



Australian Government
Department of Industry and Science

Anti-Dumping
Commission

Benchmarks: Determining “adequate remuneration”

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Article 1: Definition of a subsidy

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:

[...]

(iii) a government provides goods or services other than general infrastructure, or purchases goods;

Article 14: Calculation of the Amount of a Subsidy in Terms of the Benefit to the Recipient

For the purpose of Part V, any method used by the investigating authority to calculate the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 shall be provided for in the national legislation or implementing regulations of the Member concerned and its application to each particular case shall be transparent and adequately explained. Furthermore, any such method shall be consistent with the following guidelines:

[...]

- (d) the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

Prevailing market conditions in country of export

- First look at private domestic prices in the country of export for a benchmark to determine whether remuneration for government goods or services is ‘adequate’
- Appellate Body in *US — Softwood Lumber IV* (DS 257) has allowed the use of benchmarks other than private domestic prices (i.e. out of country benchmarks):

...an investigating authority may use a benchmark other than private prices of the goods in question in the country of provision, when it has been established that those private prices are distorted, because of the predominant role of the government in the market as a provider of the same or similar goods. When an investigating authority resorts, in such a situation, to a benchmark other than private prices in the country of provision, the benchmark chosen must, nevertheless, relate or refer to, or be connected with, the prevailing market conditions in that country, and must reflect price, quality, availability, marketability, transportation and other conditions of purchase or sale, as required by Article 14(d).

Case study – Options for stainless steel benchmark

- Australian investigation into the subsidisation of deep drawn stainless steel sinks exported from China
- Program 1: provision of 304-grade stainless steel cold rolled coil (304 SS CRC) for less than adequate remuneration
- Private domestic prices found to be distorted by government involvement in the market and therefore unsuitable for use as a benchmark
- Seven options for out of country benchmark considered:
 - 1) a MEPS-based monthly world composite 304 stainless steel price
 - 2) a MEPS-based world average 304 SS CRC price
 - 3) the MEPS Asian 304 SS CRC price
 - 4) a MEPS-based Asian 304 SS CRC price excluding Chinese prices
 - 5) Australian import prices of Thai 304 SS CRC
 - 6) the Australian industry's own 304 SS CRC purchase prices
 - 7) MEPS-based European and North American average 304 SS CRC price

Case study – Chosen stainless steel benchmark

- Option seven considered the most appropriate as it:
 - included only data related to prices of 304 SS CRC and no other irrelevant products
 - did not include any Asian pricing data that was considered may be unreasonable due to the influence of exported Chinese 304 SS CRC in the region, and
 - was based on reported MEPS prices, which is a reputable independent steel pricing and forecasting service

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