

PUBLIC RECORD



Australian Government
Department of Industry,
Science and Resources

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

REPORT NO. 651

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

28 March 2025

PUBLIC RECORD

CONTENTS

CONTENTS.....	2
ABBREVIATIONS.....	2
1 SUMMARY AND RECOMMENDATIONS	5
1.1 INTRODUCTION.....	5
1.2 RECOMMENDATIONS (CHAPTER 11)	5
1.3 RELATED DECISION FOR THE MINISTER – LESSER DUTY RULE (CHAPTER 9).....	6
1.4 BACKGROUND TO THE INQUIRY (CHAPTER 2)	6
1.5 SUMMARY OF KEY FINDINGS.....	7
2 BACKGROUND.....	12
2.1 LEGISLATIVE FRAMEWORK.....	12
2.2 APPLICATION AND INITIATION	13
2.3 CURRENT ANTI-DUMPING MEASURES	14
2.4 CONDUCT OF THE INQUIRY	15
3 THE GOODS, LIKE GOODS AND THE AUSTRALIAN INDUSTRY	18
3.1 FINDING.....	18
3.2 LEGISLATIVE FRAMEWORK.....	18
3.3 THE GOODS SUBJECT TO THE MEASURES.....	19
3.4 MODEL CONTROL CODES	19
3.5 LIKE GOODS	20
3.6 AUSTRALIAN INDUSTRY – DOMESTIC PRODUCTION	21
4 AUSTRALIAN MARKET	23
4.1 FINDING.....	23
4.2 APPROACH TO ANALYSIS.....	23
4.3 MARKET STRUCTURE.....	23
4.4 DEMAND IN THE AUSTRALIAN MARKET	23
4.5 MARKET COMPETITION	24
4.6 MARKET SIZE.....	24
4.7 MARKET PRICING	25
5 ECONOMIC CONDITION OF THE INDUSTRY	27
5.1 FINDING.....	27
5.2 APPROACH TO ANALYSIS	27
5.3 FINDINGS IN THE ORIGINAL INVESTIGATION.....	27
5.4 VOLUME EFFECTS.....	27
5.5 PRICE EFFECTS	29
5.6 PROFITS AND PROFITABILITY	30
5.7 OTHER ECONOMIC FACTORS	31
6 DUMPING DURING THE INQUIRY PERIOD	32
6.1 FINDING.....	32
6.2 LEGISLATIVE FRAMEWORK.....	32
6.3 VARIABLE FACTORS.....	33
7 SUBSIDISATION DURING THE INQUIRY PERIOD.....	39
7.1 FINDING.....	39
7.2 LEGISLATIVE FRAMEWORK.....	39
7.3 SUBSIDY PROGRAMS	40
7.4 CALCULATION OF SUBSIDY MARGINS	43
8 LIKELIHOOD THAT DUMPING, SUBSIDISATION AND MATERIAL INJURY WILL CONTINUE OR RECUR	45

PUBLIC RECORD

8.1	FINDING.....	45
8.2	LEGISLATIVE FRAMEWORK.....	47
8.3	THE COMMISSION'S APPROACH.....	47
8.4	AUSTRALIAN INDUSTRY CLAIMS.....	48
8.5	SUBMISSION RECEIVED IN RESPONSE TO THE SEF.....	49
8.6	ARE EXPORTS LIKELY TO CONTINUE OR RECUR?.....	49
8.7	WILL DUMPING AND SUBSIDISATION CONTINUE OR RECUR?.....	52
8.8	WILL MATERIAL INJURY CONTINUE OR RECUR?.....	56
8.9	CONCLUSION	61
9	NON-INJURIOUS PRICE.....	62
9.1	FINDING.....	62
9.2	LEGISLATED FRAMEWORK.....	63
9.3	ASSESSMENT OF EXCEPTIONS TO THE LESSER DUTY RULE.....	63
9.4	UNSUPPRESSED SELLING PRICE.....	64
9.5	NON-INJURIOUS PRICE	64
9.6	THE COMMISSION'S ASSESSMENT IN THE SEF	64
9.7	SUBMISSION RECEIVED REGARDING THE LESSER DUTY RULE	65
10	FORM OF MEASURES	69
10.1	FINDINGS AND RECOMMENDATIONS	69
10.2	LEGISLATIVE FRAMEWORK.....	69
10.3	FORM OF MEASURES AND EFFECTIVE RATES OF DUTY	69
11	RECOMMENDATIONS.....	70
11.1	FINDINGS AND RECOMMENDATIONS.....	70
	APPENDICES AND ATTACHMENTS	73
	APPENDIX A: ASSESSMENT OF PARTICULAR MARKET SITUATION	74
	APPENDIX B: PROPER COMPARISON OF DOMESTIC AND EXPORT PRICES	80
	APPENDIX C: CONSTRUCTED NORMAL VALUES	88
	APPENDIX D: ASSESSMENT OF ALLEGED SUBSIDY PROGRAMS – CHINA	93

PUBLIC RECORD

ABBREVIATIONS

ABF	Australian Border Force
the Act	<i>Customs Act 1901 (Cth)</i>
ADN	Anti-Dumping Notice
Calderys	Calderys Australia Pty Limited
CBSA	Canadian Border Services Agency
China	the People's Republic of China
CPI	consumer price index
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 524	Continuation Inquiry No. 524
CTM	cost to make
CTMS	cost to make and sell
the Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975 (Cth)</i>
EC	European Commission
EU	European Union
EPR	electronic public record
EXW	ex-works
FOB	Free on Board
GOC	Government of China
the goods	silicon metal – the goods the subject of the application
the Guidelines	<i>Guidelines on the Application of Forms of Dumping Duty November 2013</i>
ICD	interim countervailing duty
IDD	interim dumping duty
inquiry period	1 July 2023 to 30 June 2024
INV 237	original Investigation
the Manual	Dumping and Subsidy Manual
LTAR	less than adequate remuneration
MCC	model control code
the measures	the anti-dumping measures
the Minister	the Minister for Industry, Science
NIP	non-injurious price
the Notices	the dumping duty and countervailing notice
OCOT	ordinary course of trade
REP 237	<i>Anti-Dumping Commission Report No. 237</i>
REP 524	<i>Anti-Dumping Commission Report No. 524</i>
REP 590	<i>Anti-Dumping Commission Report No. 590</i>
REP 626	<i>Anti-Dumping Commission Report No. 626</i>
REP 646	<i>Anti-Dumping Commission Report No. 646</i>
REQ	Exporter questionnaire
Rio Tinto	Rio Tinto Aluminium (Bell Bay) Limited
RIQ	Importer questionnaire
SEF	Statement of essential facts
SG&A	Selling, general and administration
Simcoa or the applicant	Simcoa Operations Pty Ltd

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This final report concerns an inquiry into whether to continue the anti-dumping measures (the measures) on silicon metal (the goods) exported to Australia from the People's Republic of China (China). The measures are in the form of a dumping duty notice and countervailing duty notice (the notices). The notices are due to expire on 3 June 2025.¹

Section 269ZHF(2) of the *Customs Act 1901 (Cth)* (the Act) provides that the Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

This report sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) has based their recommendations to the Minister for Industry and Science (the Minister).

1.2 Recommendations (chapter 11)

The Commissioner is satisfied that the expiry of the measures on silicon metal exported to Australia from China would be likely to lead to a continuation and recurrence of the dumping and subsidisation, and the material injury that the measures are intended to prevent. The Commissioner recommends that:

- the measures apply to exporters generally as if different variable factors had been ascertained²
- the rate of interim dumping duties (IDD) and interim countervailing duties (ICD) in Table 1 apply from 4 June 2025.

Exporter	Rates	IDD		ICD	Combined IDD and ICD	Form of measures
		Before LTAR removed ³	LTAR removed			
Uncooperative and all other exporters	Current rates	26.8%	20.7%	34.8%	55.5%	Ad Valorem
	Before the lesser duty rule applied	32.4%	25.3%	29.4%	54.7%	
	After lesser duty rule applied	16.2%		29.4%	45.6%	

Table 1: Current and recommended measures resulting from this inquiry

¹ Section 269TM of the *Customs Act 1901* (the Act). All legislative references are to the *Customs Act 1901*, unless otherwise specified.

² Section 269ZHF(1)(a)(iii).

³ Less than adequate remuneration (LTAR)

PUBLIC RECORD

1.3 Related decision for the Minister – lesser duty rule (chapter 9)

In addition to the decisions required of the Minister under the Act, there are also other decisions of the Minister required under the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act).

Under the Dumping Duty Act⁴, the Minister is required to have regard to the 'lesser duty rule', that is to consider the desirability of fixing a lesser amount of duty such that the sum of the export price (of the goods ascertained for the purposes of the notices), the ICD and the IDD, does not exceed the non-injurious price (NIP).

The Commissioner considers that the Minister should exercise his discretion to apply a lesser amount of duty. The Commissioner's findings on the NIP and the Commissioner's assessment of the application of the lesser duty rule are set out in section 1.5.6 and Chapter 9.

1.4 Background to the inquiry (chapter 2)

The Commissioner initiated this inquiry on 2 July 2024⁵ and established an inquiry period of 1 July 2023 – 30 June 2024 (the inquiry period). Simcoa Operations Pty Ltd (Simcoa) is the applicant⁶ seeking to continue the measures.

1.4.1 Conduct of the inquiry

At initiation of this inquiry, the Anti-Dumping Commission (the commission) invited exporters, importers and other interested parties to provide information and evidence relevant to the inquiry. The commission also issued questionnaires relevant to the assessment of whether the continuation of the measures is justified.

Calderys Australia Pty Limited (Calderys) and Rio Tinto Aluminium (Bell Bay) Limited (Rio Tinto) were the only importers of the goods during the inquiry period. The commission received a questionnaire response from the following entities:

- Australian Industry: Simcoa
- Importer: Calderys Australia Pty Limited (Calderys)
- Importer: Rio Tinto Aluminium (Bell Bay) Limited (Rio Tinto)

The commission did not receive any responses to the exporter questionnaires (REQ) by the due date of 8 August 2024⁷ (or at any time after the due date) and therefore all exporters of the goods were deemed to be uncooperative⁸.

The commission undertook an onsite verification of the questionnaire response received from Simcoa. The verification report for Simcoa is available on the electronic public record

⁴ Sections 8(5BA) and 10(3D) of the Dumping Duty Act.

⁵ ADN No. 2024/042 on the EPR for case 651

⁶ EPR 651, document No. 1

⁷ EPR 651, document No. 5

⁸ Section 8 of the *Customs (Extensions of Time and Non-Cooperation) Direction 2015* states that the Commissioner must determine an exporter to be an uncooperative exporter if that exporter fails, within the legislated period, to provide a response or fails to request a longer period to provide a response.

PUBLIC RECORD

(EPR).⁹ The commission considered the responses received from Calderys and Rio Tinto and determined it did not need to undertake verification of the questionnaire responses because each importer only imported one small volume shipment of the goods. With such a small volume imported during the inquiry period, the commission considered it reasonable to rely on the import declarations from the Australian Border Force (ABF) database for the purpose of conducting its analysis in relation to imports. Further details concerning the commission's conduct of the inquiry is covered in section 2.4 of this report.

1.5 Summary of key findings

The Commissioner's findings and conclusions in this report rely on the information available for this inquiry. The paragraphs below provide a summary of these findings, which are set out in further detail throughout the report.

1.5.1 The goods, like goods and the Australian industry (chapter 3)

The Commissioner finds locally produced silicon metal is 'like' to the goods the subject of the application. The Commissioner is satisfied that there is an Australian industry, comprised wholly of Simcoa, producing those like goods.

1.5.2 Australian market (chapter 4)

During the five years since the measures were last continued, the Australian silicon metal market has been primarily supplied by Simcoa, with imports from China and a small volume from Malaysia, Thailand, and Taiwan. In Australia, silicon metal is mostly used for primary aluminium production, and therefore demand for silicon metal is closely tied to the demand for aluminium products.

The Australian market size has decreased progressively since the continuation of measures in 2020, due to a reduction in the number of aluminium producers operating in Australia. Silicon metal is a highly substitutable commodity, price is the main consideration for customers when purchasing it.

Over the 15-year period assessed by the commission, Chinese exports have been the dominant source of competition for the Australian industry in the sale of silicon metal to the Australian market, albeit imports from China have diminished in recent years.

1.5.3 Economic condition of the Australian industry (chapter 5)

The commission assessed the economic condition of the Australian industry from 2010 until the end of the current inquiry period (30 June 2024) to analyse market trends and assess potential injury factors. The Commissioner has found that:

- Australian industry regained market share in the domestic silicon metal market following imposition of the measures in 2015.

⁹ EPR 651, document No. 7

PUBLIC RECORD

- The overall size of the Australian market for silicon metal has declined by over 60% since 2018, particularly with the decline of Australia's automotive industries and a reduction in aluminium production companies.
- Australian industry experienced an improvement in the profitability of their Australian sales during the 2-year period from 1 July 2021 to 30 June 2023.
- Australian industry exports the majority of its silicon metal production, and while Simcoa as a whole have remained profitable, their overall (Australian and export) sales volumes of silicon metal have been declining in recent years.

1.5.4 Dumping and subsidisation during the inquiry period (chapter 6 and 7)

For the purposes of this continuation inquiry, the commission has assessed variable factors to determine whether exports in the inquiry period were dumped or subsidised, and whether dumping or subsidisation is likely to continue or recur if the anti-dumping measures are not continued.

The Commissioner has determined the dumping and subsidy margins as set out below in Table 2.

Exporter	Margins	Dumping Margin		Subsidy Margin	Combined Margin
		Before LTAR removed	After LTAR removed		
Uncooperative and all other exporters	Determined margins	32.4%	25.3%	29.4%	54.7%

Table 2: Determined dumping and subsidy margins

The Commissioner has also concluded that variable factors have changed.

1.5.5 Likelihood of dumping, subsidisation and material injury continuing or recurring (chapter 8)

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

The Commissioner finds that the expiry of the measures would lead, or would be likely to lead, to a continuation of the dumping and subsidisation and a recurrence of the material injury that the measures are intended to prevent. This finding is based on findings that:

- Chinese exporters will likely continue exporting the goods (chapter 8.5).
- Chinese exports will likely continue to be dumped and subsidised (chapter 8.6).
- The dumping and subsidisation are likely to cause to a recurrence of material injury to the Australian industry (chapter 8.7).

As outlined in chapter 8.6, the Commissioner found that Chinese exporters will likely continue exporting the goods because:

PUBLIC RECORD

- Chinese exporters have exported the goods in every year, both before and after the imposition of the anti-dumping measures, including the current inquiry period. China has consistently been the largest source of imports of the goods to Australia by volume.
- Chinese exporters have maintained distribution links to the Australian market throughout the life of the measures until the current inquiry period, including links to customers of the Australian industry.
- China is the largest exporter of the goods globally and maintains excess production capacity.
- If the measures were to expire, Australia would likely become a more attractive export market for Chinese silicon metal, given both the price of Australian manufactured goods and the high rates of anti-dumping and countervailing measures imposed on Chinese exports of the goods in other jurisdictions. For example, in Canada, the dumping duty for all other exporters is 235% and the countervailing duty is 1945 CNY per metric tonne.¹⁰

As outlined in chapter 8.7, the Commissioner found that the exports will likely continue to be dumped and subsidised because:

- The goods imported to Australia by Chinese exporters were found to have been dumped and subsidised in the original investigation (INV 237), the subsequent continuation inquiry no. 524 (CON 524) and the finding of this inquiry is that the goods have been dumped and subsidised during this inquiry period.
- The commission's pricing analysis indicated that Chinese goods would unlikely be competitive on price in the Australian market unless dumped and subsidised (see Figure 8).
- No Chinese exporters or other interested parties have sought a review or revocation of the measures since the measures were imposed, nor have applications for duty assessments been made.
- The extent of anti-dumping measures applying to Chinese exporters in other jurisdictions is indicative of a willingness to export dumped and subsidised goods.

As outlined in chapter 8.8, the Commissioner has found that if the measures were to expire, the dumping and subsidisation is likely to lead to a recurrence of the material injury that the measures are intended to prevent.

The material injury that the measures are intended to prevent was set out in *Anti-Dumping Commission Report No. 237 (REP 237)* (the original investigation, INV 237). In that report, the Commissioner found that the Australian industry had experienced material injury in the form of:

- price depression and suppression of the goods sold in Australia
- lost Australian sales volume and reduced Australia market share
- reduced revenue, profit and profitability of the Australian industry.

¹⁰ Canada Border Services Agency, *Silicon metal: Measures in force*, Government of Canada, extracted from <https://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/sm-eng.html> on 10 February 2025.

PUBLIC RECORD

The Commissioner's finding that the material injury that the measures are intended to prevent is likely to recur is based on:

- Pricing analysis (chapter 8.8.1):
 - Analysis of Australian industry sales prices compared to the sales prices of the goods imported from China shows that the price of the Chinese good (net duties) is lower than the Australian price, demonstrating the capacity of Chinese exporters to sell the goods at a price that undercuts the Australian industry prices (in the range of 16% to 24%) if measures were removed. This demonstrates that the Australian industry will likely experience a recurrence of the price depression and price suppression the measures are intended to prevent.
- Volume analysis (chapter 8.8.2):
 - Prior to the measures being put in place, Chinese exporters held around a 90% share of the Australian silicon metal market. While the current market share held by Chinese exporters is small, if measures were removed and Australian industry were to be unwilling or unable to compete on price with the dumped and subsidised exports, the Australian industry would likely experience a recurrence of the lost sales volumes and market share the measures were intended to prevent.
- Other factors (chapter 8.8.3):
 - Over the 15-year period assessed by the commission, Chinese exports have been the largest source of competition for the Australian industry in the sale of silicon metal to the Australian market, albeit imports from China have diminished in recent years.
 - Over the injury analysis period, Australian industry's domestic sales have generally been more profitable than their export sales, including during the inquiry period. While domestic sales make up a small proportion of Australian industry's total sales, due to the lower profitability of export sales, this makes the business vulnerable to a decline in domestic sales profit as it will have a material impact on the Australian industry's overall profit. REP 237 found that this caused material injury to Australian industry in terms of lost profit of around 10%.¹¹
 - Australian industry's current domestic sales represent approximately 10% of their total sales, as opposed to 1% of total sales when the measures were first implemented, making the Australian industry more vulnerable to changes in the Australian market.

The commission notes that Australian industry has not claimed it has experienced material injury from dumped imports for the period 1 July 2019 to 30 June 2024. However, Australian industry has claimed that injury will recur in the absence of measures. In addition to the analysis above, the commission noted that over the past 10 years, the

¹¹ EPR 237, document No. 44. REP 237, pp 59-60.

PUBLIC RECORD

Australian industry's asset value, total revenue and employment numbers have increased.

1.5.6 Non-Injurious Price (chapter 9)

Having regard to the available information, the commission has determined that the NIP has changed for uncooperative and all other exporters.

As noted in section 1.3, while the Minister must have regard to the desirability of applying the lesser duty rule, the Minister retains a discretion as to whether or not the rule should ultimately be applied.

In this case, the Commissioner considers that the Minister should exercise his discretion to apply a lesser amount of duty given the current economic condition of the Australian industry and changes in the market since the measures were last reviewed and that the lesser amount is adequate to remove the likely injury to the Australian industry.

1.5.7 Form of measures (chapter 10)

The Commissioner recommends that the *ad valorem* method continue to be used to calculate the IDD and ICD payable by uncooperative and all other exporters. This is consistent with the current method.

2 BACKGROUND

2.1 Legislative framework

The procedures to be followed by the Commissioner in an application for the continuation of anti-dumping measures are set out in Division 6A of Part XVB of the *Customs Act 1901*.

2.1.1 Legislative test

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

2.1.2 Statement of essential facts (SEF)

Section 269ZHE(1) requires the Commissioner to publish a statement of the facts on which they propose to base their recommendations to the Minister about the continuation of the measures. This is referred to as the SEF.

Section 269ZHE(2) requires the Commissioner, in formulating the SEF, to have regard to the application and any submissions received within 37 days of the initiation of the inquiry. Under section 269ZHE(3), the Commissioner is not obliged to have regard to any submissions relating generally to the inquiry that are received by the Commissioner after the 37 days if to do so would, in the Commissioner's opinion, prevent the timely placement of the SEF on the EPR. The Commissioner may also have regard to any other matters they consider relevant.

The Commissioner placed SEF 651 on the public record on 10 February 2025.

2.1.3 Final report

Section 269ZHF(1) requires the Commissioner, after conducting an inquiry, to give the Minister a report which recommends that the relevant notice:

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

The Commissioner is not obliged to have regard to any submission made in response to the SEF that is received more than 20 days after the publication of the SEF, if to do so

PUBLIC RECORD

would, in the Commissioner's opinion, prevent the timely preparation of the report to the Minister.¹²

The Commissioner may also have regard to any other matter they consider relevant.¹³

The final report to the Minister must include a statement of the Commissioner's reasons for any recommendation contained in the report, set out the material findings of fact on which the recommendation is based, and provide particulars of the evidence relied on to support those findings.

The initiation notice advised that the Commissioner would provide a report to the Minister on, or before, 4 December 2024. However, the Commissioner approved an extension of time to provide a report to the Minister on or before 4 April 2025.¹⁴

2.2 Application and initiation

On 11 April 2024, the Commissioner published a notice¹⁵ on the commission's website inviting the following persons to apply for the continuation of the anti-dumping measures:

- the person whose application under section 269TB resulted in the anti-dumping measures,¹⁶ or
- persons representing the whole or a portion of the Australian industry producing like goods to the goods covered by the anti-dumping measures.¹⁷

On 10 June 2024, Simcoa lodged an application for the continuation of the anti-dumping measures on the goods exported to Australia from China.¹⁸ The Commissioner was satisfied that:

- the application complied with section 269ZHC (content and lodgement requirements),¹⁹ and
- there appeared to be reasonable grounds for asserting that the expiry of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.²⁰

On 2 July 2024, the Commissioner decided not to reject the application and published Anti-Dumping Notice (ADN) No. 2024/042.²¹

¹² Section 269ZHF(4).

¹³ Section 269ZHF(3)(b)

¹⁴ EPR 651, ADN 2024/077

¹⁵ In accordance with section 269ZHB(1)

¹⁶ Section 269ZHB(1)(b)(i)

¹⁷ Section 269ZHB(1)(b)(ii)

¹⁸ Under section 269ZHC. A non-confidential version of the application is available on EPR 651, document No. 1

¹⁹ Section 269ZHD(2)(a)

²⁰ Section 269ZHD(2)(b)

²¹ EPR 651, document No. 2

PUBLIC RECORD

2.3 Current anti-dumping measures

The anti-dumping measures were initially imposed by public notice on 3 June 2015 by the relevant Minister following the original investigation (INV 237). The findings of that original investigation are detailed in Anti-Dumping Commission Report No. 237 (REP 237).²²

Table 3 below summarises the anti-dumping measures currently applying to exports of the goods to Australia from the subject countries.²³

Country	Exporter	Measures		
		Method	Effective IDD rate	Effective ICD rate
China	Uncooperative and all other rate	<i>Ad Valorem</i>	20.7%	34.8%

Table 3: Current measures applying to exports of the goods

2.3.1 Other cases

The commission has conducted several cases relating to silicon metal from China and has not conducted cases on silicon metal from any other countries. A list of relevant cases is set out in Table 4 below and further details can be found on the commission's website.

Case type and number	ADN number	Date	Country of export	Findings
Investigation 81	Australian Customs Dumping Notice No. 2005/11	15/02/2005	China	Measures imposed
Reinvestigation 103	Australian Customs Dumping Notice No. 2006/04	13/02/2006	China	Affirmed the original findings but clarified the definition of like goods
Expiry of Measures from Investigation 81	N/A	17/02/2010	China	Measures expired because no application for a continuation inquiry was submitted
Investigation 237	ADN 2015/071	3/06/2015	China	Measures imposed
	Public Notice – Parliamentary Secretary's Decision	25/11/2015	China	Change to the subsidy margin for uncooperative and all other exporters
Continuation Inquiry 524	ADN 2020/036	12/05/2020	China	Continuation of measures and change of variable factors for all exporters

Table 4: Other cases relating to the goods

²² EPR 237, document No. 44

²³ EPR 524, document No. 9

2.4 Conduct of the inquiry

The inquiry period for this continuation is 1 July 2023 to 30 June 2024. The commission invited exporters and importers of silicon metal to provide information relevant to this period. To analyse the performance of the Australian industry in the years before and after measures were imposed, the commission has examined the period from 2010.

2.4.1 Questionnaires and verification

Australian industry

The Commissioner is satisfied that the applicant, Simcoa, is the sole member of the Australian industry producing like goods to the goods the subject of this inquiry.²⁴ The commission conducted a verification visit to Simcoa's premises from the 29 to 31 October 2024. The verification report is available on the EPR.²⁵

Importers

The commission identified importers from the Australian Border Force (ABF) import database that imported silicon metal from China during the inquiry period. The commission sent questionnaires to several identified importers from the ABF import database and those listed in the application.²⁶ The commission also placed a copy of the importer questionnaire (RIQ) on the commission's website for completion by other importers who were not contacted directly.

The commission received responses to RIQ from Calderys and Rio Tinto. The commission did not undertake a verification visit to either of them. This was due to the small volume of imports each made during the inquiry period. With such a small volume imported during the inquiry period, the commission considered it reasonable to rely on the import declarations from the ABF database for the purpose of conducting its analysis.

Uncooperative exporters

The commission found several entities from China in the ABF import database that were listed as exporters of the goods and sent them exporter questionnaires. The questionnaire contains information about the consequences of not responding to the exporter questionnaire, including that the exporter may be deemed uncooperative and that the uncooperative exporter rates will be determined with regard to all relevant information. The commission did not receive any response to the exporter questionnaire (REQ) from any exporter of the goods from China.

Section 269T(1) states that an exporter is an 'uncooperative exporter' where the Commissioner is satisfied that an exporter of goods the subject of the inquiry did not give the Commissioner information that the Commissioner considered to be relevant to the

²⁴ See chapter 3.

²⁵ EPR 651, document No. 7

²⁶ EPR 651, document No. 1, *Application* p 4 (listed importer: Tomago Aluminium Company Pty Ltd). Also, Calderys and Rio Tinto, contacted from ABF data, responded to the commission.

PUBLIC RECORD

continuation inquiry within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the inquiry.

Section 6 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction) states that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response or fails to request a longer period to do so within a specified timeframe, or provides a response that the Commissioner considers did not provide information relevant to the case.

Government of China

On 2 July 2024, the commission notified the Government of China (GOC) of the initiation of this inquiry. The commission also invited the GOC to complete a questionnaire regarding the particular market situation and countervailing subsidy programs in respect of like goods in China. The commission did not receive a response to this questionnaire from the GOC.²⁷ The questionnaire contains information about the consequences of not responding to the government questionnaire, including that the commission may rely on information provided by other parties (including Australian industry), findings from previous cases, any other information that the Commissioner considers relevant, and assumptions the Commissioner considers reasonable.

2.4.2 Submissions received from interested parties

The commission received the submissions listed in Table 5 during the inquiry, including one in response to SEF 651. Non-confidential versions of these submissions are available on the EPR.

EPR document No.	Interested party and topic of submission	Date received
3	Solquartz Pty Ltd - supports the continuation of the measures.	7/08/2024
8	Simcoa – recent findings by the Canadian Border Services Agency (CBSA) in relation to silicon metal from China.	11/12/2024
10	Simcoa – Response to Statement of Essential Facts	26/02/2024

Table 5: Submissions received

Following the publication of the SEF, Simcoa made a submission expressing support for the conclusions and proposed continuation of the measures as outlined in the SEF.²⁸ They agreed with the commission's preliminary finding that the measures would lead, or would be likely to lead, to a continuation of, or recurrence of, material injury that the measures are intended to prevent. Simcoa stated that it considers the findings in SEF 651

²⁷ The GOC was informed that if it elected not respond to the questionnaire, the Commissioner may be required to rely on information supplied by other parties, previous findings and information before the Commissioner in previous investigations and any other available information which the Commissioner considers relevant.

²⁸ EPR 651, document No. 10

PUBLIC RECORD

to be objective, comprehensive, and well-reasoned. However, Simcoa also submitted that the application of the lesser duty rule in this instance is not warranted.

The Commissioner has had regard to all submissions in making the findings outlined in this report. This report also includes the Commissioner's response to Simcoa's post-SEF submission.

3 THE GOODS, LIKE GOODS AND THE AUSTRALIAN INDUSTRY

3.1 Finding

The Commissioner finds that:

- locally manufactured silicon metal is 'like' to the goods subject to the measures
- there is an Australian industry, of which Simcoa is the sole member, producing like goods, and
- the like goods are wholly manufactured in Australia.

3.2 Legislative framework

To be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation or recurrence of dumping and the material injury that the measure is intended to prevent, the Commissioner firstly determines whether the goods produced by the Australian industry are 'like' to the imported goods.

Section 269T(1) defines like goods as:

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

The definition of like goods is relevant in the context of this inquiry in determining the Australian industry and whether the expiry of the measures would lead to a continuation of, or a recurrence of, the dumping and material injury that the measures are intended to prevent. The commission's framework for assessing like goods is outlined in chapter 2 of the *Dumping and Subsidy Manual* (the Manual).²⁹

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether the respective goods have characteristics closely resembling each other. The Commissioner considers:

- physical likeness
- commercial likeness
- functional likeness, and
- production likeness.

The Commissioner must also consider whether the Australian industry manufactures 'like' goods in Australia. Section 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be either wholly or partly manufactured in Australia. Under section 269T(3), 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.

The following analysis therefore establishes the scope of the commission's inquiry.

²⁹ Available [here](#) on the commission's website.

PUBLIC RECORD

3.3 The goods subject to the measures

ADN No. 2024/042 defined the goods under consideration as follows:

Silicon metal containing:

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

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

3.3.1 Tariff classification

The goods are generally classified according to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995* as shown in Table 6 below:³⁰

Tariff subheading	Statistical code	Description
2804.69.00	14	Silicon: Other

Table 6: Tariff classification of the goods

3.4 Model control codes

The model control code (MCC) structure described in ADN No. 2024/042 (and in Table 7) describes the key characteristics of the goods.

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

Table 7: MCC structure

³⁰ These tariff classifications and statistical codes may include goods that are both subject and not subject to the anti-dumping measures. The listing of these tariff classifications and statistical codes is for convenience or reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail about goods subject to the anti-dumping measures.

PUBLIC RECORD

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

3.5 Like goods

The Commissioner is satisfied that the domestically produced goods (see section 3.6) are like to the goods under consideration³¹ because the following characteristics of each closely resemble each other:

- physical likeness
- commercial likeness
- functional likeness, and
- production likeness.

In so finding, the commission has relied on the application, verification of the Australian Industry, the findings of the previous investigation and publicly available information.

3.5.1 Physical likeness

The primary physical characteristics of the silicon metal that Simcoa produces are like the primary physical characteristics of the silicon metal exported from China, notwithstanding variations in the technical specifications of those goods based on customer needs (i.e. in lump, powder form, grade and/or packaging).

3.5.2 Commercial likeness

In the Australian market, silicon metal that Simcoa produces competes directly and indirectly with silicon metal imported from China. Simcoa and importers sell silicon metal to common customers and on similar commercial terms or conditions.

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

Based on this, the Commissioner considers the locally produced goods to be commercially like to the goods the subject of the measures.

3.5.3 Functional likeness

The silicon metal that Simcoa produces is highly interchangeable or substitutable with the goods the subject of measures, given that both goods are sold to the same customers and for identical or comparable end uses. Silicon metal is sold to primary aluminium and secondary aluminium end-users as an alloying agent and by the chemical industry to produce silicones and photovoltaics. Based on this, the Commissioner considers that the

³¹ As defined in section 269T(1)

PUBLIC RECORD

locally produced goods and the goods under consideration perform the same function and are used in the same end-use applications.

3.5.4 Production likeness

The commission considers that the locally produced goods and the goods the subject of the measures are produced using similar production processes and similar raw material inputs. This is based on the production processes the commission observed during verification activities and on the commission's understanding of the production process from previous cases.

3.6 Australian industry – domestic production

Simcoa is the sole manufacturer of silicon metal in Australia. The company has three furnaces at its manufacturing site in Wellesley, Western Australia.³²

Simcoa's core business is selling silicon metal on both export and domestic markets. Simcoa also sells silica fume and charcoal, which are both by-products from Simcoa's silicon metal production process. Silica fume is used as an additive to concrete, while a small amount of charcoal is sold for producing briquettes and other products.

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

3.6.1 Production process

Silicon metal is produced by the carbothermic reduction of silica, presented as either quartz or quartzite. Since the original investigation, Simcoa has continued to produce silicon metal and have stated that the production process has not changed since the original investigation. Simcoa sells the goods directly to end users, not via distributor or retailer.³³

The commission completed an Australian industry verification visit and undertook a tour of Simcoa's manufacturing plant, observing the production process as outlined below.³⁴

- A mix of quartz, carbonaceous reducing agents (being charcoal, coal, petroleum coke) and wood chips are prepared and placed in a furnace.
- A high electrical current is passed through electrodes within the furnace creating extreme heat.
- The heat causes the raw materials to combine into a liquid silicon metal.
- The liquid silicon metal is poured into a mould to cool and set.
- The solid silicon metal is broken down into lumps, granules or powder.

³² EPR 651, document No. 7

³³ EPR 651, document No. 7

³⁴ EPR 651, document No. 7

PUBLIC RECORD

- The silicon metal is packed for sale.

3.6.2 Conclusion – Australian industry

Based on the information obtained from the verification visit, and information from previous cases, the Commissioner is satisfied that:

- the like goods were wholly manufactured in Australia
- there is an Australian industry which produces like goods in Australia.

4 AUSTRALIAN MARKET

4.1 Finding

The Commissioner finds that since the measures were continued in 2020:

- The market for silicon metal was supplied by the Australian industry and imported goods, predominantly from China, with small volumes also imported from Malaysia, Thailand and Taiwan.
- The market for silicon metal has progressively decreased in size in the years since the measures were last continued in June 2020.

4.2 Approach to analysis

The analysis in this chapter is based on verified financial information submitted by Simcoa and data captured in the ABF import database. As there was no cooperation from Chinese exporters, the commission did not have access to verified exporter data from the current inquiry period.

4.3 Market structure

Silicon metal is sold to primary and secondary aluminium end users. As a result, demand for silicon metal is largely dependent on the demand for aluminium products. The majority (90%) of silicon metal in the Australian market is sold for primary aluminium production and 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 (the remaining 10% of the market), generally requires lower quality inputs and is used in the manufacture of die casting alloys used for automotive parts, including manifolds, crank cases and other engine components.

Silicon metal is an important input in many other products. Other end uses for silicon include silicon-based polymers called silicones, semi-conductor chips used in electronic products, photovoltaic (PV) solar panels, and optical glass used to manufacture both optical fibre and liquid crystal displays. The Australian Government listed silicon as a critical mineral in 2022, partly due to its potential applications in renewable technologies including batteries and electric vehicles, in addition to solar cells.³⁵

4.4 Demand in the Australian market

Demand for silicon metal is largely dependent on the demand for downstream aluminium products. In their response to the Australian industry questionnaire, Simcoa noted that domestic primary aluminium companies have faced threats over the last decade from

³⁵ <https://www.industry.gov.au/publications/australias-critical-minerals-list-and-strategic-materials-list> and <https://www.csiro.au/en/news/all/articles/2024/august/silicon-critical-mineral>

PUBLIC RECORD

cheaper Chinese and Middle Eastern products, along with greener products from countries such as Canada.³⁶

They also state that the secondary aluminium market has been in significant decline due to scrap metal being exported to China and the domestic market not being large enough to compete.³⁷

As outlined in REP 524, in the year 2015-16, demand fell for silicon metal on the back of the shutdown of the automotive production in Australia, and the closure of several aluminium smelters. Demand has fluctuated in subsequent years, up until the current inquiry period. Australian industry has stated that the number of aluminium companies that continue to operate in Australia is determined by electricity availability and price, along with labour and technical expertise.³⁸ A reduction in aluminium companies has reduced the amount of silicon metal sourced from Australian industry. Australian industry anticipates a stable demand and supply outlook for aluminium and cites the Resources and Energy Quarterly forecast for the years through to 2028-29.³⁹

4.5 Market competition

Simcoa competes in the Australian silicon metal market against imports from China and other countries. The majority of silicon metal is purchased directly by the end users.

4.6 Market size

The Australian market for silicon metal is supplied by the Australian industry and imported goods, primarily from China. The commission has estimated the size of the Australian market using Simcoa's verified sales volumes and import data from the ABF import database.

Figure 1 below shows that annual volume of silicon metal sold in the Australian market has remained reasonably steady (albeit with yearly fluctuations) since a major decline from 1 July 2010 to 30 June 2013. Since measures were imposed in June 2015, most of the Australian market has been supplied by Australian industry (Simcoa). The remainder of the Australian market has been supplied by imports from China and a small volume from other countries.

³⁶ EPR 651, document No. 4 – Australian Industry Questionnaire

³⁷ EPR 651, document No. 4 – Australian Industry Questionnaire

³⁸ EPR 651, document No. 4, p 8 (Industry Questionnaire Response)

³⁹ The Resources and Energy Quarterly, March 2024 report from the Department of Industry, Science and Resources outlook for Australia's aluminium, alumina, and bauxite production, consumption and exports.

PUBLIC RECORD

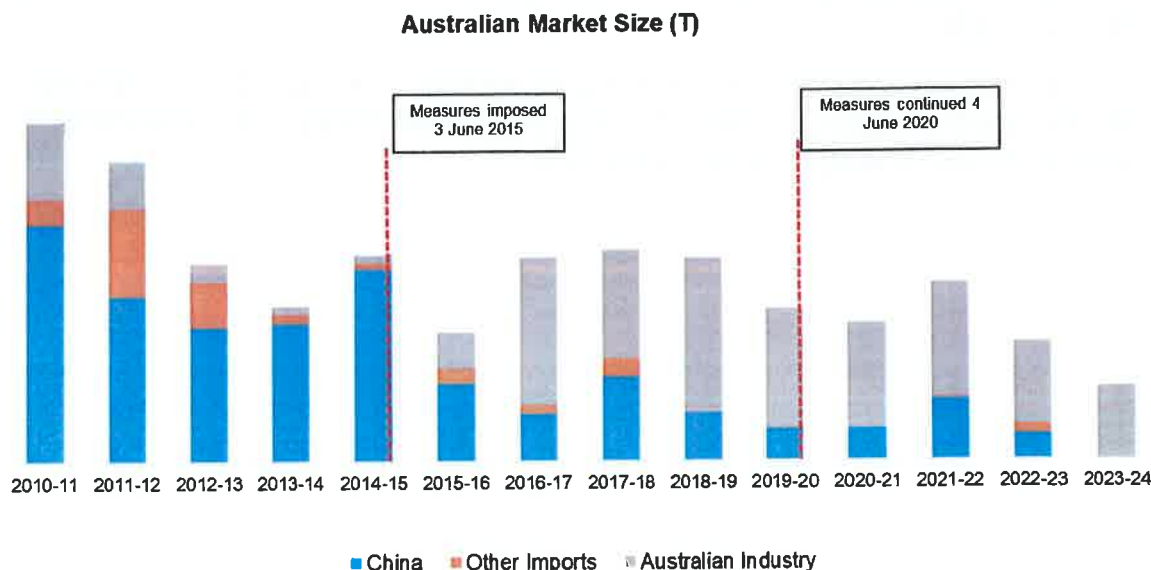


Figure 1: Australian market size

There was a large decline in the market size in the year ending 30 June 2016, as outlined in section 4.4. This reduction in market size coincides with the shutdown of the automotive production in Australia, and the closure of several aluminium smelters. There has been a further decline in the overall market size from when measures were last continued in June 2020. In addition, exports from China and other countries were almost zero during the inquiry period^(OBJ), and the entire size of the Australian market also shrunk. The commission's market analysis is at **Confidential Attachment 1**.

4.7 Market pricing

Silicon metal is a commodity product which is traded globally for a range of uses across various industries. It is easily substitutable between different suppliers, whether domestic or international, and so price is a primary consideration for customers purchasing silicon metal, along with quality of the product and continued supply. Simcoa has stated that it reviews silicon global prices (based on available indices), alongside supply and demand factors when setting prices.⁴⁰

The commission observed that the majority of Simcoa's domestic sales in Australia are made to one key customer. Simcoa enters into price and supply agreements with this customer that outline pricing and forecast volumes for the following year. However, there are no set quantities that the customer is required to purchase, nor restrictions on sourcing silicon metal from other suppliers.

Being a globally traded metal, Simcoa reviews market index prices from several global sources. Considering these prices, Simcoa adjusts its pricing, based on the specification and quantity of orders, to reach a target price. Being aware of the published data, the key customer considers this during its negotiations. For other customers in the Australian

⁴⁰ EPR 651, document No. 7

PUBLIC RECORD

market, sales prices are determined on a sale-by-sale basis, subject to market conditions at the time of sale.

Silicon metal pricing has exhibited some volatility globally, surging in 2021. Within the Australian market, disruption to markets caused by Covid-19 had some price effects for this product in recent years (refer to section 5.5).

5 ECONOMIC CONDITION OF THE INDUSTRY

5.1 Finding

The Commissioner finds that Simcoa regained market share following imposition of the measures in 2015, and that this has remained largely stable in the subsequent years. However, the overall size of the market for silicon metal in Australia has declined gradually since 2018. A more recent spike in price and profits from the year 2021-22 appears to have been caused by disruption to markets arising from Covid-19 and began to resolve to lower levels in the year 2023-24.

5.2 Approach to analysis

This chapter considers the economic condition of the Australian industry from 1 July 2010 onwards. This examination provides the basis for the commission's analysis in chapter 8 of whether material injury is likely to continue or recur.

The analysis detailed in this chapter is based on verified financial information submitted by Simcoa and data from the ABF import database. The team has also combined Simcoa's verified data from this inquiry with previously verified data used by the commission in CON 524 and INV 237, to assess industry claims in relation to the continuation or recurrence of injury.

5.3 Findings in the original investigation

In INV 237, the Commissioner found that, during the investigation period (calendar year 2013), the Australian industry had experienced injury in the form of:

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

The analysis is contained in **Confidential Attachment 2** and is summarised below.

5.4 Volume effects

5.4.1 Sales volume

As demonstrated in Figure 2 below, the commission has found that since the imposition of the measures on 3 June 2015, domestic sales of silicon metal have increased significantly, coinciding with a reduction in the volume of imports from China. Sale volumes in the Australian domestic market continued to be strong in the years following the continuation of measures on 4 June 2020. However, the industry has experienced a

PUBLIC RECORD

reduction in domestic sales volume in the years ending 30 June 2023 and 30 June 2024, which coincides with an overall reduction in the market size.

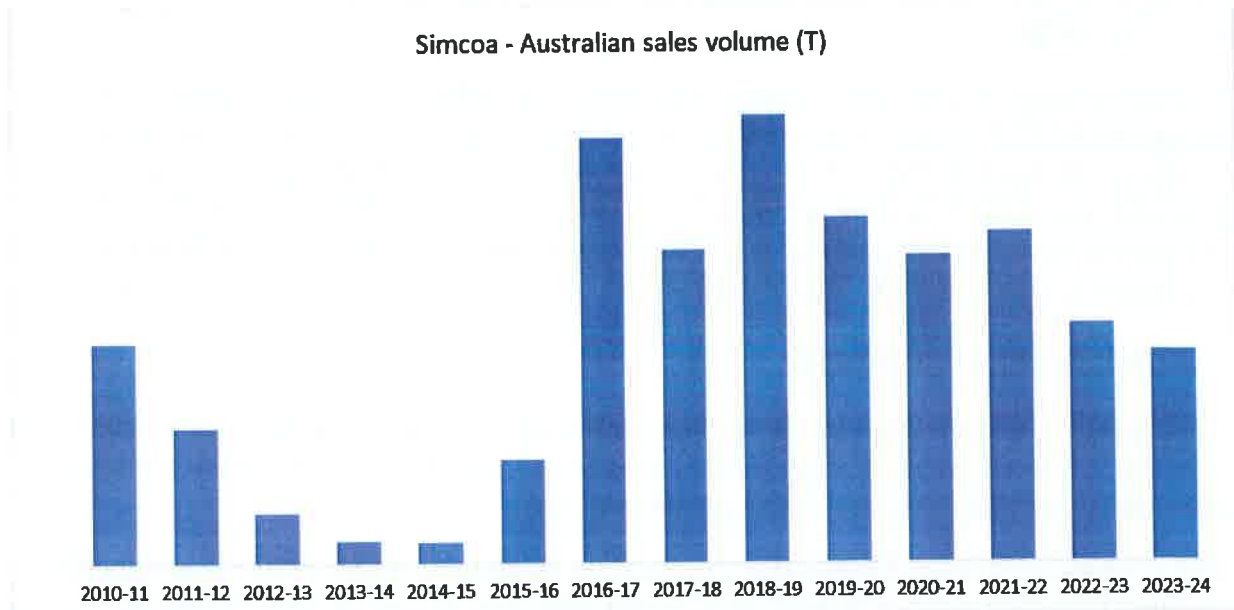


Figure 2: Simcoa domestic (Australian) sales volume of silicon metal since 2010

It should also be noted that the Australian industry exports the majority of its silicon metal production, as shown in Figure 3 below. Overall, sales of silicon metal have been declining slightly since the year ending 30 June 2018.

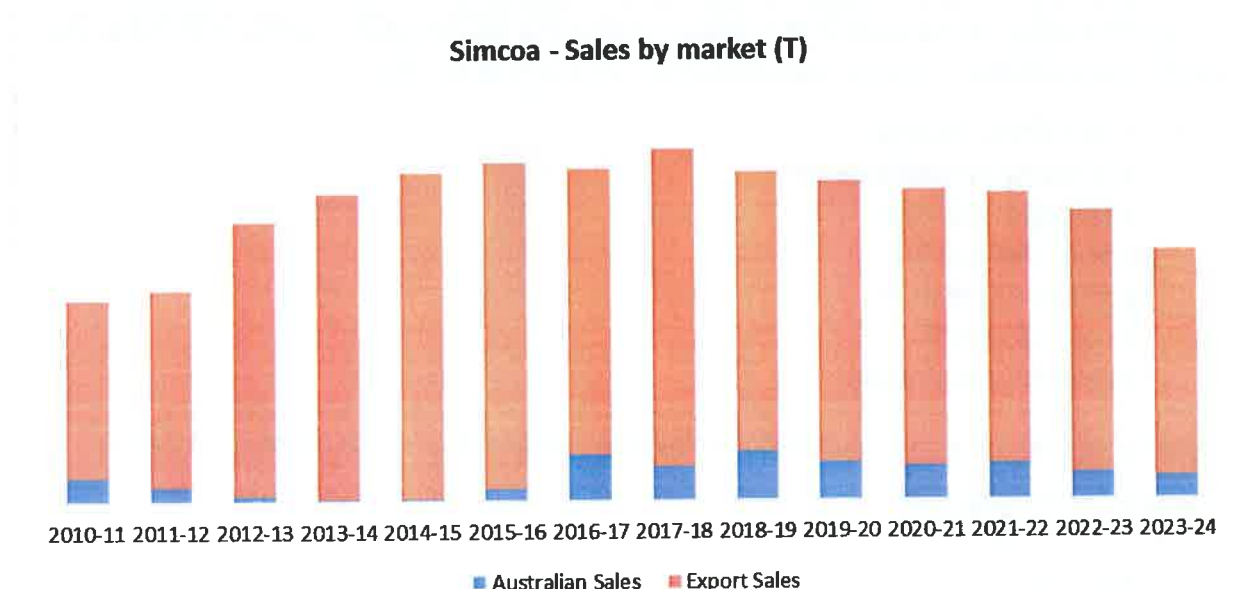


Figure 3: Simcoa's overall sales volume by market

5.4.2 Market share

Australian industry market share is shown below in Figure 4. Coinciding with an increase in sales volume following the imposition of measures on the 3 June 2015, Simcoa

PUBLIC RECORD

experienced a large increase in market share, and it has remained relatively stable in the following years. However, during the year ending 30 June 2023, market share declined, which appears to be a result of an increase in imports from countries not subject to the measures. Simcoa has been able to recapture its market share in the year ending 30 June 2024.

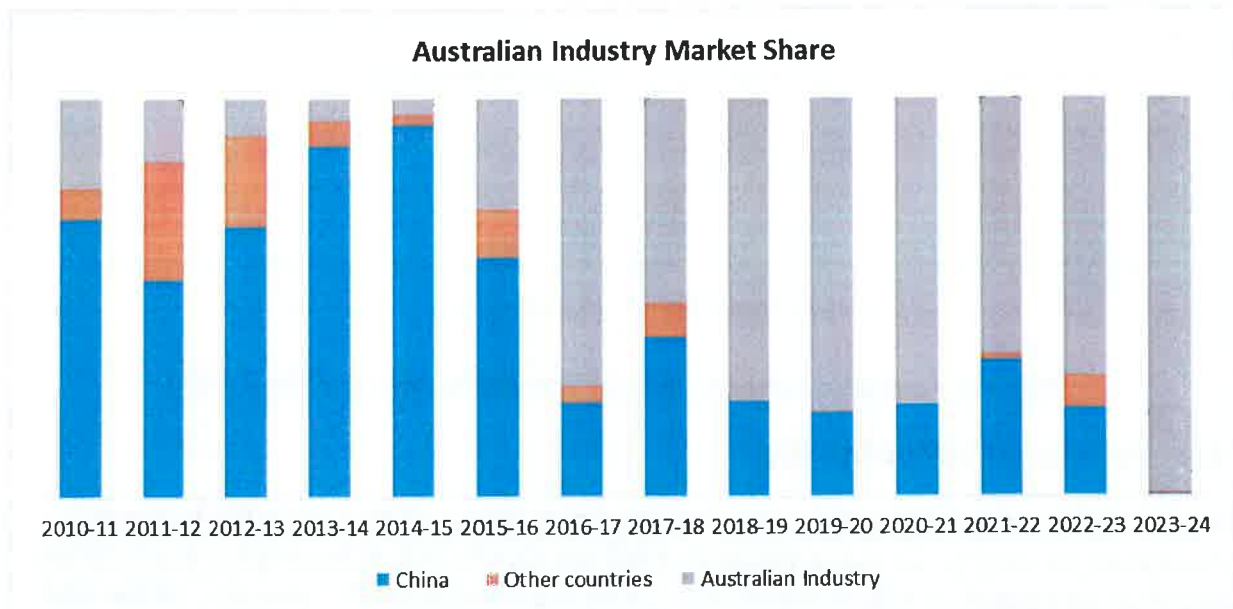


Figure 4: Australian industry market share

5.5 Price effects

Following several years of higher prices for silicon metal, Australian industry's selling prices fell during the inquiry period, and the margin between unit sales and costs also converged. These factors suggest that the industry has experienced price depression and price suppression.

5.5.1 Price depression and suppression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise might have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

Figure 5 shows that over a period of 10 years, unit sales and costs tracked together, with sales typically higher than costs. From 2021-22, a divergence was observed, as unit sales rose substantially more than costs. This coincided with a period of disruption to global shipping patterns, arising from Covid-19 and other factors. Australian industry's selling prices declined during the inquiry period and the margin between unit sales and costs converged, which is indicative of price depression and price suppression. The commission notes, however, that Simcoa has not claimed it has experienced price depression or suppression as a result of dumped imports during this period but claims that these factors will recur in the absence of measures. The commission considers the likelihood of price depression and suppression recurring in section 8.8.1.

PUBLIC RECORD

Unit sales revenue and CTMS (Domestic)

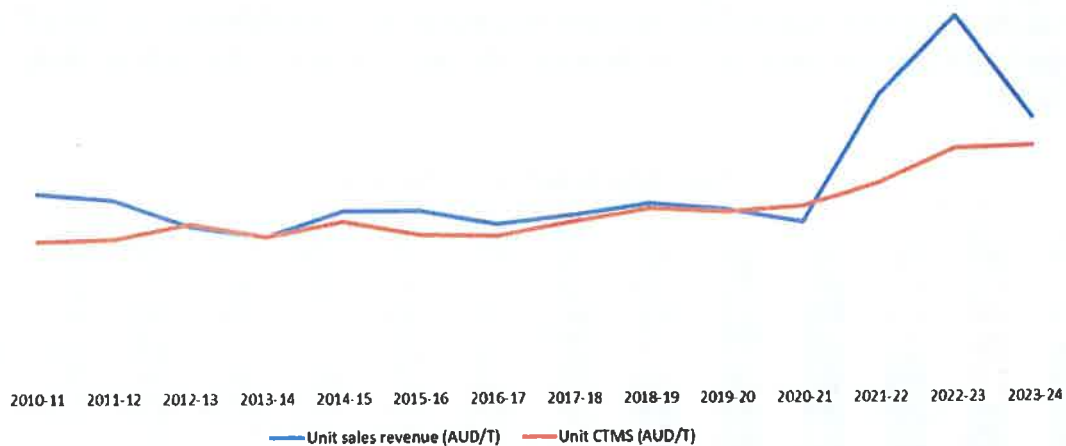


Figure 5: Australian unit sales revenue and cost to make and sell (CTMS)

5.6 Profits and profitability

Figure 6 below outlines profit and profitability on domestic sales from 2010 onwards. Australian industry profit and profitability declined significantly following the expiry of the previous measures on silicon metal from China in February 2010. However, profits and profitability rebounded around the time the current measures were imposed in June 2015, to then narrow over the following five years, and resulted in a loss in 2020-21.

On the back of the price increases demonstrated in Figure 5, profit and profitability rose in the years ending 30 June 2022 and 30 June 2023, despite declining sales volumes during this period.

Profit and Profitability (Domestic)

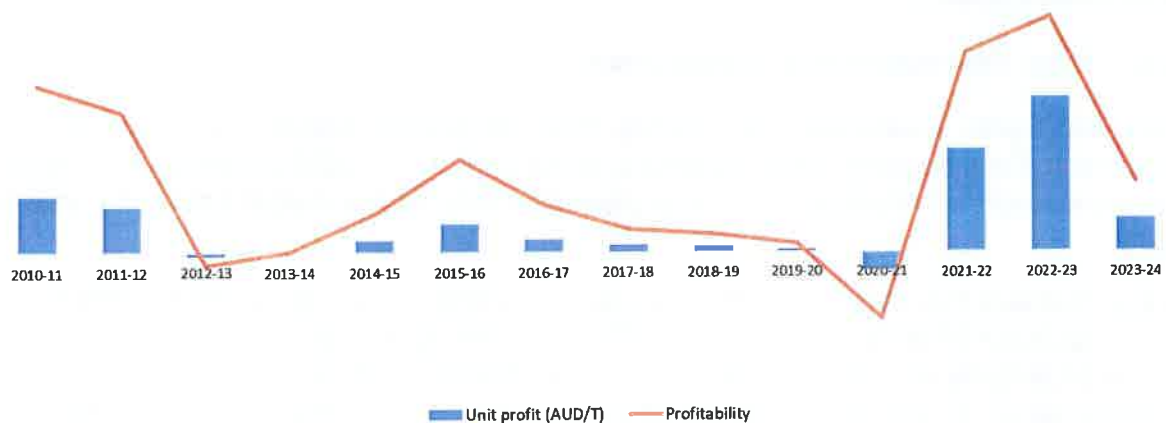


Figure 6: Simcoa's profit (left axis) and profitability (right axis)

PUBLIC RECORD

5.7 Other economic factors

At the request of the commission, Simcoa provided data in relation to a range of other economic factors that may be indicative of injury to the Australian industry for the period 1 July 2019 to 30 June 2024. Simcoa did not make any claims of injury for these factors, including:

- the value of assets
- capital investment
- R&D expense
- revenue
- return on investment
- capacity utilisation
- employment
- wages
- productivity

When assessing this information, the commission found that while the data was accurate, it was an aggregated picture of domestic and export production of silicon metal, which meant that it was not possible to draw conclusions about the above factors relating to the production of like goods in the Australian market.

6 DUMPING DURING THE INQUIRY PERIOD

6.1 Finding

To assess whether dumping is likely to continue or recur, the commission has examined whether exports in the inquiry period were dumped.

As noted in section 2.4.1, the commission did not receive any questionnaire responses or any other information from any Chinese exporters in relation to this inquiry. The Commissioner has determined that because these exporters did not provide information relevant to the case, all exporters from China are uncooperative exporters under section 269T, for the purposes of this inquiry.⁴¹

The commission has determined the dumping margin as noted in Table 8.

Exporter	Dumping Margin
Uncooperative and all other exporters	32.4.% ⁴²

Table 8: Dumping margin

6.2 Legislative framework

Under section 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of dumping or subsidisation. The existence of dumping during the inquiry period may be an indicator of whether dumping may occur in the future.

Dumping occurs when a product from one country is exported to another country at a price less than its normal value.

- **Uncooperative exporters:** Section 269TACAB(1) sets out the provisions for calculating the export price and normal value for uncooperative exporters.
- **Export price:** The export price for uncooperative exporters is determined under section 269TAB(3).
- **Normal value:** The normal value for uncooperative exporters is determined under section 269TAC(6).
- **The dumping margin is** calculated according to section 269TACB.

⁴¹ Section 8(b)(i)(a) of the Direction

⁴² The calculated dumping margin is 32.4%. However, the IDD is 25.3% after the countervailable subsidy margin for LTAR (Program 1) is removed.

6.3 Variable factors

6.3.1 Variable factors for this inquiry

Export Price

Exporters did not cooperate and did not provide any data to the commission during the course of this inquiry. Therefore, the commission has calculated export price under section 269TAB(3), having regard to all relevant information. The Act specifies that for uncooperative exporters, export prices are to be calculated under this section.

The commission determined the export price by comparing the export price for shipments reported in the ABF import database of a similar size from the investigation period in INV 237 and the inquiry period in CON 651 and applying the percentage change to the free on board (FOB) export price calculated in INV 237.

In conducting the current inquiry, the commission considered another alternative to determining export price. The commission considered determining the export price using the small number of shipments that were imported during the CON 651 inquiry period, that were also small sized shipments. Generally, the price paid in the market for small sized shipments is higher than for larger shipments due to the reduced negotiating power of the importer. The commission considered that using this small number of shipments that were all small sized shipments would have a distortionary effect on the calculation of the export price. Further, the number of shipments imported during the inquiry period was very small, reducing the reliability of the data in this approach. Accordingly, on the basis of these factors, the commission considered that this alternative method to determining export price was not sufficiently robust compared to the approach ultimately taken by the commission.

By comparing the price of similarly sized shipments in the two inquiry periods and applying the percentage change to the export price determined in INV 237 (which was determined based on a large number of exports that included shipments of a range of sizes), the commission has used the best available information to determine the export price, given the absence of exporter cooperation.

Normal Value

Exporters did not cooperate and did not provide any data to the commission during this inquiry. Therefore, the commission determined normal values under 269TAC(6), having regard to all relevant information. The Act specifies that for uncooperative exporters, normal values are to be calculated under section 269TAC(6).

To calculate the normal value applicable to the current inquiry period, the commission has used the normal value established in INV 237 for 'all other exporters', with an adjustment made for the movement in Chinese consumer price index (CPI) between the current inquiry period and that from the investigation period for INV 237.⁴³ This is to ensure that

⁴³ World Bank Group, Inflation, consumer prices (annual %) – China - <https://data.worldbank.org/indicator/FP.CPI.TOTL.ZG?end=2023&locations=CN&start=1987&view=chart>

PUBLIC RECORD

any adjustment in normal value is based on changes in Chinese market prices and, subsequently, costs. The normal value calculated in INV 237 was based on a constructed normal value with the recorded electricity cost of the relevant exporters replaced with a calculated electricity price based on information provided by the GOC during the INV 237. The Commissioner considers that this provided the most accurate assessment of normal values in China in the current inquiry period, based on the best available information. The rationale for this conclusion, as well as further information about the normal value methodology applied, is detailed in section 6.3.4 (below). The commission also considered several alternative approaches for calculating normal value as outlined in section 6.3.4.1 (below).

6.3.2 Particular market situation

In REP 237, a single exporter, Linan Group, cooperated with the investigation. The Commissioner found that because of a particular market situation, Linan Group's domestic sales of silicon metal in China did not permit a proper comparison, such that it was not suitable to determine normal values under section 269TAC(1). As a result, the normal value was established under section 269TAC(2)(c). In CON 524, no exporters cooperated, and the Commissioner considered that the findings concerning the market situation in China remained applicable.

In its application for this inquiry, Simcoa referred to this market situation finding and their understanding that GOC policies specific to silicon metal have not waned over the period since the publication of REP 524. As a result, Simcoa claim that domestic selling prices for silicon metal cannot be relied upon for the purposes of assessing normal values in this inquiry.

The commission sought information from the GOC and Chinese exporters, relevant to assessing contemporary market conditions for silicon metal in China. The commission did not receive a response from the GOC to the questionnaire regarding the particular market situation for this inquiry⁴⁴ and, as previously noted, no Chinese exporters cooperated with this inquiry.

The commission has considered the available evidence regarding the influence the GOC has on the silicon metal market in China. Based on the information before it, the commission considers that a particular market situation exists. This finding has been made on the basis of considering previous information in REP 237 and REP 524, information provided by Australian industry in their application for this inquiry, and contemporary research by the commission. Although the finding as to a particular market situation has been made partly on the basis of information relied upon in REP 237 and REP 524, the Commissioner notes that this information has been considered afresh as part of this inquiry. As a result, the commission finds that a particular market situation exists in respect of silicon metal in China for the inquiry period.

Non-confidential Appendix A contains the commission's particular market situation analysis.

⁴⁴ Chapter 2.4.1

PUBLIC RECORD

6.3.3 Proper comparison and constructed normal values

Where a particular market situation is found, pursuant to section 269TAC(2)(a)(ii), the commission must also consider whether, because of the situation in the market of the country of export, sales of like goods in that market are not suitable for determining a price under section 269TAC(1).

As a particular market situation has been found in respect of the domestic market for silicon metal in China, the commission also examined whether goods in that market are suitable for determining the normal value of Linan Group under section 269TAC(1).

The commission addressed whether a situation in the domestic market rendered those sales unfit for proper comparison in REP 237.⁴⁵ In REP 237, the commission considered that the domestic selling prices of Chinese producers and exporters of silicon metal are made within the context of the collective GOC policies and measures for the domestic silicon industry and the distorting and suppressing impact on selling prices. This was compared to prices of Chinese exports of silicon metal into the Australia market, which are not subject to such distortions.

For this inquiry, the commission has considered all relevant information before it and has examined the evidence on whether the particular market situation means that Linan Group's domestic sales do not permit a proper comparison with export prices. The commission's proper comparison analysis is at **Non-confidential Appendix B**.

The Commissioner considers that the findings regarding proper comparison remain applicable, such that the commission has not relied on Linan Group's domestic selling prices from INV 237 as part of the normal value calculation for this inquiry. Instead, the commission has relied on a constructed normal value methodology, as outlined below. In making the finding as to proper comparison, the commission did so on the basis of information relied upon in INV 237 which it has considered afresh as part of this inquiry, noting the absence of contemporary information from exporters and the GOC.

6.3.4 Normal value methodology

As outlined in section 6.1 and 6.2, no exporter cooperated with the investigation or provided any information and so the commission has calculated normal values under 269TAC(6), having regard to all relevant information. The Act specifies that for uncooperative exporters, normal values are to be calculated under this section.⁴⁶

Specifically, the commission has used the normal value established in REP 237 for 'all other exporters', with a timing adjustment between INV 237 and CON 651. Normal values were constructed as follows:

- Linan Group's Cost to Make (CTM) for the goods exported to Australia (revised to replace the recorded electricity cost using information provided by the GOC during the INV 237)

⁴⁵ REP 237, pp 29-30

⁴⁶ See section 269TACAB(1)(e)

PUBLIC RECORD

- Plus an amount for Linan Group's domestic selling, general and administration (SG&A) costs
- Plus an amount for profit using Linan Group's data related to sales made in ordinary course of trade (OCOT)
- Plus amounts to adjust the ex-works (EXW) normal value to FOB normal value using Linan Group's data related to domestic and export sales
- Plus a timing adjustment to the normal value based on the movement in Chinese CPI between the current inquiry period and that from the investigation period for INV 237.

While the commission's usual starting point is to use an exporter's records, where the first and second condition of Article 2.2.1.1 of the Anti-Dumping Agreement are met, the Commissioner considers that there are, nonetheless, compelling reasons to deviate from this position. The commission considers that the specific facts and evidence in this case in respect of the commission's rejection of Linan Group's records (on the basis that they are not normal and ordinary) provide compelling reasons to deviate from using the Linan Group's electricity costs. For the reasons articulated in Appendix C, the Commissioner is satisfied that the Linan Group's recorded electricity costs themselves reflect circumstances that are not normal and ordinary. The commission notes these are exceptional and fact specific circumstances as they relate to the Linan Group's recorded cost of electricity, and not on the basis of overarching factors which apply to the silicon metal market generally. The commission did not adjust any of the other items recorded in Linan Group's cost of production.

In the absence of contemporary cost and price information from Chinese exporters or the GOC, the commission considers that the most reliable and relevant information available to determine the normal value of the goods in China in the inquiry period is the verified normal value from INV 237, including information from the GOC and certain verified costs and sales information from Linan Group's records (no other exporter records were available during INV 237). In INV 237, the commission adopted the normal value established for Linan Group to establish the normal value for 'all other exporters'. The commission also considers that the application of a timing adjustment based on Chinese CPI to the normal value determined for Linan Group provides the most relevant information upon which to determine normal value under 269TAC(6). This is on the basis that any adjustment in normal value is based on changes in Chinese market cost and prices.

Alternative information and methodologies considered by the commission are outlined in 6.3.4.1 (below).

Further details of the commission's normal value determination, including its assessment of whether Linan Group's records are suitable for constructing normal value, are found in **Non-confidential Appendix C**.

6.3.4.1 Alternative normal value methodologies considered

As outlined in 6.3.4, the commission has used the verified records of Linan Group, information from the GOC from INV 237 and a timing adjustment based on Chinese CPI to determine normal value in the present inquiry.

PUBLIC RECORD

In considering the most reasonable approach for calculating normal value based on the best available information, the commission considered alternative approaches and alternative relevant information, outlined in the following paragraphs.

In the present circumstances, relevant information available to the commission includes information provided by the applicant in their application to continue the measures, such as cost of production data for Chinese silicon metal manufacturers during the inquiry period sourced from CRU International Limited and verified information from INV 237. The Commissioner has assessed that the information received from the applicant in this inquiry is not the most relevant or reliable to ascertain the normal values for uncooperative exporters from China. This is on the basis that, although data from CRU International Limited was utilised to demonstrate domestic production costs in China for the purposes of the application, the data does not include historical data going back to the original inquiry period. It also does not include important cost elements including estimates for overheads, SG&A and profit.⁴⁷

The commission also considered alternative approaches and sources of information for making a timing adjustment. Firstly, the commission considered whether it could source data relating to the individual cost components used to construct the normal value in INV 237 and then apply the change in each cost component over time to adjust the individual costs to account for the passage of time since the original investigation. However, the commission assessed that in the absence of cooperation from Chinese exporters and the GOC, there was no verifiable data upon which to make these adjustments. The commission also considered whether reliable, publicly available data could be used in this way. The commission found that while there is some publicly available data relevant to some cost components, there is not sufficient publicly available information in relation to all cost components, and therefore this approach to the timing adjustment could not be applied in a consistently reliable way across each cost component. Therefore, the commission assessed that there is insufficient information available to apply this approach.

Secondly, the commission considered applying the change in silicon metal spot prices in the domestic market in China between the investigation period in INV 237 and the inquiry period to adjust the normal value calculated using Linan Group's records. The commission's assessment is that Chinese silicon metal spot prices are not the best information available in the present circumstances. This is due to the particular market situation in China affecting the Chinese domestic pricing in the silicon metal market. This approach was not adopted on the basis that the commission is also unable to verify this data.

Thirdly, the commission considered whether change in electricity prices between the investigation period in INV 237 and the inquiry period could be used to adjust the normal value calculated using Linan Group's records (noting that approximately half of the cost input into the production of silicon metal is electricity). The commission's assessment is that Chinese electricity index prices are not the best information available due to the GOC

⁴⁷ For more information refer to www.crugroup.com

PUBLIC RECORD

influence in the electricity market because electricity was found to be provided by the GOC at less than adequate remuneration (LTAR) in INV 237. Furthermore, the commission was not able to source reliable information on Chinese electricity prices based on publicly available information and notes that the commission used information supplied by the GOC in INV 237 to calculate the benefit Linan Group received from the GOC due to buying electricity at LTAR during the investigation period (see Appendix C, section C4 for further detail). On this basis, the commission did not adopt this approach.

Fourthly, the commission considered whether the change in silicon metal spot prices or the change in electricity prices from other countries based on publicly available information could be used to adjust the normal value determined using Linan Group's records. The commission's assessment is that it is preferable to use data from China that is not affected by a particular market situation to make the adjustment. In INV 237, the adjustment made to the cost of electricity was based on information provided by the GOC regarding the price electricity is sold at to silicon metal producers compared to other large manufacturers (see Appendix C, section C4 for further detail). The commission therefore considered that this was not possible as the GOC did not provide the equivalent information to the current inquiry.

Noting the challenges with the alternative approaches considered above, the commission used Chinese CPI to adjust the normal value determined using Linan Group's verified data from INV 237. The commission finds it is the most reasonable approach in these circumstances because Chinese CPI is an index based on Chinese market data, it covers a range of goods and services, and is able to be sourced from reliable public sources (in this case, the World Bank). The commission considers that this is the preferable approach to adjusting the normal value under section 269TAC(6) in the circumstances and that the approach is underpinned by a reliance on data which is the best information available to the commission.

6.3.5 Dumping Margin

The dumping margin for all exporters from China was established in accordance with section 269TACB(2)(a) by comparing the weighted average export price and weighted average normal value. The dumping margin for all exporters from China is calculated at **32.4%**.⁴⁸

The commission's dumping margin calculations are at **Confidential Attachment 3**.

⁴⁸ The calculated dumping margin is 32.4%. However, the IDD is 25.3% after the countervailable subsidy margin for LTAR (Program 1) is removed.

7 SUBSIDISATION DURING THE INQUIRY PERIOD

7.1 Finding

The Commissioner finds that countervailable subsidies were provided for goods exported to Australia from China during the inquiry period.

To assess whether subsidisation is likely to continue or recur, the commission has examined whether countervailable subsidies were received in respect of the goods exported to Australia from China during the inquiry period. The Commissioner has also used this information to determine that the variable factors for Chinese exporters have changed.

The commission sent the GOC and known exporters a questionnaire requesting information necessary for the assessment of the previously identified countervailable subsidies. The commission did not receive a response from the GOC, nor any Chinese exporters subject to the countervailing duty notice.

The commission conducted a review of publicly available information to assess the status of relevant subsidy programs. This includes examining subsidy findings from other relevant cases that the commission has conducted, along with findings from REP 237 and REP 524 (relevant inquiries in respect of the goods exported from China). The commission has adopted the approaches taken in other recent cases and made appropriate adjustments to the countervailable programs for the current inquiry. As a result, the Commissioner is reasonably satisfied that exporters are likely to continue benefiting from 36 certain subsidy programs that were countervailed in REP 237 and REP 524.

The Commissioner has found that exporters received countervailable subsidies in respect of the goods exported to Australia from China during the inquiry period at the rates set out in Table 9 below.

Exporter	Subsidy Margin
Uncooperative and all other exporters	29.4%

Table 9: Subsidy margin

7.2 Legislative framework

Section 269ZHF(2) provides that the Commissioner must not recommend that the Minister take steps to secure the continuation of anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, subsidisation. The existence of subsidisation during the inquiry period may be an indicator of whether subsidisation may occur in the future.

Subsidisation occurs when a financial contribution or income or price support by a government or public body confers a benefit (whether directly or indirectly) in relation to

PUBLIC RECORD

goods exported to Australia. A subsidy is countervailable if it is specific. The amount of a countervailable subsidy is determined in accordance with section 269TACD.

7.3 Subsidy programs

7.3.1 Information considered by the Commissioner

Section 269TAACA(1) provides that, in determining whether a countervailable subsidy has been received in respect of particular goods, or the amount of a countervailable subsidy in respect of particular goods, the Commissioner may act on the basis of all the facts available and may make such assumptions as the Commissioner considers reasonable when an entity:

- has not given the Commissioner information the Commissioner considers to be relevant to the inquiry within a period the Commissioner considers to be reasonable, or
- has significantly impeded the inquiry.

Section 269TAACA(2) provides that section 269TAACA(1) applies to the following entities:

- any person who is or is likely to be directly concerned with the import or export into Australia of the goods to which the inquiry relates
- the government of the country of export of goods to which the inquiry relates.

The commission sent the GOC a questionnaire requesting information for the assessment of the previously identified countervailable subsidies. The commission did not receive a response to this questionnaire. Accordingly, because the GOC has not given the commission information considered to be relevant to the inquiry, the commission has determined whether a countervailable subsidy has been received in respect of the goods, and the amount of the countervailable subsidy, in accordance with section 269TAACA(1).

Pursuant to section 269TAACA, the Commissioner has acted on the basis of all the facts available and has made such assumptions as the Commissioner considers reasonable. In doing so, the Commissioner has relied upon the previous findings in REP 524, being the most recent and relevant inquiry in respect of the goods exported from China, as well as the original investigation (REP 237), and any relevant information obtained by the commission in other investigations. The Commissioner finds it reasonable to conclude, on the basis of the facts available to it, that exporters of silicon metal in China continue to benefit from countervailable subsidies.

The Commissioner has identified the exporters determined as uncooperative in chapter 2 as non-cooperative entities.

PUBLIC RECORD

7.3.2 Assessment of existing subsidy programs

In REP 237, the commission investigated 44 subsidy programs applicable to silicon metal exported from China, of which 38 were deemed to be countervailable.⁴⁹ These programs were also determined to remain countervailable in the last continuation inquiry 524 (REP 524).

As noted earlier, the commission did not receive any responses from exporters with respect to these countervailable programs in the current inquiry, nor were there any responses from the GOC to the subsidy questionnaire.

Notwithstanding the absence of new information, the commission has reviewed the basis of each program from the information obtained across all anti-dumping cases to verify their continued relevance to the exports of the goods. After examining the information available, the commission has made appropriate adjustments and incorporated these modifications into the subsidy calculations.

Based on the analysis, the commission reviewed all 38 current countervailed subsidy programs and determined that 36 programs remain countervailable in this inquiry. The commission's findings in respect of each program relevant to this inquiry is listed in Table 10 below.

A detailed assessment is available in non-confidential **Appendix D at section D3 and D4.**

Program Number	Program Name	Countervailable in relation to the goods (Yes/No)
1	Electricity provided by government at less than adequate remuneration	Yes
6	Preferential Tax Policies in the Western Regions	Yes
7	Land Use Tax Deduction	Yes
8	Preferential Tax Policies for High and New Technology Enterprises	Yes
9	Tariff and VAT Exemptions on Imported Materials and Equipment	Yes
10	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Yes
11	Matching Funds for International Market Development for Small and Medium Enterprises	Yes
12	Superstar Enterprise Grant	Yes
13	Research & Development (R&D) Assistance Grant	Yes
15	Innovative Experimental Enterprise Grant	Yes
16	Special Support Fund for Non State-Owned Enterprises	Yes

⁴⁹ REP 237 at section 7 refers

PUBLIC RECORD

Program Number	Program Name	Countervailable in relation to the goods (Yes/No)
17	Venture Investment Fund of Hi-Tech Industry	Yes
18	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment.	Yes
19	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Yes
20	Water Conservancy Fund Deduction	Yes
21	Wuxing District Freight Assistance	Yes
22	Huzhou City Public Listing Grant	Yes
23	Huzhou City Quality Award	Yes
24	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Yes
25	Wuxing District Public List Grant	Yes
26	Anti-dumping Respondent Assistance	Yes
27	Technology Project Assistance	Yes
28	Capital injections	Yes
29	Environmental Protection Grant	Yes
30	High and New Technology Enterprise Grant	Yes
31	Independent Innovation and High-Tech Industrialization Program	Yes
33	Environmental Prize	Yes
34	Jinzhou District Research and Development Assistance Program	Yes
35	Grant for Industrial enterprise energy management centre construction demonstration project Year 2009	No
36	Key industry revitalization infrastructure spending in budget Year 2010	No
37	Provincial emerging industry and key industry development special fund	Yes
38	Environmental protection fund	Yes
39	Intellectual property licensing	Yes
40	Financial resources construction special fund	Yes
41	Reducing pollution discharging and environment improvement assessment award	Yes
42	Comprehensive utilization of resources - VAT refund upon collection	Yes

PUBLIC RECORD

Program Number	Program Name	Countervailable in relation to the goods (Yes/No)
43	Grant of elimination of outdated capacity	Yes
44	Grant from Technology Bureau	Yes

Table 10: Current subsidy programs considered in this inquiry

7.4 Calculation of subsidy margins

7.4.1 Non-cooperative entities

As outlined above, the subsidy margin for non-cooperative entities is determined, pursuant to section 269TAACA(1), based on all facts available and having regard to reasonable assumptions.

The commission's usual approach is to assume that non-cooperative entities benefited from all non-regional countervailable subsidies and the highest region-specific subsidy (where applicable). The Commissioner considers that this approach avoids the potential for a double count of similar programs between regions.

When assessing countervailable subsidies for non-cooperative entities, the Commissioner has made reasonable assumptions to establish both the existence and amount of any countervailable subsidies related to the goods.

The commission has included those subsidy programs from CON 524 on the basis that there is no evidence to suggest the programs have ceased from the available information.

Given that there was no GOC or exporter cooperation and the consequent limited evidence available regarding subsidy programs during the inquiry period, the Commissioner considers the findings of REP 237, REP 524, and evidence obtained from other cases conducted by the commission, to provide a reasonable basis for assessing whether countervailable subsidies have been received by non-cooperative and all other exporters during the inquiry. The commission has provided a detailed assessment of each countervailable program, including if they have been assessed in other cases, in Table 14 of Appendix D.

In the absence of information on subsidies from the GOC or exporters, to calculate current subsidies for non-cooperative entities, the commission has:

1. Used subsidy amounts established in REP 524 for each program and adjusted these by the movement in Chinese CPI
2. Applied these to export prices established during this inquiry
3. Adjusted LTAR raw materials costs in normal value construction.

As outlined in the Manual part 20.3, when constructing normal value under section 269TAC(2)(c) the commission may adjust input costs that do not reflect competitive market rates. For inputs subject to LTAR subsidy findings, the relevant subsidy amount shall be excluded from the IDD to avoid any double counting.

PUBLIC RECORD

As Program 1 involves electricity provided at LTAR, and the commission has adjusted electricity as a cost input in constructing the normal values, the IDD for exporters has been modified accordingly.

Based on the available information, the commission has calculated a subsidy margin of **29.4%** for uncooperative and all other exporters.

The commission's countervailable subsidy margin calculations for non-cooperative and all other exporters are at **Confidential Attachment 4**.

8 LIKELIHOOD THAT DUMPING, SUBSIDISATION AND MATERIAL INJURY WILL CONTINUE OR RECUR

8.1 Finding

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

The Commissioner's finding is that the expiry of the measures would lead, or would be likely to lead, to a continuation of the dumping and subsidisation and a recurrence of the material injury that the measures are intended to prevent. This finding is based on findings that:

- Chinese exporters will likely continue exporting the goods (chapter 8.5).
- Chinese exports will likely continue to be dumped and subsidised (chapter 8.6).
- The dumping and subsidisation are likely to lead to a recurrence of material injury that the measures are intended to prevent (chapter 8.7).

As outlined in chapter 8.6, the Commissioner found that Chinese exporters will likely continue exporting the goods because:

- Chinese exporters have exported the goods in every year since before the measures were imposed up to and including the current inquiry period and China has consistently been the largest source of imports of the goods to Australia by volume.
- Chinese exporters have maintained distribution links to the Australian market throughout the life of the measures until the current inquiry period, including to customers of the Australian industry.
- China is the largest exporter of the goods on a global level and maintains excess production capacity.
- If the measures were to expire, Australia would likely be an attractive export market for Chinese silicon metal, given both the price of the goods manufactured in Australia and the high rates of anti-dumping and countervailing measures applying to Chinese exports of the goods in other jurisdictions.

As outlined in chapter 8.7, the Commissioner found that the exports will likely continue to be dumped and subsidised because:

- The goods imported to Australia by Chinese exporters were found to have been dumped and subsidised during the original investigation (INV 237), in the subsequent continuation inquiry (CON 524) and the finding of this inquiry is that the goods have been dumped and subsidised during this inquiry period too.
- The commission's pricing analysis indicated that Chinese goods would be unlikely to be competitive on price in the Australian market unless dumped and subsidised (see Figure 8).

PUBLIC RECORD

- No Chinese exporters or other interested parties have sought a review or revocation of the measures since the measures were imposed, nor have applications for duty assessments been made.
- The extent of anti-dumping measures applying to Chinese exporters in other jurisdictions is indicative of a willingness to export dumped and subsidised goods (e.g. in Canada, the dumping duty for all other exporters is 235% and the countervailing duty rate is 1945 CNY per metric tonne).⁵⁰

As outlined in chapter 8.8, the Commissioner found that if the measures were to expire, the dumping and subsidisation is likely to lead to a recurrence of the material injury that the measures are intended to prevent.

The material injury that the measures are intended to prevent was set out in in *Anti-Dumping Commission Report No. 237 (REP 237)* (the original investigation, INV 237). In that report, the Commissioner found that the Australian industry had experienced material injury in the form of:

- price depression and suppression of the goods sold in Australia
- lost Australian sales volume and reduced Australia market share
- reduced revenue, profit and profitability of the Australian industry.

The Commissioner's finding that the material injury that the measures are intended to prevent is likely to recur is based on:

- Pricing analysis (chapter 8.8.1):
 - Analysis of Australian industry sales prices compared to the sales prices of the goods imported from China shows that the price of the Chinese goods (net duties) is lower than the Australian price, demonstrating the capacity of Chinese exporters to sell the goods at a price that undercuts the Australian industry prices (in the range of 16% to 24%) if the measures were removed. This demonstrates that the Australian industry will likely experience a recurrence of the price depression and price suppression the measures are intended to prevent.
- Volume analysis (chapter 8.8.2):
 - Prior to the measures being put in place, Chinese exporters held around a 90% share of the Australian silicon metal market. While the current market share held by Chinese exporters is small, if measures were removed and Australian industry were to be unwilling or unable to compete on price with the dumped and subsidised exports, the Australian industry would likely experience a recurrence of the lost sales volumes and market share the measures were intended to prevent.

⁵⁰ Canada Border Services Agency, *Silicon metal: Measures in force*, Government of Canada, extracted from <https://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/sm-eng.html> on 10 February 2025.

PUBLIC RECORD

- Other factors (chapter 8.8.3):
 - Over the 15-year period assessed by the commission, Chinese exports have been the largest source of competition for the Australian industry in the sale of silicon metal to the Australian market, albeit imports from China have diminished in recent years.
 - Over the injury analysis period, Australian industry's domestic sales have generally been more profitable than their export sales, including during the inquiry period. While domestic sales make up a small proportion of Australian industry's total sales, due to the lower profitability of export sales, the business is vulnerable to a reduction in domestic sales profit, as it will have a material impact on the Australian industry's overall profit. REP 237 found that this caused material injury to Australian industry in terms of lost profit of around 10%.⁵¹
 - Australian industry's current domestic sales represent approximately 10% of their total sales, as opposed to 1% of total sales when the measures were implemented, making the Australian industry more vulnerable to changes in the Australian market.

The commission notes that Australian industry has not claimed it has experienced material injury as a result of dumped imports for the period 1 July 2019 to 30 June 2024. However, Australian industry has claimed that the injury will recur in the absence of measures. In addition to the analysis above, the commission noted that over the past 10 years, the Australian industry's asset value, total revenue and employment numbers have increased.

8.2 Legislative framework

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

The commission notes that its assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. The commission must consider what will happen (or what would be likely to happen) in the future should a certain event, being the expiry of the measures, occur. However, the Commissioner must nevertheless base their conclusions and recommendations on facts.⁵²

8.3 The commission's approach

In REP 237 the commission found that the Australian industry had experienced material injury in the form of lost sales volumes and market share, price depression and price suppression and reduced profit and profitability.

⁵¹ EPR 237, document No. 44, REP 237, pp 59-60

⁵² [ADRP Report No. 44](#) (Clear Float Glass)

PUBLIC RECORD

The commission's analysis is conducted within the context of assessing whether in the absence of measures there will be a continuation or recurrence of the forms of material injury established in the original investigation.

The commission considered a number of relevant factors to assess the likelihood that dumping and material injury will continue or recur, as outlined in the Manual.⁵³ The commission's view is that the relevance of each factor varies depending on the nature of the goods and the market into which the goods are sold. In this instance, no one factor can provide decisive guidance. The following analysis therefore examines a range of factors that the commission considers relevant to this inquiry.

The commission's assessment of the likely continuation or recurrence of material injury takes into consideration the commission's understanding of competition within the Australian market throughout the life of the measures, the nature of the material injury that resulted in the imposition of the measures, and an assessment of the anticipated effects of the removal of the measures on the economic performance of Australian industry.

The commission's analysis for this chapter is at **Confidential Attachment 5**.

8.4 Australian industry claims

Australian industry made the following claims in support of its application:⁵⁴

- Exports of silicon metal from China to Australia have continued following the imposition of measures.
- Chinese exporters of silicon metal have maintained distribution links into the Australian market.
- China remains the world's largest producer of silicon metal and its production and capacity continue to increase.
- A total of 22 anti-dumping and countervailing measures are currently imposed by WTO member countries on silicon metal, which indicates the propensity for Chinese exporters to export the goods at dumped and subsidised prices.
- In the absence of measures the volume of exports from China is likely to increase significantly and cause injury to the Australian industry.
- Dumped goods will likely undersell domestic like goods to gain market share, depressing and suppressing Australian industry prices to a significant degree.
- The previous expiry of the measures (in 2010) demonstrated the impact of the increased volume of dumped and subsidised goods on the economic condition of Australian industry and this is demonstrative of the likely impact on Australian industry should the measures be allowed to expire.

The commission has considered the Australian industry's claims in its analysis below.

⁵³ The Manual, pp 136-138

⁵⁴ EPR 651, Document No. 1, Attachment A – Silicon Metal Continuation Application – PV – 10 June 2024

PUBLIC RECORD

The Commissioner also received and considered a submission⁵⁵ from Solquartz Pty Ltd (Solquartz)⁵⁶ supporting the Australian industry application.

8.5 Submission received in response to the SEF

As outlined above, the commission received a submission from Simcoa, dated 26 February 2025, in response to the publication of SEF 651. In that submission, Simcoa submitted that it supports the conclusions and proposed continuation of the measures as outlined in that report.⁵⁷ Simcoa agreed with the Commissioner's preliminary finding that the measures would lead or would likely lead to a continuation of, or recurrence of, material injury that the measures are intended to prevent.

In their submission, Simcoa stated that the level of combined dumping and subsidisation as assessed by the commission (54.7%) is decisive. Simcoa views this assessment as clear evidence of unfair pricing practices that will cause the recurrence of material injury to domestic industry, underscoring the need for the measures to continue to prevent a recurrence of such injury and to ensure fair competition and the continued viability of domestic silicon metal production.

8.6 Are exports likely to continue or recur?

The Commissioner considers that, should the measures expire, exports from China are likely to continue.

This finding is based on the following significant factors:

- Chinese exporters have exported the goods in every year since before the measures were imposed up to and including the current inquiry period and China has consistently been the largest source of imports of the goods to Australia by volume.
- Chinese exporters have maintained distribution links to the Australian market throughout the life of the measures until the current inquiry period, including to customers of the Australian industry.
- China is the largest exporter of the goods on a global level and maintains excess production capacity.
- If the measures were to expire, Australia would likely be an attractive export market for Chinese silicon metal, given both the price of the goods manufactured in Australia and the high rates of anti-dumping and countervailing measures applying to Chinese exports of the goods in other jurisdictions.

⁵⁵ EPR 651, document No. 3

⁵⁶ Solquartz is not a current member of the Australian Industry producing like goods to those examined in this inquiry. Solquartz expressed support for the application to this inquiry as a "company developing a metallurgical silicon (MG-Si) processing plant" in Queensland.

⁵⁷ EPR 651, document No. 10

PUBLIC RECORD

To form this view the commission has assessed Chinese import volumes, maintenance of distribution links, production capacity and trade measures imposed by other jurisdictions, as outlined in the sections below.

8.6.1 Import volumes

The Manual provides that in assessing the likelihood of continuing or recurring dumping, the review may gather facts relevant to whether exports are likely to continue or resume, such as the volume of exports before and after measures were imposed and/or exporters' supply chains.⁵⁸

The commission used ABF import data to assess the volume of exports from China since 2010. The commission's findings are shown in Figure 7 below.

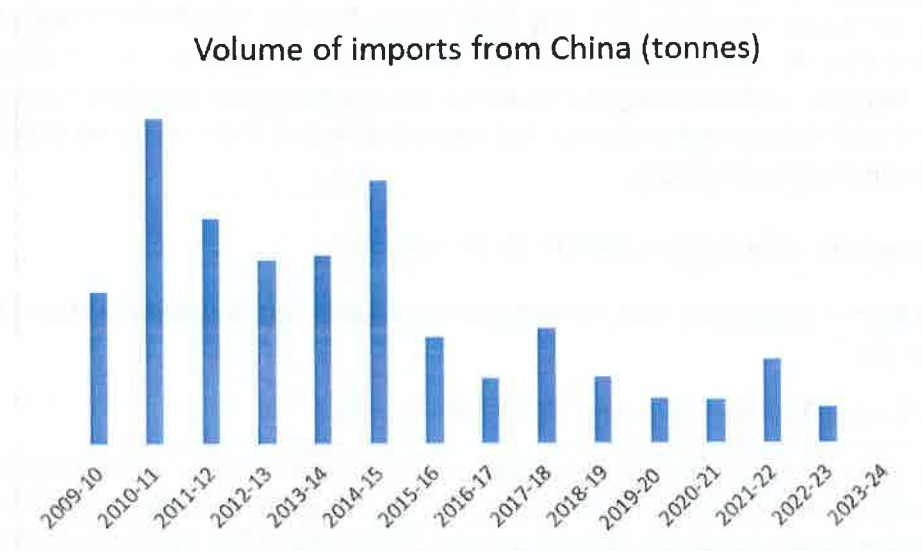


Figure 7: Volume of imports from China (tonnes)

Figure 7 indicates that:

- following the removal of measures in 2010, import volumes surged
- following the imposition of new measures in 2015 import volumes reduced significantly, with subsequent annual volumes of less than half the volumes observed prior to the measures being imposed
- though only a negligible volume of imports was observed during the inquiry period of 2023-24, the goods have been imported from China in every year reviewed by the commission since 2009-10.

8.6.2 Maintenance of distribution links

The commission identified from analysis of ABF import data that exporters from China have maintained their distribution channels to Australia and have continued to export the goods to Australia. While the volume of exports observed during the inquiry period was

⁵⁸ The Manual, p 137 refers

PUBLIC RECORD

small relative to prior years, the commission noted that the same exporter and importer relationships continued throughout the period since measures were last continued.

The commission also compared the importers identified in the ABF import database against the sales listing of Australian industry. The commission noted that importers of the goods from China (or related entities) were also the direct purchasers of the goods from Australian industry during the period since measures were last continued. The commission considers that these purchasers would therefore be able to easily shift their supply preference from Australian industry to their Chinese suppliers in the absence of measures.

8.6.3 Excess production capacity

In its application, Australian industry asserted that China remains the world's largest producer of silicon metal, production capacity continues to increase and China remains a highly export-oriented producer of silicon metal.⁵⁹ Australian industry supplied both confidential and non-confidential evidence to support this assertion. For example, information obtained from a Chinese silicon metal producer claimed that *there are more than 200 silicon metal manufacturers in China...* This is compared to *...less than 50 actual silicon metal manufacturers in more than ten countries producing industrial silicon abroad.*⁶⁰ Australian Industry also sourced information on excess capacity from other website sources noting that Chinese production of silicon metal is above domestic consumption and global demand.⁶¹

The commission has reviewed the claims made by Australian industry in its application against the evidence provided. The Commissioner is satisfied that the claims made by Australian industry are supported by the evidence provided.

The commission also notes that Chinese exporters and the GOC did not respond to questionnaires and that no submissions have been received in respect of China's production capacity that seek to challenge or refute the claims made by Australian industry in its application.

Based on the evidence provided by Australian industry, the Commissioner is satisfied that China maintains excess production capacity which would likely be diverted to Australia in the absence of measures.

8.6.4 Availability of other markets

In its application seeking the continuation of measures, Australian industry outlined the trade remedies or anti-dumping measures applying to the goods in other jurisdictions (or comparable goods where the definition of the goods varies from jurisdiction to jurisdiction).⁶²

⁵⁹ EPR 651, document No. 1, Attachment A – Silicon Metal Continuation Application – PV – 10 June 2024

⁶⁰ EPR 651, document No. 1, Attachment A, pp 4-5, and Non-confidential Attachment 6 (<https://www.hsimetal.com/silicon-metal-company-of-china/>)

⁶¹ EPR 651, document No. 1, Attachment A, pp 5-5

⁶² EPR 651, document No. 1, Attachments 1-5

PUBLIC RECORD

Simcoa noted there were 22 anti-dumping and countervailing measures in force globally under tariff code 28046900.⁶³ The goods are generally, but not exclusively, classified under this subheading.⁶⁴ This points to the export focus of Chinese exporters and the preparedness to export at dumped prices.

Simcoa highlighted in their application that major markets including the United States of America, Canada and the European Union (EU) had imposed or continued measures in recent years.

- The European Commission (EC) continued anti-dumping duties on Chinese exports of silicon metal in an August 2022 decision.⁶⁵
- U.S. Department of Commerce (DOC) and the U.S. International Trade Commission (ITC) concluded a sunset review on exports of silicon metal from China in November 2023, also deciding to continue measures.⁶⁶
- The Canada Border Services Agency (CBSA), found that expiry of a 2019 order would result in the continuation or resumption of dumping and/or subsidizing of the goods in November 2024.⁶⁷ Australian industry made a further submission on reinforcing the relevance of the CBSA finding to the inquiry.⁶⁸

The commission considers that the application of trade remedies and measures in other jurisdictions is a factor that influences global trade by altering comparative access to markets. The expiration of the measures may make Australia a comparatively more attractive and accessible market for exports from China, given the prevalence of trade measures against them in other jurisdictions.

8.7 Will dumping and subsidisation continue or recur?

Having regard to the evidence before the commission, the Commissioner considers that the expiry of the measures would be likely to lead to a continuation of dumping and subsidisation of silicon metal from China.

This finding is based on the following significant factors:

- The goods imported to Australia by Chinese exporters were found to have been dumped and subsidised in the original investigation (INV 237), the subsequent continuation inquiry (CON 524) and the finding of this inquiry is that the goods have been dumped (section 6.3) and subsidised (section 7.3) during this inquiry period.

⁶³ At the date of application and as verified by the commission in January 2024 - WTO Integrated Trade Intelligence Portal. https://www.wto.org/english/res_e/statistics_e/itip_e.htm

⁶⁴ Refer to the goods description in ADN 2024/042

⁶⁵ [European Commission Implementing Regulation \(EU\) 2022/1394](#)

⁶⁶ Silicon Metal from the People's Republic of China: Final Results of the Expedited Fifth Sunset Review of the Antidumping Duty Order <https://www.federalregister.gov/d/2023-20125>

⁶⁷ The Canadian International Trade Tribunal (CITT) has now initiated an expiry review to determine whether these factors are likely to result in injury, with a decision due in April 2025. If the CITT determines that the expiry of the order with respect to the goods is likely to result in injury, the order will be continued in respect of those goods, with or without amendment. <https://www.cbsa-asfc.gc.ca/sima-lmsi/er-rre/sm2024/sm2024-de-eng.html>

⁶⁸ EPR 651, document No. 8

PUBLIC RECORD

- The commission's pricing analysis indicated that Chinese goods would unlikely be competitive on price in the Australian market unless dumped and subsidised (see Figure 8).
- No Chinese exporters or other interested parties have sought a review or revocation of the measures since the measures were imposed, nor have applications for duty assessments been made.
- The extent of anti-dumping measures applying to Chinese exporters in other jurisdictions is indicative of a willingness to export dumped and subsidised goods (e.g. in Canada, the dumping duty for all other exporters is 235% and the countervailing duty rate is 1945 CNY per metric tonne⁶⁹).

To form this view, the commission has considered previous dumping and subsidy margin assessments, dumping and subsidy assessments in other jurisdictions and an estimate of the competitiveness of undumped and unsubsidised prices in the Australian market, as outlined in the sections below.

8.7.1 Analysis of dumping and subsidisation within the inquiry period and previous assessments

As noted in section 2.4.1, the commission sent questionnaires to identified exporters of silicon metal from China as well as the GOC however did not receive any responses to these questionnaires.

In the absence of information from exporters and the GOC the commission considers the current Dumping Duty Notice reliable evidence of the levels of dumping during the inquiry period. Noting that no interested party has sought a review or revocation of dumping measures since they were last continued, the notice remains valid and applicable to the goods. Furthermore, since the measures were continued in 2020, dumping duty has been collected on goods exported from China and no applications for a duty assessment have been lodged, suggesting that the level of IDD collected is representative of the level of dumping occurring.

Considering the dumping margins calculated during the original investigation, and the previous continuation inquiry, the commission has found a consistent pattern of dumping by Chinese exporters since measures were imposed in 2015. The commission considers that Chinese exporters' prior and consistent behaviour in exporting goods at dumped prices, and in the absence of evidence suggesting a change in that behaviour, is relevant information for assessing the likelihood that dumping would continue if the measures expired.

8.7.2 Analysis of subsidisation within the inquiry period and previous assessments

In the absence of contemporary information from exporters and the GOC, the commission considers the current Countervailing Duty Notice relevant and reliable evidence of the

⁶⁹ Canada Border Services Agency, *Silicon metal: Measures in force*, Government of Canada, extracted from <https://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/sm-eng.html> on 10 February 2025.

PUBLIC RECORD

levels of subsidy during the inquiry period. The Countervailing Duty Notice is a valid legal instrument that specifies the amount of countervailable subsidy received in respect of the goods and notifies that section 10 of the Dumping Duty Act applies to these goods. Noting that no interested party has sought a review or revocation of countervailing measures since they were last continued, that is, no review of measures has modified the amount of countervailable subsidy, it is the relevant information of the countervailing duty applying to these goods. Furthermore, since the measures were continued in 2020 dumping duty has been collected on goods exported from China and no duty assessments have been lodged. The fact that no interested party has sought to have the variable factors changed means that the Countervailing Duty Notice remains the most current information available relevant to the goods the subject of the inquiry and representative of the level of subsidisation occurring during the inquiry period.

The commission has however, as detailed in section 7.3, identified certain subsidy programs reflected in the current Countervailing Duty Notice that are no longer applicable and has revised the subsidy margin accordingly.

Considering the subsidy margins determined during the original investigation, and the previous continuation inquiry, the Commissioner has found a consistent pattern of subsidisation of Chinese exporters since measures were imposed in 2015. The Commissioner is reasonably satisfied that Chinese exporters' prior and consistent behaviour in exporting goods at subsidised prices, and in the absence of contemporary evidence suggesting a change in that behaviour, is relevant information for assessing the likelihood that subsidisation would continue if the measures expired.

8.7.3 Estimate of competitiveness of undumped and unsubsidised prices in Australia

The commission observed from its analysis of the composition of the Australian market that since the measures were imposed in 2015, 96% of silicon metal sold in the Australian market was either manufactured by Australian industry or imported from China. Given the small volumes of silicon metal imported from a range of other countries, the commission considers that pricing within the Australian market is predominantly a function of the competitive price dynamic between Australian manufactured silicon metal and imports from China. Product quality and access to supply are also factors in purchasing decisions, however it is understood that customers can change to imported products relatively easily should significantly cheaper products be available that meet the quality requirements of the customer.⁷⁰

The commission has therefore considered the competitiveness of undumped and unsubsidised prices of Chinese imports to inform its analysis of the likelihood of silicon metal being exported to Australia in the future at dumped and subsidised prices. To assess the competitiveness of undumped and unsubsidised prices of Chinese imports in the Australian market, the commission compared Australian industry's selling prices against estimated undumped and unsubsidised selling prices for Chinese imports. Noting the lack of cooperation from Chinese exporters and the GOC, the commission has relied

⁷⁰ EPR 651, document No. 4, p 8

PUBLIC RECORD

on Australian industry's verified sales data in conjunction with ABF import data to complete the analysis.

The commission has estimated a delivered undumped and unsubsidised price for Chinese imports using the landed price of these imports as recorded in the ABF import database, uplifted for delivery costs. The landed price of the imports from China is the price inclusive of dumping and countervailing duties. The commission considers this to be the most relevant proxy for an undumped and unsubsidised landed price on the basis that the application of the dumping and countervailing duty is designed to recalibrate the price of imports to an undumped and unsubsidised level. The commission has used the verified delivery costs of Australian industry as the most relevant available information.

The commission's comparison of Australian industry's delivered selling prices against the estimated undumped and unsubsidised Chinese selling prices is illustrated in Figure 8.⁷¹ The commission has undertaken the analysis for the period from 1 July 2019 on a quarterly basis. It is important to note that imports from China were not observed in every quarter of the period analysed. The commission has therefore only included Australian industry prices for those quarters where imports from China have been identified in Figure 8.

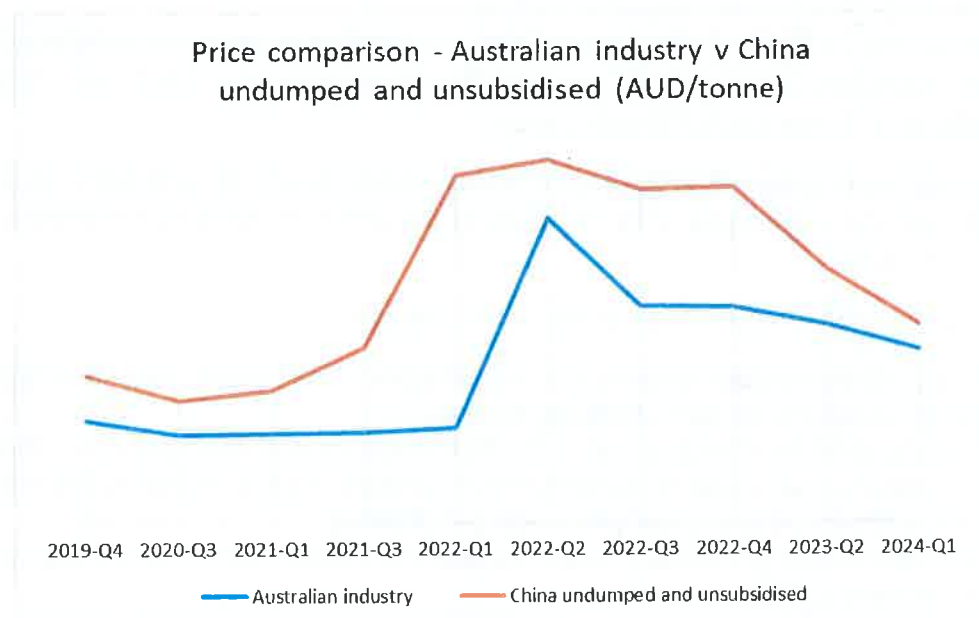


Figure 8: Price comparison – Australian industry selling prices against estimated undumped and unsubsidised Chinese selling prices (AUD/tonne)

Figure 8 indicates that, while the pricing trends for both Australian industry sales and imports from China were similar over the period assessed, in each quarter where Chinese imports were observed, the estimated undumped and unsubsidised price of imports from China was considerably higher than Australian industry's selling prices.

⁷¹ SEF 651 – Confidential Attachment 4 – Likelihood that dumping and injury will continue – Estimated undumped prices

PUBLIC RECORD

The Commissioner considers that for imports from China to be price competitive they would need to be dumped and/or subsidised, and it is therefore likely that future exports would continue to be dumped and subsidised.

8.7.4 Anti-dumping actions in other jurisdictions

As detailed in section 8.6.4 there are 22 anti-dumping and countervailing measures in force globally in relation to silicon metal, including Canada, the EU and the USA.

The commission notes the extent of anti-dumping and countervailing measures in other jurisdictions and the preparedness of Chinese exporters to export silicon metal at dumped and subsidised prices. Most recently, the EC has initiated a safeguard investigation into imports of manganese and silicon-metal based alloying elements (including silicon metal), as outlined by Simcoa in their submission following the publication of the SEF.⁷²

8.8 Will material injury continue or recur?

In REP 237 the commission found that the Australian industry had experienced material injury in the form of lost sales volumes and market share, price depression and price suppression and reduced profit and profitability.

The commission's analysis is conducted within the context of assessing whether in the absence of measures there will be a continuation or recurrence of the forms of material injury established in the original investigation.

The commission considers that the expiry of the measures would be likely to lead to a continuation of or a recurrence of material injury that the anti-dumping measures are intended to prevent.

This finding is based on the following significant factors:

- Since 2010 Australian industry and imports from China have been the dominant sources of supply to the Australian market.
- While demand for silicon metal in the Australian market has been in decline since the measures were last continued, the Australian market remains concentrated, with a limited number of suppliers and purchasers.
- Australian industry's primary customer has also historically sourced the goods directly from China.
- Prior to the imposition of measures in 2015 imports from China accounted for over 90% of sales in the Australian market, however China's influence has declined since measures were imposed such that during the inquiry period it accounted for a negligible volume of sales.
- Pricing analysis shows that following a period during COVID where the price of Australian silicon metal and Chinese imports diverged, pricing has reconverged and in the absence of measures the commission estimates that the price of Chinese imports would likely have undercut Australian industry by between 16% and 24% during the inquiry period.

⁷² EPR 651, document No.10

PUBLIC RECORD

- In the absence of measures, dumped and subsidised imports from China would likely undercut Australian industry pricing leading to a recurrence of price depression and price suppression, and material reductions in revenue and profit.
- If Australian industry is unable or unwilling to compete on price, it is likely that Australian industry will experience material reductions in sales volumes and market share, noting the maintenance of distribution links and excess production capacity of Chinese exporters and the fact that Chinese exporters held a 90% share of the Australian market prior to the imposition of measures.

To form this view the commission has assessed the likely effect of price and volume in the absence of measures, as well as other potential causes of injury to Australian industry, as outlined in the sections below.

8.8.1 Pricing analysis

As detailed in chapter 3, the commission considers that the Australian-produced goods and the imported goods have similar end uses, meet similar quality specifications and standards, are sold to the same types of customers and compete directly with each other in the same market segments. While demand in the Australian market has been in decline since the measures were last continued, the commission observed that the competitive dynamic within the Australian market remains unchanged - the market remains concentrated with a limited number of suppliers and consumers of silicon metal.

Previous investigations and inquiries conducted by the commission indicate that price is an important factor in customers' purchasing decisions.⁷³ This is along with the quality of the product and continuity of supply.⁷⁴

To inform its consideration of the likely effect on prices should the measures expire, the commission compared Australian industry's selling prices against constructed selling prices for Chinese imports in the absence of measures.

The commission has constructed a delivered duty-free price for Chinese imports using the landed price of these imports as recorded in the ABF import database less the dumping and countervailing duties levied, uplifted for delivery costs. This method effectively simulates the price of the Chinese imports in the absence of measures.

The commission's comparison of Australian industry's delivered selling prices against Chinese imports in the absence of measures is illustrated in Figure 9. The commission has undertaken the analysis for the period from 1 July 2019 on a quarterly basis. It is important to note that imports from China were not observed in every quarter of the period analysed and therefore Figure 9 only includes quarters where Chinese imports were observed.

⁷³ Investigation 237, Continuation Inquiry 524

⁷⁴ EPR 651, document No. 4

PUBLIC RECORD

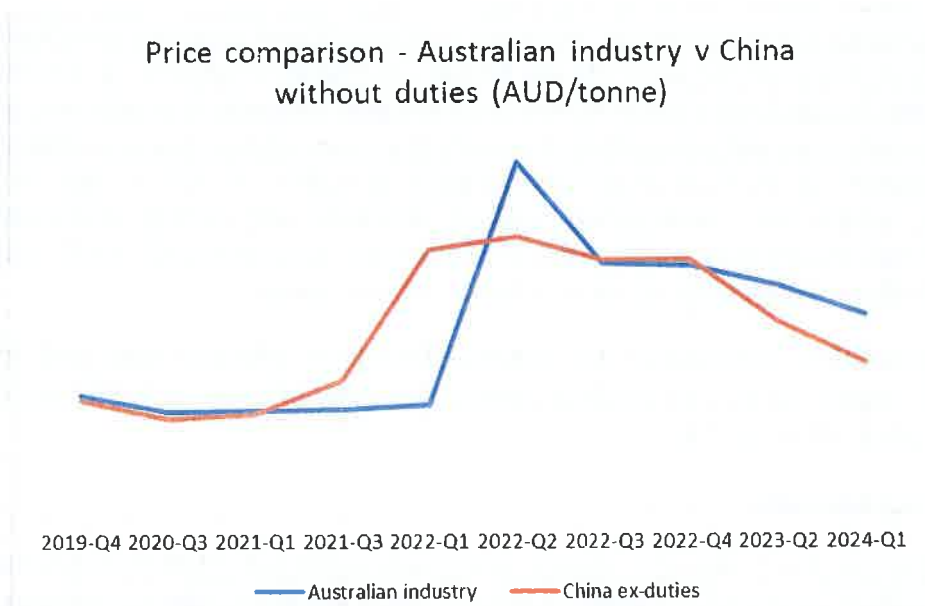


Figure 9: Price comparison – Australian industry selling prices against Chinese selling prices without duties (AUD/tonne)

Figure 9 indicates that until 2021 Australian industry's prices tracked closely against the price of Chinese imports (net of duties). The economic disruptions caused by the COVID pandemic, including global shipping constraints, resulted in significant increases in the price of silicon metal and a divergence in the pricing trends between Australian manufactured goods and those imported from China. As the disruptive effects of the pandemic began to abate, pricing reconverged toward the end of 2022 and has been on a downward trend since 2023. It is also evident that from the final quarter of 2022 the price of Chinese imports net of duties has trended downward at a faster rate than the price of Australian manufactured silicon metal, such that, in the absence of duties, dumped and subsidised imports from China would have undercut Australian industry in the range of 16% to 24%.

The commission considers that this pricing analysis supports a finding that, should measures be removed, it is likely that dumped and subsidised imports from China would undercut Australian industry's prices. Noting that the Australian market has historically been supplied almost entirely by Australian industry and imports from China, the commission considers that in the absence of measures dumped and subsidised imports from China would likely undercut the prices of Australian industry to such an extent that Australian industry would need to reduce prices to compete. This would likely lead to a recurrence of price depression and price suppression and a material reduction in revenue and profit.

8.8.2 Volume analysis

As detailed in section 8.8.1 above, the commission considers it likely, in the absence of measures, that Chinese exporters will continue to export silicon metal at dumped and subsidised prices that undercut the Australian industry. Should the Australian industry be

PUBLIC RECORD

unwilling or unable to reduce prices to compete with these dumped and subsidised exports the commission considers it will likely cede sales volumes and market share.

The commission considered the historical composition of the Australian market in chapter 4. The commission's findings in relation to market share are reproduced in Figure 10 below.

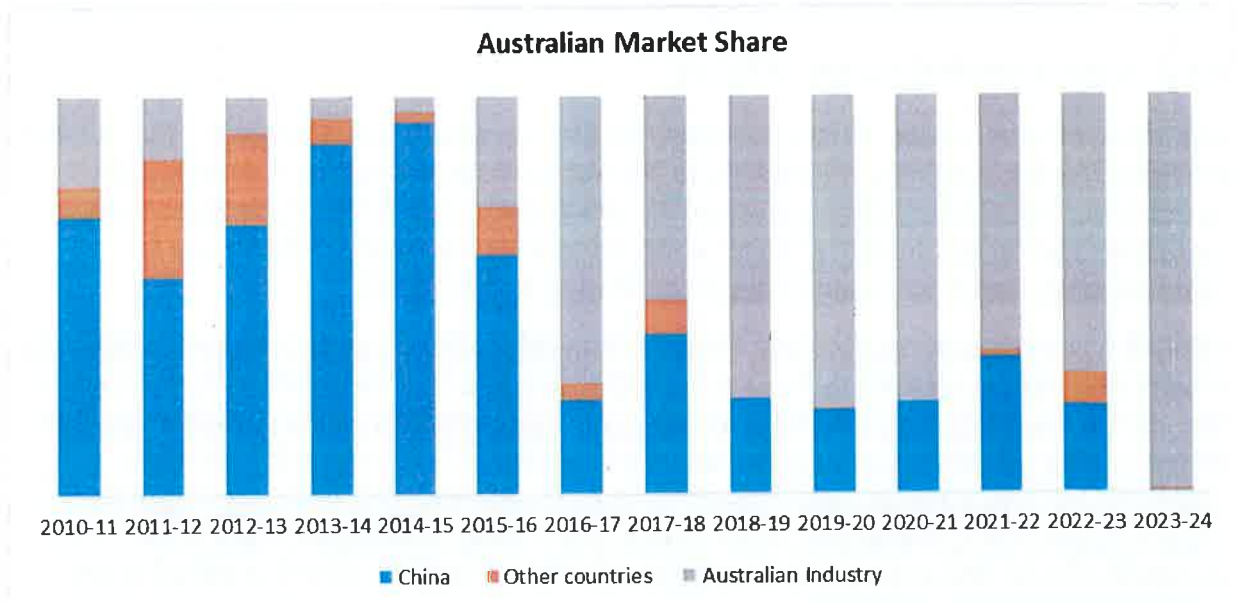


Figure 10: Australian market share (%)

Figure 10 indicates that in each of the years prior to the imposition of measures in 2015 Chinese imports accounted for over half of all sales of silicon metal in the Australian market, and in the final year before measures were imposed this had increased to over 90%.⁷⁵ While there have been sporadic and small volumes of exports from other sources since measures were imposed, the Australian market has effectively been dominated by Australian manufactured silicon metal and imports from China.

Noting that Chinese exporters maintain excess production capacity and have maintained distribution links to the Australian market, and further, that the primary customer of Australian industry has continued to source shipments from its Chinese supplier since the measures were imposed, the commission considers it likely that Chinese exporters would continue to export at dumped and subsidised prices that, in the absence of measures, would undercut Australian industry with the objective of reclaiming the significant market share they enjoyed prior to the measures. Given that during the inquiry period Australian industry supplied almost the entirety of the Australian market, any increase in the market share of Chinese imports would be at the direct expense of Australian industry (rather than displacing, for example, imports from other sources). The commission also notes that prior to the imposition of measures, Chinese exporters held around 90% of the Australian market. Should the measures expire and Chinese exporters regain that level of market share, the injury to Australia industry would be material. In addition, Australian

⁷⁵ SEF 651 – Confidential Attachment 4 – Likelihood that dumping and injury will continue – Market size and composition.

PUBLIC RECORD

industry's current domestic sales represent approximately 10% of their total sales, as opposed to 1% when measures were implemented, making their total business more vulnerable to changes in the Australian market.

The Commissioner is therefore satisfied that these outcomes would likely lead to a recurrence of injury, in the form of reduced market share and reduced sales volume, caused by dumped and subsidised exports from China.

8.8.3 Other potential causes of injury

Australian industry noted, in its Australian Industry Questionnaire response, other general economic factors that may be relevant to the economic performance of its domestic operations, notably Australia's power policy which discourages heavy electricity usage industries and environmental policies which constrain investment.⁷⁶ Electricity is approximately half of the input in the production of silicon metal.

While the commission accepts that these factors (as outlined below in further detail) may have a detrimental impact on the cost competitiveness of Australian industry, they do not negate the likely injurious effects of dumping and subsidisation which provide exporters with an unfair pricing advantage. As detailed in section 8.7.3, even with domestic economic policies such as those identified by Australian industry that may negatively impact its cost competitiveness, Australian industry was nonetheless more price competitive than undumped and unsubsidised Chinese exports over the period since measures were last continued.

The commission did not receive submissions from interested parties concerning other factors that may have caused injury to the Australian industry for silicon metal. Notwithstanding this, the commission identified the below factors during the conduct of the inquiry which may have caused injury to the Australian industry as part of its assessment.

Imports of the goods from countries not subject to measures

The commission examined the volumes of goods exported from countries that were not subject to measures. Since the continuation of measures in 2015 the volume of imports from countries not subject to measures represented less than 5% of the total volume of sales of silicon metal in the Australian market.⁷⁷ The commission does not consider that imports from other countries have been of sufficient volume to have caused material injury to the Australian industry, or that imports from these countries are likely to increase to levels that would likely cause material injury to Australian industry in the future. The commission did not find any evidence to suggest that the economic condition of the Australian industry has been, or would likely be, influenced by exports from countries not subject to measures.

⁷⁶ EPR 651, document No. 4, p 16

⁷⁷ Attachment 4 – Likelihood that dumping and injury will continue – Market size and composition.

PUBLIC RECORD

Australian market conditions for silicon metal

As detailed in chapter 4, other than for an increase in the 2021-22 financial year, the total size of the Australian market has been in decline since the 2017-18 financial year. The size of the Australian market for the inquiry period was around one third of the size of the market in 2017-18 and one quarter of the size of the market at its peak in 2010-11. The commission considers that reducing demand for silicon metal in the Australian market will likely have an adverse impact on the economic condition of the Australian industry and that in circumstances where the domestic market is in decline Australian industry is more vulnerable to the injurious effects of dumped and subsidised exports.

Profit

The profitability of Australian industry's export sales of silicon metal has been declining in recent years. Australian industry's domestic sales have been more profitable than their export sales, including during the inquiry period. While domestic sales make up a small proportion of Australian industry's total sales, the business is vulnerable to a reduction in domestic sales profit caused by dumped and subsidised goods, as it will still have a marked effect on Australian industry's total profit, including both domestic and export sales. In REP 237, the material injury to Australian industry, in terms of lost profit, was calculated to be around 10%.

Other considerations

The commission notes that Australian industry has not claimed it has experienced material injury as a result of dumped imports for the period 1 July 2019 to 30 June 2024. However, Australian industry has claimed that the injury will recur in the absence of measures. In addition to the analysis above, the commission noted that over the past 10 years, the Australian industry's asset value, total revenue and employment numbers have increased.

8.9 Conclusion

Taking the above analysis into account, the Commissioner is satisfied that there is sufficient evidence to support a finding that, in the absence of the anti-dumping measures, exports of silicon metal from China:

- are likely to continue and be in greater volumes
- are likely to be at dumped and subsidised prices
- are likely to undercut Australian industry's selling prices, such that Australian industry would experience a recurrence of material injury in the form of price depression and or price suppression should Australian industry reduce prices to compete, or lost sales volume and market share should Australian industry be unwilling or unable to lower prices to compete with the increased volume of dumped and subsidised exports.

As a result, the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation or recurrence of the dumping, subsidisation, and material injury that the anti-dumping measures are intended to prevent.

9 NON-INJURIOUS PRICE

9.1 Finding

The commission has assessed that none of the exceptions to the mandatory consideration of the lesser duty rule apply in this case. Therefore, the Minister is required to have regard to the desirability of fixing a lesser rate of duty based on the calculation of the NIP.

The commission has determined that the NIP has changed for uncooperative and all other exporters. According to the lesser duty rule, the NIP will be operative and used to determine the ICD and IDD payable for uncooperative and all other exporters if the NIP is less than the sum of:

- the export price ascertained for the goods
- the IDD payable on the goods
- the ICD payable on the goods (where applicable)

The commission has assessed in this case, that if the lesser duty rule is applied, the NIP will be operative. The commission's calculation of the NIP is contained in **Confidential Attachment 6**.

Table 11 shows the rates of IDD and ICD that would be payable by all exporters from China based on whether the lesser duty rule is applied.

Exporter	Rates	IDD		ICD	Combined IDD and ICD ⁷⁸	Form of measures
		Before LTAR removed	After LTAR removed			
Uncooperative and all other exporters	Before lesser duty rule is applied	32.4%	25.3%	29.4%	54.7%	Ad Valorem
	After lesser duty rule is applied	16.2%		29.4%	45.6%	

Table 11: Combined IDD and ICD rates dependant on the lesser duty rule

While the Minister must have regard to the desirability of applying the lesser duty rule, the Minister retains discretion. In this case, the Commissioner considers that the Minister should exercise his discretion to apply a lesser amount of duty on the basis that the lesser amount is adequate to remove the likely injury to the Australian industry given the current economic condition of the Australian industry and changes in the market since the measures were last reviewed.

⁷⁸ LTAR removed

9.2 Legislated Framework

The NIP is defined in section 269TACA as the minimum price necessary to prevent the injury or a recurrence of the injury caused by the dumping. The NIP is a variable factor relevant to determining duty payable under the Dumping Duty Act.

Where the Minister is required to determine the IDD, section 8(5B) of the Dumping Duty Act applies. Where the Minister is required to determine both ICD and IDD, sections 8(5BA) and 10(3D) of the Dumping Duty Act apply.

Sections 8(5BA) and 10(3D) require the Minister to have regard to the 'lesser duty rule' when determining the ICD and IDD payable. In respect of concurrent dumping and countervailing notices, the lesser duty rule requires the Minister to consider the desirability of fixing a lesser amount of duty such that the sum of the export price (of the goods ascertained for the purposes of the notices), the ICD and the IDD, do not exceed the NIP.

Pursuant to sections 8(5BAAA) and 10(3DA) of the Dumping Duty Act, the Minister is not required to have regard to the lesser duty rule where one or more of the following circumstances (exceptions) apply:⁷⁹

- the normal value of the goods was not ascertained under section 269TAC(1) because of the operation of section 269TAC(2)(a)(ii)
- there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises⁸⁰
- if an exporter of the goods has received a countervailing subsidy in respect of the goods – where the exporter's country has not complied with Article 25 of the World Trade Organization (WTO) Agreement on Subsidies and Countervailing for the compliance period.

Where any of the above exceptions apply, the Minister is not required to consider the lesser duty rule but may still exercise the discretion to do so.

9.3 Assessment of exceptions to the lesser duty rule

For exporters subject to the anti-dumping and countervailing measures, the commission does not consider that any of the exceptions in the Dumping Duty Act apply because:

- The normal value of the goods was not ascertained under section 269TAC(1) of the Act because of the operation of section 269TAC(2)(a)(ii) of that Act.
- The Australian industry does not consist of at least 2 small-medium enterprises.
- China has complied with Article 25 of the WTO Agreement on Subsidies and Countervailing for the compliance period.

⁷⁹ Sections 8(5BAAA)(a) to (c) of the Dumping Duty Act concern the calculation of dumping duty and sections.

⁸⁰ As defined in the Customs (Definition of 'small-medium enterprise') Determination 2013

PUBLIC RECORD

On the basis that no exceptions apply, the Minister is required to consider the desirability of applying the lesser duty rule for all exporters subject to the anti-dumping and countervailing measures.

9.4 Unsuppressed selling price

The legislation does not prescribe a method of calculating a NIP, but there are several methods outlined in the Manual.⁸¹ The commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This commission refers to this price as the unsuppressed selling price (USP).

The Manual provides that the commission will normally use the following approaches, in order of preference, for establishing a USP, subject to the facts of the case:

- Australian industry's selling prices in a period unaffected by dumping and subsidisation
- the constructed approach, using the Australian industry's CTMS plus a reasonable amount for profit
- selling prices of undumped and unsubsidised imports in the Australian market.

In this case, the commission considers that the most appropriate method of determining the USP is Australian industry's selling prices during the inquiry period. The commission notes that the volume of dumped imports during this period has declined to very low levels. As a result, the commission does not consider that Simcoa's selling prices were affected by dumping or subsidisation during this period.

The USP calculation is contained in **Confidential Attachment 6**.

9.5 Non-injurious price

The Commissioner has calculated a NIP by deducting from the USP the costs incurred in getting the goods from an export FOB point in China to the relevant level of trade in Australia. The deductions include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

The commission's NIP calculation is at **Confidential Attachment 6**.

9.6 The commission's assessment in the SEF

In the SEF, the commission preliminarily assessed that the calculated NIP for the category of 'uncooperative and all other exporters' from China is less than the sum of:

- the export price ascertained for the goods
- the IDD payable on the goods
- the ICD payable on the goods (where applicable).

⁸¹ The Manual, p 107

PUBLIC RECORD

On the basis that no exceptions apply, the Minister is required to consider the desirability of applying the lesser duty rule to all Chinese exporters in the 'all other exporters' category. Table 12 shows the rates of IDD and ICD that would be payable by all exporters from China based on whether the lesser duty rule is applied.

Exporter	Rates	IDD		ICD	Combined IDD and ICD ⁸²	Form of measures
		Before LTAR removed	LTAR removed			
Uncooperative and all other exporters	Before lesser duty rule is applied	32.4%	25.3%	29.4%	54.7%	<i>Ad Valorem</i>
	After lesser duty rule is applied	16.2%		29.4%	45.6%	

Table 12: Combined IDD and ICD rates dependant on the lesser duty rule

While the Minister must have regard to the desirability of applying the lesser duty rule, the Minister retains a discretion as to whether or not the rule should ultimately be applied. In this case, the Commissioner considers that the Minister should exercise his discretion to apply a lesser amount of duty on the basis that the lesser amount is adequate to prevent the recurrence of the injury to the Australian industry given the current economic condition of the Australian industry and changes in the market since the measures were last reviewed.

9.7 Submission received regarding the lesser duty rule

9.7.1 Summary of the submission received from Simcoa

In SEF 651, the commission noted that under the Dumping Duty Act, the Minister is required to have regard to the 'lesser duty rule', that is to consider the desirability of fixing a lesser amount of duty such that the sum of the export price (of the goods ascertained for the purposes of the notices), the ICD and the IDD, does not exceed the NIP.⁸³

The Commissioner considered in the SEF that the Minister should exercise his discretion to apply a lesser amount of duty.

In its submission dated 26 February 2025, Simcoa contended that it does not agree with the Commissioner's assessment as to the application of the lesser duty rule, which has the effect of reducing the combined duty rate from 54.7% to 45.6%.⁸⁴ It considers the application of the lesser duty rule to be unwarranted. Simcoa argues against the Commissioner's consideration that the Minister should exercise his discretion to apply the lesser duty on two grounds:

⁸² LTAR removed

⁸³ SEF 651, section 9.2 (EPR 651, document No. 9)

⁸⁴ EPR 651, document No. 10

PUBLIC RECORD

- **Precedent:** Simcoa submitted that there is a precedential disconnect between the approach taken in this case and the approach taken in the most recent continuation of the measures (CON 524) in relation to:
 - a) whether the existence of a particular market situation is sufficient to invoke the exception to the mandatory consideration of fixing a lesser duty; and
 - b) the impact of the lack of exporter cooperation on the desirability of fixing a lesser duty.
- **Economic condition of the market:** Simcoa submitted that, even disregarding precedent, the Minister ought to not apply the lesser duty rule in this case based on the actual current and expected economic condition of the Australian industry and anticipated future market changes.

The Commissioner has had regard to the submission provided by Simcoa and notes the following additional detail provided in Simcoa's response.

To support the view that there is no basis to apply a lesser rate of duty with reference to the current economic condition of the industry, Simcoa submitted that the findings in the SEF supported this position. Simcoa also provided additional contemporaneous data to demonstrate that the economic condition of the industry is in further decline. Simcoa claimed that this additional evidence shows that Australia is likely to become a more attractive destination for dumped or subsidised exports of the goods.

In relation to the analysis in the SEF, Simcoa submitted that the SEF concluded that the Australian industry's economic position has not improved in the period since CON 524. Simcoa also provided additional confidential information demonstrating a further decline from the most recent economic performance outlined in the SEF. Simcoa further claimed that apart from the abnormal impact of COVID, the factors identified are no different from those identified in CON 524. Simcoa submitted that the application of the lesser rate of duty would accelerate the convergence of the price of undumped and unsubsidised exports (cited in Figure 8 of SEF 651), increasing the likelihood of price undercutting in the future.

Simcoa made specific reference to the current measures imposed by the EC and Canada⁸⁵ and reiterated the findings of the SEF in relation to current anti-dumping and countervailing measures in other jurisdictions, and that the lesser rate of duty would make Australia a more attractive market for the goods from China.

Simcoa also submitted evidence that the EC, on 19 December 2024, initiated a safeguard investigation into imports of manganese and silicon-metal based alloying elements which is likely to impact the Australian industry's export sales as well as increase the incentive for Chinese exporters to sell the goods into Australia. Simcoa stated that the application of the lesser duty rule reduces the effectiveness of the Australian trade levelling mechanism and makes the Australian industry susceptible to ongoing material injury from Chinese imports.

⁸⁵ Simcoa have stated that measures for the EC are at 16%, and in Canada at 235% (the dumping duty for non-cooperative Chinese exporters) and CNY\$1,950/tonne as the countervailing measure.

PUBLIC RECORD

9.7.2 The commission's assessment:

Precedent

Simcoa is correct in submitting that the approach taken in the SEF for this inquiry regarding the lesser duty rule differs from the approach taken in CON 524. However, findings in previous cases are not binding and each inquiry is considered on its merits, based on positive evidence before the commission.

Precedent – Particular Market Situation

As outlined above, in this case, as well as in CON 524, the normal value has been calculated under 269TAC(6), rather than 269TAC(1). Normal value has not been ascertained under 269TAC(1) due to the fact that there were no cooperating exporters to provide the domestic sales price information necessary to ascertain the normal value under that provision.

Accordingly, grounds for the exception (pursuant to section 8(5BAAA)(a) and 10(3DA) of the Dumping Duty Act), that relies on the normal value of the goods not being ascertained under section 269TAC(1) due to the operation of subparagraph 269TAC(2)(a)(ii), to apply have not been satisfied. This is the case, notwithstanding that a particular market situation (as defined by 269TAC(2)(a)(ii)) has been found to exist.

As a result, the commission assesses that the exception to the mandatory consideration of the desirability of fixing the lesser duty ought not apply. Further, the commission notes that the exception contained in section 8(5BAAA) and 10(3DA) of the Dumping Duty Act does not remove the Minister's discretion to have regard to the desirability of applying the lesser duty rule but simply removes the requirement to have regard to it.

Precedent – Non-cooperation

In relation to Simcoa's submission regarding the lack of exporter cooperation, while the commission agrees that most facts in this inquiry are consistent with the facts in CON 524, the commission does not agree that the lack of cooperation is necessarily the most important factor to consider. This conclusion is supported by the fact that lack of cooperation is not specified as one of the exceptions to the mandatory consideration of the desirability of applying the lesser duty rule under section 8(5BAAA) and 10(3DA) of the Dumping Duty Act. In this case, the commission has placed greater weight on its consideration of whether or not the lesser amount of duty is sufficient to prevent the recurrence of material injury from dumping and subsidisation that the measures were intended to prevent. This is discussed further under 'economic condition of the industry'.

Economic condition of the industry

In providing additional information regarding the current economic condition of the Australian industry, Simcoa did not specifically address the reasons that they consider the lower duty rate to be inadequate for addressing the injury to the Australian industry. In considering this question, the commission noted that in the year ending 30 June 2024, the Australian industry controlled almost 100% of Australian market for silicon metal with imports from China falling to almost zero (see chapter 5.4.2, Figure 4). The commission also noted that, according to Figure 9 in chapter 8.8.1, in the absence of duties, dumped

PUBLIC RECORD

and subsidised imports from China would have undercut Australian industry in the range of 16% to 24%. It is the commission's view that the lesser rate of duty would be adequate to prevent the recurrence of the material injury from dumping and subsidisation that the measures were intended to prevent.

In considering Simcoa's submission, the commission notes that Simcoa's domestic sales volumes declined in years ending 30 June 2023 and 30 June 2024, market share declined in the year ending 30 June 2023, overall sales (domestic and export) of the Australian industry have been declining since 2018, and that, in the inquiry period, the margin between sales and costs converged (indicating price depression and suppression) and profitability also fell. Although the commission considers this as evidence to support the likelihood of recurrence of injury from dumping and subsidisation, it does not consider it to support the argument that the lesser amount of duty is inadequate for preventing the recurrence of said injury.

The commission assessed Simcoa's submission that the lesser duty rate will make Australia a more desirable market for Chinese exports of the goods. The commission considers the measures in other jurisdictions to be indicative of the preparedness of Chinese exporters to export silicon metal at dumped and subsidised prices. Therefore, it supports the finding that the injury the measures were intended to prevent would likely recur if the measures were to expire. While measures in place on Chinese exports in some other jurisdictions are significant, the commission considers that the measures have been imposed with reference to the facts particular to those jurisdictions and the commission should only consider whether the lesser rate of duty is adequate with reference to the Australian industry.

The Commissioner finds that the proposed measures following the application of the lesser duty rule are adequate for preventing the recurrence of injury to the Australian industry that the measures were intended to prevent. As such, the Commissioner considers that the Minister should exercise his discretion to apply a lesser amount of duty.

10 FORM OF MEASURES

10.1 Findings and recommendations

The Commissioner considers the IDD and ICD payable on silicon metal exported from China should be worked out using the *ad valorem* duty method, which is the same as the current method.

The commission has calculated a dumping margin of 32.4%, which is reduced to 25.3% after the removal of the LTAR (program 1), and a countervailing margin of 29.4%, for uncooperative and all other exporters from China before the application of the lesser duty rule.

After the application of the lesser duty rule, the commission has calculated a dumping margin of 16.2% and countervailing margin of 29.4% for uncooperative and all other exporters from China and therefore considers it appropriate to apply the *ad valorem* duty method due to the NIP being the operative measure.

The Commissioner is satisfied that the current *ad valorem* duty method is the most appropriate form of duty.

10.2 Legislative framework

The *Customs Tariff (Anti-Dumping) Regulation 2013* prescribes the methods available to the Minister for working out the IDD payable. The methods are:

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

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances than others. More detail on the nature and operation of the various forms of duty are contained in the *Guidelines on the Application of Forms of Dumping Duty November 2013* (the Guidelines).

10.3 Form of measures and effective rates of duty

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

11 RECOMMENDATIONS

11.1 Findings and Recommendations

11.1.1 Section 269ZHF(2) Recommendation

This section details the relevant section 269ZHF(2) recommendation made by the Commissioner, as well as findings made in support of that recommendation.

In accordance with section 269ZHF(2), the Commissioner is satisfied that the expiration of the anti-dumping and countervailing measures applicable to silicon metal exported to Australia from China would lead, or would be likely to lead, to a continuation or recurrence of the dumping and subsidisation and the material injury the anti-dumping measures are intended to prevent.

The Commissioner recommends that the measures apply to exporters generally as if different variable factors had been ascertained.⁸⁶ The following rates of IDD and ICD would apply from 4 June 2025.

Exporter	Rates	IDD		ICD	Combined IDD and ICD	Form of measures
		Before LTAR removed	LTAR removed			
Uncooperative and all other exporters	Before the lesser duty rule applied	32.4%	25.3%	29.4%	54.7%	Ad Valorem
	After lesser duty rule applied	16.2%		29.4%	45.6%	

Table 13: Measures resulting from this inquiry

11.1.2 Findings

The commission notes that the Minister is provided with a schedule to this report which outlines the Minister's relevant powers with respect to making a declaration, and determinations, being satisfied and having regard to certain findings of fact, consistent with the following declarations and determinations.

The Commissioner considers that the Minister ought to **declare**:

- in accordance with section 269ZHG(1)(b) that they have decided to secure the continuation of the measures from China.

The Commissioner considers that the Minister ought to **determine**:

- in accordance with subsection 269ZHG(4)(a)(iii), that the dumping and countervailing duty notices continue in force after 3 June 2025 but that, after 3 June 2025, the notices have effect in relation to exporters generally as if different

⁸⁶ Section 269ZHF(1)(a)(iii)

PUBLIC RECORD

variable factors, as set out in section 11.1 and **Confidential Attachments 3, 4 and 6**, had been fixed relevant to the determination of duty.

- having had regard to subsections 269TAAC(2) and (3), and in accordance with subsections 269TAAC(4) and (5), that the subsidies listed in Table 10 are specific.
- in accordance with subsection 269TAB(3), having regard to all relevant information, that the export price for 'uncooperative and all other' exporters is as set out in section 6.3.1 and **Confidential Attachment 3**.
- in accordance with subsection 269TAC(6), having regard to all relevant information, that the normal value for 'uncooperative and all other' exporters is as set out in 6.3.1 and **Confidential Attachment 3**.
- having applied subsection 269TACB(2)(a) and in accordance with subsections 269TACB(1) and (4), that silicon metal exported to Australia from China is taken to have been dumped, and the dumping margins for 'uncooperative and all other exporters' in respect of those goods is the difference between the weighted average export prices of silicon metal over 1 June 2023 and 30 June 2024, and the weighted average of corresponding normal values over that period, as set out in section 6.3.5 and **Confidential Attachment 3**.
- in accordance with subsection 269TACC(1), having regard to all relevant information and subsections 269TACC(2) and (3), that the financial contributions provided under the countervailable subsidies identified in Table 10 of section 7.3.2 confers a benefit.
- in accordance with subsection 269TACD(1), that the amount of countervailable subsidy received in respect of silicon metal by 'uncooperative and all other exporters', expressed as a percentage of the ascertained export price, is 29.4% as set out in **Confidential Attachment 4**.

The Commissioner considers that the Minister ought to be **satisfied**:

- in accordance with subsection 269TAB(3), that sufficient information is not available to enable the export price of silicon metal exported to Australia from China by 'uncooperative and all other' exporters to be ascertained under subsection 269TAB(1).
- in accordance with subsection 269TAC(6), that sufficient information is not available to enable the normal value of silicon metal exported to Australia from China by 'uncooperative and all other' exporters to be ascertained under the preceding subsections of section 269TAC (other than subsection 269TAC(5D)).
- in accordance with subsection 269TACD(1), that countervailable subsidies have been received in respect of silicon metal exported to Australia from China by 'uncooperative and all other' exporters.

The Commissioner considers that the Minister ought to **have regard to**:

- in accordance with subsection 8(5BA), in relation to silicon metal exported to Australia from China, the desirability of specifying a method such that the sum of the amounts outlined in subsections 8(5BA)(c), (d) and (e) do not exceed the non-injurious price.

PUBLIC RECORD

- in accordance with subsection 10(3D), in relation to interim countervailing duty in respect of silicon metal exported to Australia from China, the desirability of fixing the amount of interim countervailing duty in respect of the goods such that the sum of the amounts outlined in subsection 10(3D)(a), (b) and (c) does not exceed the non-injurious price.

PUBLIC RECORD

APPENDICES AND ATTACHMENTS

Non-confidential Appendix A	Assessment of particular market situation
Non-confidential Appendix B	Proper Comparison of Domestic and Export Prices
Non-confidential Appendix C	Constructed Normal Value
Non-confidential Appendix D	Assessment Of Alleged Subsidy Programs – China
Confidential Attachment 1	Australian Market Analysis
Confidential Attachment 2	Australian industry economic condition and other injury factors
Confidential Attachment 3	Dumping Margin and Normal Value
Confidential Attachment 4	Subsidy Margin
Confidential Attachment 5	Likelihood that dumping and injury will continue
Confidential Attachment 6	Non-Injurious Price and USP
Confidential Attachment 7	Export Analysis – ABF data to end June 2024

APPENDIX A: ASSESSMENT OF PARTICULAR MARKET SITUATION

A1 Introduction

In previous inquiries, including most recently in CON 524, the Commissioner has found that a particular market situation existed in respect of the domestic market for silicon metal in China which rendered sales in that market unsuitable for use in determining a normal value. Simcoa's current application contends that a particular market situation continues to exist in respect to the domestic market for silicon metal in China.⁸⁷

The commission recalls that no exporters cooperated with this inquiry. The commission has considered the available evidence, including the findings from CON 524. Having regard to all available information, the Commissioner is satisfied that a particular market situation continues to exist in respect of the domestic market for silicon metal in China. The existence of a particular market situation has been relied upon in the commission's calculation of normal value under section 269TAC(6).

In conducting its particular market situation assessment, the commission has relied upon information gathered during REP 237 and CON 524 in conducting the analysis, alongside additional information received in this inquiry. This is the best information which is currently available to the commission.

The commission further notes that although the information which is being relied upon in undertaking the particular market situation assessment is sourced from REP 237 and CON 524 (in addition to the further information obtained during this inquiry), the commission has performed the analysis afresh, based on that information.

The commission considers that information from REP 237 and CON 524 is still the most reliable for its analysis as it was based on verified exporter data, and information provided by the GOC directly in regard to electricity input costs. The commission did not receive such cooperation for this inquiry.

Having conducted a fresh examination of the information in REP 237 and CON 524 relating to the existence of a particular market situation in China for silicon metal, the Commissioner is reasonably satisfied that the evidence supports the following findings (considered in further detail below):

- the GOC has maintained export tariffs on ferro-silicon including during the current inquiry period
- the GOC abolished the VAT export refund on silicon and non-ferrous metals from September 2006 onwards
- in relation to the cost of coal, the *13th Five-Year Plan (2016-2020)* refers to a number of cuts to coal consumption and a restructure of the domestic coal market. Specific provinces in China have either closed or renovated coal mines based on

⁸⁷ EPR 651, Application, document No. 1

PUBLIC RECORD

the annual capacity. These factors impact the cost of coal, which represents approximately 8% of the cost to manufacture silicon metal

- provinces in China have reduced electricity costs in key silicon production zones. This is specifically to ensure the competitiveness of silicon manufacturers and ensure output
- the GOC continues to support silicon projects
- according to the 13th Five-Year Plan (2016-2020), the GOC intend to catch up and exceed international energy efficiency standards with a focus on six major energy-intensive industries, one of them being the non-ferrous metal industry. The Five-Year Plan also notes the encouragement of China's equipment, technology, standards and services to go global by engaging in international cooperation
- the GOC has continued to exert influences on the Chinese silicon metal industry, which have substantially distorted competitive market conditions in the industry in China.

A2 Australian legislation, policy and practice

Australia treats China as a market economy for anti-dumping purposes, and the commission conducted this inquiry in the same manner for China as it does for other market economy members of the WTO.

Irrespective of the country whose products are the subject of inquiry, the Australian anti-dumping framework allows for rejection of domestic selling prices as the basis for normal values where there is a 'particular market situation'. This is only if the particular market situation renders sales in that market unsuitable for use in determining a price that would permit proper comparison with the export price in determining the margin of dumping.

A2.1 Legislation

Section 269TAC(2)(a)(ii) implements, in part, Article 2.2 of the ADA:

When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country [footnote omitted], such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

Where a particular market situation is found to exist in the domestic market of the exporting country, pursuant to section 269TAC(2)(a)(ii), the commission must further consider whether, because of that situation, sales in that market are unsuitable for determining a price under section 269TAC(1).

As part of this assessment, and in accordance with the findings of the WTO Panel in DS529, *Australia – Anti-Dumping Measures on A4 Copy Paper from Indonesia*, the

PUBLIC RECORD

commission assesses whether, because of that particular market situation, domestic prices can be properly compared with the export prices. Appendix B sets out the commission's consideration of whether sales in the Chinese domestic market are suitable to permit a proper comparison.

Where the commission determines that, because of the particular market situation, domestic sales are unsuitable for determining a price under section 269TAC(1). Normal values may instead be constructed under section 269TAC(2)(c) or determined by reference to prices from a third country under section 269TAC(2)(d).

A2.2 Policy and practice

The Act does not define or prescribe what is required to reach a finding of a particular market situation. A particular market situation will arise when there is some factor or factors affecting the relevant market in the country of export generally. When considering whether a particular market situation renders sales unsuitable for use in determining a normal value under section 269TAC(1), the commission may consider factors such as whether:

- government intervention in the industry and/or market of the exporting country results in prices that are lower or not substantially the same as they would otherwise be
- there are other conditions in the market that render sales in that market unsuitable for use in determining prices under section 269TAC(1).

The Manual provides further guidance on the circumstances in which the commission will find that a particular market situation exists.⁸⁸ In particular, with respect to prices of inputs in the manufacture of the like goods, the Manual states:

Prices may also be artificially low or lower than they would otherwise be in a competitive market due to government influence and distortion of the costs of inputs. The mere existence of any government influence on the cost of inputs would not be enough to make sales unsuitable. The commission looks at the effect of this influence on market conditions and the extent to which domestic prices can no longer be said to prevail in a normal competitive market.⁸⁹

Further according to the Manual, "market conditions will no longer be said to prevail when ... government owned enterprises, together with any unprofitable sales by those same enterprises, has caused a significant distortion to the prices received by private enterprises."⁹⁰

⁸⁸ The Manual, p. 29

⁸⁹ The Manual, p. 29

⁹⁰ The Manual, p. 29

PUBLIC RECORD

A3 Market situation in this inquiry

As outlined above, in REP 237 and CON 524 the Commissioner made a market situation finding in relation to the Chinese domestic market for silicon metal. This finding was based on information from the following sources:

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

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

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

For the purpose of this inquiry, the commission has considered the same information received in REP 237 and CON 524, alongside the additional information obtained from secondary sources. The commission has not received information in the current inquiry from the GOC, Chinese exporters or any other interested party, relevant to determining whether a market situation exists in China. Based on the evidence, the Commissioner finds that there is a market situation which exists in China in respect of silicon metal. The Commission's assessment of the available evidence with regard to a market situation is below.

GOC Export Control Measures

1. Export tariff

The commission has obtained evidence indicating that the GOC has maintained export tariffs on ferro-silicon including during the current inquiry period.⁹¹ China has opted to keep the duties as it aims to curb the production of energy-sensitive and polluting products.

⁹¹

Refer to

https://www.ferroalloy.net.com/news/the_latest_import_and_export_tax_rates_of_products_in_china_in_2024.html

PUBLIC RECORD

2. Zero refund of VAT on exports

Information available to the commission indicates that the GOC abolished the VAT export refund on silicon and non-ferrous metals from September 2006 onwards.⁹²

GOC influence on cost of electricity input

Information obtained by the commission indicates that provinces in China have reduced electricity costs in key silicon production zones, including recent cost cuts.⁹³ This is specifically to ensure the competitiveness of silicon manufacturers and ensure output.⁹⁴

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

A4 The GOC role in the Chinese Silicon metal market

Information obtained by the commission indicates provinces in China continue to support silicon projects. In 2018 the Yunnan province agreed to a further 100,000 tonne silicon industrial silicon project.⁹⁵

*13th Five-Year Plan (2016-2020)*⁹⁶

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

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

The commission has not found evidence suggesting that this GOC support ceased during the inquiry period.

⁹² Refer to <https://www.lehmanbrown.com/peeling-the-onion/revision-chinese-vat-export-refund/>

⁹³

China's Richest Regions Cut Electricity Prices to Protect Industries, Bloomberg News, January 8, 2025. <https://finance.yahoo.com/news/china-richest-regions-cut-electricity-234702875.html>

⁹⁴ Refer to REP 524, non-confidential appendix 1, p. 40

⁹⁵ Refer to <https://en.imsilkroad.com/p/122074.html>.

⁹⁶ Refer to https://en.ndrc.gov.cn/newsrelease_8232/201612/P020191101481868235378.pdf.

PUBLIC RECORD

A5 Conclusion

Based on the information available to them, the Commissioner finds that the GOC has continued to exert influences on the Chinese silicon metal industry, which have substantially distorted competitive market conditions in the industry in China. These were in the form of broad, overarching GOC macro-economic policies and plans that outline aims and objectives for the Chinese silicon industry, in addition to various taxes, VAT refund policies and export quotas applicable to both silicon metal itself and the cost inputs in the production of the finished goods under investigation. The commission considers these combined factors to have led to a distortion in the domestic selling prices of silicon metal.

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

APPENDIX B: PROPER COMPARISON OF DOMESTIC AND EXPORT PRICES

B1 Introduction

As considered above, a particular market situation has been found in respect of the domestic market for silicon metal in China (as was the case during the original investigation period (REP 237), as well as in CON 524).

In arriving at this finding, the Commissioner has considered the information that underpinned the normal value findings ascertained in REP 237 and CON 524 as part of its assessment of whether a particular market situation exists. This section examines whether, because of the particular market situation, domestic prices can be properly compared to export prices. The Commissioner has considered the information from REP 237 and CON 524 in undertaking its proper comparison assessment.

The normal value for Linan Group was applied to uncooperative and all other exporters in REP 237 and was utilised as the basis for normal values ascertained in CON 524. In respect of its proper comparison assessment, the commission has primarily relied upon information gathered during REP 237 in conducting the analysis. This is the best information which is currently available to the commission, consistent with section 269TAC(6).

The commission further notes that although the information which is being relied upon in undertaking the proper comparison assessment is primarily sourced from the original investigation, the commission has performed the analysis afresh, based on that information.

The commission considers that information from REP 237 and CON 524 is still the most reliable for its analysis as it was based on verified exporter data, and information provided by the GOC directly in regard to electricity input costs. The commission did not receive such cooperation for this inquiry.

Having conducted a fresh examination of the information in REP 237 relating to a proper comparison assessment, the Commissioner is reasonably satisfied that the information supports the following findings (considered in further detail below).

- the relationship between price and cost and the prevailing conditions of competition in China is different in comparison to the relationship between price and cost and the prevailing conditions of competition in Australia. This relationship defines the conditions of competition in China.
- the particular market situation on the domestic sales prices in China does not result in any competitive advantages or disadvantages between market participants, being Chinese producers
- Chinese producers pass on their lower input costs to the customer with reduced prices
- In Australia, where no particular market situation or input cost decrease exists, competitive pricing prevails at a higher level. Higher production costs for those

PUBLIC RECORD

participants producing without the benefit of a particular market situation established a higher minimum threshold for competitive prices

- Chinese exporters enjoy a cost advantage that manifests as an increased margin at the prevailing level of competitive pricing in the Australian market, a lower export price that undercuts the Australian industry pricing, or a combination whereby the Chinese manufacturer can enjoy a higher margin while still undercutting Australian industry.

B1.1 Proper comparison of domestic and export price

When assessing the relative effect of the particular market situation on domestic prices and export prices, the commission has compared the existing relationships between price and cost in the domestic market and export market of the exporting country. In relation to the domestic sales price, the relevant market is the domestic market of the exporting country (i.e., China); for the export price, the relevant market is that in the country into which the goods are being sold (i.e., Australia). In assessing the existing relationship between price and cost within each market, it is important to note that those relationships are defined by the prevailing conditions of competition in each market. It is also important that the relevant factual circumstances of each price, including its relationship with cost, is considered within the proper context of the relevant market.

Taking these considerations into account, the commission has examined the following:

- the relationship between raw material costs and the domestic prices and Australian export prices for the goods for each relevant producer of the goods and like goods
- the domestic market conditions (the particular market situation) leading to those costs and prices
- export market conditions.

The commission considers that the relationship between cost, price and competition will provide insight into the effect of the particular market situation in the country of export (domestic prices) and Australian markets (export prices). In turn, it will provide insight into whether a proper comparison is permitted between domestic prices and Australian export prices.

In particular, the commission has undertaken:

- a *quantitative* assessment of prices, noting that '...a purely numerical comparison between the two prices may not reveal anything about whether the domestic price can be properly compared with the export price'⁹⁷
- a *qualitative* assessment of prices, to '...focus on how the particular market situation affects that comparison'.⁹⁸

This approach assesses both the effect of the particular market situation on domestic and export prices. This is because while '...a particular market situation may have an effect on

⁹⁷ DS529 – para. 7.75

⁹⁸ DS529 – para. 7.75

both domestic and export prices, it does not follow that the impact on domestic and export prices will be the same'.⁹⁹

B2 Prevailing conditions of competition in Australia

B2.1 Market structure

Chapter 4 of this report discussed the Australian market for silicon metal. In summary:

- Australian industry and imports from China and other countries supply the Australian market, selling directly to end customers
- Australian industry supplies the greatest volume in Australia, with small volumes supplied from China, along with other countries not subject to measures
- Australian produced goods and the imported goods have similar end uses, meet similar specifications, are sold to the same types of customers and compete directly with each other in the same markets
- Demand for silicon metal in Australia is closely aligned to demand for aluminium products and is therefore susceptible to changes in both government and private investment.

The commission considers the Australian market for silicon metal is a competitive market, characterised by a number of suppliers and customers engaging in commercial negotiations.

B2.2 Raw materials

The main raw material inputs used in the production of the goods in Australia are quartz, charcoal, petroleum coke and woodchips. REP 237 established that electricity and coal contribute a large proportion of the production costs for both Australian industry and exported product from China.¹⁰⁰

The commission understands that the final price of silicon metal is a major factor that influences an Australian customer's purchase decision.

B2.3 Import penetration in the Australian market

During the original investigation period for REP 237 a large proportion of the Australian market was supplied by exporters from China, with a small volume being supplied from other countries. The commission identified 16 potential exporters from China and 3 of these exporters cooperated with the investigation. The commission also identified a number of importers.

In addition, the commission found during CON 524 and has found in the context of this inquiry, exporters have continued to supply the goods and have maintained distribution links with importers in the Australian market (section 8.6).

⁹⁹ DS529 – para. 7.76

¹⁰⁰ REP 237

PUBLIC RECORD

The presence of a single Australian producer of the goods and a number of importers with material import volumes during the original investigation period for REP 237, CON 524 and this inquiry indicates to the commission that the Australian market for silicon metal can be characterised as having a high level of import penetration contributing to a highly competitive market for the goods between participants.

B3 Prevailing conditions of competition in China

B3.1 Market structure

The commission sent the GOC a questionnaire at the beginning of this inquiry requesting information, among other things, in relation to the silicon metal market in China. The commission did not receive a response to this questionnaire. The commission also did not receive a response from the GOC during the previous continuation (CON 524). However, while in the original investigation (REP 237) the GOC did respond to the commission's government questionnaire, the GOC did not provide specific responses to the market structure relating to silicon metal market in China.

In the absence of information to the contrary, the commission considers that information underpinning the analysis of the Chinese market for the goods from REP 237 remains relevant. Specifically, the commission has examined that information afresh and the Commissioner has found that the market situation in China reduces production and selling risks for producers and reduces input costs across all production. This lowers silicon metal prices throughout the market, such that prices reflect the lowered input costs for major items such as electricity and coal. In this way, the market situation directly affects the silicon metal prices for all market participants manufacturing and selling silicon metal.

B3.2 Raw materials - Electricity

From the data provided to the commission during REP 237, one of the major input costs in the production of the goods in China is electricity, purchased from Chinese providers.

The commission was provided with verified electricity costs for the Linan Group for REP 237. The commission compared these costs to the electricity tariff rates identified as 'Other Large Industry' on the schedule of tariff rates provided by the GOC in REP 237. Upon reviewing the schedule of tariff rates, the Commissioner has found that the Linan Group was paying less than the costs for electricity during the original investigation period.

B3.3 Import penetration in the Chinese market

The commission examined the ABF import database and noted there were more Chinese exporters of the goods than exporters from any other country during the original inquiry period. The commission also found in REP 237 that no other countries represent significant sources of supply of silicon metal to Australia during the investigation period and that China was the major source of supply.

Simcoa claims in its application that China remains the world's largest producer (as it was in REP 237) of silicon metal and that its capacity and production continues to increase.

PUBLIC RECORD

This claim was supported by evidence from a variety of sources.¹⁰¹ The evidence in the application also states that Chinese production of silicon metal is not only well above the domestic consumption, but also well above the total world demand for silicon metal.¹⁰² The commission finds it reasonable to conclude from this evidence that China's capacity to produce silicon metal has increased since the measures were last continued.

Given the relative size of Australia's customer base compared to China's, the Commissioner considers the number of Chinese manufacturers supplying the Australian market would represent only a small portion of all Chinese manufacturers.

The Commissioner considers that, due to the number of Chinese producers supplying the Chinese market and based on the lower cost of inputs available to those producers, there would appear to be a competitive disadvantage in respect of the importation of the goods into China.

Accordingly, despite noting the limitations in the information before the commission, the Commissioner is reasonably satisfied that on balance, import penetration in the Chinese market for the goods was low in the original investigation period, and continues to be low in the inquiry period, relative to the Australian market.

B4 Relationship between price and cost – China

The commission considers that Chinese producers supplying silicon metal to the Chinese domestic market operate under unique market conditions that differ from those in other countries, including in Australia. Specifically, the particular market situation in China reduces costs across all production due to lower raw material and input costs.

From analysis of the cooperative exporter's records in the original investigation (REP 237), the commission found that raw material costs affected the CTM for both domestic and exported goods equally. During verification, the commission found that the cooperating Chinese exporters used the same facilities, raw material inputs and manufacturing processes to silicon metal for the Chinese domestic market as that exported to Australia, with raw materials (including electricity costs) accounting for the majority of the total CTM.

The commission compared the input costs for silicon metal produced for sale on the domestic market by the cooperating exporter against the input costs produced for export of silicon metal to the Australian market. The commission observed that there was no difference in costs between goods produced for domestic consumption and those produced for export to Australia.

¹⁰¹ EPR 651, document No. 1, Attachment A, pp 4-6

¹⁰² EPR 651, document No. 1, Attachment A, pp.5 (footnote 18, referencing Confidential Attachment 7)

PUBLIC RECORD

B4.1 Chinese domestic prices

During the original investigation (REP 237), the commission received questionnaire responses from three related entities collectively known as the Linan Group.¹⁰³ The commission was unable to therefore compare domestic selling prices for the goods across different Chinese manufacturers as the three related entities were treated as one manufacturer.

Nonetheless, from the evidence before it the Commissioner is reasonably satisfied the Chinese domestic market for silicon metal consists of a number of producers that compete with each other. As a result of this environment for the goods, the lower raw material input costs attributable to the particular market situation directly affect silicon metal prices, such that the prices are lower than they would otherwise have been. Producers of silicon metal are able to pass on these lower costs to the customer through lower prices in China.

This relationship defines the conditions of competition in China. The effect of the particular market situation on the domestic sales prices in China does not result in any competitive advantages or disadvantages between domestic producers selling in the domestic market as it modifies the conditions of competition in a consistent manner for all market participants.

Therefore, the Commissioner considers that Chinese producers have little flexibility with respect to price setting for sales of silicon metal in their domestic market.

B4.2 Chinese export prices

The commission has reviewed import prices available from the ABF import database to undertake its analysis of the relationship between raw material input costs and export prices. REP 237 found that export prices were undercutting Australian industry prices.¹⁰⁴ For this inquiry period, the commission found that, in the absence of duties, dumped and subsidised imports from China would have undercut Australian industry prices in the range of 16% to 24% (section 8.8.1).

The commission also notes that there was a significant price variability amongst Chinese manufacturers into the Australian market.

The commission also notes from REP 237 that the Australian market for the goods was characterised by direct competition between Australian industry and imports from multiple sources (mainly from China) and are sold to the same types of customers and compete directly with each other in the same market segments. There is no geographic segmentation for silicon metal.

¹⁰³ Linan Group comprises of the three entities Hua'an Linan Silicon Industry Co. Ltd, Guizhou Liping Linan Silicon Industry Co. Ltd and Xiamen K Metal Co. Ltd.

¹⁰⁴ REP 237, chapter 9.5, p 56

PUBLIC RECORD

B4.3 Relationship between price and cost conclusion

Based on the above analysis, the Commissioner finds that:

- The Chinese silicon metal market is defined by minimal competition amongst domestic producers, where no competitive advantage is derived by any individual manufacturer as the reduced production costs resulting from the situation in the market benefits all domestic producers
- the Australian silicon metal market is a competitive market between Simcoa and Chinese producers of the goods. The commission considers variability of pricing between Chinese manufacturers supplying to the Australian market is indicative of a competitive advantage attributable to the particular market situation in China, which allows Chinese exporters to engage in pricing strategies in the Australian market which achieve either:
 - higher margins than the margins attainable on the sale of the same goods on the domestic market
 - increased sales volumes by undercutting Australian industry or a combination of higher margins and increased sales volumes resulting from undercutting.

B5 Conclusion as to the effects of the situation in the market

The commission's analysis, being mainly reliant on information gathered during the original investigation (REP 237) indicates that the relationship between price and cost and the prevailing conditions of competition in China is different in comparison to the relationship between price and cost and the prevailing conditions of competition in Australia.

Based on the information before the commission, on balance, the Commissioner is reasonably satisfied the effect of the particular market situation on the domestic sales prices in China does not result in any competitive advantages or disadvantages between market participants, being Chinese producers. While there may be competition between Chinese producers based on manufacturing efficiencies and other factors (no evidence of which was presented to the commission during the inquiry), the particular market situation modifies the conditions of competition in a consistent manner for all Chinese producers, whereby Chinese producers pass on their lower input costs to the customer with reduced prices and foreign imports are unable to compete with these reduced prices and the market remains dominated by Chinese producers.

In Australia, where no particular market situation or input cost decrease exists, higher production costs for those participants establishes a higher minimum threshold for competitive prices. Under these circumstances, the effect of the particular market situation in China on the price of silicon metal sold into the Australian market results in competitive advantages to Chinese exporters, to the disadvantage of other market players. Chinese exporters enjoy a cost advantage in the Australian market that manifests either as an increased margin at the prevailing level of competitive pricing, at a lower export price that undercuts the Australian industry pricing, or a combination whereby the Chinese manufacturers can enjoy a higher margin while still undercutting Australian industry. In other words, the effect of the particular market situation on export price

PUBLIC RECORD

modifies the conditions of competition in Australia to the benefit of Chinese exporters. Thus, the particular market situation differentially impacts the prices of goods sold by Chinese producers in the Chinese compared to the Australian market.

Accordingly, the Commissioner finds that, based on the evidence considered in this section, domestic prices cannot be properly compared to the export price of the goods exported to Australia. The Commissioner's finding regarding proper comparison is relevant to the assessment of normal value under section 269TAC(6) in this inquiry.

APPENDIX C: CONSTRUCTED NORMAL VALUES

C1 Finding

As outlined in section 6.3.4, after having regard to all relevant information, normal values for all uncooperative and all other exporters were established in accordance with section 269TAC(6). The commission considers that information from INV 237/REP 237, including the verified records of Linan Group, and information from the GOC, provide the most relevant, reliable, and accurate information to determine the normal value for this inquiry. Specifically, the verified normal value determined in REP 237 for the Linan Group, with a timing adjustment, is the basis for the commission's determination of normal value under s 269TAC(6).

Normal values were constructed as follows:

- Linan Group's Cost to Make (CTM) for the goods exported to Australia (revised to replace the recorded electricity cost)
- Plus an amount for domestic selling, general and administration (SG&A) costs using the Linan Group's data
- Plus an amount for profit using Linan Group's data related to sales made in ordinary course of trade (OCOT)
- Plus a timing adjustment to the normal value based on the movement in Chinese Consumer Price Index between the current inquiry period and that from the investigation period for REP 237.

C2 Applicable legislation, policy and practice

Section 269TAC(6) of the Act provides that where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding sections to section 269TAC(6), the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.

In respect of the Anti-Dumping Agreement, the relevant obligations for determining normal values are set out in Article 2. The determination of whether an exporter's recorded costs are to be used in determining the cost of production in the country of origin are set out in Article 2.2.1.1. The commission also notes Article 6.8 of the Anti-Dumping Agreement, which states:

In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

Paragraph 1 of Annex II to the Anti-Dumping Agreement additionally provides:

As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The

PUBLIC RECORD

authorities should also ensure that the party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry.

C3 Normal Value

As no exporter has cooperated with the investigation or provided sufficient information, the commission has calculated normal values under 269TAC(6), having regard to all relevant information. The Act specifies that for uncooperative exporters, normal values are to be calculated under this section.¹⁰⁵

For the reasons outlined in section 6.3.2, the commission considers the verified records of Linan Group, and information from the GOC, from INV 237/REP 237 provides the best available information to determine the normal value under section 269TAC(6). These records were used to determine the normal value in REP 237 and CON 524 for the Linan Group, which has been relied on to determine the normal value under section 269TAC(6) (with a timing adjustment based on the movement in Chinese CPI between the current inquiry period and that from the investigation period for REP 237).

To ensure that this information remains relevant and reliable for the purposes of the current inquiry and the determination under section 269TAC(6), the commission has considered the approach to the determination of the normal value for the Linan Group used in INV 237 and CON 524, to ensure that the approach taken accords with the commission's current approach to constructing normal values. In particular, the commission has considered, in light of the Linan Group's records, whether replacing the recorded electricity costs was appropriate in constructing the normal value. As set out below, the commission has concluded that this approach remains correct, which supports the use of the normal value (with a timing adjustment) as the best information available to determine normal value under section 269TAC(6).

The commission's additional analysis is set out below.

The records of Linan Group

In CON 524, the commission considered that the most reliable and relevant information it possessed in relation to the normal value of the goods in China over the inquiry period was the verified normal value information from the original investigation, (refer to REP 237), as this provided the most accurate assessment of current normal values in China. In CON 524, the commission considered that the most reliable and relevant information it possessed in relation to the normal value of the goods in China over the inquiry period was the verified normal value information from the original investigation, (REP 237 refers), as this provided the most accurate assessment of current normal values in China.

¹⁰⁵ See section 269TACAB(1)(e)

PUBLIC RECORD

As noted above, Article 2.2.1.1 of the Anti-Dumping Agreement outlines the circumstances in which an exporter's recorded costs shall normally be used in determining the cost of production in the country of origin.

The Commissioner is satisfied that Linan Group kept records in relation to the production of the goods under consideration. Further, the commission is satisfied that Linan Group's records are in accordance with GAAP in China (first condition) and reasonably reflect costs associated with the production of like goods (second condition), being that they reflect the costs actually incurred by Linan Group.

The commission's starting position is to use the exporter records where the first and second conditions are satisfied. However, for the reasons described below, the Commissioner is satisfied that, based on the evidence before the commission, a deviation from this starting position is warranted given the specific and exceptional facts of this inquiry.

Linan Group's records unsuitable for determining normal value

As considered above, the Commissioner is satisfied that Linan Group's records are in accordance with GAAP in China and reasonably reflect the costs associated with the production of the goods. However, for the reasons outlined below and based on the evidence before the commission, the Commissioner is reasonably satisfied that Linan Group's records in relation to its recorded electricity costs are not normal and ordinary. On this basis, Linan Group's records are not suitable for the purpose of determining the normal value of the goods and the Commissioner finds that it is appropriate to replace the recorded electricity costs in constructing the normal value for the purpose of this inquiry.

Therefore, in respect of its previous findings in INV 237 and CON 524 the Commissioner has concluded that the approach to determining the constructed normal value (including replacing the recorded electricity cost) on those previous findings remains correct, which supports the use of the normal value from REP 237 (with a timing adjustment) in this inquiry as the best information available to determine the normal value under s 269TAC(6).

Circumstances which are not normal and ordinary: Linan Group's recorded electricity costs

In REP 237 the commission found that a particular market situation exists in respect of silicon metal produced in China. REP 237 found that 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.¹⁰⁶ REP 237 found that electricity costs have been affected by preferential rates provided by SIE electricity providers for industries in the silicon manufacture sector.¹⁰⁷

For the purpose of this inquiry, the commission has reconsidered whether it is appropriate to rely on Linan Group's purchase prices of electricity to form part of the cost of production of silicon metal in China. In that regard, the commission recalls its finding of a

¹⁰⁶ REP 237, chapter 6.4.5, p 31

¹⁰⁷ REP 237, chapter 6.7.2, p 34

PUBLIC RECORD

particular market situation in **Non-confidential APPENDIX A** indicating that provinces in China have reduced electricity costs in key silicon production zones. The commission has also considered the information from the GOC in their response to the commission's questionnaire in INV 237/REP 237, in regards to preferential rates of electricity being offered to ferroalloy and silicon manufacturers in the two provinces where Linan Group has manufacturing facilities.¹⁰⁸

While the commission's usual starting point is to use an exporter's records, where the first and second condition of Article 2.2.1.1 are met, the Commissioner considers that there are nonetheless compelling reasons to deviate from this position. That is, taking into account this information and all of the relevant evidence before the commission, the Commissioner is reasonably satisfied that the electricity costs in the Linan Group's records reflect circumstances that are not normal and ordinary.

The commission considers that the specific facts and evidence in this case in respect of the commission's rejection of Linan Group's records (on the basis that they are not normal and ordinary), provides compelling reasons to deviate from using the Linan Group's electricity costs. For the reasons articulated above, the Commissioner is satisfied that the Linan Group's recorded electricity costs themselves reflect circumstances that are not normal and ordinary. The commission notes these are exceptional and fact specific circumstances as they relate to the Linan Group's recorded cost of electricity, and not on the basis of overarching factors which apply to the silicon metal market generally.

The commission thus considers that the conclusion in REP 237 that it was necessary to adjust the costs for electricity in Linan Group's records in constructing the normal value was correct, supporting the conclusion that the adjusted normal value from CON 524 (which was itself based on the constructed normal value in REP 237) is the best information available for the purpose of determining normal value under section 269TAC(6) in this inquiry. The commission did not adjust any of the other items recorded in Linan Group's cost of production.

C4 Calculation of the electricity cost adjustment

The commission has considered the adjustment method followed in REP 237 and CON 524, and remains of the view that it is appropriate to adjust the cost of electricity for Linan Group (as reflected in the normal value determined in REP 237, which has been relied on under section 269TAC(6) in this inquiry, with a timing adjustment).

To calculate the costs for electricity in China for the Linan Group, the commission considered what information was available (other than Linan Group's recorded electricity costs). The only other information before the commission was the electricity tariff rates, identified as 'Other Large Industry' on the schedule of tariff rates provided by the GOC in REP 237. According to the GOC questionnaire response, these tariff rates reflect electricity tariff rates for all other industries other than silicon metal in the relevant

¹⁰⁸ This information was received in the GOC's response to the commission's questionnaire in INV 237/REP 237.

PUBLIC RECORD

provinces. That is, where the two manufacturing entities in the Linan Group conduct silicon metal manufacturing activities.

The commission compared the other manufacturing tariff rate to tariff rates actually incurred by the Linan Group. The commission observed that the 'other manufacturing' tariff rate was higher than that incurred by the Linan Group, confirming the basis for rejecting Linan Group's recorded electricity costs set out in appendix section C3, above.

To calculate the cost of electricity for the Linan Group, the commission multiplied the 'other manufacturing' tariff rate by the actual kWh consumed by the two manufacturing entities in the Linan Group during the original investigation period, as verified by the commission in REP 237. The actual verified recorded cost of electricity was substituted for the (higher) calculated electricity cost.

The commission's consideration was to ensure that the 'other manufacturing' tariff rate would, to the extent practicable in light of the available evidence, correspond to the 'cost of production in the country of export' under section 269TAC(2)(c)(i).

The commission has no new relevant information relating to profit and SG&A. As such, the best available information is incorporated in the CON524 normal value, which has been relied upon to determine the normal value under s 269TAC(6) in this inquiry. The commission has included an SG&A costs and an amount for profit using Linan Group's data related to sales made in OCOT.

In the absence of cooperation from the GOC and exporters of the goods, the commission considers that this information is the most relevant information available in which to ascertain the normal value pursuant to section 269TAC(6).

APPENDIX D: ASSESSMENT OF ALLEGED SUBSIDY PROGRAMS – CHINA

D1 Introduction

The commission has reviewed the alleged subsidy programs applicable to silicon metals. Sections D3 and D4 of Appendix D assesses the existing programs that were found to be countervailable in REP 237 and again in REP 524.

D2 Definition of Government, public and private bodies

In its assessment of each program, the commission has had regard to the entity responsible for providing the financial contribution (if any) under the relevant program, as part of the test under section 269T(1) for determining whether a financial contribution is a subsidy. Under section 269T(1), for a contribution to be a subsidy, the contribution must have been made by:

- a government of the country of export or country of origin of the goods, or
- a public body of that country or a public body of which that government is a member, or
- a private body entrusted or directed by that government or public body to carry out a governmental function.

D2.1 Government

As described in section 16.2 of the Manual, the commission considers that the term 'government' is taken to include government at all different levels, including at a national and sub-national level.

D2.2 Public bodies

The term 'public body' is not defined in the Act. Determining whether an entity is a 'public body' requires evaluation of all available evidence of the entity's features and its relationship with government, including the following:

- The objectives and functions performed by the body and whether the entity in question is pursuing public policy objectives. In this regard relevant factors include:
 - legislation and other legal instruments
 - the degree of separation and independence of the entity from a government, including the appointment of directors and
 - the contribution that an entity makes to the pursuit of government policies or interests, such as considering national or regional economic interests and the promotion of social objectives.
- The body's ownership and management structure, such as whether the body is wholly-or part-owned by the government or whether the government has a majority of shares in the body. A finding that a body is a public body may be supported through:
 - the government's ability to make appointments

PUBLIC RECORD

- the right of government to review results and determine the body's objectives and
- the government's involvement in investment or business decisions.

The commission considers this approach is consistent with the WTO Appellate Body decision of *United States – Countervailing Measures (China)*.¹⁰⁹ In that case the Appellate body referred to the following 3 indicia which may assist in assessing whether an entity was a public body vested with, or exercising, government authority:

- Where a statute or other legal instrument expressly vests government authority in the entity concerned
- Where there is evidence that an entity is, in fact, exercising governmental functions.
- Where there is evidence that a government exercises meaningful control over an entity and exercises governmental authority in the performance of government functions.

These principles have also been previously considered by the Federal Court of Australia.¹¹⁰

D2.3 Private bodies

Where an entity is neither a government nor public body, the commission will classify it as a private body. In such cases, a government directive to make a financial contribution in respect of the goods must be established for the contribution to qualify as a subsidy, as defined by section 269T(1).

Pursuant to section 16.3 of the Manual, in determining the character of an entity which may have provided a financial contribution, the commission will assess whether the private body has been:

- 'entrusted' to carry out a government function, which occurs when a government assigns responsibility to a private body
- 'directed' to carry out a government function, which occurs in situations where the government exercises its authority over a private body.

Not all government actions will be considered as entrusting or directing a private body. Encouragement or mere policy announcements by the government, of themselves, are insufficient to meet this test. However, threats and inducements may serve as evidence of entrustment or direction. The test is satisfied when a private body is effectively acting as a proxy for the government in providing financial contributions.

¹⁰⁹ DS379 United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.

¹¹⁰ See *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, [27] - [70] *Dalian Steelforce Hi Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885, [50] - [73].

PUBLIC RECORD

D3 Assessment of existing Programs

D3.1 Program 1 - Electricity provided by government at less than adequate remuneration (LTAR)

In REP 237 and REP 524, the commission identified a countervailable subsidy program (Program 1) involving the production and supply of electricity from government-owned or partially government-owned enterprises in China at less than adequate remuneration.

During this inquiry, the commission did not find any further new information that would warrant a departure from the findings in REP 237 and REP 524 in relation to the existence of Program 1. As such, the commission adopted the assessment made in those prior reports.

Consistent with the original investigation and subsequent continuation inquiry, the commission sought information from GOC and all known exporters. However, the GOC declined to participate in this inquiry and no exporters cooperated.

The commission concludes that no new information has been presented in this inquiry to demonstrate that this program is no longer operative. No evidence has been provided indicating that the eligibility criteria for subsidy is neutral, do not favour particular enterprises, are economic in nature and horizontal in application, or are strictly adhered to in the administration. The eligibility for the subsidy remains limited to certain enterprises, thereby favouring particular enterprises over others. It therefore does not satisfy the exception to specificity under section 269TAAC(3). As such, the Commissioner finds that the program is countervailable in relation to exports of the goods from China during the inquiry period.

D3.2 Grants – Programs 10-13, 15-31 and 33 - 44

The commission found in CON 524 that programs 10-13, 15-31 and 33-44 are countervailable.

The commission is not aware of a change in the status of these programs given the GOC has declined to participate in this inquiry and no exporters provided responses to questionnaires.

The commission maintains its determination regarding the countervailability of these programs as no new information has been provided in this inquiry that would warrant a reconsideration. No evidence demonstrate that the eligibility criteria were neutral, do not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3). The Commissioner finds that these programs are countervailable in relation to exports of the goods from China for the inquiry period.

Despite the limitations regarding new information, the commission has evaluated each program's continued relevance to the goods exported from China during the inquiry period. The evaluation drew from previous and recent cases, including Anti-Dumping

PUBLIC RECORD

Commission Report No 569 (REP 569 (Continuation inquiry of Anti-Dumping Measures applying to Certain Grinding Balls exported to Australia from China)) and Anti-Dumping Commission Report No 590 (REP 590 (Continuation inquiry of Anti-Dumping measures applying to Hollow Structural Sections exported to Australia from China)). These cases assessed subsidy programs identified in REP 237. After examining the information available, the Commissioner is reasonably satisfied that programs 10-13, 15-31, 33, 34 and 37- 44 remain relevant.

Due to the nature of the subsidy program, the commission excluded program 35 and program 36 considering that these programs are specific to certain period.

D3.3 Preferential tax policies – Programs 6,7 and 8

The commission found in CON 524 that programs 6, 7 and 8 were countervailable.

As outlined above, the GOC declined to participate in this inquiry, and no exporters submitted responses to the questionnaires sent to them.

No new information has been provided in this inquiry to demonstrate that the eligibility criteria were neutral, do not favour particular enterprises. The criteria are economic in nature and horizontal in application, or that the administration adheres strictly to stated subsidy criteria. The programs do not meet the exception to specificity under section 269TAAC(3). The Commissioner has therefore found that these programs are countervailable in relation to exports of the goods from China during the inquiry period.

The commission examined these programs in recent cases including REP 590, Anti-Dumping Commission Report No. 646 (REP 646¹¹¹ (Continuation inquiry of Anti-Dumping Measures on Deep Drawn Stainless Steel Sinks exported to Australia from China)) and Anti-Dumping Commission Report No. 626 (REP 626 (Continuation inquiry of Anti-Dumping Measures on PVC Electric Cables exported to Australia from China)). The Commissioner found that the countervailable subsidies likely extended to uncooperative and all other exporters from China generally. After examining the information available, the Commissioner is satisfied that programs 6, 7 and 8 remain relevant.

D3.4 Tariff and VAT – Program 9

The commission found in CON 524 that program 9 is countervailable.

No new information has been provided in this inquiry that would warrant reconsideration of the finding. No information has been submitted to demonstrate that the eligibility criteria for program 9 are neutral, do not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It does not satisfy the exception to specificity in section 269TAAC(3). The commission has maintained that the program is countervailable in relation to exports of the goods from China for the inquiry period.

¹¹¹ REP 646, chapter 7.3.3, p 82, Program 24

PUBLIC RECORD

Notwithstanding the limitations surrounding new information, the commission has reviewed the basis of each program from the information obtained in previous cases to determine whether the programs remain relevant to exports of the goods. After examining the information available, the Commissioner is satisfied that program 9 remains relevant.



Australian Government
Department of Industry,
Science and Resources

Anti-Dumping Commission

D3.5 Assessment of existing programs - detail

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
Program 6 Preferential Tax Policies in the Western Regions	The policy objective and/or purpose of this subsidy is to accelerate the development of the western regions, expand the opening up, lessen the imbalance of economic development among different areas and promote the development of the regions. This program was found to be countervailable in REP 590 (Program 13), REP 524 (Program 6), REP 419 (Program 13), and prior to that in REP 316 (Program 3) and REP 237 (Program 6). Notified by the GOC to the WTO in G/SCM/N/220/CHN (Program 11)	The legal basis to establish this subsidy is pursuant to the following: Circular of the State Council Guo Fa No. 33 of 2000, Circular of the State Council Guo Ban Fa No. 73 of 2001, Law of the People's Republic of China on Enterprise Income Tax (2007) Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007) MOF GACC SAT Announcement No.43 of 2008	The subsidy is provided to: 1) Enterprises established in the western regions which have the items included in the Catalogue of Encouraged Industries in Central and Western Regions as their major business with the income from that major business accounting for over 70% of total revenue of the current year 2) The domestic and foreign-invested enterprises which are newly established in the western regions before 31 December 2010 and engaged in	This program is limited to enterprises with foreign investment in the Pudong area of Shanghai. It provides preferential tax treatment in the form of a reduced tax rate to eligible enterprises. The reduced income tax rate is considered a financial contribution would made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in	This program is limited to enterprises engaged in particular industries and businesses in the western region. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
	G/SCM/N/315/CHN (Program 1.4) and G/SCM/N/343/CHN (Program 4).	MOF Circular Cai Shui No.58 of 2011 MOF Circular Cai Shui No.4 of 2013 Catalogue of Encouraged Industries in Central and Western Regions Fa Gai Wei No.15 of 2014 State Council Circular Guo Fa No. 39 of 2007 MOF Circular Cai Shui No.1 of 2008 The program is authorised by MOF, State Administration of Taxation, MOFCOM and other relevant authorities under the State Council.	business such as transportation, electric power, water conservancy, postal service, radio and television, enjoying 'two years of exemption and 3 years of reduction by half' in accordance with Circular Cai Shui No. 202 of 2001, MOF, SAT, GACC, Circular on Preferential Tax Treatment Policy of Western Regions Development 3) The imported equipment for self-use within the total amount of the capital invested by domestic enterprises established in the western regions and engaged in the encouraged industries or by foreign-invested enterprises established in the western regions and engaged in the encouraged or advantageous	relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
			industries, except for those listed in the Catalogue for the Imported Products not Subject to Tax Exemption in Foreign Invested Projects, the Catalogue for the Imported Products not Subject to Tax Exemption in Domestic Invested Projects, or the Catalogue for the Imported Major Technical Equipment and Products not Subject to Tax Exemption.		
Program 7 Land Use Tax Deduction	This program provides for the reduction or exemption of land use taxes for high and new technology enterprises. This program was found to be countervailable in REP 590 (Program 29), REP 524 (Program 7), REP 419 (Program 29), and prior to that in REP 316 (Program 4) and REP 237 (Program 7).	Regulatory instrument: Approval of Tax (Expense) Deduction (ZhengDiCaShui [2010] No.11581). This program is administered by Huzhou City Local Taxation Bureau and Wuxing Sub-Bureau.	This program is available to new high and new technology enterprises within 3 years of their establishment.	The commission considers that the reduction in land use tax provided under this program is a financial contribution by the GOC which involves the forgoing of land use tax revenue otherwise due to the GOC. Due to the nature of the grant it is considered that a financial contribution would be	This program is limited to high and new technology enterprises that are less than 3 years old. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). No evidence was provided indicating that the eligibility criteria

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
	This program was identified as having received by a cooperative exporter in REP 419. The commission is not aware of any WTO notification of this program.			made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).
Program 8 Preferential Tax Policies for High and New Technology Enterprises	This program reduces the income tax paid by high and new technology enterprises to 15% (from the standard enterprise income tax rate of 25%). This program was found to be countervailable in REP 646 (Program 24), REP 626 (Program 5), REP	This program is provided for in Article 28 of the <i>PRC Enterprise Income Tax Law 2007</i>, which states: 'With respect to a high and new technology enterprise that needs key support by the State, the tax levied on its income shall be reduced at a rate of 15%.'	Companies recognised by the GOC as a high and new technology enterprise are eligible for this program. To be recognised as a high and new technology enterprise, companies must meet certain criteria, submit an application, alongside copies of the company's business	The reduced income tax rate under this program is a financial contribution by a government which involves foregoing or not collecting of revenue by a government. The reduced income tax rate is considered a financial contribution made in connection to	This program is limited to enterprises recognised by the GOC as a high and new technology enterprise. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a).

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
	524 (Program 8), REP 469 (Program 5), REP 419 (Program 35), and prior to that in REP 316 (Program 5) and REP 237 (Program 8) Notified by the GOC to the WTO in G/SCM/N/220/CHN (Program 6) G/SCM/N/315/CHN (Program 1.5) and G/SCM/N/343/CHN (Program 5).	It is considered likely that this program is a national program, administered by the GOC's State Administration of Taxation. Article 28 of the Law of the People's Republic of China on Enterprise Income Tax (2007) Article 93 of the Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (2007) . This program is authorised by MOST, MOF, SAT.	registration and other relevant documentation, and have the application approved by relevant authorities.	the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).
Program 9 Tariff and VAT Exemptions on Imported Materials and Equipment	This program was found to be countervailable in REP 590 (Program 14), REP 524 (Program 9), REP 419 (Program 14), and prior to that in REP 316 (Program 6) and REP 237 (Program 9).	Regulatory instrument: Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment (Guo Fa [1997] No. 37)	Under Articles 1 and 2 of the <i>Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment</i> (Guo Fa [1997] No. 37) to be eligible for this program:	The commission considers that the tariff and VAT exemptions under this program is a financial contribution by the GOC which involves the forgoing or not collecting of revenue by a government.	This program is limited to foreign invested enterprises that fall in the category of 'encouraged' or 'restricted' enterprises of the FIE catalogues, or domestic invested enterprises that fall

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
	Notified by the GOC to the WTO in G/SCM/N/220/CHN (Program 61).	Catalogue of Industries for Guiding Foreign Investment Catalogue of Industry, Product and Technology Key Supported by the State at Present (2004) State Council's Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue Import Goods Not Exempted from Taxation for Domestic Investment Projects Catalogue. The program appears to operate on a national level. The commission NDRC or its provincial branches issue certificates under this program, while local customs authorities administer the VAT	the enterprise must be an FIE which falls in the 'encouraged' or 'restricted' categories in the <i>Catalogue of Industries for Guiding Foreign Investment</i> (2004) (until 30 November 2007) or the <i>Catalogue of Industries for Guiding Foreign Investment</i> (2007) (after 1 December 2007) the imported equipment which is sought to be exempt from tariff and/or VAT must be for the enterprise's own use and not fall in the State Council's <i>Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue</i> and the total value of the purchase must not exceed the investment 'cap'	Due to the nature of this program, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	under the DIE catalogue. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
		and tariff exemptions.	or the enterprise must be a domestic invested enterprise (DIE) which falls in the <i>Catalogue of Industry, Product and Technology Key Supported by the State at Present</i> (2004) and the imported equipment must be for the enterprises own use and not fall in the <i>Import Goods Not Exempted from Taxation for Domestic Investment projects catalogue</i> the total value of the purchase must not exceed the investment 'cap'.		
Program 10 One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China'	This program was found to be countervailable in REP 590 (Program 2), REP 524 (Program 10), REP 419 (Program 2), and prior to that in REP 316	Decision Concerning Commending and/or Awarding to Enterprises of Guangdong Province Whose Products Qualify for the Title of 'China Worldwide	Enterprises whose products qualify for the Title of 'China Worldwide Famous Brand'. Enterprises whose products qualify for the	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government.	This program is limited to enterprises in the Guangdong Province whose products qualify for the title of 'China worldwide famous brand', 'China well-

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
and 'Famous Brands of China'	(Program 7) and REP 237 (Program 10). The commission is not aware of any WTO notification of this program.	Famous Brand', 'China Famous Brand', or 'China Well-Known Brand' The government of Guangdong Province is responsible for the administration and management of this program.	Title of 'China well-known brand' and/or 'famous trademark (China famous Trademark)'.	Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	known brand' and/or 'China famous brand'. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).
Program 11	This program was found to be countervailable in REP	Regulatory instrument:	SME enterprises that have:	Grants provided under this program are financial contributions	The commission considers that this program is limited to

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
Matching Funds for International Market Development for Small and Medium Enterprises	590 (Program 5), REP 524 (Program 11), REP 419 (Program 5), and prior to that in REP 316 (Program 8) and REP 237 (Program 11). The commission is not aware of any WTO notification of this program.	<i>Measures for Administration of International Market Developing Funds of Small and Medium Sized Enterprises.</i> The program is administered by the MOF and MOFCOM, with the assistance of other competent authorities, and is implemented by the local finance and foreign trade authorities in their respective jurisdictions.	a legal personality according to law the capacity to manage an import or export business made exports in the previous year of 15,000,000 (before 2010) or 45,000,000 (after 2010) US dollars or less sound financial management systems and records employees who specialise in foreign trade and economic business who possess the basic skills of foreign trade and economics a solid market development plan.	by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	small and medium enterprises involved in foreign trade. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
Program 12 Superstar Enterprise Grant	This program was found to be countervailable in REP 590 (Program 6), REP 524 (Program 12), REP 419 (Program 6), and prior to that in REP 316 (Program 9) and REP 237 (Program 12). The commission is not aware of any WTO notification of this program.	Measures for Assessment and Encouragement of Superstar Enterprises and Excellent Enterprises Notice of Huzhou Government Office Concerning Announcement of Criteria for Superstar Enterprises, Excellent Enterprises and Backbone Enterprises. This program is administered by the Huzhou Economic Committee.	Enterprises located in Huzhou City that satisfy the following criteria: (a) The 'output scale' of the enterprises must meet one of the following criteria: business income of the current year not exceeding RMB 3.5 billion and sales revenue within the city exceeding RMB 2 billion sales revenue within the city exceeding RMB 2.5 billion sales revenue within the city exceeding RMB 1.5 billion where the increase of sales revenue between 2007 and 008 was more than 30% and the increased paid-up tax between 2007 and 2008 was more than RMB 10 million	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	This program is limited to enterprises in Huzhou City meeting the specified 'output scale'. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
			revenue from self-export of current year is more than USD 150 million. (b) The enterprise's accumulated industrial input between the years 2006 to 2008 must have exceeded RMB 150 million (c) The enterprise must be profitable, and its VAT 'paid up', while its consumption tax, income tax, business tax, city construction tax and education supplementary tax must exceed RMB 30 million (d) The enterprise must not have suffered environmental or 'unsafe production accidents (or other illegal incidents) in the current year		

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
			(e) If the enterprise is not state-owned, it must have passed the 'Five-Good Enterprises' assessment conducted by its county or district.		
Program 13 Research & Development (R&D) Assistance Grant	This program was found to be countervailable in REP 590 (Program 7), REP 524 (Program 13), REP 419 (Program 7), and prior to that in REP 316 (Program 10) and REP 237 (Program 13). The commission is not aware of any WTO notification of this program.	Regulatory instrument: Notice of the Office of People's Government of Wuxing District on Publishing and Issuing the Management Measures on Three Types of Science and Technology Expenses of Wuxing District. The GOC stated that the funding shall not be more than RMB150,000 and the duration for supporting an enterprise shall not be more than 3 years. The government of Wuxing district and the Science and Technology Bureau of	In REP 316, the GOC stated that to qualify for this grant, applicant must meet the following requirements: register and operate in Jinzhou New District have complete organisational structure, R&D facilities and intellectual protection measures have definite direction and task for technology development and technology research and have independent assets and funds have a technology team with strong	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made	This program is limited to enterprises in Jinzhou New District with research and development facilities. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
		Wuxing District are jointly responsible for the administration of this program.	capacities to do research and development have more than one patent or science and technology project of municipal level and above. The GOC provided further information stating that the purpose of the grant is to accelerate the transformation of the economic development pattern and economic restructure of Jinzhou New District, enhance the capacity of self-dependent innovation of the district, implementing the strategy on 'innovative Urban District', and making efforts to achieve the sound and rapid economy development of Jinzhou New District.	under this program meet the definition of a subsidy under section 269T.	enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).
Program 15	This program was found to be countervailable in REP	Regulatory instrument:	Eligible enterprises are those that are located	Grants provided under this program are financial contributions	This program is limited to enterprises engaged in research and

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
Innovative Experimental Enterprise Grant	590 (Program 15), REP 524 (Program 15), REP 419 (Program 15), and prior to that in REP 316 (Program 11) and REP 237 (Program 15). The commission is not aware of any WTO notification of this program.	Work Implementation Scheme of Zhejiang Province on Setting Up Innovative Enterprises. Administered by the administrative office of Science and Technology Bureau of Zhejiang province.	in Zhejiang Province, and are: independent economic entities with 'reasonable asset-liability ratios', consistent earnings over the past 3 years, and an increasing market share well placed to undertake research and development activities with a provincial or new and high-tech technology centre available, and proven relationships with colleges and scientific research centres investing at least 5% of annual sales income using intellectual property rights to protect major products strongly committed to technological	by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	development and technological innovation and protection in Zhejiang province. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
			innovation and protection with previous technological achievements.		
Program 16 Special Support Fund for Non State-Owned Enterprises	This program was found to be countervailable in REP 590 (Program 16), REP 524 (Program 16), REP 419 (Program 16), and prior to that in REP 316 (Program 12) and REP 237 (Program 16). The commission is not aware of any WTO notification of this program.	Regulatory Instrument: Notions concerning accelerating the growth of the non-state-owned economy, 18 April 2003.	Non-SOEs located in Yunnan Province.	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a	This program is limited to non-SOEs located in Yunnan province. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
				subsidy under section 269T.	exception to specificity in section 269TAAC(3).
Program 17 Venture Investment Fund of Hi-Tech Industry	This program was found to be countervailable in REP 590 (Program 17), REP 524 (Program 17), REP 419 (Program 17), and prior to that in REP 316 (Program 13) and REP (Program 17). The commission is not aware of any WTO notification of this program.	Regulatory Instrument: Circular of Chongqing People's Government Office on Temporary Administration Measures on Venture Investment Fund of Hi-tech Industry in Chongqing. The program is administered by the Chongqing Venture Investment Fund.	Enterprises with 'high-tech programs' located in the High-Tech Zone or the High-Tech Park of the new Northern District. In addition: the program must have a leading technological position in its field, and sufficient experience to enter the industrialisation development phase (industrialisation programs with intellectual property rights are given priority) the product must be of high quality and have potential economic benefit to the collective development of the Chongqing High-Tech Industry Zone	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a	This program is limited to enterprises with 'high-tech programs' located in the High-Tech Zone or the High-Tech Park of the new Northern District. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
			the department supporting the program must have good credit, excellent operation mechanisms and strong innovation abilities the enterprise must have good legal standing the total investment in the program must be RMB 100 million or more.	subsidy under section 269T.	over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).
Program 18 Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	This program was found to be countervailable in REP 590 (Program 18), REP 524 (Program 18), REP 419 (Program 18), and prior to that in REP 316 (Program 14) and REP 237 Program 18 The commission is not aware of any WTO notification of this program.	Regulatory Instrument: Provisions of Guangzhou Municipality on Encouraging Foreign Investors to Set up Headquarters and Regional Headquarters. Administered by the local commerce authority of Guangzhou.	This program is available to enterprises whose headquarters are established in the Guangzhou Municipality by a foreign investor. To qualify as 'Headquarters' the facility must control all the operations and management of any enterprises it is invested in, both in	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise	This program is limited to enterprises whose headquarters are established in the Guangzhou Municipality by a foreign investor. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b).

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
			China and internationally. Only one enterprise Headquarters is permitted in the Guangzhou Municipality. To qualify as 'Regional Headquarters', the facility must control operations and management of some or all enterprises it is invested in a certain area of China. Headquarters or Regional headquarters may be of investment companies, management companies, research and development centres, and production enterprises.	(including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).
Program 19 Grant for key enterprises in equipment manufacturing industry of Zhongshan	This program was found to be countervailable in REP 590 (Program 19), REP 524 (Program 19), REP 419 (Program 19), and prior to that in REP 316	Regulatory Instrument: Notice of Issuing 'Method for Determination of Key Enterprises in Equipment	For an enterprise to be eligible for this program: it must be established, registered and	Grants provided under this program are financial contributions by a government which involve the direct	This program is limited to enterprises whose primary product must be a part of the equipment manufacturing industry and established,

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
	(Program 15) and REP 237 Program 19. The commission is not aware of any WTO notification of this program.	Manufacturing Industry of Zhongshan, Zhong Fu (2005) No.127. The program is administered by the local economic and trade office, by the Municipal Economic and Trade Bureau and by the Municipal Leading Group of Accelerating Development of Equipment Manufacturing Industry of Zhongshan City.	carrying out business in Zhongshan City its primary product must be part of the equipment manufacturing industry and comply with the relevant industrial policies it must have assets over RMB 30 million, annual sales income of over RMB 50 million and annual paid-in tax of over RMB 3 million or, alternatively, the enterprise's main economic and technical indices must be at the forefront of the equipment manufacturing industry in the country or province, and have potential for additional development it must have implemented a brand strategy, established	transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	registered and carrying out business in Zhongshan City. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
			a technical centre for research and development and be comparatively strong in its capacity for independent development and technical innovation it must have good credit standing.		
Program 20 Water Conservancy Fund Deduction	This program was found to be countervailable in REP 590 (Program 21), REP 524 (Program 20), REP 419 (Program 21), and prior to that in REP 316 (Program 16) and REP 237 (Program 20). The commission is not aware of any WTO notification of this program.	Regulatory Instrument: Notification of Relevant Problems of Further Strengthening Water Conservancy Fund Deduction Administration of Zhejiang Province Local Taxation Bureau (ZheDiShuiFa [2007] No.63). This program is administered by the Local Taxation Bureau of Zhejiang Province and it is implemented by the competent local taxation authorities of the municipal and	The GOC has confirmed that only enterprises satisfying one of following criteria will be eligible for the grant under this program: Provide job opportunities to laid-off workers, the disabled, and retired soldiers searching for jobs. Enterprises that 'utilize resource comprehensively as designated by government department above municipal level'.	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in	This program is limited to enterprises located in Zhejiang province that satisfy one of the specific criteria. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
		county levels in Zhejiang Province.	Trading enterprises of commodities with annual gross profit rate of less than 5%. Enterprises undertaking 'State reserve and sale, the portion of revenues incurred from that undertaking may qualify for an exemption of the fee'. 'Advanced manufacturing enterprises' or key enterprises as designated by the municipal government, which are undertaking technology development projects and incurring development expenditure at an amount above RMB1 million. 'Insurance company's revenue from sales which are subject to	relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
			exemption of excise tax'. 'Bank's revenue from turnovers between banks'. 'Revenue from sales between members of an enterprise group subject to same consolidated financial statement'.		
Program 21 Wuxing District Freight Assistance	This program was found to be countervailable in REP 590 (Program 22), REP 524 (Program 21), REP 419 (Program 22), and prior to that in REP 316 (Program 35) and REP 237 (Program 21). The commission is not aware of any WTO notification of this program.	Regulatory instrument: Several Opinions on Further Supporting Industrial Sector to Separate and Develop Producer-Service Industry (HuZhengBanFa [2008] 109). This program is administered by the Finance Bureau of Huzhou City.	Those enterprises whose annual freight cost is RMB 3 million or above, will be refunded 50% of the increase in the annual turnover tax which is paid locally by the transportation business and which is retained by the city. This increase is measured over the amount of tax paid in 2007. For enterprises whose annually paid income tax is RMB100,000 or above:	The refunded income tax and turnover tax under this program is a financial contribution by a government which involves foregoing or not collecting of revenue by a government. The refunded income tax and turnover tax is based on annual freight cost. It is considered that this financial contribution would be made in connection to the export of all goods of the recipient enterprise (including	This program is limited to enterprises whose annual freight cost is RMB 3 million or above located in Wuxing district. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
			100% of the income tax paid by the 'separated enterprise' and retained by the city will be granted as assistance in each of the 3 years after the establishment date of the separated enterprise. 50% of the turnover tax paid by the separated enterprise and retained by the city will be granted as assistance in each of the 3 years after the establishment date of the separated enterprise.	goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia.	economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).
Program 22 Huzhou City Public Listing Grant	This program was found to be countervailable in REP 590 (Program 23), REP 524 (Program 22), REP 419 (Program 23), and prior to that in REP 316 (Program 36) and REP 237 (Program 22). The commission is not aware of any WTO	Regulatory instrument: <i>Notification of Government of Huzhou City (HuBan No. 160).</i> This program is administrated by the Finance Bureau of Huzhou City.	This program is available to enterprises that successfully completed listing of shares during 2010.	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production,	This program is limited to enterprises in Huzhou City that successfully completed listing of shares during 2010. The commission is satisfied that this meets the criteria of a countervailable subsidy under section

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
	notification of this program.			manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	269TAAC(2)(a) and 269TAAC(2)(b). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).
Program 23 Huzhou City Quality Award	This program was found to be countervailable in REP 590 (Program 27), REP 524 (Program 23), REP 419 (Program 27), and prior to that in REP 316 (Program 37) and REP 237 (Program 23).	Regulatory instrument: Notification of the Office of People's Government of Huzhou City (HuZhengBanFa No.60). The Government of Huzhou City and the	The award is granted to no more than 3 enterprises each year that are registered in Huzhou City and have been in operation for more than 3 years and that have 'enjoyed excellent performance', 'implemented quality	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial	This program is awarded to no more than 3 enterprises each year located in Huzhou City and have excellent performance, implemented quality management and an industry leader with

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
	The commission is not aware of any WTO notification of this program.	Bureau for Quality and Technical Supervision are jointly responsible for the administration of this program.	management' and 'obtained a leading position in industry with significant economic benefits and social benefits'. The products of an applicant must also meet the standards provided by laws and regulations regarding product safety, environmental protection, field safety as well as relevant industrial policy.	contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	significant economic and social benefits. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).
Program 24	This program was found to be countervailable in REP	The purpose of the program is to promote industrial structure	This program is limited to enterprises registered in Huzhou	Grants provided under this program are financial contributions	This program is limited to enterprises which encourages the

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
Huzhou Industry Enterprise Transformation & Upgrade Development Fund	590 (Program 28), REP 524 (Program 24), REP 419 (Program 28), and prior to that in REP 316 (Program 38) and REP 237 (Program 24). The commission is not aware of any WTO notification of this program.	adjustment and upgrading, and to support technology updating and innovation of enterprises. In REP 316, the GOC advised that there is no single purpose legal document directly related to any benefit received by a respondent under investigation. The Bureau of Finance and the Economic and Information Committee of Huzhou City are jointly responsible for the administration of this program. The Bureau of Finance and the Economic and Information Committee of Huzhou City examine and approve applications, with the funds provided from the budget of the Financial Bureau of Huzhou City.	and encourages the transformation and upgrade of enterprises, 'including but not limited to industry upgrades, and to promote equipment manufacturing industry, high and new technology industry and new industry'.	by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	transformation and upgrade of enterprises and registered in Huzhou. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
Program 25 Wuxing District Public Listing Grant	This program was found to be countervailable in REP 590 (Program 30), REP 524 (Program 25), REP 419 (Program 30), and prior to that in REP 316 (Program 39) and REP 237 (Program 25). The commission is not aware of any WTO notification of this program.	Regulatory instrument: Notification on Awarding Advanced Individuals and Advanced Entities of Industrial Economy and Open Economy for the Year of 2010 (WuWeiFa [2011] No.14). This program is administered by the Government of Wuxing District.	A grant is available to eligible advanced publicly listed enterprises.	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	This program is limited to eligible advanced publicly listed enterprises in Wuxing District. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a) and 269TAAC(2)(b). No evidence was provided indicating that the eligibility criteria were neutral, no not favour particular enterprises, are economic in nature and horizontal in application, or that the criteria are strictly adhered to in the administration of the subsidy. Eligibility is limited to certain enterprises, favouring particular enterprises over others. It therefore does not satisfy the exception to specificity in section 269TAAC(3).

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
Program 26 Anti-dumping Respondent Assistance	This program was found to be countervailable in REP 569 (Program 17), REP 524 (Program 26), REP 520 (Program 17), REP 419 (Program 31), and prior to that in REP 316 (Program 17), REP 237 (Program 26) and in 2016 in relation to grinding balls (Program 43). The commission is not aware of any WTO notification of this program.	Regulatory Instrument: Notification of Receiving Fair Trade Assistance by Wuxing Foreign Economic and Trade Bureau. This program is administrated by Wuxing District Foreign Economic and Trade Bureau.	Enterprises which incur expenses in an anti-dumping proceeding may benefit from this program.	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	As the GOC did not provide a response to the commission's questionnaire, the commission does not consider that section 269TAAC(3) applies. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). The Commission therefore considers this grant program to be specific.
Program 27	This program was found to be	Regulatory Instrument:	This program is available to enterprises	Grants provided under this program are	This program is limited to enterprises that

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
Technology Project Assistance	countervailable in REP 626 (Program 27), REP 590 (Program 32), Program 524 (Program 27), REP 469 (Program 27), REP 419 (Program 32), and prior to that in REP 316 (Program 18) and REP 237 (Program 27). The commission is not aware of any WTO notification of this program.	Interim Measure for Administration of Post-completion Assistance or Loan Interest Grant for Industrialization of Science and Technology Achievements Sponsored by Zhejiang Province (2008). The Bureau of Finance and the Science and Technology Bureau of Huzhou City are jointly responsible for the administration of this program.	that undertake a scientific research project which meets the scope of the projects encouraged under this program.	financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	undertake a scientific research project encouraged under this program. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). As the GOC did not provide a response to the commission's questionnaire, the commission does not consider that section 269TAAC(3) applies.
Program 28 Capital injections	Research indicates that China has been conducting state capital	<i>The Guiding Opinions of the Central Committee of the Communist Party of</i>	Revitalization of the iron and steel industry, mergers and acquisitions, and	Grants provided under this program represent financial contributions by the government	These programs are limited to enterprises undertaking revitalization process,

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
	injection in various industries¹¹². This program was found to be countervailable in REP 524 (Program 28) and REP 237 (Program 28) The commission is not aware of any WTO notification of this program	<i>China and the State Council on Deepening the Reform of State-Owned Enterprises</i>	industry integration in infrastructure such as water, electricity, heat power and gas production and supply.	involving the direct transfer of funds. Due to the nature of these grants, they are considered financial contribution connected to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	including mergers and acquisitions under their framework. The commission is satisfied that these programs meet the criteria of a countervailable subsidy under section 269TAAC(2)(a). As the GOC did not provide a response to the commission's questionnaire, section 269TAAC(3) is not applicable in this situation.
Program 29 Environmental Protection Grant	It is alleged that the exporters of the goods have benefited from an	The commission has not identified any specific legal basis for this program (i.e. no	There are no articulated eligibility criteria for enterprises receiving	Grants provided under this program are financial contributions by a government which	As the GOC did not provide a response to the commission's questionnaire, the

¹¹² China Economic Quarterly International Journal- www.keaipublishing.com/en/journals/china-economic-quarterlyinternational

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
	Environmental protection grant. This program was identified as countervailable in REP 626 (Program 32) REP 524 (Program 29), REP 469 (Program 32), and prior to that in REP 322 (Program 32) and REP 237 (Program 29). The commission is not aware of any WTO notification of this program	specific law, regulation, or other GOC document has been identified that provides for its establishment)	environmental protection grants.	involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	commission does not consider that section 269TAAC(3) applies. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). The commission therefore considers this grant program to be specific.
Program 30 High and New Technology Enterprise Grant	This program was identified as countervailable in REP 569 (Program 21), REP 524 (Program 30), REP 520 (Program 21) and	The commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC specific	The commission has not identified any eligibility criteria for this program.	Grants provided under this program are financial contributions by a government which involve the direct	As the GOC did not provide a response to the commission's questionnaire, the commission does not

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
	prior to that in 2016 in relation to grinding balls (Program 21) and REP 237 (Program 30). The commission is not aware of any WTO notification of this program	law, regulation, or other GOC document has been identified that provides for its establishment)		transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	consider that section 269TAAC(3) applies. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). The commission therefore considers this grant program to be specific.
Program 31 Independent Innovation and High-Tech Industrialization Program	It is alleged that the exporters of the goods have benefited from grants under the Independent Innovation and High-Tech	The commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been	There are no articulated eligibility criteria for enterprises receiving grants under the independent innovation and high-	Grants provided under this program are financial contributions by a government which involve the direct	As the GOC did not provide a response to the commission's questionnaire, the commission does not

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
	Industrialization Program. This program was identified as countervailable in REP 626 (Program 40), REP 524 (Program 31), REP 469 (Program 40) and prior to that in REP 237 (Program 31). The commission is not aware of any WTO notification of this program	identified that provides for its establishment)	tech industrialization program.	transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program	consider that section 269TAAC(3) applies. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). The commission therefore considers this grant program to be specific.
Program 33 Environmental Prize	This program was identified as countervailable in REP 569 (Program 20), REP 524 (Program 33), REP 520 (Program 20) and prior to that in 2016 in relation to grinding	The commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC specific law, regulation, or other GOC document has been identified that	The commission has not identified any eligibility criteria for this program.	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered	As the GOC did not provide a response to the commission's questionnaire, the commission does not consider that section 269TAAC(3) applies. The commission is satisfied that this meets

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
	balls (Program 23) and REP 237 (Program 33). The commission is not aware of any WTO notification of this program	provides for its establishment)		that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	the criteria of a countervailable subsidy under section 269TAAC(2)(a). The commission therefore considers this grant program to be specific.
Program 34 Jinzhou District Research and Development Assistance Program	This program was identified as countervailable in REP 569 (Program 43), REP 524 (Program 34), REP 520 (Program 43), REP 322 (Program 42), and prior to that in REP 237 (Program 34) and in 2016 in relation to	Administered by the administrative office of Science and Technology Bureau of Dalian city of Liaoning province	This program is available to enterprises that undertake a scientific research project which meets the scope of the projects encouraged under this program.	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to	Yes This program is limited to enterprises that undertake a scientific research project encouraged under this program. The commission is satisfied that this meets the criteria of a countervailable subsidy

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
	grinding balls (Program 43). The commission is not aware of any WTO notification of this program			the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy	under section 269TAAC(2)(a). As the GOC did not provide a response to the commission's questionnaire, the commission does not consider that section 269TAAC(3) applies.
Program 35 Grant for Industrial enterprise energy management centre construction demonstration project Year 2009	This program was identified as countervailable in REP 569 (Program 41), REP 524 (Program 35), REP 520 (Program 41) and prior to that in 2016 in relation to grinding balls (Program 41) and REP 237 (Program 35). The commission is not aware of any WTO notification of this program	The commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC specific law, regulation, or other GOC document has been identified that provides for its establishment)	The commission has not identified any eligibility criteria for this program.		No
Program 36	This program was identified as	The commission has not identified any	The commission has not identified any		No

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
Key industry revitalization infrastructure spending in budget Year 2010	countervailable in REP 569 (Program 42), REP 524 (Program 36), REP 520 (Program 42) and prior to that in 2016 in relation to grinding balls (Program 42) and REP 237 (Program 36). The commission is not aware of any WTO notification of this program	specific legal basis for this program (i.e. no specific law, regulation, or other GOC specific law, regulation, or other GOC document has been identified that provides for its establishment)	eligibility criteria for this program.		
Program 37 Provincial emerging industry and key industry development special fund	This program was identified as countervailable in REP 569 (Program 24), REP 524 (Program 37), REP 520 (Program 24) and prior to that in 2016 in relation to grinding balls (Program 24) and REP 237 (Program 37). The commission is not aware of any WTO notification of this program	The commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC specific law, regulation, or other GOC document has been identified that provides for its establishment)	The commission has not identified any eligibility criteria for this program.	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia).	As the GOC did not provide a response to the commission's questionnaire, the commission does not consider that section 269TAAC(3) applies. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). The commission therefore considers this grant program to be specific.

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
				The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	
Program 38 Environmental protection fund	This program was identified as countervailable in REP 569 (Program 25), REP 524 (Program 38), REP 520 (Program 25) and prior to that in 2016 in relation to grinding balls (Program 25) and REP 237 (Program 38). The commission is not aware of any WTO notification of this program	The commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC specific law, regulation, or other GOC document has been identified that provides for its establishment)	The commission has not identified any eligibility criteria for this program.	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this	As the GOC did not provide a response to the commission's questionnaire, the commission does not consider that section 269TAAC(3) applies. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). The commission therefore considers this grant program to be specific.

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
				constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	
Program 39 Intellectual property licensing	This program was identified as countervailable in REP 569 (Program 26), REP 524 (Program 39), REP 520 (Program 26) and prior to that in 2016 in relation to grinding balls (Program 26) and REP 237 (Program 39). The commission is not aware of any WTO notification of this program	The commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC specific law, regulation, or other GOC document has been identified that provides for its establishment)	The commission has not identified any eligibility criteria for this program.	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in	As the GOC did not provide a response to the commission's questionnaire, the commission does not consider that section 269TAAC(3) applies. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). The commission therefore considers this grant program to be specific.

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
				relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	
Program 40 Financial resources construction special fund	This program was identified as countervailable in REP 569 (Program 27), REP 524 (Program 40), REP 520 (Program 27) and prior to that in 2016 in relation to grinding balls (Program 27) and REP 237 (Program 40). The commission is not aware of any WTO notification of this program	The commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC specific law, regulation, or other GOC document has been identified that provides for its establishment)	The commission has not identified any eligibility criteria for this program.	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in	As the GOC did not provide a response to the commission's questionnaire, the commission does not consider that section 269TAAC(3) applies. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). The commission therefore considers this grant program to be specific.

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
				relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a subsidy under section 269T.	
Program 41 Reducing pollution discharging and environment improvement assessment award	It is alleged that exporters received a one-time grant for construction of automatic monitoring systems on the site of an enterprise's pollution sources - From 2008 to 2010. This program was identified as countervailable in REP 626 (Program 36) REP 524 (Program 41), REP 469 (Program 36) and prior to that in REP 322 (Program 36) and REP 237 (Program 41). The commission is not aware of any WTO notification of this program	<i>Environmental Protection Law of the People's Republic of China, Administrative Measure on Automatic Monitoring of Source of Pollution (no. 28 order of former State Environmental Protection Administration); and Administrative Measure on Automatic Monitoring of Source Pollution of Hunan Province (no. 203 order of the People's Government of Hunan Province).</i>	The grant was provided to the enterprises whose industries are on the list of key sources of pollution under national control of Hunan Province of 2008.	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in	As the GOC did not provide a response to the commission's questionnaire, the commission does not consider that section 269TAAC(3) applies. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). The commission therefore considers this grant program to be specific.

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
				relation to the goods exported to Australia. The financial contributions made under this program	
Program 42 Comprehensive utilization of resources - VAT refund upon collection	This program was identified as countervailable in REP 569 (Program 29), REP 524 (Program 42), REP 520 (Program 29) and prior to that in 2016 in relation to grinding balls (Program 29) and REP 237 (Program 42). The commission is not aware of any WTO notification of this program	The commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC specific law, regulation, or other GOC document has been identified that provides for its establishment)	The commission has not identified any eligibility criteria for this program.	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made	As the GOC did not provide a response to the commission's questionnaire, the commission does not consider that section 269TAAC(3) applies. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). The commission therefore considers this grant program to be specific.

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
				under this program meet the definition of a subsidy under section 269T.	
Program 43 Grant of elimination of outdated capacity	This program was identified as countervailable in REP 569 (Program 30), REP 524 (Program 43), REP 520 (Program 30) and prior to that in 2016 in relation to grinding balls (Program 30) and REP 237 (Program 43). The commission is not aware of any WTO notification of this program	The commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC specific law, regulation, or other GOC document has been identified that provides for its establishment)	The commission has not identified any eligibility criteria for this program.	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program meet the definition of a	As the GOC did not provide a response to the commission's questionnaire, the commission does not consider that section 269TAAC(3) applies. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). The commission therefore considers this grant program to be specific.

REP 651 – SILICON METAL - CHINA

PUBLIC RECORD

Program	Background and WTO Notification	Legal Basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?
				subsidy under section 269T.	
Program 44 Grant from Technology Bureau	It is alleged that the exporters of the goods have benefited from grants from the Technology Bureau. This program was identified as countervailable in REP 626 (Program 38), REP 524 (Program 44), REP 469 (Program 38) and prior to that in REP 322 (Program 38) and REP 237 (Program 44). The commission is not aware of any WTO notification of this program	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)	Enterprise located in Shandong Province.	Grants provided under this program are financial contributions by a government which involve the direct transfer of funds from that government. Due to the nature of the grant, it is considered that a financial contribution would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including goods exported to Australia). The commission considers that this constitutes a benefit in relation to the goods exported to Australia. The financial contributions made under this program	Yes As the GOC did not provide a response to the commission's questionnaire, the commission does not consider that section 269TAAC(3) applies. The commission is satisfied that this meets the criteria of a countervailable subsidy under section 269TAAC(2)(a). The commission therefore considers this grant program to be specific.

Table 14: Assessment of existing programs

REP 651 – SILICON METAL - CHINA