



Australian Government
Department of Industry and Science

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

ANTI-DUMPING COMMISSION REPORT NO. 287

**INQUIRY INTO THE CONTINUATION OF
ANTI-DUMPING MEASURES**

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

28 September 2015

PUBLIC RECORD

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ABBREVIATIONS

ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
AUD	Australian dollars
Capral	Capral Limited
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CNY	Chinese Yuan Renminbi
CTMS	Cost to make and sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FOB	Free on board
GOC	Government of China
the goods	the goods the subject of the application (also referred to as the goods under consideration)
Guang Ya	Guang Ya Aluminium Industries Co., Ltd.
Inquiry no. 241	Anti-circumvention Inquiry No. 241
Inquiry period	1 April 2014 to 31 March 2015
Jinxiecheng	Guangdong Jinxiecheng Al. Manufacturing Co., Ltd.
Kam Kiu	Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd.
LME	London Metal Exchange
NIP	Non-injurious price
PanAsia	PanAsia Aluminium (China) Co., Ltd.
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP	Final Report
Review no. 248	Review of Anti-Dumping Measures No. 248
SCM Agreement	<i>Agreement on Subsidies and Countervailing Measures</i>
SEF	Statement of Essential Facts
SHFE	Shanghai Futures Exchange
USD	United States dollars
USP	Unsuppressed selling price

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This continuation inquiry (the inquiry) is in response to an application by Capral Limited (Capral) seeking the continuation of anti-dumping measures applying to certain aluminium extrusions (aluminium extrusions) exported to Australia from the People's Republic of China (China).

This report sets out the Commissioner of the Anti-Dumping Commission's (the Commissioner) recommendations to the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary) in relation to this inquiry.¹

1.2 Applicable legislation

Division 6A of Part XVB of the *Customs Act 1901* (the Act)² requires the Commissioner to publish a notice informing persons of the impending expiry of anti-dumping measures and provide an opportunity, before those measures expire, to apply for a continuation of the measures.

Division 6A of Part XVB of the Act:

- sets out the consequences if no application is made;
- outlines the procedures to be followed by the Commissioner in dealing with an application and preparing a report for the Parliamentary Secretary; and
- empowers the Parliamentary Secretary, after consideration of that report, either to decide that the measures will expire or to take steps to ensure the continuation of the measures.

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

¹ The Minister for Industry, Innovation and Science has delegated responsibility for anti-dumping matters to the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

² A reference to a division, section, subsection, paragraph or subparagraph in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

1.3 Findings and conclusions

Based on all relevant and available information, the Commissioner is satisfied that:

- aluminium extrusions have been exported to Australia from China between 1 April 2014 to 31 March 2015 (the inquiry period) at dumped and subsidised prices; and
- the expiration of anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and subsidisation and the material injury that the anti-dumping measures are intended to prevent.

The Commissioner has also found that subsections 8(5BAAA) and 10(3DA) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) apply. As such, it is no longer mandatory for the Parliamentary Secretary to have regard to the lesser duty rule for the purposes of continuing the anti-dumping measures.³

1.4 Recommendations

The Commissioner recommends that the Parliamentary Secretary secure the continuation of anti-dumping measures applying to aluminium extrusions exported to Australia from China from the expiry date of 28 October 2015.

The Commissioner recommends that, in continuing the anti-dumping measures, the variable factors⁴ of export price, normal value and amount of countervailable subsidy received remain unaltered. This will mean that the interim dumping duty and interim countervailing duty rates determined by Review of Anti-Dumping Measures No. 248 (review no. 248)⁵ remain in place.

The Commissioner further recommends that the full dumping and subsidy margins determined in review no. 248 be applied to any interim dumping duty and interim countervailing duty taken in relation to aluminium extrusions exported to Australia from China. The Commissioner notes that the Assistant Minister is not obliged to, but still may, consider applying a lesser amount of duty in accordance with the lesser duty rule.

If the Parliamentary Secretary exercises her discretion not to have regard to the lesser duty rule, the non-injurious price will have no future application.

³ Subsections 8(5BA) and 10(3D) of the Dumping Duty Act require the Parliamentary Secretary, in determining the interim dumping and countervailing 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 non-injurious price. There are some exceptions to this requirement.

⁴ Subsection 269T(4D).

⁵ The final report for review no. 248 was submitted to the Parliamentary Secretary on 13 July 2015, and notice of the Parliamentary Secretary's decision was published in *The Australian* newspaper and the *Commonwealth of Australia Gazette* on 19 August 2015.

2 BACKGROUND

2.1 Continuation inquiry process

Dumping duty notices and countervailing duty notices (that have not been earlier revoked) expire five years after the date on which they were published, unless the Parliamentary Secretary decides to continue them.⁶

Not later than nine months before particular anti-dumping measures expire, the Commissioner must publish a notice informing persons that anti-dumping measures are due to expire on a specified day and invite certain interested parties to apply, within 60 days, for continuation of the anti-dumping measures.⁷ If no application for continuation is received by the Anti-Dumping Commission (the Commission) within the period allowed, the anti-dumping measures expire on the specified expiry day.⁸

If an application for continuation of anti-dumping measures is received, and not rejected, the Commissioner has up to 155 days (or such longer period as the Parliamentary Secretary allows) to inquire and report to the Parliamentary Secretary on whether continuation of the anti-dumping measures is justified. Within 110 days of the initiation notice, or such longer period as the Parliamentary Secretary allows, the Commissioner must place on the public record a statement of essential facts (SEF) on which he proposes to base his recommendation to the Parliamentary Secretary.⁹

Before recommending the continuation of the anti-dumping measures, the Commissioner must be satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measures were intended to prevent.¹⁰

Where the Parliamentary Secretary decides to secure the continuation of anti-dumping measures, the dumping duty notice and countervailing duty notice continue in force for five years after the specified expiry date unless the notices are revoked before the end of that period.¹¹

⁶ Subsection 269TM(1).

⁷ Subsection 269ZHB(1)(a).

⁸ Subsection 269ZHB(3).

⁹ Subsection 269ZHE(1).

¹⁰ Subsection 269ZHF(2).

¹¹ Subsection 269ZHG(5)(a).

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In making recommendations in the report to the Parliamentary Secretary, the Commissioner must have regard to:¹²

- the application for continuation of the anti-dumping measures;
- any submission relating generally to the continuation 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 the SEF being placed on the public record.

The Commissioner may also have regard to any other matter that he considers to be relevant to the inquiry.¹³

Following the Parliamentary Secretary's decision, a notice will be published advising interested parties of the decision.¹⁴

2.2 History of anti-dumping measures

A history of the anti-dumping measures applying to aluminium extrusions exported to Australia from China is summarised below.

24 June 2009	The then Australian Customs and Border Protection Service initiated an investigation into the alleged dumping and subsidisation of aluminium extrusions exported to Australia from China following an application by Capral.
28 October 2009	The then Attorney-General published a dumping duty notice and a countervailing duty notice applying to aluminium extrusions exported from China - <i>Trade Remedies Branch Report No. 148</i> refers.
27 August 2011	The then Attorney-General published new notices as a result of a reinvestigation of certain findings made in <i>Trade Remedies Branch Report No. 148</i> following a review by the former Trade Measures Review Officer. <i>International Trade Remedies Report No. 175</i> refers.
21 November 2012	Publication of the outcome of a review of the anti-dumping measures as they apply to Wuxi Xisha Photoelectric Aluminium Products Co., Ltd. <i>International Trade Remedies Report No. 186</i> refers.

¹² Subsection 269ZHF(3)(a).

¹³ Subsection 269ZHF(3)(b).

¹⁴ Subsection 269ZHG(1).

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Anti-dumping measures applicable to Wuxi Xisha Photoelectric Aluminium Products Co., Ltd. were altered as if different variable factors applied.

- 4 September 2013 The Federal Court ruled that dumping duty and countervailing duty notices cannot impose different variable factors for each finish of aluminium extrusion.¹⁵
- 8 May 2014 Publication of the outcome of a review of anti-dumping measures as they apply to Alnan Aluminium Co., Ltd. Anti-dumping measures applicable to Alnan Aluminium Co., Ltd remained unaltered. *Final Report No. 229* refers.
- 19 February 2015 Publication of the outcome of an anti-circumvention inquiry into the avoidance of the intended effect of duty concerning certain aluminium extrusions exported to Australia by PanAsia Aluminium (China) Co., Ltd. (PanAsia). *Final Report No. 241* refers.
- 19 August 2015 The Parliamentary Secretary published a notice declaring the outcome of review no. 248. Anti-dumping measures applying to exports of certain aluminium extrusions from China were altered as if different variable factors had been ascertained. A correction to this notice was published on 10 September 2015 with respect to six entities incorrectly identified as residual exporters.

2.3 Notification and participation in the inquiry

Anti-dumping measures applying to aluminium extrusions exported to Australia from China are due to expire on 28 October 2015.

On 27 January 2015, the Commission 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.

On 27 March 2015, Capral, 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 initiation of the inquiry was made in *The Australian* newspaper on 24 April 2015. Anti-Dumping Notice No. 2015/48 provides further details of the initiation and is available at www.adcommission.gov.au.

The Commission requested sales and cost to make and sell (CTMS) data from Capral and other Australian industry manufacturers covering the period 1 July 2008 to the end of March 2015.

¹⁵ *PanAsia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870.

Given that a verification visit to Capral (the largest Australian industry manufacturer) was conducted in August 2014 for the purpose of review no. 248, the Commission did not conduct further Australian industry visits as part of the inquiry. The Commission has cross checked data provided by Capral in this inquiry with verified data in review no. 248 and is satisfied of its accuracy, relevance and completeness. Similarly, verification visits to importers and exporters were not conducted as part of this inquiry.

Having conducted review no. 248, the Commission considers it is in possession of sufficient verified data to base many of the findings for this inquiry. To supplement the verified data from review no. 248, on 19 June 2015, a file note and exporter questionnaire was placed on the public record inviting exporters to provide updated information relating to the inquiry period (1 April 2014 to 31 March 2015).¹⁶ Three exporter questionnaires were received and considered as part of this inquiry.

2.4 Statement of Essential Facts (SEF)

On 12 August 2015, the Commissioner placed on the public record a statement of the facts (SEF 287) on which the Commissioner proposed to base his recommendation to the Parliamentary Secretary concerning the continuation of the anti-dumping measures.

Interested parties were invited to make submissions to the Commissioner in response to the SEF by 1 September 2015 (20 days after the SEF was placed on the public record).

2.5 Submissions in response to the SEF

The Commissioner received the following submissions in response to SEF 287.

Interested party	Date received	Public record item no.
Capral Limited	2 September 2015	12
Guangdong Jinxi Cheng Al. Manufacturing Co., Ltd.	2 September 2015	13

Table 1: Submissions received in response to the SEF

Non-confidential versions of the above submissions are available on the public record.

The Commissioner has had regard to these submissions in deciding on the recommendations to be made to the Parliamentary Secretary in this report.

¹⁶ The Commission did not conduct a separate sampling exercise under section 269TACAA of the Act as part of the inquiry. The file note also indicated that the Commission will, in assessing whether dumping and countervailable subsidies have continued, have regard to the outcomes of review no. 248.

3 THE GOODS AND LIKE GOODS

3.1 Findings

The Australian industry produces aluminium extrusions that have characteristics closely resembling aluminium extrusions produced in China and exported to Australia. Therefore, aluminium extrusions manufactured by the Australian industry are like goods as defined in subsection 269T(1) of the Act.

3.2 The goods

The goods the subject of the current 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. 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.

Consistent with investigation no. 148 (the original investigation), the inquiry has also relied upon the information shown in Table 2 in its assessment of the goods under consideration and like goods.

< GUC >				< Non GUC >		
1	2	3	4	5	6	7
Aluminium extrusions	Aluminium extrusions with minor working	Aluminium extrusions that are parts intended for use in intermediate or finished products	Aluminium extrusions that are themselves finished products	Unassembled products containing aluminium extrusions, e.g. 'kits' that at time of import comprise all necessary parts to assemble finished goods	Intermediate or partly assembled products containing aluminium extrusions	Fully assembled finished products containing aluminium extrusions
< Examples >						
Mill finish, painted, powder coated, anodised, or otherwise coated aluminium extrusions	Precision cut, machined, punched or drilled aluminium extrusions	Aluminium extrusions designed for use in a door or window	Carpet liner, fence posts, heat sinks	Shower frame kits, window kits, unassembled unitised curtain walls	Unglazed window or door frames	Windows, doors

Table 2: Goods under consideration and like goods

3.3 Tariff classification

The goods subject to the anti-dumping measures may be classified to the following 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

Table 3: Aluminium extrusions tariff classifications

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

3.4 Like goods

In the original investigation (no. 148) and subsequent reviews in respect of aluminium extrusions (as detailed in section 2.2 of this report), the Commission (or the then Australian Customs and Border Protection Service¹⁷) found there to be an Australian industry producing like goods.

As part of this continuation inquiry, Capral stated that it continues to manufacture like goods to the goods under consideration. The Commissioner remains satisfied that there is an Australian industry producing like goods.

¹⁷ As of 1 July 2015, the former Australian Customs and Border Protection Service is now known as the Australian Border Force - refer <https://www.border.gov.au/>.

4 THE AUSTRALIAN INDUSTRY

4.1 Findings

The Commission is satisfied that there are like goods wholly manufactured in Australia and that there is an Australian industry consisting of nine aluminium extrusion manufacturers.

4.2 Australian industry

In its application, Capral indicated that the Australian industry comprises of itself and the following eight manufacturers:

- Aluminium Profiles Australia Pty. Ltd.;
- G. James Extrusion Co., Pty. Ltd.;
- Almax Aluminium Pty. Ltd.;
- Independent Extrusions Pty. Ltd.;
- Extrusions Australia Pty. Ltd.;
- Olympic Aluminium Co., Pty. Ltd.;
- Aluminium Shapemakers Pty. Ltd.; and
- Ullrich Aluminium Pty. Ltd.

The Commission has made inquiries and remains satisfied that the Australian industry consists of the entities listed above.

The Commission sent an information request to each of the Australian industry manufacturers and received responses from Capral, Extrusions Australia Pty. Ltd., Independent Extrusions Pty. Ltd. and Aluminium Shapemakers Pty. Ltd.¹⁸

4.3 Production of aluminium extrusions in Australia

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

Based on the information obtained from Capral during the Australian industry verification visit for review no. 248, the Commission is satisfied that like goods are wholly manufactured in Australia.

¹⁸ The Commission notes that Independent Extrusions Pty. Ltd., Extrusions Australia Pty. Ltd. and Aluminium Shapemakers Pty. Ltd. collectively account for a minor proportion of the Australian market.

5 AUSTRALIAN MARKET

5.1 Finding

The Commission estimates the market for aluminium extrusions was approximately 165,000 tonnes in the inquiry period. The size of the Australian market has increased slightly since the original investigation.

5.2 Market structure and factors influencing market performance

As part of review no. 248, Capral advised that the market structure in Australia, with respect to aluminium extrusions, has not changed significantly since the original investigation. Capral considers the main market segments are:

- residential - including products such as windows and doors, security, internal fit out of showers and robes, external fit out, and fencing;
- commercial - including commercial window and doors, internal and external fit out, and curtain walls; and
- industrial - including automotive, truck and trailer, rail, electrical, signage, marine, portable buildings and large industrial infrastructure.

Capral also advised that the key drivers of market demand are:

- housing construction and commercial building activity;
- general industrial activity;
- major infrastructure projects; and
- the level of finished product substitution (for local manufacture).

5.3 Market size

The Australian market for aluminium extrusions is supplied by Australian manufacturers and imported goods predominately from China.

The Commission estimated the size of the Australian market using data submitted by the Australian industry and import data obtained from the Australian Border Force (ABF) import database.

The Commission filtered the data to identify the goods declared under the relevant tariff subheadings in the ABF import database. The Commission is satisfied that this data is reliable for estimating the size of the Australian market for aluminium extrusions.

The Commission estimates that the size of the Australian market in the inquiry period was 165,000 tonnes, which is slightly higher than the original investigation period.¹⁹

The Commission estimates that Capral currently accounts for almost half of domestically manufactured aluminium extrusions, and almost a third of the overall Australian market (including imports).

Subsequent to lodging its application, Capral provided its estimates of the Australian market for aluminium extrusions. In providing its estimates, Capral relied on its own sales volumes, import data, and its knowledge of local competitors (including press capacity, published financial accounts and market feedback). The Commission compared Capral's estimates to other information available to it and considers Capral's estimates are suitable for examining the trends in market share from 2009 to 2014.

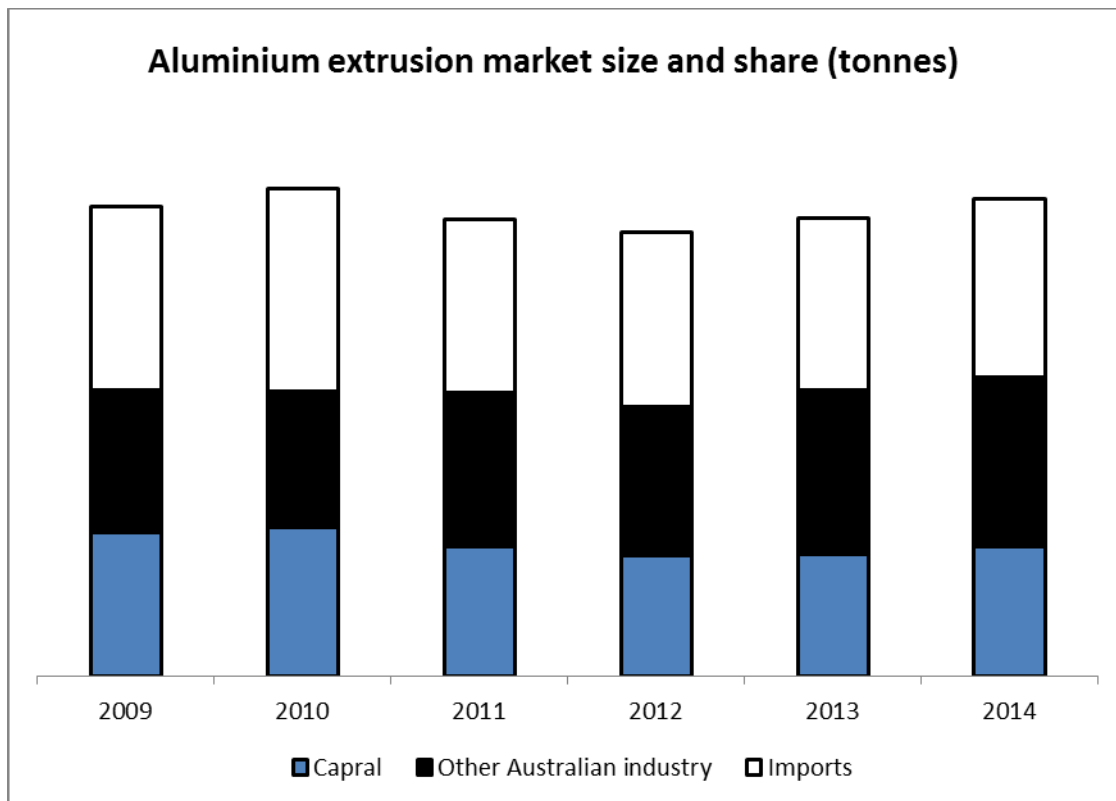


Figure 1: Capral's estimation of Australian market for aluminium extrusions

Figure 1 shows that Capral's market share has decreased slightly in 2014 from the levels achieved in 2009. For the same period, the market share of other Australian industry manufacturers has increased, whereas the market share held by imports has decreased slightly.

¹⁹ The Commission notes that in the final report for investigation no. 148, the estimated size of the Australian market was stated as approximately 195,000 tonnes. However, as part of the inquiry, the Commission has applied additional filtering criteria, which indicates that import volumes, in particular from Japan, were overstated in the final report for investigation no. 148.

5.4 Import volume

Figure 2 below shows that import volume of aluminium extrusions from China was at its highest levels in 2008 (which partly covers the original investigation period). Chinese import volumes dipped in the first half of 2009 (also in the original investigation period). Chinese import volumes overall decreased in the period June 2009 to June 2011 and have since remained relatively constant to June 2014. Imports from China have increased over the inquiry period.

Figure 2 clearly shows that Chinese imports have remained the largest source of imports and accordingly the total import volumes follow a similar trend to the Chinese import volumes. The Commission has found that import volumes from China have ranged between 60 to 80 per cent of the total imports of aluminium extrusions since the original investigation period.

The Commission has found that there was a moderate increase in imports from other countries not subject to anti-dumping measures, including Malaysia, the Republic of Indonesia, the Kingdom of Thailand and the Socialist Republic of Vietnam. Based on the ABF import database, for the 2014 calendar year, imports from those four countries accounted for approximately 29 per cent of total imports.

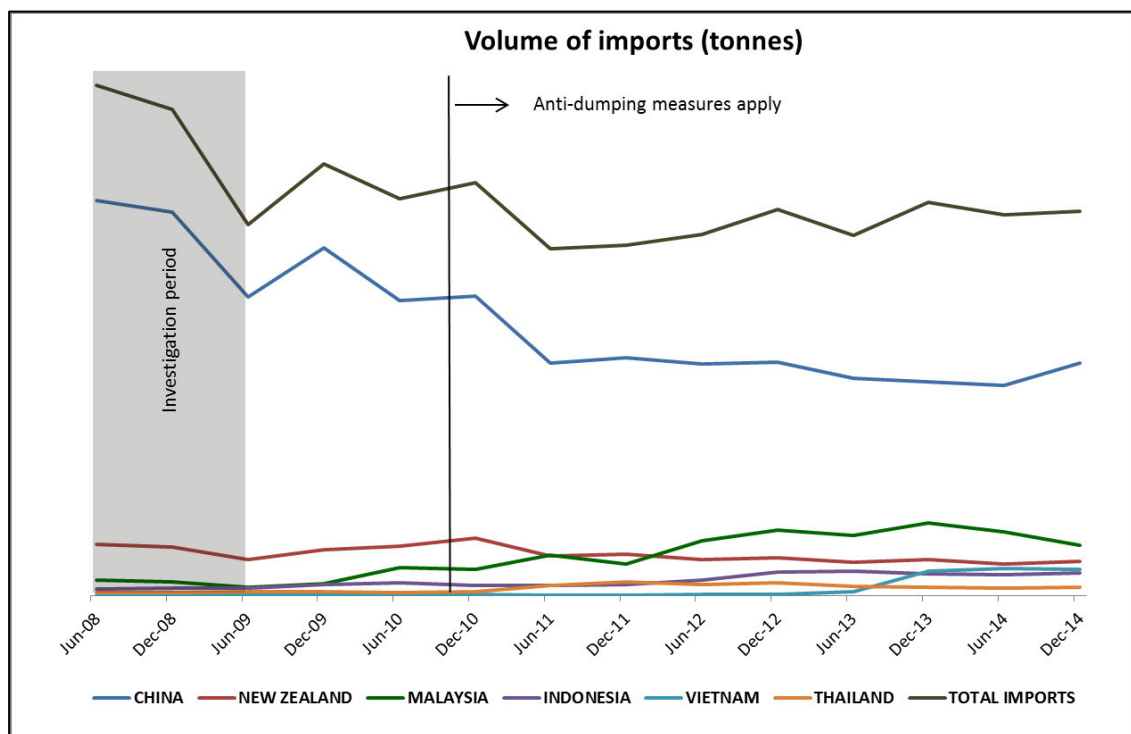


Figure 2: Imports of aluminium extrusions

6 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

6.1 Findings

Based on available evidence, the Commission considers that the economic performance of the Australian industry deteriorated from 2010 to 2013. Despite a minor improvement in economic performance in 2014, the Commission considers that the Australian industry is susceptible to material injury caused by dumping and subsidisation.

6.2 Approach to injury analysis

The Commission has analysed Australian industry data dating back to 2009. In doing so, it is noted that not all Australian industry manufacturers provided data for the period from 2009 to 2014 (inclusive).

As noted in section 5.3 of this report, Capral is the major producer of aluminium extrusions in Australia. For the purposes of this inquiry, the Commission considers that Capral is an appropriate representation of the Australian industry. The Commission has used Capral's data to assess the economic performance of the Australian industry. This approach is consistent with the original investigation.

The following analysis examines trends in respect of sales of local production and imports where noted, on a calendar year basis from 2009 to 2014 (inclusive).

6.3 Volume effects

6.3.1 Sales volume

Trends in Capral's sales volume are illustrated in Figure 3.

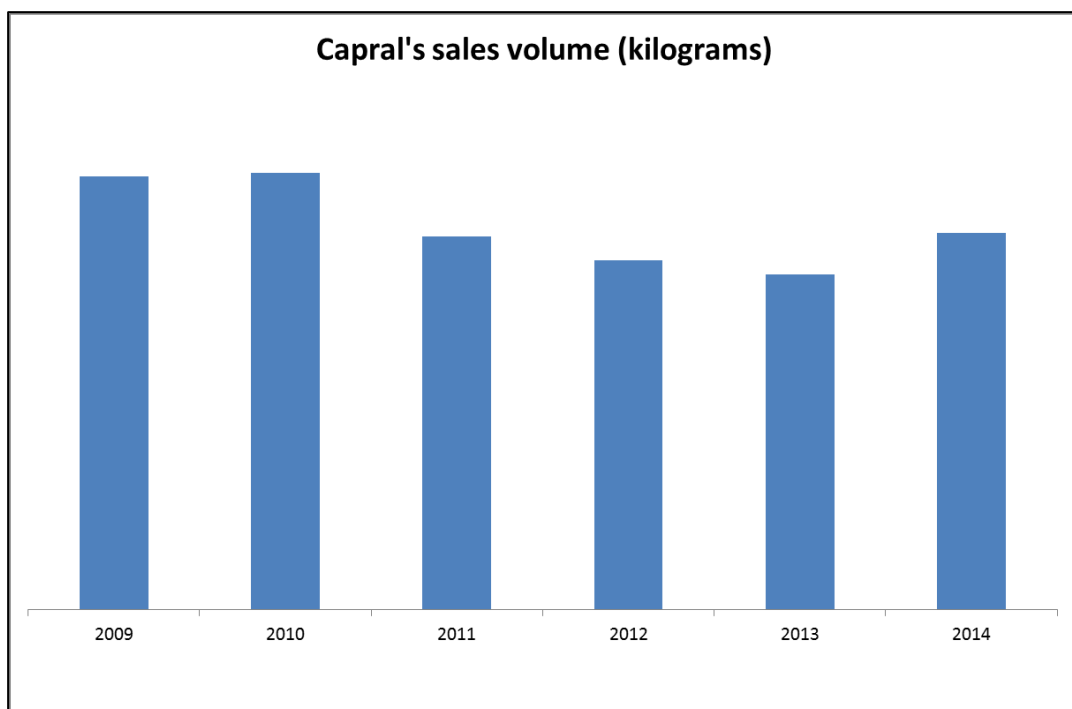


Figure 3: Capral's sales volume (kilograms) - 2009 to 2014

Figure 3 shows that Capral's sales volumes have increased in 2014 from levels achieved in 2013; however, the levels achieved in 2014 are approximately 13 per cent lower than when anti-dumping measures were imposed in 2010.

The Commission does not consider this conclusive evidence of volume injury. As outlined in section 5.3 of this report, the Commission found that the Australian industry (including manufacturers other than Capral) has collectively increased its market share relative to imports in the inquiry period. As indicated in Figure 1, data available to the Commission suggests that the Australian industry as a whole has increased its sales volumes in the inquiry period relative to the original investigation period.

6.4 Price effects

6.4.1 Price suppression and depression

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

Figure 4 shows Capral's weighted average unit selling prices and weighted average unit CTMS of aluminium extrusions for the period 2009 to 2014.

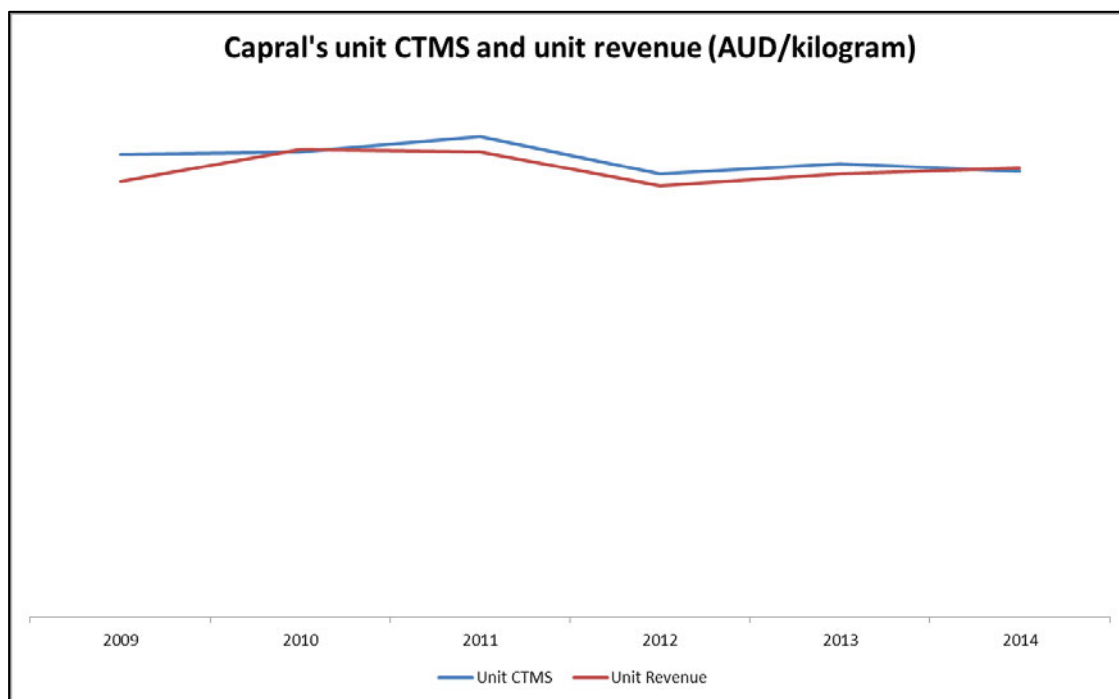


Figure 4: Capral's weighted average unit CTMS and weighted average selling prices 2009 - 2014

Figure 4 indicates that in 2009, Capral's unit CTMS exceeded its unit revenue. In 2010, when anti-dumping measures were first imposed, Capral's unit revenue increased relative to its unit CTMS and during this period unit revenue surpassed unit CTMS. However, between 2010 and 2012, Capral's unit revenue has declined.

From 2011 to 2013, Capral's unit CTMS once more exceeded unit revenue. It was not until 2014 that Capral's unit revenue again exceeded its unit CTMS. Despite recent improvement, the Commission considers that the Australian industry has remained susceptible to injury in the form of price depression and price suppression.

6.5 Profit and profitability

Trends in Capral's profits and profitability for the period 2009 to 2014 are illustrated in Figure 5.

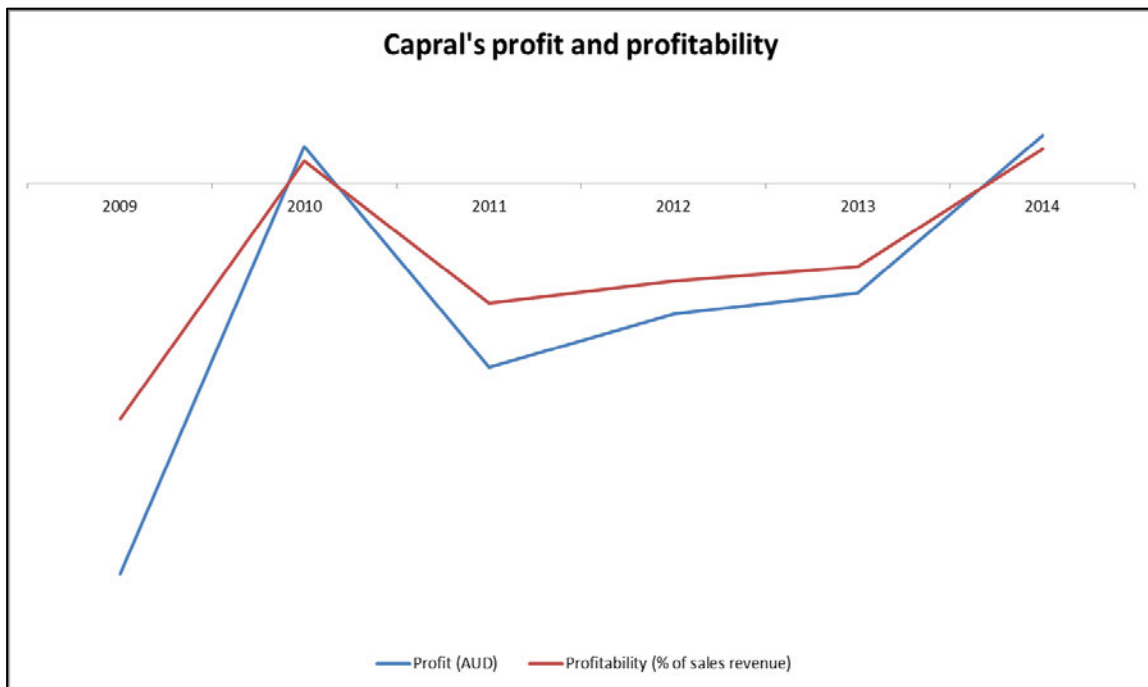


Figure 5: Capral's profit and profitability 2009 - 2014

Figure 5 shows that Capral's profit and profitability was lowest in 2009. In 2010, when anti-dumping measures were imposed, profit and profitability substantially improved.

Profit and profitability, however, decreased significantly in 2011, remaining negative in 2012 and 2013 before returning to 2010 levels in 2014. Despite recent improvement, profit and profitability are yet to exceed levels obtained in 2010 when anti-dumping measures were imposed.

The Commission is satisfied that Capral has experienced ongoing pressure in terms of profit and profitability.

6.6 The Commission's assessment

The Commission considers that the Australian industry has continued to experience pressure in terms of price depression, price suppression, profit and profitability.

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The sales volumes, profit and profitability of the Australian industry have improved recently; however, this improvement is considered to be marginal and has yet to be sustained. As a result, based on evidence currently available, the Commission considers that the Australian industry is susceptible to material injury caused by dumping and subsidisation.

The Commission's assessment of the economic performance of the Australian industry is at **Confidential Appendix 1**.

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7 WILL DUMPING, SUBSIDISATION AND MATERIAL INJURY CONTINUE TO RECUR?

7.1 Findings

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

7.2 Introduction

In accordance with subsection 269ZHF(2) of the Act, the Commissioner must not recommend that the Parliamentary Secretary take steps to secure the continuation of anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping or subsidisation and the material injury that the anti-dumping measures are intended to prevent.

7.3 Will dumping continue or recur?

7.3.1 Australian industry's claims

In its application, Capral submitted that:

- following the imposition of a dumping duty notice in October 2010, exports of aluminium extrusions to Australia from China have continued in significant volumes;
- PanAsia, the main Chinese exporter of aluminium extrusions, has maintained its market share and recorded revenue growth in recent times. In addition, duties of 10.1 per cent originally imposed on PanAsia were increased to 57.6 per cent as a result of Anti-circumvention Inquiry No. 241 (inquiry no. 241);
- in its view, dumping margins for other exporters are currently under review for review no. 248 and will be revised; and
- the Australian Dollar (AUD) has depreciated by around 15 per cent following the end of the review period for review no. 248 (31 March 2015). Capral considers that the declining AUD is likely to have impacted dumping margins in the most recent 12 month period and that this increases the likelihood of dumping in the future.

7.3.2 The Commission's assessment – dumping

Import volumes

The Commission has found in Chapter 5 of this report that exports of aluminium extrusions to Australia from China have continued in significant volumes. Whilst there has been some decline in the volume and market share of imports from China, as noted in Section 5.4 of this report, imports from China have remained between 60 to 80 per cent of total imports since the original investigation period. The continuing volume of imports from China indicates that Chinese exporters have maintained distribution channels into the Australian market since anti-dumping measures were imposed in October 2010. This trend in import volumes suggests that imports are likely to continue in significant volumes in the immediate future.

Anti-circumvention Inquiry no. 241

The key outcome of inquiry no. 241 was that exports from PanAsia were being sold by Australian importers at a price which was not commensurate with the total amount of duty payable.

As part of inquiry no. 241, the Minister for Industry and Science (as the decision maker at the time) declared that, for the purposes of the Act and the Dumping Duty Act, a different variable factor (a new ascertained export price) be applied to PanAsia in relation to the dumping duty notice and countervailing duty notice published under subsection 269TG(2) and subsection 269TJ(2) of the Act.

The declaration to alter the original notices resulted in the dumping margin on exports from PanAsia increasing from 10.1 per cent to 57.6 per cent.

This finding supports Capral's claims that during the relevant period for inquiry no. 241, the goods subject to dumping and countervailing duty were being sold at a loss, which allowed importers to circumvent the measures and undercut the Australian industry's selling prices. The Commission is of the view that if the measures were to expire, there would be an increased risk that price undercutting from importers would cause material injury to the Australian industry.

Review no. 248

As a result of review no. 248, the Parliamentary Secretary declared that the dumping duty notice and the countervailing duty notice are to be taken to have effect from 19 August 2015 as if different variable factors had been fixed in respect of the exporters identified in the table below.

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The following weighted average dumping margins were calculated for the various exporters.

Exporter	Dumping margin
Tai Shan City Kam Kiu Aluminium Co., Ltd.	2.0%
PanAsia Aluminium (China) Co., Ltd.	21.9%
Guang Ya Aluminium Industries Co., Ltd.	-0.7%
Residual exporters	14.5%
Uncooperative and all other exporters	37.9%

Table 4: Dumping margins published in REP 248

The findings from review no. 248 support Capral's claims that dumping has continued to occur since the imposition of anti-dumping measures in October 2010.

The Commission notes that PanAsia's dumping margin of 21.9 per cent is substantially higher than the other selected cooperating exporters and residual exporters from review no. 248. Verified data from the original investigation, review no. 248 and data from the ABF import database, confirm Capral's claims that PanAsia is the single largest exporter from China by volume and value. Taking into consideration the size of PanAsia's dumping margin, in the absence of anti-dumping measures, there would be significant scope for importers of PanAsia's goods to injure the Australian industry by undercutting its selling prices.

Continuation inquiry

Three exporters completed an exporter questionnaire for the inquiry.

- PanAsia (and related trading company OPAL (Macao Commercial Offshore) Ltd.);
- Guang Ya Aluminium Industries Co., Ltd. (Guang Ya); and
- Guangdong Jinxiacheng Al. Manufacturing Co., Ltd. (Jinxiacheng).

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In order to establish whether dumping has continued to occur in the inquiry period of 1 April 2014 to 31 March 2015, the Commission took the following approaches.

1. For exporters who submitted an exporter questionnaire response as part of the inquiry, the Commission used data contained in the exporter questionnaire responses.

The Commission constructed the normal values under subsection 269TAC(2)(c) of the Act²⁰ in a manner consistent with that used in review no. 248. The Commission replaced the costs of primary aluminium with a reasonably competitive market cost. Specifically, the Commission replaced each exporter's primary aluminium costs with contemporaneous London Metal Exchange (LME) cash prices plus other reasonable costs and charges. Where applicable, the Commission made adjustments to normal values to ensure comparability with the export price.

2. For Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd. (Kam Kiu), the Commission relied on all relevant information, specifically on declared FOB values from the ABF import database to establish its export price.²¹ The Commission benchmarked the declared FOB values for the inquiry period with the declared FOB values in the review period for review no. 248 and also verified data from the review and is satisfied with its accuracy. In relation to normal value, the Commission relied on cost data previously verified for Kam Kiu as part of review no. 248 and updated the aluminium component of the costs data to reflect contemporaneous LME cash prices plus other reasonable costs and charges. The Commission applied the same adjustments to Kam Kiu's normal values as determined for review no. 248.
3. The Commission established the export price for all other exporters having regard to all relevant information. Namely, the Commission used the weighted average declared FOB values of Chinese exporters from the ABF import database. The Commission also relied on best available information to calculate the normal value for all other exporters. Specifically, the Commission used the highest quarterly normal value of the three exporters who submitted an exporter questionnaire as part of the inquiry.

²⁰ As part of review no. 248, the Commission found that the Government of China influenced the Chinese primary aluminium market. This influence is likely to have materially 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 affected supply within that industry. The Commission is satisfied that based on the distortion in the upstream raw material market having a flow-on effect, there was a 'market situation' in the market for aluminium extrusions during the review period such that sales in that market are not suitable for use to determine normal value under subsection 269TAC(1) of the Act. As a result, the Commission constructed normal values under paragraph 269TAC(2)(c) of the Act. The Commission's inquiries suggest that there would be no change to the market situation in the time since review no. 248; therefore, this continuation inquiry has not revisited this finding.

²¹ The Commission filtered the ABF import database and isolated imports of aluminium extrusions made during the inquiry period and calculated quarterly weighted average export prices at FOB terms.

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Dumping margins

The Commission has calculated dumping margins by comparing the weighted average of export prices over the inquiry period with the weighted average of corresponding normal values over the inquiry period.

For exporters who submitted an exporter questionnaire as part of the inquiry, dumping margins ranged from -2.0 to 13.9 per cent. Kam Kiu's dumping margin was within this range.²² These dumping margins were found to be relatively consistent with review no. 248.

For all other exporters, the Commission calculated a dumping margin of 11.2 per cent. Dumping margin assessments are at **Confidential Appendix 2**.

Decline in the AUD

Figure 6 below shows the value of the AUD compared to the Chinese Yuan Renminbi (CNY) from June 2008 to June 2015.

Figure 6 supports Capral's claims that the AUD has declined in comparison to the CNY since January 2013. However, it also provides limited support of Capral's claims that the decline in the AUD has impacted on the export price when converted to CNY.

Figure 6 also shows that the declared FOB values extracted from the ABF import database, when converted from AUD to CNY, also correlate loosely to the spot price of primary aluminium as quoted in United States dollars (USD) on the LME. It is reasonable to expect that the normal value would have followed a similar trend.²³ The Commission also notes that a significant proportion of importations of aluminium extrusions are invoiced in other currencies, therefore, the Commission does not consider that the decline in the AUD influenced dumping margins in this instance.

²² Guangdong Zhongya is currently exempt from dumping duties.

²³ Particularly given that primary aluminium is the major raw material input and that normal values for aluminium extrusions were constructed for review no. 248 under paragraph 269TAC(2)(c) of the Act.

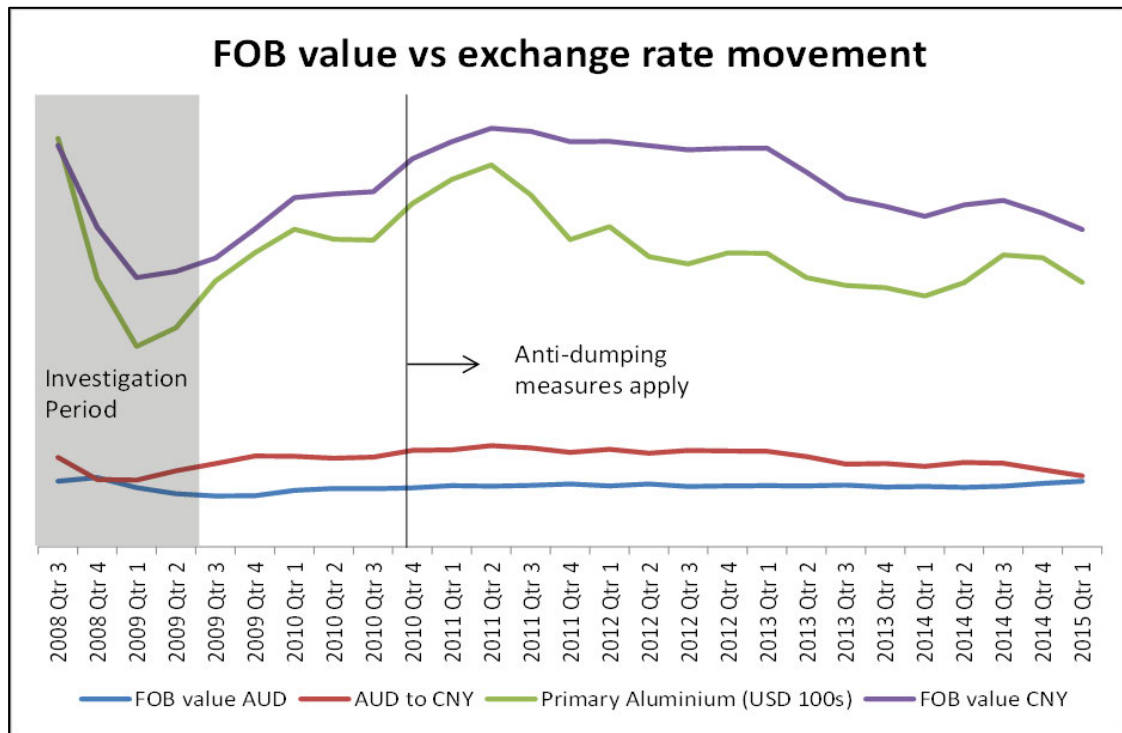


Figure 6: AUD to CNY comparison

Conclusion - dumping

The Commission has found that:

- imports have continued from China at substantial levels;
- the outcomes of inquiry no. 241 found that the anti-dumping measures had been circumvented;
- the outcomes of review no. 248 found that dumping has continued since the original dumping duty notice was published; and
- there was dumping in the continuation inquiry period.

The Commissioner is satisfied that expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping that the anti-dumping measures are intended to prevent.²⁴

²⁴ Whilst the Commission has calculated dumping margins for the purposes of the inquiry, as outlined in Chapters 8 and 9, it does not recommend altering the variable factors to reflect these dumping margins.

7.4 Will subsidisation continue to recur?

7.4.1 Australian industry's claims

As part of its application, Capral submitted that:

- the countervailing duty notice for the original investigation was published in October 2010 and covered 19 subsidy programs. The majority of the subsidy programs covered by the original investigation have been found to exist in subsequent investigations; and
- exporters have recently declared receipts of benefits under additional subsidy programs investigated in review no. 248.

In Capral's view, this is a clear indication that subsidisation is continuing and will continue should the countervailing duty notice be allowed to expire.

7.4.2 The Commission's assessment – subsidies

Review no. 248

In review no. 248, the Commission found that the programs outlined at **Attachment 2** were countervailable in respect of aluminium extrusions exported to Australia from China.

The following subsidy margins were calculated as part of review no. 248:

Exporter	Subsidy margin
Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd.	1.8%
Guangdong Zhongya Aluminium Co., Ltd.	0.6%
PanAsia Aluminium (China) Co., Ltd.	5.4%
Guang Ya Aluminium Industries Co., Ltd.	4.5%
Residual Exporters	8.1%
Uncooperative and all other exporters	20.2%

Table 5: Subsidy margins published in REP 248

Continuation inquiry

For the three exporters who submitted an exporter questionnaire response, the Commission relied on information provided in the exporter questionnaire response to establish whether the exporters continued to receive subsidies from the programs listed at **Attachment 2**.

Subsidies were found to have been received from programs 5, 7, 15 and 26. Subsidy margins for the three exporters ranged from 8.8 per cent to 15.5 per cent during the inquiry period. Subsidy margin assessments are at **Confidential Appendix 3**.

The Commission also looked at data submitted by the selected cooperating exporters as part of review no. 248. Of the existing programs found to be countervailable in review no. 248, no new information has been presented to indicate that any of those programs will cease in the near future.²⁵

Conclusion - subsidies

Based on the available evidence, the Commissioner is satisfied that expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, subsidisation that the anti-dumping measures are intended to prevent.

7.4.3 Capral's submission regarding Program 45

Following publication of SEF 287, Capral submitted that the Commission should determine that Program 45 (provision of land use rights for less than adequate remuneration) is countervailable.

Capral cited the dumping and countervailing investigation by the United States of America into aluminium extrusions from China to support its view that the Commission should also countervail the provision of land use rights at less than adequate remuneration.

Capral also submitted information relating to PanAsia and attempted to calculate an amount of benefit that PanAsia allegedly received from Program 45.

7.4.4 The Commission's assessment

As discussed in REP 248, the data provided by the exporters for the purposes of review no. 248 revealed that there had not been any land use rights granted to aluminium extrusion manufacturers during the period of review. Therefore, the Commission concluded that it was not in possession of sufficient information to satisfy itself that the program should be countervailable in relation to aluminium extrusions.

The Commission notes Capral's attempt to calculate an amount of benefit that PanAsia allegedly received under Program 45.

Given that review no. 248 covered all exporters, including PanAsia, the Commission considers that, in this instance, it is appropriate to rely on verified data and information provided by the exporters in determining whether any land use rights were granted to the relevant exporters. As a result, for the purposes of this inquiry, the Commission remains satisfied that Program 45 should not be countervailable in relation to aluminium extrusions.

²⁵ The Commission sent a letter to the Government of China advising it of the inquiry, offering the opportunity to discuss any aspect of the inquiry and inviting it to complete a questionnaire. To date, the Commission has not received a response from the Government of China.

7.5 Will material injury continue to recur?

7.5.1 Australian industry's claims

As part of its application, Capral submitted that:

- material injury from dumped and subsidised Chinese imports commenced as early as 1998 and was found to have occurred during the original investigation period of July 2008 to June 2009. Provisional measures were imposed on Chinese imports in November 2009, followed by the imposition of measures in October 2010;
- the Australian industry has not recovered as would be expected following the imposition of measures. Capral highlights that its sales volume has continued to decline since measures were imposed;
- China continues to be the main source of imports into Australia; and
- circumvention of duties enabled importers to continue to undercut the Australian industry's prices, causing ongoing injury to the industry.

7.5.2 The Commission's assessment - material injury

Injury assessment

The Commission examined the economic performance of the Australian industry in Chapter 6 of this report and is satisfied that the Australian industry is susceptible to material injury caused by dumping and subsidisation. Based on the evidence before it, the Commission considers that it would be unlikely that injury from other factors, if any, would detract from the Commissioner's view that dumping and subsidisation has materially injured the Australian industry's economic performance.

As noted in Section 7.3.2 of this report, the Commission established that imports of Chinese aluminium extrusions have continued in substantial volumes. Data from exporter questionnaires for review no. 248 and this inquiry indicate that Chinese aluminium extrusion manufacturers have excess capacity, with production utilisation ranging from 58 to 83 per cent. Data from the exporter questionnaires also demonstrates that many Chinese aluminium extrusion producers have a strong export focus.

The Commission is also of the view that the conditions of competition between imported products and between imported and domestically produced aluminium extrusions are similar. The Commission has established that importers and the Australian industry are both selling goods into the same markets and to the same customers, and that domestically produced aluminium extrusions can be substituted with imported goods. The Commission also considers that domestic and imported goods are alike, have similar specifications, and have similar end-uses. The above finding has been verified during previous importer, exporter and Australian industry visits.

For the above reasons, the Commission considers that import volumes are likely to continue and in the absence of anti-dumping measures would likely increase and continue to cause material injury.

Market for primary aluminium in China

In review no. 248, the Commission established that the Government of China (GOC) substantially influenced the aluminium extrusion market in China due to the distorted price of primary aluminium, a primary input used in the manufacture of aluminium extrusions.²⁶ This influence is likely to have materially 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 that industry.

According to the *Resources and Energy Quarterly (June 2015)*,²⁷ published by the Office of the Chief Economist,²⁸ the Chinese aluminium industry has grown significantly in recent years, with its production growth exceeding world growth. China is now responsible for 49 per cent of world aluminium production.²⁹ The Office of the Chief Economist has also established that within China's domestic aluminium market, supply has been rapidly increasing and demand has been growing at a slower rate. With higher international prices on the LME, China has increased its exports of aluminium in 2014 and has moved from being a net importer of aluminium to a net exporter. This is expected to continue with Chinese aluminium production forecast to continue increasing on the back of new smelters, capacity upgrades and efficiencies achieved by smelters that opened in 2014 reaching full production.

On this basis, it is reasonable to conclude that Chinese aluminium extrusion manufacturers will continue, because of GOC influence, to have the capacity and a competitive advantage over Australian manufacturers, such that the domestic sales prices of aluminium products, including aluminium extrusions, are unsuitable for determining normal value. In the absence of anti-dumping measures, exports of aluminium extrusions to Australia are likely to continue to injure the Australian industry.

²⁶ REP 248 – Non-Confidential Appendix 1 – Market situation assessment.

²⁷ Available at <http://www.industry.gov.au/Office-of-the-Chief-economist/Publications/Documents/req/REQ-June15.pdf>.

²⁸ The Office of the Chief Economist is a research unit within the Department of Industry and Science, providing objective, robust and high quality economic analysis to inform policy development across resources and energy, industry and innovation, skills and evaluation.

²⁹ World Bureau of Metal Statistics, *World Metal Statistics* May 2015, Volume 68 Number 4, Table 7.

A report³⁰ by IBISWorld³¹, dated October 2014, provides further support that import volumes and injury from imports are likely to continue for the aluminium rolling, drawing and extruding industry (of which aluminium extrusions represented approximately 28 per cent). In particular, IBISWorld predicts:

“Over the next five years, the Aluminium Rolling, Drawing, Extruding industry’s prospects are not expected to improve significantly. Excess supply, weak demand and ongoing structural changes within Australia’s manufacturing base mean that industry players will face deep-seated challenges. With domestic demand expected to remain subdued at best, the international market will increase in significance as players increasingly derive their earnings offshore. In 2019-20, about 85.0% of the industry’s revenue base will originate from international markets. At the same time, additional cuts to the local industry’s manufacturing base will mean that imports will satisfy an even higher proportion of domestic demand.

Echoing trends throughout the general aluminium supply chain, the industry is expected to contract further. Revenue is forecast to decline by an annualised 2.2% over the next five years, to just \$867.0 million in 2019-20. This includes an expected fall of 1.0% in 2015-16.

In view of this weak performance, industry enterprise and establishment numbers will decline. Establishment numbers are expected to fall by 2.8% annualised as the industry seeks to cut excess capacity. The exit of players as struggling participants are forced to leave the industry will contribute to further cuts to the industry’s base. This will result in a fall in employment to an expected 1,510 people in 2019-20.”

Anti-circumvention Inquiry no. 241

The Commission determined that, for the relevant period of inquiry, certain goods subject to dumping duty and countervailing duty were being sold by Australian importers at a loss.

For inquiry no. 241, Capral provided the Commission with evidence of the circumvention goods undercutting the Australian industry’s selling prices. Therefore, the Commission is satisfied that the expiry of anti-dumping measures would lead to a recurrence of price undercutting, further injuring the Australian industry. This undercutting would likely lead to further pressure on Australian industry’s prices resulting in price depression and suppression. The resulting price effects would flow through to a deterioration of the Australian industry’s profit performance.

³⁰ Industry Report C2142 Aluminium Rolling, Drawing, Extruding in Australia, October 2014.

³¹ IBISWorld is an independent research agency - www.ibisworld.com.au.

Comparison of the non-injurious price to export prices

Consistent with review no. 248, the Commission calculated a non-injurious price (NIP) by establishing an unsuppressed selling price (USP) using Capral's CTMS data and profit from the inquiry period. The Commission deducted from the USP amounts for importer selling, general and administrative expenses, profit and relevant post-exportation expenses verified as part of review no. 248.

The Commission compared the NIP with weighted average export prices of aluminium extrusions exported from China to Australia during the inquiry period. The NIP was higher than the weighted average export prices of aluminium extrusions exported from China during the investigation period.

This analysis supports the conclusion that dumped aluminium extrusions exported to Australia from China caused material injury to the Australian industry.

In the absence of measures, it is reasonable to expect that the exportation of aluminium extrusions from China is likely to be dumped and potentially undercut the Australian industry's selling prices. This undercutting would likely lead to further pressure on Australian industry's prices resulting in price depression and suppression. The resulting price effects would flow through to a deterioration of the Australian industry's profit performance. The NIP calculations are at **Confidential Appendix 4**.

Conclusion – material injury

The Commission is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of the material injury that the anti-dumping measures are intended to prevent.

7.6 The Commission's assessment

The Commission has found:

- review no. 248 and the Commission's assessment of dumping (section 7.3 of this report refers) in the inquiry period indicate that dumping has continued to occur since the imposition of the dumping duty notice in October 2010;
- inquiry no. 241 found that certain importers of aluminium extrusions from China have circumvented the intended effect of anti-dumping measures, allowing importers of Chinese aluminium extrusions to undercut the Australian industry's selling prices;
- there is limited evidence to support claims that changes in the AUD may impact on the level of dumping margins in the future;
- of the selected exporters from review no. 248, PanAsia, the largest exporter of aluminium extrusions from China, was found to have the highest dumping margin, which is substantial at 21.9 per cent;
- that there is strong price competition between imported goods and domestically produced like goods;

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- the GOC substantially influences the primary aluminium and aluminium extrusion market in China and this influence is likely to have materially distorted competitive market conditions in the aluminium extrusions market. In the absence of anti-dumping measures, it is likely that Chinese aluminium extrusion exporters would capitalise on cheaper aluminium inputs and further target export markets such as Australia;
- subsidisation is likely to continue to occur, given that existing programs found to be countervailable in review no. 248 are likely to continue in the near future;
- the Australian industry is susceptible to material injury particularly in terms of price and profitability as a result of dumping and subsidisation;
- since the imposition of anti-dumping measures, the size of the market has increased slightly and imports of Chinese aluminium extrusions have continued in substantial volumes (currently accounting for approximately 60 per cent of the market). It is reasonable to assume that in the absence of anti-dumping measures, dumped imports of Chinese aluminium extrusions are likely to increase in volume to levels achieved prior to the original investigation;
- exporter questionnaire data shows that many Chinese aluminium extrusions manufacturers have excess capacity and have a strong export focus;
- the calculated NIP is higher than weighted average export prices; and
- the economic outlook for the Australian industry is that it is likely to experience further pressures from imports in the short term; therefore, continued dumping and subsidisation may cause further material injury to the Australian industry as price competition from dumped and subsidised imports from China is likely to have a continuing adverse impact on the Australian industry.

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

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8 VARIABLE FACTORS

8.1 Findings

Based on the analysis of the Commission, the Commissioner recommends that the Parliamentary Secretary, in deciding whether to continue the anti-dumping measures, leave the variable factors of export price, normal value and subsidies unaltered.

However, the Commissioner is satisfied that subsections 8(5BAAA) and 10(3DA) of the Dumping Duty Act apply (refer section 8.3.1. of this report). Therefore, the Parliamentary Secretary is no longer required to have regard to the desirability of fixing a lesser rate of duty under subsections 8(5BA) and 10(3D) of the Dumping Duty Act. If the Parliamentary Secretary chooses not to apply the lesser duty rule, the NIP will no longer be operable.

8.2 Export price, normal value and subsidies

As discussed in section 7.3.2 of this report, the Commission has calculated dumping and countervailing margins for the three exporters that had submitted responses to the exporter questionnaire. Further, the Commission calculated dumping and countervailing margins for Kam Kiu and for all other exporters.

However, given that review no. 248 applied to all exporters and altered variable factors in relation to export price, normal value and subsidies, the Commission considers, in this instance, it is preferable to rely on verified data from review no. 248 in continuing the measures. The Commission estimates that the variable factors calculated during review no. 248 do not appear to have changed so substantially as to warrant the fixing of different variable factors.

As a result, the inquiry has not established new variable factors for export price, normal value and subsidies and will rely on the findings from review no. 248, in relation to export price, normal value and subsidies in continuing the anti-dumping measures.

8.2.1 Jinxiecheng's submission

Following publication of SEF 287, Jinxiecheng requested that the Commissioner recommend to the Parliamentary Secretary that the dumping duty notice and the countervailing duty notice have effect in relation to Jinxiecheng as if different variable factors had been ascertained.

In particular, Jinxiecheng argues that it has submitted responses to the exporter questionnaire for review no. 248 and for the purposes of this inquiry, and therefore, the Commission should determine separate variable factors (including separate dumping and countervailing margins) for Jinxiecheng.

8.2.2 The Commission's assessment

As discussed in section 8.2 of this report, the Commission considers that it is reasonable to rely on verified data and information from review no. 248 in continuing the measures. Therefore, the Commissioner does not propose different variable factors in relation to Jinxiacheng.

The Commission notes that in certain circumstances, importers are able to recover any dumping and countervailing duty paid through the duty assessment process. This process would allow Jinxiacheng's individual variable factors to be considered.

8.3 Non-injurious price

8.3.1 Relevant legislation

Duties³² 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) of the Act, 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 they exist, the Parliamentary Secretary is not required to have mandatory regard to the desirability of fixing a lesser amount of duty. These include:³³

- there is a situation in the market that makes domestic selling prices unsuitable for the purpose of determining normal value under subsection 269TAC(1);
- there is an Australian industry in respect of like goods consisting of at least two small to medium sized enterprises (as defined in the Act); and

³² 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.

³³ 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.

- the country in relation to which the subsidy has been provided, has not complied with Article 25 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement) for the compliance period.

These changes apply to dumping duty and countervailing duty notices that were published before 1 January 2014, but are continued on or after this date.³⁴

8.3.2 The Commission's assessment

For the inquiry (and relying on review no. 248 findings), the Commission has found that two of the prescribed circumstances mentioned above exist. That is:

- there is a situation in the market that makes domestic selling prices for Chinese aluminium extrusions unsuitable for the purpose of determining normal value under subsection 269TAC(1); and
- China, the country in relation to which the subsidy has been provided, has not complied with Article 25 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement) for the compliance period.

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

The Annual Report of the Committee on Subsidies and Countervailing Measures (the Committee) includes, in separate annexures to the Report, the status of notifications by Members for relevant reporting periods on a biennial basis (reflecting the above decision of the Committee that new and full notifications should be submitted every two years). These reports are the primary source of information for the Commission in making determinations regarding compliance with the subsidy notifications.

The Committee's report dated 3 November 2014 indicates that China has not submitted new and full subsidy notifications since 2011.

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 duty due to the operation of paragraphs 8(5BAAA)(a) and (c) and paragraphs 10(3DA)(a) and (c) of the Dumping Duty Act. However, this does not prevent the Parliamentary Secretary from considering and applying the lesser duty rule, if considered appropriate.

The Commissioner is recommending that the full dumping and subsidy margins be applied to any interim dumping duty and interim countervailing duty taken in relation to aluminium extrusions exported to Australia from China. The Commissioner notes that, notwithstanding his recommendation, the Parliamentary Secretary is not obliged to, but still may, consider applying a lesser amount of duty.

³⁴ Specifically, the legislative changes apply in circumstances where the Parliamentary Secretary publishes a notice under subsection 269ZH(1) of the Act to continue the measures concerned.

9 RECOMMENDATIONS

The Commissioner recommends that the Parliamentary Secretary take steps to secure the continuation of the anti-dumping measures relating to certain aluminium extrusions exported to Australia from China from the expiry date of 28 October 2015.

The Commissioner recommends that, in continuing the anti-dumping measures, the variable factors of export price, normal value and amount of countervailable subsidy received remain unaltered. This will mean that the interim dumping duty and interim countervailing duty rates determined by review no. 248 remain in place.

The Commissioner further recommends that the full dumping and subsidy margins determined in review no. 248 be applied to any interim dumping duty and interim countervailing duty taken in relation to aluminium extrusions exported to Australia from China. The Commissioner notes that the Parliamentary Secretary is not obliged to, but still may, consider applying a lesser amount of duty in accordance with the lesser duty rule.

If the Parliamentary Secretary exercises her discretion not to have regard to the lesser duty rule, the NIP will have no future application.

If the Parliamentary Secretary accepts these recommendations, to give effect to the decision, the Parliamentary Secretary must declare, by signing the notice under subsection 269ZH(1)(b) of the Act (**Attachment 1**), that she has decided to secure the continuation of the anti-dumping measures.

10 APPENDICES AND ATTACHMENTS

Attachment 1	Public notice under subsection 269ZHG(1)(b)
Attachment 2	Countervailable programs from review no. 248
Confidential Appendix 1	Economic performance of the Australian industry
Confidential Appendix 2	Dumping margin calculations
Confidential Appendix 3	Subsidy margin calculations
Confidential Appendix 4	USP and NIP calculations

ATTACHMENT 2 – SUBSIDY PROGRAMS FROM REVIEW NO. 248

Program number	Program name	Program type	Countervailable in relation to the goods (Yes/No)
1	Preferential tax policies for FIEs in the coastal economic open areas and economic and technological development zones	Tax	No
2	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant	Yes
3	Provincial Scientific Development Plan Fund	Grant	Yes
4	Export Brand Development Fund	Grant	Yes
5	Matching Funds for International Market Development for SMEs	Grant	Yes
6	Superstar Enterprise Grant	Grant	Yes
7	Research & Development (R&D) Assistance Grant	Grant	Yes
8	Patent Award of Guangdong Province	Grant	Yes
9	Training Program for Rural Surplus Labour Force Transfer Employment	Grant	Yes
10	Preferential Tax Policies for FIEs – Reduced Tax Rate for Productive FIE's scheduled to operate for a period of not less than 10 years	Tax	No
15	Aluminium provided at less than adequate remuneration	LTAR	Yes
16	Preferential tax policies for FIEs established in Special Economic Zones (excluding Shanghai Pudong area)	Tax	No
17	Preferential tax policies for FIEs established in Pudong area of Shanghai	Tax	No
18	Preferential tax policies in the Western Regions	Tax	Yes
21	Tariff and VAT Exemptions on Imported Materials and Equipment	Tax	Yes
26	Innovative Experimental Enterprise Grant	Grant	Yes
29	Special Support Fund for Non-State-Owned Enterprises	Grant	Yes
32 [#]	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
35 [#]	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
44 [#]	Preferential lending programs – loans from Chinese policy banks and state owned commercial banks	Loans	No
45 [#]	Provision of land use rights for less than adequate remuneration	LTAR	No
46 [#]	Provision of electricity for less than adequate remuneration	LTAR	No
47 [#]	Preferential tax policies for high and new technology enterprises	Tax	Yes
48 [#]	Provincial Government of Guangdong tax offset for R&D	Tax	Yes

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Program number	Program name	Program type	Countervailable in relation to the goods (Yes/No)
49 [#]	Exemption from city construction tax and education tax for FIEs	Tax	No
50 [#]	Refund of land-use tax for firms located in the Zhaoqing New and High Tech Industrial Development Zone (ZHTDZ)	Tax	No
51 [#]	Fund for SME bank-enterprise cooperation projects	Grant	No
52 [#]	Special fund for science and technology in Guangdong	Grant	No
53 [#]	Provincial fund for fiscal and technological innovation	Grant	No
54 [#]	Provincial loan discount special fund for SMEs	Grant	No
55 [#]	Export rebate for mechanic, electronic, high tech products	Grant	No
56 [#]	PGOG special fund for energy saving technology reform	Grant	Yes
57 [#]	PGOG science and technology bureau project fund	Grant	No
58 [#]	Development assistance grants from the ZHTDZ	Grant	Yes
59 [#]	Provision of water for less than adequate remuneration	LTAR	No
60 [#]	Provision of natural gas for less than adequate remuneration	LTAR	No
61 [#]	Provision of heavy oil for less than adequate remuneration	LTAR	No
62 [#]	Currency undervaluation	Other	No

- Denotes programs not previously countervailed in relation to aluminium extrusions.

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