The Commission has examined whether the exports of silicon metal from China to Australia, at dumped and subsidised prices, have caused material injury to the Australian industry producing like goods.

9.4 Price effects

Following an increase in unit price in 2011, Simcoa's domestic selling price of silicon metal decreased significantly in 2012 and 2013. Based on data from the ACBPS import database, the FOB export prices of silicon exported from China followed a similar trend.

The Commission calculated the weighted average into store unit price for imports by the Pacific Aluminium group (the predominant purchaser of silicon in the Australian market) during the investigation period and found that it undercut Simcoa's selling price by around 6.5%.

9.5 Volume effects

Simcoa's biggest domestic customer historically is the Pacific Aluminium group comprising Rio Tinto's Bell Bay, Boyne and Tomago smelters. One of Simcoa's other significant customers at the commencement of the injury analysis period was Hydro Kurri Kurri.

Pacific Aluminium

Pacific Aluminium's purchases represented the majority of the Australian market for silicon metal in 2013.

In 2010, Pacific Aluminium sourced a significant portion of its silicon metal requirements from Simcoa. In 2011 this decreased significantly however Simcoa's sales appear to have been replaced by imports from countries other than China. In 2012, Simcoa's share of Pacific Aluminium's business was replaced by imports from both China and other countries. In 2013, Pacific Aluminium sourced a greater portion of its requirements, which itself had decreased in volume since 2010, from China.

At the visit to Pacific Aluminium it stated that in 2013, as a result of research and development, it considered that a large proportion of its silicon requirements could be met using a lower grade of silicon, Grade 441. Pacific Aluminium claimed that it approached Simcoa to provide a quote for this grade but was advised that Simcoa could not make this grade. Pacific Aluminium did not provide any evidence that it had sought a price from Simcoa for Grade 441. It did provide evidence of a quote being provided for a higher grade, which it also required, and which it ultimately sourced from China.

Simcoa states that due to the quality of the raw material it can source for silicon production it is a high quality producer of silicon generally. It claims that it can produce whatever grade is required by a customer but that it is naturally of higher quality than might be produced in China. Simcoa claims that the only reason Pacific Aluminium decided to purchase Grade 441 silicon from China is that Simcoa was unable to compete with the dumped and subsidised prices being offered by Chinese manufacturers.

Hydro Kurri Kurri

At the commencement of the injury analysis period Hydro Kurri Kurri was a significant customer in terms of Simcoa's domestic sales of silicon.

Hydro Aluminium closed the Kurri Kurri aluminium plant in 2012, causing purchases from this customer to cease. This loss of sales volume is therefore not attributable to dumped or subsidised imports.

Other domestic customers

After Pacific Aluminium and Hydro Aluminium, Simcoa's remaining domestic sales volume is made up of a number of small purchasers. The total sales volume to these customers in 2010 has decreased only marginally in 2013.

9.6 Materiality of injury

Given that the loss of sales volume to Hydro Aluminium cannot be attributed to dumped and subsidised imports the Commission has assessed whether the loss of volume to Pacific Aluminium has caused material injury to Simcoa. While interested parties have disputed that the lost volume is attributable to dumping and subsidisation based on claims about the grades produced by Simcoa and required by Pacific Aluminium, the analysis of materiality has been conducted on the basis that the entirety of the lost volume can be linked to dumping and subsidisation.

The Commission has firstly assessed the potential lost profit to Simcoa assuming that it was able to obtain the entirety of Pacific Aluminium's custom in 2013. This assumption is not without flaw given that Pacific Aluminium has historically purchased some of its silicon requirement from imports, including the period prior to when Simcoa claims dumping and subsidisation commenced.

On the assumption that Pacific Aluminium purchased all its silicon metal from Simcoa in 2013, the Commission has calculated the potential lost profit as follows:

- Multiplied the lost volume to Pacific Aluminium by the unit profit Simcoa actually achieved on its domestic sales in 2013; and
- Accounted for the lower margin achieved on export sales that would not have been incurred if that volume of sales was diverted from export to domestic sales. This is based on the fact that Simcoa was operating at full capacity in 2013.

This analysis shows that the loss of profit represented around 20% of Simcoa's actual profit in 2013.

As stated above the Commission considers there is reason to doubt whether Simcoa could expect to achieve 100% of Pacific Aluminium's business in the absence of dumping and/or subsidisation given Pacific Aluminium's historical purchasing pattern. The Commission has calculated an alternative measure of the materiality of any injury assuming that Pacific Aluminium would have purchased from Simcoa in 2013 in the same proportions that it purchased in 2010, the commencement of the injury analysis period. Applying the same methodology as above, the analysis shows that the loss of profit still represents around 10% of Simcoa's actual profit in 2013.

The Commission considers the above analysis demonstrates that the lost volume, and consequent lost revenue and profits, represents material injury to Simcoa.

10 WILL DUMPING AND SUBSIDY AND MATERIAL INJURY CONTINUE?

10.1 Findings

The Commission finds that exports of silicon metal from China in the future may be at dumped and subsidised prices and that continued dumping and subsidisation may cause further material injury to the Australian industry.

10.2 Introduction

When the Parliamentary Secretary is satisfied that material injury to an Australian industry has been caused by dumping and subsidisation, anti-dumping measures may be imposed on future exports of like goods if the Parliamentary Secretary is satisfied that the dumping and subsidisation and material injury may continue.

10.3 Commission's assessment

10.3.1 Will dumping continue?

The Commission's dumping analysis shows that silicon metal exported to Australia from China during the investigation period were at dumped prices, with dumping margins ranging from 14.1 to 22.5 per cent.

The Commission notes that Pacific Aluminium's imports have a significant share and influence in the Australian market hence importations of the goods from China are likely to continue. Taking into account the established routes to market, the Commission considers that dumping will continue if anti-dumping measures are not imposed.

10.3.2 Will subsidisation continue?

The Commission found that silicon metal exported to Australia from China during the investigation period were subsidised, with subsidy margins ranging from 3.7 to 35 per cent.

The Commission considers that no evidence exists to show that countervailable subsidisation of Chinese products will be ceased in its entirety in the future and it is therefore considered that silicon metal exporters will likely continue to receive financial contributions under at least some of the identified countervailable subsidy programs. In particular, it is considered the existence and accessing of Program 1 (electricity at less than adequate remuneration) will continue in future and is thus likely to benefit silicon metal exporters. This program is the program under which the majority of benefit to silicon metal exporters has been observed during the investigation period.

It is therefore considered that subsidisation will continue in the future.

10.3.3 Will material injury continue?

The Commission has reviewed the Australian industry's performance over the injury analysis period and has made a finding that silicon metal exported at dumped and subsidised prices have caused material injury to the Australian industry.

The Commission considers that a continuation of price competition from dumped and subsidised imports from China is likely to have a continuing adverse impact on the Australian industry. The Commission considers that this impact may be particularly evident in price undercutting and reduced volume, revenue, profits and profitability.

Based on the available evidence, the Commission finds that exports of silicon metal from China in the future may be at dumped or subsidised prices and that continued dumping or subsidisation may cause further material injury to the Australian industry.

11 NON-INJURIOUS PRICE

11.1 Preliminary assessment of NIP

Noting the operation of section 8(5BAAA) of the Dumping Duty Act and the Commission's findings that:

- the normal value of the goods should not be ascertained under subsection 269TAC(1) of the Act due to the existence of a market situation; and
- the goods have been in receipt of subsidies and the country in relation to which they were provided has not complied with Article 25 of the SCM Agreement for the compliance period,

the Commission recommends that regard should not be had to the desirability of fixing a lesser rate of duty and the full preliminarily assessed dumping and subsidy margins be applied to any interim dumping duty and interim countervailing duty taken in relation to silicon metal that the Commission proposes in this report to recommend to the Parliamentary Secretary.

11.2 Relevant legislation

Duties may be applied where it is established that dumped imports have caused or threatened to cause material injury to the Australian industry producing like goods. The level of dumping duty imposed by the Parliamentary Secretary cannot exceed the margin of dumping, but the Parliamentary Secretary must have regard to the desirability of fixing a lesser amount of duty if it is sufficient to remove the injury.¹⁵

However, pursuant to Section 8(5BAAA) of the Dumping Duty Act, the Parliamentary Secretary is not required to have regard to the desirability of fixing a lesser amount of duty in certain circumstances. These are where the normal value of the goods has not been established in accordance with section 269TAC(1) due to the existence of a market situation and, in a case where countervailable subsidies have been received in respect of the goods, the country in relation to which the subsidy has been provided has not complied with Article 25 of the SCM Agreement for the compliance period.

Article 25 of the SCM Agreement requires that WTO members are to notify the WTO of any specific subsidies (as defined in Articles 1 and 2) that are granted or maintained within their territories

11.3 Commission's assessment

At the time of publishing this SEF, the Commission has not received any submissions from interested parties that address either the desirability of the Parliamentary Secretary fixing a lesser amount of duty, or, if such an approach was to be taken, how this lesser amount of duty should be determined.

As outlined in Chapter 6 and Non-confidential Appendix 1 the Commission has found a

¹⁵ SECTION 269TG(5)

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market situation exists in relation to domestic sales of silicon metal in China and for this reason normal value cannot be determined under section 269TAC91). In addition, as outlined in Chapter 7 and Non-confidential Appendix 3, the Commission has found that the country in relation to which the subsidies were provided had not complied with Article 25 of the SCM Agreement for the compliance period.

In light of the above, the Commission considers that regard should not be had to the desirability of fixing a lesser rate of duty, and the full margin of the assessed dumping and countervailable subsidisation should be applied to the collection of interim dumping duty and interim countervailing duty that the Commissioner proposes to recommend to the Parliamentary Secretary in the final report for this investigation.

12 PROPOSED MEASURES

12.1 Finding

The Commission proposes to recommend to the Parliamentary Secretary that a dumping duty notice and a countervailing duty notice be published in respect of silicon metal exported to Australia by all exporters from China.

The Commission proposes to recommend that the interim dumping duty and interim countervailing duty imposed as a result of these notices be the:

- the ad valorem rate of countervailable subsidisation; plus
- the ad valorem rate of dumping, minus an amount for the subsidy rate applying to subsidy Program 1 (where this has been received by the exporter or group of exporters).

This ad valorem rate is to be calculated as a percentage of the export price.

12.2 Proposed measures

12.2.1 Form of measures

The forms of duty available when implementing measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* and include:

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

The Commission recommends that interim dumping duty and interim countervailing duty be calculated ad valorem (i.e. a proportion of export price). The ad valorem method is suitable for goods with different product levels of varying unit prices.

12.2.2 Combined measures

Noting the above recommendation that the lesser duty rule not be applied (see Chapter 11), the Commission proposes to recommend that the level of interim countervailing duties proposed for silicon metal exported from China be the full margin of countervailable subsidisation in the case of all exporters.

In relation to interim dumping duties, the Commission notes that in the case of silicon metal, the calculation of combined dumping and countervailing duties is not simply a matter of adding the reported dumping and subsidy margins together for any given exporter, or group of exporters. This is due to the fact that the Commission has recommended that:

- the normal value of silicon metal exported to Australia from China be constructed under Section 269TAC(2)(c) and that, as part of this construction, an uplift for electricity costs incurred by Chinese exporters of those goods should be applied to

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ensure that these costs are reasonably representative of competitive market costs (refer to Chapter 6); and

- Program 1 - Electricity Provided by the Government at Less than Fair Market Value, is a countervailable subsidy received by certain exporters, the benefit for which has been determined by establishing the difference between the electricity tariff actually paid by Chinese exporters of the goods and the tariff benchmark used in determining costs for constructed normal values (see Chapter 7).

Consequently, the Commission proposes to recommend that the collective interim dumping duty and interim countervailing duty imposed in relation to silicon metal exported from China to be the sum of:

- the subsidy rate calculated for all countervailable programs; and
- the dumping rates calculated, less an amount for the subsidy rate applying to Program 1 (where this has been received by the exporter or group of exporters).

This approach avoids any overlap or double-counting that may arise from the circumstances of this case where there are domestic subsidies and a constructed normal value that includes a major cost component that is based on surrogate data.

12.3 Imposition of dumping duties retrospectively

Dumping duties can be imposed retrospectively on goods which entered home consumption between the day of initiation of an investigation to the day securities could be taken (approximately 60 days after initiation) or were taken (up to a limit of 90 days).

In considering whether a retrospective notice should be published in relation to dumping duties, the Commissioner has had to regard to whether:

- the importer knew, or ought to have known, that the amount of the export price of the goods was less than the normal value of the goods and by that reason thereof material injury would be caused to Australian industry (subsection 269TN(4)(a)); OR
- the goods are of a kind the exportation of which to Australia on a number of occasions has caused material injury to Australian industry, or would have caused material injury but for the publication of a notice under Section 269TG (i.e. the goods are of a kind which have previously been found to be dumped in Australia) (subsection 269TN(4)(b));

AND

- the goods entered home consumption up to 90 days before securities were taken (or the Commissioner had a right to take securities) (subsection 269TN(3)(a)); and
- material injury, arising from dumping, has been caused to Australian industry by the importation during a short period of large quantities of goods of the same kind (subsection 269TN(3)(b)); and
- publication of a retrospective notice is necessary to prevent the serious undermining of the remedial effect of the dumping duty that will become payable upon publication of the notice (subsection 269TN(3)(b)).

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The Commission has determined that it will not recommend the Parliamentary Secretary impose retrospective dumping duties on the importation of silicon metal from China.

The Commission did not receive or observe any evidence to show that Chinese exporters of the goods had increased importations of silicon metal from China in large volumes following the commencement of this investigation.

12.4 Imposition of countervailing duties retrospectively

Countervailing duties can be imposed retrospectively on goods which entered home consumption between the day of initiation of an investigation to the day securities could be taken (approximately 60 days after initiation) or were taken (up to a limit of 90 days).

In considering whether a retrospective notice should be published in relation to countervailing duties, the Commissioner has had to regard to whether:

- the goods entered home consumption up to 90 days before securities were taken (or the Commissioner had a right to take securities) (Section 269TN(5)(a)); and
- material injury which is difficult to repair, arising from countervailable subsidies, has been caused to Australian industry by the importation during a short period of large quantities of goods of the same kind (Section 269TN(5)(b)); and
- publication of a retrospective notice is necessary to prevent the recurrence of the injury (Section 269TN(5)(b)).

The Commission has determined that it will not recommend the Parliamentary Secretary impose retrospective subsidy duties on the importation of deep drawn stainless steel sinks from China. The Commission has arrived at this determination for the same reasons outlined in Section 12.3 in relation to the imposition of retrospective dumping duties.

13 PRELIMINARY AFFIRMATIVE DETERMINATION

13.1 Introduction

Under section 269TD of the Act, at any time not earlier than 60 days after the date of initiation of an investigation into whether there are sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice, in respect of goods the subject of an application, the Commissioner may, if he is satisfied that:

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

make a PAD to that effect.

The ACBPS may, at the time of the Commissioner making a PAD or at any later time during the investigation, require and take securities under s.42 of the Act in respect of interim duty that may become payable if the officer of the ACBPS taking the securities is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

13.2 The Commission's findings

The Commissioner, having made the finding that silicon metal from China was exported at dumped and subsidised prices and that those exports have caused material injury, is satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice and a countervailing duty notice. Accordingly, the Commissioner considers it necessary to make a PAD under section 269TD(1).

Under section 42, a PAD allows the ACBPS to require and take securities in respect of interim duty that may become payable if the Commissioner is satisfied that it is necessary to do so to prevent material injury to the Australian industry occurring while the investigation continues.

The Commissioner is satisfied that dumped and subsidised silicon metal exported to Australia from China in the investigation period has caused material injury to the Australian industry and that it is likely that importations of silicon metal will occur in the future. The Commissioner is of the view that it is necessary to make a PAD under section 269TD and impose securities under section 42 to prevent material injury to the Australian industry occurring while this investigation continues.

13.3 Securities

The PAD, including the level of securities, will be publicly notified by way of an Anti-Dumping Notice and also in *The Australian* newspaper on 23 February 2015. Securities will be collected from 23 February 2015. This report sets out the reasons for the determination, including all the material findings of fact and law on which the determination is based.

The ACBPS will calculate the amount of securities payable on an ad valorem basis (calculated as a proportion of export price). Securities will be at the level of the full dumping margins calculated, as tabulated below:

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Exporter / Manufacturer	Dumping securities	Countervailing securities	Combined securities
Manufactured by Hua'an Linan Silicon Industry Co., Ltd and supplied through Xiamen K Metal Co., Ltd	10.4%	3.7%	14.1%
Manufactured by Guizhou Liping Linan Silicon Industry Co., Ltd and supplied through Xiamen K Metal Co., Ltd	10.4%	3.7%	14.1%
Uncooperative and all other exporters	18.8%	35.0%	53.8%

Note that the level of securities imposed is different from the combined dumping and subsidy margin totals found in the preliminary analysis of dumping and subsidisation, due to the removal of any double count relating to subsidy Program 1.

14 APPENDICES AND ATTACHMENTS

Non-Confidential Appendix 1	Assessment of market situation
Non-Confidential Appendix 2	Assessment of reasonableness of electricity costs
Non-Confidential Appendix 3	Assessment of countervailability of subsidies
Confidential Attachment 1	Calculation of dumping margins
Confidential Attachment 2	Calculation of subsidy margins

NON-CONFIDENTIAL APPENDIX 1 – ASSESSMENT OF MARKET SITUATION

In the CBSA’s investigation into the dumping of silicon metal from China it conducted a Section 20 inquiry and found that domestic prices for silicon metal in China were not substantially the same as they would have been if determined in a competitive market. The findings were released in November 2013 so are considered reasonably contemporaneous.

The GOC did not fully 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. A document issued by the Yunnan Government in China in 2011, which was relied upon by the CBSA and provided to the Commission by the Australian industry, provides the following information about the silicon metal market in China:

- The total production capacity was 3.2 million tonnes however the actual output was 1.4 million tonnes
- The domestic demand was less than 600,000 tonnes
- The Yunnan province accounted for around one third of China’s capacity and output for silicon metal
- Industry concentration was low with the average production capacity of individual enterprises around 14,000 tonnes

The following table assesses the factors relevant to assessment of the domestic market for silicon metal in China by reference to the findings in the CBSA inquiry.

Category	Factor	Evidence relied on by CBSA	Commission’s comment
GOC Export Control Measures	Export tax of 15%	Fact	Repealed on 1 January 2013 (start of investigation period)
	Zero refund of VAT on exports	2005 notice by Chinese Ministry of Finance and the State Administration of Taxation	Confirmed in response to GOC questionnaire
	Direct price control on exports	‘Confidential information obtained’	No access to information relied on by CBSA
	Export quotas and licence restrictions	Research report published by Hong Kong	The Commission has obtained a copy of this document. It states: <i>“To ensure ample</i>

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Category	Factor	Evidence relied on by CBSA	Commission's comment
		<p>securities firm (February 2012)</p> <p>Article published by Platts in December 2012</p>	<p><i>supply in the home market, China has imposed export quotas on nine minerals, e.g....silicon metal... ”</i></p> <p>States that the Chinese government has issued 255 export licenses for various ferroalloys, including ferrosilicon. http://www.platts.com/latest-news/metals/hongkong/china-approves-255-companies-for-ferroalloy-export-6961009)</p>
<p>Government influence on price of inputs</p>	<p>Electricity</p> <ul style="list-style-type: none"> - 90% of electricity production is owned by SIEs - Rates in Yunnan province 32% lower than rates in other regions - one exporter (MSSI) purchased electricity at lower rate than other enterprises in same prefecture 	<p>Information contained in complaint</p> <p>Information in questionnaire response by MSSI</p>	<p>No access to information relied on by CBSA</p> <p>From verification of the Linan Group in the Commission's investigation energy represents around 50% of the cost of manufacture.</p> <p>From the GOC's response to the Commission's questionnaire:</p> <ul style="list-style-type: none"> • Tariff rate for ferroalloy producers in Guizhou province around 2% lower than rate for other 'Large industry', which itself is around 29% lower than rate for 'Non-industrial and general industrial' • Tariff rate for crystalline silicon production in Fujian province (in wet season) around 9% lower than rate for other 'Large industry', which itself is around 24% lower than rate

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Category	Factor	Evidence relied on by CBSA	Commission's comment
			for 'Non-industrial and general industrial'
	Coal at less than fair value <ul style="list-style-type: none"> - GOC policies, laws, regulations, production caps 	Information contained in complaint 12 th Five Year Plan (2011-2015) – caps in coal production and capacity, restrict number of companies, mergers WTO panel report – MOFCOM limited coal exports in 2011 and 2012, domestic price of coke controlled by GOC, coke subject to export controls, export tax of 40% on coke	No access to information in complaint The Commission has obtained a copy of this document. The Commission has obtained a copy of the WTO panel report and confirmed this information. From verification of the Linan Group in the Commission's investigation coal represents approximately 8% of the cost to manufacture.
Government policies and regulations	12th Five Year Plan <ul style="list-style-type: none"> - No specific reference to silicon - Elimination of backward technology - Volume expansion in smelting industries should be controlled - Relocation of urban non-ferrous metal enterprises carried out in orderly fashion - Supporting cutting edge smelting technologies 	12 th Five Year Plan List of enterprises to eliminate backward production capacity of MIIT (2010) – China Silicon Industry Branch webpage List of enterprises to eliminate backward production capacity of MIIT (2011) – China	See above – the Commission has obtained a copy of this document. The Commission has obtained a copy of <i>Technological Progress and Structural Adjustment of Chinese silicon industry</i> , delivered by MIIT at conference in Yunnan: <ul style="list-style-type: none"> - <i>“Promote industrial restructuring and upgrading</i> - <i>speed up industrial restructuring to accelerate the elimination of out-dated production capacity and to accelerate</i>

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Category	Factor	Evidence relied on by CBSA	Commission’s comment
	<ul style="list-style-type: none"> - Energy conservation and recycling of energy and waste 	Silicon Industry Branch webpage	<ul style="list-style-type: none"> - <i>the elimination of small silicon furnaces</i> - <i>transfer the industry from high consumption of energy to high efficiency of production, from raw material production to value added fine material production.</i> - <i>enterprises should press on merging, in order to form a number of enterprise groups, to consolidate their assets, resources and products.</i> - <i>Only when silicon enterprises are bigger and stronger, then can the competitiveness of the silicon industry can be improved. In that way, we can resolve the price discrimination in the international market.”</i>
	<p>Yunnan Government</p> <ul style="list-style-type: none"> - All silicon furnaces less than 12.500KVA will be phased out by 2015 - Restructured or new facilities must have capacity of 2 x 25,000KVA or above - Silicon capacity of 4 regions restricted to ensure total capacity less than 1.4 million tonnes - No other states or municipalities allowed to add new capacity 	<p>Document issued by Yunnan government outlining plans relating to silicon – ‘Document of the Office of the People’s Government of Yunnan Province (Yun Zheng Ban Fa [2012] No. 236)’ – Mangshi Sinice Silicon Industry</p>	<p>The GOC declined to provide the document but it was provided by the Australian industry in submission dated 25 September 2014.</p> <p>Cooperating exporters were not located in Yunnan province (Fujian and Guizhou) but major uncooperative exporter is.</p> <p>Fujian government website mentions closing down a 6300kva and a 3200 kva silicon furnace.</p> <p>Guizhou government website refers to eliminating outdated production capacity in a range of industries, including non-ferrous metals. Light on detail</p>

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Category	Factor	Evidence relied on by CBSA	Commission's comment
	Restricting access	MIIT Notice No. 15 of 2012 – China Nonferrous Metals Industry Association Webpage	<p>however other than eliminating by the end of 2010 more than 50 million kilowatts of small coal-fired power generators and 8,000 small coal mines. This could impact electricity generation.</p> <p>See ‘*’ below this table for information from silicon industry conference in 2010.</p> <p>The Australian industry provided this document in submission dated 25 September 2014. It provides a ‘list of companies that meet the ferroalloy industry access conditions (the industrial silicon)’. There are 22 companies listed.</p>
	Limiting capacity expansion through land policies – silicon possibly/appears to be a prohibited project	<p>Articles about Ministry of Industry verification of silicon enterprises – China Silicon Industry Branch Webpage</p> <p>Restrictions prohibit the land for the project directory (2012) – China Nonferrous Metals Industry Association Webpage</p> <p>Document issued by Yunnan government</p>	<p>The Australian industry provided this document in submission dated 25 September 2014.</p> <p>The Australian industry provided this document in submission dated 25 September 2014.</p> <p>As above – the Australian industry provided this document.</p>

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Category	Factor	Evidence relied on by CBSA	Commission's comment
		<p>outlining plans relating to silicon – ‘Document of the Office of the People’s Government of Yunnan Province (Yun Zheng Ban Fa [2012] No. 236)’ – Mangshi Sinice Silicon Industry</p>	
<p>Government restrictions on use and supply of inputs</p>	<p>Yunnan Government</p> <ul style="list-style-type: none"> - Restrict energy consumption per unit of silicon - Restrict carbonaceous reducing agents consumption per unit - Achieve minimum recycle and waste heat utilization rates - Realise waste water recycling and complete recycling of dust - Limit use of charcoal to promote high grade silicon - Restrictions on use of carbon based reducing agent for producers of grades 441 and 553 	<p>Document issued by Yunnan government outlining plans relating to silicon – ‘Document of the Office of the People’s Government of Yunnan Province (Yun Zheng Ban Fa [2012] No. 236)’ – Mangshi Sinice Silicon Industry</p>	<p>See above – the Australian industry provided this document.</p> <p>The cooperating exporters are not located in this province but the major uncooperative exporter is.</p>
<p>Domestic silicon price analysis</p>	<p>Chinese domestic selling prices lower than normal values (using US selling prices from Metal Bulletin) and South</p>	<p>Information gathered during inquiry</p>	<p>The Commission has no access to the information relied on by the CBSA, however little weight has been placed on this factor.</p>

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Category	Factor	Evidence relied on by CBSA	Commission's comment
	African domestic selling prices		

*** Excerpts from silicon industry conference in 2010:**

(at <http://www.siliconchina.org/2010/0426/3339.html>)

- “Vice President of China Nonferrous Metals Industry Association, Zhao Jiasheng pointed out that with the rapid development of the national economy, the development of silicon metal industry is growing rapidly. However, due to various historical reasons, China's silicon metal industry is small in scale, low in technical level and outmode in equipment. It is easy to enter into the silicon production. The business depends largely on export. We must promote the healthy and stable development of silicon industry, improve the competitiveness of the whole industry”
- Raw material division head Zhang Fengkui of Ministry of Industry and Information Technology (MIIT) attended the meeting and he stressed that at present there is overcapacity of silicon metal production; “We shall actively eliminate outmoded production capacity, speed up technological advancement, reduce energy consumption and emissions, improve resource utilization and stabilise the export of the products, prohibit cut-throat competition within the industry in order to protect the healthy and sustainable development of enterprises.”
- The following consensus was formed:
 - First, improve the industrial policy to promote the healthy development of the industry. Set up a clear time table for industrial restructuring industrial upgrading. Keep on reviewing the process.
 - Second, to strengthen the management of silicon metal export, prevent cut-throat competition. At present, more than 50 per cent of Chinese silicon metal is for export.
 - Third, to set up a unified standard for silicon products and production equipment. There is no uniform standard for silicon metal industry. National silicon industry standard should be introduced as soon as possible. The standard should include silicon metal products and electrodes standards.
 - Fourth, to promote the use of silicon dust. Government should adopt a policy requesting cement in infrastructure project must contain certain proportion of silicon dust. In this way, the demand for silicon dust will be expanded.
 - Fifth, strengthen the communication within the industry to enhance technology exchange.
 - Sixth, strengthen the role of industry associations.

NON-CONFIDENTIAL APPENDIX 2 – ASSESSMENT OF REASONABLENESS OF ELECTRICITY COSTS AND DETERMINATION OF A COMPETITIVE MARKET SUBSTITUTE PRICE

PART I OVERVIEW

As outlined in Chapter 6, in determining the cost of manufacture for exporters of the goods when constructing normal values under subsection 269TAC(2)(c), regard must be had to Regulation 180(2), which provides where:

- an exporter or producer keeps records relating to like goods that are in accordance with GAAP in the country of export; and
- those records reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Parliamentary Secretary must work out the cost of production or manufacture using information set out in the exporter's or producer's records.

This assessment necessarily involves examining the costs incurred by manufacturers of the goods, and assessing their reasonableness in the context of a competitive market and compliance with the applicable GAAP.

PART II ASSESSMENT OF COMPLIANCE WITH GAAP

During this investigation, the Commission has assessed that the accounting records of the cooperating exporter, the Linan Group, have been kept in accordance with the Chinese GAAP (with reference to the auditor's opinions in each company's audited financial statements).

PART III ASSESSMENT OF COSTS REASONABLENESS – ELECTRICITY

III(i) SIMCOA'S CLAIMS

Simcoa asserts that, when normal values are constructed under subsection 269TAC(2)(c), the cost of electricity in the records of Chinese manufacturers of the goods are understated.

In making these claims, Simcoa submits that the reasonableness of the cost has been impacted by state-owned electricity authorities providing lower tariff rates for silicon metal manufacturers than for other industry members.

Simcoa did not suggest an alternative measure of electricity costs, although pointed to the CBSA's finding that electricity costs in Yunnan province (that is responsible for 20% of China's domestic output of silicon metal) were 32% lower than electricity costs in other regions.

III(ii) GOC CLAIMS

Following initiation of the investigation, the Commission wrote to the GOC outlining Simcoa's allegations, and requesting the GOC complete a Government Questionnaire to assist the Commission's investigation into the alleged favourable treatment to manufacturers of silicon metal in relation to electricity prices. The Government Questionnaire also requested information from the GOC relevant to the Commission's assessment of countervailable subsidisation.

The GOC responded to the Government Questionnaire but in doing so declined to provide direct responses to the questions posed in Parts A and B, which are considered particularly relevant to the assessment of the alleged particular market situation in the Chinese silicon metal market and the assessment of the reasonableness of the cost of electricity incurred by Chinese exporters of the goods.

Instead, the GOC stated its general opposition to the Commission's (and its predecessor, ACBPS) approach to determining the existence of a particular market situation in China in relation to goods previously subject to anti-dumping investigations.

III(iii) COMMISSION'S ASSESSMENT

In light of the GOC's failure to provide direct responses to Parts A and B of the Government Questionnaire, the Commission considers that it must rely on all information reasonably available to it in order to make a preliminary assessment as to the reasonableness of exporters' incurred costs, for the purposes of this SEF.

As part of its subsidy investigation (refer Non-confidential Appendix 2) the Commission determined that SIE electricity providers were public bodies as there is evidence of the exercise of meaningful control by the government in the provision of electricity and the regulation of prices. The regulation of prices includes the ability to set different tariff rates for different types of consumers.

In addition, as part of its response to the Commission's questionnaire the GOC provided schedules of electricity tariff rates for the two provinces where the only cooperating exporter, the Linan Group, has its manufacturing facilities. These schedules show preferential rates of electricity offered to ferroalloy and/or silicon manufacturers in both regions. These rates are lower than the rates for other 'large industry' users in the respective provinces.

III(iv) CONCLUSION

In these circumstances, the Commission considers the costs incurred by silicon metal manufacturers in China for electricity used in the investigation period do not reasonably reflect competitive market costs in terms of Regulation 180(2).

PART IV DETERMINING A REASONABLY COMPETITIVE MARKET COST SUBSTITUTE FOR ELECTRICITY

After determining that the cost of electricity incurred by Chinese exporters of the goods is not a reasonably competitive market cost for the purposes of Regulation 180(2), the

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Commission has sought to establish an appropriate benchmark for electricity, having regard to the guidelines set out in subsection 269TACC(4)(d) and (5) of the Act, and Article 14(d) of the SCM Agreement.

There are no specific provisions in the Act or Regulations that direct how a reasonably competitive market price should be determined for costs considered to not be reasonable for the purposes of Regulation 180(2).

However, the Commission considers that, in the case of electricity incurred by Chinese exporters of the goods, it is reasonable to apply the same 'benchmark' price considered to be representative of 'adequate remuneration' for the purposes of determining a benefit under Subsidy Program 1 - Raw Materials Provided by the Government at Less than Fair Market Value.

This 'benchmark' has been established from the tariff rates provided by the GOC as part of their response to the government questionnaire. The relevant tariff rate applied by the Commission is the rate for 'other large industry'.

NON-CONFIDENTIAL APPENDIX 3 – ASSESSMENT OF COUNTERAVAILABILITY OF SUBSIDIES

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 preliminary 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

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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
41	Reducing pollution discharging and	Grant	Yes

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Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
	environment improvement assessment award		
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:

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(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

II(i) 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.

II(ii) 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.

II(iii) OTHER INFORMATION CONSIDERED AS PART OF THIS ASSESSMENT

The Commission also considered as part of this assessment:

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- 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;

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- 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;
- *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):¹⁶

- **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.

¹⁶ Appellate Body report DS379 at [318]

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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 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 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.

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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.

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During the Commission's investigation into the dumping and subsidisation of aluminium road wheels exported from China¹⁷ the GOC provided the Commission, in response to a questionnaire, a copy of the Electric Power Law of the People's Republic of China¹⁸ (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..."

...

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.

¹⁷ The findings and recommendations for this investigation are contained in REP 181.

¹⁸ Non-confidential Attachment A43 to the GOC questionnaire response

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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 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*

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*Council*¹⁹. 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 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 COUNTERAVAILABLE 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.

¹⁹ Non-confidential attachment 18 to the GOC questionnaire response

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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,

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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 COUNTERAVAILABLE 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 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%.

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Accordingly, the GOC believes that there is no evidence demonstrating that the alleged program exists.”²⁰

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’²¹. 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 sheets²². It is therefore not considered that this program would have benefitted exporters of silicon metal.

²⁰ This text and the supporting GOC documents are available on the Public Record (www.adcommission.gov.au/cases/EPR238.asp).

²¹ Refer to Program 16, Investigation 193

²² Refer to Program 34, Investigation 193 – Subsidisation of aluminium zinc coated steel and galvanised steel.

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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%. The Commission has calculated the amount of subsidy attributable to these benefits under section 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 section 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

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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.