



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS

NO. 392

**REVIEW OF ANTI-DUMPING MEASURES APPLYING TO
ALUMINIUM EXTRUSIONS
EXPORTED TO AUSTRALIA FROM
THE PEOPLE'S REPUBLIC OF CHINA**

25 August 2017

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ABBREVIATIONS

the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
ABF	Australian Border Force
Capral	Capral Limited
China	the People's Republic of China
CIF	cost, insurance and freight
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
Darley	Darley Aluminium Trading Pty Ltd
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FOB	free on board
GAAP	Generally accepted accounting principles
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
Goomax	Goomax Metal Co. Ltd., Fujian
GOC	Government of China
Guang Ya	Guang Ya Aluminium Industries Co., Ltd.
Haomei	Guangdong Haomei Aluminium Co., Ltd
Harbor	Harbor Aluminium Intelligence Unit
HNTE	High and New Technology Enterprises
Hongchi	Xiamen Hongchi Trade Co., Ltd
ICD	interim countervailing duty
IDD	interim dumping duty
Jiawei	Foshan Shunde Beijiao Jiawei Aluminium Factory
Jinxiecheng	Guangdong Jinxiecheng AL Manufacturing Co., Ltd
Kam Kiu	Taishan City Kam Kiu Aluminium Extrusion Co.,Ltd.
KAU	Kam Kiu (Australia) Pty Ltd
Kt	kilotonne
LME	London Metal Exchange
MJP	Major Japanese Ports
Megastone	Megastone Aluminium Pty Ltd
Nanfang	Guangdong Nanfang Aluminium Co., Ltd
NDRC	National Development and Reform Commission
NIP	non-injurious price
OCOT	ordinary course of trade

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PanAsia	PanAsia Aluminium (China) Co., Ltd
PanAsia Australia	PanAsia Aluminium Pty Ltd
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
the then Parliamentary Secretary	the then Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
PMI	Press Metal International Ltd
PMAA	Press Metal Aluminium Australia Pty Ltd
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 148	<i>Report No. 148</i>
REP 248	<i>Report No. 248</i>
REP 287	<i>Report No. 287</i>
REQ	exporter questionnaire response
review period	1 January 2016 to 31 December 2016
SBMR	State Bureau of Material Reserve
SEF	statement of essential facts
SHFE	Shanghai Futures Exchange
SIE	state invested enterprise
SOE	state owned enterprise
State Council	State Council of China
TMRO	Trade Measures Review Officer
USP	unsuppressed selling price
VAT	Value Added Tax
WTO	World Trade Organization
YaoYinShan	Guangdong YaoYinShan Aluminium Co., Ltd
Zhongya	Guangdong Zhongya Aluminium Co., Ltd

1 SUMMARY

1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)¹ in relation to a review of the anti-dumping measures (in the form of a dumping duty notice and countervailing duty notice) applying to certain aluminium extrusions (also referred to in this report as the goods) exported to Australia from the People's Republic of China (China).²

This review was initiated on 23 March 2017 after separate applications were lodged by:

- Guangdong Haomei Aluminium Co., Ltd (Haomei);
- Guangdong YaoYinShan Aluminium Co., Ltd (YaoYinShan);
- PanAsia Aluminium (China) Co., Ltd (PanAsia); and
- Guangdong Jinxiecheng AL Manufacturing Co., Ltd (Jinxiecheng).

Each applicant considered it appropriate to review the anti-dumping measures because one or more of the variable factors relevant to the taking of the anti-dumping measures had changed. The variable factors that have allegedly changed are the export price, normal value, countervailable subsidy and non-injurious price (NIP).³

Although the application for this review was made by the above exporters, the change in circumstances upon which the applications were predicated was found to be common to all exporters. As such, the Commissioner recommended to the Parliamentary Secretary that the review be extended to all exporters of the goods from China generally to ensure that any changes to the anti-dumping measures are applied across all exporters. The Parliamentary Secretary accepted this recommendation.

In its application, Jinxiecheng also sought a review of the anti-dumping measures on the basis that the anti-dumping measures are no longer warranted in relation to its exports of the goods, however the application for revocation of anti-dumping measures in relation to its exports was rejected by the Commissioner.

¹ On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this review, the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

² It is noted that the anti-dumping measures apply to all exporters from China, with the exception of Guangdong Jiangsheng Aluminium Co Ltd (formerly known as Tai Ao Aluminium Tai Shan Co., Ltd). It is also noted that Guangdong Zhongya Aluminium Company Limited is subject to the countervailing duty notice only.

³ It is noted that not all applicants sought a review of all of these variable factors.

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)⁴ sets out, among other things, the procedures to be followed by the Commissioner when undertaking a review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject the application, he is required to publish a notice indicating that it is proposed to review the anti-dumping measures covered by the application.⁵

The Commissioner must, within 110 days after the publication of the notice or such longer period as the Parliamentary Secretary allows, place on the public record a statement of essential facts (this SEF) on which the Commissioner proposes to base his recommendation to the Parliamentary Secretary in relation to the review of anti-dumping measures.⁶

1.3 Proposed recommendation

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice and countervailing duty notice have effect as if different variable factors had been ascertained for all exporters generally.

1.4 Final report

The Commissioner's final report and recommendations must be provided to the Parliamentary Secretary by **9 October 2017** or within such longer period as may be allowed.⁷

⁴ All references to legislation in this report are to the *Customs Act 1901*, unless otherwise specified.

⁵ Subsection 269ZC(4).

⁶ Subsection 269ZD(1).

⁷ Subsection 269ZDA(1). It is noted that, on 14 January 2017, the Parliamentary Secretary delegated the powers and functions of the Minister under section 269ZHI to the Commissioner. Refer to Anti-Dumping Notice (ADN) No. 2017/10 for further information.

2 BACKGROUND

2.1 Initiation

Following consideration of the applications, the Commissioner decided not to reject the applications and on 23 March 2017, initiated a review of the anti-dumping measures applying to the goods exported to Australia from China.

Notification of the initiation of the review was made in ADN No. 2017/38, which was published on the Anti-Dumping Commission (the Commission) website on 23 March 2017.

Consideration Report No. 392 was also published on the Commission's website detailing the Commissioner's reasons for not rejecting the applications.

2.2 Extension of the review to include all exporters generally

Subsection 269ZC(4)(b) provides that if the Commissioner decides not to reject an application for a review of anti-dumping measures, the Commissioner may, if he or she considers that the review applied for should be extended to include any additional matter, recommend to the Parliamentary Secretary that the review be extended accordingly.

As the change in circumstances upon which the various applications for review of anti-dumping measures were based (broadly relating to changes in the underlying raw materials used in aluminium extrusions) is common to all Chinese aluminium manufacturers, the Commissioner considered that it would be appropriate to ensure that any changes to the anti-dumping measures are applied consistently across all exporters of aluminium extrusions from China generally. Based on the Commissioner's recommendation, prior to initiation of the review, the Parliamentary Secretary requested the Commissioner to extend the review to all exporters generally.

On 24 March 2017, the Commissioner initiated a review of the anti-dumping measures in respect of aluminium extrusions exported from China by all exporters. The review is limited to examining whether the variable factors, relevant to the taking of the anti-dumping measures as they affect the goods exported from China by all exporters, have changed. Notification of the initiation of the review was made in ADN 2017/38. The review period for the purpose of establishing the variable factors for this review is from 1 January 2016 to 31 December 2016.

2.3 History of the anti-dumping measures

Since 2009, the Commission has conducted numerous investigations, reviews and inquiries relating to aluminium extrusions. Full details can be found on the Commission's electronic public record at www.adcommission.gov.au. The matters most relevant to this review are summarised below.

24 June 2009	The then Australian Customs and Border Protection Service initiated an investigation into the alleged dumping and subsidisation of aluminium extrusions exported to Australia
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	from China following an application by Capral Limited (Capral).
28 October 2010	The then Attorney-General published a dumping duty notice and a countervailing duty notice applying to aluminium extrusions exported from China - Trade Remedies Branch Report No. 148 (REP 148) refers.
27 August 2011	The then Attorney-General published new notices as a result of a reinvestigation of certain findings made in REP 148 following a review by the former Trade Measures Review Officer. International Trade Remedies Report No. 175 refers.
19 February 2015	Publication of the outcome of an anti-circumvention inquiry into the avoidance of the intended effect of duty concerning certain aluminium extrusions exported to Australia by PanAsia. Report No. 241 and ADN 2015/17 refers.
19 August 2015	The Parliamentary Secretary published a notice declaring the outcome of Review No. 248. Anti-dumping measures applying to exports of certain aluminium extrusions from China were altered as if different variable factors had been ascertained. A correction to this notice was published on 10 September 2015 with respect to six entities incorrectly identified as residual exporters. Report No. 248 (REP 248) and ADN 2015/96 refer.
20 October 2015	The findings of Continuation Inquiry No. 287 were published. This inquiry followed an application by Capral. The then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science continued the measures for a further five years, until 28 October 2020. Report No. 287 (REP 287) and ADN 2015/125 refer.
9 February 2016	Publication of the outcome of a review of anti-dumping measures as they apply to Press Metal International Ltd (PMI). The review resulted in a fixed interim dumping duty (IDD) and interim countervailing duty (ICD) of zero (0) per cent and a variable amount of duty where the actual export price is below the ascertained export price for the aluminium extrusions exported from China by PMI. Report No. 304 and ADN No. 2016/04 refer.
28 April 2017	Publication of the outcome of an accelerated review of the dumping duty notice and countervailing duty notice applying to Foshan Shunde Beijiao Jiawei Aluminium Factory (Jiawei). The accelerated review resulted in a fixed IDD and ICD of zero (0) per cent and a variable amount of duty where the actual export price is below the ascertained export price for the aluminium extrusions exported from China by Jiawei. Report No. 387 and ADN No. 2017/43 refer.
10 July 2017	Publication of the outcome of an accelerated review of the dumping duty notice and countervailing duty notice applying to Goomax Metal Co. Ltd., Fujian (Goomax). The accelerated review resulted in IDD equal to the difference between the actual export price and the ascertained export price and ICD of 0.2 per cent. Report No. 399 and ADN No. 2017/84 refer.

2.4 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those anti-dumping measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may apply for,⁸ or the Parliamentary Secretary may request that the Commissioner conduct,⁹ a review of those anti-dumping measures if one or more of the variable factors has changed.

The Parliamentary Secretary may initiate a review at any time. However, a review application must not be lodged earlier than 12 months after publication of the notice imposing the original anti-dumping measures or the notice(s) declaring the outcome of the last review.¹⁰

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner has up to 155 days, or such longer time as the Parliamentary Secretary may allow, to conduct a review and report to the Parliamentary Secretary on the review of the anti-dumping measures.¹¹

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

Variable factors in this particular review are a reference¹² to:

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

Within 110 days of the initiation of a review, or such longer time as allowed,¹³ the Commissioner must place on the public record a SEF on which he proposes to base recommendations to the Parliamentary Secretary concerning the review of the anti-dumping measures.¹⁴

For this review, in making recommendations in his final report to the Parliamentary Secretary, the Commissioner must have regard to:¹⁵

- the applications for review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;

⁸ Subsection 269ZA(1).

⁹ Subsection 269ZA(3).

¹⁰ Subsection 269ZA(2)(a).

¹¹ Subsection 269ZDA(1).

¹² Subsection 269T(4E).

¹³ On 14 January 2017, the Parliamentary Secretary delegated the powers and functions of the Minister under section 269ZHI to the Commissioner. Refer to ADN No. 2017/10 for further information.

¹⁴ Subsection 269ZD(1).

¹⁵ Subsection 269ZDA(3)(a).

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- this SEF; and
- any submission made in response to this SEF that is received by the Commissioner within 20 days of it being placed on the public record.

The Commissioner may also have regard to any other matter considered to be relevant to the review.¹⁶

At the conclusion of the review, the Commissioner must provide a final report to the Parliamentary Secretary. In his final report he must make a recommendation to the Parliamentary Secretary that the dumping duty notice and countervailing duty notice:¹⁷

- remains unaltered; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been fixed relevant to the determination of duty.

The Parliamentary Secretary must make a declaration within 30 days of receiving the report or, if the Parliamentary Secretary considers there are special circumstances that prevent the declaration being made within that period, such longer period as the Parliamentary Secretary considers appropriate¹⁸ that the dumping duty notice and countervailing duty notice:¹⁹

- remain unaltered; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been fixed relevant to the determination of duty.

The Parliamentary Secretary must give notice of the decision.²⁰

On 3 July 2017, the Commissioner, under subsection 269ZHI(3), extended the deadline for publication of the SEF to 25 August 2017 and for the deadline for the Commissioner to provide his final report and recommendation to the Parliamentary Secretary to 9 October 2017.

2.5 Submissions received in relation to the initiation of the review

Following the initiation of the review, the Commission received submissions from the below listed importers of aluminium extrusions:

- Coolon LED Lighting, available on the case public record at item 8;
- Smart Gears Pty Ltd, available on the case public record at item 9;
- Signcraft Pty Ltd, available on the case public record at item 10;
- Concrete Formwork Technologies Pty Ltd, available on the case public record at item 16; and
- Screensafe, available on the case public record at item 36.

¹⁶ Subsection 269ZDA(3)(b).

¹⁷ Subsection 269ZDA(1)(a).

¹⁸ Subsection 269ZDB(1A).

¹⁹ Subsection 269ZDB(1)(a).

²⁰ Subsection 269ZDB(1).

Capral made a submission in response to Concrete Formwork Technologies Pty Ltd which is available on the case public record at item 43.

The Commission notes that each submission broadly dealt with the impact of the anti-dumping measures on importers of aluminium extrusions. The submissions did not address the variable factors under review and therefore the Commission considers that these submissions are outside of the scope of the review and has not addressed them in this report.

2.6 Sampling

On 23 March 2017 the Commission published ADN 2017/38 which, among other things, outlined that the Commissioner intended to make findings and recommendations in relation to this review based on an examination of a limited number of exporters in accordance with section 269TACAA.

Subsection 269TACAA(1) states that where the number of exporters from a particular country of export in relation to the investigation, review or inquiry is so large that it is not practicable to examine the exports of all of those exporters, then the investigation, review or inquiry may be carried out, and findings may be made, on the basis of information obtained from an examination of a selected number of those exporters who:

- constitute a statistically valid sample of those exporters; or
- are responsible for the largest volume of exports to Australia that can reasonably be examined.

In considering whether this review should be carried out on the basis of information obtained from an examination of a selected number of exporters, the Commissioner took into account:

- the large number of suppliers/exporters from China;
- the large number of exporters likely to submit completed questionnaires; and
- the current and foreseeable investigative workload of the Commission in other investigations and the resources available to examine exporters of aluminium extrusions.

In these circumstances, the Commissioner considered it appropriate to limit the number of exporters to be examined to a sample of the largest exporters by volume to ensure the review is representative, manageable and completed within a reasonable timeframe.

ADN 2017/38 described three categories of exporters and how the dumping and subsidy margins will be calculated for each category. The three categories are described below:

2.6.1 Cooperative exporters

Selected exporters

As part of ADN No. 2017/38, the Commissioner selected the following five exporters for examination in accordance with subsection 269TACAA(1):

- Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd (Kam Kiu);

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- Guangdong Zhongya Aluminium Company Limited (Zhongya);²¹
- PanAsia;
- Guang Ya Aluminium Industries Co., Ltd (Guang Ya); and
- Jinxiecheng.

According to verified data from exporters and data obtained from the Australian Border Force (ABF) import database, the five selected exporters represent close to 80 per cent of the volume of the goods exported to Australia from China during the review period.

Each of these five selected exporters cooperated with the review.²²

During the course of the review, the Commissioner selected a further two entities for further examination, Guangdong Nanfang Aluminium Co., Ltd (Nanfang) and Xiamen Hongchi Trade Co., Ltd (Hongchi). Neither entity cooperated with the review. The Commissioner therefore considers them to be uncooperative exporters as defined by subsection 269T(1) and non-cooperative entities as defined by subsection 269TAACA.

Other cooperative exporters

Under subsection 269TACAA(2), if information is submitted by an exporter that is not selected for examination under subsection 269TACAA(1), the review must extend to that exporter unless to do so would prevent its timely completion. The review extended to an additional two exporters (who provided information relating to the review period which did not prevent timely completion of the review – further information is at section 4.2.1):

- Goomax; and
- Jiawei.

2.6.2 Residual exporters

Following initiation of the review, exporters of the goods, other than the selected cooperative exporters named above, were requested to provide a basic level of information, via an information request, including associated spreadsheets that was uploaded onto the case page of the Commission's website. Through this process the Commission identified the following 11 exporters who have been classified as 'residual exporters'²³ for the purposes of this review:

- Foshan Guangcheng Aluminium Co., Ltd (Guangcheng);
- Foshan JMA Aluminium Co., Ltd;
- Foshan Yatai PVC and ALU Co., Ltd;
- Guangdong Jiahua Aluminium Co., Ltd;
- Guangdong JMA Aluminium Profile Factory (Group) Co., Ltd;
- Guangdong Xingfa Aluminium Co., Ltd;
- Haomei;
- JiangYin East China Aluminium Technology Co., Ltd;
- JMA (HK) Company Limited;

²¹ It is noted that Zhongya is subject to the countervailing duty notice only.

²² Cooperative exporter is defined in subsection 269T(1).

²³ Residual exporter is defined in subsection 269T(1).

- PMI; and
- Suzhou Union Metal Co., Ltd.

2.6.3 Uncooperative exporters and non-cooperative entities

An uncooperative exporter, in relation to the review of the dumping duty notice, is defined in subsection 269T(1) as an exporter that did not cooperate with the review by providing information considered to be relevant to the review, or an exporter that significantly impeded the review.

A non-cooperative entity is an entity, in relation to the review of the countervailing duty notice that did not provide information considered to be relevant to the review within the specified timeframe, or an entity that significantly impeded the review.

The Commission considers that the exporters who meet the criteria set out in subsections 269T(1) and/or 269TAACA(1) are for the purpose of this review uncooperative exporters and non-cooperative entities.

The Commission considers that the exporters who are not identified as either a 'selected exporter' or 'residual exporter' are for the purpose of this review uncooperative exporters and non-cooperative entities.

2.7 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Parliamentary Secretary.

The SEF represents an important stage in the review as it informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner. The final report will recommend whether or not the dumping duty notice and countervailing duty notice should be varied, and the extent of any interim duties that are, or should be, payable.

Interested parties are invited to make submissions to the Commissioner in response to the SEF within 20 days of the SEF being placed on the public record. The due date to lodge written submissions in response to this SEF therefore is **14 September 2017**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Parliamentary Secretary.²⁴

The Commissioner must report to the Parliamentary Secretary by 9 October 2017.

Submissions should preferably be emailed to investigations3@adcommission.gov.au. Alternatively, they may be sent to fax number +61 3 8539 2499, or posted to:

²⁴ Subsection 269ZDA(4).

PUBLIC RECORD

Director Investigations 3
Anti-Dumping Commission
GPO 2013
CANBERRA ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record.

A guide for making submissions is available at the Commission's website at www.adcommission.gov.au.

The public record contains non-confidential submissions by interested parties and other publicly available documents. It is available by request in hard copy in Melbourne (phone (03) 8539 2409 to make an appointment), or online at www.adcommission.gov.au

Documents on the public record should be read in conjunction with this SEF.

3 THE GOODS AND LIKE GOODS

3.1 The goods subject to the anti-dumping measures

The goods the subject of the anti-dumping measures in relation to China (the goods) are:

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

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

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

The table below provides guidance to assist the categorisation of aluminium extrusions into the types covered by interim duties (GUC) and those that are not covered (non-GUC).

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

3.2 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

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

3.3 Like goods

Subsection 269T(1) defines like goods as:

“...goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration”.

The definition of like goods is relevant in the context of this review in determining the normal value of goods exported to Australia, the NIP and the goods subject to the dumping duty notice and countervailing duty notice. The Commission’s framework for assessing like goods is outlined in Chapter 2 of the Commission’s *Dumping and Subsidies Manual* (the Manual).²⁵

²⁵ Available on the Commission’s website at www.adcommission.gov.au

4 VARIABLE FACTORS – DUMPING DUTY NOTICE

4.1 Finding

The Commissioner finds that the variable factors relevant to the determination of dumping duty payable under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) have changed.

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice have effect as if different variable factors (being the export price and normal value) had been ascertained. The revised variable factors have resulted in different dumping margins relevant to the taking of IDD.

4.2 Approach to calculating variable factors

4.2.1 Selected exporters

Consistent with the sampling approach outlined in ADN 2017/38, the Commission sent exporter questionnaires to the five exporters selected for examination under subsection 269TACAA(1), being:

- Kam Kiu;
- Zhongya;
- PanAsia;
- Guang Ya; and
- Jinxi Cheng.

All five selected exporters lodged exporter questionnaire responses (REQ) by the requested due date.

Exporter-specific variable factors have been calculated for each of the selected exporters.

4.2.2 Entities not selected under subsection 269TACAA(1)

The following exporters submitted completed REQs relating to the review period:

- Goomax;
- PMI;
- Jiawei; and
- Guangcheng.

The Commission indicated in ADN 2017/38 that, as required by subsection 269TACAA(2), if information is submitted by an exporter not initially selected under subsection 269TACAA(1) for the purposes a review, the review must extend to that exporter unless this prevents its timely completion. The Commission's ability to examine the REQs lodged by residual exporters was contingent on a number of factors, including:

- the level of cooperation from the selected exporters;
- the number of other exporters seeking an individual examination; and
- the available resources within the Commission to undertake individual examination which in relation to this review would have involved on-site or remote verification.

The Commission extended the review to Jiawei on the basis that Jiawei submitted information relating to the review. The Commission had already examined Jiawei's data in relation to nine months of the review period for the purposes of preparing *Final Report No. 387* (REP 387) and was therefore able to examine the additional three months of data provided by Jiawei without preventing the timely completion of the review.

Similarly, the Commission extended the review to include Goomax on the basis that Goomax submitted information relating to the review. The Commission had already examined Goomax's data for the entire review period for the purposes of preparing *Final Report No. 399* (REP 399) and was therefore able to consider Goomax's data without preventing the timely completion of the review.

Exporter-specific variable factors have been calculated for Goomax and Jiawei.

The Commission did not extend the review to PMI and Guangcheng as to do so would have prevented the review's timely completion. PMI and Guangcheng are considered residual exporters.

4.2.3 Residual exporters

The approach to calculating the export price and normal value for residual exporters is outlined at sections 4.4.6 and 4.8.2.

4.2.4 Uncooperative exporters

The Commission considers that the exporters who meet the criteria in subsection 269T(1) in relation to uncooperative exporters are, for the purpose of this review, uncooperative exporters. Subsection 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative exporters, export prices are to be calculated under subsection 269TAB(3) and normal values are to be calculated under subsection 269TAC(6).

In addition to the five selected exporters, the Commission requested, based on information obtained during the conduct of the review, that a further two entities complete an exporter questionnaire.

The Commission requested that Nanfang complete an exporter questionnaire following a review of the residual exporter questionnaire it submitted which indicated that it had exported a significant volume of aluminium extrusions to Australia during the review period. Nanfang did not complete the exporter questionnaire. On 7 June 2017, the Commissioner notified Nanfang that it had not given him information he considered relevant to the review within a period of time he considered reasonable, and that he intended to treat Nanfang as an uncooperative exporter pursuant to subsection 269T(1) and a non-cooperative entity pursuant to section 269TAACA.²⁶

The Commission requested that Hongchi complete an exporter questionnaire following verification activities with both importers and exporters of aluminium extrusions from

²⁶ No. 42 on the public record.

China. Despite referring to itself as an intermediary, the Commission's verification activities indicated that Hongchi played more than just an intermediary role in the exportation of a significant volume of the goods to Australia and that Hongchi is an exporter of aluminium extrusions. Hongchi notified the Commission on the due date for the exporter questionnaire that it had not been able to complete it. The Commissioner determines that Hongchi has not given him information he considers relevant to the review within a period of time he considered reasonable, and therefore intends to treat Hongchi as an uncooperative exporter pursuant to subsection 269T(1) and a non-cooperative entity pursuant to section 269TAACA.

4.3 Importer questionnaires and verification

The Commission performed a search of the ABF import database and identified importers of aluminium extrusions from China during the review period.

The Commission contacted major importers requesting that they provide a response to an importer questionnaire. The Commission received and reviewed importer information from:

- Darley Aluminium Trading Pty Ltd (Darley);
- PanAsia Aluminium Pty Ltd (PanAsia Australia);
- Kam Kiu (Australia) Pty Ltd (KAU);
- Megastone Aluminium Pty Ltd (Megastone); and
- Press Metal Aluminium Australia Pty Ltd (PMAA).

Importer verification visits were conducted to each of these importers except PMAA. Importer verification reports are available on the [case](#) public record.

4.4 Export price

The following outlines the export prices determined for each selected exporter, residual exporters and uncooperative exporters.

4.4.1 Kam Kiu

The Commission conducted an on-site verification visit to Kam Kiu in China during May 2017. A copy of the visit verification report can be obtained on the case public record at item 50.

Based on information obtained as part of the exporter verification visit, as well as information obtained as part of the KAU importer verification visit, the Commission considered that:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporter; and
- the purchase of the goods by the importer were not arms length transactions because, although those goods were subsequently sold by the importer in the

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same condition to customers in Australia, those goods were sold at substantial losses and those losses were not recoverable in a reasonable period of time.²⁷

In making a finding in relation to the nature of arms length transactions between the exporter and the importer and in assessing whether the goods were sold by the importer to customers in Australia at a loss for the purposes of subsection 269TAA(2), the Commission took the following into consideration in accordance with subsection 269TAA(3):

- the amount of the price paid or to be paid for the goods by the importer – subsection 269TAA(3)(a);
- such amounts as determined to be the costs necessarily incurred in the importation and sale of the goods – subsection 269TAA(3)(b);
- the likelihood that the amounts referred to in subsections 269TAA(3)(a) and (b) will be able to be recovered in a reasonable time - subsection 269TAA(3)(c); and
- other matters considered relevant - subsection 269TAA(3)(d).

The facts support a finding that the importer made sales at a loss under subsection 269TAA(2). The Commission is satisfied that it is appropriate in the circumstances to:

- consider that the losses incurred by the importer are not explained by commercial reasons unrelated to dumping and;
- consequently that it is appropriate for the Parliamentary Secretary to treat the importer's losses as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price for the purposes of subsection 269TAA(1)(c).

Accordingly, the export prices for Kam Kiu could not be calculated under subsection 269TAB(1)(a) and have been calculated under subsection 269TAB(1)(b). Specifically, the export price has been calculated by reference to the invoice price from KMY to its Australian customers, less prescribed deductions outlined under subsection 269TAB(2) to work the invoiced amount back to a free-on-board (FOB) price from China.

4.4.2 PanAsia

The Commission conducted an on-site verification visit at PanAsia in China during May 2017. A copy of the visit verification report can be obtained on the case public record at item 53.

Based on information obtained as part of the exporter verification visit, as well as information obtained as part of the PanAsia Australia importer verification visit, the Commission considered that:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporter;
- the transactions between the importer and exporter were not arms length; and

²⁷ Subsections 269TAA(1), (2) and (3).

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- the goods were subsequently sold by the importer in the same condition to customers in arms length transactions.

In making an assessment that the transactions between the importer and exporter were not arms length, the Commission examined relevant information to determine whether there had been genuine bargaining. The Commission considers that, during the review period, the price for all exports of the goods by the exporter were influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller – subsection 269TAA(1)(b). In particular, the Commission is not satisfied that the price between the importer and exporter is a result of real bargaining and that prices for different finishes of the goods were set according to market conditions.

Accordingly, export prices for PanAsia cannot be determined under subsection 269TAB(1)(a) and have been determined under subsection 269TAB(1)(b). Specifically, the export price has been calculated by reference to the invoice price from PanAsia Australia to its Australian customers, less prescribed deductions under subsection 269TAB(2) to bring the invoiced amount back to an FOB price from China.

4.4.3 Guang Ya

The Commission conducted an on-site verification visit to Guang Ya in China during June 2017. A copy of the visit verification report can be obtained on the case public record at item 55.

In relation to Guang Ya's exports, the Commission considers that the goods have exported to Australia otherwise than by the importer and that the goods had been purchased by the importer from the exporter.

The Commission analysed the invoiced prices charged by Guang Ya to its importer and compared them with export prices of other selected exporters examined as part of the review. The Commission's analysis revealed a significant variance between Guang Ya's invoiced prices and the export prices of other selected exporters. The Commission sought to test whether the invoiced prices charged by Guang Ya to its importer were arms length in accordance with section 269TAA, including making an assessment as to whether Guang Ya's importer sold the goods in Australia at a loss.

It is noted that, upon initiation of the review, the Commission contacted Guang Ya's importer and invited it to complete an importer questionnaire. Guang Ya's importer elected not to complete the questionnaire at that stage. Following verification of Guang Ya's exports, the Commission again contacted the importer and requested that it complete the importer questionnaire as well as some additional questions in relation to its relationship to, and transactions with, Guang Ya. As part of that communication the Commission noted that failure to provide the requested information could result in the Commission determining export prices for Guang Ya having regard to all relevant information available to it, which may in turn have an adverse impact on it as an importer of aluminium extrusions exported by Guang Ya. The importer did not respond to the Commission's request for information.

Given that the importer did not participate with the review, the Commission has no basis on which to adequately verify information relating to the importer side of the transactions,

and consequently the requirements of section 269TAA could not be fully tested. As a result, the Commission considers that, in relation to Guang Ya's exportation of goods to Australia, sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under subsection 269TAB(1). As such, export prices for Guang Ya have been established under subsection 269TAB(3) having regard to all relevant information.

Specifically, the Commission has determined an FOB export price for Guang Ya based on the weighted average FOB export price of the selected exporters.

4.4.4 Jinxiecheng

The Commission conducted an on-site verification visit to Jinxiecheng in China during May 2017. A copy of the visit verification report can be obtained on the case public record at item 47.

Verification of Jinxiecheng's REQ found that the goods had been exported to Australia otherwise than by the importer but had not been purchased by the importer from the exporter.

Accordingly, export prices for Jinxiecheng cannot be established under subsection 269TAB(1)(a) or (b) and have been established under subsection 269TAB(1)(c), having regard to all the circumstances of the exportation. Specifically, the export price has been determined as the price paid by traders in China to Jinxiecheng less transport and other costs arising after exportation.

4.4.5 Goomax and Jiawei

The Commission has found that Goomax and Jiawei did not export the goods to Australia during the review period. As such, sufficient information is not available to determine the export price of the goods under subsection 269TAB(1).

Specifically, sufficient information is not available to determine the export price of the goods using:

- the price paid or payable for the goods by the importer;²⁸
- the price at which the goods were sold by the importer in Australia less prescribed deductions;²⁹ or
- the price of the goods having regard to all the circumstances of the exportation.³⁰

Therefore, the Commission has determined an export price for Goomax and Jiawei under subsection 269TAB(3) having regard to all relevant information.

Specifically, the Commission considers it appropriate to determine the export price based on the weighted average export price determined for the selected exporters.

²⁸ Subsection 269TAB(1)(a).

²⁹ Subsection 269TAB(1)(b).

³⁰ Subsection 269TAB(1)(c).

4.4.6 Residual exporters

Export prices for the residual exporters listed in section 2.6.2 were established in accordance with subsection 269TACAB(2)(c) using the weighted average export price determined for the selected exporters.

4.4.7 Uncooperative exporters and all other exporters

Export prices for uncooperative exporters were established under subsection 269TACAB(1)(d) which directs that export prices for uncooperative exporters be worked out under subsection 269TAB(3) having regard to all relevant information. The export price is based on the lowest weighted average export price of the selected exporters during the review period.

4.5 Normal value

4.5.1 Applicable legislation

Under subsection 269TAC(1) the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade (OCOT) for home consumption in the country of export in sales that are arms length transactions.

However, subsection 269TAC(2) sets out how normal value is to be ascertained if it cannot be ascertained under subsection 269TAC(1). In particular, if, in accordance with subsection 269TAC(2)(a)(ii), the Parliamentary Secretary is satisfied that the normal value of the goods exported to Australia cannot be ascertained under subsection 269TAC(1) because *'the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under [subsection 269TAC(1)]'*, normal value is such amount as the Parliamentary Secretary determines in accordance with subsection 269TAC(2)(c).

Where the Parliamentary Secretary is satisfied that such a market situation exists, normal value cannot be established on the basis of domestic sales in the country of export. Instead, the normal value of the goods is determined on the basis of a cost construction, including any profit applicable (subsection 269TAC(2)(c)) or third country sales (subsection 269TAC(2)(d)).

4.5.2 Particular market situation – the Commission's assessment

Upon initiation, the Commission sent a questionnaire to the Government of China (GOC) requesting the following information in relation to the aluminium extrusions market in China:

- identification of the names of the government departments, bureaus or agencies that are responsible for the administration of any GOC measures concerning the aluminium industry;
- details of all manufactures/traders of aluminium extrusions in China including location, whether they are a State Invested Enterprise (SIE) or State Owned Enterprise (SOE), production quantity and whether there is GOC representation in the business;

- a detailed description of the domestic Chinese aluminium extrusions industry and the relevant upstream industries;
- quarterly import and export data (volume and value);
- details about the operation of the Price Law of the People's Republic of China; and
- identification of any GOC initiatives and/or policies that affect the aluminium extrusions industry, including raw materials used in its manufacture.

The GOC did not provide a response to any of the questions related to an assessment of market situation.

In assessing whether a market situation exists in relation to the Chinese aluminium extrusions market during the review period, the Commission has relied on contemporary evidence available to it, as well as submissions made to the review and the findings of previous cases conducted by the Commission.

In light of all the information before the Commission, it is the Commission's view that a particular market situation existed in respect of the domestic market for aluminium extrusions in China for the review period. The evidence for this finding is set out in non-confidential **Appendix A**.

4.6 Establishing normal values for selected exporters

The Commission notes that, in accordance with subsection 269TAC(3A), the Parliamentary Secretary is not required to consider working out the normal value of goods under subsection 269TAC(2)(d) before working out the normal value of goods under subsection 269TAC(2)(c). Where subsection 269TAC(1) is not available, the Commission's policy preference, as outlined at chapter 10 of the Manual, is to construct normal values under subsection 269TAC(2)(c), in the first instance, when cost data of exporters is available.

Consequently, the Commission has constructed normal values under subsection 269TAC(2)(c), and has done so in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015*³¹ (the Regulations), relevant aspects of which are outlined below.

4.7 Constructed normal values – outline

4.7.1 Applicable legislation, policy and practice

Where the Parliamentary Secretary is satisfied that normal value cannot be determined under subsection 269TAC(1), subsection 269TAC(2)(c) provides that the normal value is:

(c) ... the sum of:

- (i) such amount as the [Parliamentary Secretary] determines to be the cost of production or manufacture of the goods in the country of export; and
- (ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of

³¹ As required by subsections 269TAC(5A) and 269TAC(5B).

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export—such amounts as the [Parliamentary Secretary] determines would be the administrative, selling and general costs associated with the sale and the profit on that sale;

As required by subsections 269TAC(5A) and 269TAC(5B), the construction of normal values under subsection 269TAC(2)(c) is required to be undertaken in accordance with sections 43, 44 and 45 of the Regulations.

To determine costs of manufacture or production in relation to constructing normal values, subsection 43(2) of the Regulations requires that if:

- an exporter or producer of the goods keeps records relating to the goods that are in accordance with generally accepted accounting principles (GAAP) in the country of export; and
- those records reasonably reflect competitive market costs associated with the production or manufacture of the goods;

the Parliamentary Secretary must work out the cost of production or manufacture using the information set out in the exporter or producer's records.

It is the Commission's view that, where an exporter's records are otherwise in accordance with GAAP, and are reliable, but the records do not reasonably reflect competitive market costs associated with the production or manufacture of the goods, it is open for the Parliamentary Secretary, if practicable, to adjust the records so they reasonably reflect competitive market costs associated with the production or manufacture of the goods in the country of export. In making such adjustments, the Commission considers that the Parliamentary Secretary may have regard to all relevant information.

4.7.2 Reasonableness of exporters' costs of production

In relation to this review, the Commission has found that the records of Chinese exporters relating to the goods have been kept in accordance with GAAP in the country of export.

However, the Commission's view is that, due to the existence of a particular market situation in respect of the domestic market for aluminium extrusions in China for the review period, the exporters' records do not reasonably reflect competitive market costs for the production or manufacture of the goods. Specifically, the Commission considers that aluminium costs in China, which make up a major proportion of the total costs of production of aluminium extrusions are distorted by GOC influence and do not reasonably reflect competitive market costs associated with the production or manufacture of the goods in terms of subsection 43(2)(b)(ii) of the Regulations (Appendix A refers). Accordingly, the Commissioner considers it appropriate that aluminium costs relating to the costs of production in the exporters' records be adjusted to reflect competitive market costs and that the methodology outlined below be applied in making such adjustments.

4.7.3 Aluminium cost adjustment

For the reasons set out in section 4.7.2, the Commission has determined that the constructed normal values should not consist solely of the actual aluminium costs incurred by exporters in the relevant costs of production. The Commission has considered all relevant information and considers it appropriate to use the exporter's records, but only

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after an adjustment is made to the records relating to the costs of aluminium, as submitted by each selected exporter in its exporter questionnaire. Such adjustment ensures that each exporter's records reflect competitive market costs. In doing so, the Commission has considered the individual circumstances of each exporters' purchases of aluminium and to the greatest extent possible has ensured that the exporter's adjusted records reflect cost that would be incurred in China, if not for the market situation.

The Commission has established in previous cases that aluminium costs in competitive markets in Asian regions are often priced according to:

- a published price for primary aluminium;
- a regional premium;
- inland transport costs;
- a billet premium reflecting an additional cost to convert an ingot to a billet for use in the production of the goods.

The Commission has included each of the above components in establishing a competitive benchmark cost for aluminium, as outlined below:

Primary aluminium – LME cash price

The Commission has relied on the average monthly London Metal Exchange (LME) official cash price data sourced from Metal Prices Pty Ltd under subscription.

Regional premium

The Commission has relied on the published Major Japanese Ports (MJP) regional premium sourced from Metal Prices Pty Ltd under subscription. Shipments under the MJP premium are made on a Cost, Insurance and Freight (CIF) basis. This means that the premium is inclusive of all costs associated with transporting the goods from the country of export to the destination port except for those cost relating to port of arrival charges and inland transport from the port of arrival to the final destination.

Inland transport costs

None of the exporters provided details regarding inland transport costs for primary aluminum purchases. In the absence of actual costs, the Commission calculated and applied the verified weighted average inland transport costs incurred by one exporter for its export sales of aluminum extrusions to Australia.

Billet premiums

The Commission has determined a billet premium using the Australian industry's billet price schedules relevant to the review period.

4.7.4 Calculation of adjustment

The aluminum costs have been determined by comparing the competitive benchmark cost to the exporter's actual costs, and applying the resulting variation as an adjustment to the exporter's records.

In cases where an exporter has purchased ingot or billet, the adjustment to the aluminium costs will be proportionate to the amount of billet and ingot purchased in the relevant period. Imported aluminium ingot and billet will not be subject to adjustment. This approach is intended to acknowledge that the costs of imported aluminium from outside of China are not distorted by GOC influence.

For instances where an exporter's average cost for domestic aluminium ingot and billet is above the competitive benchmark cost, a downwards adjustment has been applied. Where the benchmark is higher, the actual cost will be adjusted upwards by an amount which is commensurate with the variation between the actual costs and the competitive benchmark costs.

4.7.5 Determination of profit for constructed normal values

Subsection 45(2) of the Regulations requires that, where reasonably practicable, profit for constructed normal values under subsection 269TAC(2)(c)(ii) must be worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the OCOT.

Accordingly, the Commission has calculated a weighted average profit rate, measured as a percentage mark-up on the full cost to make and sell, for each selected exporter, using the actual records relating to the costs of production. This profit rate has been used to calculate an amount of profit for the purposes of subsection 269TAC(2)(c)(ii).

4.8 Normal values

4.8.1 Cooperative exporters

The normal value for each cooperative exporter was established in accordance with subsection 269TAC(2)(c) using the relevant exporter's quarterly weighted average cost to make and sell data (as adjusted to reflect competitive market costs), by model, and an amount for profit determined as outlined in section 4.7.5 above. Where applicable, adjustments to the normal value for each cooperative exporter were made under subsection 269TAC(9) to ensure comparability with the corresponding export price. Adjustments to normal value were made for differences in:

- packaging;
- inland transport;
- handling and other expenses;
- credit;
- trader's costs; and
- non-refundable VAT.

The Commission notes that the normal values determined for Jiawei in REP 387 and Goomax in REP 399 have been reviewed and modified slightly to incorporate all relevant information obtained and verified during the course of this review to ensure consistency with the other cooperative exporters.

4.8.2 Residual exporters

The normal value for residual exporters has been determined under subsection 269TACAB(2)(d) being the weighted average normal value for the like goods of the selected exporters.

4.8.3 Uncooperative and all other exporters

The normal value for uncooperative and all other exporters has been determined under subsection 269TACAB(1)(e) being the normal value worked out under subsection 269TAC(6) having regard to all relevant information. Specifically, the normal value is based on the highest weighted average normal value of the selected exporters during the review period.

4.9 Submissions regarding preliminary dumping margin calculations

4.9.1 PMI

PMI requested that, to the extent that any dumping margin is found, the Commission establish for PMI an individual ascertained export floor price rather than PMI being treated as a residual exporter. PMI noted that it had completed an REQ and was prepared to make itself available for on site or off site verification.

4.9.2 Capral regarding Jinxiecheng

Capral raised a number of issues³² in relation to the Commission's approach to determining the dumping margin for Jinxiecheng, including:

- that it was unclear to Capral what methodology the Commission used to determine the amount of profit applied in constructing the normal value;
- whether the Commission adequately investigated Jinxiecheng's affiliations and associations with entities involved in the export of the goods to Australia so as to ensure the export prices are arms length; and
- whether the Commission adequately investigated Jinxiecheng's export packaging costs for the use of stillages and additional packaging above that used for domestic sales.

4.9.3 Kam Kiu

Kam Kiu made a submission regarding the amount of profit used in constructing its normal value. A copy of Kam Kiu's submission can be obtained on the case public record at item 51.

Kam Kiu's submission presents two arguments in relation to the appropriate method for determining the amount of profit to be used in calculating a normal value.

Firstly, Kam Kiu submits that the models it manufactures for use in medical equipment, the motor vehicle industry and in mobile phones, and which it describes as "High-end

³² No 48 on the public record.

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Models”, should not be considered like goods for the purposes of calculating an amount of profit to be used in constructing a normal value.

Kam Kiu makes this assertion on the basis that the High-end Models have been processed or fabricated to an extent that they are not alike to the goods under consideration in all respects, and that they do they share characteristics closely resembling those of the goods under consideration.

In support of this claim, Kam Kiu notes that:

“High-end Models are:

(a) materially different in that they are often made with different grade alloys compared to the alloys used to manufacture Normal Models;

(b) different in outward appearance by way of the smaller lengths to which they are cut, when compared to the multiple metre long lengths that Normal Model aluminium extrusions are cut to;

(c) also different in outward appearance by way of the different, and sometimes detailed, finishes applied to them;

(d) also different in outward appearance by way of other additional production processes that are applied to them, such as drilling, CNC milling, and bending;

(e) characteristically different to the Normal Models due to the tighter tolerances to which they are built and the additional quality control inspections that they are subjected to—that is, the High-end Models that make it to sale are more consistent and accurate to specification than Normal Models; and

(f) made especially for and used in specific commercial applications—namely, in the production of mobile phones, in the production of sunroofs for motor vehicles, and in the production of medical equipment—whereas Normal Models are used in a broad range of applications, including window frames, door frames, et cetera.”

Secondly, Kam Kiu submits that, if the High-end Models are considered like goods by the Commission, the profits derived from the domestic sales of these High-end Models should be excluded from the calculation of profit for the purpose of constructing a normal value to ensure a fair comparison is made between the export price of the goods under consideration and the normal value of those goods.

In support of this assertion Kam Kiu notes that it:

“derives higher rates of profit from the High-end Models than it does from its other models. Further, these High-end Models are not exported to Australia. Therefore, the inclusion of the High-end Models in the verification team’s profit calculations lead to an inflated constructed normal value against which the export prices for the goods actually exported to Australia are compared. The comparison of an inflated value against a non-inflated value cannot be said to be a “fair comparison”.”

Kam Kiu further notes that the inclusion of profit from domestic sales of High-end Models

“has the potential to lead to a flawed and unfair outcome in which any of Kam Kiu’s competitors which do not manufacture models equivalent to the High-end Models—models which those competitors would be able to sell at a higher rate of profit in their domestic market—would have a lower rate of profit applied to their products by the Commission during its construction of a normal value in respect of their products. In this case, Kam Kiu’s products would have a higher dumping margin applied to them upon their import into Australia and, despite potentially having the same cost to manufacture and sell as their competitors, and the same domestic profit margin on the equivalent products, be ultimately more expensive in Australia.”

4.9.4 The Commission’s assessment

PMI

The Commission’s treatment of PMI as a residual exporter is consistent with the application of the sampling provisions at section 269TACAA and information it outlined at Attachment A to ADN No. 2017/38.

Based on the level of cooperation from the selected exporters, the high number of residual exporter questionnaires submitted and the available resources within the Commission to undertake verification activities, the Commissioner was unable to extend the review to include PMI without preventing the timely completion of the review.

Capral regarding Jinxiecheng

Profit

The Commission determined a weighted average profit rate for all like goods sold by Jinxiecheng in the OCOT in accordance with subsection 45(2) of the Regulation. This profit rate was then applied to each export model when calculating an amount of profit in constructing the normal value under subsection 269TAC(2)(c)(ii).

Related parties

Based on Jinxiecheng’s sales data and related party disclosures contained within Jinxiecheng’s audited financial statements, the Commission did not identify any evidence that Jinxiecheng was related to the traders through which sales to Australia were made or that there was any consideration payable for the goods other than price.³³ As such, the Commission considers that Jinxiecheng’s sales to these traders were arms length.³⁴

Packaging

Jinxiecheng sells its goods for export on an ex-works basis, therefore its dumping margin was calculated on an ex-works basis and in doing so, the Commission did not gather information from Jinxiecheng which would allow a packaging adjustment. However for the purposes of implementing revised variable factors for Jinxiecheng and for the purposes of including Jinxiecheng’s data in the calculation of a weighted average export price and

³³ In accordance with subsection 269TAA(1).

³⁴ In accordance with section 269TAA.

normal value to apply to the residual exporters, the Commission has ensured that Jinxiecheng's export price and normal value are at FOB terms. The amounts for export packaging and inland transport relating to the FOB terms was obtained from other selected cooperating exporters. These amounts include the costs for stillages and export packaging. This ensures that the revised variable factors for Jinxiecheng are consistent with other cooperative exporters.

Kam Kiu

The Commission has considered Kam Kiu first contention, that "High-end Models" it sells on the domestic market, should not be considered like goods for the purposes of calculating an amount of profit to be used in constructing a normal value.

The Commission accepts that the High-end Models Kam Kiu sells domestically may differ from the "Normal Models" manufactured by Kam Kiu, including by way of alloy composition, appearance as described by size or shape, additional production and quality control processes applied during their manufacture, or specificity of commercial application. However, the Commission does not accept that the combination of these factors changes the fundamental nature of these models such that they are not like goods.

Specifically, the Commission is of the view that the High-end Models are properly categorised within column three of the goods under consideration table contained in section 3.1, that is, the High-end Models are "aluminium extrusions that are parts intended for use in intermediate or finished products". The Commission can see no grounds based on the additional information provided by Kam Kiu to characterise the High-end Models as non GUC as envisaged under columns five, six or seven of the goods under consideration table.

The Commission does however accept the second contention raised by Kam Kiu, that the profits derived from the domestic sales of High-end Models should be excluded from the calculation of profit for the purpose of constructing a normal value. This will ensure a fair comparison is made between the export price of the goods under consideration and the normal value of those goods.

Subsection 269TAC(2)(c)(ii) requires that the normal value of the goods include an amount for profit on the assumption that the goods, instead of being exported had been sold for home consumption in the OCOT. As such the Commission has reviewed the amount of profit applied in constructing a normal value for Kam Kiu to ensure the amount of profit on domestic sales in the OCOT (as represented by product code) is relevant to and reflective of amounts that would be achieved by goods exported to Australia.

4.10 Dumping margins

The Commission has calculated dumping margins based on the revised variable factors. For this review the dumping margins for the review period have been calculated by comparing the weighted average export price of the goods during the review period, with the weighted average of corresponding normal values in accordance with subsection 269TACB(2)(a).

The dumping margin for each exporter is listed below:

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Exporter	Dumping margin
Kam Kiu	21.0%
Pan Asia	46.1%
Guang Ya	18.8%
Jinxiecheng	3.6%
Jiawei	3.6%
Goomax	11.1%
Residual exporters	28.6%
Uncooperative and all other exporters	64.4%

A summary of the export price, normal value and dumping margin calculations is at **Confidential Attachment 1**.

5 VARIABLE FACTORS – COUNTERVAILING NOTICE

5.1 Finding

The Commissioner finds that the variable factors relevant to the determination of ICD under the Dumping Duty Act have changed.

The Commissioner proposes to recommend to the Parliamentary Secretary that the countervailing duty notice have effect as if different variable factors (the export price and amount of countervailable subsidy received) had been ascertained. The revised variable factors have resulted in different subsidy margins relevant to the taking of ICD.

5.2 Programs reviewed

The Commission has reviewed the existing 19 subsidy programs that were found to be countervailable in REP 287. The Commission requested all cooperative exporters to provide data and information regarding all subsidies they received during the review period as part of its REQ.

During examination of information provided in REQs, and at verification visits by the Commission with selected Chinese exporters of the goods, the Commission obtained information that indicated benefits were received, or were able to be received, by exporters of the goods under several new subsidy programs that were not included in the 19 alleged programs previously countervailed by the Commission.

Through this process, the Commission identified 13 additional subsidy programs that were not identified in the initial application or subsequent submission. As such a total of 32 programs have been examined.

5.3 Export prices

The export prices relating to all exporters other than Zhongya were outlined previously in chapter 4. Zhongya's export price is only relevant to the countervailing duty notice therefore the assessment of its export price is outlined in this chapter (below).

5.3.1 Zhongya

The Commission conducted an on-site verification visit to Zhongya in China during May 2017. A copy of the visit verification report can be obtained on the case public record at item 44.

Verification of Zhongya's REQ found that the goods had been exported to Australia otherwise than by the importer but had not been purchased by the importer from the exporter.

Accordingly, export prices for Zhongya cannot be determined under subsections 269TAB(1)(a) or (b) and have been determined under subsection 269TAB(1)(c), having regard to all the circumstances of the exportation. Specifically, the export price has been determined as the price paid by the importer less transport and other costs arising after exportation.

5.4 Summary of countervailable programs

After assessing all relevant information available, the Commission has found that the following programs are countervailable³⁵ in respect of aluminium extrusions exported to Australia from China.

The findings in relation to each program are outlined in the below table.

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
2	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant	Yes
3	Provincial Scientific Development Plan Fund	Grant	Yes
4	Export Brand Development Fund	Grant	Yes
5	Matching Funds for International Market Development for SMEs	Grant	Yes
6	Superstar Enterprise Grant	Grant	Yes
7	Research & Development (R&D) Assistance Grant	Grant	Yes
8	Patent Award of Guangdong Province	Grant	Yes
9	Training Program for Rural Surplus Labour Force Transfer Employment	Grant	Yes
15	Aluminium provided at less than adequate remuneration	LTAR	Yes
18	Preferential tax policies in the Western Regions	Tax	Yes
21	Tariff and Value Added Tax (VAT) Exemptions on Imported Materials and Equipment	Tariff and VAT Exemptions	Yes
26	Innovative Experimental Enterprise Grant	Grant	Yes
29	Special Support Fund for Non-State-Owned Enterprises	Grant	Yes
32	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
35	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
47	Preferential tax policies for high and new technology enterprises	Tax	Yes
48	Provincial Government of Guangdong tax offset for R&D	Tax	Yes
56	PGOG special fund for energy saving technology reform	Grant	Yes

³⁵ Under section 269TAAC.

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Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
58	Development assistance grants from the ZHTDZ	Grant	Yes
59 [#]	Processing trade special fund	Grant	Yes
60 [#]	Trade insurance support fund	Grant	Yes
61 [#]	Enterprise employment fixed point monitoring work subsidy	Grant	Yes
62 [#]	Special funds for provincial enterprises to transfer and upgrade equipment	Grant	Yes
63 [#]	Reserve funds for enterprise development	Grant	Yes
64 [#]	High integrity enterprise award 2014	Grant	Yes
65 [#]	Jiangmen engineering technology research centre award	Grant	Yes
66 [#]	2016 Shanghai Automotive Commodities Exhibition special fee subsidy	Grant	Yes
67 [#]	Corporate remuneration survey subsidy	Grant	Yes
68 [#]	Energy saving project subsidy	Grant	Yes
69 [#]	Science and technology project subsidy	Grant	Yes
70 [#]	Provincial engineering and technology research centre 2016	Grant	Yes
71 [#]	Foreign trade development fund subsidy of Jiangmen City	Grant	Yes

Denotes programs not previously countervailed in relation to aluminium extrusions.

The Commission's findings in relation to each program investigated are outlined in **Non-Confidential Appendix B**.

5.5 Subsidies received

5.5.1 Cooperative exporters

After assessing all relevant available information and the data provided by the cooperative exporters, the Commission has determined that the following cooperative exporters have received a financial contribution conferring a benefit³⁶ in respect of the goods, in the form of subsidies listed in the table in section 5.3.

Exporter-specific subsidy margins have been calculated for each selected exporter with reference to the specific programs that conferred a benefit to each exporter.

Exporter	Applicable programs
Kam Kiu	21, 47, 48, 61 - 71

³⁶ Subsections 269TACC(2)(a)-(b).

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Zhongya	2, 21, 56, 58
Pan Asia	15, 59, 60
Guang Ya	5, 7, 15, 26, 56
Jinxiecheng	9
Goomax	2, 15, 26
Jiawei	NA

5.5.2 Residual exporters

The Commission has determined the amount of subsidy received for the residual exporters based on the weighted average countervailable subsidisation received by selected exporters.

In calculating a subsidy margin for residual exporters, the Commission also used a unit of measure (sales volume) and an export price calculated based on the weighted average of selected exporters.

Applicable programs
2, 5, 7, 9, 15, 21, 26, 56, 58 - 71

5.5.3 Non-cooperative entities

In the absence of GOC advice regarding the individual enterprises that had received financial contributions under each of the investigated subsidy programs, the Commission has had regard to the available relevant facts and determines that non-cooperative entities have received financial contributions that have conferred a benefit under all 32 programs found to be countervailable in relation to aluminium extrusions.

5.5.4 Subsidy margins

The table below shows the subsidy margins calculated by the Commission:

Exporter	Subsidy margin
Kam Kiu	6.7%
Zhongya	0.1%
Pan Asia	2.4%
Guang Ya	0.3%
Jinxiecheng	0.0%
Jiawei	0.0%
Goomax	2.3%
Residual exporters	2.0%
Non-cooperative entities	10.8%

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

6 NON-INJURIOUS PRICE

6.1 Introduction

Where the Parliamentary Secretary is required to determine IDD in respect of the goods and a countervailing duty notice has been published in respect of those goods, subsection 8(5BA) of the Dumping Duty Act applies. Subsection 8(5BA) requires the Parliamentary Secretary, in determining the IDD payable, to have regard to the 'lesser duty rule' which requires consideration of the desirability of fixing a lesser amount of duty, such that the export price, together with IDD and ICD, do not exceed the NIP.³⁷

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

However, in January 2014, legislative provisions commenced that prescribe certain circumstances, where if they exist, the Parliamentary Secretary is not required to have mandatory regard to the desirability of fixing a lesser amount of duty. These include:³⁸

- where there is a situation in the market that makes domestic selling prices unsuitable for the purpose of determining normal value under subsection 269TAC(1);
- where there is an Australian industry in respect of like goods consisting of at least two small to medium sized enterprises (as defined in the *Customs (Definition of "small-medium enterprise") Determination 2013*); and
- where the country in relation to which the subsidy has been provided, has not complied with Article 25 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement) for the compliance period.

These changes apply to dumping duty and countervailing duty notices that were published before 1 January 2014, but are continued on or after this date.³⁹

In REP 287 the Commissioner found that two of the prescribed circumstances mentioned above existed and therefore noted that the then Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the then Parliamentary Secretary) was not required to have regard to the desirability of fixing a lesser amount of duty due to the operation of subsections 8(5BAAA) and 10(3DA) of the Dumping Duty Act.

6.2 Final assessment of NIP

For the reasons outlined in Chapter 4 and Appendix A, the Commissioner recommends that the Parliamentary Secretary be satisfied that, in accordance with subsection

³⁷ Under subsections 269TACA(a) and (c), the NIP of the goods exported to Australia is the minimum price necessary to prevent the injury, or a recurrence of the injury, to the Australian industry caused by dumped or subsidised goods.

³⁸ Subsection 8(5BAAA) of the Dumping Duty Act in relation to the calculation of dumping duty and subsection 10(3DA) of the Dumping Duty Act in relation to the calculation of countervailing duty.

³⁹ Specifically, the legislative changes apply in circumstances where the Parliamentary Secretary publishes a notice under subsection 269ZHG(1) to continue the measures concerned.

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269TAC(2)(a)(ii), the situation in the Chinese aluminium extrusions market is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1).

Accordingly, for this review, the Commissioner considers that subsections 8(5BAAA)(a) and 10(3DA)(c) of the Dumping Duty Act apply, and as a result, the Parliamentary Secretary is not required to consider the lesser duty rule for the purposes of subsections 8(5BA) and 10(3D) of the Dumping Duty Act.

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

The Commission's calculation of NIP is at **Confidential Attachment 3**.

7 FINDINGS AND PROPOSED RECOMMENDATIONS

7.1 Findings

The Commissioner finds that, in relation to exports of aluminium extrusions to Australia from China for all exporters generally during the review period:

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

7.2 Proposed recommendations

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice and the countervailing duty notice in respect of exports of aluminium extrusions from China have effect as if different variable factors had been ascertained.

Consistent with the current form of anti-dumping measures, the Commissioner recommends that duties be calculated:

- in respect of any ICD that may become payable, as a proportion of the export price of the goods;⁴⁰ and
- in respect of any IDD that may become payable, using the combination of fixed and variable duty method.⁴¹

For each exporter, the combined fixed rate of ICD and IDD will be the sum of:

- the subsidy rate calculated for all countervailable programs; and
- the dumping rate calculated, less an amount for the subsidy rate applying to Program 15 (where this has been received by the exporter or group of exporters).

This approach avoids any overlap or double-counting that may arise from the circumstances of this case where there are domestic subsidies and a constructed normal value both relate to a major cost component based on surrogate data (in this instance, primary aluminium).

The table below lists the amounts of ICD and IDD that will apply.

Exporter	Fixed rate of combined IDD and ICD	Variable component of IDD
Kam Kiu	27.7%	Applicable only where the actual export price is below the ascertained export price
Pan Asia	46.1%	
Guang Ya	19.1%	
Zhongya	0.1%	

⁴⁰ In accordance with subsection 10(3B)(a) of the Dumping Duty Act.

⁴¹ Pursuant to subsection 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

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Jinxiecheng	3.6%	
Jiawei	3.6%	
Goomax	11.4%	
Residual exporters	30.1%	
Uncooperative and all other exporters	72.5%	

8 APPENDICES AND ATTACHMENTS

Non-Confidential Appendix A	Market situation assessment
Non-Confidential Appendix B	Assessment of countervailability of subsidies
Non-Confidential Appendix C	Assessment of whether State Invested Enterprises are public bodies
Confidential Attachment 1	Calculation of export price, normal value and dumping margin summary
Confidential Attachment 2	Calculation of subsidy margins
Confidential Attachment 3	USP and NIP calculation

NON-CONFIDENTIAL APPENDIX A – MARKET SITUATION ASSESSMENT

A1 Introduction

Having regard to all available information, it is the Commission's view that a market situation exists in respect of the domestic market for aluminium extrusions in China, such that sales in that market are not suitable for use in determining a normal value under subsection 269TAC(1).

A2 Australian legislation, policy and practise

Australia treats China as a market economy for anti-dumping purposes, and the Commission conducts its investigation in the same manner for China as it does for other market economy members of the World Trade Organization (WTO).

Irrespective of the country the subject of investigation, the Australian anti-dumping framework allows for rejection of domestic selling prices as the basis for normal values where there is a 'market situation' such that sales in that market are not suitable for use in determining a price, as outlined below.

A2.1 Legislation

Market situation

Subsection 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the OCOT for home consumption in the country of export in arms length transactions by the exporter or, if like goods are not sold by the exporter, by other sellers of like goods.

However, subsection 269TAC(2)(a)(ii) provides that the normal value of the goods exported to Australia cannot be determined under subsection 269TAC(1) where the Parliamentary Secretary is satisfied that '*...because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1)*'.

Where such a market situation exists, normal value cannot be established on the basis of domestic sales. Instead, the normal value may be determined using another method in section 269TAC. Therefore, a determination as to whether there is a market situation has potential consequences for the assessment of normal value.

Subsection 269TAC(2)(c) provides that a cost construction of normal value comprises:

- the sum of what the Parliamentary Secretary determines to be the cost of production or manufacture of the goods in the country of export; and
- on the assumption the goods, instead of being exported, had been sold in the OCOT in the country of export, such amounts that the Parliamentary Secretary determines would be the sales and general administrative costs associated with the sale and the profit on that sale.

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Subsection 269TAC(2)(d) provides that where the Parliamentary Secretary directs that third country sales be used for normal value, it will be based upon the price paid or payable for like goods sold in the OCOT in arms length transactions for exportation from the country of export to an appropriate third country.

As outlined in section 7.4.3, the Commission has chosen to establish normal values for cooperative exporters for the purposes of this review, in accordance with subsection 269TAC(2)(c).

Costs of production or manufacture

When determining the costs of production or manufacture of goods under subsection 269TAC(2)(c)(i) in a constructed normal value, subsection 269TAC(5A) provides that these costs must be worked out in accordance with the Regulations for the purposes of subsection 269TAAD(4)(a). Subsection 43(1) of the Regulations sets out the manner the Parliamentary Secretary must, for the purposes of subsection 269TAAD(4)(a), work out an amount to be the cost of production or manufacture of goods in a country of export, and the factors that he or she must take account of for that purpose.

Subsection 43(2) of the Regulations requires that if:

- an exporter keeps records relating to like goods that are in accordance with the GAAP in the country of export; and
- those records reasonably reflect competitive market costs associated with the production or manufacture of like goods,

the Minister must work out the cost of production or manufacture using information set out in the exporter's records.

Similarly, in terms of sales and general administrative costs, subsection 44(2) of the Regulations provides that if:

- an exporter keeps records relating to like goods that are in accordance with GAAP in the country of export; and
- those records reasonably reflect the sales and general administrative costs associated with the sale of like goods,

the Minister must work out the sales and general administrative costs using information set out in the exporter's records.

Where the conditions of subsections 43(2) and 44(2) of the Regulations are not met, it is the Commission's position that the cost records kept by that exporter are not required to be used in working out its costs.

Under subsection 269ZDA(3)(b), the Commissioner may have regard to any other matter that the Commissioner considers to be relevant to the review, and as such the Commission may resort to other information to calculate these costs.

A2.2 Policy and practice

Market situation

In relation to market situation assessments, the Commission's Manual states that:

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[i]n considering whether sales are not suitable for use in determining a normal value under s. 269TAC(1) because of the situation in the market of the country of export the Commission may have regard to factors such as:

- *whether the prices are artificially low; or*
- *whether there are other conditions in the market which render sales in that market not suitable for use in determining prices under s. 269TAC(1).*

Government influence on prices or costs could be one cause of “artificially low pricing”. Government influence means influence from any level of government.

In investigating whether a market situation exists due to government influence, the Commission will seek to determine whether the impact of the government’s involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market.

For subsection 269TAC(2)(a)(ii) to apply, the Commission is required to identify where a ‘market situation’ exists, and if found to exist, be satisfied that the ‘market situation’ renders sales in that market not suitable for normal value purposes before rejecting actual selling prices. It is considered that the assessment as to whether a market situation exists in a particular market constitutes a positive test.

Although it is for the Commission to establish the nature and consequence of the ‘market situation’, including an evaluation of whether there is an impact on domestic prices, the Commission considers that the pricing effect does not necessarily have to be quantified.

Costs of production or manufacture

In relation to the determination of the reasonableness of costs of production or manufacture for the purpose of doing a cost construction, under subsections 43(2) and 44(2) of the Regulations, it must be assessed:

- whether the cost to make is reasonably reflective of competitive market costs associated with the manufacture of like goods; and
- whether the sales and general administrative costs reasonably reflect the costs associated with selling like goods (i.e. are these costs generally reasonable).

It is noted that the Regulations specifically relates to the costs of like goods, rather than the price of the goods themselves (the sales price of these goods is what is examined for a market situation assessment).

The Commission considers that it is possible government influence on these costs can be such that these costs are not reasonably reflective of competitive market costs (costs of production or manufacture) or not generally reasonable (sales and general administrative costs). Again, it is considered that this is a question of the degree of the influence.

A3 Assessing market situation in this review

As part of its market situation assessment for this review, the Commission has considered:

- stated policies and plans of the GOC;

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- REQs by cooperative exporters and residual exporters;
- information obtained from Department of Industry, Innovation and Science resources;
- information from third party information providers;
- the Commission's 2016 report, *Analysis of Steel and Aluminium Markets Report to The Commissioner of the Anti-Dumping Commission*;
- other desktop research; and
- market situation assessments in relation to relevant cases between 2010 and 2016, such as:
 - Investigation No. 181 in relation to aluminium road wheels;
 - Reinvestigation No. 204 in relation to aluminium road wheels
 - Review No. 263 in relation to aluminium road wheels;
 - Inquiry No. 378 in relation to aluminium road wheels;
 - Investigation No. 148 in relation to aluminium extrusions;
 - Review No. 248 in relation to aluminium extrusions; and
 - Inquiry No. 287 in relation to aluminium extrusions.

The Commission did not receive a response to the government questionnaire from the GOC for this review. This has impeded the ability of the Commission to undertake its assessment. Notwithstanding, the Commission analysed all available information

When assessing the conditions within the Chinese primary aluminium market, the Commission has focused on the period 2010 to 2016, paying particular attention to the impact of conditions for exporters of aluminium extrusions in the review period. It is the Commission's view that the GOC distorted conditions in the Chinese primary aluminium market over the entire review period, and that these distortions created a market situation in respect of the domestic market for aluminium extrusions in China for the review period.

Typically, the cost of primary aluminium accounts for around 80 per cent of the total cost to make aluminium extrusions for exporters in China.⁴² Therefore, in considering whether a market situation exists in respect of the domestic market for aluminium extrusions, it is reasonable for the Commission to assess conditions in the primary aluminium market, as a significant raw material.

A4 Conditions in the Chinese primary aluminium market

Factors considered by the Commission when assessing conditions within the Chinese market during the review period include the level of, and trends in, aluminium production and production capacity, aluminium consumption, pricing and the influence of the GOC over these variables.

In terms of supply, Chinese aluminium production increased by approximately 83 per cent between 2010 and 2016, such that China was responsible for producing approximately 32 million tonnes of the total global aluminium production of 58 million tonnes. Over the review period of calendar year 2016 Chinese aluminium production remained steady⁴³,

⁴² Based on cost data provided by selected exporters.

⁴³ Department of Industry, Innovation and Science - Office of the Chief Economist "Resources and Energy Quarterly March 2017" page 100.

however the static production obscures the more complex issues impacting upon the Chinese primary aluminium production sector. The first half of calendar year 2016 saw monthly production reach low levels not seen for many years as Chinese smelters responded to GOC supply side reforms aimed at controlling air pollution and clamping down on “illegal capacity”. However, as aluminium prices began to recover throughout 2016 Chinese smelters were given greater incentive to restart idled capacity and boost production, with the result that monthly production rose for three consecutive months through to November 2016, with November 2016 registering the highest monthly production ever recorded⁴⁴. Despite the supply side reforms being attempted by the GOC, Chinese aluminium production is still expected to grow to 35 million tonnes over the next two years⁴⁵ based on available idle capacity that can be restarted and new projects expected to add capacity of up to 3.2 million tonnes.⁴⁶

In terms of demand, Chinese aluminium consumption increased by approximately 96 per cent between 2010 and 2016 to an annual consumption of 31 million tonnes out of the total global aluminium consumption of 58 million tonnes. China’s share of total world production (and consumption) have increased from around 40 per cent in 2010 to over 50 per cent in 2016. The strong growth in consumption over this period has resulted in only a small proportion of production, estimated to be around three per cent, being exported. In addition to strong consumption growth, exports of aluminium have been discouraged by significant differentials in the VAT rebate and export tariff rates applicable to primary aluminium as opposed to value added aluminium products, such as aluminium extrusions.

While the preceding analysis suggests there is a broader alignment between production and consumption within China, the Commission understands that the GOC State Bureau of Material Reserve (SBMR), operates a significant stockpile of primary aluminium, which is likely to have distorted domestic official consumption statistics. The failure of the GOC to respond to the Commission’s government questionnaire has restricted the Commission’s ability to assess the significance of these stockpiles, and their impact on the true balance between domestic production and consumption. In addition to the possible distortion of market conditions by the GOC through its stockpiling activities, the Commission estimates that capacity utilisation within the Chinese primary aluminium industry was around 83 per cent in 2015, compared to more normal levels of 92 per cent in 2010. The Commission’s assessment of there being significant excess capacity is broadly in line with the major themes of the GOC’s planning documents and directives before and after 2010.

In terms of pricing, the significant growth in Chinese aluminium production between 2010 and 2016 was accompanied by a decline in domestic prices⁴⁷, from around USD2,330 to USD1,900 per tonne. Over the same period, the primary non-Chinese aluminium contract price benchmark, the LME, declined from around USD2,180 to USD1,730 per tonne⁴⁸. Both benchmarks tested historical lows in November 2015 before stabilizing and then

⁴⁴ <http://marketrealist.com/2017/01/why-chinese-aluminum-production-still-matters-for-alcoa/> page 12

⁴⁵ Department of Industry, Innovation and Science - Office of the Chief Economist “Resources and Energy Quarterly June 2017” page 83.

⁴⁶ Ibid page 80.

⁴⁷ As represented by the Shanghai Futures Exchange (SHFE) Aluminium by Month spot contract price, sourced from Metalprices.com under subscription.

⁴⁸ LME Aluminium Cash Official rate monthly average, sourced from Metalprices.com under subscription.

rallying throughout 2016. During the review period, Chinese aluminium prices rose from around USD1,600 to USD1,900 per tonne, while the LME rose from around USD1,460 to USD1,730.

This rallying of prices is consistent with demand for aluminum both domestically and globally outstripping growth in supply in an environment where the GOC has commenced implementing supply side reforms. Market commentary suggests however that rising prices during the review period also contained a speculative element driven by uncertainty over the ongoing impact of these reforms. The Harbor Aluminium Intelligence Unit (Harbor) noted in its *October 2016 Special Aluminium Intelligence Report* that the SHFE saw aluminium open interest up 50% in the last half of 2016 to near record high levels.

In terms of profitability, Harbor notes that aluminium price rises have outpaced rising production costs, such that profit margins within the Chinese aluminium smelting industry stand at 10 year high levels, and that an estimated 93% of China's operating capacity is cashflow positive. Harbor further noted in its June 2017 Aluminium LME Price Outlook that these profitability levels remain above those historically justified by fundamentals. The Commission considers it likely that the attraction of historically unjustifiable profit levels will drive smelters to lift output which will ultimately work against the GOC's supply side reform agenda and add to downward pricing pressures.

In assessing all of the factors impacting upon the Chinese aluminium market during the review period, the Commission recognises that the GOC continues to take significant steps to restructure and reorganise the domestic aluminium industry to better manage the level of excess production capacity, oversupply and environmental concerns. The GOC introduced and implemented a 'supply-side reform' policy aiming at cutting domestic production and removing excess capacity. The Government also introduced a 'new for old' policy in 2016, to replace old and inefficient capacity with new and cost-effective capacity. These efforts are reflected in the GOC's plans and directives, which further support the Commission's view that there are significant distortions within the domestic Chinese market. The Commission considers, based on the information available to it, that these directives, and associated programmes, have had a limited impact in terms of addressing the underlying causes of market distortions, principally excess production capacity.

The Commission considers that key constraints on the effectiveness of these directives includes the divergence in economic and social objectives between the different levels of the GOC, and the availability of financing to support the restructuring and reorganisation. With regard to the objectives of provincial and local governments, aluminium smelters are typically major employers, sources of significant tax revenue and providers of health care and education services within their respective regions. It is also the Commission's understanding that aluminium smelters are often used by local governments to support the establishment of electrical generation facilities, particularly in the developing regions of western China. As such, there are significant incentives for provisional and local governments to resist directives from the central government to remove excess capacity and to provide ongoing support to local producers.⁴⁹

⁴⁹ AME Aluminium Strategic Market Study (Quarter 1 2016), pages 9 and 94. Page 9 notes that, in spite of the recently implemented 'supply side reform' policy, local governments within Gansu, Shanxi and Xinjiang

A5 GOC influence in the Chinese aluminium market

The Commission considers that the GOC materially contributed to the excess supply of aluminium in the domestic Chinese market and hence has significantly influenced the domestic price for Chinese primary aluminium during the review period. This influence occurred through the following mechanisms:

- industry planning directives and associated programmes;
- taxation and tariff policies;
- distortion of electricity production costs and pricing;
- aluminium stockpiling programmes; and
- provision of financial support to loss making aluminium smelters.

The extent of the GOC's direct involvement within the Chinese aluminium industry is also reflected in the extent of productive capacity accounted for by Chinese SOEs and SIEs. The Commission estimates that between 2010 and 2015, SOEs and SIEs accounted for between 32 and 47 per cent of productive capacity.⁵⁰ The Commission does not consider that the presence of these entities alone automatically means that a market is distorted. However, the presence of these entities, and their share of the market, does mean that there is a higher likelihood that the GOC plans and directives will be adhered to.⁵¹ Based on past cases, the Commission also considers that this status enables these entities to obtain preferential treatment by Chinese financial institutions, both in terms of their access to, and the cost of, financing.

The significance of SOEs and SIEs to the broader Chinese economy, including the primary aluminium and related industries, is also reflected in the recent State Council of China (State Council) 'guidance on the promotion of central enterprises restructuring and reorganisation'.

In introducing this guidance, the State Council notes the important role of 'central enterprises' in actively promoting structural adjustment, optimisation of structural layout and quality improvement within the Chinese economy. The commentary also notes that many structural problems are still prominent, that efficiency of resource allocation needs to be improved and that innovation capacity needs to be enhanced. In response to these issues, the guidance indicates that the Party Central Committee and State Council will deepen reform of SOE policies and arrangements to optimise state owned capacity allocation, promote transformation and upgrading. Details concerning the promotion of central enterprises restructuring and reorganisation are subsequently detailed. These include, under the 'safeguard measures' theme, the strengthening of the organisation and

provinces have reportedly been offering incentives for extra production. Page 94 notes that, while the official position has been that overcapacity in China's aluminium sector is to be addressed, in practice, there has been little in the way of practical effects in limiting discretionary production start-ups or restarts. Difficulties include local governments being directly involved in state smelting projects and subsidies being provided to maintain unviable operations. Indirect official intervention, such as requiring smelters to achieve emissions targets and efficiency levels, does not seem to have had the dramatic impact expected.

⁵⁰ Estimates are based on information previously provided by the GOC. Current information regarding this issue was requested by the Commission in its government questionnaire, to which the GOC did not provide a response.

⁵¹ <https://www.thebalance.com/the-10-biggest-aluminum-producers-2012-2339722>.

leadership of SOEs, strengthening of industry guidance, increased policy support and improved support measures.

A5.1 GOC directives

It is the Commission's view that the GOC has maintained a central role in the development of the Chinese aluminium industry, and by virtue of this has materially contributed to its rapid expansion and oversupply during the review period. The central role of the GOC in the Chinese aluminium industry is also reflected through the numerous planning documents and directives regarding the structure and composition of the Chinese aluminium industry. Examples of these plans and directives include the:

- thirteenth Five Year Plan (2016 to 2020) of China (2016);
- twelfth Five Year Plan (2011 to 2015) of China (2011);
- guidelines for Accelerating the Restructuring of the Aluminium Industry (the Guidelines) (2009);
- non-ferrous metal industry Adjustment and Revitalisation plan (2009);
- non-ferrous metal Five Year Plan (2012);⁵²
- directory catalogue on Readjustment of Industrial Structure and the Interim Provisions on Promotion of Industry Structure and Adjustment (2011);
- notice of the State Council on Further Strengthening the Elimination of Backward Production Capabilities;
- requirements on entry into the aluminium industry (2007);
- normalisation criteria on the aluminium industry (2013);⁵³
- circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy (2006); and
- State Council guidance on the Promotion of Central Enterprises Restructuring and Reorganisation (2016).

How these plans and directives relate to conditions within the Chinese primary aluminium industry, as well as the major themes, are discussed in subsequent sections of this appendix.

Other GOC directives, which are likely to have impacted conditions within the Chinese aluminium industry and markets include:⁵⁴

- notice of several opinions on curbing overcapacities and redundant constructions in certain industries and guiding the healthy development of industries (2009);
- guiding opinions on pushing forward enterprise mergers and acquisitions and reorganisation in key industries (2013); and
- the directory catalogue on readjustment of industrial structure (version 11) (2013 amendment).

⁵² Replaced the non-ferrous metal industry Adjustment and Revitalisation Plan (2009).

⁵³ Replaced the Requirements on Entry into the Aluminium Industry (2007).

⁵⁴ Sourced from market situation assessments at EPR 300/063 (steel reinforcing bar) and 301/038 (rod in coils).

A5.2 GOC directives – relevance and enforceability

The Commission considers that the extent of the GOC's influence within the Chinese primary aluminium industry is reflected in the major themes and objectives of its plans and directives. In assessing the relevance of these plans and directives, it is the Commission's view that the national five year plans provide the overarching framework for the industry and province specific plans and other directives, such as those noted above. In regards these plans and directives, the Commission acknowledges that the GOC considers these to be for guidance, rather than enforceable directives. However, the Commission is of the view that the five year plans also have a significant impact on how identified industries are supported and regulated by government planning bodies and other institutions. Examples of the channels through which identified industries are influenced includes:

- the presence of SOEs and SIEs;
- the wording of plans and directives;
- the consistency of the themes and objectives throughout different plans and directives;
- the central role of the National Development and Reform Commission (NDRC) in the development of directives, and the provision of project approvals; and
- enforcement mechanisms.

While the Commission notes that GOC ownership, through SOEs and SIEs, doesn't automatic translate into GOC control of these entities, it is the Commission's view that these entities are more likely to be responsive to the directives of the broader GOC. The level of influence and broader role of SOEs and SIEs within the Chinese primary aluminium industry is relevant to this assessment, as it is estimated these entities accounted for around 42 per cent of total primary aluminium capacity between 2010 and 2015. In regards the wording and consistency of themes and objectives between different plans, the Commission notes that these documents, and particularly the Guidelines, are written in such a way that it emphasises their importance and binding nature. Examples of these consistent themes include:

- the elimination of backwards capacity;
- control of production levels;
- encouraging mergers, restructuring and relocation;
- promoting technological and product quality improvement; and
- implementing and encouraging environmental measures.⁵⁵

In regards the role of the NDRC, the Commission notes that it is the key body responsible for both developing these directives, and providing overarching approval of large scale investment projects within China. It is the Commission's view that directives from the NDRC, as the GOC's central planning authority, would thus be central to both industry specific 'five year plans' and the planning decisions of all levels of government more generally. More explicit enforcement mechanisms are reflected in the notice of the State Council on 'Further Strengthening the Elimination of Backward Production Capabilities and Guidelines'. Mechanisms to address non-compliance include:

- revoking of pollutant discharge permits;

⁵⁵ EPR 263/051, page 85 refers.

- restrictions on financial institutions providing new credit support;
- restrictions on examination and approval of new investment projects;
- restrictions on approval of new land for use by the enterprise; and
- restrictions on issuing of new, and cancelling of existing, production licenses.

The Guidelines state that enterprises that do not conform to the industrial policy shall not be provided financial support by financial departments.⁵⁶ More implicit enforcement mechanisms are reflected by the regulatory powers of bodies, such as the Ministry of Industry and Information Technology. It is the Commission's understanding that such bodies maintain lists of companies that are deemed to be either compliant or non-compliant with national standards on production, environmental protection, energy efficiency and safety. Those deemed non-compliant are to be closed.⁵⁷

It is the Commission's view that the effectiveness of the above mentioned mechanisms are reflected in the responsiveness of industry groups and major companies to the GOC's various directives. For example, in responses to the GOC's recent 'supply side reform' directive, the Chinese Nonferrous Metals Association indicated that it would continue to limit production for the remainder of 2016,⁵⁸ while 14 significant Chinese aluminium producers agreed to not restart curtailed capacity within a one year period, as well as to refrain from ramping up constructed potlines.⁵⁹

A5.3 GOC directives – summary of themes, objectives and implementation

Below are a list of the major GOC plans and directives concerning the Chinese primary aluminium industry, and some of the key themes emphasised throughout them:

- thirteenth Five Year Plan of China (2016):
 - promoting innovation in science and technology;⁶⁰
 - support regional development and the development of special regions;⁶¹ and
 - promoting economical and intensive resource use;⁶²
- twelfth Five Year Plan of China (2011):
 - promoting the restructuring of key industries;⁶³

⁵⁶ EPR 263/051, page 85 refers.

⁵⁷ Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2015), page 47.

⁵⁸ Department of Industry, Innovation and Science, Resources and Energy Quarterly (June 2016), page 63.

⁵⁹ AME Aluminium Strategic Market Study (Quarter 1 2016), page 94.

⁶⁰ Chapter 6 refers.

⁶¹ Chapters 37 and 40 refer.

⁶² Chapter 43 refers.

⁶³ Chapter 9 refers.

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- promoting the orderly relocation of urban enterprises for non-ferrous metals;⁶⁴
- planning of mergers and reorganisation of enterprises;⁶⁵ and
- promoting the development of small and medium enterprises.⁶⁶
- the Guidelines:
 - objectives for structural adjustment within the Chinese primary aluminium industry;⁶⁷
 - measures to accelerate structural adjustment of the primary aluminium industry;⁶⁸
- non-ferrous metal industry Adjustment and Revitalisation Plan:
 - stabilisation and expansion of the domestic market;
 - control of volume and eliminate backward production capacity;
 - strengthening of technological innovation;
 - promoting of industry and enterprise restructuring;
 - promotion of non-ferrous metals industrial restructuring and upgrading.
- non-ferrous metals Five Year Plan:
 - policy mechanisms for controlling market access;
 - use of fiscal incentives to support elimination of backward capacity elimination;
 - use of improved 'supervision and inspection mechanisms', including the creation of annual lists of enterprises with backward capacity, technologies and equipment for elimination along with the monitoring and reporting of the elimination process;
 - strengthening of GOC organisation and leadership of elimination activities;
 - provision of support to competitive enterprises for the elimination of backward capacity through merger, acquisition or restructuring activities;
 - GOC agencies and government involvement in the development of implementation plans through alignment of tasks to cities, counties and specific enterprises along with submission of capacity elimination lists to the Ministry of Industry and Information Technology and National Energy Administration;
 - improved regulation and control of land use including prohibiting land supply for construction projects involving backward production capacities;
 - encouraging role of pricing mechanism to support reform and elimination of backward production capacity;
- requirements on entry into the primary aluminium industry:
 - speed up the structural reform of primary aluminium industry;
 - regulate behaviour;
 - achievement of environmental goals;

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ *ibid.*

⁶⁷ Chapter 2 refers.

⁶⁸ Chapter 3 refers.

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- normalisation criteria on primary aluminium industry:
 - requirements targeting the layout, location, and production scale new bauxite, alumina, electrolytic and secondary aluminium enterprises;
 - requirements that new electrolytic aluminium projects have surety over their alumina and electricity supply, transport and other external requirements;
 - requirements that new aluminium enterprises meet the relevant national standards concerning quality, capacity, energy efficiency and national environmental standards;
 - requirements for monitoring and administration by the Ministry of Industry and Information Technology;
- circular of the State Council on accelerating the restructuring of the sectors with production capacity redundancy:
 - promoting of economic restructuring to prevent inefficient expansion of industries that have resulted from blind expansion;
 - intensify the implementation of industrial policies related to the primary aluminium sector to strengthen the examination thereof and to improve them in practice; and
- State Council guidance on the promotion of central enterprises restructuring and reorganisation:⁶⁹
 - SOEs restructuring and reorganisation should serve national strategies, respect market rules, combine with reforms, follow laws and regulations, and stick to a coordinated approach;
 - state-owned capital should support SOEs, whose core businesses are involved in national and economic security and major national programmes, to strengthen their operations, and allow non state-owned capital to play a role, while ensuring the state-owned capital's leading position.
 - related departments and industries requested to steadily promote restructuring of enterprises in fields such as equipment manufacturing, construction engineering, electric power, steel and iron, nonferrous metal, shipping, construction materials, tourism and aviation services, to efficiently cut excessive overcapacity and encourage restructuring of SOEs.

A5.4 GOC involvement in energy sector

As a significant component of aluminium production costs, electricity pricing has a major impact on the price of primary aluminium, and the profitability of aluminium producers.⁷⁰ Based on information provided in the course of past investigations and the Commission's research, it is the Commission's view that the GOC continues to provide support to Chinese aluminium producers through discounted electricity. Examples of support provided by the GOC through electricity pricing include:

⁶⁹ http://english.gov.cn/policies/latest_releases/2016/07/26/content_281475402145108.htm.

⁷⁰ Electricity accounts for around 40 per cent of primary aluminium production costs (EPR 263/051, page 100 refers).

- the report by AME that ‘government-provided power subsidies are being seen in China to halt individual smelter curtailment plans, or to enable restarts and that this would appear unsustainable in the current market situation’;⁷¹
- the report in May 2016 that the state-owned entity, Aluminium Corporation of China Limited, had indicated it would shut down one of its 500 kilotonne (kt) smelters in the Gansu region, due to profitability issues. In response to this announcement, Gansu officials reduced the plant’s electricity bill by 30 per cent, with the facility subsequently returning capacity to full production;⁷²
- the report by AME that the Jinneng Taiyuan Oriental aluminium smelter in the Shanxi province intended to restart production, after being fully curtailed since early 2015, subsequent to receiving a significant power discount from the local government;⁷³
- the report by AME that the 450 kt expansion project for Jiarun aluminium smelter in the Xinjiang province had been supported by the receipt of electricity at favourable rates from the local grid, significantly below the price from its own captive power source;⁷⁴
- the report by AME that the 130 kt Zengshi Anshun Huangguoshu aluminium smelter in Guizhou province had returned to full capacity following the restarting of idle capacity, with the support of local government subsidies enabling the company to achieve favourable electricity prices;⁷⁵
- the report by AME that the Baise Yin Hai aluminium smelter in Guangxi province had delayed the planned restart of its full 200 kt smelting capacity, due to its inability to come to terms with the local government for favourable power subsidies to enable a profitable restart;⁷⁶ and
- the report by AME that the government of Yunnan province had announced that it was providing assistance to Yunnan Aluminum Holdings for it to lower its total smelting power costs. The report noted that the government may continue to assist Yunnan Aluminum Holdings until further reductions in its power cost has been achieved.⁷⁷

A5.5 GOC taxation and tariff policies

During the course of previous cases the Commission has established that the GOC tariff and tax rates applicable to the Chinese aluminium industry value chain serve to discourage the exportation of primary and alloyed aluminium while encouraging the exportation of downstream aluminium products such as aluminium extrusions and aluminium road wheels.

⁷¹ AME Aluminium Strategic Market Study (Quarter 4 2015), page 9.

⁷² www.wsj.com/articles/chineseexports-surge-amid-overcapacity-at-home-1462746980.

⁷³ Aluminium Outlook, July 2016, page 13.

⁷⁴ Aluminium Outlook, July 2016, page 13.

⁷⁵ Aluminium Outlook, July 2016, page 15.

⁷⁶ Aluminium Outlook, July 2016, page 16.

⁷⁷ Aluminium Outlook, July 2016, page 16.

The Commission did not obtain any information during the review to indicate that there had been any change to the GOC's VAT rebate and export tariff arrangements in relation to the aluminium industry.

As such it is the Commission's view that the GOC's VAT rebate and export tariff arrangements for primary aluminium, alloy aluminium and aluminium extrusions during the review period continued to have the effect of discouraging exports of primary and alloyed aluminium. It is the Commission's view that these arrangements contributed to increasing the supply available to the domestic market for the production of goods such as aluminium extrusions.

In assuming that there had not been a significant change in the tariff and rebate rates between the previous investigations and current review, it is the Commission's view that these arrangements are part of the broader GOC strategy to control the domestic market for primary and alloyed aluminium within China, to ensure there is adequate supply for downstream industries such as aluminium extrusions.

This conclusion is not only based on differences in the VAT rebates available to exports of aluminium extrusions and primary or alloyed aluminium, but also on the GOC's active involvement in the domestic market through stockpiling policies as discussed in the following section.

A5.6 GOC stockpiling policies

Prior cases undertaken by the Commission into aluminium related products exported to Australia from China identified the role of the China State Reserve Bureau, now known as the SBMR, in using aluminium stockpiles to manage price fluctuations in the domestic Chinese market.⁷⁸ An example of the SBMR's market interventions includes the purchase and sale of aluminium from its stockpile to support the domestic market.

The Commission considers that the SBMR's stockpiles continue to exist and are operated with the intention of managing aluminium price volatility within the domestic Chinese market. It is the Commission's view that the ongoing operation of the SBMR's stockpiling not only reflects the desire of the GOC to influence and control conditions within the domestic primary aluminium market, but also the distortion of market forces and hence the degree to which conditions within these markets reflect competitive market conditions.

A6 The Chinese aluminium extrusion market

A6.1 Conditions in the Chinese aluminium extrusion market

The ability of the Commission to undertake a detailed assessment of conditions within the Chinese aluminium extrusion market was constrained due to the lack of response to the government questionnaire from the GOC.

While the Commission was unable to undertake a detailed assessment of the aluminium extrusion market, it considers it highly likely that the impact of distorted aluminium pricing, along with the receipt of numerous subsidies both within and prior to the review period, is

⁷⁸ The SBMR is situated in the NDRC.

likely to have distorted conditions within this market. It is also the Commission's view that the GOC has actively sought to encourage the export of valued added aluminium products, such as aluminium extrusions, over primary aluminium, through differences in VAT rebates and export tariffs applied to these goods (Section B4.5 refers).

A6.2 GOC subsidy programmes to Chinese aluminium extrusion producers

In addition to the support mechanisms listed above, the Commission notes that previous cases into aluminium extrusions exported to Australia from China have identified a number of subsidy programmes that individual producers have received. In noting that these programmes have been reviewed as part of the countervailing section of this inquiry, and hence separately to the assessment of market situation, the Commission refers to Section 5.4 and **Appendix B** to demonstrate the nature of support being provided to China's aluminium related industries.

The extent of this support is further reflected in REQs and (confidential) annual reports provided by selected exporters for this review. Details of the monetary amounts of grants and other subsidies received by these companies is also detailed in the respective financial statements and accompanying notes.

A7 Assessment of market situation in the Chinese aluminium extrusions market

A7.1 Assessment of conditions in the Chinese aluminium market

As outlined in the preceding sections, the Commission considers that there continued to be significant GOC induced distortions within the Chinese primary aluminium market during the review period, which rendered pricing outcomes in that market uncompetitive. More specifically, the GOC induced distortion of that market is considered by the Commission to be structural, and will therefore take a significant time to dissipate.

A7.2 Flow through to aluminium extrusions sector

It is the Commission's view that, during the review period, primary aluminium prices in China were lower than they otherwise would have been if the markets operated in a competitive environment without GOC intervention. As primary aluminium is a major cost component in aluminium extrusions (averaging approximately 80 per cent across all selected exporters),⁷⁹ the Commission considers that this understated aluminium cost would likely have an impact on the end cost and prices of aluminium extrusions.

The Commission further views that the subsidies provided to the aluminium and aluminium extrusions sectors would likely impact the costs of production associated with aluminium extrusions through:

- improving the technology used by aluminium extrusion manufacturers, decreasing the cost of production, as well as affecting the supply and hence price of

⁷⁹ This observation has been made using cost information provided by selected exporters notwithstanding that this information was not considered suitable for establishing normal values.

aluminium producing enterprises (and upstream industries that are also likely to have received subsidies);

- decreasing the cost of inputs of aluminium and aluminium extrusions through the encouraged structural adjustment of aluminium and upstream industry entities; and
- directly reducing input prices of products at each stage of production if the subsidies are passed on by the recipient enterprises.

A7.3 Conclusion

The Commission therefore finds that GOC influence in the primary aluminium and aluminium extrusion sectors has resulted in significantly different aluminium extrusion prices, compared to what would have been the case if the relevant markets operated without significant GOC intervention.

The Commission recognises that the impact of these GOC influences on supply are extensive, complex and manifold, and their resulting impact on the price of aluminium extrusions is not able to be easily quantified. However, available information and the Commission's analysis indicates that these influences are likely to have had a material impact on the domestic price of aluminium extrusions in the review period, such that prices of aluminium extrusions in that market are no longer suitable for determining normal value under subsection 269TAC(1).

The Commission therefore considers that GOC influences in the Chinese aluminium industry have created a 'market situation' in the domestic aluminium extrusions market.

NON-CONFIDENTIAL APPENDIX B – ASSESSMENT OF COUNTERAVAILABILITY OF SUBSIDIES

B1 Introduction and summary of findings

This appendix details the Commission's assessment of the 19 subsidy programs that currently apply to aluminium extrusions exported from China. An additional 13 subsidy programs were also investigated in the review.

The findings in relation to all investigated programs, and the Commission's preliminary assessment of the countervailability of each in relation to aluminium extrusions from China, is outlined in the below table.

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
2	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant	Yes
3	Provincial Scientific Development Plan Fund	Grant	Yes
4	Export Brand Development Fund	Grant	Yes
5	Matching Funds for International Market Development for SMEs	Grant	Yes
6	Superstar Enterprise Grant	Grant	Yes
7	Research & Development (R&D) Assistance Grant	Grant	Yes
8	Patent Award of Guangdong Province	Grant	Yes
9	Training Program for Rural Surplus Labour Force Transfer Employment	Grant	Yes
15	Aluminium provided at less than adequate remuneration	LTAR	Yes
18	Preferential tax policies in the Western Regions	Tax	Yes
21	Tariff and VAT Exemptions on Imported Materials and Equipment	Tariff and VAT Exemptions	Yes
26	Innovative Experimental Enterprise Grant	Grant	Yes
29	Special Support Fund for Non-State-Owned Enterprises	Grant	Yes
32	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
35	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes

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Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
47	Preferential tax policies for high and new technology enterprises	Tax	Yes
48	Provincial Government of Guangdong tax offset for R&D	Tax	Yes
56	PGOG special fund for energy saving technology reform	Grant	Yes
58	Development assistance grants from the ZHTDZ	Grant	Yes
59 [#]	Processing trade special fund	Grant	Yes
60 [#]	Trade insurance support fund	Grant	Yes
61 [#]	Enterprise employment fixed point monitoring work subsidy	Grant	Yes
62 [#]	Special funds for provincial enterprises to transfer and upgrade equipment	Grant	Yes
63 [#]	Reserve funds for enterprise development	Grant	Yes
64 [#]	High integrity enterprise award 2014	Grant	Yes
65 [#]	Jiangmen engineering technology research centre award	Grant	Yes
66 [#]	2016 Shanghai Automotive Commodities Exhibition special fee subsidy	Grant	Yes
67 [#]	Corporate remuneration survey subsidy	Grant	Yes
68 [#]	Energy saving project subsidy	Grant	Yes
69 [#]	Science and technology project subsidy	Grant	Yes
70 [#]	Provincial engineering and technology research centre 2016	Grant	Yes
71 [#]	Foreign trade development fund subsidy of Jiangmen City	Grant	Yes

Denotes programs not previously countervailed in relation to aluminium extrusions.

B2 Relevant legislation

Section 269T defines a 'subsidy' as follows:

"subsidy" , in respect of goods exported to Australia, means:

(a) a financial contribution:

(i) by a government of the country of export or country of origin of the goods; or

(ii) by a public body of that country or a public body of which that government is a member; or

(iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

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(iv) a direct transfer of funds from that government or body; or

(v) the acceptance of liabilities, whether actual or potential, by that government or body; or

(vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or

(vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or

(viii) the purchase by that government or body of goods or services; or

(b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.

(Emphasis added)

This reflects Article 1.1 of the WTO *Agreement on Subsidies and Countervailing Measures (SCM Agreement)*.

Section 269TAAC defines a countervailable subsidy as follows:

(1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.

(2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:

(a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or

(b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or

(c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or

(d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.

(3) Subject to subsection (4), a subsidy is not specific if access to the subsidy:

(a) is established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and

(b) those criteria or conditions do not favour particular enterprises over others and are economic in nature; and

(c) those criteria or conditions are strictly adhered to in the administration of the subsidy.

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(4) Despite the fact that access to a subsidy is established by objective criteria, the Minister may, having regard to:

(a) the fact that the subsidy program benefits a limited number of particular enterprises; or

(b) the fact that the subsidy program predominantly benefits particular enterprises; or

(c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or

(d) the manner in which a discretion to grant access to the subsidy has been exercised;

determine that the subsidy is specific.

Subsection 269TACC(3) specifies the guidelines that the Minister is to have regard to in determining whether a financial contribution confers a benefit.

B3 Information considered by the Commission

B3.1 Information provided by exporters

The Commission has relied upon information provided by exporters in assessing the alleged subsidy programs. This includes information provided by the selected cooperative exporters in the respective REQs, as well as information provided during verification visits.

B3.2 Information provided by the GOC

The Commission included questions relating to each program in a Government Questionnaire that was sent to the GOC on 23 March 2017. The deadline for receipt of the questionnaire was 1 May 2017.

The Commission did not receive a response from the GOC.

B3.3 Other information considered

The Commission also considered as part of this assessment findings from other subsidy investigations conducted by the Commission and other jurisdictions.

B4 Category One: Program 15 – Aluminium provided at less than adequate remuneration

B4.1 Background

In the original investigation it was alleged that Chinese exporters of aluminium extrusions have benefited from the provision of goods by the GOC at less than adequate remuneration. In particular it was claimed that primary aluminium, the main input used in the manufacture of aluminium extrusions, was being produced and supplied by government owned enterprises at less than adequate remuneration.

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Under this program, a benefit to the exporter of aluminium extrusions is conferred by primary aluminium being provided by the GOC at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

Consistent with the original investigation and subsequent cases, the Commission sought information from exporters to establish the quantity and cost of primary aluminium purchases, the form (ingot or billet), origin of product, identify of the supplier (trader or original manufacture) and if the supplier was an SOE.

In determining whether the provision of goods conferred a benefit, the Commission has had regard to the guidelines set out in subsection 269TACC(3).

In establishing a benchmark price for assessing the adequacy of primary aluminium remuneration supplied by SOEs, the Commission considered whether the following sources were an appropriate basis for comparison:

- prices from private enterprises;
- SHFE spot prices; and
- the constructed LME based benchmark which is the same benchmark detailed in section 4.8.3 above.

The exporters from whom the Commission received REQs collectively reported over one million tonnes of aluminium purchases during the review period. The exporter's purchasing data also revealed whether that aluminium was imported or purchased from domestic suppliers, and where it was purchased from domestic suppliers whether the supplier, or the supplier's manufacturer was purchased from a SOE or SIE. In some cases where a trader was involved the exporter was unable to identify if the producing mill was an SOE or SIE mill. One exporter who did not provide adequate information fell into this category.

The Commission also conducted an examination of the five selected cooperative exporter's monthly primary aluminium purchases during the review period and compared these monthly costs with both the SHFE spot price applicable for that month and the constructed LME based benchmark. The Commission found that the SHFE and constructed LME benchmark were close to parity for the first two months of the review period before the SHFE began to appreciate at a greater rate than the LME benchmark over the remainder of the review period. This divergence may be explained by the speculative pricing element underlying the SHFE discussed in section A4 of Non-confidential Appendix A.

In terms of selected cooperative exporter's aluminium purchases, the Commission found that the exporters' aluminium costs loosely tracked the SHFE, however, with the exception of one exporter, the exporters had paid less than the SHFE spot price in every month of the review period. In relation to the exceptional exporter, its aluminium costs were below the SHFE spot price for eight months of the review period.

When comparing the selected cooperative exporters' aluminium purchases to the constructed LME benchmark the Commission noted that:

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- one exporter's monthly costs were below the benchmark for every month of the review period;
- three exporters' monthly costs were below the benchmark for 11 months of the review period; and
- one exporter's monthly costs were below the benchmark for 4 months of the review period.

In keeping with the position outlined in REP 248, the Commission considers that the constructed LME based prices for imported primary aluminium are the most suitable benchmark for determining whether primary aluminium was provided at less than adequate remuneration and conferred a benefit in relation to the primary aluminium used in the goods exported.

The definition of a subsidy under subsection 269T(1) includes reference to 'a financial contribution by a government...or any public body....'.

The Commission's assessment of whether SOE and SIE smelters providing primary aluminium constitute public bodies as that term is used in the definition of 'subsidy' in subsection 269T(1) is discussed at **Non-confidential Appendix C**.

Under this program, a benefit to exported aluminium extrusions is conferred by being provided by the GOC (through SOE or SIE) at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

B4.2 Legal Basis

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

B4.3 WTO Notification

The Commission is not aware of any WTO notification of this program.

B4.4 Eligibility Criteria

There are no articulated eligibility criteria for enterprises receiving electricity at less than adequate remuneration.

B4.5 Is there a subsidy?

Financial contribution

Based on the information above, the Commission considers that this program involves a financial contribution that involves the provision of goods, at less than adequate remuneration.

By a government or public body?

In the absence of information from the GOC in relation to its role in the operation of SIEs, and in light of the reasons detailed in **Non-confidential Appendix C**, the Commission

considers that it is reasonable to conclude for the purpose of the current review that SIEs that produce and supply raw materials to manufacturers of aluminium extrusions should be considered public bodies within the meaning of subsection 269T(1).

Conferral of benefit on the goods

As Chinese exporters use primary aluminium in their production of aluminium extrusions, it is considered this financial contribution is made in respect of the production, manufacture or export of the goods.

Where the financial contribution involves a direct transaction between the public bodies and the exporters of the goods, the Commission considers that this financial contribution confers a direct benefit in relation to the goods exported to Australia, because the goods were provided at less than adequate remuneration, as determined by the Commission.

These benefit amounts are equal to the amount of the difference between the purchase price and the adequate remuneration, i.e. a constructed price based on LME.

Where exporters of the goods during the review period received a financial contribution under the program of primary aluminium at less than adequate remuneration, it would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under section 269T.

B4.6 Is the subsidy a countervailable subsidy?

As provided for in paragraph 269TAAC(4)(a), the Parliamentary Secretary may determine that a subsidy is specific, having regard to the fact that the subsidy program benefits a limited number of particular enterprises.

As the criteria or conditions providing access to this subsidy favour Chinese manufacturers that purchase primary aluminium, the program is considered to be specific under subsection 269TAAC(2)(a), and the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).

For this reason the subsidy is determined to be specific.

B4.7 Amount of subsidy in respect of the goods

The Commission found that the following exporters received a financial contribution that conferred a benefit under Program 15 during the review period, in accordance with subsection 269TACC(3)(d);

- PanAsia;
- Guang Ya;
- Goomax;
- residual exporters; and
- all other exporters.

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In accordance with subsection 269TACC(4), the adequacy of remuneration was determined by reference to a 'benchmark' for adequate remuneration, established having regard to the prevailing market conditions for like goods in China.

In accordance with subsection 269TACD(1), the amount of the subsidy has been determined as the difference between adequate remuneration (as established) and the actual purchase price paid for primary aluminium incurred by the selected exporters in purchasing these goods from SOEs or SIEs.

In accordance with subsection 269TACD(2), the amount of subsidy received in respect of aluminium extrusions has been apportioned to each unit of the goods using the total sales volume of the relevant companies.

Residual exporters

Residual exporters have been attributed a unit amount of subsidisation based on the total benefits received by the selected cooperative exporters who received a benefit from this program.

This was then calculated as a percentage of subsidisation by attributing the unit amount of benefit over the weighted average export price of the relevant selected cooperative exporters.

Uncooperative and all other exporters

For the uncooperative and all other exporters, no information was provided by either the GOC or the individual exporters themselves to identify whether a financial contribution has been received under this program. The Commission considers that these entities have not given the Commissioner information considered to be relevant to the investigation within a reasonable period.

Pursuant to subsections 269TAACA(1)(c) and 269TAACA(1)(d), the Commissioner has acted on the basis of all the facts available and made reasonable assumptions in order to determine whether a countervailable subsidy has been received in respect of the goods.

Based on the Commission's assessment of the costs and sources of primary aluminium purchases made by selected cooperative exporters it is considered likely that uncooperative and all other exporters purchased primary aluminium from SOEs and SIEs at subsidised prices and therefore received a financial contribution under this program.

In the absence of information that demonstrates the quantum of primary aluminium purchased from SOEs and SIEs by uncooperative and all other exporters, in accordance with subsection 269TACD(1), the Commission determines that uncooperative and all other exporters would have had benefits conferred to them under this program by this financial contribution, and has calculated the amount of subsidy received by reference to the amount of subsidy received by cooperative exporters in receipt of a benefit under this program.

B5 Category Two: Preferential Tax Policies

B5.1 Program 18 Preferential tax policies in the Western Regions

Program 18 was found to be countervailable in the original investigation and again in REP 248. Recent investigations into aluminium road wheels⁸⁰, silicon metal⁸¹ and grinding balls⁸² have determined this program to be countervailable.

The Commission is not aware of the current status of this program given the GOC has declined to participate in the review. Furthermore, the REQs submitted by exporters did not provide any new information in regard to this program.

The Commission considers that no new information has been provided that would warrant a reconsideration of the determination made in relation to this program in REP 248, and has therefore maintained its position that this program is countervailable in relation to exports of aluminium extrusions from China for the review period.

B5.2 Program 47 Preferential Tax Policies for High and New Technology Enterprises (HNTE).

Program 47 was first found to be countervailable in REP 248, and has subsequently been found to be countervailable in recent investigations into deep drawn stainless steel sinks⁸³, silicon metal and grinding balls.

During exporter verification Kam Kiu indicated it has received a reduced income tax rate of 15 per cent during the review period and prior consecutive years on account of qualifying as a HNTE under Article 28 of the *Enterprise Income Tax law of China 2008*.

On the basis of the Commission's previous finding in relation to Program 47 and Kam Kiu's disclosure during a verification visit, the Commission finds that Program 47 is countervailable in relation to exports of aluminium extrusions from China.

B5.3 Program 48 Provincial Government of Guangdong tax offset for R&D

Program 48 was first found to be countervailable in REP 248.

During exporter verification Kam Kiu indicated that it is eligible to receive a tax offset for research and development expenditures under Program 48.

On the basis of the Commission's previous finding in relation to Program 48 and Kam Kiu's disclosure during verification, the Commission finds that Program 48 is countervailable in relation to exports of aluminium extrusions from China.

⁸⁰ REP 181

⁸¹ REP 237

⁸² REP 316

⁸³ REP 238

B6 Category Three: Tariff and VAT Exemptions - Program 21 Tariff and VAT Exemptions on Imported Materials and Equipment

This program was found to be countervailable in the original investigation and again in REP 248, as well as recent investigations into silicon metal and grinding balls.

In REP 248 Zhongya contended that Program 21 ceased to operate on 30 April 2009. The Commission was not able to obtain substantive evidence that this was the case. The Commission sought to establish this contention by reviewing the asset registers of the verified exporters to identify imported purchases of material and equipment that would be eligible under Program 21 since 30 April 2009. The Commission found that the exporters had not purchased imported materials and equipment during that review period and also confirmed that the most recent imported purchases that predated the alleged end of the program was in March 2009. For those imports pre-dating 30 April 2009 that received an exemption under Program 21, the asset registers indicated a depreciation period up to 10 years. The Commission concluded that the benefit received through Program 21 had been amortised over a 10 year period and therefore that the benefit conferred would not expire until at least 30 April 2019.

To verify the ongoing existence of Program 21 in the current review the Commission sought information from exporters about the operation of this program as well as the exporters' asset registers for imports subject to Program 21 purchased between 1 January 2007 and 31 December 2016.

Kam Kiu provided clarification about the operation of program 21. Kam Kiu advised that, with effect from 1 January 2009, the VAT exemption on importation of self-use equipment was terminated, however there was a "buffer period" for the VAT exemption component of this program until 30 April 2009. This is consistent with the Commission's finding in REP 248. Kam Kiu advised however that the change implemented on 1 January 2009 only related to the VAT exemption, and the import tariff on self-use equipment continues to be exempted under this program.

Relying on the information and data provided by the cooperative exporters, the Commission considers that the Program 21 continues to remain countervailable on exports of aluminium extrusions from China during the review period. The Commission considers that the VAT exemption component of Program 21 will remain countervailable until at least 30 April 2019, while the import tariff exemption component may remain countervailable beyond this date.

B7 Category Four: Grants

B7.1 Programs 2, 5, 7, 9, 26, 56 and 58

Programs 2, 5, 7, 9 and 26 were found to be countervailable in the original investigation and again in REP 248. Programs 56 and 58 were first found to be countervailable in REP 248.

The Commission's verification of selected cooperative exporters subject to the review established that subsidies had been received under Programs 2, 5, 7, 9, 26, 56 and 58.

This finding provides evidence that these particular programs are still operable and are potentially available to other members of the aluminium extrusion industry. The data collected in the review also supports the findings from recent investigations into aluminium road wheels, deep drawn stainless steel sinks, silicon metal and grinding balls which also determined one or more of these programs to be countervailable.

B7.2 Programs 3, 4, 6, 8, 29, 32 and 35

These programs were found to be countervailable in the original investigation and again in REP 248. Prior investigations into aluminium road wheels, deep drawn stainless steel sinks, silicon metal and grinding balls also determined one or more of these programs to be countervailable.

The Commission is not aware of the status of these programs given the GOC has declined to participate in the review. Furthermore, the REQs submitted by exporters did not provide any new information in regard to these programs.

The Commission considers that no new information has been provided that would warrant a reconsideration of the determinations made in the REP 248, and has therefore maintained its position that these programs are countervailable.

B7.3 Additional grant programs

In addition to the existing 14 grant programs that were considered as part of this review, the Commission has also had regard to 13 additional grant programs in response to information obtained during exporter verifications. The Commission's assessment of the following additional programs is contained in the table below.



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

Anti-Dumping Commission

ADDITIONAL GRANT PROGRAMS

Program number	Program description	Background	WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method used to calculate subsidy margin
Program 59	Processing Trade Special Fund	One cooperative exporter reported receiving a benefit under this program in its REQ.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the review period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T.</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with subsection 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.</p>	<p><u>Selected Exporter</u></p> <p>A subsidisation rate per unit has been calculated based on the amount of benefit received by the selected cooperative exporter under this program as a function of total sales volume of all goods. This has then been calculated as a percentage by attributing this per unit amount over the export price of the selected cooperative exporter.</p> <p><u>Residual exporters</u></p> <p>Residual exporters have been attributed a rate of per unit subsidisation based on the amount of benefit received by the one selected cooperative exporter who received this program divided by the total volume of sales of the selected exporters.</p> <p>This was then calculated as a percentage of subsidisation by attributing this per unit amount over the weighted average export price of four selected exporters</p>

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								<p>who had export prices calculated under section 269TAB(1).</p> <p><u>All other exporters</u></p> <p>As neither the GOC nor uncooperative exporters provided information as to whether these exporters benefited from this program, the Commissioner has considered all relevant information to conclude that it is likely that uncooperative and all other exporters have had benefits conferred to them under this program during the review period in the form of direct transfers of funds.⁸⁴</p> <p>In calculating the amount of subsidy, the Commission:</p> <ul style="list-style-type: none"> • attributed the same rate of per unit subsidisation determined above for the one selected exporter who received this program; and • determined a subsidisation rate (margin) by reference to the lowest weighted average export price amongst the selected exporters.
Program 60	Trade Insurance Support Fund	One cooperative exporter reported receiving a benefit under this program in its REQ.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.	Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.	As for Program 59 above.

⁸⁴ Pursuant to s. 269TAACA(1)(c) and 269TAACA(1)(d), the Commissioner has acted on the basis of all the facts available and made reasonable assumptions in order to determine whether a countervailable subsidy has been received in respect of the goods. In the absence of usage information, the Commissioner has determined it is reasonable to assume all other exporters received benefits under this program, nothing that one selected exporter was found to have received a benefit under this program.

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						<p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the review period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T.</p>	<p>that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.</p>	
Program 61	Enterprise employment fixed point monitoring work subsidy	<p>One cooperative exporter reported receiving a benefit under this program in its REQ.</p> <p>The Commission understands that this program is subject to the approval of the Bureau of Labour of Taishan City.</p>	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the review period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T.</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with subsection 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.</p>	As for Program 59 above.
Program 62	Special funds for provincial	One cooperative exporter	The Commission is not aware of any	The Commission is not aware of any	The Commission is not aware of	<p>Due to the nature of this grant, and in light of the limited information available,</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the</p>	As for Program 59 above.

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	enterprises to transfer and upgrade equipment	<p>reported receiving a benefit under this program in its REQ.</p> <p>The Commission understands that this program is subject to the approval of the Bureau of Technology, Industry and Commerce of Taishan City.</p>	WTO notification of this program.	legal basis for this program.	the eligibility criteria for this program.	<p>it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the review period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T.</p>	<p>Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with subsection 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.</p>	
Program 63	Reserve funds for enterprise development	<p>One cooperative exporter reported receiving a benefit under this program in its REQ.</p> <p>The Commission understands that this program is subject to the approval of the Bureau of Technology, Industry and Commerce of Taishan City.</p>	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the review period received a grant under this program, this would therefore confer a benefit in relation to the</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with subsection 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).</p>	As for Program 59 above.

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						goods, and this financial contribution meets the definition of a subsidy under section 269T.	Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.	
Program 64	High integrity enterprise award 2014	<p>One cooperative exporter reported receiving a benefit under this program in its REQ.</p> <p>The Commission understands that this program is subject to the approval of the Bureau of Technology, Industry and Commerce of Taishan City.</p>	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the review period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T.</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with subsection 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.</p>	As for Program 59 above.
Program 65	Jiangmen Engineering Technology Research Center Award	<p>One cooperative exporter reported receiving a benefit under this program in its REQ.</p> <p>The Commission understands that this program is subject to the approval of the Bureau of Technology,</p>	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with subsection 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within</p>	As for Program 59 above.

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		Industry and Commerce of Taishan City.				extrusions due to receipt of funds from the GOC. Where exporters of aluminium extrusions during the review period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T.	a designated geographical region. The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3). Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.	
Program 66	2016 Shanghai Automotive Commodities Exhibition special fee	One cooperative exporter reported receiving a benefit under this program in its REQ. The Commission understands that this program is subject to the approval of the Bureau of Technology, Industry and Commerce of Taishan City.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise. This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC. Where exporters of aluminium extrusions during the review period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T.	Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable. In accordance with subsection 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region. The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3). Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.	As for Program 59 above.
Program 67	Corporate remuneration survey subsidy	One cooperative exporter reported receiving a benefit under	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the	Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such	As for Program 59 above.

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		<p>this program in its REQ.</p> <p>The Commission understands that this program is subject to the approval of the Bureau of Human resources and Social Security of Taishan City.</p>				<p>production, manufacture or export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the review period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T.</p>	<p>assumptions as considered reasonable.</p> <p>In accordance with subsection 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.</p>	
Program 68	Energy saving project subsidy	<p>One cooperative exporter reported receiving a benefit under this program in its REQ.</p> <p>The Commission understands that this program is subject to the approval of the Bureau of Technology, Industry and Commerce of Taishan City.</p>	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the review period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with subsection 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy</p>	As for Program 59 above.

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						contribution meets the definition of a subsidy under section 269T.	program to be specific, and therefore countervailable.	
Program 69	Science and technology project subsidy	<p>One cooperative exporter reported receiving a benefit under this program in its REQ.</p> <p>The Commission understands that this program is subject to the approval of the Bureau of Technology, Industry and Commerce of Taishan City.</p>	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the review period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T.</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with subsection 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.</p>	As for Program 59 above.
Program 70	Provincial engineering and technology research centre 2016	<p>One cooperative exporter reported receiving a benefit under this program in its REQ.</p> <p>The Commission understands that this program is subject to the approval of the</p>	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with subsection 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits</p>	As for Program 59 above.

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		Bureau of Technology, Industry and Commerce of Taishan City.				<p>manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the review period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T.</p>	<p>particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.</p>	
Program 71	Foreign trade development fund subsidy of Jiangmen City	<p>One cooperative exporter reported receiving a benefit under this program in its REQ.</p> <p>The Commission understands that this program is subject to the approval of the Bureau of Technology, Industry and Commerce of Taishan City.</p>	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of the eligibility criteria for this program.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the review period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T.</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with subsection 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.</p>	<p><u>Selected Exporter</u></p> <p>A subsidisation rate per unit has been calculated based on the amount of benefit received by the selected exporter under this program as a function of total sales volume of exported goods. This has then been calculated as a percentage by attributing this per unit amount over the export price of the selected exporter.</p> <p><u>Residual exporters</u></p> <p>Residual exporters have been attributed a rate of per unit subsidisation based on the amount of benefit received by the one selected exporter who received this program divided by the total volume of sales of the four selected exporters who had export prices calculated under section 269TAB(1).</p> <p>This was then calculated as a percentage of subsidisation by attributing this per unit amount over the weighted average export price of four selected exporters who had export prices calculated under section 269TAB(1).</p> <p><u>All other exporters</u></p>

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								<p>As neither the GOC nor uncooperative exporters provided information as to whether these exporters benefited from this program, the Commissioner has considered all relevant information to conclude that it is likely that uncooperative and all other exporters have had benefits conferred to them under this program during the review period in the form of direct transfers of funds.</p> <p>In calculating the amount of subsidy, the Commission:</p> <ul style="list-style-type: none">• attributed the same rate of per unit subsidisation determined above for the one selected exporter who received this program; and• determined a subsidisation rate (margin) by reference to the lowest weighted average export price amongst the selected exporters.
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Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

NON-CONFIDENTIAL APPENDIX C - ASSESSMENT OF WHETHER STATE INVESTED ENTERPRISES ARE PUBLIC BODIES

C3.1 Background

In order for the identified programs to be considered a 'subsidy' the financial contribution provided under the program must be from a government, public body, or private body entrusted with governmental functions.

C3.2 Previous consideration

The term 'public body' is not defined in the legislation or the SCM Agreement. It has been considered by the Commission in previous investigations and has been the subject of a number of WTO Appellate Body findings. To inform the Commission's assessment of this issue in the present review the following documents are considered to be relevant:

- INV 177 – the Commission's finding in relation to the subsidisation of hollow structural sections (HSS) exported from China;
- INV 203 – the Commission's reinvestigation of certain findings in INV 177, one of which was whether SIEs that supplied hot rolled coil (HRC) to manufacturers of HSS were public bodies;
- INV 193 – the Commission's findings in relation to the subsidisation of aluminium zinc coated steel and galvanised steel (collectively 'coated steel') exported from China. The Commission found that SIEs that supplied hot rolled coil (HRC) to manufacturers of coated steel were public bodies;
- INV 237 – the Commission's finding in relation to the subsidisation of silicon metal exported from China;
- INV 238 – the Commission's finding in relation to the subsidisation of deep drawn stainless steel sinks exported from China;
- INV 316 – the Commission's finding in relation to the subsidization of grinding balls exported from China;
- Anti-Dumping Review Panel (ADRP) Report (15 November 2013) in relation to INV 193 – the ADRP disagreed with the Commission's finding that SIE HRC suppliers were public bodies. The Parliamentary Secretary accepted the ADRP's finding in relation to this issue;
- DS 379 – this Appellate Body finding considered the meaning of 'public body' in accordance with Article 1.1(a)(1) of the SCM Agreement. This report is considered to be one of the most definitive references to date on the matter of public bodies;
- DS 436 – this WTO Panel finding further considered the requirements for finding an entity to be a public body; and

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- *United States – Countervailing Measures (China)* (DS 437) – this dispute involved a number of decisions of the US in relation to multiple investigations and again considered the factors that determine whether an entity is a public body.

In relation to DS 437, while this decision is recent the Commission considers it of less relevance to the present investigation. In the US investigations considered by the Panel in DS 437, the US determined that the relevant input suppliers were public bodies on the grounds that these suppliers were majority-owned or otherwise controlled by the GOC. The Commission agrees with the views of the Panel in this dispute, and the Appellate Body in DS 379, that majority ownership of itself does not lead to a conclusion that an entity is a public body. The Commission does not advocate such an approach in the present review.

In DS 379 the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):⁸⁵

- **Indicia 1** - where a *statute or other legal instrument* expressly vests government authority in the entity concerned;
- **Indicia 2** - where there is evidence that an entity is, *in fact, exercising governmental functions* may serve as evidence that it possesses or has been vested with governmental authority; and
- **Indicia 3** - where there is evidence that a government exercises *meaningful control* over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

The Commission, and more recently the ADRP, have used these indicia as the basis for its approach to determining decisions regarding whether entities subject to dumping and countervailing investigations should be considered to be public bodies.

C3.3 Decisions of the Commission

In INV 177, the Commission assessed whether SIE suppliers of HRC were public bodies according to each of the three indicia. The Commission concluded that Indicia 1 was not met, however evidence exists to show that both Indicia 2 (evidence that an entity is, in fact, exercising governmental functions) and Indicia 3 (evidence that a government exercises meaningful control over an entity and its conduct) are satisfied in relation to Chinese HRC and/or narrow strip manufacturers. This conclusion was based on an assessment of a number of factors including policy documents issued by the GOC and statements by SIE steel manufacturers in public reports. The Commission considered that the evidence ‘show(ed) that these entities are still constrained by, and abiding by, multiple GOC policies, plans and measures, and in some circumstances acting as an important means by which these GOC policies and plans are implemented.’

⁸⁵ Appellate Body report DS379 at [318]

The Commission's finding was appealed to the Trade Measures Review Officer (TMRO), who directed the Commission to conduct a reinvestigation of the public body finding. The Commission's reinvestigation report, INV 203, affirmed the findings in INV 177. It considered that "SIEs are exercising government functions and that there is evidence that the government exercises meaningful control over SIEs and their conduct. In performing government functions, SIEs are controlling third parties."

In INV 193, relating to coated steel, the Commission relied on its findings in INV 203 to find that SIE suppliers of HRC were public bodies. The GOC appealed this finding to the ADRP. In disagreeing with the Commission's finding, the ADRP made the following observations:

- Active compliance with governmental policies and/or regulation does not equate to the exercise of governmental functions or authority;
- In concluding that certain companies were actively implementing objectives in the five-year plans the Commission conflated the purpose of acting in accordance with a government policy and carrying out government functions;
- Article 14 of the Interim Measures, which vests SASAC with certain obligations in respect of the economy, is a reference to SASAC and not to the SIEs. It does not evidence how, or if, there is authority delegated to SIEs to control participants in the iron and steel industry;
- Having an impact on other participants in the industry is not indirectly controlling them and is not evidence of the exercise of governmental authority; and
- There is no material which demonstrates that there has been a delegation (noting this is not necessarily in the strict sense of delegation) of governmental authority to SIEs to impose state-mandated policies on participants in the iron and steel industry.

C3.4 Commission's consideration

The Commission considers that the ADRP's decision to direct a reinvestigation of the findings in INV 177 was, to a large extent, premised on the TMRO's view that there needs to be the essential element of exercising a power of government over third persons. This view was in turn likely influenced by the words of the Appellate Body in DS 379, 'that the term "government" is defined as the "continuous exercise of authority over subjects; authoritative direction or regulation and control".'

The Panel considered this issue in DS 437, a decision that was handed down after the ADRP's report in relation to coated steel. The Panel stated in its report that '(it) was not persuaded by China's argument that... "[a] public body, like government in the narrow sense, thus must itself possess the authority to 'regulate, control, supervise or restrain' the conduct of others".' The Appellate Body's view was that this was not supported by the findings in DS 379. It stated that:

'In our view, governments, either directly themselves or through entities that are established, owned, controlled, managed, run or funded by the government, commonly exercise or conduct many functions or responsibilities that go beyond "the effective power to 'regulate', 'control', or 'supervise' individuals, or otherwise 'restrain' their conduct".'

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The Commission considers that while it was relevant for the ADRP to consider this element in the context of the coated steel case, the ability to control others is of itself not decisive in determining whether an entity possesses, exercises or is vested with government authority.

In DS 436, also released after the ADRP's findings, the WTO Dispute Settlement Body further considered the issue of whether a government exercises 'meaningful control' over an entity. The Panel stated that 'to determine whether an entity has governmental authority, an investigating authority must evaluate the core features of the entity and its relationship to government. Governmental control of the entity is relevant if that control is "meaningful".'

The Dispute Settlement Body stated that, in its view:

- 'government involvement in the appointment of an entity's directors (involving both nomination and direct appointment) is extremely relevant to the issue of whether that entity is meaningfully controlled by the government';
- 'while a government shareholding indicates that there are formal links between the government and the relevant entity, government involvement in the appointment of individuals – including serving government officials – to the governing board of an entity suggests that the links between the government and the entity are more substantive, or "meaningful", in nature'; and
- 'in the context of government ownership and government involvement in the appointment of directors, such evidence provides additional support for a finding that an entity is under the "meaningful" control of the government.'

The Interim Regulations set out the functions and obligations of a state-owned assets supervision and administration authority. Relevant provisions are as follows:

- Article 13 states that one of the main responsibilities is to 'appoint or remove the responsible persons of the invested enterprise';
- Article 16 states that a state-owned assets supervision and administration authority 'shall establish and improve the mechanism for selecting and appointing the responsible persons or enterprises';
- Article 17 describes the positions presumably considered to be 'responsible persons', which include the general manager, deputy general manager, chief accountant, chairman, vice-chairman and director of the board;
- Article 17 also states that where the State Council or any level of government 'provide otherwise' in relation to the appointment or removal of responsible persons then those decisions prevail;
- Article 18 states that a state-owned assets supervision and administration authority shall establish a performance evaluation system and conduct annual performance reviews of responsible persons; and
- Article 19 states that a state-owned assets supervision and administration authority shall determine the remuneration of responsible persons of wholly state-owned enterprises.

The Commission is not in possession of evidence as to whether SASAC has appointed directors or other key management positions to any of the suppliers of steel billet, electricity, coke, coking coal or grinding bar identified within the REQs submitted. Additionally, as part of the government questionnaire, the GOC was requested to respond

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to a number of questions concerning entities that produce grinding balls and upstream raw material, including:

- a list of all manufacturers of grinding balls and upstream raw materials suppliers and the percentage of GOC ownership in each (A4);
- whether there is GOC representation in the business, and if so the type of representation (e.g. on the Board of Directors), the authority responsible, and an indication of any special rights provided to the representative (e.g. veto rights) (A4);
- for each business where the GOC is a shareholder and/or there is GOC representations in the business provide the complete organisational structure, including subsidiaries and associated businesses and copies of annual reports of the business for the last 2 years (A4);
- confirm whether the '*Law of the People's Republic of China on State-Owned Assets of Enterprises*' is current and has not been superseded or supplemented by other laws and if so provide any superseding or supplementary laws (C2).

The GOC did not provide a response to these questions. In the absence of this information the Commission has had regard to other relevant information in its possession, including information contained in the application and other information obtained by the Commission relating to the ownership structures of Chinese steel producing enterprises, the findings of previous investigations, and the Interim Regulations.

The Commission observes that the GOC submitted during INV 177 that the current law, as outlined in Article 7 of the Interim Regulations, prevents SASAC from exercising any government functions of administrative public affairs. Article 7 states:

People's governments at all levels shall strictly abide by the laws and regulations on State-owned assets management, persist in the separation of government functions of social and public administration from the functions of investor of State-owned assets, persist in the separation of government functions from enterprise management and separation of ownership from management.

The State-owned assets supervision and administration authority shall not perform the functions of social and public administration assumed by the government. Other institutions and departments under the government shall not perform the responsibilities of investor of State-owned assets of enterprises.

The Commission does not consider this Article to be at odds with a finding that SIEs are public bodies. The Appellate Body in DS 379 stated that an entity may possess certain features suggesting it is a public body and others that suggest that it is a private body. In DS 436 the Government of India argued that the National Mineral Development Corporation enjoyed a significant amount of autonomy from it, which was granted "to make the public sector more efficient and competitive". These are similar sentiments to those expressed by the GOC in the Commission's previous considerations of public bodies. The Dispute Settlement Body in DS 436 stated that '(s)o long as public sector enterprises are involved, we are not persuaded that the grant of a greater degree of autonomy is necessarily at odds with a determination that such public sector enterprises constitute public bodies.'

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In the absence of information from the GOC in relation to its role in the operation of SIEs, and in light of the reasons considered above, the Commission considers that it is reasonable to conclude for the purpose of the current review that SIEs that produce and supply raw materials to manufacturers of aluminium extrusions should be considered public bodies.