



CUSTOMS ACT 1901 - PART XVB

FINAL REPORT REPORT NO. 259

**ACCELERATED REVIEW
OF A DUMPING DUTY NOTICE AND COUNTERVAILING DUTY
NOTICE APPLYING TO**

**CERTAIN ALUMINIUM EXTRUSIONS EXPORTED FROM THE
PEOPLE'S REPUBLIC OF CHINA**

ZHAOQING XINLIANCHANG METAL CORPORATION LTD.

October 2014

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ABBREVIATIONS

ACBPS	Australian Customs and Border Protection Service
ADN	Anti-Dumping Notice
Capral	Capral Limited
China	People's Republic of China
Commission	Anti-Dumping Commission
CTMS	Cost to make and sell
ICD	Interim countervailing duty
IDD	Interim dumping duty
FIE	Foreign Invested Enterprise
FOB	Free on board
GAAP	Generally accepted accounting principles
GOC	the Government of China
LME	London Metal Exchange
NIP	Non-injurious price
OCOT	Ordinary course of trade
REP 148	Trade Measures Branch Report No.148
SEF	Statement of Essential Facts
SG&A	Selling, general and administration costs
SIE	State Invested Enterprise
Tai Ao	Tai Ao (Taishan) Co Ltd
The Act	<i>Customs Act 1901</i>
The applicant	Zhaoqing Xinlianchang Metal Corporation Ltd (Zhaoqing)
the Commissioner	the Commissioner of the Anti-Dumping Commission
the goods	Certain aluminium extrusions
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry
USP	Unsuppressed selling price
VAT	Value Added Tax

1 SUMMARY AND RECOMMENDATION

1.1 Background

This *Accelerated Review No. 259* is in response to an application¹ from Zhaoqing Xinlianchang Metal Corporation Ltd. (Zhaoqing) seeking an accelerated review of the dumping duty and countervailing duty notices applying to certain aluminium extrusions² exported to Australia from the People's Republic of China (China).

1.2 Recommendation

The Commissioner of the Anti-Dumping Commission (the Commissioner) pursuant to subsection 269ZG(1), recommends to the Parliamentary Secretary to the Minister for Industry (Parliamentary Secretary) that:

- the dumping duty notice and the countervailing duty notices be altered so as to apply to the applicant as if different variable factors had been fixed.³

The Commissioner recommends that, for the purpose of this accelerated review, the Parliamentary Secretary determine that the dumping duty amount be worked out in accordance with the floor price duty method. The result of this recommendation is that Zhaoqing's exports will not attract interim dumping duty as long as its export prices are at or above the floor price established by reference to the normal value determined for Zhaoqing's export sales of aluminium extrusions, as adjusted. If the export price falls below the floor price, a variable rate of interim dumping duty will be payable equal to the difference between the actual export price and the floor price.

The Commissioner recommends that the countervailing duty notice be varied as it applies to the applicant and an individual countervailing duty rate be applied to Zhaoqing. The Commissioner further recommends that the Parliamentary Secretary determine that the countervailing duty amount be worked out as a proportion of the export price of the goods, reflecting the ad valorem duty method.⁴ The applicable countervailing duty rate is 7.5 per cent.

If the Parliamentary Secretary accepts these recommendations, to give effect to the decision, the Parliamentary Secretary must sign the relevant notice at **Non Confidential Attachment 1** and schedules at **Confidential Attachment 1**.

1.3 Findings and conclusions

Based on all relevant and available information the Commission's findings and conclusions in respect of Zhaoqing are as follows:

- the export price has been determined having regard to all relevant information (Section 3 of this report refers) being set equal to the normal value determined;⁵

¹ This application was lodged in accordance with section 269ZF of the Customs Act 1901.

² Refer to Section 2.6 for a full description of the goods.

³ Subsection 269ZG(1)(b)(ii).

⁴ The Minister is not required to determine the countervailing duty method.

⁵ Subsection 269TAB(3) refers.

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- the normal value has been determined having regard to Zhaoqing's domestic sales of aluminium extrusions made in the ordinary course of trade (OCOT) in China (Section 4 of this report refers);⁶
- ten countervailable subsidy programs (Programs 2-10 and 13) applied to Zhaoqing in relation to aluminium extrusions during the review period (Section 5 of this report refers);⁷ and
- the non-injurious price (NIP) for aluminium extrusions can be established by reference to an unsuppressed selling price (USP) which has been calculated using the cost to make and sell (CTMS) information supplied by the Australian industry, plus a reasonable amount of profit and less importation costs (Section 6 of this report refers).

Based on these findings and conclusions, the Commissioner recommends that the Parliamentary Secretary fix exporter specific variable factors and alter the anti-dumping measures⁸ in so far as they relate to exports of aluminium extrusions by Zhaoqing.

If accepted by the Parliamentary Secretary the individual rates applicable to Zhaoqing will take effect retrospectively from 21 July 2014 (the date the application was lodged).

1.4 Application of law to facts

Division 6 of Part XVB of the Act enables eligible parties to apply for an accelerated review of anti-dumping measures. The Division, among other matters:

- sets out the procedures to be followed and the matters to be considered by the Commissioner in conducting accelerated reviews in respect of the exporter and the goods covered by the application for the purpose of making a report to the Minister; and
- empowers the Minister, after consideration of such reports, to leave the measures unaltered or to modify them as appropriate.⁹

6 Subsection 269TAC(1) refers.

7 The review period for the purposes of this accelerated review is 1 August 2013 to 31 July 2014.

8 Anti-dumping measures refers to dumping and countervailing measures.

9 In December 2013, the Minister for Industry delegated responsibility for decision making on operational matters under Parts XVB and XVC of the Act and other anti-dumping legislation to the Parliamentary Secretary.

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2 BACKGROUND

2.1 Accelerated Review process

If anti-dumping measures have been taken in respect of certain goods, a new exporter, who has not exported the goods to Australia during the period specified in section 269T of the Act may request an accelerated review of those measures as they affect that particular exporter, if they consider the measures are not appropriate to that exporter (**Non-Confidential Attachment 1** refers).

If an application for an accelerated review of anti-dumping measures is received and not rejected, the Commission has up to 100 days to inquire and report to the Parliamentary Secretary on the accelerated review of the measures.

In making recommendations in its final report to the Parliamentary Secretary, the Commissioner must consider the application for an accelerated review and make such inquiries as considered appropriate.

In respect of a dumping duty notice or countervailing duty notice, the Commissioner must recommend to the Parliamentary Secretary that the dumping duty notice or countervailing duty notice:

- remain unaltered; or
- be altered:
 - so as not to apply to the particular exporter; or
 - to have effect in relation to the particular exporter as if different variable factors had been ascertained.

Following the Parliamentary Secretary's decision, a notice is published advising interested parties of the decision.

2.2 Existing measures

On 11 May 2009, an investigation into aluminium extrusions exported to Australia from China was initiated following an application lodged by Capral Limited (Capral). In that investigation, as outlined in the *Trade Measures Branch Report No. 148* (REP 148), it was found that:

- with the exception of one exporter, Tai Ao (Taishan) Co Ltd (Tai Ao), the goods were exported from China at dumped prices;
- with the exception of Tai Ao, the goods exported from China were subsidised;
- the Australian industry producing like goods had suffered material injury as a result of those dumped and subsidised goods; and
- future exports of the goods from China may be dumped and subsidised and that continued dumping and subsidisation may cause further material injury to the Australian industry.

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Accordingly, it was recommended that the then Attorney-General impose anti-dumping measures (in the form of interim dumping duty (IDD) and interim countervailing duty (ICD)) on the goods exported from China.¹⁰ The Attorney-General accepted these recommendations and, on 28 October 2010, notice of the decision was published in Australian Customs Dumping Notice (ACDN) No. 2010/40.

Following a review by the Trade Measures Review Officer, the Australian Customs and Border Protection Service (ACBPS) conducted a reinvestigation into certain findings made in REP 148.¹¹ *International Trade Remedies Report No. 175* (REP 175) sets out the findings affirmed and new findings made by ACBPS as a result of the reinvestigation.

The recommendations of REP 175 were to vary the dumping and countervailing duty notices to increase the rate of IDD for exporters of aluminium extrusions with 'mill' and 'anodised' finish, and make Zhaoqing New Zhongya Aluminium Co Ltd not subject to the dumping duty notice. The rate of ICD remained unchanged. REP 175 found that ascertained export prices, ascertained normal values and non-injurious prices for the purpose of calculating interim dumping duty and interim countervailing duty should be set by finish type.¹²

To give effect to these decisions the then Attorney-General published new notices under section 269ZZM. The new notices, which varied the anti-dumping measures by setting the measures for aluminium extrusions by "finish" (i.e. mill finish or anodised), came into effect on 27 August 2011, replacing the earlier notices.

Two Chinese exporters, Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd (Kam Kiu) (and its related companies Kam Kiu Aluminium Products SDN BHD and Kam Kiu (Australia) Pty Limited), and PanAsia Aluminium (China) Ltd (PanAsia) (and its related company Opal (Macao Commercial Offshore) limited), applied to the Federal Court of Australia (Federal Court) for judicial review of the then Attorney General decision.

On 4 September 2013, the Federal Court decided in favour of the Commonwealth on nine of the ten grounds of review, finding in favour of the applicants for one other ground of review. The Federal Court held that the then Attorney General had no power to vary the dumping and countervailing measures for aluminium extrusions by finish.

The effect of the Federal Court's decision is that the rates of dumping and countervailing duty against the applicants, Kam Kiu and PanAsia, revert to single "consolidated" levels (rather than by finish) that were previously set by the then Attorney in October 2010. These changes were applied retrospectively from 27 August 2011.¹³

¹⁰ On 30 June 2010, the Minister for Home Affairs formed the view that he should not make decisions or play any role in this matter and as such the Attorney General considered the report and exercised powers under the Act in his place.

On 25 September 2013, responsibility for anti-dumping matters was transferred to the Minister for Industry. The Minister for Industry subsequently delegated responsibility for anti-dumping matters to the Parliamentary Secretary for the Minister for Industry.

¹¹ The function of the Anti-Dumping Commission was formerly carried out by ACBPS.

¹² See also ACDN 2011/31

¹³ Further details regarding the findings of the course case and amendments to anti-dumping measures applicable to aluminium extrusions can be found in ADN 2013/80.

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2.3 Notification and participation

On 21 July 2014, Zhaoqing lodged an application for an accelerated review of the anti-dumping measures applicable to aluminium extrusions exported to Australia from China.

The Commissioner considered the application¹⁴ to determine if it was valid as required by sections 269ZE, 269ZF and the definitions provided in section 269T of the Act. The Commissioner was satisfied that:

- Zhaoqing was a new exporter as defined by section 269T of the Act;
- the application satisfied the requirements of section 269ZF of the Act;
- the conditions for rejection under subsection 269ZE(2) of the Act were not met; and
- that therefore, the circumstances in which an accelerated review can be sought were satisfied.

As the circumstances in which an accelerated review can be sought were satisfied the Commissioner did not reject the application and commenced the accelerated review. Consideration Report No. 259 (CON 259) provides further details in relation to the Commissioner's consideration of the application. CON 259 should be read in conjunction with this report. CON 259 is available on the Commission's website at www.adcommission.gov.au.

The commencement of the accelerated review was publicly notified in Anti-Dumping Notice (ADN) No. 2014/87, which was published on 8 September 2014. The ADN is available on the Commission's website at www.adcommission.gov.au.

This ADN highlighted that interested parties had until 3 October 2014 to lodge submissions in relation to the accelerated review. It also advised that the Commissioner's recommendation to the Parliamentary Secretary will be made in a report on or before 29 October 2014.

For the purposes of the accelerated review the period examined is 1 August 2013 to 31 July 2014 (herein referred to as the review period).

2.4 Public record

There is no legislative requirement for the Commission to maintain a public file for accelerated reviews. However, in the interests of ensuring this process is conducted in an open and transparent manner, a public file for this accelerated review has been maintained and is accessible on the Commission's website at www.adcommission.gov.au.

2.5 Current accelerated review (No. 259) – excluded matters

As highlighted in ADN No. 2014/87, having regard to the expedited nature of an accelerated review, the Commission considered that it was not the relevant mechanism to

¹⁴ In accordance with section 269ZG of the Act.

reassess certain aspects of the anti-dumping measures applying to aluminium extrusions. The ADN specified that the accelerated review would not:

- reassess findings as to whether or not a market situation exists such that sales in that market are not suitable for use in determining normal value;
- reassess the countervailable subsidies other than those already subject to the countervailing duty notice; or
- reassess other substantive methodological matters where those matters have been considered in the original investigation.

2.6 Initiation of a review of measures (Division 5)

On 12 June 2014 a review of measures¹⁵ was commenced for all exporters of aluminium extrusions from China following an application from a single exporter under section 269ZB of the Act. The Parliamentary Secretary considered it appropriate to extend the review to all exporters.¹⁶

Division 5 of Part XVB of the Act provides that a review of measures is available to affected parties (as defined). An application for a review of measures cannot be made earlier than 12 months after a dumping duty notice or countervailing duty notice has been published (or last revised). A review of measures may apply in respect of a particular exporter of goods or as they affect exporters of those goods generally.

A review of measures under Division 5 of Part XVB of the Act may reassess aspects of anti-dumping measures including whether one or more of the variable factors relevant to the taking of the measures in relation to an exporter or exporters have changed.

As a result of a review of measures, the Parliamentary Secretary may amend the dumping duty notice or countervailing duty notice. Where a review of measures applies to exporters of goods generally (that is, not a single exporter) those notices will apply to all relevant exporters of goods, including Zhaoqing.

The current review of measures does not impact on this accelerated review. However, the findings and recommendations of the review of measures, if accepted by the Parliamentary Secretary, may update the level of measures for all exporters, including the level of measures determined by this accelerated review.

2.7 The goods

2.7.1 Description

The goods the subject of the application (the goods) are:

¹⁵ A review of measures is undertaken in accordance with the provisions of Division 5 of the Act, which is distinct from the accelerated review provisions of Division 6, considered in this report.

¹⁶ Subsection 269(4)(b); details of the review are contained in ADN 2014/46

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Aluminium extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by the Aluminium Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness or diameter greater than 0.5 mm, with a maximum weight per metre of 27 kilograms and a profile or cross-section which fits within a circle having a diameter of 421 mm.

The goods include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. For example, aluminium extrusion products that have been painted, anodised, or otherwise coated, or worked (e.g. precision cut, machined, punched or drilled) fall within the scope of the goods.

The goods do not extend to intermediate or finished products that are processed or fabricated to such an extent that they no longer possess the nature and physical characteristics of an aluminium extrusion, but have become a different product.

2.7.2 Tariff classification

The goods are classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

- 7604.10.00 (statistical code 6);
- 7604.21.00 (statistical codes 7 and 8);
- 7604.29.00 (statistical codes 9 and 10);
- 7608.10.00 (statistical code 9);
- 7608.20.00 (statistical code 10);
- 7610.10.00 (statistical code 12); and
- 7610.90.00 (statistical code 13).

These goods are subject to a 5 per cent Customs duty.

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3 EXPORT PRICE

3.1 Findings

The export price for aluminium extrusions exported by Zhaoqing from China has been determined under subsection 269TAB(3) of the Act, having regard to all relevant information. The export price has been ascertained to be equal to the normal value of the goods, which has the effect of setting a floor price for aluminium extrusions exported by Zhaoqing.

3.2 Exporter questionnaire response and verification

3.2.1 Zhaoqing's exporter questionnaire response

Upon the commencement of the accelerated review, the Commission sent an exporter questionnaire to Zhaoqing to complete.

On 17 September 2014, the Commission received a completed response to the exporter questionnaire. The non-confidential version of this response was placed on the public record.¹⁷

This response contained information and data in relation to:

- company structure and organisation;
- business license registration;
- turnover, financial statements and income tax;
- domestic sales with supporting documentation for two sales;
- export (Australian) sales¹⁸ with supporting documentation for two sales;
- purchase of raw materials including detail of aluminium suppliers;
- production and selling costs for aluminium extrusions;
- production process and production volumes;
- supply of inputs including water, electricity and heavy oil; and
- adjustments required to ensure fair comparison of export prices and normal values.

Zhaoqing provided a limited response to questions in relation to countervailable subsidy programs, including those that the ACBPS identified in REP 148 in respect of aluminium extrusions.¹⁹ Notwithstanding the brevity of the response, the Commission considered that the response provided was sufficient.

¹⁷ Document No. 004 on the electronic public record refers.

¹⁸ Zhaoqing claimed that it had not exported to any other countries.

¹⁹ In REP 148 (published in October 2010) the ACBPS found that 19 programs were countervailable subsidy programs that conferred benefits to aluminium extrusions exported to Australia from China.

3.3 Determination of export price

Zhaoqing made two export sales to Australia during the review period, to customer [REDACTED] [name of the importer] (an Australian importer). Zhaoqing stated that they used trading company, [REDACTED] [name of the trader], to export the goods. A search of the ACBPS import database confirmed these details to be correct. Supporting documentation for the export sales were also able to be reconciled to data provided by Zhaoqing.

Notwithstanding that Zhaoqing provided information and supporting evidence in respect of its Australian export sales, the Commission considers that sufficient information is not available to determine the export price of the goods under subsection 269TAB(1) of the Act.

The small sample of export sales to Australia was inadequate for determining the export price in accordance with 269TAB(1). Zhaoqing made two sales to Australia on 12 May 2014 and 19 May 2014 according to information supplied by Zhaoqing.²⁰ Both sales occurred within a week of one another and the goods all had mill finish. These sales offer limited scope to investigate variables such as the customer, sales type or product finish. In this case, the information from these transactions is not considered to be representative of export prices across the review period.

The Commission has therefore determined the export price of the goods under subsection 269TAB(3), having regard to all relevant information.

The export price (at Free-On-Board (FOB) terms) has been ascertained to be equal to the normal value of the goods (including aluminium extrusions of varying finishes). This has the effect of setting a floor price for aluminium extrusions exported by Zhaoqing.

²⁰ The lodgement dates for the two shipments are 22 May 2014 and 26 May 2014 in the ACBPS import database.

4 NORMAL VALUE AND DUMPING MARGIN

4.1 Findings

The normal value for aluminium extrusions sold in the ordinary course of trade (OCOT) on the domestic market in China exported by Zhaoqing was determined under subsection 269TAC(1) of the Act.

4.2 Determination of cost of production

4.2.1 REP148

In assessing whether the price paid for domestic sales of like goods is taken to have been paid in the OCOT, the Commission examines whether prices are less than the cost of such goods, and whether the seller will be able to recover the cost of such goods within a reasonable period (section 269TAAD refers).

Subsection 269TAAD(4) establishes that the cost of goods is the amount determined by the Minister to be the cost of production of those goods in the country of export and the amount determined by the Minister to be the selling, general and administrative (SG&A) costs associated with the sale of those goods. Subsection 269TAAD(5) requires that those amounts must be worked out in such manner, and taking account of such factors, as the regulations provide.

Regulation 180(2) requires that if an exporter keeps records relating to like goods that are in accordance with generally accepted accounting principles (GAAP) in the country of export, and reasonably reflect competitive market costs associated with the production or manufacture of like goods, the Minister must work out the cost of production using information set out in the exporter's records.

In REP 148, the ACBPS found that sufficient evidence existed to consider that the cost of aluminium ingot²¹ reflected in the records of the selected exporters' did not reasonably reflect competitive market costs. Appendix 2 of REP 148 provides an overview of these findings.

Therefore, for the purposes of assessing whether domestic sales were sold in the OCOT, in REP 148 the ACBPS considered it appropriate to determine the cost of production for aluminium extrusions sold domestically by replacing the cost of primary aluminium with a competitive market cost. The ACBPS considered that an appropriate replacement cost for aluminium ingot was the price of primary aluminium quoted on the London Metal Exchange (LME), to reflect competitive market costs in China. The ACBPS identified additional expenses incurred in purchasing domestic primary aluminium and added these to the LME price to ensure similar delivery and payment terms to the exporter's actual purchase costs of primary aluminium in the Chinese domestic market during the investigation period. These additional expenses included trading premiums, delivery charges and interest charges.

²¹ The terms "aluminium ingot" and "primary aluminium" are used interchangeably in this report.

After substituting the exporter's purchase cost of aluminium ingot with an equivalent LME adjusted cost, the ACBPS calculated revised monthly CTMS data for each of the selected exporters. The revised CTMS was then used to assess whether domestic sales were in the ordinary course of trade

4.2.2 Current accelerated review (No. 259)

For this accelerated review, the Commission has adopted the same methodology used in REP 148, and has substituted Zhaoqing's purchase cost of primary aluminium with an equivalent LME adjusted cost (including a trading premium and delivery charges) to calculate revised quarterly CTMS data. The premium was based on actual costs incurred by cooperating exporters in the original investigation.²² The Commission used this approach as Zhaoqing was not able to provide details regarding its trader premium. The substitution of the revised costs has resulted in a downwards adjustment to CTMS data in the first three quarters of the review period. In the fourth quarter, the adjustment was an uplift. The revised CTMS was used to conduct an OCOT assessment.

The Commission notes that in REP 148, the "net" LME cost was used as a substitute for the cooperative exporters, regardless of whether the LME was above or below the exporter's actual aluminium cost (although the "net" LME cost was above the exporters' actual costs, which resulted in an upwards adjustment to the CTMS). The Commission has adopted a consistent approach for this accelerated review, however for the majority of the review period the LME price (as adjusted) was below Zhaoqing's purchase price of primary aluminium.

As discussed at Section 2.5, the Commission has not considered whether the LME represents an appropriate benchmark for determining a competitive market cost for primary aluminium (supplied in China). This issue will be considered as part of the ongoing review of measures applying to aluminium extrusions, which was initiated in June 2014.

4.3 The Commission's assessment - normal value

Sufficient information is available to enable the normal value of aluminium extrusions exported to Australia from China by Zhaoqing to be determined under subsection 269TAC(1).

Normal values were determined using domestic sales of aluminium extrusions made by Zhaoqing in China that were made in the OCOT (and in sufficient volumes). The following adjustments were made to the normal value under subsection 269TAC(8):

- inland freight – an upwards adjustment was made to reflect inland freight to the port for the exported goods;
- Value Added Tax (VAT) difference – an upwards adjustment was made to reflect net VAT liability for the exported goods.

Normal value calculations are at **Confidential Attachment 1**.

²² This approach reflects approach used in REP 148. Verified costs from REP 148 were used as Zhaoqing was not able to confirm certain expenses associated with aluminium purchases.

4.4 Dumping margin

As the Commission has ascertained that the export price of the goods is equivalent to the normal value of the goods, there is no requirement to calculate a dumping margin.

5 COUNTERAVAILABLE SUBSIDIES

5.1 Findings

Pursuant to subsection 269TAAC(1) of the Act, the Commissioner considers that Zhaoqing received subsidies under ten of the programs that were deemed to be countervailable in REP 148 during the current review period. The countervailable subsidy margin has been calculated at 7.5 per cent.

The Commissioner does not recommend that Zhaoqing should be exempt from the countervailing duty notice applying to aluminium extrusions exported from China.

5.2 Original investigation

In REP 148, the ACBPS found that exporters of aluminium extrusions from China to Australia received financial contributions in respect of the goods that conferred a benefit under 19 subsidy programs (as detailed in Table 1 below). Subsequent to accepting the recommendations contained in REP 148, the Attorney-General published a countervailing duty notice specifying countervailing duty rates applicable for aluminium extrusions exported from China.

Program No.	Program title (as specified in REP 148)
Preferential Income Tax Programs	
Program 1	<i>Preferential tax policies for enterprises with foreign investment established in the coastal economic open areas and economic and technological development zones</i>
Program 10	<i>Preferential Tax Policies for Foreign Invested Enterprises (FIE) – Reduced Tax Rate for Productive FIEs scheduled to operate for a period of not less than 10 years</i>
Program 13	<i>Exemption of Tariff and Import VAT for Imported Technologies and Equipment</i>
Program 16	<i>Preferential tax policies for enterprises with foreign investment established in Special Economic Zones (excluding Shanghai Pudong area)</i>
Program 17	<i>Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai</i>
Program 18	<i>Preferential tax policies in the Western Regions</i>
Grants and Preferential Policy Programs	
Program 2	<i>One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'</i>
Program 3	<i>Provincial Scientific Development Plan Fund</i>
Program 4	<i>Export Brand Development Fund</i>

Program No.	Program title (as specified in REP 148)
Program 5	<i>Matching Funds for International Market Development for SMEs</i>
Program 6	<i>Superstar Enterprise Grant</i>
Program 7	<i>Research & Development (R&D) Assistance Grant</i>
Program 8	<i>Patent Award of Guangdong Province</i>
Program 9	<i>Training Program for Rural Surplus Labour Force Transfer Employment</i>
Program 15	<i>Goods provided at less than adequate remuneration</i>
Program 26	<i>Innovative Experimental Enterprise Grant</i>
Program 29	<i>Special Support Fund for Non-State-Owned Enterprises</i>
Program 32	<i>Venture Investment Fund of Hi-Tech Industry</i>
Program 35	<i>Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment</i>

Table 1: REP 148 countervailable subsidy programs

5.3 Current review

5.3.1 Zhaoqing's claims

As discussed at Section 3.2.1, Zhaoqing submitted an exporter questionnaire response, which included limited but relevant information with regard to the subsidy programs listed at Table 1. Zhaoqing claims that it has not received any benefit or subsidy from the programs identified in REP 148 in the last three years.

5.3.2 Scope of subsidies assessed

As discussed at Section 2.5, due to the expedited nature of accelerated reviews, the Commission's assessment of whether countervailable subsidies were received by Zhaoqing in respect of aluminium extrusions only relates to the 19 countervailable subsidy programs that are subject to the countervailing duty notice (REP 148 refers).

The review of measures applying to aluminium extrusions will consider further subsidy programs if necessary.

5.4 The Commission's assessment – countervailable subsidies

5.4.1 Preferential Income Tax Programs

Zhaoqing stated in its questionnaire response that it did not receive any benefit under the preferential income tax programs during the review period. Zhaoqing provided information regarding company ownership and income tax payable that was supported by documentation. Documents included unaudited financial statements (balance sheet and

income statement), corporate tax application forms, certificate of registration and a diagram of corporate structure. Zhaoqing also confirmed that the general tax rate for enterprises in China was 25 per cent over the period. This was substantiated by detail within the corporate tax form supplied.

The Commission could not establish the veracity of these documents: financial statements were unaudited and tax forms contained no evidence of a seal or mark from an external tax authority. The Commission was therefore unable to confirm that the company paid tax at the 25 per cent rate.

The information provided is also insufficient to determine whether the company is a foreign invested enterprise (FIE). The Commission examined Zhaoqing's corporate structure for ownership, and is not satisfied that the applicant is wholly domestically owned. In the absence of necessary information, the Commission has had regard to the available relevant facts and concludes that Zhaoqing received benefits under Programs 1 and 10 during the review period.

Programs 16, 17 and 18 were found to be not applicable, based on geographic eligibility criteria which eliminated Zhaoqing from these programs.

In respect of *Program 13 Exemption of Tariff and Import VAT for Imported Technologies and Equipment*, Zhaoqing claims that it has not received any benefit or subsidy from this program in the last three years, as all equipment is procured by the company domestically. Zhaoqing did not provide any further information or evidence to substantiate this claim.

In the absence of necessary information to establish whether the exporter has received benefits under this program, the Commission has had regard to the available relevant facts and determined that a benefit has been conferred under Program 13 to Zhaoqing during the review period.

5.4.2 Grants and Preferential Policies Programs

Zhaoqing indicated that it did not receive any benefits under the *Grants and Preferential Policies Programs*. Zhaoqing did not provide any further information or evidence to substantiate this claim.

The Commission considers that the grants provided under these programs are financial contributions by the Government of China (GOC), to the extent that they were made in connection with the production of aluminium extrusions in China, which involves a direct transfer of funds by GOC to the recipient enterprises. This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions because of receipt of the respective funds from the government.

The Commission reviewed the chart of accounts, supplied in Zhaoqing's questionnaire response, for any positive evidence of grants received. The accounts were not sufficiently detailed to provide information at a level necessary to determine the receipt of grants.

Programs 26, 29, 32 and 35 were found to be not applicable, based on geographic eligibility criteria which eliminated Zhaoqing from these programs.

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In the absence of necessary information, the Commission concludes that Zhaoqing received benefits under Programs 2, 3, 4, 5, 6, 7, 8 and 9 during the review period.

In REP 148, the ACBPS considered the following factors, among others, to indicate the GOC's involvement in the domestic aluminium market and the distorting effects on domestic prices:

- export taxes on primary aluminium; and
- purchase of primary aluminium by the GOC.

Under *Program 15 Goods provided at less than adequate remuneration*, it was considered that a benefit to the exporter of aluminium extrusions was conferred by primary aluminium being provided by the GOC at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China. The ACBPS found that this program involved a financial contribution to the extent that it was made in connection with the production of aluminium extrusions in China that involved the provision of goods (primary aluminium) by state invested enterprises (SIEs), being public bodies.

In its exporter questionnaire response, Zhaoqing claimed that it did not purchase (primary) aluminium from SIEs. It also claims that it did not receive any benefits under Program 15. Zhaoqing provided a list of all aluminium purchases during the review period, including details of its suppliers, none of which were identified by the company as SIEs.

The Commission compared the volume of aluminium purchases to the volume of production over the review period in order to verify this information. Primary aluminium represents approximately 97 per cent of the production by volume of the goods. Zhaoqing's production volumes closely mirror the quantity of primary aluminium purchased for the review period.

The Commission then sought to establish whether the suppliers named in the spreadsheet were SIEs. A list of SIEs and their associated companies involved in aluminium production was supplied by the GOC as part of the original investigation. This list was compared against the company names in the aluminium purchases spreadsheet provided by the applicant. No matches were made. The Commission also searched for information on the primary aluminium suppliers' company type, investment status and activities. Finding no evidence to suggest that the suppliers were SIEs, together with information submitted by the applicant, the Commission concludes that no aluminium purchases were made from SIEs.

The Commission therefore considers that it is appropriate to conclude that no benefit was conferred under *Program 15* as primary aluminium was not purchased from SIEs.

5.5 Subsidy Margins

The Commission has determined that during the review period Zhaoqing received financial contributions in respect of the goods that conferred a benefit, under Programs 2, 3, 4, 5, 6, 7, 8, 9, 10 and 13.

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In the absence of relevant information from the exporter, the Commission has had regard to the available relevant facts to determine the amount of the benefit received. These relevant facts include verified information from the original investigation and unverified information from subsequent reviews and duty assessments in relation to aluminium extrusions.

The Commission calculated a countervailable subsidy margin of 7.5 per cent in respect of the benefit conferred under the various programs.

The Commission has determined that the other nine countervailable subsidy programs identified in REP 148 did not apply to the applicant in the review period.

Subsidy margin calculations are at **Confidential Appendix 2**.

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6 NON INJURIOUS PRICES

6.1 Findings

A single NIP for aluminium extrusions (all types) has been derived from a constructed USP based on verified CTMS data provided by Australian industry plus a reasonable rate of profit with deductions for importation costs. The Commission has compared the calculated NIP to the normal value, adjusted for applicable subsidies (representing all types of aluminium extrusions) and found that the NIP exceeds the normal value. Therefore the Commission considers that the floor price should be set as being equal to the normal value.

6.2 Introduction

Anti-dumping measures may be applied where it is established that dumped and / or subsidised imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of duty cannot exceed the margin of dumping and subsidisation, but a lesser duty may be applied if it is sufficient to remove the injury.

The calculation of the NIP provides the mechanism whereby this lesser duty provision is given effect. The NIP is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping and subsidisation.²³

Dumping and countervailing duties are usually based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export.

6.3 Unsuppressed selling price

The Commission follows one of the following approaches to establish the USP:

1. *Market approach* – industry selling prices at a time when the Australian market was unaffected by dumping;
2. *Construction approach* – the Australian industry's CTMS plus a reasonable rate of profit; or
3. *Other approach* – selling prices of un-dumped imports in the Australian market.

Having calculated the USP, the Commission then calculates a NIP by deducting the importation costs incurred in getting the goods from the FOB point at export (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, duty, insurance, into-store costs and amounts for importer expenses and profit.

6.4 The Commission's assessment – the USP and the NIP

When establishing a USP / NIP for accelerated reviews, the Commission will not depart from the approach taken in the original investigation or in subsequent reviews, unless

²³ The NIP is defined in section 269TACA.

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there has been a change in circumstances that makes the approach unreasonable and/or less preferable.

During the original investigation the USP was established using the construction approach. The ACBPS used Australian industry's CTMS and included a zero margin of profit as the prices that may have been achieved during the investigation period may not have been sufficient to recover the full CTMS. The Commission considers that it is still reasonable and preferable to use this methodology based on current circumstances. For this accelerated review, the Commission has used updated CTMS data supplied by Australian industry. This forms the basis of the updated USP.

To calculate the NIP (at FOB terms), the Commission has deducted the following costs from the USP:

- overseas freight and marine insurance;
- into-store costs; and
- SG&A costs related to the sale of the imported goods by the importer.

These importation costs reflect verified costs relevant to the review period that were provided from importers during duty assessments for aluminium extrusions.

USP and NIP calculations are at **Confidential Attachment 3**.

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7 EFFECT OF THE ACCELERATED REVIEW

If the Parliamentary Secretary accepts the recommendations in this report, in respect of aluminium extrusions exported by Zhaoqing from China:

- interim dumping duty will be payable only when the export price is below the relevant normal value (reflecting the imposition of a floor price duty mechanism); and
- interim countervailing duty will be payable for each consignment of the exported goods (reflecting the imposition of an ad valorem duty mechanism of 7.5 per cent).

If the Parliamentary Secretary accepts the recommendations in this report, these changes will take effect retrospectively from 21 July 2014.

The Commission notes the outcome of this accelerated review is subject to any future review and/or changes to anti-dumping measures for aluminium extrusions from China. This includes the current review described in Section 2.6 of this report.

8 RECOMMENDATION

The Commissioner recommends that the Parliamentary Secretary considers this report, and if agreed, sign the attached notice (**Confidential Attachment 1**) and sign the attached schedules (**Confidential Attachment 2**) to **declare**:

- under subsection 269ZG(3)(b)(ii) of the Act, that, for the purpose of the Act and the Dumping Duty Act, to the extent that the anti-dumping measures concerned involved the publication of a dumping duty notice and a countervailing duty notice, that, with effect from 21 July 2014, the notices are taken to have effect in relation to Zhaoqing as if different variable factors had been fixed in respect of this exporter, relevant to the determination of duty.

The Commissioner recommends that the Parliamentary Secretary **be satisfied** that:

- in accordance with subsection 269TAB(3) of the Act, sufficient information is not available to enable export prices for aluminium extrusions exported to Australia from China by Zhaoqing the subject of this review to be ascertained under the preceding subsections of section 269TAB of the Act; and
- in accordance with subsection 269TAC(1) of the Act, the normal value of goods exported to Australia can be determined based on domestic sales of like goods sold by Zhaoqing in the ordinary course of trade.

The Commissioner recommends that the Parliamentary Secretary **determine**:

- in accordance with subsection 269TAB(3) of the Act, the export prices for aluminium extrusions exported to Australia from China by Zhaoqing is the amount having regard to all relevant information;
- in accordance with subsection 269TAC(1) of the Act, the normal value for aluminium extrusions exported to Australia from China be based on Zhaoqing's domestic sales of like goods sold in the ordinary course of trade; and
- in accordance with subsection 8(5) of the Dumping Duty Act, that the amount of interim dumping duty payable on the goods the subject of the dumping duty notice be worked out in accordance with the floor price duty method prescribed in subsection 5(4) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.²⁴

The Commission recommends that the Parliamentary Secretary:

- decide not to publish the tables attached to the notices because publication would adversely affect the business or commercial interest of interested parties.

²⁴ There is no legislative requirement for the Minister to determine the countervailing duty method.

9 APPENDICES AND ATTACHMENTS

Attachments	
Non confidential Attachment 1	Section 269ZG(3) public notice
Confidential Attachment 1	Relevant schedules
Appendices	
Confidential Appendix 1	Appendix 1 – Normal Value
Confidential Appendix 2	Appendix 2 - Subsidy Calculation
Confidential Appendix 3	Appendix 3 - NIP