

**PUBLIC RECORD**



**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Anti-Dumping  
Commission**

*CUSTOMS ACT 1901 - PART XVB*

# **ANTI-DUMPING COMMISSION**

## **REPORT NO. 304**

**REVIEW OF ANTI-DUMPING MEASURES APPLYING TO  
CERTAIN ALUMINIUM EXTRUSIONS  
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA  
BY  
PRESS METAL INTERNATIONAL LTD.**

15 January 2016

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**ABBREVIATIONS**

the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant	Press Metal International Ltd.
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
the goods	the goods the subject of the anti-dumping measures (also referred to as the goods the subject of the application)
Inquiry 287	Inquiry into the continuation of anti-dumping measures applying to aluminium extrusions - no. 287
LME	London Metal Exchange
MJP	Major Japanese Ports
NIP	non-injurious price
the Parliamentary Secretary	the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
PMI	Press Metal International Ltd.
the Regulations	<i>Customs (International Obligations) Regulations 2015</i>
Review 248	Review of Anti-Dumping Measures No. 248
review period	1 July 2014 to 30 June 2015
SEF	Statement of Essential Facts
SG&A	selling, general and administrative costs
VAT	value added tax

## 1 SUMMARY

### 1.1 Introduction

This review of measures is in response to an application from Press Metal International Ltd. (referred to as the applicant or PMI) for a review of the anti-dumping measures (in the form of a dumping duty notice and a countervailing duty notice) applying to certain aluminium extrusions (aluminium extrusions)<sup>1</sup> exported to Australia from the People's Republic of China (China) in so far as the anti-dumping measures affect the applicant.

This report sets out the Commissioner of the Anti-Dumping Commission's (the Commissioner's) recommendations to the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)<sup>2</sup> in relation to this review.

### 1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)<sup>3</sup> enables affected parties to apply for a review of anti-dumping measures. The division, among other matters:

- sets out the circumstances in which applications for the review of anti-dumping measures can be brought;
- sets out the procedure to be followed by the Commissioner in dealing with such applications or requests and preparing reports for the Parliamentary Secretary; and
- empowers the Parliamentary Secretary, after consideration of such reports, to leave the anti-dumping measures unaltered or to modify them as appropriate.

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<sup>1</sup> Refer to section 3.3 of this report for a full description of the goods.

<sup>2</sup> On 23 December 2014, the then Minister for Industry and Science delegated his powers and functions under Part XVB of the *Customs Act 1901* to the Parliamentary Secretary to the Minister for Industry and Science. On 20 September 2015, the Department of Industry and Science became the Department of Industry, Innovation and Science. The titles of the Minister and Parliamentary Secretary also changed to the Minister for Industry, Innovation and Science, and the Parliamentary Secretary to the Minister for Industry, Innovation and Science. On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science.

<sup>3</sup> A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

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Pursuant to subsection 269ZDA(1), the Commissioner must, after conducting a review of anti-dumping measures and within 155 days after the date of publication of the notice under subsection 269ZC(4), (5) or (6) in relation to those measures or such longer period as the Parliamentary Secretary allows under section 269ZHI, give the Parliamentary Secretary a report recommending, to the extent that the measures involved the publication of a dumping duty notice or a countervailing duty notice:

- (i) that the notice remain unaltered; or
- (ii) that the notice be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally; or
- (iii) that the notice have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

### 1.3 Findings

The Commissioner has found that, in relation to exports of aluminium extrusions to Australia from China by PMI during the review period (1 July 2014 to 30 June 2015):

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the amount of countervailable subsidy received has changed.

The Commissioner has also found that subsection 8(5BAAA)(a) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) applies. As such, the Parliamentary Secretary is not required to, but may still, have regard to the lesser duty rule for the purpose of this review.

### 1.4 Recommendations

The Commissioner recommends to the Parliamentary Secretary that the dumping duty notice and the countervailing duty notice have effect in relation to PMI as if different variable factors had been ascertained.

The Commissioner further recommends that the Parliamentary Secretary exercise her discretion not to have regard to the lesser duty rule. The Commissioner notes that the Parliamentary Secretary is not obliged to, but may still, consider applying a lesser amount of duty in accordance with the lesser duty rule.

The full recommendations are outlined in Chapter 7 of this report.

If the Parliamentary Secretary accepts these recommendations, the Parliamentary Secretary must declare, by notice published on the Anti-Dumping Commission's (the Commission's) website (**Attachment 1**), that, in accordance with subsection 269ZDB(1)(a)(iii), for the purposes of the Act and the Dumping Duty Act, and with effect from the date specified in the declaration, the dumping duty notice and the countervailing duty notice are taken to have effect or to have had effect, in relation to PMI, as if different variable factors had been fixed in respect of PMI relevant to the determination of duty.

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## 2 BACKGROUND

### 2.1 Application and initiation of review

On 2 July 2015, PMI lodged an application, under subsection 269ZA(1), requesting a review of the anti-dumping measures as they apply to its exports of aluminium extrusions to Australia from China. PMI's application claimed that variable factors relevant to the taking of the anti-dumping measures have changed.

Following consideration of the application, the Commissioner decided not to reject the application and initiated a review of the anti-dumping measures applying to aluminium extrusions exported to Australia from China in so far as the anti-dumping measures affect the applicant.

Notification of the initiation of the review was made in *The Australian* newspaper on 13 August 2015 and in Anti-Dumping Notice (ADN) No. 2015/99.

Consideration Report No. 304 was published on the Commission's website detailing the reasons for not rejecting the application.

### 2.2 Recent cases relating to aluminium extrusions

#### Review of anti-dumping measures – Review 248 (2015)

On 12 June 2014, the Commissioner initiated a review of the anti-dumping measures in respect of aluminium extrusions exported from China by all exporters following an application by PanAsia Aluminium (China) Co., Ltd. Notification of the initiation of the review was made in *The Australian* newspaper on 12 June 2014 and ADN No. 2014/46.

On 19 August 2015, the Parliamentary Secretary published a notice declaring the outcome of the review.

Anti-dumping measures applying to exports of certain aluminium extrusions from China were altered as if different variable factors had been ascertained. A variation to this notice was published on 10 September 2015 with respect to six entities incorrectly identified as residual exporters.<sup>4</sup>

#### Inquiry into the continuation of anti-dumping measures applying to aluminium extrusions – Inquiry 287 (2015)

On 27 January 2015, the Commissioner published a notice in *The Australian* newspaper inviting certain interested parties to apply for the continuation of the anti-dumping measures in relation to aluminium extrusions exported to Australia from China. Anti-dumping measures applying to aluminium extrusions exported to Australia from China were due to expire on 28 October 2015.

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<sup>4</sup> This variation only affected the six entities incorrectly categorised as residual exporters and did not affect any other aspect of the notice. The variation is taken to have effect from 19 August 2015.

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On 27 March 2015, Capral Limited, a manufacturer of aluminium extrusions in Australia, lodged an application for the continuation of the anti-dumping measures.

Following consideration of the application, the inquiry was initiated and public notification of the inquiry was made in *The Australian* newspaper on 24 April 2015.

On 14 October 2015, the Parliamentary Secretary decided to secure the continuation of the anti-dumping measures applying to aluminium extrusions exported from China. The Parliamentary Secretary determined that the dumping duty notice and the countervailing duty notice continue in force after 28 October 2015 for a period of five years.

In making this decision to continue the anti-dumping measures applying to aluminium extrusions exported from China, the Parliamentary Secretary determined that:

- the variable factors of export price, normal value and amount of countervailable subsidy received determined following Review 248 remain unaltered; and
- the full dumping and subsidy margins determined in Review 248 be applied to calculate any interim dumping duty and interim countervailing duty taken in relation to aluminium extrusions exported to Australia from China, using her discretion to not have regard to the desirability of fixing a lesser amount of duty.

Noting that these cases also considered the export of aluminium extrusions from China, the Commissioner considers the findings made in these cases to be relevant to this review.

### 2.3 Current measures

For the purposes of this review, the dumping duty and countervailing duty notices that apply are the notices that were published on 28 October 2010 and as amended on 19 August 2015 as a result of Review 248.

In Review 248, PMI agreed to cooperate with the review however it was not selected as part of the sampled exporters. PMI was categorised as a 'residual exporter' for the purposes of Review 248, and the variable factors relevant to that category of exporters were used to determine the rate of anti-dumping measures applicable to exports of aluminium extrusions by PMI.

PMI is listed as a 'Residual Exporter (Group 1)' in Table 4 of the Dumping Commodity Register.<sup>5</sup>

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<sup>5</sup> Available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

## **2.4 Review process**

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may apply for,<sup>6</sup> or the Parliamentary Secretary may request that the Commissioner conduct,<sup>7</sup> a review of those measures if it is considered that one or more of the variable factors have changed.

The Parliamentary Secretary may initiate a review at any time. However, a review application must not be lodged earlier than 12 months after publication of the notice imposing the original anti-dumping measures or the notice(s) declaring the outcome of the last review.<sup>8</sup>

During the course of a review, the Commissioner will examine whether the variable factors have changed.

Variable factors in this particular review are a reference to:

- the ascertained export price;
- the ascertained normal value;
- the amount of countervailable subsidy received in respect of the goods; and
- the non-injurious price (NIP).

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner must, within 110 days of the initiation of a review, or such longer time as the Parliamentary Secretary may allow, place on the public record a statement of essential facts (SEF) on which he proposes to base recommendations to the Parliamentary Secretary concerning the review of the anti-dumping measures.<sup>9</sup>

The Commissioner must, after conducting a review of anti-dumping measures and within 155 days, or such longer time as the Parliamentary Secretary may allow, report to the Parliamentary Secretary on the review of the anti-dumping measures.<sup>10</sup>

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<sup>6</sup> Subsection 269ZA(1).

<sup>7</sup> Subsection 269ZA(3).

<sup>8</sup> Subsection 269ZA(2)(a).

<sup>9</sup> Subsection 269ZD(1).

<sup>10</sup> Subsection 269ZDA(1).



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In making recommendations in his final report to the Parliamentary Secretary, the Commissioner must have regard to:<sup>11</sup>

- the application for review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- the SEF; and
- any submission made in response to the SEF that is received by the Commissioner within 20 days of it being placed on the public record.

The Commissioner may also have regard to any other matter considered to be relevant to the review.<sup>12</sup>

At the conclusion of the review, in respect of the dumping duty notice and the countervailing duty notice, the Commissioner must provide a final report that makes a recommendation to the Parliamentary Secretary that the dumping duty notice and the countervailing duty notice:<sup>13</sup>

- remain unaltered; or
- be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

After the Parliamentary Secretary considers the report of the Commissioner and any other information that the Parliamentary Secretary considers relevant, the Parliamentary Secretary must declare, by notice published in accordance with subsection 269ZDB(7), that the dumping duty notice and the countervailing duty notice:<sup>14</sup>

- remain unaltered; or
- are taken to be, or to have been, revoked either in relation to a particular exporter or to exporters generally or in relation to a particular kind of goods; or

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<sup>11</sup> Subsection 269ZDA(3)(a).

<sup>12</sup> Subsection 269ZDA(3)(b).

<sup>13</sup> Subsection 269ZDA(1)(a).

<sup>14</sup> Subsection 269ZDB(1)(a).

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- be taken to have effect or to have had effect, either in relation to a particular exporter or to exporters generally, as if the Parliamentary Secretary had fixed different variable factors in respect of that exporter or of exporters generally, relevant to the determination of duty.

The Parliamentary Secretary must make a declaration under subsection 269ZDB(1) within 30 days after receiving the report or, if the Parliamentary Secretary considers there are special circumstances that prevent the declaration being made within that period, such longer period as the Parliamentary Secretary considers appropriate.

### 2.5 Statement of essential facts

On 1 December 2015, the Commissioner placed on the public record a statement of the facts (SEF 304) on which the Commissioner proposed to base his recommendations to the Parliamentary Secretary in relation to the review of measures.

Interested parties were invited to make submissions to the Commissioner in response to SEF 304 by 21 December 2015 (20 days after the SEF was placed on the public record).

#### 2.5.1 Submissions in response to SEF 304

The Commissioner received the following submissions in response to SEF 304.

Interested party	Public record item no.
Capral Ltd.	7
Press Metal International Ltd.	8

**Table 1: Submissions received in response to SEF 304**

Non-confidential versions of the submissions are available on the Commission's website.

The Commissioner has had regard to these submissions for the purposes of the recommendations made to the Parliamentary Secretary in this report. Details of submissions received, and the Commissioner's response to these submissions, are included in relevant sections of this report.

## 3 THE GOODS AND LIKE GOODS

### 3.1 Findings

The Commissioner considers that aluminium extrusions manufactured by the Australian industry are 'like' goods as defined in subsection 269T(1).

### 3.2 Legislative framework

The Commissioner must be satisfied that 'like' goods to the goods the subject of the anti-dumping measures are produced in Australia.

Subsection 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In accordance with subsection 269T(3), for goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of those goods must be carried out in Australia.

### 3.3 The goods subject to the anti-dumping measures

The goods subject to the anti-dumping measures (the goods) are:

*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.

### **3.4 Tariff classification**

The goods subject to the anti-dumping measures may be classified to the following tariff subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

7604.10.00/06	non-alloyed aluminium bars, rods and profiles
7604.21.00/07	aluminium alloy hollow angles and other shapes
7604.21.00/08	aluminium alloy hollow profiles
7604.29.00/09	aluminium alloy non hollow angles and other shapes
7604.29.00/10	aluminium alloy non hollow profiles
7608.10.00/09	non-alloyed aluminium tubes and pipes
7608.20.00/10	aluminium alloy tubes and pipes
7610.10.00/12	doors, windows and their frames and thresholds for doors
7610.90.00/13	Other

The goods exported to Australia from China are subject to a 5 per cent rate of customs duty.

### **3.5 Like goods produced by the Australian industry**

During the original investigation (investigation no. 148), the then Australian Customs and Border Protection Service found that:

- there was an Australian industry producing like goods;
- a substantial process of manufacture was carried out in Australia in producing the like goods; and
- there was an Australian industry consisting of eight companies that produce like goods in Australia.

In Review 248 and Inquiry 287, it was found that there is an Australian industry, consisting of nine aluminium extrusion manufacturers, producing like goods. The Commission has not received any information during the course of this review to indicate otherwise. The Commissioner remains satisfied that there is an Australian industry producing like goods.

## 4 VARIABLE FACTORS – DUMPING DUTY NOTICE

### 4.1 Findings

The Commissioner finds that the variable factors relevant to the taking of anti-dumping measures in relation to aluminium extrusions exported to Australia by PMI have changed.

The Commissioner recommends to the Parliamentary Secretary that the dumping duty notice have effect in relation to PMI as if different variable factors, the export price and the normal value, had been ascertained.

### 4.2 Export price

PMI did not export the goods to Australia during the review period. As such, sufficient information is not available to enable the export price of the goods to be ascertained using:

- the price paid or payable by the importer;<sup>15</sup> or
- the price at which the goods were sold by the importer in Australia less prescribed deductions;<sup>16</sup> or
- the price having regard to all the circumstances of the exportation.<sup>17</sup>

Therefore, the Commission considers it appropriate to determine an export price, for the purposes of this review, under subsection 269TAB(3) having regard to all relevant information.<sup>18</sup> Specifically, the Commission considers it appropriate to determine the ascertained export price to be the same amount as that determined to be the normal value for the purposes of this review. This price is at free on board commercial terms.

### 4.3 Normal value

#### 4.3.1 Particular market situation

In Review 248 (and subsequently confirmed in Inquiry 287), it was found that, in line with subsection 269TAC(2)(a)(ii), a situation exists in the Chinese aluminium extrusions market that renders sales in that market unsuitable for the purpose of determining the normal value for aluminium extrusions under subsection 269TAC(1).

The reasons for this finding are contained in *Anti-Dumping Commission Report No. 248 – Non-Confidential Appendix 1 – Market Situation Assessment*.

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<sup>15</sup> Subsection 269TAB(1)(a).

<sup>16</sup> Subsection 269TAB(1)(b).

<sup>17</sup> Subsection 269TAB(1)(c).

<sup>18</sup> Subsection 269TAB(3).

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For this review, given the recent finding in Review 248 and Inquiry 287 (and having received no information to warrant a departure from the recent finding) that a market situation exists in the Chinese aluminium extrusions market such that, under subsection 269TAC(2)(a)(ii), sales in that market are not suitable for use in determining the normal value under subsection 269TAC(1), the Commissioner has not reassessed this finding. As such, the normal value of the goods has been ascertained under subsection 269TAC(2)(c) for the purpose of this review.

### 4.3.2 Constructed normal value

Subsection 269TAC(2)(c) provides that, where the normal value cannot be ascertained under subsection 269TAC(1), the normal value of the goods is to be calculated as:

- such amounts as the Parliamentary Secretary determines to be the cost of production or manufacture of the goods in the country of export; and
- on the assumption that the goods had been sold for home consumption in the ordinary course of trade in the country of export, such amounts that the Parliamentary Secretary determines to be the administrative, selling and general costs associated with such a sale and the profit on that sale.

#### 4.3.2.1 Cost of production

As noted above, subsection 269TAC(2)(c)(i) requires that the cost of production of the goods be used in determining the normal value. As PMI has made no export sales of the goods during the review period, the company does not have a cost to manufacture the goods during the period for the purpose of this review. The Commission instead considers it reasonable to use PMI's cost to manufacture for like goods sold domestically during the review period for the purpose of determining the normal value.

As required by subsection 269TAC(5A)(a), the cost to produce or manufacture the goods (like goods) must be established in accordance with section 43 of the *Customs (International Obligations) Regulation 2015* (the Regulations).<sup>19</sup>

During Review 248, it was concluded that, in determining the cost of manufacture of aluminium extrusions in China, the records of Chinese exporters of aluminium extrusions did not reasonably reflect competitive market costs associated with the production or manufacture of those goods for the purposes of section 43 of the Regulations.

Specifically, the Commission found that:

*...the Government of China has influenced the Chinese aluminium industry, and this influence is likely to have distorted competitive market conditions and both directly affected the price of the primary input used in the manufacture of aluminium extrusions, as well as likely affecting supply within the industry.*<sup>20</sup>

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<sup>19</sup> Previously Regulation 180 of the *Customs Regulations 1926*. The *Customs Regulations 1926* were replaced by the *Customs Regulation 2015* and the *Customs (International Obligations) Regulation 2015* which became effective on 1 April 2015.

<sup>20</sup> *Anti-Dumping Commission Report No. 248*, page 35. This report is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

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Therefore, to calculate normal values under subsection 269TAC(2)(c), it was determined that replacement costs that reasonably represented competitive market costs for primary aluminium in the absence of distortions that exist in the Chinese aluminium market should be used.

As a result, during Review 248, the Commission replaced the costs (as recorded by each Chinese exporter) of raw material inputs (aluminium ingot and billet) used in the manufacture of aluminium extrusions with a competitive market price for these inputs when constructing the normal values for each of the selected exporters.

Specifically, the Commission replaced each exporter's aluminium costs with contemporaneous aluminium ingot cash prices quoted on the London Metal Exchange (LME) plus other reasonable costs and charges including a premium for aluminium billet (where applicable).<sup>21</sup>

For the same reasons as in Review 248, the Commission considers that the costs of aluminium provided by PMI do not reasonably reflect competitive market costs associated with the production or manufacture of like goods as required by subsection 43(2)(b)(ii) of the Regulations. Therefore, because PMI's costs of production or manufacture do not reasonably reflect competitive market costs, the cost of production or manufacture of like goods is not required to be worked out using the information set out in PMI's records. The Commission instead considers that it is appropriate to calculate PMI's cost of production or manufacture of like goods using replacement costs for aluminium to reflect competitive market costs for that input.

Consistent with the approach followed in Review 248, the Commission considers that an appropriate replacement cost for aluminium is the cash price of primary aluminium quoted on the LME plus other reasonable costs and charges including a billet premium.

PMI's aluminium costs have been uplifted by the difference between the price actually paid by PMI for aluminium and the LME-based comparable competitive market price for primary aluminium (taking into account the applicable delivery terms and whether the aluminium is cast into ingots or billets).

The competitive market aluminium cost benchmark used for the purpose of this review is at **Confidential Appendix 1**.

### **4.3.2.2 Submission from PMI**

In a submission in response to SEF 304, PMI has submitted that the Commission should remove the 'regional premium' from the competitive market cost benchmark that was used to replace PMI's aluminium costs.

Further, PMI has submitted that the Commission should adjust the billet premium to reflect the actual difference between the ingot and billet prices at which PMI had purchased these inputs.

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<sup>21</sup> Details of the competitive market cost benchmark methodology can be found in *Anti-Dumping Commission Report No. 248*.

### **4.3.2.3 Consideration of submission from PMI**

#### Regional premium

For this review, and consistent with Review 248, the Commission has replaced the aluminium costs as submitted by PMI with a competitive market cost benchmark based on the following:

- cash price of aluminium ingot quoted on the LME; plus
- regional ingot premium; plus
- inland transport (where applicable); plus
- aluminium billet premium (where applicable).

The regional ingot premium applied for the purpose of this review (and consistent with Review 248) is the Major Japanese Ports (MJP) regional premium.

The Commission considers that an aluminium cost benchmark should be indicative of the actual price that would be incurred if a customer was to obtain the physical delivery of aluminium in a competitive market, noting that a premium is payable to physically obtain aluminium from LME-approved warehouses.

The Commission notes that supply agreements based on physical settlement and delivery implicitly include a premium recognising the cost of metals exiting an LME-approved warehouse. Conversely, reference to the LME-traded metal price solely refers to the trading aspect of the LME on the global market, without regard for physical settlement.

Therefore, as the Commission considers that there are additional costs associated with physically obtaining primary aluminium via the LME, the Commission views that it is reasonable to apply a regional premium (the MJP regional premium) to its LME-based competitive market aluminium cost benchmark to reflect the actual costs incurred to physically obtain aluminium purchased via a futures exchange.

The Commission's comprehensive assessment of the MJP regional premium is at section 4.9.6 of *Anti-Dumping Commission Report No. 248*.

#### Billet premium

As discussed in section 4.3.2.1 of this report, the Commission considers that, in determining the cost of manufacture of aluminium extrusions in China, the records of Chinese exporters of aluminium extrusions do not reasonably reflect competitive market costs associated with the production or manufacture of those goods for the purpose of section 43 of the Regulations.

Given that the conditions of section 43 of the Regulations have not been met, the Commission considers that PMI's aluminium purchase and cost data cannot be used for the purpose of determining the cost of manufacture of aluminium extrusions, let alone be used to derive a billet premium as suggested by PMI.



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In constructing the competitive market aluminium cost benchmark, the Commission considers that with regard to the billet premium, it is appropriate to use a billet premium that reasonably reflects competitive market costs. As a result, the Commission has used publicly reported information on the average Japanese billet premium for the calendar year 2014.<sup>22</sup>

The Commission notes that the inclusion of a billet premium in the competitive market cost benchmark is consistent with the approach followed in Review 248; however, the billet premium used for the purpose of this review was updated to reflect contemporaneous data for this particular review period.

### **4.3.2.4 Selling, general and administrative costs**

As required by subsection 269TAC(5A)(b), in ascertaining the normal value of the goods under subsection 269TAC(2)(c), the selling, general and administrative (SG&A) costs are to be established in accordance with section 44 of the Regulations.

PMI provided information on SG&A costs associated with the domestic sales of like goods.

Consistent with the requirements of subsection 44(2) of the Regulations, the Commission was satisfied that the information in PMI's records are in accordance with the generally accepted accounting principles in the country of export, and the records reflect the SG&A costs associated with the sale of like goods in the country of export. The Commission worked out the SG&A amount for each quarter of the review period by using the information set out in the records.

### **4.3.2.5 Profit**

As required by subsection 269TAC(5B), when ascertaining the normal value of the goods under subsection 269TAC(2)(c), the amount of profit included in the normal value is to be determined having regard to section 45 of the Regulations.

Subsection 45(2) of the Regulations provides that, if reasonably practicable, profit is to be determined using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.

Consistent with subsection 45(2) of the Regulations, the Commission calculated a weighted average profit margin for like goods. The calculation of this profit margin was based on PMI's domestic sales of aluminium extrusions in the ordinary course of trade, the selling prices of which were compared to the company's domestic cost to make and sell those goods as reported in the company's response to the exporter questionnaire (prior to the amendments made to the cost of primary aluminium discussed above). This profit margin was applied to each quarter of the review period in constructing the normal value.

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<sup>22</sup> For extrusion-grade billet (aluminium alloy 6063), as reported in Metal Bulletin ([www.metalbulletin.com](http://www.metalbulletin.com)).

#### **4.3.2.6 Submission from PMI**

In a submission in response to SEF 304, PMI has submitted that the Commission should amend the profit margin applied in constructing the normal value for PMI.

To support its submission, PMI provided a spreadsheet that showed its calculation of the profit margin, which is considerably less than the profit margin that the Commission had determined. The Commission notes that the sales and cost data PMI has provided in its submission is not consistent and does not reconcile with data that PMI had previously provided and that was reviewed by the Commission for the purposes of this review.

#### **4.3.2.7 Consideration of submission from PMI**

As discussed in section 4.3.2.5 of this report, subsection 45(2) of the Regulations requires that, if reasonably practicable, the Parliamentary Secretary is to determine profit by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.

The Commission has not departed from this prescribed approach in this review. The Commission has calculated a weighted average profit margin by comparing PMI's weighted average cost to make and sell (as submitted by PMI) with the invoice values of corresponding like goods (by finish) in the ordinary course of trade. These invoice values were obtained from PMI's domestic sales spreadsheet where PMI had identified and listed its domestic sales of like goods.

The Commission notes that the profit margin calculations that PMI had submitted are not consistent with subsection 45(2) of the Regulations. The Commission notes that PMI's profit margin calculation includes sales that are not in the ordinary course of trade. Therefore, the Commission will not amend the profit margin as suggested by PMI.

#### **4.3.2.8 Adjustments**

To ensure that the ascertained normal value is properly comparable with the export price of the goods, a positive adjustment to the normal value has been applied to account for the difference in the amount of residual value added tax (VAT) that would apply to export sales of the goods.<sup>23</sup> The residual amount has been calculated at the rate of 4 per cent, which is the full VAT rate of 17 per cent less the 13 per cent VAT rebate that applies to export sales of the goods.

Further, a positive adjustment to the normal value has been applied for export inland freight and port handling charges.<sup>24</sup> Following SEF 304, PMI provided data relating to export inland freight to its nearest shipping port, including relevant port handling charges. The Commission calculated a weighted average of these costs for the period 1 January 2014 to 30 June 2015 and applied this to the normal value (calculated at ex-works) to reflect free on board delivery terms.

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<sup>23</sup> Subsection 269TAC(9).

<sup>24</sup> Subsection 269TAC(9).

#### **4.3.3 Conclusion – normal value**

Details of normal value calculations are at **Confidential Appendix 2**.

#### **4.4 Dumping margin**

For this review, as the ascertained export price is equal to the ascertained normal value, the dumping margin is zero.

## 5 VARIABLE FACTORS – COUNTERVALING DUTY NOTICE

### 5.1 Findings

The Commissioner has determined that the amount of countervailable subsidy received by PMI has changed.

The Commissioner recommends to the Parliamentary Secretary that the countervailing duty notice have effect in relation to PMI as if a different variable factor, the amount of countervailable subsidy received, had been ascertained.

### 5.2 Programs reviewed

The Commission requested that PMI provide information relating to all subsidies it received during the review period as part of its response to the exporter questionnaire.

After assessing the information provided by PMI, the Commission found that countervailable subsidies have been received in respect of aluminium extrusions manufactured by PMI under the following countervailable subsidy<sup>25</sup> programs:

- Program 5 – Matching Funds for International Market Development for SMEs;
- Program 7 – Research & Development (R&D) Assistance Grant; and
- Program 15 – Aluminium provided at less than adequate remuneration.

These subsidy programs were found to be countervailable in the original investigation and subsequently in Review 248 and Inquiry 287. During the course of this review, the Commission has not found any information nor received any submissions that indicate that these subsidy programs no longer exist nor that they are no longer countervailable. As such, the Commission is satisfied that these subsidy programs exist and remain countervailable.

The Commission has therefore determined that during the review period, PMI has received a benefit from a number of financial contributions in respect of the goods.<sup>26</sup>

#### 5.2.1 Program 15 – Aluminium provided at less than adequate remuneration

In the original investigation and subsequently in Review 248, it was established that a countervailable subsidy program (Program 15) existed whereby the Government of China provided primary aluminium (the primary input used in the manufacture of aluminium extrusions) to manufacturers of aluminium extrusions at an amount reflecting less than adequate remuneration.

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<sup>25</sup> Subsection 269T(1) and section 269TAAC.

<sup>26</sup> Subsection 269TACC(1).

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The Commission has quantified the amount of the countervailable subsidy received under Program 15 by comparing the actual costs incurred by PMI to the competitive market aluminium cost benchmark discussed in section 4.3.2.1 of this report.

However, when collecting the anti-dumping measures applicable to PMI's exports of aluminium extrusions, the Commission considers that, for the purpose of this review, this subsidy should not be countervailed because to do so would be double-counting the benefit received. This is because, where the ascertained export price is equal to the ascertained normal value, the maximum amount of the countervailable subsidy is equal to the difference between the actual cost of aluminium and the replacement (competitive market) cost of aluminium used in constructing the normal value (when measured on a weighted average basis). This difference has already been incorporated in the constructed normal value.

Therefore, in order to avoid any double-counting of dumping duty and countervailing duty, the Commission has calculated a subsidy margin without including the subsidy amount determined for Program 15.

### **5.3 Submission from Capral**

In a submission in response to SEF 304, Capral has submitted that the Commission should further investigate any countervailable benefits that may have been received by PMI and should re-examine the actual rate of taxation paid by PMI.

#### **5.3.1 Consideration of submission from Capral**

Following initiation of this review, the Commission had requested that PMI provide copies of its quarterly company income tax returns for the review period. Further, the Commission had requested that PMI provide a copy of its 2014 audited financial statements (translated and non-translated). As requested, PMI had provided this information.

Following a review of this information, the Commission further requested that PMI provide a copy of the income ledger linked to a particular item in its 2014 audited financial statements.

PMI provided a copy of its income ledger for 2014 and for the first half of 2015. These income ledgers recorded grants received by PMI which could be traced to PMI's audited financial statements. PMI also provided a summary of all the grants it had received (including a description of each grant) and traced this to the audited financial statements.

Based on this information, the Commission is satisfied that PMI did not receive any grants or tax benefits other than those already identified in section 5.2 of this report.

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#### **5.4 Amount of countervailable subsidy received**

The Commission calculated a subsidy margin with reference to the information provided by PMI. The subsidy margin is expressed as a percentage of the ascertained export price.

The subsidy margin applicable to PMI in the review period is 0.04 per cent (which excludes the benefit received under Program 15). This amount, when rounded, is 0.0 and therefore, an interim countervailing duty rate of zero per cent should apply as a result.

The subsidy margin calculations are at **Confidential Appendix 3**.

## 6 NON-INJURIOUS PRICE

### 6.1 Relevant legislation

Duties<sup>27</sup> may be applied where the Parliamentary Secretary is satisfied that dumped or subsidised exports of the goods to Australia have caused or threatened to cause material injury to the Australian industry producing like goods.

Under subsections 269TACA(a) and (c), the NIP of the goods exported to Australia is the minimum price necessary to prevent the injury, or a recurrence of the injury, to the Australian industry by dumped or subsidised goods.

Where the Parliamentary Secretary is required to determine both interim dumping duty and interim countervailing duty, subsection 8(5BA) of the Dumping Duty Act applies. Subsection 8(5BA) requires the Parliamentary Secretary, in determining the interim dumping duty payable, to have regard to the 'lesser duty rule' which requires consideration of the desirability of fixing a lesser amount of duty that does not exceed the NIP. That is, a duty that is less than the full amount of the dumping margin but is sufficient to prevent material injury to Australian industry.

Similarly, in relation to the determination of interim countervailing duty, subsection 10(3D) of the Dumping Duty Act is applicable and requires the Parliamentary Secretary to have regard to the lesser duty rule in relation to interim countervailing duty.

However, in January 2014, legislative provisions commenced that prescribe certain circumstances where, if one or more of them exist, the Parliamentary Secretary is not required to have mandatory regard to the desirability of fixing a lesser amount of duty. These include:<sup>28</sup>

- a situation in the market that makes domestic selling prices unsuitable for the purpose of determining normal value under subsection 269TAC(1);
- an Australian industry in respect of like goods consisting of at least two small-to-medium enterprises (as defined in the Act); and
- the country in relation to which the subsidy has been provided has not complied with Article 25 of the *Agreement on Subsidies and Countervailing Measures* for the compliance period.

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<sup>27</sup> In the form of a dumping duty notice under subsection 269TG(1) or (2) of the Act and a countervailing duty notice under subsection 269TJ(1) or (2) of the Act.

<sup>28</sup> Subsection 8(5BAAA) of the Dumping Duty Act in relation to the calculation of dumping duty and subsection 10(3DA) of the Dumping Duty Act in relation to the calculation of countervailing duty.

These new legislative provisions apply to dumping duty and countervailing duty notices that were published before 1 January 2014, in cases where the anti-dumping measures are continued on or after this date.<sup>29</sup>

## **6.2 The Commission's assessment**

Under subsection 8(5BA) of the Dumping Duty Act, the Parliamentary Secretary must have regard to the desirability of specifying a method (of calculating duty) such that the sum of the following does not exceed the NIP:

- the export price of goods of that kind as so ascertained or last so ascertained;
- the interim dumping duty payable on the goods the subject of the dumping duty notice; and
- the interim countervailing duty payable under section 10 of the Dumping Duty Act on the goods the subject of the countervailing duty notice.

Given that the dumping and countervailable subsidy margins applicable to PMI are zero, the Parliamentary Secretary must only have regard to the desirability of specifying a method of calculating interim dumping duty payable such that the export price of the goods of that kind as so ascertained does not exceed the NIP. Therefore, given that the interim dumping duty payable will comprise a fixed component that is zero,<sup>30</sup> and a variable component that will be payable if the actual export price is below the ascertained export price (i.e. the floor price), the ascertained export price cannot exceed the NIP in this instance. This has the effect of setting a lower floor price (equal to the NIP) in calculating any interim dumping duty payable.

However, the Commissioner notes that the normal value of the goods in this review was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii).

Given these circumstances, the Commissioner notes that the Parliamentary Secretary is not required to have regard to the desirability of fixing a lesser amount of dumping duty due to the operation of subsection 8(5BAAA)(a) of the Dumping Duty Act. Therefore, the Commissioner recommends that the Parliamentary Secretary exercise her discretion not to have regard to the lesser duty rule and therefore not apply the NIP as the floor price for the purpose of calculating any interim duty payable.

The Commissioner notes that, notwithstanding his recommendation, the Parliamentary Secretary is not obliged to, but may still, consider applying a lesser amount of duty in accordance with the lesser duty rule.

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<sup>29</sup> Specifically, the legislative changes apply in circumstances where the Parliamentary Secretary publishes a notice under subsection 269ZHG(1) of the Act to continue the measures concerned.

<sup>30</sup> For this review, as the ascertained export price is to be the same amount as that determined to be the ascertained normal value, the dumping margin is zero.



## 7 FINDINGS AND RECOMMENDATIONS

### 7.1 Findings

The Commissioner has found that, in relation to exports of aluminium extrusions to Australia from China by PMI during the review period:

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the amount of the countervailable subsidy received has changed.

### 7.2 Recommendations

Under subsection 269ZDA(1)(a)(iii), the Commissioner recommends that the dumping duty notice and the countervailing duty notice have effect in relation to PMI as if different variable factors had been ascertained.

In ascertaining the variable factors, the Commissioner recommends that the Parliamentary Secretary be satisfied that:

- in accordance with subsection 269TAB(3), sufficient information is not available to enable the export price of aluminium extrusions exported to Australia from China by PMI to be ascertained under subsections 269TAB(1)(a), (b), or (c);
- the normal value cannot be ascertained under subsection 269TAC(1) because, in accordance with subsection 269TAC(2)(a)(ii), the situation in China's market is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1); and
- in accordance with subsection 269TACD(1), countervailable subsidies have been received in respect of PMI's goods.

In ascertaining the variable factors, the Commissioner further recommends that the Parliamentary Secretary determine that:

- in accordance with subsection 269TAB(3), having regard to all relevant information and being satisfied that sufficient information is not available to enable the export price of goods to be ascertained under subsections 269TAB(1)(a), (b), or (c), the export price of aluminium extrusions exported to Australia from China by PMI be the same amount as that determined to be the normal value;

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- in accordance with subsection 269TAC(2)(c), the normal value is the sum of PMI's cost of production of the goods in China, which is set out in **Confidential Appendix 2** and, on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in China, PMI's administrative, selling and general costs associated with such a sale and the profit on that sale, making, in accordance with subsection 269TAC(9), the necessary adjustments described in section 4.3.2.8 of this report to ensure that the normal value is properly comparable with the export price of the goods; and
- in accordance with subsection 269TACD(1), the amount of the countervailable subsidy received by PMI, expressed as a percentage of the ascertained export price, is zero per cent.

In ascertaining the interim dumping duty payable, the Commissioner recommends that the Parliamentary Secretary determine that:

- in accordance with subsection 8(5) of the Dumping Duty Act, the interim dumping duty payable is an amount which will be worked out in accordance with the combination of fixed and variable duty method pursuant to subsection 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*, comprising of a fixed component that is zero,<sup>31</sup> and a variable component that will be payable if the actual export price (dumping export price or 'DXP') is below the ascertained export price (which is a specified (confidential) amount per kilogram); and
- due to the operation of subsection 8(5BAAA)(a) of the Dumping Duty Act, the lesser duty rule does not apply.

In ascertaining the interim countervailing duty payable, the Commissioner recommends that the Parliamentary Secretary direct that:

- in accordance with subsection 10(3B)(a) of the Dumping Duty Act, the amount of interim countervailing duty payable on the goods the subject of the countervailing duty notice be ascertained as a proportion of the export price which is a specified (confidential) amount per kilogram.<sup>32</sup>

If the Parliamentary Secretary accepts these recommendations, the Parliamentary Secretary must declare, by notice published on the Commission's website (**Attachment 1**), that, in accordance with subsection 269ZDB(1)(a)(iii), for the purposes of the Act and the Dumping Duty Act, and with effect from the date specified in the declaration, the dumping duty notice and the countervailing duty notice are taken to have effect or to have had effect, in relation to PMI, as if different variable factors had been fixed in respect of PMI relevant to the determination of duty.

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<sup>31</sup> For this review, as the ascertained export price is to be the same amount as that determined to be the ascertained normal value, the dumping margin is zero.

<sup>32</sup> For this review, the rate of interim countervailing duty applying to PMI's exports of aluminium extrusions is zero per cent.

**8 LIST OF ATTACHMENTS AND APPENDICES**

Attachment 1	Notice under subsection 269ZDB(1)(a)(iii) of the <i>Customs Act 1901</i>
Confidential Appendix 1	Aluminium benchmark price calculation
Confidential Appendix 2	Normal value calculation
Confidential Appendix 3	Subsidy margin calculation