



CUSTOMS ACT 1901 – PART XVB

FINAL REPORT

NO. 241

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

23 December 2014

Final Report No. 241 – Certain aluminium extrusions – China

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ABBREVIATIONS

\$	Australian dollars
ACBPS	Australian Customs and Border Protection Service
Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
AEP	ascertained export price
ASIC	Australian Securities and Investments Commission
Capral	Capral Limited
China	People's Republic of China
circumvention goods	The circumvention goods are described in section 3.2 of this report.
Commission	Anti-Dumping Commission
Commissioner	Commissioner of the Anti-Dumping Commission
CON 241	<i>Consideration Report No. 241</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Explanatory Memorandum	Explanatory Memorandum to the Customs Amendment (Anti-dumping Measures) Bill 2013
FOB	free on board
Identified importers	P&O Aluminium (Brisbane) Pty Ltd, P&O Aluminium (Melbourne) Pty Ltd, P&O Aluminium (Perth) Pty Ltd, P&O Aluminium (Sydney) Pty Ltd, and Oceanic Aluminium Pty Ltd
inquiry period	The inquiry period is as described in section 2.2 of this report
Issues Paper	Issues Paper published by the Commission on 18 September 2014
Kam Kiu	Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd
LME	London Metals Exchange
Oceanic	Oceanic Aluminium Pty Ltd
original notice	The original notice is as described in section 2.1.2 of this report.
OPAL Macao	OPAL (Macao Commercial Offshore) Limited
P&O Brisbane	P&O Aluminium (Brisbane) Pty Ltd
P&O Group	P&O Group Pty Ltd
P&O Melbourne	P&O Aluminium (Melbourne) Pty Ltd
P&O Perth	P&O Aluminium (Perth) Pty Ltd
P&O Sydney	P&O Aluminium (Sydney) Pty Ltd
PanAsia	PanAsia Aluminium (China) Limited
PanAsia Group	PanAsia Group Pty Limited
Minister	Minister for Industry and Science
report	Final Report No. 241
SG&A	selling general and administration
Success Aluminium	Success Aluminium Pty Ltd

PUBLIC RECORD

the goods	the goods subject to dumping and countervailing duties
Three Importers	P&O Aluminium (Perth) Pty Ltd, P&O Aluminium (Sydney) Pty Ltd and Oceanic Aluminium Pty Ltd

1. SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This inquiry is in response to an application by Capral Limited (Capral) alleging that importers of certain aluminium extrusions exported from the People's Republic of China (China) have engaged in a circumvention activity that is avoiding the intended effect of the duty, within the meaning of subsection 269ZDBB(5A) of the *Customs Act 1901* (Act)¹.

Capral claimed that five importers were circumventing the intended effect of the dumping and countervailing duties by failing to recover the full cost of the goods and duties when they are selling into the Australian market. Capral identified the following importers (jointly referred to as the Identified Importers):

- P&O Aluminium (Brisbane) Pty Ltd (formerly known as PanAsia Aluminium (Brisbane) Pty Ltd) (P&O Brisbane);
- P&O Aluminium (Melbourne) Pty Ltd (formerly known as PanAsia Aluminium (Melbourne) Pty Ltd) (P&O Melbourne);
- P&O Aluminium (Perth) Pty Ltd (formerly known as PanAsia Aluminium (Perth) Pty Ltd) (P&O Perth);
- P&O Aluminium (Sydney) Pty Ltd (formerly known as PanAsia Aluminium (Sydney) Pty Ltd) (P&O Sydney); and
- Oceanic Aluminium Pty Ltd (Oceanic).

This report sets out the Commissioner's recommendations to the Minister for Industry and Science (Minister) in relation to this inquiry. This report sets out the Commissioner of the Anti-Dumping Commission's (Commissioner's) material findings of fact, on which the recommendations are based and the particulars of the evidence relied on to support those findings.

1.2 Recommendations to the Minister

The Commissioner is satisfied that the alleged circumvention activity as described in subsection 269ZDBB(5A) of the Act in relation to the original dumping and countervailing duty notice (original notice) has occurred. Accordingly, the Commissioner recommends to the Minister that the Minister determine:

- that the Identified Importers of the circumvention goods have engaged in circumvention activity by avoiding the intended effect of the duty within the meaning of subsection 269ZDBB(5A) of the Act; and

¹ A reference to a part, division, section or subsection is a reference to a part, division, section or subsection of the *Customs Act 1901* unless stated otherwise.

- a different variable factor (a new ascertained export price (AEP)) in accordance with subsection 269TAB(3) of the Act for the goods exported by PanAsia, having regard to all relevant information.

The Commissioner recommends that the Minister sign the notice at **Attachment A** to declare that in accordance with subsection 269ZDBH(1)(b) of the Act, the alteration to the original notice specifies a dumping margin of 57.6%, a subsidy margin of 8.7% and an effective rate of combined interim duty of 57.6%, and takes effect as follows:

- Retrospective - the alteration to the original notice relating to all exports of the circumvention goods by PanAsia to the Identified Importers from PanAsia is taken to have been made, with effect on and after 14 April 2014; and
- Prospective - the alteration to the original notice relating to all exports of the circumvention goods by PanAsia is taken to have been made, with effect on and after the day specified in the declaration (being a date on or after the date the declaration notice has been published).

1.3 Application of law to facts

Division 5A of Part XVB of the Act sets out, among other matters, the procedures to be followed, and the matters to be considered, by the Commissioner in conducting an anti-circumvention inquiry. The Explanatory Memorandum to the Customs Amendment (Anti-dumping Measures) Bill 2013 (Explanatory Memorandum) explains what “avoidance of the intended effect of duty” is for the purposes of conducting an anti-circumvention inquiry:

... ‘avoidance of the intended effect of duty’, describes the situation where dumping or countervailing duty has been imposed and is being paid by the importer; however, the imposition of the duty has little or no effect as, over a ‘reasonable period’, the price at which the goods are sold by the importer has not increased in line with the duty payable.²

If a notice has been published under subsection 269TG(2) or subsection 269TJ(2) in respect of goods, Division 5A allows a person representing, or representing a portion of, the Australian industry producing like goods to request that the Commissioner conduct an anti-circumvention inquiry in relation to that notice. The Division also provides for the Minister to request that the Commissioner conduct an anti-circumvention inquiry.

After conducting an anti-circumvention inquiry, the Commissioner must give the Minister a report containing his recommendations in relation to the inquiry. The recommendations of the Commissioner include the types of alterations that are to be made to the original notice (see subsection 269ZDBH(2)).

² The Explanatory Memorandum can be found at <http://www.comlaw.gov.au/Details/C2013B00179/Explanatory%20Memorandum/Text>.

Under subsection 269ZDBH(1), the Minister, after consideration of such reports, must declare that the original notice remain unaltered, or that the original notice be altered such that the alterations are taken to have been made to the original notice, with effect on or after a day specified in the declaration.

1.4 Application and inquiry

1.4.1 Application

On 19 March 2014, Capral lodged an application requesting an inquiry into the alleged circumvention of dumping and countervailing duties applying to certain aluminium extrusions exported to Australia from China. After considering the application, the Commissioner did not reject the application. Consequently, on 14 April 2014, the Commissioner published a notice in a newspaper in accordance with subsection 269ZDBE(4) informing interested parties of the Commission's initiation of the anti-circumvention inquiry.

In Consideration Report No. 241 (CON 241), the Commissioner indicated that the inquiry period to determine whether circumvention has occurred was to be from 1 January 2013 to 31 December 2013. The inquiry period was later amended to be from 1 January 2013 to 27 October 2013 (see section 2.2 of this report).

1.4.2 Issues Paper

On 18 September 2014, the Commission published an issues paper (Issues Paper) setting out matters being considered by the Commission in this inquiry. The Commission invited submissions in response to the Issues Paper from interested parties. All submissions following the release of the Issues Paper were taken into account in preparing this report.

1.4.3 Final Report

Under subsection 269ZDBG(1) of the Act, the Commissioner must, within 100 days after the day the notice under subsection 269ZDBE(4) about the inquiry is published (or such longer period as the Minister allows under section 269ZHI), provide the Minister a report recommending:

- the original notice remain unaltered; or
- the original notice be altered because the Commissioner is satisfied that circumvention activities in relation to the original notice have occurred. The Commissioner must also recommend the alterations to be made to the original notice.

The report was originally due on 23 July 2014. On four occasions (15 July 2014, 28 August 2014, 22 October 2014 and 11 December 2014) the then Parliamentary Secretary to the Minister for Industry extended the deadline for the Commissioner to

provide the report due to the complex and novel issues arising from the Commission's first anti-circumvention inquiry.³

In formulating this report to Minister, the Commissioner has had regard to:

- the application for the inquiry;
- submissions concerning the inquiry that were received within 40 days after the publication of the notice under subsection 269ZDBE(4); and
- any other matter that the Commissioner considered to be relevant to the inquiry, as provided for in subsection 269ZDBG(2)(b) of the Act.

1.5 Summary of findings

1.5.1 Circumvention activity

As set out in chapters 3 and 4 of this report, the Commissioner is satisfied that circumvention activity under subsection 269ZDBB(5A) of the Act that avoids the intended effect of the duty has occurred after finding that:

- goods (the circumvention goods) subject to a dumping and countervailing duty notice were exported to Australia from a foreign country to which the notice applies;
- the exporter of those goods was an exporter in respect of which the notice applies. PanAsia was the relevant exporter in respect of which the notice applies;
- both sections 8 and 10 of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) apply to the export of the circumvention goods to Australia;
- the Identified Importers of the circumvention goods sold the goods in Australia without increasing the price commensurate with the total amount of duty payable under the Dumping Duty Act (by way of selling the circumvention goods at a loss). The Commissioner determined that the circumvention goods had been sold at a loss after applying a profitability test on data and information obtained by the Commission; and
- the circumvention activity outlined above was found to have occurred over a reasonable period during the inquiry period of 1 January 2013 to 27 October 2013. The Commissioner determined that the circumvention goods were sold at a loss for most of the inquiry period.

³ Anti-Dumping Notices 2014/61, 2014/83, 2014/111 and 2014/135.

1.5.2 Specification of a different variable factor

As set out in chapter 5 of this report, the Commissioner recommends the specification of a different variable factor (a new AEP) for the goods in accordance with subsection 269TAB(3) of the Act.

1.5.3 Alteration to the original notice

As set out in chapter 6 of this report, the Commissioner recommends alteration to the original notice specifies a dumping margin of 57.6%, a subsidy margin of 8.7% and an effective rate of combined interim duty of 57.6%.

The Commissioner considers it necessary to alter the original notice in such a way that the changes are applied both retrospectively (as applicable to the Identified Importers) and prospectively (to all importers).

2. BACKGROUND

2.1 Initiation

On 19 March 2014, Capral lodged an application under subsection 269ZDBC(1) requesting the Commissioner conduct an anti-circumvention inquiry in relation to an original dumping and countervailing duty notice issued under subsection 269TG(2) and subsection 269TJ(2) of the Act.

Subsection 269ZDBC(1) of the Act provides:

Applications by Australian industry

(1) If:

- (a) a notice (an **original notice**) has been published under subsection 269TG(2) or 269TJ(2) in respect of goods; and
- (b) a person representing, or representing a portion of, the Australian industry producing like goods considers that one or more circumvention activities in relation to the notice have occurred; and
- (c) the person considers that it may be appropriate to alter the notice because of the circumvention activities;

the person may, by application lodged with the Commissioner, request that the Commissioner conduct an anti-circumvention inquiry in relation to the notice.

2.1.1 The application by Australian industry

Capral is a manufacturer of aluminium extrusions in Australia. Accordingly, the Commissioner was satisfied that Capral represents the Australian industry producing like goods to the goods the subject of this inquiry, i.e. aluminium extrusions. Capral stated in its application that it may be appropriate to alter the original notice because of circumvention activity that is avoiding the intended effect of the duties.

2.1.2 The original notice

Anti-dumping measures in the form of a dumping and countervailing duty notice were first imposed in October 2010 following the investigation by the then International Trade Remedies Branch of Australian Customs and Border Protection Service (ACBPS) resulting in *Report to the Minister No. 148*⁴. Report No. 148 was subject to a review by the then Trade Measures Review Officer who recommended that ACBPS conduct a reinvestigation. The dumping and countervailing duties were varied following this reinvestigation, and again more recently resulting from Federal Court proceedings.

In the Federal Court proceedings, two Chinese exporters, Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd (and its related companies Kam Kiu Aluminium Products

⁴ Details of this investigation can be found at: <http://www.adcommission.gov.au/cases/148.asp/>.

SDN BHD and Kam Kiu (Australia) Pty Limited) (Kam Kiu) and PanAsia (and its related company OPAL (Macao Commercial Offshore) Limited (formerly known as PanAsia (Macao Commercial Offshore) Limited)) (OPAL Macao), applied to the Federal Court for judicial review of the Attorney-General's decision based on International Trade Remedies Branch Report No. 175⁵.

The Federal Court judgment, dated 4 September 2013, held that the Attorney-General had no power to vary the dumping and countervailing duty notice to impose anti-dumping measures for aluminium extrusions by finish. The effect of the decision was that the rates of dumping and countervailing duty against the applicants, Kam Kiu and PanAsia, had to be amended and these changes were applied retrospectively from 27 August 2011.

For the purpose of this inquiry, the original notice is the dumping and countervailing duty notice published on 28 October 2010 as amended by the reinvestigation by ACBPS, and the Federal Court decision⁶. Chapter 2 of CON 241 provides an overview of the investigation that resulted in the 2010 notice being published under subsections 269TG(2) and 269TJ(2) applying dumping and countervailing duties to certain aluminium extrusions exported from China.

2.1.3 Consideration of the application

Pursuant to subsection 269ZDBE(2), the Commissioner was satisfied that:

- the application complied with section 269ZDBD; and
- there appeared to be reasonable grounds for asserting that circumvention activity in relation to the original notice had occurred.

Following consideration of the application, the Commissioner decided not to reject the application and initiated an inquiry on 14 April 2014. The Commission's assessment of the application is set out in CON 241. Public notification of initiation of the inquiry was made in *The Australian* newspaper on 14 April 2014. Anti-Dumping Notice (ADN) 2014/31 provides further details of the investigation and is available on the Commission's website at www.adcommission.gov.au.

2.2 The inquiry period

In CON 241, the Commission informed interested parties that the relevant inquiry period for this anti-circumvention inquiry would be the period from 1 January 2013 to 31 December 2013. The Commission received a number of submissions in relation to the original inquiry period which raised several matters as set out below.

2.2.1 Submissions received by the Commission

The Commissioner's statutory obligations

⁵ Anti-Dumping Notice 2013/80.

⁶ Anti-Dumping Notice 2010/40.

Oceanic⁷ argued that the original inquiry period did not allow the Commissioner to meet his statutory obligations because the total amount of duty payable cannot be ascertained until the importation period has passed for when a duty assessment can be lodged under subsection 269V(1) of the Act.

Inappropriate period

P&O Perth, P&O Sydney and Oceanic (jointly referred to as the Three Importers) contended⁸ that the inquiry period nominated in CON 241 was inappropriate for determining circumvention activity. They submitted that the original inquiry period covered a time in which the Federal Court had subsequently found that anti-dumping measures were incorrectly applied. The submission also made the point that, if the current single AEP had been applied since the measures were last amended on 27 August 2011, the lower cost of imported aluminium would have resulted in profitable sales.

The Federal Court decision

In response to the Issues Paper, the Three Importers submitted⁹ that there is no meaningful period in 2013 in which the Commission can reasonably undertake an objective examination and assessment of the reasons why the imported goods had not increased in price commensurate with the total amount of duty payable. The Three Importers submitted that changes to the duty applying to PanAsia, following the decision of the Federal Court, applied from 27 August 2011 to 10 October 2013. Therefore, in the original inquiry period there was a potential for refund of overpaid duty. The submission also referred to a 17 day period after 10 October 2013 in which the Three Importers would be unable to seek a refund of any duties which may have been overpaid as a result of the imposition of a measure by finish type which had been overturned by the Court.

2.2.2 The Commission's assessment

Following the consideration of the submissions set out in section 2.2.1 above, the Commission decided that, for the purposes of this report, greater focus would be given to the importations of certain aluminium extrusions during the period that was no longer subject to a duty assessment application from the importers, that is, from 1 January 2013 to 27 October 2013. The amendment to the inquiry period was made to ensure that the Commissioner's determinations about any circumvention activity did not cover a period which a duty assessment could be applied for under section 269Y of the Act (in which arguably the "total amount of duty payable" was not yet conclusively determined). To counter the effect of any declarations which have not been amended or were not open to a refund or duty assessment, the Commission has not relied on the actual duty paid by the importers. Instead, the Commission has

⁷ Oceanic submission 19 May 2014 (EPR No.9).

⁸ P&O Perth, P&O Sydney, Oceanic submission 18 Jul 2014 (EPR No.14).

⁹ P&O Perth, P&O Sydney, Oceanic submission 7 Oct 2014 (EPR No.31).

calculated the duty payable using a methodology that applies the same rate of duty as the Federal Court decision.

2.3 The Identified Importers

2.3.1 Overview

At the time of the original investigation in 2009, PanAsia Group Pty Limited (PanAsia Group) was the owner of the Identified Importers. Since that time, the ownership of the Identified Importers has changed.

Change of ownership and name in June 2013

In June 2013, the Identified Importers changed ownership from PanAsia Group to individual ownership structures. Each importer also changed names:

- PanAsia Aluminium (Brisbane) Pty Ltd became known as P&O Aluminium (Brisbane) Pty Ltd;
- PanAsia Aluminium (Melbourne) Pty Ltd became known as P&O Aluminium (Melbourne) Pty Ltd;
- PanAsia Aluminium (Sydney) Pty Ltd became known as P&O Aluminium (Sydney) Pty Ltd; and
- PanAsia Aluminium (Perth) Pty Ltd became known as P&O Aluminium (Perth) Pty Ltd.

Oceanic Aluminium Pty Ltd also changed ownership but maintained its company name.

During the original investigation in 2009, the Commission was informed that PanAsia Group was related to the Chinese manufacturer exporter, PanAsia. Both companies fell under the ownership structure of PanAsia Enterprises Group Limited, a British Virgin Islands entity. The ultimate shareholder of the PanAsia entities in China and Australia, including OPAL Macao, was Easy Star Holdings Limited, another British Virgin Islands entity.

At the time the Commission initiated this inquiry on 14 April 2014, P&O Sydney, P&O Perth, P&O Melbourne and P&O Brisbane were part of a sales group known as P&O Aluminium. As stated on the P&O Aluminium website, the P&O Aluminium sales group offered a national branch and distribution network which allowed customers to draw stock from any of the group's distribution centres. At the time this inquiry was initiated, P&O Sydney and P&O Perth had the same owner (single shareholder). P&O Melbourne and P&O Brisbane had separate ownership structures to P&O Sydney and P&O Perth.

Change of ownership in June 2014

On 29 May 2014, the Three Importers informed the Commission “about the changes to the operations, structure and ownership of the P&O Aluminium entities and Oceanic Aluminium”¹⁰. The information provided:

...all of the assets including the premises of P&O Aluminium (Sydney), P&O Aluminium (Perth) and Oceanic Aluminium will be owned and controlled by the new owners.

The Commission was informed that, as of 1 June 2014, the four P&O branded companies, together with the fifth importer subject to this inquiry, Oceanic, were acquired by Success Aluminium Pty Ltd (Success Aluminium), a new company set up for the acquisition and grouping of these companies.

2.3.2 Success Aluminium

In June 2014, a market announcement was made under P&O Aluminium’s letterhead (with P&O Sydney’s address) introducing Success Aluminium as the new business name with a new business number:

To our valuable Customers and Suppliers,

On the 1st of June 2014 our business will have a new name and structure.

As our business has been growing, we need to grow with it. Up until now, our businesses in various parts of the country have been operated as independent entities. As of June 1st 2014 we will become one larger, stronger and national entity. As of June 1st 2014 we will become one larger, stronger and national entity.

The announcement goes on to say:

We expect the transition to be seamless, our greatest asset our people, our quality products and our service will remain as per your current experience. The only noticeable change in the short term will be the name of the company noted in the documentation that we provide you. This change will however allow us to make significant improvements in many areas of the business, such as IT systems, accounting, property, stock and others.

The Commission notes that company records from the Australian Securities and Investments Commission (ASIC) do not confirm Success Aluminium as the beneficial owner of the Identified Importers. Also, ASIC records show that the Identified Importers continue to be registered companies and their respective shareholdings have not changed.

Company extracts from ASIC state that from the date of its incorporation on 24 April 2014 until 30 May 2014, Success Aluminium was known as AusPacific Aluminium Pty Limited. The ACBPS import database confirm that AusPacific has not imported any goods to Australia.

¹⁰ Email from J Bracic & Associates, dated 29 May 2014.

Company extracts from ASIC state that Success Aluminium's shareholding has not changed since its incorporation on 24 April 2014. The ACBPS import database confirm that Success Aluminium:

- imports other goods that are not the goods subject to this inquiry, such as [REDACTED]¹¹ [other product description]; and
- imports about [REDACTED]% [percentage] of all its imports from PanAsia based on the declared importation value.

As at the date of this report, Success Aluminium has not imported aluminium extrusions, the goods subject to this inquiry.

2.3.3 Identified Importers' participation in the inquiry

At the start of the inquiry, the Commission forwarded importer questionnaires for completion by the Identified Importers. Only three of the five Identified Importers responded to the Commission's questionnaires.

P&O Brisbane and P&O Melbourne

The following importers did not provide a response to the importer questionnaire:

- P&O Brisbane; and
- P&O Melbourne.

Oceanic, P&O Perth and P&O Sydney

The following three importers provided responses to the importer questionnaire:

- Oceanic;
- P&O Perth; and
- P&O Sydney.

The Three Importers informed the Commission that they import and sell a range of [REDACTED] [product types]. The range of products offered by the Three Importers to customers included aluminium extrusions that fall within the definition of the goods subject to the measures.

The Three Importers who responded to the importer questionnaires provided data and information to this inquiry however the Commission determined that the data and information was incomplete. Commission staff visited their premises to conduct verification of their data and information. When verifying the importers' data, the Commission encountered a number of limitations in completing the verification

¹¹ As at the date of this report, aluminium sheets are not subject to dumping or countervailing measures.

process. As set out in the visit reports for the Three Importers, the Commission found that the following data and information could not be provided to the Commission:

- audited financial statements;
- evidence of proof of payment to the exporter in relation to the imported goods; and
- documentation supporting selling, general and administration (SG&A) costs.

As a result, the Commission was unable to verify the Three Importers' data and information in a complete manner. While the Three Importers' data could not be verified completely, the Commission was able to use data and information relating to the shipment samples requested by the Commission, as set out in Chapter 4 of this report.

2.4 Submissions to the inquiry

The Commission received a number of submissions during the inquiry. All of these submissions were taken into account in preparing this report. The submissions received by the Commission are summarised in **Attachment B**.

Stakeholders and interested parties were provided a number of opportunities to participate in the inquiry, including through a formal submission period pursuant to subsection 269ZDBE(6)(e) in which interested parties were invited to lodge submissions within 40 days of publication of the notice. The Commission also received submissions in response to the Issues Paper and to the Commission's proposed approach to the inquiry.

3. AVOIDANCE OF INTENDED EFFECT OF DUTY

3.1 The Commission's findings

As set out below in this chapter, the Commission considers that the elements set out in subsections 269ZDBB (5A)(a)-(c) of the Act have been satisfied:

- the circumvention goods are exported to Australia from China, a country in respect of which the original notice applies (see section 3.3 of this report);
- PanAsia, the exporter of the circumvention goods, is an exporter in respect of which the original notice applies (see section 3.4 of this report); and
- both sections 8 and 10 of the Dumping Duty Act apply to PanAsia (see section 3.4.2 of this report).

3.2 Legislative framework

Capral requested that an anti-circumvention inquiry be conducted into the circumvention activities under subsection 269ZDBB(5A) of the Act concerning the avoidance of the intended effect of the duty. Subsection 269ZDBB(5A) describes the elements of circumvention activities relating to the avoidance of the intended effect of duty:

Circumvention activity in relation to the notice occurs if the following apply:

- (a) *the goods (the **circumvention goods**) are exported to Australia from a foreign country in respect of which the notice applies;*
- (b) *the exporter is an exporter in respect of which the notice applies;*
- (c) *either or both of sections 8 and 10 of the Dumping Duty Act apply to the exporter of the circumvention goods to Australia;*
- (d) *the importer of the circumvention goods, whether directly or through an associate, sells those goods in Australia without increasing the price commensurate with the total amount of duty payable on the circumvention goods under the Dumping Duty Act;*
- (e) *the circumstances covered by each paragraphs (a) to (d) occur over a reasonable period.*

This report addresses each element under subsection 269ZDBB(5A) as follows:

- subsections 269ZDBB(5A)(a)-(c) are addressed in Chapter 3; and
- subsections 269ZDBB(5A)(d)-(e) are addressed in Chapter 4 of the report.

3.3 The circumvention goods

3.3.1 Description of the circumvention goods

The goods, the subject of the original notice, are:

certain aluminium extrusions (the goods), classified to tariff subheading 7604.00.00, 7608.00.00 and 7610.00.00 Schedule 3 of the Customs Tariff Act 1995 exported to Australia from the People's Republic of China.

The goods identified above are the 'circumvention goods' the subject of this inquiry. ADN 2014/31, announcing the initiation of the inquiry, described the circumvention goods as follows:

Aluminium extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations by The Aluminium Association commencing with 1,2,3,5,6 or 7 (or proprietary or the 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 are classified to the tariff subheadings of Schedule 3 to the *Customs Tariff Act 1995*. The rates of duty for the goods from China are 4% for goods classified to headings 7604 and 7608 and 5% for goods classified to heading 7610.

The application provided the following details of the subject goods:

Tariff Classification	Stat Code	Goods
7604.10.00	06	Non –alloyed aluminium bars, rods and profiles
7604.21.00	07	Alloyed aluminium hollow profiles - Angles, other shapes and sections
7604.21.00	08	Alloyed aluminium hollow profiles – Other
7604.29.00	09	Alloyed aluminium non – hollow profiles – Angles, other shapes and sections
7604.29.00	10	Alloyed aluminium non – hollow profiles – Other
7608.10.00	12	Non – alloyed aluminium tubes and pipes
7608.20.00	10	Alloyed aluminium tubes and pipes
7610.10.00	12	Aluminium doors, windows and their frames and thresholds for doors
7610.90.00	13	Aluminium plates, rods, profiles, tubes and the like prepared for use in structures; and other aluminium structures and parts of structures

Table 1 - Description of goods subject to measures by statistical code

3.3.2 Circumvention goods exported to Australia

Capral claims that PanAsia supplied the circumvention goods to Australia. The Commission examined the relevant tariff classifications and statistical codes in the ACBPS import database to determine if PanAsia or its trading subsidiaries had exported the circumvention goods to Australia during the inquiry period.

The Commission determined that PanAsia and a related trading intermediary, OPAL Macao, exported the circumvention goods to Australia during the inquiry period. In the original investigation in 2009, the then International Trade Remedies Branch determined that PanAsia was the exporter of the goods, and that OPAL Macao was found to purchase the goods from PanAsia and was on-selling to Australian customers (thereby finding that OPAL Macao was acting only as a trading intermediary). For the purposes of the inquiry, the Commission agrees with the previous determination that PanAsia is the exporter of the goods.

The table below shows the volume of imports of circumvention goods purchased by the Identified Importers from PanAsia during the calendar year 2013.

Importer	Qtr1	Qtr2	Qtr3	Qtr4
Oceanic				
P & O Brisbane				
P & O Melbourne				
P & O Perth				
P & O Sydney				

Table 2 - Volume of exports from PanAsia (kilograms)

3.3.3 The Commission's assessment

The Commission considers that subsection 269ZDBB(5A)(a) of the Act has been satisfied in that the circumvention goods are exported to Australia from China by PanAsia (an exporter in respect of which a dumping and countervailing notice applies).

3.4 The exporter

3.4.1 Original notice

Subsection 269ZDBB(5A)(b) of the Act requires that the exporter is an exporter in respect of which the notice applies. The Commission confirmed that PanAsia is an exporter in respect of which the original notice applies. The final applicable dumping

margin and level of subsidisation established for PanAsia under the original notice is set out in Table 3 below.

Exporter / goods	Dumping Margin	Subsidy margin	Effective rate of combined duty of interim	Duty methods
PanAsia Aluminium (China) Limited All finishes	10.1%	6.1%	10.1%	Dumping - fixed (ad valorem) and variable duty methods Countervailing – fixed (ad valorem) duty method

Table 3 - Applicable dumping margin and level of subsidisation for PanAsia

Therefore, the Commission considers that subsection 269ZDBB(5A)(b) of the Act has been satisfied.

3.4.2 The Commission's assessment

PanAsia is an exporter in respect of which the original notice applies, the Commission considers that subsection 269ZDBB(5A)(b) of the Act has been satisfied.

3.5 Sections 8 and 10 of the Dumping Duty Act apply

3.5.1 Dumping and countervailing duties

Subsection 269ZDBB(5A)(c) provides that either or both sections 8 and 10 of the Dumping Duty Act apply to the export of the circumvention goods to Australia. Sections 8 and 10 of the Dumping Duty Act relate to the imposition of dumping and countervailing duties on goods.

As set out in Table 3 above, the original notice imposed both dumping and countervailing duties on the goods and the original notice applied to PanAsia, the exporter of the circumvention goods.

3.5.2 The Commission's assessment

The Commission considers that subsection 269ZDBB(5A)(c) of the Act has been satisfied.

4. THE IDENTIFIED IMPORTERS AND THEIR SELLING PRICES

4.1 The Commission's findings

During the inquiry, the Commission found the following:

- the Identified Importers sold the circumvention goods in Australia without increasing the price commensurate with the total amount of duty payable by selling them at a loss. The sale of the circumvention goods was not influenced by external factors (for example, currency rate fluctuations, changes in market conditions, or importers' own cost reductions) (see sections 4.4 and 4.5 of this report);
- sales of the circumvention goods at a loss was determined by applying a profitability test comparing the cost of goods sold against the sale revenue (see section 4.4.1 of this report);
- sales of the circumvention goods by the Three Importers were found to be sold at a significant loss;
- in the absence of sales data from P&O Brisbane and P&O Melbourne, the importers who did not cooperate with the inquiry, the Commission relied on the best available information to determine if these importers had engaged in circumvention activity (see section 4.4.5 of this report); and
- the circumvention activity occurred for most of the inquiry period and accordingly, it occurred over a reasonable period (see section 4.6 of this report).

4.2 Legislative framework

As set out in chapter 3 above, the Commission considers that its findings have satisfied the requirements under subsections 269ZDBB(5A)(a)-(c). In this chapter, the Commission sets out its findings under subsections 269ZDBB(5A)(d)-(e), which state:

Circumvention activity in relation to the notice occurs if the following apply:

...

(d) the importer of the circumvention goods, whether directly or through an associate or associates, sells those goods in Australia without increasing the price commensurate with the total amount of duty payable on the circumvention goods under the Dumping Duty Act;

(e) the circumstances covered by each paragraphs (a) to (d) occur over a reasonable period.

In the Issues Paper, the Commission informed interested parties of its approach on a number of matters. It outlined, among other things, the situations which may indicate that an importer is engaging in circumvention activity that avoids the intended effect of the duty.

The Issues Paper referred to the Explanatory Memorandum which provided examples of practices that avoid the intended effect of dumping and countervailing duties already imposed. These practices include the determination of sales at a loss, reimbursement or compensation from the exporter, or other activity of a similar nature.

Capral's application specifically alleges that the Identified Importers are selling at a loss:

Despite their alleged independence, we claim that P&O and Oceanic are circumventing the intended effect of the dumping and countervailing duties by failing to recover the full cost of the extrusions, including the duties, and are continuing to cause injury to the Australian industry.

Whilst selling at a loss by an importer, in and of itself, does not indicate that circumvention activity is occurring, the Commission considers that such practices may reflect a situation in which the selling price of an importer is not "commensurate with the total amount of duty payable" in respect of goods subject to anti-dumping measures.

A fundamental characteristic of the anti-dumping system is the price effect on goods subject to anti-dumping measures in the market resulting from the payment of additional duties. It is expected that the price of the goods subject to measures would increase, as the imposed duty would see an increase in cost to importers. It is reasonable to assume that where an additional cost is imposed (i.e. through the payment of dumping duties) a profit maximising business would seek to pass on the cost increase associated with the payment of dumping duties in its selling prices to customers. It is this increased price in the market that can remedy or prevent injury to Australian industry caused by the dumped goods. Accordingly, in circumstances such as this anti-circumvention inquiry into certain aluminium extrusions, where the anti-dumping measures have been in place for some time, the Commission will inquire whether the payment of dumping duties is fully reflected in the selling prices of importers to determine whether selling prices are commensurate with the total duty payable.

For the purposes of this inquiry, the Commission has focused on whether the Identified Importers are selling at a loss as an activity that may indicate avoidance of the intended effect of the duty. It is the Commission's view that sales at a loss may constitute circumvention activity unless there are reasons other than the circumvention activity for selling the goods at a loss. For example, the selling price of the importer may have not increased in accordance with the duty due to currency fluctuations.

Notwithstanding this emphasis of the inquiry, the Commission has also examined whether other activities of a similar nature, for example, reimbursement or some type

of compensation from the exporter or a third party has occurred. The Commission's analysis is outlined section 4.4.

4.3 Treatment of the Identified Importers

4.3.1 Submissions to the Commission

During the inquiry, the Commission received submissions on the possible treatment of the Identified Importers as one or as multiple entities. The Commission considered submissions on the linkage and common ownership of the Identified Importers that support the approach the Identified Importers should be treated as a single entity.

In its application, Capral claimed that the P&O branded importers operate as a single business in the marketplace and that the Commission should treat these companies as a single business entity for the purposes of determining sales at a loss and any resulting measures.

Capral's submission restated the view contained in its application that the P&O branded importers should be treated as a single entity¹². In support of this view, Capral referred to the P&O Aluminium website which alleged that the P&O branded importers operate as a single entity in the marketplace. Capral also provided other information relating to the ASIC company register and the linkages between the subject importers.

The importers' counter submission stated that each of the P&O branded subject importers were geographically separated and operated as separate legal entities¹³. The submission stated that P&O Perth and P&O Sydney have common ownership, and whilst P&O Sydney, P&O Brisbane and Oceanic have separate ownership and management structures, the P&O branded entities operate by way of a licensing arrangement with P&O Group Pty Ltd (P&O Group).

As set out in section 2.3 of this report, the Commission reviewed company extracts from ASIC for the relevant importers. The Commission's review of the ASIC company register identified there was a period in which there were common ownership and management structures across the importers. From December 2006, P&O Group was listed as a 100% shareholder of P&O Melbourne and P&O Sydney. From November 2005, P&O Group owned P&O Brisbane and from September 2008 P&O Group owned P&O Perth.

P&O Group's current director, [REDACTED] [company officer A], was appointed in January 2011. [REDACTED] [company officer A] was appointed as a director of Oceanic in August 2006. [REDACTED] [company officer A] is also listed as a former owner. Between January 2011 and May 2013, [REDACTED] [company officer A] was also director of all P&O branded entities.

¹² Capral submission 10 July 2014 (EPR No 13).

¹³ P&O Perth, P&O Sydney, Oceanic submission 23 July 2014 (EPR No.16).

██████ [company officer A] dual role as director of P&O Group, and the P&O branded Identified Importers, and his position as director of Oceanic at the same time, was for a substantial period before and during the inquiry. The diagram below shows the business structure of the P&O Group and ██████ [company officer A] various roles for the period up to May 2013. Capral submitted to the Commission that activities of the Identified Importers during part of the inquiry period were coordinated largely by one individual and by one parent company, as illustrated in Figure 1 below.

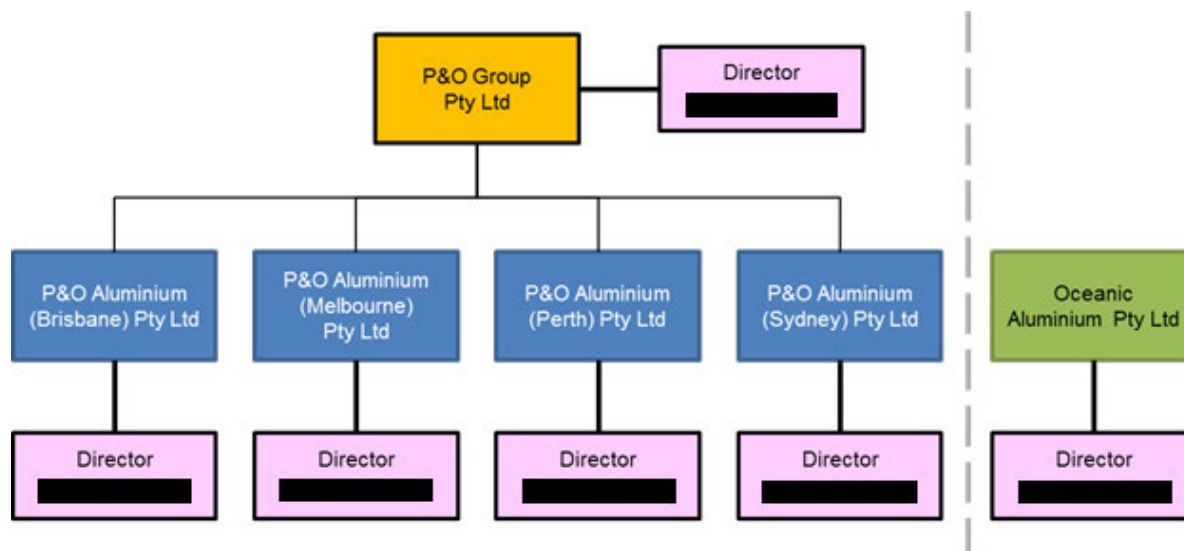


Figure 1 - P&O Aluminium entities group structure to May 2013

Capral's claim seeks to apply a common determination for all importers on the basis that if one of the importers has been found to be engaging in circumvention activity, then being related parties the same determination applies to all importers.

4.3.2 The Commission's assessments

After reviewing ASIC company records, the Commission notes that the above structure illustrated in Figure 1 no longer exists. In the circumstances, the Commission has sought to examine, for each Identified Importer, if circumvention activity has occurred during the inquiry period. The Commission's findings are detailed in section 4.4 below.

4.4 Avoidance of the intended effect of the duty

4.4.1 The Commission's general methodology

In determining whether the goods which are subject to anti-dumping measures are being sold by the Identified Importers at a loss, the Commission undertook a two-step profitability analysis of the circumvention goods. The profitability analysis consists of a comparison between the total sales revenue earned by the importer over the inquiry period with respect to the circumvention goods and the fully absorbed cost to import and sell the circumvention goods. Where the total sales revenue did not cover the fully absorbed cost to import and sell the goods, the

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Commissioner determined that the goods were sold at a loss and that the circumvention activity had occurred.

Fully absorbed cost to import and sell

The fully absorbed cost to import and sell the goods included the following:

- cost of the goods;
- overseas ocean freight and marine insurance;
- expenses associated with import clearance (for example, import duty, port charges, broker's fees, fumigation and quarantine charges, terminal handling, etc.);
- other direct expenses (for example, inland transport charges, repackaging expenses, warehousing, etc.);
- indirect SG&A costs; and
- total duties payable.

Weighted average fully absorbed unit cost to import and sell

The Commission established the weighted average fully absorbed unit cost to import and sell using the importer declarations of all the relevant shipments within the period of the inquiry, in the ACBPS import database, combined with any reasonably reliable data and information provided by the Three Importers.

By way of example, the two-step profitability analysis is illustrated below:

Step 1 – Determining the weighted average fully absorbed unit cost to import and sell

Fully absorbed cost to import and sell	\$200,000
Total quantity of goods imported	20,000kg
Weighted average (WA)	$\frac{\$200,000}{20,000/\text{kg}}$ = \$10/kg

Step 2 – Undertaking a profitability analysis

Sales Revenue		\$175,000
Total quantity of sales		20,000kg
Cost of Goods Sold	$\$10/\text{kg} \times 20,000\text{kg}$ (Apply WA from Step 1)	\$200,000
Profit (Loss)	Sales revenue <u>less</u> cost of goods sold	$\$175,000 - \$200,000 =$ (\$25,000)

The Commission also applied the following principles to the Identified Importers:

1. The total cost of goods sold was established by relying on the verified importation costs, inclusive of all duties payable. To calculate the dumping duty payable, the Commission used the AEP established following the Federal Court decision.
2. A cost to import was calculated by finish type to reflect the difference in the export prices paid by the imports for each finish type.
3. Calculation of the duties payable was carried out in accordance with the Federal Court decision. The Commission applied a rate of 10.1%, that is the combined dumping and countervailing duty.

Specific adjustments relating to each Identified Importer and other importer-specific determinations are described below.

4.4.2 Oceanic

Weighted average fully absorbed unit cost to import

As set out on page 19 of the Commission's Importer Visit Report for Oceanic, the Commission relied on data contained in the ACBPS import database and the information contained in the shipment sample requested by the Commission from Oceanic¹⁴. From this information, the Commission was able to calculate the weighted average cost of imports.

The Commission's calculations are at **Confidential Appendix 1**.

Profitability analysis

Sales revenue and quantity of goods sold

As Oceanic did not provide its 2013 audited financial statements as requested by the Commission, Oceanic's sales data could not be verified for relevance and completeness. As part of the importer verification process, the Commission sought copies of source documents relating to a sample of sales. Oceanic allowed verification of a sample data requested by the Commission. As a result, Oceanic provided extracts from its bank statements evidencing payment from customers. From these bank statement extracts, the Commission was able to determine that, with the exception of credit terms and product part numbers, the sampled line items were found to be reasonably accurate when compared against source documents such as sales invoices.

As indicated in the Importer Visit Report for Oceanic, the Commission identified that product part numbers were not included in Oceanic's response to the importer questionnaire. Product part numbers assist the Commission in verifying the country

¹⁴ Case 241, Verification Visit Report, dated 28 May 2014, No 029.

of origin of goods against import documents. However, the Commission determined that since Oceanic's response to the importer questionnaire indicated that approximately █% of their total sales were the goods imported from China, the Commission considered that the data was adequate for the purpose of the profitability analysis.

SG&A costs

Oceanic's information indicated that SG&A costs were █% of sales revenue. However, this figure could not be verified to audited financial statements because they were not provided.

Oceanic's SG&A figure was found to be comparable to other importers who provided questionnaire responses. Also, a comparison to other importer data provided in the original investigation in 2009 showed that Oceanic's SG&A costs have increased since that time. As Oceanic's SG&A costs were found to be comparable with other industry participants, the Commission was satisfied with the importer's estimation of its SG&A costs for the purpose of determining if the circumvention goods were sold at a loss.

Rebates and credit notes

A number of credit transactions were identified during verification. The credit transactions were verified against source documents and found to be accurate. The Commission calculated the total sum of the credit transactions which Oceanic stated were related to goods subject to the anti-dumping measures. The sum of all relevant rebates was deducted from the gross profit and loss calculation.

The Commission's assessment

After conducting its profitability analysis, the Commission determined that Oceanic's sales of aluminium extrusions subject to measures had been sold at a loss. Although the Commission could not verify the sales revenue and SG&A costs to the audited financial statements, the Commission considers that Oceanic's sales data to be most reliable for determining if goods had been sold at a loss. The Commission determined that Oceanic experienced a net loss on sales equivalent to █% of its sales revenue over the period 1 January 2013 to 27 October 2013.

The Commission's calculations are at **Confidential Appendix 2**.

4.4.3 P&O Perth

Weighted average fully absorbed unit cost to import and sell

As set out on page 22 of the Commission's combined Importer Visit Report for P&O Perth and P&O Sydney, the Commission relied on data contained in the ACBPS import database and the information contained in the shipment sample requested by

the Commission from P&O Perth¹⁵. From this information, the Commission was able to calculate the weighted average cost of imports.

Profitability analysis

Sales revenue

Total sales revenue was based on the data provided in the response to the importer questionnaire. The Commission found that the sales data was accurate. However, it could not be determined if the sales data was relevant and complete because the importer had declined the Commission's request to provide the entity level audited financial statements.

The aggregate sales of P&O Perth and P&O Sydney reconciled, to within a reasonable range, with information the importer said was its 2013 consolidated income statement. The Commission notes that this is an unaudited document and the document appeared to be a worksheet. None of the line items shown on the statement could be verified.

Regarding credit terms, the invoice sample indicated that P&O Perth offered credit terms of ■, ■ and ■ days. The Commission adopted the median figure of ■ days. This figure was applied to the stated invoice values of all sales provided in the questionnaire dataset.

The importer questionnaire data indicated that approximately ■% of their total sales were imports from China, the subject of measures. The data did not contain any product part numbers and, as a result, the country of origin of the goods could not be verified to import documents. However, since such a large proportion of imports were stated as being subject to the measures, the data was considered to be adequate for the purpose of calculating profitability.

Overall, the sampled line items were found to be accurate when compared against source documents. Accordingly, while the data and information could not be verified upwards to P&O Perth's entity level audited financial statements, the Commission accepted the sales revenue data of the purpose of conducting the profitability test.

SG&A costs

P&O Perth's information indicated that SG&A costs were ■% of sales revenue. However, this figure could not be verified to any audited financial statements.

The consolidated income statement for P&O Sydney and P&O Perth indicates SG&A costs equivalent to ■% of sales revenue. P&O Perth's SG&A cost estimate was found to be the higher when compared with the other importers who provided questionnaire responses for the inquiry.

¹⁵ Case 241, Verification Visit Report, dated June 2014, No 028.

The Commission compared P&O Perth's SG&A costs with the importer questionnaire data provided for the original investigation in 2009. The Commission found that the SG&A costs provided by P&O Perth were consistent with those provided in the investigation in 2009.

Rebates and credit notes

A number of credit transactions were identified during verification. The credit transactions were verified against source documents and found to be accurate. The Commission calculated the total sum of the credit transactions which were identified by P&O Perth as being related to the goods subject to measures. The sum of all relevant rebates was deducted from the gross profit and loss calculation.

The Commission's assessment

After conducting its profitability analysis, the Commission determined that P&O Perth's sales of aluminium extrusions subject to measures had been sold at a loss. The Commission determined that P&O Perth experienced a net loss on sales equivalent to ■% of its sales revenue over the period 1 January 2013 to 27 October 2013.

4.4.4 P&O Sydney

Weighted average fully absorbed unit cost to import and sell

As set out on page 22 of the Commission's combined Importer Visit Report for P&O Perth and P&O Sydney, the Commission relied on data contained in the ACBPS import database and the information contained in the shipment sample requested by the Commission from P&O Sydney¹⁶. From this information the Commission was able to calculate the weighted average cost of imports.

The Commission's calculations are at **Confidential Appendix 3**.

Profitability analysis

Sales revenue

Total sales revenue was based on the data provided in the importer's questionnaire response. The Commission found that the sales data was accurate, however it could not be determined if the sales data was relevant and complete because the importer had declined the Commission's request to provide the entity level audited financial statements.

The aggregate sales of P&O Perth and P&O Sydney's data reconciled, to within a reasonable range, with information the importer said was its 2013 consolidated income statement. The Commission notes that this is an unaudited document and

¹⁶ Case 241, Verification Visit Report, dated June 2014, No 028.

the document appeared to be a worksheet. None of the line items shown on the statement could be verified.

With the exception of credit terms and part number information, the sampled line items were found to be accurate when compared against source documents. Regarding credit terms, the invoice sample indicated that P&O Perth offered credit terms of ■, ■ and ■ days. The Commission adopted the median figure of ■ days. This figure was applied to the stated invoice values of all sales provided in the questionnaire dataset.

The importer questionnaire data indicated that approximately ■% of their sales were imports from China, the subject of measures. The data did not contain any part number information and, as a result, the country of origin of the goods could not be verified to import documents. However, since such a large proportion of imports were stated as being subject to the measures, the data was considered adequate for the purpose of calculating profitability.

SG&A costs

P&O Sydney's response to the importer questionnaire indicated that SG&A costs were ■% of sales revenue for direct shipments and ■% of sales revenue for all other shipments. In the absence of audited financial statements, these figures could not be verified. The Commission was not provided with any data that supported the SG&A cost assumption for direct shipments.

The consolidated income statement for P&O Sydney and P&O Perth indicates SG&A costs equivalent to ■% of sales revenue. The Commission sought to compare P&O Sydney's SG&A cost estimate for indirect shipments to other importers and found this estimate to be reasonable.

SG&A costs attributed to direct shipments were particularly low. Where a direct shipment is sold, the importer does not handle the goods and acts more as a trader. By comparing P&O Sydney's SG&A direct shipment costs to other traders involved in the importation of metal products, the Commission found the figure for direct shipments was reasonable.

Accepting the unverified SG&A data for direct sales, the Commission found that the circumvention goods were sold at a loss by a significant margin.

Rebates and credit notes

A number of credit transactions were identified during verification. The credit transactions were verified by the Commission against source documents and found to be accurate. The Commission calculated the total sum of the credit transactions which were identified by P&O Sydney as being related to goods subject to measures. The sum of all relevant rebates was deducted from the gross profit and loss calculation.

The Commission's assessment

After conducting its profitability analysis, the Commission determined that P&O Sydney's sales of aluminium extrusions subject to measures had been sold at a loss. The Commission determined that P&O Sydney experienced a net loss on sales equivalent to ■% of its sales revenue over the period 1 January 2013 to 27 October 2013.

The Commission's calculations are at **Confidential Appendix 4**.

4.4.5 P&O Brisbane and P&O Melbourne

P&O Brisbane and P&O Melbourne did not provide a response to the importer questionnaire. In the absence of sales data from P&O Brisbane and P&O Melbourne, the Commission has relied on the best available information to determine if these importers have engaged in a circumvention activity.

Weighted average fully absorbed unit cost to import and sell

The table below compares the weighted average prices paid to PanAsia by P&O Brisbane and P&O Melbourne to the weighted average prices paid by P&O Perth and P&O Sydney based on data from the ACBPS import database.

Importer	2013 WA \$/kg
Oceanic Aluminium Pty Ltd	■
P & O Aluminium (Brisbane) Pty. Ltd.	■
P & O Aluminium (Melbourne) Pty. Ltd.	■
P & O Aluminium (Perth) Pty. Ltd.	■
P & O Aluminium (Sydney) Pty. Ltd.	■

Table 4 – Weighted average prices paid by P&O Brisbane and P&O Melbourne

Using the importation and sales data available to the Commission, the Commission determined the fully absorbed cost to import and sell aluminium extrusions sold by P&O Brisbane and P&O Melbourne, by applying the cost base observed for P&O Sydney and Oceanic.

Relying on the importers' description of pricing mechanisms in the Australian market, it is also reasonable to conclude that P&O Melbourne and P&O Brisbane were selling the goods at prices at least equivalent to the prices observed for P&O Sydney, P&O Perth and Oceanic.

Since all five Identified Importers appear to have traded under the same conditions during 2013 and would likely have incurred similar costs, it is reasonable to conclude that the goods imported by P&O Brisbane and P&O Melbourne have been sold at a loss during the inquiry period.

To account for the issues surrounding verification of the Three Importers' data and the decision taken by P&O Melbourne and P&O Brisbane to not provide any data

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and information to the Commission, the Commission sought to test the above conclusion against the information provided by Capral in its application.

Capral provided an account of the prices being offered by the P&O entities and Oceanic over the period November 2013 to March 2014. While the information provided is outside the inquiry period, the Commission considers that it is relevant to the inquiry and allows the Commission to assess whether P&O Brisbane and P&O Melbourne were also selling at a loss. Capral informed the Commission that it obtained relevant information during price negotiations with current and potential customers. In a submission to the inquiry, Capral revised this data to show the selling price for each P&O branded importer located in each capital city in Australia¹⁷.

Capral's application indicated that a weighted average selling price of \$[REDACTED] was being offered by Oceanic while \$[REDACTED] as being offered by the P&O entities. The table below shows Capral's revised figures presented for each P&O entity and Oceanic.

Importer	Capral \$/kg
P & O Aluminium (Brisbane) Pty Ltd.	[REDACTED]
P & O Aluminium (Melbourne) Pty Ltd.	[REDACTED]
P & O Aluminium (Perth) Pty Ltd.	[REDACTED]
P & O Aluminium (Sydney) Pty Ltd.	[REDACTED]
Oceanic Aluminium Pty Ltd	[REDACTED]

Table 5 - Capral price offer estimates Nov 2013 to March 2014

The pricing information Capral provided for P&O Brisbane and P&O Melbourne was concentrated in the month of February 2014 and follows the period where dumping and countervailing duties ceased to be applied by finish type. The chart below shows the prices paid by the importers throughout 2013 and up to May 2014. The effect of the change in duties after the Federal Court's decision to a single AEP for all finishes is clearly evident. From December 2013 onwards, the import data shows that all imports from PanAsia had the same weighted average price per kilogram.

¹⁷ Capral submission 27 June 2014 (EPR No.11).

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Figure 2- Actual weighted average export prices Jan 2013 to May 2014

As P&O Melbourne and P&O Brisbane have not cooperated with the inquiry, the Commission considered Capral's data to be a suitable secondary benchmark to determine whether P&O Brisbane and P&O Melbourne were selling at a loss.

4.4.6 The Commission's assessment

The Commission determined that the selling prices Capral alleged are being offered by P&O Brisbane and P&O Melbourne, and the P&O importers as a whole, were significantly lower than the \$■■■ per kilogram paid to PanAsia. After consideration of other costs involved in the sale of the circumvention goods, the Commission has determined that consistent with the findings for P&O Perth, P&O Sydney and Oceanic, sufficient information exists to determine that P&O Melbourne and P&O Brisbane have sold the circumvention goods at a loss.

4.5 External factors, market conditions and cost reduction initiatives

During the inquiry, the Commission considered whether the price of goods sold by the Identified Importers were influenced by external factors such as fluctuations in currency rates, changes in market conditions (for example, base metal prices), or an importer's own actions such as cost reductions. As set out in the Issues Paper, if the Commission finds in this inquiry that the price has been influenced by one of these external factors and the inquiry has not identified goods sold at a loss or duty absorption facilitated by reimbursement or compensation from the exporter, the Commissioner may determine that, under these circumstances, circumvention activity is not occurring.

4.5.1 Submissions to the Commission

The Commission received a number of submissions on the Commission's approach to the "avoidance of the intended effect of the duty". The Commission received submissions from the Three Importers supporting their claim that circumvention activity has not occurred. Their submissions are discussed in detail below.

Export prices fixed to AEP

The Three Importers¹⁸ submitted that to minimise the amount of duties payable and their overall cost base they had agreed to pay PanAsia prices that were equal to the AEP at that time. They argued that free on board (FOB) prices paid, inclusive of duties payable, were greater than the consolidated product normal value that resulted after the Federal Court decision.

Creation of a floor price due to AEP

The Three Importers¹⁹ submitted that the AEP created a floor price for aluminium extrusions purchased from PanAsia at a time when the London Metals Exchange (LME) price was much lower. As a result, by continuing to import from PanAsia, the Three Importers were at a disadvantage compared to competitors who were importing at much lower prices from sources which had no dumping duties imposed such as Vietnam.

The importers²⁰ claimed that during the two year period before the Federal Court's decision they were unfairly required to compete against the prices of imports sourced from countries which did not have measures applied. The importers pointed out that they were anticipating a decision from the Federal Court within twelve months.

Change in supply to countries not subject to measures

The Three Importers²¹ highlight that the key driver of aluminium extrusion pricing, the LME price for primary aluminium, had consistently fallen from 2011 and through 2013. The Three Importers submitted that, because the AEP imposed on exports from PanAsia was higher than the LME throughout this time, they were placed at a cost disadvantage, causing them to source products from countries where dumping duties did not apply, such as [REDACTED] [supplier country]. The quantity of imports from [REDACTED] [supplier country] were said to be between [REDACTED]% and [REDACTED]% of their purchases.

Pricing by local producers

¹⁸ P&O Perth, P&O Sydney, Oceanic submission 18 Jul 2014 (EPR No.14).

¹⁹ *Ibid*

²⁰ *Ibid*

²¹ *Ibid*

The importers²² sought to refute Capral's representations concerning continued price undercutting and the resulting injurious effects to the Australian industry. The importers reasoned that the price undercutting was, in part, caused by Capral's own imports.

Sales of goods at a loss

The Three Importers submitted²³ that the Commission's primary focus is to establish profitability of sales of aluminium extrusions without reviewing if the price had increased commensurate with the duty payable. They reasoned that the "spread" component of their selling prices incorporate the additional cost of the dumping and countervailing duties. They provided that the pricing of aluminium extrusions is "set by reference to the London Metals Exchange (LME) price for aluminium plus a "spread" which captures all conversion, importation and selling costs". The submission also reiterated the impact on the selling price caused by the duties applied by finish type which resulted in the inclusion of an incorrect amount for duties payable in the spread component of the selling price.

The Three Importers maintain that the selling price for aluminium extrusions in Australia is driven by the prevailing LME price. They also informed the Commission that to stay competitive and prevent loss of market share they are required to sell the goods subject to measures at a loss. This has been confirmed by the Commission and is detailed in the visit verification reports and in the Three Importers' submission of 18 July 2014²⁴.

4.5.2 The Commission's assessment

The Commission's assessment of the relevant submissions

The Commission has considered the submissions set out in section 4.5.1 above. The import data obtained from the ACBPS database shows that the Identified Importers paid prices equivalent to the AEP. In some cases, export prices were found to be higher. The Commission is of the view however that FOB prices that include import duties are not "un-dumped" if the export price is still below the normal value determined for the goods.

The Three Importers were unable to demonstrate that they were bound to engage with PanAsia for the purchase of aluminium extrusions as they did not provide copies of contracts or related information to the Commission. The Commission expects that under normal commercial conditions, exporters and importers are free to negotiate sale prices regardless of the AEP.

Regarding the pricing of local producers, the injurious effects that may have been caused by Capral's own import activities is not considered to be a relevant

²² *Ibid*

²³ P&O Perth, P&O Sydney, Oceanic submission 7 Oct 2014 (EPR No.31).

²⁴ P&O Perth, P&O Sydney, Oceanic submission 18 July 2014 (EPR No.14).

consideration when determining if a circumvention activity has occurred. Similarly, it is not clear how the Three Importers' sourcing of the goods from [REDACTED] [supplier country] would be relevant to the inquiry.

The Three Importers' submission relating to sales of goods at a loss argued that the spread component of the price had increased commensurate with the duty payable. Noting that the goods have been found to be sold at a loss, adopting this methodology would require a knowledge of which costs had been passed on to customers and those which had not been passed on for each sale. The Commission does not agree that such an approach is meaningful nor has it been demonstrated by the importers how such an approach could be tested.

Benchmarking against information provided by PanAsia in the review of measures

The inquiry did not request PanAsia to provide a response to a questionnaire in its capacity as the exporter named in the inquiry. However, PanAsia has responded to a request for an exporter questionnaire in relation to a current review of measures under Division 5 of the Act into aluminium extrusions that was initiated by the Commissioner on 12 June 2014²⁵. The review of measures requires the Commission to review the variable factors, for example, the normal value, export price, non-injurious price or the amount of subsidy.

The Commission has compared PanAsia's response to the exporter questionnaire to the data and information provided by the Three Importers in this inquiry. Although PanAsia's data and information has not yet been verified by the Commission, the Commission considered it relevant when testing the findings in this inquiry.

After taking into account overseas freight, insurance and packaging, the Commission found that substituting PanAsia's FOB prices with the figures declared by the importer in this inquiry also meant that the importer's sales of circumvention goods are being sold at a loss.

4.6 Reasonable period

Subsection 269ZDBB(5A)(e) of the Act requires that the circumstances covered by subsections 269ZDBB(5A)(a) to (d) need to have occurred over a reasonable period. For the purposes of determining if circumvention activity was occurring, the Commission established an inquiry period.

The Commission determined that during the inquiry period, the period from 1 January 2013 to 27 October 2013, the Identified Importers engaged in circumvention activity through selling at a loss almost every month of the inquiry period. Accordingly, the Commission considers that the circumvention activity occurred over a reasonable period as set out in subsection 269ZDBB(5A)(e) of the Act.

²⁵ Anti-Dumping Notice 2014/46.

4.7 The Commission's assessments

The Commission analysed importation data representing 99% of the total volume of exports from PanAsia to Australia during the inquiry period. As set out in this chapter of the report, the Commission found the following:

- the Commission is satisfied that pursuant to subsection 269ZDBB(5A) of the Act, the Identified Importers sold the circumvention goods in Australia without increasing the price commensurate with the total amount of duty payable under the Dumping Duty Act by selling them at a loss;
- sales of the circumvention goods by the Three Importers were found to be sold at a significant loss;
- sufficient information pertaining to the operation of the market for aluminium extrusions in Australia was available to enable the Commission to conclude that P&O Melbourne and P&O Brisbane, the importers who did not cooperate with the inquiry, were also selling the circumvention goods at a loss during the inquiry period; and
- the Commission was not satisfied that external factors, market conditions and cost reduction initiatives, influenced the price of the circumvention goods sold by the Identified Importers.

5. SPECIFICATION OF A DIFFERENT VARIABLE FACTOR

5.1 The Commission's findings

During the inquiry, the Commission found the following:

- circumvention activity had occurred under subsection 269ZDBB(5A) of the Act, and therefore, it was appropriate for the Commissioner to recommend the specification of a different variable factor (a new AEP) under subsection 269TAB(3) of the Act (see section 5.3 of this report); and
- the new AEP resulted in the increase of the effective rate of combined duty (from 10.1% to 57.6%) (see section 5.8 of this report).

5.2 Legislative framework

In accordance with subsections 269ZDBG(1)(c) and (d) of the Act, the Commissioner must recommend to the Minister, to the extent that the measures involved the publication of a dumping duty notice or a countervailing notice, that:

- the original notice remained unaltered; or
- the original notice be altered because the Commissioner is satisfied that circumvention activities in relation to the original notice have occurred, together with the alterations to be made to the original notice.

5.3 Establishing a new AEP

The Commission has calculated a new AEP based on the importer's weighted average selling price of the goods less deductions for importer profit and SG&A expenses and for importation costs (as set out in section 5.3.2 below). When determining how a new export price could be ascertained, the Commission has assessed the information available to the inquiry and the hierarchy of ascertaining the export price as set out under section 269TAB of the Act.

Establishing the export price under subsection 269TAB(1)(a)

As set out in chapter 4 of this report, the Commission found that the Identified Importers' sales of the circumvention goods to Australian customers were at a loss. Under subsection 269TAA(2) of the Act, the Minister may, for the purposes of subsection 269TAA(1)(c), treat the sale of those goods at a loss as indicating that the Identified Importers or an associate of the Identified Importers will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or part of the price. As a result, the Commission could not be satisfied that the purchase of the goods by the Identified Importers were arms length transactions. In the circumstances, the Commission is of the view that subsections 269TAA(1)(c) and (2) of the Act are enlivened and therefore, it would be inappropriate to determine the export price under subsection 269TAB(1)(a) of the Act.

Establishing the export price under subsection 269TAB(1)(b)

The Commission was then required to consider the deductive export price methodology under subsection 269TAB(1)(b) of the Act. As stated in section 4, the Commission was unable to verify all of the data provided by the Three Importers, and it did not receive a questionnaire response from the other two importers. As a result, the Commission could not be satisfied that the importers' data was sufficient for determining an export price under subsection 269TAB(1)(b).

Establishing the export price under subsection 269TAB(1)(c)

If the export price cannot be determined under subsection 269TAB(1)(a) or TAB(1)(b), the Minister may determine an export price having regard to all of the circumstances of the exportation.

As set out in section in 2.2.3 of this report, three out of the five Identified Importers participated, to some extent, in the verification process, however the Commission was unable to adequately verify the Three Importers' data and information.

The absence of data from two importers (P&O Brisbane and P&O Melbourne) along with the problems associated with the verification of data from the Three Importers, have precluded the Commission from having regard to all of the circumstances of the exportation. As a result, the Commission has found that it is not possible to determine an export price under subsection 269TAB(1)(c) of the Act.

Establishing the export price under subsection 269TAB(3)

Subsection 269TAB(3) of the Act allows the export price to be determined by the Minister having regard to all relevant information if sufficient information has not been furnished, or is not available, to enable the export price to be ascertained under subsection 269TAB(1)(a), (b) or (c).

The Commission's approach to applying subsection 269TAB(3) is based on utilising information that is most relevant. This has included elements which, whilst not found to be suitable for use under TAB(1)(b) or (c), were able to be used in conjunction with other information available to the Commission.

5.3.1 Weighted average selling price

The new AEP is derived from determining the importer's weighted average selling price of the circumvention goods less relevant deductions. The weighted average selling price is based on the aggregated sales data provided by the Three Importers based on the sample of invoices requested by the Commission.

As explained in section 4.4 above, the Commission was not able to verify the sales figures against audited financial statements for all importers. However, those sales which were verified against source documents were found to be accurate. Because the Commission was unable to determine if the sales data was complete and relevant, the Commission could not be satisfied that the weighted average selling price derived from the entire data set was reliable.

The only information that the Commission could reasonably rely on was the more limited sample of invoices which were found to be reasonably accurate. During the inquiry, the Commission requested data and information relating to a “sample” of 10 invoices each from P&O Perth and P&O Sydney and 20 invoices from Oceanic. Invoices which were dated outside the inquiry period were omitted from the calculations.

In considering the documents relating to the sample of invoices chosen by the Commission, the Commission was also able to verify that customers had paid for the goods at the prices stated on the invoice. This was considered to be a reasonably reliable indicator of the actual selling price.

The weighted average selling price from these transactions was determined to be \$[REDACTED] per kilogram.

5.3.2 Importation costs

Similar to the method used to determine the weighted average selling price, the Commission has aggregated the importers’ cost data. The import costs related to the following:

- overseas insurance and freight;
- Customs brokers’ fees;
- Australian port of arrival charges;
- Australian freight charges from port of arrival; and
- duty payable (refer to section 5.3.5).

The weighted average import costs were calculated to be \$[REDACTED] per kilogram.

5.3.3 SG&A costs

During verification, the Commission identified that P&O Perth and P&O Sydney incurred different levels of SG&A costs, particularly in the case of direct shipments imported by P&O Sydney. The calculations supporting the SG&A costs for direct shipments were not provided to the Commission. Accordingly, adjustments for direct shipments were not taken into consideration.

The SG&A used for the calculation of the export price was based on the P&O Sydney and P&O Perth unaudited consolidated income statement. The SG&A cost as a ratio of total sales revenue was found to be [REDACTED] %.

5.3.4 Reasonable profit

Capral’s application proposed an allowance for a [REDACTED] % profit margin for the purpose of calculating a target selling price but it had not substantiated this figure. The Commission received two submissions in relation to the allowance of a reasonable profit.

Capral submitted during the inquiry ²⁶ that the Commission should adopt a rate of [REDACTED] % for profit. This was based on a selection of five Australian companies in the building products sector.

The Identified Importers' joint submission²⁷ in response to Capral's submission rejected Capral's methodology on the grounds that the companies benchmarked were not representative in terms of size, activities, product range or workforce. The importers put forward the opinion that a zero rate of profit should be used to calculate the export price.

The Commission did not consider Capral's submission regarding profit to be an appropriate benchmark. Acceptance of a zero rate of profit was equally not appropriate after it was observed, in data available to the Commission, that other importers of aluminium extrusions are generating profits.

Before turning to other available information, the Commission sought to establish a profit margin using the importers' own financial data in relation to the circumvention goods.

In determining the export price under subsection 269TAB(3), the Commission has made a provision for a rate of profit benchmarked against the verified profit margin for P&O Brisbane, P&O Sydney and P&O Melbourne in the original investigation. The profit margin was calculated using sales revenue and import cost data for the period 1 July 2008 to 30 June 2009. This period reflects a time when there were no measures imposed on imports of aluminium extrusions from China. It is a reasonable expectation that after the measures were imposed the importers would seek to maintain these profit margins.

The profit margin analysis was based on sales of the [REDACTED] which represented over 70% of all sales. A comparison of the weighted average cost to import and sell per unit and the weighted average sales revenue per unit of mill finish product results in a profit margin of [REDACTED] %.

The Commission's calculations are at **Confidential Appendix 5**.

5.3.5 Duty Payable

The duty applied in calculating the new export price is the current 10.1% for dumping and countervailing applied to exports from PanAsia, and 4% for general duty. This is the duty that applied after the Federal Court decision.

5.4 Ascertained Export Price

The Commission has determined the AEP for exports from PanAsia in accordance with subsection 269TAB(3) of the Act. The AEP in Table 6 below has been determined by having regard to all relevant information.

²⁶ EPR Item 10.

²⁷ EPR Item 11.

WA Selling Price	██████
<i>less Profit</i>	██████
<i>less SG&A</i>	██████
<i>less other costs</i>	██████
<i>less duty payable</i>	██████
Export Price	██████

Table 6- New deductive export price

The Commission's calculations are at **Confidential Appendix 6**.

5.5 Normal Value

The calculation of a normal value is not considered to be one of the variable factors within the scope of the inquiry. For the purpose of calculating a new dumping margin, the normal value established in the original investigation will continue to apply. The normal value of \$██████ in the original investigation was determined under subsection 269TAC(6), using all relevant information.

5.6 Dumping margin

The new dumping margin for the imports of aluminium extrusions exported by PanAsia is 57.6%. The dumping margin for the inquiry period has been calculated by comparing the AEP determined in section 5.4 with the weighted average normal value determined in the original investigation in accordance with subsection 269TACB(2)(a) of the Act.

The Commission's calculations are at **Confidential Appendix 7**.

5.7 Subsidy margin

The original investigation determined that PanAsia was the recipient of subsidies of 25 cents per kilogram under Program 15.

Program 15 relates to goods provided at less than adequate remuneration. The original investigation found that this program involved a financial contribution to the extent that it was made in connection with the production of aluminium extrusions in China that involves the provision of goods (primary aluminium) by state owned enterprises, being public bodies.

The scope of the anti-circumvention inquiry did not include a new investigation into the subsidies. The inquiry assumed that Program 15 continues. However, as a result of the way the measures are structured, it is necessary to alter the subsidy margin to recognise the amount of subsidy received as a proportion of the export price. The current subsidy of ██████ per kilogram represents 6.1% of the current AEP of \$██████. The AEP used in the subsidy margin calculation represents the weighted average export price for all finish types identified in the original investigation.

Since the anti-circumvention inquiry has determined a new lower export price the amount of subsidy as a proportion of the export price has increased. As a result, the new subsidy margin for the imports of aluminium extrusions exported by PanAsia is now **8.7%**. The actual amount of subsidy per kilogram remains unchanged at [REDACTED] per kilogram.

The Commission's calculations are at **Confidential Appendix 8**.

5.8 The Commission's assessment

Having regard to all relevant information, the Commission concludes that the export of the goods from PanAsia in China have been the subject of circumvention activity that is avoiding the intended effect of the duty as set out under subsection 269ZDBB(5A). As an appropriate remedy to the injurious effects caused by the circumvention, the Commissioner recommends the specification of a new AEP for the imposition of anti-dumping and countervailing measures.

Table 7 below shows the proposed alterations to the original notice published under section 269TJ(2) and 269TG(2). It shows that the dumping duty on aluminium extrusions exported from China is in the form of a combination fixed (ad valorem) and variable duty method. For countervailing duty, it is in the form of a fixed duty method.

Exporter / goods	Dumping Margin	Subsidy margin	Effective rate of combined interim duty	Duty methods
PanAsia Aluminium (China) Limited All finishes	57.6%	8.7%	57.6%	Dumping - fixed (ad valorem) and variable duty methods Countervailing – fixed (ad valorem) duty method

Table 7- Revised dumping and subsidy margins

6. ALTERATION TO THE ORIGINAL NOTICE

6.1 The Commission's findings

The Commission has determined that two types of alterations to the original notice are necessary in order to:

- address the circumvention activity found by the Commission in this inquiry relating to the Identified Importers; and
- address ongoing concerns relating to the importation of the goods based on current importation circumstances.

In conducting the inquiry, the Commission has found that circumvention activity occurred during the inquiry period. The inquiry also revealed the potential for future circumvention activity to occur or continue to occur in relation to existing importers or future importers that may undertake trade with PanAsia.

To ensure any alteration to the original notice provides an effective remedy to the injurious effects caused by circumvention behaviour, it is necessary to alter the notice in such a way that the changes are applied both retrospectively (as applicable to the Identified Importers) and prospectively (to all importers) (see **Confidential Attachment C**). This approach recognises the circumvention activity found in relation to the Identified Importers, as established during the inquiry period, and also, implements a new ascertained export price to address potential circumvention activity for all future exports from PanAsia.

6.2 Legislative framework

As set out in Chapters 3 and 4 of this report, the Commission has determined that circumvention activity, as described under subsection of 269ZDBB(5A) of the Act, had occurred during the inquiry period. In making recommendations to the Minister the Commission has had regard to the Commission's findings on the Identified Importers' activities established during the inquiry period and to current importation circumstances.

The Commission considers that current importation circumstances are relevant to this inquiry, pursuant to subsection 269ZDBG(2)(b) of the Act, as they may indicate changes in the market, including those that may have resulted as a consequence of the initiation of this anti-circumvention inquiry. Accordingly, the Commission has had regard to current importation circumstances, including data from the ACBPS import database, the ASIC company database, submissions and other relevant information in determining what recommendations should be made to the Minister.

In consideration of the declaration to alter the original notice, subsection 269ZDBH(8) of the Act provides that the declaration to alter the original notice can be effective from a day that must not be earlier than the day of publication of the notice under subsection 269ZDBE(4) or (5) about the conduct of the inquiry. For the

purposes of this inquiry, the earliest date that the alteration to the original notice can take effect is from 14 April 2014.

6.3 Alteration relating to the Identified Importers

As set out in this report, the Commission has determined that the five Identified Importers avoided the intended effect of duty by selling the circumvention goods at a loss. In the circumstances, the Commissioner considers it appropriate to recommend to the Minister that alterations to the original notice, as they pertain to the Identified Importers, be taken to have been made with effect on and after the day of publication of the notice under subsection 269ZDBE(4) of the Act on 14 April 2014.

As stated in section 5.8 of this report, the specification of a different variable factor (namely, a different export price) will increase the dumping and subsidy margin from a combined 10.1% to 57.6%. As the different export price will be taken to operate from 14 April 2014, the duty payable on the importations by the Identified Importers that arrived after that date will now be subject to a higher rate of duty.

6.4 Alteration relating to the exporter

In determining the Commissioner's recommendations to the Minister, the Commissioner has had regard to information contained in the ACBPS import database and other relevant information. Current importation circumstances suggest that an alteration to the original notice is necessary to prevent any ongoing or future circumvention activity that had been identified in this inquiry.

6.4.1 Findings under section 269TAA of the Act

As set out in section 5.3 of this report, the Commission determined that the Identified Importers were selling the circumvention goods at a loss. Subsection 269TAA(2) of the Act allows the treatment of the sale of those goods at a loss as indication that the Identified Importers will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or part of the price. In the circumstances, the Commission could not be satisfied that the sales transactions between the Identified Importers and the exporter, PanAsia, were arms length transactions. In the circumstances, the Minister may treat the sales at a loss as an indication of reimbursements or other compensatory arrangements being provided to the importers.

6.4.2 Findings on current importation circumstances

The Commissioner had regard to current importation circumstances, in particular those relating to importers who were not identified by Capral in its application.

Success Aluminium Pty Ltd

As set out in section 2.3 of this report, the Identified Importers were acquired by Success Aluminium on 1 June 2014. Success Aluminium, as the Identified Importers' successor, appears to have commenced operations from that date. The Commission understands that Success Aluminium has effectively assumed, from the Identified

Importers, the roles and functions of the seller of aluminium extrusions imported from China and other countries.

As indicated in section 2.2.2 above, Success Aluminium, to date, has not imported the goods from PanAsia or any other exporter. The Commission notes that while Success Aluminium may import the goods from China in the future, any alteration to the original notice relating to Success Aluminium for past importations will not have any meaningful or practical effect as it appears that Success Aluminium has not imported the goods as of the date of this report.

Nevertheless, as information available to the Commission suggests that Success Aluminium does have a trading relationship with PanAsia (who has been found to have engaged in non-arms length transactions with Success Aluminium's predecessors), it is relevant for the alteration to the notice to address the potential for such circumvention activities to take place by Success Aluminium as their pricing strategies into the domestic market are at this stage unknown.

New importer

The ACBPS import database shows a relatively new entrant in the importation of goods exported by PanAsia. According to the ASIC companies register, the importer was incorporated in April 2014.

The ACBPS import database shows that this importer began importing the goods from PanAsia in May 2014. Since then, this importer has been importing the goods from PanAsia in significant volumes.

The Commission makes the following observations:

- the price paid by the new importer appears to be the same price that was paid by the Identified Importers in April 2014²⁸;
- shipments of the goods imported by the new importer arrive at various ports around Australia that are similar to the ports of shipment used by the Identified Importers; and
- the new importer's importation volumes appear to be comparable to the volume of imports by the Identified Importers over an equivalent period in 2013. Table 3 below shows a comparison of volume of imports for the new importer from May to October 2014 and the Identified Importers over the same period in 2013.

²⁸ As set out in section 2.2 of this report, the Identified Importers ceased importation sometime after April 2014.

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Destination Port	The new importer's volumes in 2014 (kilograms)	The Identified Importers' volumes in 2013 (kilograms)
Adelaide	██████	██████
Brisbane	██████	██████
Darwin	██████	██████
Fremantle (Perth)	██████	██████
Melbourne	██████	██████
Sydney	██████	██████
Townsville	██████	██████
Total	██████	██████

Table 8- Comparison of import volumes by the importer and the Identified Importers

On 5 November 2014, the Commission wrote to the new importer inviting it to make submissions to the inquiry. The new importer did not provide any response to the Commission.

Other minor importers

Analysis of export volumes from PanAsia in 2013 shows that two other importers traded with PanAsia during the inquiry period. These two importers imported the goods in volumes equivalent to █████% of the total volume exported to Australia by PanAsia in 2013.

Further analysis shows that only one of these importers, Protector Aluminium Pty Ltd (Protector Aluminium), continued to import the circumvention goods in 2014. For the period ending 31 October 2014, Protector imported █████ kilograms which represented █████% of the total volume exported to Australia by PanAsia.

On 5 November 2014, the Commission invited Protector Aluminium [importer name] to make a submission to the inquiry²⁹. The Commission received a submission from Protector Aluminium on 26 November 2014³⁰. Protector submitted that Capral's allegation of circumvention activity was not relevant to its business and that its trading relationship with PanAsia was not different than any of its other local or

²⁹ The Commission did not contact the other importer as its importation volume was relatively small. In addition, its last importation of the goods was in 2013.

³⁰ Case 241 EPR Item 35.

overseas suppliers. Protector Aluminium was of the view that it had not engaged in any anti-circumvention activity.

The Commission wrote a second letter to Protector Aluminium on 1 December 2014 with the intention of clarifying the impact of potential outcomes from the inquiry. Protection Aluminium did not respond to the Commission's letter of 1 December 2014. Protection Aluminium also did not respond to the Commission's follow up emails and telephone calls seeking further clarification about its submission to the Commission.

6.4.3 The Commission's assessment

Under subsection 269ZDBG(2)(b) of the Act, the Commissioner considers that current importation circumstances are relevant to the inquiry, in particular to the recommendations to the Minister.

As set out above, under subsection 269TAA(2) of the Act, there is an indication that the importers identified in Capral's application were directly or indirectly receiving reimbursements or compensation or otherwise receiving a benefit for, or in respect of, the whole or part of the price. In addition, the Commission established the following facts:

- the five Identified Importers no longer import the circumvention goods;
- a new entity, Success Aluminium, has assumed the business for the Identified Importers, however it does not appear to have been or currently importing the circumvention goods from PanAsia; and
- a new importer entered the market in May 2014 and has been importing significant volumes of the goods from PanAsia. These volumes are not dissimilar to the importation volumes made by the Identified Importers before they ceased importation sometime after April 2014, and it would appear that this new exporter has supplanted the Identified Importers in the Australian market in trading in the circumvention goods with PanAsia.

The Commission considers that the circumstances of these importations do not appear to be coincidental. The Commission views them as a possible response to the initiation of this anti-circumvention inquiry. As a result, in addition to the Commissioner's recommendation in section 6.3 of this report relating to alterations to the notice for the Identified Importers coming into effect on and from April 2014, the Commissioner recommends that the Minister apply the new export price established in this inquiry in respect of all exports of the circumvention goods by PanAsia from the prospective date specified in the Minister's declaration. The specification of a new AEP will increase the effective rate of combined interim duty from 10.1% to 57.6%.

The Commissioner recommends that the alteration to the original notice as they relate to PanAsia be taken to have been made to the original notice, with effect on and after the day specified in the declaration (being a date on or after the date the declaration is published).

7. RECOMMENDATIONS

The Commissioner is satisfied that:

- certain aluminium extrusions, the circumvention goods, were exported to Australia from a foreign country in respect of which a notice published under subsection 269TG(2) or subsection 269TJ(2) of the Act applies;
- the exporter of the circumventions goods is an exporter in respect of which the notice applies;
- both section 8 and section 10 of the Dumping Duty Act apply to the export of the circumvention goods to Australia;
- the importers of the circumvention goods, the Identified Importers, have engaged in circumvention activity by selling the circumvention goods at a loss in Australia, without increasing the price commensurate with the total amount of duty payable on the circumvention goods under the Dumping Duty Act; and
- the above circumstances have occurred over a reasonable period.

The Commissioner recommends that the Minister:

- make a declaration under subsection 269ZDBH(1)(b) of the Act that, for the purposes of the *Customs Act 1901* and the Dumping Duty Act, specifies a different variable factor (a new ascertained export price) for the original notice published under subsection 269TG(2) and subsection 269TJ(2) of the Act in relation to certain aluminium extrusions exported from China from PanAsia which takes effect as follows:
 - the alteration to the original notice relating to all exports of the circumvention goods by PanAsia to the Identified Importers is taken to have been made, with effect on and after 14 April 2014; and
 - the alteration to the original notice relating to all exports of the circumvention goods by PanAsia is taken to have been made, with effect on and after the day specified in the declaration.

The Commissioner recommends that the Minister determine:

- that the Identified Importers of the circumvention goods have engaged in circumvention activity by avoiding the intended effect of the duty within the meaning of subsection 269ZDBB(5A) of the Act; and
- a different variable factor (a new AEP) in accordance with subsection 269TAB(3) of the Act for the goods exported by PanAsia, having been satisfied that sufficient information was not provided to the Commission to

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enable the export price to be ascertained under subsections 269TAB(1)(a), (b) or (c) of the Act.

The Commissioner recommends that the Minister declare:

- in accordance with subsection 269ZDBH(1)(b) of the Act, the alteration to the original notice specify a dumping margin of 57.6%, a subsidy margin of 8.7% and an effective rate of combined interim duty of 57.6%, and takes effect as follows:
 - the alteration to the original notice relating to all exports of the circumvention goods by PanAsia to the Identified Importers is taken to have been made, with effect on and after 14 April 2014; and
 - the alteration to the original notice relating to all exports of the circumvention goods by PanAsia is taken to have been made, with effect on and after the day specified in the declaration.

8. APPENDICES AND ATTACHMENTS

Confidential Appendix 1	Oceanic Weighted Average Fully Absorbed Unit Cost to Import,
Confidential Appendix 2	Oceanic Profitability
Confidential Appendix 3	P&O Aluminium (Perth) and P&O Aluminium (Sydney) Weighted Average Fully Absorbed Unit Cost to Import
Confidential Appendix 4	P&O Aluminium (Perth) and P&O Aluminium (Sydney) Profitability
Confidential Appendix 5	Profit Margin Analysis
Confidential Appendix 6	Ascertained Export Price
Confidential Appendix 7	Dumping Margin
Confidential Appendix 8	Subsidy Margin
Attachment A	Public Notice - Declaration to alter the original notice under section 269ZDBH.
Attachment B	Submissions to the Anti-Dumping Commission relating to the inquiry

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ATTACHMENT B

Submissions received by the Commission

EPR Item No.	Submitted by	Submission title/description	Date received
9	Oceanic	Discontinuation of inquiry	19 May 14
10	Aluminium Specialities Group Pty Limited	Australian industry interested party	23 May 14
11	Capral Limited	P&O prices by region	27 Jun 14
12	Capral Limited	Goods covered by the notice	3 Jul 14
13	Capral Limited	Treatment of the importers	10 Jul 14
14	P&O Sydney, P&O Perth, Oceanic	Reasonable period, measures by finish type, external factors	23 Jul 14
16	P&O Sydney, P&O Perth, Oceanic	Treatment of the importers	23 Jul 14
17	Capral Limited	Response to importers submissions (EPR Items 14 & 16)	30 Jul 14
18	Capral Limited	Response to extension of time	30 Jul 14
19	Capral Limited	Rate of profit for the importers	20 Aug 14
26	P&O Sydney, P&O Perth, Oceanic	Rate of Profit - Response to Capral submission (EPR Item 19)	10 Sep 14
30	Capral Limited	Response to Issues Paper 2014/02 (EPR Item 027)	3 Oct 14
31	P&O Sydney, P&O Perth, Oceanic	Response to Issues Paper 2014/02 (EPR Item 027)	7 Oct 14
32	Capral Limited	Response to importer visit reports (EPR Items 28 & 29)	9 Oct 14
33	P&O Sydney, P&O Perth, Oceanic	Response to Capral Submission (EPR Item 30)	9 Oct 14