



CUSTOMS ACT 1901 - PART XVB

REPORT
NO. 248

REVIEW OF ANTI-DUMPING MEASURES
CERTAIN ALUMINIUM EXTRUSIONS
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

13 July 2015

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ABBREVIATIONS

12 th FYP	Guidelines of the 12th Five-Year (2011-2015) Plan of the People's Republic of China for the National Economic and Social Development
ACBPS	Australian Customs and Border Protection Service
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
ARW	Aluminium road wheels
AUD	Australian Dollar
China	The People's Republic of China
CIF	Cost, Insurance & Freight
CPC	Central Committee of the Communist Party of China
CRU	CRU Group Ltd
CSRB	China State Reserve Bureau
CTMS	Cost to Make & Sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FIE	Foreign Invested Enterprise
FOB	Free on Board
GAAP	Generally accepted accounting principles
GOC	Government of China
GQ	Government Questionnaire
Guang Ya Aluminium	Guang Ya Aluminium Industries Co Ltd
Guangdong Zhongya	Guangdong Zhongya Aluminium Co Ltd
HNTE	High and New Technology Enterprises
ITA	International Trade Administration
ITRB	International Trade Remedies Branch
Kam Kiu	Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd
LME	London Metal Exchange
Merger Guidelines	Guiding Opinion on Accelerating the Promotion of Merger and Reorganization of Enterprises in Key Industries
MIIT	Ministry of Industry and Information Technology
Minister	The Minister for Industry and Science
MJP	Major Japanese Ports
NDRC	GOC's National Development and Reform Commission
NIP	Non-injurious Price
Oceanic	Oceanic Aluminium Pty Ltd

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P&O Aluminium	P&O Aluminium (Melbourne) Pty Ltd
P&O Melbourne	P&O Aluminium (Brisbane) Pty Ltd
P&O Perth	P&O Aluminium (Perth) Pty Ltd
P&O Sydney	P&O Aluminium (Sydney) Pty Ltd
PanAsia	PanAsia Aluminium (China) Co., Ltd
PIR	Preliminary Information Request
PRC	People's Republic of China
RMB	Renminbi (Official currency of the PRC)
SCM Agreement	WTO Agreement on Subsidies and Countervailing Measures
SEF	Statement of Essential Facts
SHFE	Shanghai Futures Exchange
SIE	State Invested Enterprise
SINOMACH	The China National Machinery Industry Corporation
SOE	State Owned Enterprises
The Act	<i>Customs Act 1901 (Cth)</i>
the applicant	PanAsia Aluminium (China) Co., Ltd
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the goods	Certain Aluminium Extrusions as described in section 3.3
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry and Science
The Regulations	<i>Customs (International Obligations) Regulation 2015 (Cth)</i>
TMRO	Trade Measures Review Officer
USD	United States Dollar
USP	Unsuppressed Selling Price
WTO	World Trade Organisation

1. SUMMARY AND RECOMMENDATIONS

1.1. Summary

This review is in response to an application lodged by PanAsia Aluminium (China) Co., Ltd (PanAsia) to review the anti-dumping measures as they apply to exports to Australia of certain aluminium extrusions from the People's Republic of China (China).¹

The application was based on a change in the variable factors. The variable factors relevant to the review are the normal value, export price, non-injurious price (NIP) and the amount of countervailable subsidy received in respect of the goods. The application states that the normal value, export price and the amount of countervailable subsidy received in respect of the goods have changed. A key reason for PanAsia's application relies on the relative change between the prices for primary aluminium offered on the London Metal Exchange (LME) and Shanghai Futures Exchange (SHFE).

In relation to PanAsia, it received its own dumping duty rate and countervailing duty rate after the then Minister for Home Affairs (the Minister) published a notice on 28 October 2010 which specified dumping and countervailing duty applying to aluminium extrusions exported to Australia from China. Notification of the then Minister's decision was given in Australian Customs Dumping Notice No. 2010/40.

Although the application for this review was made by PanAsia, the change in circumstances upon which PanAsia's application commenced was found to be common to all exporters. The Commissioner of the Anti-Dumping Commission (Commissioner) considered it appropriate to recommend to the Parliamentary Secretary to the Minister for Industry and Science (Parliamentary Secretary) to extend the review to ensure the change to the measures applied to all exporters. The Parliamentary Secretary accepted this recommendation.

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1.2. Applicable law

Division 5 of Part XVB of the *Customs Act 1901* (Act) enables affected parties to apply for a review of anti-dumping measures.² The Division, among other matters:

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

¹ Refer to the full description of the goods in section 3.3 of this report.

² All references to legislation in this report are references to the *Customs Act 1901*, unless otherwise specified.

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After conducting a review of anti-dumping measures, the Commissioner must give the Parliamentary Secretary a report containing recommendations in relation to the review of measures.

1.3. Findings and conclusions

The Commissioner has conducted a review of anti-dumping measures, in respect of exports of certain aluminium extrusions from China to Australia, as they affect:

- Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd;
- Guangdong Zhongya (Countervailing only);
- Panasia;
- Guang Ya;
- Residual exporters; and
- All uncooperative and other exporters,

and is satisfied that variable factors relevant to the taking of those measures in relation to all exporters from China have changed.

1.4. Recommendations

The Commissioner recommends to the Parliamentary Secretary that the dumping duty notice and countervailing notice have effect in relation to:

- Kam Kiu;
- Guangdong Zhongya (Countervailing only);
- Panasia;
- Guang Ya;
- Residual exporters; and
- All uncooperative and other exporters;

as if different variable factors had been ascertained.

2. BACKGROUND

2.1. Initiation

On 2 May 2014, PanAsia lodged an application requesting a review of the anti-dumping measures as they apply its own exports of aluminium extrusions to Australia from China under Division 5 of Part XVB of the *Customs Act 1901* (the Act)³. PanAsia claims that certain variable factors relevant to the taking of the anti-dumping measures have changed.

The Commission examined the application and the Commissioner decided not to reject the application. A key element in PanAsia's application was centred on the relationship between the primary aluminium price benchmarks that were relied upon in the original investigation.

In the original investigation (REP 148) the price benchmarks referenced were the SHFE and the LME. In broad terms it was found that primary aluminium purchased from State Owned Enterprises (SOEs) by PanAsia and other exporters were at prices that were equivalent to the SHFE benchmark. It was further found in the original investigation that primary aluminium was provided at less than adequate remuneration and countervailable, and was not reflective of competitive market cost for establishing normal value. The original investigation did not make a finding of a market situation in relation to aluminium extrusions.

The outcome of the original investigation resulted in a finding that PanAsia and other exporters had received a benefit in the form of primary aluminium provided at less than adequate remuneration by State Owned Enterprises (SEOs). The measure of the benefit received relied on the observation that the LME benchmark prices were higher than the SHFE prices. The variance between the two was applied to the actual prices paid by the exporters for their primary aluminium for the purposes of determining a constructed normal value, determining sales in the ordinary course of trade and the amount of subsidy received under Program 15.

PanAsia's review of measures application cites the change in the two benchmark levels which appears to indicate that the LME cash price is lower than SHFE prices. On this basis, PanAsia has made the claim that it is no longer receiving a countervailable subsidy in relation to its primary aluminium purchases and prices for primary aluminium in China reflect a competitive market.

Anti-Dumping Commission Consideration Report 248 contains the Commission's assessment of PanAsia's application. PanAsia's grounds for claiming it no longer receives a countervailable subsidy in relation to its primary aluminium meant that there appeared to be reasonable grounds for asserting that the amounts of countervailable subsidy received by PanAsia had changed.

2.2. Extending the review to include all exporters

Section 269ZC(4)(b) of the Act provides that if the Commissioner decides not to reject an application for 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 PanAsia's application for review of anti-dumping measures would be commenced (a change in the relationship between the SHFE and the LME) is common to all Chinese aluminium manufacturers, the Commission considered that it would be appropriate to ensure that any changes to the measures are applied to all exporters of aluminium extrusions from China. Prior to initiation of the review, the Parliamentary Secretary decided to extend the review to all exporters.

On 12 June 2014, the Commissioner initiated a review of the anti-dumping measures in respect of aluminium extrusions exported from China by all exporters. 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 *The Australian* newspaper on 12 June 2014 and Anti-Dumping Notice No. (ADN) 2014/46. The review period for the purpose of this review is from 1 April 2013 to 31 March 2014.

2.3. Previous cases

Dumping and countervailing Investigation 148 (2009)

On 24 June 2009, following an assessment of an application made by Capral Limited, the then CEO of the Australian Customs and Border Protection Service (ACBPS) initiated investigations into:

- the alleged dumping of certain aluminium extrusions exported to Australia from the China; and,
- the alleged subsidisation of certain aluminium extrusions exported to Australia from China.

The anti-dumping measures were initially imposed by public notice on 28 October 2010 by the then Attorney-General following consideration of *Trade Remedies Branch Report No. 148* (REP 148).

In REP 148, ACBPS concluded that:

- aluminium extrusions exported from China to Australia was dumped with margins between 2.7% and 25.7%;
- that aluminium extrusions exported from China was subsidised during the investigation period. The subsidy margins ranged from 3.8 to 18.4%;
- the dumped and subsidised exports caused material injury to the Australian industry producing like goods; and
- continued dumping and subsidisation may cause further material injury to the Australian industry.

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The then ACBPS found that the combined dumping and subsidy margin for PanAsia was 10.1%.

The then Attorney General accepted the recommendations contained in REP 148, including the reasons for the recommendations, the material findings of fact on which the recommendations were based, and the evidence relied on to support those findings.

The current measures are applicable to all exporters from China with the exception that interim dumping duties and countervailing duties do not apply to Tai Ao Aluminium Tai Shan Co., Ltd (Tai Ao) and interim dumping duties do not apply to Guangdong Zhongya Aluminium Company Limited.

Reinvestigation 175 (2011)

Following a review by the former Trade Measures Review Officer, the then ACBPS conducted a reinvestigation into certain findings made in REP 148. *International Trade Remedies Branch Report No. 175* (REP 175) sets out the findings affirmed and new findings made by the then ACBPS as a result of the reinvestigation, which were accepted by the then Attorney-General.

To give effect to the then Attorney-General's new notices under section 269ZZM of the Act these notices, which came into effect on 27 August 2011, replaced the dumping and countervailing duty notices published on 28 October 2010.

With the exception of Tai Ao, the then Minister published a dumping duty notice imposing dumping duties on the goods exported to Australia from China and a countervailing duty notice imposing countervailing duties on the goods exported to Australia from China (excluding Tai Ao) in *The Gazette* and *The Australian* on 3 July 2012.

Federal Court Proceedings (September 2013)

In Federal Court proceedings, two exporters, Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd (Kam Kiu) (and its related companies Kam Kiu Aluminium Products SDN BHD and Kam Kiu (Australia) Pty Limited) and PanAsia (and its related company OPAL (Macao Commercial Offshore) Limited (formerly known as PanAsia (Macao Commercial Offshore) Limited)) (OPAL Macao), sought judicial review of the then Attorney-General's decision based on REP 175.⁴

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

For the purpose of this review, except for PanAsia, the original notice is the dumping and countervailing duty notice published on 28 October 2010 as amended by the

⁴ Anti-Dumping Notice 2013/80.

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reinvestigation by ACBPS, and the Federal Court decision.⁵ In relation to PanAsia, the original notice is the dumping and countervailing duty notice published on 19 February 2015 as amended by anti-circumvention inquiry 241 by the Minister.⁶

Review of anti-dumping measures Case 186 (2012)

On 2 November 2012, a notice was published declaring the outcome of a review of the anti-dumping measures as they apply to a single exporter, Wuxi Xisha Photoelectric Aluminium Products Co. Ltd. *International Trade Remedies Branch Report No. 186* refers.

Review of anti-dumping measures Case 229 (2013)

On 8 May 2014, the then Parliamentary Secretary to the then Minister for Industry and Science published a notice following a review of anti-dumping measures as they apply to Alnan Aluminium Co., Ltd. Anti-dumping measures applicable to Alnan Aluminium Co., Ltd remained unaltered.

Anti-circumvention inquiry Case 241 (2014)

On 19 February 2015, a notice was published declaring the outcome of an anti-circumvention inquiry into the avoidance of the intended effect of duty concerning certain aluminium extrusions exported to Australia from China by PanAsia. The findings and recommendations are contained in the Commissioner's report to the then Minister for Industry and Science (the Minister) in *Anti-Dumping Commission Report No.241* (REP 241).

In this inquiry, for certain aluminium extrusions applying to exports from PanAsia, under section 269ZDBH(1) of the Act, the then Minister for Industry and Science declared that for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act), a different variable factor (a new ascertained export price) be applied to in relation to the original dumping and countervailing duty notices published under section 269TG(2) and section 269TJ(2) of the Act.

The key outcome of the inquiry determined that exports from PanAsia were being sold by the Australian importers at a price which was not commensurate with the total amount of duty payable. This was supported by the Commission's finding that the goods subject to dumping and countervailing duty were being sold at a loss.

The declaration to alter the original notice resulted in the dumping margin on exports from PanAsia increasing from 10.1% to 57.6%. During the course of the anti-circumvention inquiry, which was initiated on 14 April 2014, PanAsia applied for the review of measures the subject of this report.

⁵ Anti-Dumping Notice 2010/40.

⁶ Anti-Dumping Notice 2015/17

Anti-Dumping Review Panel (ADRP) Report No. 21 (2015) in relation to Case 241 (2015)

On 23 March 2015, the ADRP received applications from Capral, Opal and PanAsia seeking a review of the 19 February 2015 decision of the Minister to alter a dumping duty notice and a countervailing duty notice, following the anti-circumvention inquiry. The ADRP's Report No.21, dated 9 June 2015, recommended that it did not consider the applicants had established that the decision of the Minister was not the correct or preferable decision. The ADRP further recommended that the Parliamentary Secretary affirm the reviewable decision⁷.

On 22 June 2015, the Parliamentary Secretary published a notice under section 269ZZM(4) of the Act accepting the ADRP's recommendation to affirm the decision published on 19 February 2015⁸.

2.4. Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party who considers it may be appropriate to review those measures as they affect a particular exporter or exporters generally may apply for a review of those measures if one or more of the variable factors have changed.⁹ The Parliamentary Secretary may also request that the Commissioner initiate a review at any time.¹⁰

A review application may not be lodged earlier than twelve months after publication of the notice imposing anti-dumping measures or the notice(s) declaring the outcome of the last review.¹¹

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

In making recommendations in his final report to the Parliamentary Secretary, the Commissioner must have regard to¹²:

⁷ ADRP Report No.21

<http://www.adreviewpanel.gov.au/CurrentReviews/Documents/REPORT%20Certain%20Aluminium%20Extrusions%20FINAL.pdf>

⁸ Notice under section 269ZZM(4)

<http://www.adreviewpanel.gov.au/CurrentReviews/Documents/Public%20Notice%20-%20CAE%20Parliamentary%20Secretary%20Decision.pdf>

⁹ section 269ZA(1) of the Act.

¹⁰ section 269ZA(3)(b) of the Act.

¹¹ section 269ZA(2)(a) of the Act.

¹² section 269ZDA(3)(a) of the Act.

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

The Commissioner may also have regard to any other matter considered to be relevant to the review.¹³

During the course of a review, the Commission will examine whether the variable factors have changed. Variable factors in this particular review are a reference to:

- the ascertained export price;
- the ascertained normal value;
- the amount of countervailable subsidies received; and
- the NIP.

At the conclusion of a review of anti-dumping measures, the Commissioner must provide a final report that makes a recommendation to the Parliamentary Secretary that the dumping duty notice and/or countervailing notice¹⁴:

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

The Parliamentary Secretary must make a declaration under section 269ZDB(1) within 30 days of receiving the Commissioner's report or if the Parliamentary Secretary considers there are special circumstances that prevent the declaration being made within that period, such longer period as the Parliamentary Secretary considers appropriate.¹⁵

2.5. Statement of essential facts (SEF 248)

On 29 May 2015, the Commissioner placed on the public record SEF 248 to inform all interested parties of the essential facts on which the Commissioner proposed to base a recommendation to the Parliamentary Secretary in relation to the review of measures.

2.6. Submissions in response to the SEF

The Commissioner received the following submissions in response to SEF 248:

¹³ section 269ZDA(3)(b) of the Act.

¹⁴ section 269ZDA(1)(a) of the Act.

¹⁵ section 269ZDB(1A) of the Act.

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Interested party	Date received	EPR Item No.
Clean Energy Council	4 June 2015	62
Zhaoqing Xinlianchang Metal Corporation Ltd	8 June 2015	63
PanAsia	18 June 2015	59
Guandong Xingfa Aluminium Co Ltd	18 June 2015	61
Capral Ltd	18 June 2015	60
Guandong Jinxiecheng Al. Manufacturing Co Ltd	22 June 2015	64

Table 1 - Submissions received in response to the SEF

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

The Commissioner has had regard to these submissions in formulating his recommendations to the Parliamentary Secretary in this report.

2.7. Sampling

On 11 July 2014, the Commission published a report to outline its sampling approach under section 269TACAA of the Act. The report outlined the Commission's consideration and assessment of the need to sample and thereby examine exportations to 'selected exporters'.

Section 269TACB of the Act and the Anti Dumping Agreement (Article 6.10) sets out a basic rule that an individual margin of dumping will be determined for each exporter involved in an investigation.

Section 269TACAA 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
- who are responsible for the largest volume of exports to Australia that can reasonably be examined.

In considering whether the sampling provisions are applicable to this review, the Commission took into account the consideration of section 269TACAA of the Act having regard to:

- the number of suppliers/exporters from China that would constitute a statistically valid sample; or
- the exporter responsible for the largest volumes of exports to Australian that can be reasonably examined.

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The sampling report describes three categories of exporters and how the dumping and subsidy margins will be calculated for each category. The three categories are described below

1. Cooperative Exporters - the Commission decided to investigate the exportations of five 'cooperative exporters' of aluminium extrusions from China. These 'cooperative exporters' are the largest exporters of the goods to Australia during the investigation period and represent approximately 85% of the total import volume of aluminium extrusions from China.
2. Residual Exporters - As a consequence of limiting the examination of exportations to the 'cooperative exporters', exporters who responded to a Preliminary Information Request (PIR) will fall within the definition of 'residual exporters'. For a residual exporter who completed an exporter questionnaire, the Commission may examine that exporter's exportations and as a result determine an individual dumping margin for them, unless to do so would prevent the timely completion of the review.
3. Uncooperative Exporters - An uncooperative exporter is defined as an exporter that did not provide information considered to be relevant to the review, or an exporter that significantly impeded the review.

Responses to the PIR and Exporter Questionnaire responses

The sampling report follows on from the outcome of a PIR process that went to all suppliers whose exports to Australia exceeded one metric tonne over the review period.

The Commission received 28 responses to the PIR process. Out of the list of exporters who responded to the PIR, nine (9) exporters listed below lodged exporter questionnaire responses.

- Foshan Jma Aluminium Company Limited;
- Fujian Minfa Aluminium Inc;
- Guang Ya Aliminium Industries Co Ltd;
- Guangdong Jinxi Cheng Al Manufacturing Co Ltd;
- Guangdong Jma Aluminium Profile Factory (Group) Co Ltd;
- Guangdong Zhongya Aluminium Co Ltd;
- Panasia Aluminium (China) Co Ltd;
- Press Metal International Ltd; and
- Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd.

Cooperative Exporters

All of the exporters who are classified as 'cooperative exporters' have cooperated with the review. The following exporters are considered the 'cooperative exporters' for the purpose of the review.

- Guang Ya Aluminium Industries Co Ltd;

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- Guangdong Zhongya Aluminium Co Ltd (Countervailing only);
- Panasia Aluminium (China) Co Ltd;
- Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd¹⁶; and
- Kam Kiu Aluminium Products Sdn Bhd.

Residual Exporters

The Commission identified the following 23 exporters as 'residual exporters' having completed a PIR and indicating to the Commission that they were prepared to cooperate with the review.

- 100 Door Window and Curtain Wall (Guangdong) Co., Ltd;
- Air Comfort System Co;
- Avangarde Ceramiche;
- Chander Trading Co Ltd;
- Clenergy (Xiamen) Technology Co Ltd;
- Fletcher Aluminium;
- Foshan City Nanhai Yongfeng Aluminium Co Ltd;
- Foshan JMA Aluminium Co Ltd;
- Foshan Yuelin Import and Export Co., Ltd;
- Fujian Minfa Aluminium Inc;
- Guangdong Huachang Aluminium Factory Co Ltd;
- Guangdong Jinxi Cheng AI Manufacturing Co Ltd (GDJ);
- Guangdong JMA Aluminium Profile Factory (Group) Co Ltd;
- Guangdong Weiye Aluminium Factory Group Co Ltd;
- Guangdong Xinfa Aluminium Co Ltd;
- Guangzhou Jangho Curtain Wall System Engineering Co Ltd;
- Guangzhou Parkson Logistics Services Co Ltd;
- Jangho Curtain Wall Hongkong Limited;
- Press Metal International Ltd;
- Silver 100 Aluminium Innovation (Guangdong) Limited;
- Suzhou Rizhongtian Aluminium Co Ltd;

¹⁶ Tai Shan City Kam Kiu Aluminium Extrusions Co Ltd and Kam Kiu Aluminium Products Sdn Bhd are related entities. As such they will be treated as a single entity for the purpose of determining an export price and normal value. For the purposes of this review, the Commission's reference to Tai Shan City Kam Kiu Aluminium Extrusions Co Ltd (Kam Kiu) means also a reference to Kam Kiu Aluminium Products Sdn Bhd.

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- Zhaoqing Xinlianchang Metal Corporation Ltd (ZXM); and
- Zhaoqing Jin Zhong Cai Aluminium Industrial Limited.

From the initial listing of 23, the following five 'residual exporters' submitted exporter questionnaire responses:

- Foshan Jma Aluminium Company Limited;
- Fujian Minfa Aluminium Inc;
- Guangdong Jinxiecheng Al Manufacturing Co Ltd (GDJ);
- Guangdong Jma Aluminium Profile Factory (Group) Co Ltd; and
- Press Metal International Ltd.

Uncooperative and all other exporters

The Commission considers that the exporters who are not identified as either a 'cooperative exporter' or 'residual exporter' are for the purpose of this review considered as being either uncooperative or in the all other exporters category. For uncooperative and all other exporters, the Commission will establish export prices and normal values under sections 269TAB(3) and section 269TAC(6) respectively, having regard to all relevant information.

Exporters who have not been identified in this review and are subject to the all other rate may be entitled to seek an individual dumping and subsidy margin by applying for an accelerated review under Division 6 of the Act.

2.8. Submissions received regarding residual exporters

2.8.1. Guangdong Jinxiecheng Aluminium Manufacturing Co., Ltd (GDJ)

Following publication of the SEF, GDJ requested that it receive individual variable factors on the basis of special circumstances applicable to GDJ. GDJ also states that "*there was no indication prior to the publication of SEF 248 that the Commission would disregard the information provided by the residual exporters*".

2.8.2. Zhaoqing Xinlianchang Metal Corporation Ltd (ZXM)

Following publication of the SEF, ZXM requested that it also receives individual variable factors on the basis that it received its own dumping and countervailing duty rates in November 2014 following its application for an accelerated review in July 2014.¹⁷ ZXM claims it should not be subject to residual exporter status for the current review of measures since the exportations examined in its accelerated review occurred in May 2014, after the period of investigation for this review.

¹⁷ ADN 2014/131

2.8.1. Guangdong Xingfa Aluminium Co Ltd (Xingfa)

Following publication of the SEF, Xingfa submitted that it agreed with it being classified as a residual exporter although expressed it did not agree with PanAsia being included as a cooperative exporter on the basis that, in Xingfa's opinion, PanAsia had not cooperated with the review.

2.8.2. Commission's assessment

GDJ

GDJ received its own rate after the completion of Accelerated Review 214 in December 2013, prior to the initiation of this review.¹⁸ The accelerated review examined domestic sales and exports for the period 1 June 2012 to 31 May 2013. The Commission determined an export price under section 269TAB(3) having regard to all relevant information after finding that sufficient information was not available to determine the export price under section 269TAB(1). Due to the lack of sufficient export volumes, GDJ's interim dumping duty was an amount worked out in accordance with the floor price duty method. GDJ's countervailing duty was determined using the ad valorem method and worked out as a proportion of the export price.

The Commission's treatment of GDJ as a residual exporter is consistent with the treatment of all of the other exporters who are listed as residual exporters in the Commission's sampling report which was published on the case public record in June 2014. GDJ also participated in the review by responding to the PIR initially sent out by the case team and subsequently completing an exporter questionnaire. On this basis GDJ was fully aware of the various options available to the Commission in its treatment of residual exporters.

ZXM

With respect to ZXM's submission, Accelerated Review 259 examined shipments exported by ZXM between 1 August 2013 and 31 July 2014. The Commission determined an export price under section 269TAB(3) having regard to all relevant information after finding that sufficient information was not available to determine the export price under section 269TAB(1). Due to the lack of sufficient export volumes, ZXM's interim dumping duty was an amount worked out in accordance with the floor price duty method. ZXM's countervailing duty was determined using the ad valorem method and worked out as a proportion of the export price.

ZXM was informed by the Commission in the lead up to its application that if it received individual variable factors by seeking an accelerated review, it was possible that its variable factors would be impacted by the outcomes of this review. This was also explained in REP 259. It remains that ZXM, as a new exporter, exercised its right to apply for its own individual variable factors by seeking an accelerated review. This was despite

¹⁸ ADN 2013/88

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being in possession of the knowledge that this review of measures may revise the factors it received as an outcome of the accelerated review.

The Commission is of the view that both GDJ and ZXM should be included as residual exporters. Consistent with the Commission's treatment of other residual exporters, the export price and normal for GDJ and ZXM will be determined under section 269TACAB(2) of the Act using the weighted average export price and normal values determined for the cooperative exporters. Although GDJ and ZXM will be subject to the residual exporter rate, importations from either exporter could be subject to a duty assessment should the relevant importer elect to submit an application.

Xingfa

Xingfa's submission cites the Commission's application of section 269TAB(3) of the Act in determining PanAsia's export price. Xingfa's interpretation of section 269TAB(3) of the Act appears to be based on its belief that this particular provision of the Act is used when an exporter is uncooperative. Use of section 269TAB(3) of the Act is not exclusively applied when an exporter is deemed uncooperative within the definition provided in section 269T(1). In the case of this review, PanAsia has not acted in such a way that it would satisfy being defined as an uncooperative exporter. However, this does not preclude the use of section 269TAB(3) for the reasons set out in section 4.3.3 of the report.

3. THE GOODS AND LIKE GOODS

3.1. Finding

The Commission considers the Australian industry produces aluminium extrusions that have characteristics closely resembling those of the goods under consideration, and therefore, aluminium extrusions manufactured by the Australian industry are considered like goods¹⁹.

3.2. Legislative framework

The Commissioner must be satisfied that the “like” goods are in fact produced in Australia. Section 269T(2) of the Act specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In accordance with section 269T(3) of the Act, for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

3.3. The goods

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

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

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

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

Consistent with the findings of the original investigation in Final Report 148, this review has also relied upon the information shown in Table 1 in its assessment of like goods.

¹⁹ As defined by section 269T(1) of the Act.

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

Table 2 - Goods under Consideration

3.4. Tariff classification

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

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

Table 3 – aluminium extrusions tariff classifications

3.5. Like goods produced by the Australian industry

During the original investigation, ACBPS found that:

- there was an Australian industry producing like goods;
- a substantial process of manufacture was carried out in Australia in producing the like goods;
- the like goods were wholly manufactured in Australia; and

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- there was an Australian industry consisting of four Australian companies that produce like goods in Australia.

The Commission conducted an Australian industry visit to Capral in November 2014.²⁰ The visit confirmed that Capral and several other Australian companies continue to produce like goods.

The Commissioner remains satisfied that there is an Australian industry producing like goods.

3.6. Like goods produced by the exporters.

During the original investigation, ACBPS found that aluminium extrusions sold on the domestic market in China by all exporters possesses similar physical characteristics and manufacturing processes and is commercially and functionally substitutable with aluminium extrusions exported to Australia.

3.7. Submissions received regarding like goods

3.7.1. Clean Energy Council (CEC)

The CEC's submission in response to SEF 248 relating to the impact of anti-dumping measures on Australia's solar photo voltaic (PV) industry and proposes possible approaches to remedy a number of issues the CEC states are impacting the solar PV industry.

Specially, the CEC proposes that solar PV mounting kits, which are constructed with aluminium extrusions, should be excluded from the GUC for this review. The CEC is of the view that solar PV mounting kits should be allocated their own tariff classification. It also highlights instances where the then ACBPS has investigated importers of solar PV racking.

3.7.2. Commission assessment

The measures that currently apply to aluminium extrusions include consideration of seven possible categories of aluminium extrusions products as described in Table . Categories five to seven describe products that are not considered to be GUC. Category five, relating to unassembled products containing aluminium extrusions is provided for the importation of kits.

Aluminium extrusions that form part of a kit or an unassembled structure are not currently covered by anti-dumping duties. The then ACBPS tariff precedent (no. 20689500) in relation to tariff heading 7610.90.00 (aluminium and articles thereof) defines the requirements for a shipment of goods to be treated as complete, unassembled aluminium structures.

²⁰ Visit Verification Report Case 248 Public Record Item 43

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The Commission considers that aluminium extrusions that form part of a kit or an unassembled structure are therefore not subject to this review.

The Commission notes that CEC's proposals regarding tariff classification are matters for the Department of Immigration and Border Protection.

4. VARIABLE FACTORS – DUMPING NOTICE

4.1. Finding

The Commissioner finds that the variable factors relevant to the determination of duty payable under the Dumping Duty Act have changed in respect of all exporters of aluminium extrusions from China.

4.2. Exporter questionnaire responses

The Commission sent exporter questionnaires to 25 exporters who responded to the Commission's PIR process. Exporter questionnaire responses were due on 18 August 2014. Consistent with the Commission's sampling approach outlined in section 2.7, five of these exporters were selected for verification. All five cooperative exporters lodged questionnaires by the due date. The exporters are classified as cooperative exporters.

The remaining exporters who responded to the PIR were classified as residual exporters. The Commission received questionnaire responses from five residual exporters by the due date. The Commission's sampling report indicated that residual exporters who completed a questionnaire would be examined unless to do so would prevent timely completion of the review. The Commission's ability to examine the questionnaire responses lodged by residual exporters was contingent on a number of factors;

- the level of cooperation from the five 'cooperative exporters';
- the number of 'residual exporters' seeking an individual dumping margin determination; and
- the available resources within the Commission to undertake either on-site or remote verification.

Whilst the Commission initially indicated it may examine the questionnaire responses received from residual exporters, the circumstances of the case have precluded the Commission from being able to do so. The approach to calculating the residual exporters export price and normal value is outlined in the following sections.

All other exporters of aluminium extrusions from China that were not identified as either a cooperative or 'residual exporter' are considered to have not cooperated with the review.

4.3. Export price

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

4.3.1. Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd and Kam Kiu Aluminium Products Sdn Bhd (Kam Kiu)

The Commission conducted on site verification at Kam Kiu in China in January 2015. A copy of the visit verification report can be obtained on the case public record at item 51.

Verification of Kam Kiu's exporter questionnaire found:

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- that the goods have been exported to Australia otherwise than by the importer;
- that the goods have been purchased by the importer from the exporter; and
- the purchases of the goods were arms' length transactions.

Accordingly, export prices for Kam Kiu have been established under section 269TAB(1)(a) of the Act being the price paid or payable by the importer less any part of the price that represents a charge in respect of transport of the goods or in respect of any other matter arising after exportation.

4.3.2. Guangdong Zhongya Aluminium Co Ltd

The Commission conducted on site verification at Guangdong Zhongya in China in January 2015. A copy of the visit verification report can be obtained on the case public record at Item 52.

Verification of Guangdong Zhongya's exporter questionnaire found;

- that the goods have been exported to Australia otherwise than by the importer;
- that the goods have been purchased by the importer from the exporter; and
- the purchases of the goods were arms' length transactions.

Accordingly, export prices for Guangdong Zhongya have been established under section 269TAB(1)(a) of the Act being the price paid or payable by the importer less any part of the price that represents a charge in respect of transport of the goods or in respect of any other matter arising after exportation.

4.3.3. PanAsia

Relevance of the anti-circumvention inquiry (REP 241)

As indicated above in section 2.3 above, the Commission conducted an anti-circumvention inquiry into the avoidance of the intended effect of duty concerning certain aluminium extrusions exported to Australia by PanAsia. The Commission's findings were published in REP 241 in February 2015.

In July 2014, while the anti-circumvention inquiry was still on foot, the Commission determined that due to the significant overlap of the period of review and period of inquiry, this review would rely on the importer verifications and general findings of the anti-circumvention inquiry. The Commission recognised that the importer verification process for the inquiry was identical to that which would be carried out for the review of measures. As a result, the Commission determined it was not necessary to conduct verification of the importers for this review, where they had already been covered by the anti-circumvention inquiry.

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The Commission wrote to the importers subject to the anti-circumvention inquiry. The correspondence was placed on the public record and all interested parties were advised of the following²¹:

“In view of the considerable overlap between the periods being examined by the current anti-circumvention inquiry (No. 241) and the review, I am proposing to rely on information submitted by, and verification process undertaken with respect to, the following companies for the anti-circumvention inquiry for the purposes of the review....”

As part of the anti-circumvention inquiry, the following five importers who represented over ■% of PanAsia’s exported volumes to Australia were invited to complete an importer questionnaire:

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

Questionnaire responses were received from P&O Sydney and Perth and Oceanic Aluminium. P&O Melbourne and Brisbane did not provide questionnaire responses.

Verification was conducted at P&O Sydney and P&O Perth and Oceanic in June 2014. The visit verification reports are available on the public record of Case 241 at items 28 and 29.

The detailed findings and approach regarding the Commission’s verification activities and profitability analysis for the inquiry are set out in Section 4.4 of REP 241. The following findings of the anti-circumvention inquiry are considered to be the most relevant for the review with respect to determining an export price:

- The Commission could not verify the relevance and completeness of the importers sales data on account that the requested audited financial statements were not provided by any of the importers who were subject to verification; and,
- The profitability analysis conducted by the Commission found the sales of the goods subject to measures purchased by P&O Melbourne, P&O Perth, P&O Sydney, P&O Brisbane and Oceanic from PanAsia were found to have been sold in Australia at a loss.

Whilst the importer’s questionnaire responses from the inquiry have been used in this review, the Commission acknowledges that the period of investigation for the inquiry covered 1 January 2013 to 31 December 2013. The period of investigation for the review, however, covers the period 1 April 2013 to 31 March 2014. To address the difference

²¹ EPR 248, Items 10 and 11.

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between the two cases, the Commission has had regard to all relevant information for its assessment of quarter 1 2014.

The Commission has relied on a submission made to the anti-circumvention inquiry that provides an account of the prices that were offered by the P&O entities and Oceanic over the period November 2013 to March 2014²². The Commission compared this data against the quarter 1 2014 verified FOB export prices reported by PanAsia and the cost data provided by the importers during the inquiry. The result of this comparison shows that the importers would also be selling at a loss. For all other quarters, the Commission has relied on the data used in the anti-circumvention inquiry.

Verification of the importers examined in the anti-circumvention found that the goods subject to measures were sold in Australia by the importers at a loss during the period between 1 January 2013 and 31 March 2013. Under section 269TAA(2) of the Act, the Minister may, for the purposes of section 269TAA(1)(c), treat the sale of those goods at a loss as indicating that an 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 part of the price.

As a result, the Commission could not be satisfied that the purchase of the goods by the importers were arms length transactions. In the circumstances, the Commission is of the view that sections 269TAA(1)(c) and (2) of the Act are enlivened and therefore, it would be inappropriate to determine the export price under section 269TAB(1)(a) of the Act.

On the basis that the Commission was not able to verify all of the data provided by the importers subject to verification in the anti-circumvention inquiry, the Commission is not satisfied that the importers' data is sufficient for determining a deducted export price under section 269TAB(1)(b).

If the export price cannot be determined under sections 269TAB(1)(a) or TAB(1)(b), the Minister may determine an export price having regard to all of the circumstances of the exportation by determining the export price under 269TAB(1)(c). However, due to the issues relating to verification of the importers data, the Commission is unable to determine the export price under 269TAB(1)(c).

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

For this review, relevant information available to the Commission includes the information relied on in the anti-circumvention inquiry. This has included elements which, whilst not found to be suitable for use under sections 269TAB(1)(b) or (c), were able to be used in conjunction with other information available to the Commission. The Commission has therefore determined the export price under section 269TAB(3).

²² Capral submission 27 June 2014 (Case 241 EPR No.11).

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On site verification was conducted at PanAsia in China during February 2015. A copy of the visit verification report can be obtained on the case public record at item 53.

Based on the information available at the visit, the visit team found no evidence that;

- there is any consideration payable for in respect of the goods other than price;
- the price is 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; or
- the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

The Commission's preliminary assessment in SEF 248 was satisfied that transactions between PanAsia and its Australian customers appeared to be arms length transactions. However, taking into account the findings from the anti-circumvention inquiry, the Commission considers that the transactions were not arms length transactions.

Export price calculated under 269TAB(3)

The methodology for calculating PanAsia's export price in this review is consistent with the approach adopted in the anti-circumvention inquiry. The inquiry derived an FOB export price from the importers weighted average selling prices less amounts for reasonable profit, selling general and administration costs, importation costs and duty payable. Full details of the various components are explained in section 5.3 of REP 241.

The weighted average selling price relies on a sample of 48 sales lines that have been verified to source documents. The sample data is spread across all quarters in 2013 of the investigation period and for each finish type. Export prices for the remaining quarter, quarter 1 2014, were indexed from the prior quarter against fluctuations in the verified quarterly CTM for each finish type between quarter 4 2013 and quarter 1 2014.

The above methodology relates to non-fabricated finish types only. As explained in the PanAsia verification report, the Commission has also included a quantity of fabricated extrusions that were found to meet the description of the goods. This was established by reviewing a sample of technical drawings provided by PanAsia. The drawings indicated that the extrusions had features such as slots and notches or were precision cut. These types of extrusions fall under Category 2 of the goods under consideration shown in Table which describes aluminium extrusions with minor workings.

The importers' sales data provided to the Commission in the anti-circumvention inquiry relates to non-fabricated finish types only. All other types of extrusions were excluded. However, as a result of the exporter verification process in this review the Commission now understands that the importers sales data may not have fully disclosed fabricated finish types as goods under consideration.

The export price for fabricated finish types has been calculated by indexing the difference in the verified quarterly CTM between fabricated and non-fabricated finish types.

4.3.4. Guang Ya Aluminium Industries Co Ltd

Guang Ya's exporter questionnaire was remotely verified by the Commission using a combination of benchmarking of data to other verified exporters and requests for further information made to Guang Ya.

Guang Ya provided an Australian sales spreadsheet that included a line by line listing of goods to Australia during the investigation period. It also provided documents relating to eight invoices in its exporter questionnaire response. Upon further examination the Commission identified that a quantity of sales were to a related company, Kong Ah International Company Limited (Kong Ah). The remaining sales to non-related entity, [REDACTED] [customer], represented over [REDACTED] [percentage] of exports to Australia.

Guang Ya's export sales spreadsheet was found to include a quantity of sales labelled as "panel" however it was not clear if these were subject to measures. Guang Ya provided technical drawings to demonstrate that the products were intermediate or partly assembled products or fully assembled finish products (Refer to GUC Category 6 & 7 in Table . The drawings indicated that "panel" products were fencing assemblies so the Commission was satisfied that these products should be excluded from verification. The description of the goods as "panel" also corresponds with the packing lists provided by Guang Ya.

To verify the export price the Commission concentrated on one invoice in January 2014 which contained eleven lines items relating to the good subject to measures. To support verification Guang Ya provided the following documents:

- commercial invoice;
- [REDACTED] [customer] purchase order;
- bill of lading;
- documents supporting Chinese inland freight cost;
- documents supporting the calculation of credit terms;
- documents supporting the cost of customs fees; and
- evidence of payment from [REDACTED] [customer] to Guang Ya.

Further verification of Guang Ya export data was compared against other cooperative exporters. The weighted average export prices and costs were found to correspond with other exporters within an acceptable range. Relying on the comparison to other verified exporters and its own supporting data, the Commission did not identify any significant variances that would warrant Guang Ya's export prices being treated as unreliable.

Regarding the assessment of Guang Ya's sales to [REDACTED] [customer] being at arms length, the Commission notes that [REDACTED] [customer] notified the Commission in June 2013 that it did not wish to participate in the review. As a result the Commission has relied on additional information to assess whether or not transactions between Guang Ya and its Australian customers are at arms length.

The Commission requested Guang Ya to provide a remittance advice from [REDACTED] [customer] as evidence of payment for goods purchased in January 2014. Guang Ya explained that it receives payment from [REDACTED] [customer] on a lump sum rolling basis that

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does not recognise individual invoices. Guang Ya provided bank transfer receipts for January 2014 as evidence of payment for goods purchased by [redacted] [customer] in December 2013.

The Commission compared the amounts paid by [redacted] [customer] and the sum of [redacted] [customer] December 2013 purchases. It was found that [redacted] [customer] had transferred approximately AUD\$ [redacted] [amount in Australian dollars] more than the total sum of its December 2013 invoices. This amount is approximately 1% of annual sales to [redacted] [customer] over the investigation period. Guang Ya has also advised that the average collecting period of accounts receivable in relation to its sales to [redacted] [customer] is [redacted] [number of days] days. Based on this information, the Commission considers it reasonable to conclude that the amounts paid by [redacted] [customer] in January 2014 generally corresponds to the value of sales recorded by Guang Ya for December 2013. The timing of the payments by [redacted] [customer] also corresponds to the collecting period advised by Guang Ya. Based on the information available, the Commission has found no evidence that it was satisfied that:

- there is any consideration payable for in respect of the goods other than price;
- the price is 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; or
- the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

At the SEF, the Commission considered that the transactions between Guang Ya and its Australian customers were arms length transactions based solely on the information provided by Guang Ya. Verification of Guang Ya's exporter questionnaire found:

- that the goods have been exported to Australia otherwise than by the importer;
- that the goods have been purchased by the importer from the exporter; and
- the purchases of the goods were arms' length transactions.

Accordingly, in SEF 248 export prices for Guang Ya were initially established under section 269TAB(1)(a) of the Act being the price paid or payable by the importer less any part of the price that represents a charge in respect of transport of the goods or in respect of any other matter arising after exportation

Following SEF248, however, the Commission has had cause to reconsider the initial finding that transactions between Guang Ya and its Australian customers were arms length transactions. On the basis that the Commission was not able to verify the importer side of the transaction, the requirements of section 269TAA could not be fully determined and as a result, the export price could not be established under section 269TAB(1)(a).

Similarly, the Commission does not have sufficient information to assess the importer's selling prices on the Australian market to establish an export price under section 269TAB(1)(b) or have regard to all the circumstances of the exportation under section 269TAB(1)(c).

Since completing SEF 248, the Commission has conducted further analysis of Guang Ya's export price by comparing Guang Ya's export price to those reported by the other

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cooperative exporters whose transactions with the Australian importers were found to be arms length. The Commission did not identify any variances that would support a finding that Guang Ya's export price is unreliable.

Export prices for Guang Ya have therefore been established under section 269TAB(3) of the Act having regard to all relevant information. In this case of this review, the export price for Guang Ya has been calculated to be Guang Ya's FOB export prices as provided in its exporter questionnaire.

4.3.5. Residual exporters

Export prices for the residual exporters listed in section 2.7 were established under section 269TACAB(2)(c) of the Act using the weighted average export price determined for the cooperative exporters.

As section 269TACAB(3) does not apply to a review of measures, export prices for exporters which were not found to result in dumping, or the dumping margin was less than 2% have been included.

4.3.6. Uncooperative exporters and all other exporters

Export prices for uncooperative and all other exporters were established under section 269TACAB(1)(d) of the Act using the export price worked out under 269TAB(3) having regard to all relevant information. The export price is based on the export price for the cooperative exporters that exhibited the highest quarterly dumping margin for a specific model.

4.4. Submissions received regarding export price

4.4.1. PanAsia

PanAsia has submitted that a number of issues exist in relation to the Commission's approach to determining the export price for PanAsia. The following summarises these issues:

- exports to Protector Aluminium and the inadequacy of the arms length assessment of the transactions under section 269TAA of the Act;
- the Commission's application of section 269TAA(3) of the Act for determining the losses incurred by the five P&O importers and Oceanic;
- the Commission not having regard to all relevant information for determining export prices under section 269TAB(3) of the Act; and,
- insignificant volumes of sample sales, variance in selling prices and sampled sales are not representative of the review period.

4.4.2. Capral

Capral have raised concerns regarding the Commission's assessment of sales between Guang Ya and its largest Australian customer as being arms length transactions. Capral

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highlights the Dumping and Subsidy Manual guidance regarding the Commission's examination of export price by calculating the profitability of an importer's sales.²³

Capral submit that sufficient information is not available to determine the export price under section 269TAB(1) and it should be determined under section 269TAB(3) having regard to all relevant information. Capral further submits that the most relevant information is that concerning the lowest export price determined for the other cooperative exporters.

Capral's submission also raises concerns regarding the basis for the Commission's adjustments to PanAsia's export sales volumes.

4.4.3. Commission's assessment

Sales to Protector Aluminium

In response to PanAsia's submission regarding exports to Protector Aluminium, the Commission has determined the export price of sales to Protector Aluminium under section 269TAB(3) have regard to all relevant information. In doing so, PanAsia's FOB export prices reported for sales to Protector Aluminium in its exporter questionnaire have been used in the calculation for determining a weighted average export price.

Determination of sales of goods at a loss under section 269TAA(3)

In response to the SEF, PanAsia states that it "*strongly disputes the preliminary finding in SEF 248 that the trading performance of the importers is in any way suggestive of a reimbursement or other payment by PanAsia*".

The Commission's findings in relation to the verification of the importers who participated in the anti-circumvention inquiry, for which the same outcomes have also been applied in the review, are stated both in REP 241 and SEF 248. PanAsia's submission on the Commission's assessment of sales at a loss appears to centre on several factors which PanAsia believes the Commission should have taken into account when applying section 269TAA(3) of the Act.

However, the Commission has not relied on the provisions of section 269TAA(3) in relation to arms length transactions and flowing from that, determining an export price under section 269TAB(1)(b) in relation to PanAsia's export sales to the P&O branded importers and Oceanic. Rather, the Commission has relied on section 269TAB(3) to determine PanAsia's export price having regard to all relevant information.

Having regard to all relevant information under section 269TAB(3)

PanAsia suggests that the Commission, in determining the export price for PanAsia under section 269TAB(3), has not complied with its own policy and obligations under the WTO Anti-Dumping Agreement to evaluate and assess all relevant information.

²³ *Dumping and Subsidy Manual*, p.24

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The Commission does not agree with PanAsia's view that its export price has been determined under section 269TAB(3) without having regard to all relevant information. As set out in REP 241, the Commission found that a significant volume of sales sourced from PanAsia were found to have been sold at a loss by the importers in Australia. It is also set out in REP 241 that the Commission was not afforded the opportunity to properly verify the importers sales to determine how or why the losses were occurring on account that the importers did not make their audited financial statement available.

The Commission does not consider that the information obtained for other exporters arms length transactions should be preferred ahead of the information that the Commission has obtained from PanAsia's own Australian customers. This being the case, the Commission regards the latter to be the most relevant for determining PanAsia's export price under section 269TAB(3).

Sampled sales by relevant importers and variance in selling prices

Regarding PanAsia's views on the adequacy of the sample of data used to calculate its export price, the Commission notes that the importer's own actions which denied the Commission the opportunity to verify their sales data. This was the key driver which resulted in the sample of sales data that has subsequently been used in this review. Relying on other importers sales data is equally not appropriate because the circumvention activity observed in relation to PanAsia's exports was unique and not evident in the behaviour of other importers. To rely on other importers who were not found to be engaging in circumvention activity is in effect implying that the circumvention activity in relation to PanAsia's exports never occurred.

Sales not representative of the review period

PanAsia contends that the sample of importer sales for determining a deductive export price is not representative of the review period. PanAsia's view is formed on the basis that adjustments have not been made to ensure importers sales reflect the exporter's date of sale. PanAsia explains that it takes 6-8 weeks to deliver products to Australia. Assuming a 30 day stock turnaround by the importer, PanAsia contend that the timing difference between date of sale by the importer and date of export by PanAsia is three months.

The Commission disagrees with PanAsia's representation of the difference in timing. Documents obtained by the Commission during verification of the importers in the anti-circumvention inquiry show that the date on PanAsia's invoices to the Australian importers closely corresponded with the date of arrival of the goods in Australia. The invoice dates on PanAsia's invoices which were examined for this review were found to be accurate when compared with PanAsia's exporter questionnaire.

In addition, during verification in anti-circumvention inquiry 241, the Commission found that the importer's inventory system lacked the necessary sophistication to calculate the length of time goods were held in store after arrival, or trace the importation of product to a sale invoice for Australian customers. Due to this problem, the Commission is unable to estimate what the timing difference would be.

For those sales which the importer referred as 'direct sales', rather than arrive into store, the container was shipped directly to the customer. Given this scenario and the observation that PanAsia's invoice dates are closely representative of the date of arrival,

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the amount of time between the date of sale reported by PanAsia and the date of sale reported by the importer would be minimal.

Consistent with the Dumping and Subsidy Manual, rather than the export date, the date of sale reported by PanAsia on its invoices best reflects the material terms of the sale. This date was found to be accurate following verification. Through verification of the importers documentation, the Commission found that the date of sale reported by the importer is likely to correspond to the date of sale recorded by the exporter within a reasonable period.

PanAsia makes a point regarding the data used to calculate the ascertained export price for quarter 1 2014. The Commission calculated the export price for quarter 1 2014 by indexing prices in the prior quarter using the variation of prices between the two quarters prior to quarter 1 2014. This method was considered a reasonable approach when the Commission observed that the movement in export price between quarter 4 2013 and quarter 1 2014 was minimal. A comparison for the importer's selling prices revealed a similar pattern for all but one finish type. The one finish type which exhibited a larger variance was found to increase over time and have the effect of increasing the weighted average export price to the advantage of the exporter.

Calculation of Guang Ya export price

In response to Capral's submission regarding Guang Ya's export price, the Commission notes that Guang Ya's main Australian customer, [REDACTED] [customer], was invited by the Commission in June 2014 to complete an importer question. [REDACTED] [customer] response in July 2014 advised it was "unable to participate in the review this time due to time and resources constraints".

Although the importer declined to participate, the Commission has relied on other relevant information to determine whether or not Guang Ya's export prices were reliable. In response to Capral's submission the Commission conducted further analysis by comparing Guang Ya's export price to those reported by the other exporters whose transactions with the Australian importer were found to be arms length.

The Commission does not agree with Capral's submission that proposes, in the absence of certain importer's data, the Commission has the latitude to impute the lowest export price found during the review. This approach is not considered an appropriate first step when the Commission has other information obtained from exporters who have verified arms length transactions.

PanAsia theoretical weight adjustment

When assessing PanAsia's domestic and export sales volumes, the Commission found it appropriate to ensure that the sales volumes reported in each market were comparable. Although PanAsia's export sales invoices and packing lists reported theoretical weight, the actual weight of product packed into each container was measured on a weigh bridge. PanAsia provided weigh dockets which corresponded to the container number shown on the packing list. The same container number was referenced on PanAsia's sales invoices. The Commission was satisfied that PanAsia was able to account for the difference between actual weight and theoretical weight to justify applying a downward adjustment to the quantity of goods reported in PanAsia's Australian sales.

4.5. Market situation assessment

4.5.1. Submissions to the Commission

Capral submitted that since REP 148 (the original aluminium extrusions investigations where no market situation was found) the Commission's understanding of the aluminium industry has "evolved" and that the factors underpinning the findings in REP 181 also affect the production of aluminium extrusions. Capral set out the broader range of factors identified in the REP 181 that underpinned the ACBPS' finding of significant distortions in the primary aluminium market and consequently, the ACBPS finding of market situation in the Chinese aluminium road wheels market.

Capral submitted, "It is clear that the same distortions must affect the price of aluminium extrusions to an equal or greater degree given that primary aluminium represents approximately 60% of the cost to produce extrusions".²⁴ Capral concluded that similar to the findings in REP 181, the situation in the Chinese domestic market for aluminium extrusions is such that domestic selling prices are not suitable for use in determining normal value.

4.5.2. The Commission's assessment

After having regard to all relevant information, the Commission has found that the Government of China (GOC) has influenced the Chinese aluminium industry, and this influence is likely to have materially distorted competitive market conditions and both directly affected the price of the primary input used in the manufacture of aluminium extrusions, as well as likely affecting supply within that industry. The Commission has formed the view that it is satisfied there was a situation in the Chinese aluminium extrusions market during the review period such that sales in that market are not suitable for use to determine normal value under section 269TAC(1) of the Act. An assessment of the market situation is provided at Non-confidential Appendix 1.

4.6. Applicable legislation

Section 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid or payable for sufficient volumes of like goods sold domestically in the ordinary course of trade in arm's length transactions.

However, section 269TAC(2)(a)(ii) provides that the normal value of the goods exported to Australia cannot be determined under section (1) where the Parliamentary Secretary is satisfied that:

...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 section (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 on the basis of a cost construction (section 269TAC(2)(c)) or third country sales (section 269TAC(2)(d)).

²⁴ Capral Submission, Case 248, Public Record Item 5

The Commission's assessment

The Commission sent a questionnaire to the 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), 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.

The Commission has relied on submissions made to the review, the findings of previous cases conducted by the Commission and further information gathered by the Commission.

In light of all the information before the Commission, the Commission considers that the GOC has had substantial influence on the aluminium extrusion market in China, and the evidence for this finding is set out in non-confidential Appendix 1.

4.7. Establishing normal values – third country sales or construction

Following the above finding that domestic sales are not suitable for use in determining normal value due to a situation in the market, the Commission has examined the possibility of establishing normal value using either:

- sales of aluminium extrusions to third countries by Chinese exporters (section 269TAC(2)(d) of the Act); or
- constructing normal values (section 269TAC(2)(c) of the Act).

In responses to the Exporter Questionnaire, all exporters provided:

- aggregate third country sales data (not split into model or in line-by-line detail); and
- detailed domestic and export (to Australia) CTMS data, split into month and model-level detail.

The Commission assessed the suitability of using third country sales of aluminium extrusions in determining normal values under section 269TAC(2)(d). The Commission determined that third country sales were not a viable option for determining normal values in relation to the goods due to its consideration that the exporter's cost of primary

aluminium does not reflect a competitive market cost (refer to section 4.7). This would in turn have affected the exporter's prices to third countries making them unsuitable for use in determining normal value.

Consequently, the Commission has constructed normal values under section 269TAC(2)(c) of the Act, and has done so by observing the conditions of sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulations), relevant aspects of which are outlined below.²⁵

4.8. Constructed normal values – outline

4.8.1. Applicable legislation, policy and practice

Section 269TAC(2)(c) of the Act provides that:

- (c) *except where paragraph (d) applies, the sum of:*
- (i) *such amount as the Minister 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 export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale;*

The construction of normal values under paragraph 269TAC(2)(c) of the Act is required to be undertaken in accordance with the conditions of sections 43, 44 and 45 of the Regulations.²⁶

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

To determine costs of manufacture or production, subsection 43(2) of the Regulations requires that if:

- an exporter or producer keeps records relating to like 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 like goods;

²⁵ As required by sections 269TAAD(5)

²⁶ As required by sections 269TAC(5A) and 269TAC(5B) of the Act.

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

It is the Commission's policy and practice that, where the conditions of subsection 43(2) are not met, the cost records kept by that exporter are not required to be used in working out their costs, and the Commission may resort to other information to calculate these costs.

4.9. Reasonableness of costs in constructing normal values

4.9.1. Introduction

In addressing the normal value of the goods, Capral's submission alleged that a market situation exists in the Chinese aluminium extrusions market and that normal values should be constructed as a result.

Capral asserted that this construction of normal values should take account of the fact that Chinese aluminium extruders purchase primary aluminium at below the cost of production. As a result, the cost of primary aluminium does not reasonably reflect a competitive market cost for that input and should be substituted.

4.9.2. Commission's assessment

As outlined above, subsection 43(2) of the Regulations requires that if an exporter keeps records in accordance with the appropriate GAAP, and those records reasonably reflect competitive market costs associated with the production of like goods, then the cost of production must be worked out using the exporter's records.

The Commission's assessment of exporters' data has found that the records of Chinese exporters of the goods have been kept in accordance with the relevant GAAP.

However, the Commission's assessment concludes that primary aluminium costs, the main material component of aluminium extrusions, have been distorted. The distortion in primary aluminium is considered to have had a significant impact on the price of aluminium extrusions.

The Commission, therefore, considers that all domestic sales of aluminium extrusions in China are unsuitable for determining normal value under section 269TAC(1) of the Act in all circumstances, and consequently, the normal value in respect of aluminium extrusions sold in China should be constructed under section 269TAC(2)(c) of the Act.

As a result, the Commission was unable to rely on the information set out in the records of Chinese exporters relating to primary aluminium costs. When constructing normal values for exporters, the Commission has replaced the costs of primary aluminium for each Chinese exporter, as recorded by these exporters, with a reasonably competitive market cost for these inputs.

The Commission's approach has been to construct a primary aluminium cost based on the LME benchmark cash price plus other reasonable costs and charges. The rationale for selecting the LME as the basis of the replaced costs is provided below.

4.9.3. Replacement cost for primary aluminium

In Part II of Appendix I, the Commission sets out its assessment of the likely impact of the GOC's influence on the aluminium extrusions industry. Using Chinese smelting cost data provided to the Commission, it was observed that Chinese domestic aluminium prices are below the estimated cost of production due to GOC influence and intervention.²⁷ Accordingly, the Commission determined that, domestic aluminium prices are materially distorted and therefore, unsuitable for use in calculating normal value.

The Commission considers that a reasonable alternative for actual costs incurred for primary aluminium purchases is to replace these with a cost that reflects a competitive market that would be available to the exporters.

Submissions made to the Commission in relation to this review suggested three benchmark methodologies that could be used to replace primary aluminium costs. The Commission addresses these benchmarks in Part III of Appendix I:

- Cost based on the smelting cost curve data;
- Cost based on SHFE prices; and,
- Cost based on LME prices.

The Commission's assessment of each benchmark concluded that the most appropriate was that based on LME market prices. The Commission considered the SHFE prices and the smelting cost curve data and determined the following:

- a constructed price based on SHFE prices is not considered appropriate on the basis of the Commission's assessment that the market for primary aluminium traded on the SHFE is distorted due to significant GOC influence and intervention, as discussed in non-confidential Appendix 1; and
- a price based on utilising the smelting cost data provided to the Commission is also considered unsuitable on the basis that the Commission has not been able to adequately verify such data to a level that is sufficient for calculating normal value.

Regarding the construction of a price which is based on the LME benchmark, the Commission prefers this option on the basis that the function of the LME price for 'price discovery' and as reference prices for physical contracts supports that the LME cash prices are sufficiently reliable and representative for use in benchmark calculations. With the addition of regional premiums and other costs, this is considered an appropriate replacement as it reasonably represents what is a competitive market cost for primary aluminium available to producers in China in the absence of distortions that existed during the review period.

²⁷ Case 248, Public Record Item 38.

4.9.4. Calculation of uplift

The uplift of primary aluminum costs has been determined by comparing the constructed benchmark price to the exporter's actual prices, and applying the resulting variation to the exporter's CTMS material expenses for each relevant domestic model.

In SEF 248 the Commission proposed the following for calculating a replacement cost for primary aluminium:

- 1) LME cash price; *plus*,
- 2) regional premium; *plus*,
- 3) import costs; *plus*,
- 4) inland transport.

Subsequent to publication of the SEF, the Commission has reconsidered a number of the assumptions for calculating the replacement costs. The SEF outlined an approach which was based largely on the availability of product outside of China, however upon further consideration the Commission has calculated the cost by having regard to what the costs would be for a domestic transaction. As a result, costs associated with importation of primary aluminium are no longer included.

In cases where an exporter has purchased ingot or billet, the uplift to the material expenses will be proportionate to the amount of billet and ingot purchased in the relevant quarter. Imported ingot and billet will not be subject to uplift. The proportion of imported aluminum reported in a quarter will be accounted for in the uplift.

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

Listed below is a full description of the composition of the various elements in the constructed benchmark.

4.9.5. LME cash price

The Commission has relied on the average monthly LME official cash price data provided in a submission made by Australian industry. The data was sourced from Metal Prices Pty Ltd under subscription. The Commission compared this to its own sources and found that the data was accurate. LME price data is generally available directly from the LME or via third party sources via subscription.

4.9.6. Regional Ingot Premium

In the original investigation, the uplift of primary aluminum costs included additional expenses for trading premiums, delivery charges and interest charges. The review has looked to follow this approach, however due to new and further information received and considered during this review, the Commission has refined its position on the full costs of purchasing from the LME warehousing system, in particular the inclusion of a "physical

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premium”. Further information has provided the Commission the opportunity to establish a detailed understanding of the full costs associated with purchasing primary aluminum on the LME market.

As mentioned above, the Commission has previously included expenses relating to trading premiums. In this review, the Commission has also come across similar terminologies relating to “local premium”, “regional premium”, or “trader’s premium”.

A submission from Capral advocated for the inclusion of a regional premium and a trading premium. Capral submitted that the regional premium represents the costs to obtain physical metal and is a necessary component in establishing the complete costs in obtaining primary aluminum in physical form in competitive market conditions. Likewise, Capral sought the inclusion of a trading premium for fees charged by traders in sourcing aluminum supply for a Chinese extruder.

The Commission explored the nature of different “premiums” with a cooperating exporter. The Commission inquired whether in establishing a supply agreement with a supplier outside of China, it was required to pay a regional premium or a trader’s premium. The cooperating exporter explained to the Commission that there was only one negotiated premium from their perspective and that this was embodied in its supply agreement. It did not refer to it as a regional premium or a trader’s premium. Its supply agreement did not refer to any trading premium, however, it referred to a published premium that is largely considered in the metals parlance as an LME regional premium.

In previous investigations, the Commission had not included an LME regional premium. In REP 148, the ACBPS constructed an uplift of primary aluminum costs that included expenses for trading premiums, delivery charges and interest charges. Due to new and further information, the Commission considers that the inclusion of an LME regional premium is necessary in taking account of the complete replacement cost of primary aluminium based on LME market prices. The Commission sets out its considerations regarding the inclusion of an LME regional premium in further detail below:

4.9.7. Physical metals v LME traded metals

In its submissions, Capral refers to a recent judgement of the England and Wales High Court (Administrative Decisions) explaining the price of physical aluminum as purchased from the LME. In the Matter of Rusal, the applicant, United Company Rusal PLC sued the London Metal Exchange alleging that its consultative process and subsequent decision were defective in light of the defendant’s proposal to amend the rules for LME-approved warehouses.

In its decision, the High Court of Justice explained at some length the attributes of the LME. It noted that the LME, established in 1877, was the world’s premier base metals market. It further described the LME as operating the

“...futures and options markets in eleven industrial base metals. For eight of those metals, including aluminium, the daily LME official prices have become the accepted reference prices for the world trade in those metals.

His Honour, Mr Justice Phillips wrote:

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“The LME provides three main functions: (a) a price-discovery mechanism for the metals traded; (b) a price-hedging mechanism for producers and consumers of metals traded; and (c) a source of last resort for the physical delivery of those metals.

The LME is an on-exchange forwards market. This means that LME contracts are based on physical settlement by the transfer of ownership of metals stored in LME approved warehouses. Although only a very small proportion of LME trades actually result in physical settlement, the possibility of physical delivery (out of one of more than 700 LME approved warehouses worldwide) results in price convergence between the LME price and the price of physical metal, so that the LME price is truly reflective of supply and demand”.

The High Court then explained the full costs in obtaining physical metals from the LME system:

*“The LME price, which is used as the global benchmark for physical contracts, is a price for metal traded 'in--warehouse'. This entails that the additional costs associated with making delivery of "free metal" outside the constraints of the LME system are not reflected in the LME price, with the result that the physical market price for aluminum will be higher than the LME price. The physical market price of aluminum, known as the "all in" price, is therefore made up of the LME price plus a premium”.*²⁸

The High Court further explored the relationship between the physical metal price and the LME metal price. The High Court referred to the defendant’s commissioned study, the Europe Economics report, which explained that “the LME price is dependent on arbitrage (or the possibility of arbitrage) with the physical market, ensuring that the LME price and physical prices will converge”. However, the Europe Economics report found that the natural arbitrage between the LME price and the physical price is not occurring as it ought to. Due to strong demand for metals in the global market in recent years, the physical premium, attributable to the “warehouses queues”, has increased.²⁹ It found that “because of the impediments to arbitrage caused by queues, the value of warranted metal in LME warehouses concerned is lower than it would otherwise be in relation to the value of metal physically delivered”.

4.9.8. The Commission’s verified exporter information

During the Commission’s exporter verification process, an exporter informed the Commission that it paid a “premium” for importations of primary aluminum from an international supplier. The exporter provided the Commission with a copy of its supply agreement. The Commission verified the supply agreement indicated the import of

²⁸ *United Company Rusal Plc v The London Metal Exchange* [2014] EWHC 890 (Admin) <http://www.bailii.org/ew/cases/EWHC/Admin/2014/890.html> at paragraph 13

²⁹ *Ibid*, paragraph 19.

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primary aluminium was at the LME metal price with a premium based on the Major Japanese Ports (MJP) premium, ex Yokohama.

4.9.9. Other jurisdictions' approaches

Canada Border Services Agency

In March 2009, the Canada Border Services Agency (CBSA) published its Statement of Reasons setting out its final determinations with respect to the dumping and subsidizing of certain aluminum extrusions from China. Like the Commission, the CBSA analysed LME aluminum prices. It noted:

“ In regards to making proper price comparisons, it should be noted that companies purchasing aluminum from aluminum producers quoting LME prices would also pay local premiums on their purchases. This is evidenced by information contained in both the complaint and in information from a Chinese extruder with a supply agreement for importations of aluminum from an international supplier”.

Further, in the CBSA's analysis of countervailable subsidies relating to the provision of primary aluminum by government at less than fair market value, the CBSA once again referred to a cooperating exporter's supply arrangements with a supplier located outside China in establishing the fair market value of primary aluminum in China. The CBSA concluded that:

*“...in order to determine a fair market value price to compare with cooperative exporters' purchases of primary aluminum from SOEs, the CBSA based the fair market value price on the non-confidential terms found in the pricing agreement. The pricing agreement between the cooperative exporter and the Non-SOE supplier was based on the monthly average LME price plus a negotiated premium”.*³⁰

The Commission also considered the methodology applied by the United States Department of Commerce, International Trade Administration (ITA) in its administrative review of countervailing measures relating to aluminum extrusions from China³¹. There, the ITA considered submissions on the appropriateness of building up the LME metal price to include a premium.

One of the parties to the investigation submitted the following to the ITA:

³⁰ Canada Border Services Agency, Statement of Reasons, Certain Aluminium Extrusions Originating in or Exported from the People's Republic of China, 4214-22 AD/1379, 4218-26 CV/124, 3 March 2009.

The CBSA noted that non-confidential information relating to premiums paid on primary aluminium imported into China was not available and for that sole reason, it could not apply a premium amount in establishing the fair market value.

³¹ United States Department of Commerce, International Trade Administration, Decision Memorandum for the Final Results of the Countervailing duty Administrative Review: Aluminum Extrusions from the People's Republic of China, C-570-968, 22 December 2014

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- *“The LME cash price tells only a portion of the full pricing story, i.e., just the in-warehouse pricing; the particular regional premium applicable to the warehouse where the metal is located and from which it is drawn must also be included in the price.*
- *It is not possible to convert the LME cash price into an export price simply by adding ocean freight and import duties. The only way to build an export price using the LME cash price is to add the various regional premiums that would be charged to extract the aluminum from the warehouse”.*³²

While the ITA considered the representations above, it ultimately did not make a decision on this matter as it chose a different benchmark altogether. With different benchmarks available to the ITA on the investigation’s public record, such as the LME and the World Bank Commodity Price Data, the ITA relied on aluminum pricing data from the Global Trade Information Services, Inc. (GTIS) which compiles actual export transaction prices for primary aluminum.

The Commission notes that unlike the ITA, there have been no submissions in this review urging the Commission to rely on pricing data from the GTIS. The Commission also notes that the ITA case was in relation to a determination of a benchmark to work out the benefit associated with the alleged subsidy and its own methodologies. Elements can differ for this reason and the Commission has not included import transport costs for the primary metal when working out the assumed domestic transaction cost for the primary metal.

4.9.10. The Commission’s assessment

From the Matter of Rusal, the Commission accepts the explanation describing the different elements of pricing in the LME, including the distinction between physical metals (requiring regional premiums) and the LME traded metals. The Commission notes that supply agreements based on physical settlement and delivery implicitly includes a physical premium recognizing the cost of warranted metals exiting an LME-approved warehouse. Conversely, reference to the LME traded metal price solely refers to the trading aspect of the LME on the global market, without regard for physical settlement.

For the purposes of this review, the Commission is applying the published Major Japanese Ports (MJP) regional premium³³. The Commission has seen information relating to MJP premiums with delivery terms being made on a Cost, Insurance and Freight (CIF) basis or on a Cost and Freight (C&F) basis. The Commission recognizes that the MJP 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 inland transport from the port of arrival to the final destination and port of arrival charges.

³² Ibid

³³ Metal Prices Pty Ltd

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The Commission understands that premiums are paid over the LME cash price to cover freight and insurance and reflect regional demand and supply³⁴. The Commission understands that premiums are generally negotiated and then published. The published premium prices for each month are indicative of the negotiations from the prior month. Due to the complex nature of the formulation of LME regional premiums, the proportion of the premium that is attributed to freight cannot be determined.

The Commission has not identified information that would allow an adjustment to the premium to remove importation costs. The Commission has therefore determined to use the premiums as published and will not undertake to adjust the figures to remove amounts which may relate to freight or insurance.

Based on the available information, the Commission is satisfied that inclusion of a physical premium or regional premium to the LME traded metal price, based on the MJP premium, is appropriate.

Billet Premiums

Capral submitted to the Commission that purchases of billet attract a premium in addition to the full cost price of ingot purchases. The Commission's inquiries with one exporter who imported billet and ingot confirmed that billet premiums were indeed paid in addition to the ingot price. The Commission verified the supply agreement for the imported primary aluminum in billet form.

For determining the billet premium, the Commission has relied on billet premiums paid by one of the cooperative exporters.

Import duty and importation costs

On the basis of the primary aluminium benchmark price used in this review reflects domestic (in-country) purchases, costs associated with importation are no longer warranted.

Trader's premium

Australian industry submits that the uplift should also include an amount for a trader's premium. An analysis of the exporter's aluminum purchases was inconclusive in determining if a trader's premium was paid. It was observed that the unit price for purchase through a trader was less than the unit price directly from a smelter. On the basis that Commission is unable to establish with a reasonable level of certainty if a trader's premium was paid by the exporters, an allowance for trader's premium is not included.

Inland transport costs

The inland transport costs outlined in SEF 248 relied on the presumption of an import transaction and the cost of inland transport from the port of arrival to the extruder's

³⁴ Reuters <http://www.reuters.com/article/2014/09/11/lme-aluminium-idUSL5N0RC4R520140911>

location. Whilst the Commission has reconsidered the basis of the transaction, i.e. no presumed to be a domestic purchase, the Commission continues to hold the view that inland transport costs are necessary. The costs reflect transport of the primary aluminium from the supplier's location to the exporter's location.

As previously stated, none of the exporters provided details regarding inland transport costs incurred for primary aluminum purchases. The Commission has therefore calculated the weighted average inland transport costs reported by one exporter for its export sales of aluminum extrusions to Australia as the basis for inland transport costs relating to primary aluminium.

4.10. Submissions received regarding reasonableness of costs

4.10.1. Capral Ltd

Capral's submission in response to SEF 248 reiterates its prior July 2014 submission which outlines a range of other costs which it claims do not reasonably reflect competitive market costs³⁵.

Capral requested that the Commission assess the following costs with the objective being to determine that these costs should be substituted with other costs which are considered to reflect competitive market conditions:

- Heavy oil;
- Natural gas;
- Depreciation;
- Manufacturing overheads;
- Steel used in tooling; and
- Land use.

Also, in response to SEF 248 and the exporter verification visit reports, Capral raised issues relating to Kam Kiu's powder coating costs and packing costs for products sold on the Australian market.

4.10.2. PanAsia

PanAsia's submission in response to SEF 248 argues that the MJP premium represents delivery expenses, import charges and other services and that the LME cash price is the only relevant component in the Commission's proposed benchmark. PanAsia also put forward the view that the published LME prices are for primary aluminium already cast into ingots so the addition of the MJP premium is not warranted. In PanAsia case, it is also of the view that since its primary aluminium purchase are at ex-warehouse terms, the addition of a premium is inappropriate because the premium essentially relates to ocean freight expenses and port charges. PanAsia also states that the alternative benchmark should reflect prevailing market conditions in the country of provision.

³⁵ Case 249 Public Record Item No.21

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PanAsia submits that there is no evidence on the public record that demonstrates the purchase of billet incurs the MJP premium and a separate amount specifically relating to billet. PanAsia have also indicated that the Commission has double counted ocean freight and port charges by adding the billet premium.

4.10.3. Commission's assessment

Response to Capral submission

With respect to sub regulation 43(2) of the Regulations, the Commission's assessment of the cost of production for aluminium extrusions has assessed the exporter's reported primary aluminium costs. This particular cost was found to contribute between 70% to 80% of the overall cost of production and is therefore likely to be the most significant driver for determining the overall cost of the goods. By replacing the exporter's reported costs of primary aluminium with a competitive market cost, the Commission has accounted for the part of the cost base that would affect the assessment that the overall cost of the finished goods would not reasonably reflect competitive market costs.

To address the part of Capral's submission relating to Kam Kiu powder coating costs, the Commission is in possession of detailed cost figures for every model that Kam Kiu exported to Australia and sold domestically. Verification of Kam Kiu's cost data did not reveal any concerns regarding the allocation of costs for powder coated extrusions being biased to domestic sales.

Regarding packaging costs, the Commission is mindful of the point raised by Capral regarding how the Commission has treated Kam Kiu's export sales packaging costs. The visit verification found that Kam Kiu's exports to Australia were packed in wooden crates. The Commission therefore considers it reasonable to apply an upward adjustment to the normal value to account for the difference in packing costs relating to export sales and domestic sales. Since such cost data is not available to the Commission in relation to Kam Kiu, the Commission has relied on the packaging costs incurred by the other verified exporters who used similar packaging methods. An uplift that reflects the difference between Kam Kiu's reported packaging costs and the other exporter's packaging costs has been made to Kam Kiu's normal value.

Response to PanAsia submission

The Commission does not agree with PanAsia regarding its views on what the MJP premium is representing. The Commission has already stated that it identified the inclusion of the MJP premium through its enquiries with one of the exporters selected for verification. Australian industry has also shown that it also pays a premium. The Commission also disagrees that the premium is merely a cost associated with delivery. There has been no evidence put before the Commission that supports the view that a premium is purely representative of delivery costs such as ocean freight and port charges. Capral's own aluminium purchase data shows that it purchased aluminium from Australian suppliers on CIF terms, however, the Commission found that Capral's transactions were not subject to adjustment to remove costs which may relate to ocean freight. PanAsia's submission that payment of the MJP premium infers payment of ocean freight and thus should be removed is contrary to the Commission's review of Capral's purchases.

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The fluctuations in the premiums are also suggestive that other factors are at play. The Commission finds it unlikely that historical variation in the premiums is driven by changes in transportation costs alone. When combined with the Commission's observations of Capral's purchases, and in the absence of other information that suggests otherwise, the Commission holds the view that the various elements which are embedded within the premiums cannot reasonably be separated.

Regarding PanAsia's comments about the benchmark needing to reflect prevailing market conditions, the Commission's market situation analysis has determined that the market for primary aluminium is subject to distortion. On the basis that the prices paid for primary aluminium in China are distorted, the Commission is of the view that the premiums charged by domestic producers are also likely to be distorted. To suggest that the Commission should use the LME cash rate and then apply a domestic premium is not persuasive when the Commission has found that the domestic price for primary aluminium in China, which includes a premium, is distorted.

The Commission has had regard to the prevailing market conditions in China by establishing a constructed benchmark that excludes importation costs, trader's premiums and import tariffs. The Commission considers it appropriate and necessary to include the premium that would be paid if metal was purchased on the LME market. In the case of this review, the Commission found that the most appropriate was the MJP premium.

4.11. Determination of profit for constructed normal values

Section 45(2) of the Regulations requires that, where reasonably possible, profit for constructed normal values 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 ordinary course of trade.

Accordingly, the Commission has calculated a weighted average net profit for each cooperative exporter, measured as a percentage mark-up on full cost to make and sell, for each cooperative exporter for sales in the ordinary course of trade, before performing the abovementioned amendment to the recorded costs incurred in relation to primary aluminium.

4.12. Normal value

Cooperative exporters

Except for Guang Ya, the normal values for each cooperative exporter were established in accordance with section 269TAC(2)(c) of the Act using each exporter's quarterly weighted average cost to make and sell data (revised for primary aluminium cost uplift), by model, and an amount for profit determined as outlined in Section 4.11 above. Where applicable, adjustments to the normal value for each cooperative exporter were made under section 269TAC(9) for differences in:

- inland transport;
- credit cost;
- handling and other expenses;

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Guang Ya verification

As mentioned in section 4.3.4, the Commission verified Guang Ya's exporter questionnaire using a combination of benchmarking to other verified cooperative exporters and desktop verification using data provided by Guang Ya.

For the purpose of constructing a normal value, the Commission reviewed Guang Ya's CTMS data. In doing so a number of issues were identified that have precluded the Commission from relying on Guang Ya's data.

The Commission was not able to reconcile Guang Ya's total CTMS for the review period to its audited financial statements. In particular, the total CTMS reported in the questionnaire was found to be significantly higher than the cost of goods sold reported on Guang Ya's income statement. Guang Ya provided further information to demonstrate how the CTMS data reconciled to the income statement. However, the reconciliation data revealed additional anomalies which Guang Ya were unable to explain. This included a significant amount of goods that were described as "self-use", however, Guang Ya could not satisfy the Commission what it meant by "self-use" goods. The calculation of cost of goods sold was also found to include the cost of Guang Ya's casting workshop. The Commission understands that Guang Ya does not sell the billet produced by its casting workshop.

The Commission found that Guang Ya's SG&A costs reported in its CTMS data were twice that reported on its income statement. Guang Ya's reported sales volumes were found to be significantly lower than its reported production volumes. Whilst this in itself may not be an issue, the disparity between the two suggests that Guang Ya carries unusually high levels of inventory when compared to other exporters verified by the Commission. The resulting SG&A cost is therefore based on a large amount of inventory so the Commission does not accept that selling costs should be attributed to product which hasn't yet been sold.

The cost of direct labour reported in the CTMS data was found to be significantly lower than the direct costs reported by other exporters. The cost of power coated extrusions was found to be on average higher than mill finish extrusions which in itself is not unusual. However, a comparison to other verified exporter's data suggests that the cost differential between Guang Ya's finish types was unusually low.

In order to further understand Guang Ya's production volumes, the CTMS production volume was compared to Guang Ya's purchases of primary aluminium over the review period. Guang Ya's turnover statement reports [REDACTED] tonnes of production compared to [REDACTED] tonnes of primary aluminium purchases over the review period. However, the CTMS data reports a production volume of [REDACTED] tonnes over the review period. Again, Guang Ya's explanation regarding the difference was not sufficient.

Due to the difficulties encountered in attempting to verify Guang Ya's CTMS data, the Commission is not satisfied that there is sufficient information available to enable the normal value of the goods to be ascertained under section 269TAC(2)(c). The Commission's preliminary determination in the SEF calculated Guang Ya's normal value under section 269TAC(6) having regard to all relevant information. The Commission has calculated Guang Ya's normal value based on other relevant information that has been verified for the other cooperative exporters.

Re-assessment of Guang Ya normal value

In response to Capral's submission in response to the SEF regarding the approach to calculating Guang Ya's normal value, the Commission has found it necessary to reassess Guang Ya's cost data. The Commission reassessed Guang Ya's costs by benchmarking to the other verified cooperative exporters to determine if its costs were reasonable. On the basis that Guang Ya is located in the same province as the other cooperative exporters, the results of the benchmarking exercise are considered to be relevant to the calculation of Guang Ya's normal value. The benchmarking process revealed significant variations in Guang Ya's direct labour costs, manufacturing overheads and electricity, which in comparison to its industry peers, were significantly lower.

The variance in direct labour costs was an issue that was raised with Guang Ya prior to publication of the SEF 248 and in SEF 248 itself. However, a sufficient explanation to account for the variation has not been provided to the Commission. Further detailed examination post SEF has revealed additional concerns in relation to the variance observed for manufacturing overheads and electricity.

On the basis of the findings of the Commission's benchmarking to other exporters and the circumstances relating to the difficulties encountered with verification of Guang Ya's cost to make and sell data, Guang Ya's reported costs for direct labour, manufacturing overhead and electricity are considered unreliable. The Commission has therefore replaced these particular costs with verified costs obtained from the other cooperative exporters.

Consistent with the preliminary findings in SEF 248 that the Commission is not satisfied that there is sufficient information available to enable the normal value of the goods to be ascertained under section 269TAC(2)(c), the Commission has determined Guang Ya's normal value under section 269TAC(6) having regard to all relevant information.

Residual exporters

The normal value for residual exporters has been determined under section 269TACAB(2)(d) being the weighted average normal value for the like goods of the cooperative exporters from the same country of export.

Uncooperative and all other exporters

The normal value for uncooperative and all other exporters has been determined under section 269TACAB(1)(e) being the normal value worked out under section 269TAC(6) having regard to all relevant information.

4.13. Final Dumping margin

A calculation of dumping margins is not required for the purpose of reviewing variable factors. However, for this review a dumping margin for the review period has been calculated by comparing the weighted average of export price of the goods during the review period, with the weighted average of corresponding normal values in accordance with s.269TACB(2)(a) of the Act.

The weighted average dumping margin for each cooperative exporter is listed below:

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Exporter	Final dumping margin
Kam Kiu	2.0%
Pan Asia	21.9%
Guang Ya	-0.7%
Residual Exporters	14.5%
Uncooperative and all other exporters	37.9%

Table 4 – Final Dumping Margins

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 Commission finds that countervailable subsidies have been received in respect of aluminium extrusions exported to Australia from China during the investigation period. The subsidy margin was not negligible.

The Commission finds that the volume of subsidised goods exported to Australia during the investigation period was not negligible.

5.2. Programs reviewed

The Commission has reviewed the existing 19 subsidy programs that were found to be countervailable in the original investigation. A further 19 additional programs that were not included in the original investigation have also been reviewed in this investigation. The inclusion of these additional programs was in response to submissions made to the review alleging that producers of the goods benefited from a number of countervailable subsidies that were not included in the original investigation. These alleged subsidies referred to programs for the provision of good at less than adequate remuneration, grants, and beneficial taxation schemes.

The Commission requested all cooperating exporters to provide data and information regarding all subsidies they received during the review period as part of its response to the exporter questionnaire.

5.3. Summary of countervailable programs

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

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

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
1	Preferential tax policies for FIEs in the coastal economic open areas and economic and technological development zones	Tax	No
2	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant	Yes
3	Provincial Scientific Development Plan Fund	Grant	Yes
4	Export Brand Development Fund	Grant	Yes

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Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
5	Matching Funds for International Market Development for SMEs	Grant	Yes
6	Superstar Enterprise Grant	Grant	Yes
7	Research & Development (R&D) Assistance Grant	Grant	Yes
8	Patent Award of Guangdong Province	Grant	Yes
9	Training Program for Rural Surplus Labour Force Transfer Employment	Grant	Yes
10	Preferential Tax Policies for FIEs – Reduced Tax Rate for Productive FIE’s scheduled to operate for a period of not less than 10 years	Tax	No
15	Aluminium provided at less than adequate remuneration	LTAR	Yes
16	Preferential tax policies for FIEs established in Special Economic Zones (excluding Shanghai Pudong area)	Tax	No
17	Preferential tax policies for FIEs established in Pudong area of Shanghai	Tax	No
18	Preferential tax policies in the Western Regions	Tax	Yes
21	Tariff and VAT Exemptions on Imported Materials and Equipment	Tax	Yes
26	Innovative Experimental Enterprise Grant	Grant	Yes
29	Special Support Fund for Non-State-Owned Enterprises	Grant	Yes
32 [#]	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
35 [#]	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
44 [#]	Preferential lending programs – loans from Chinese policy banks and state owned commercial banks	Loans	No
45 [#]	Provision of land use rights for less than adequate remuneration	LTAR	No
46 [#]	Provision of electricity for less than adequate remuneration	LTAR	No
47 [#]	Preferential tax policies for high and new technology enterprises	Tax	Yes
48 [#]	Provincial Government of Guangdong tax offset for R&D	Tax	Yes
49 [#]	Exemption from city construction tax and education tax for FIEs	Tax	No

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

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

Table 5 – Current and new subsidy programs

5.4. Subsidies received

5.4.1. Cooperative exporters

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

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

Exporter	Applicable programs
Kam Kiu	15,21,47,48
Guangdong Zhongya	21,56,58

³⁶ A direct financial payment received from the government or a public body (sections 269TACC(2)(a)-(b) of the Act).

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Exporter	Applicable programs
Pan Asia	15
Guang Ya	5, 15, 26, 56

Table 6 – Cooperative exporters applicable subsidy programs

5.4.2. Residual exporters

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 determined subsidy margins for the residual exporters based on the weighted average countervailable subsidisation determined for all cooperative exporters.

Applicable programs
5, 15, 21, 26, 47, 48, 56, 58

Table 7 – Residual exporters applicable subsidy programs

5.4.3. Uncooperative and all other exporters

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 uncooperative exporters and all other exporters have received financial contributions that have conferred a benefit under 19 programs found to be countervailable in relation to aluminium.

5.4.4. Final subsidy margins

Table 8 below shows the Commission’s individual subsidy margin calculations for cooperative exporters, residual exporters, and collectively for uncooperative and all other exporters:

Exporter	Final subsidy margin
Kam Kiu	1.8%
Guangdong Zhongya	0.6%
Pan Asia	5.4%
Guang Ya	4.5%

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Exporter	Final subsidy margin
Residual Exporters	8.1%
Uncooperative and all other exporters	20.2%

Table 8 – Final subsidy margins

The Commission's findings in relation to each program investigated (including the method of calculation of subsidy margins) are outlined in **Non-Confidential Appendix 2**.

The calculation of subsidy margins for the cooperative exporter, residual exporter and uncooperative exporters is at **Confidential Attachment 2**.

5.5. Submissions received relating to subsidies

5.5.1. PanAsia

PanAsia's submission argues that the determination of the benefit received under Program 15 should not include the addition of an ingot or billet premium to the LME cash price. PanAsia continues to characterise premiums as relating to delivery costs and submits that the MJP premium is a service and does not meet the definition of a subsidy. It also highlights that because its aluminium purchases were made on an ex-warehouse basis, elements within the benchmark primary aluminium cost that relate to delivery should be excluded.

5.5.2. Capral

Capral have submitted that SEF 248 does not appear to address section 269TAACA(1) of the Act in determining whether the additional programs are countervailable. The basis of this part of Capral's submission relates to the fact that the GOC has not cooperated with the review.

Capral reiterate prior submission made to the review that the Commission should find the following program's countervailable;

- Program 44 – Preferential lending programs
- Program 45 – Provision of land use rights for LTAR

Capral also raise concerns with the findings made in relation to Program 7 and Program 58.

5.5.3. Commission's assessment.

In response to PanAsia's submission regarding the suitability of adding a premium, whether it be for ingot or billet and the issue surrounding what the premium actually represents, the Commission refers to section 4.9 of this report.

Regarding the point made by PanAsia about the terms of its primary aluminium purchases being ex-warehouse, the Commission finds it reasonable to exclude costs

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relating to inland transport on the basis that such services are not provided by a government entity and has accordingly done so.

In response to Capral's submission regarding the application of 269TAACA(1) of the Act, the Commission has had regard to the lack of GOC cooperation by finding that a number of new programs, which have not previously been investigated by the Commission, to be countervailable. In terms of the programs that the Commission has not found to be countervailable, the Commission refers to the findings detailed in Non-Confidential Appendix 2. The findings relating to Program 44 and 45 are also detailed in the same appendix.

SEF 248 stated that one of the cooperative exporters received a benefit under Program 7. A further review of the exporter's data shows that the cooperative exporter did not receive a benefit under Program 7 in the review period of investigation. The Commission's preliminary finding was therefore incorrect. However, as this program is still considered operative, it has been countervailed in relation to all other /uncooperative exporters category.

With respect to Program 58, the Commission confirms that subsidies received under this program were incorporated in the preliminary subsidy margins contained in SEF 248, however was incorrectly not included in summary table 7 at section 5.4.4.

6. NON-INJURIOUS PRICE

6.1. General

Under section 8 of the *Customs Tariff (Anti-Dumping) Act 1975*³⁷ (the Dumping Duty Act), the Parliamentary Secretary must have regard to the desirability of ensuring that the amount of dumping duty is not greater than is necessary to prevent injury or a recurrence of the injury.

Under section 10 of the Dumping Duty Act³⁸, the Parliamentary Secretary must have regard to the desirability of ensuring that the amount of countervailing duty is not greater than is necessary to prevent injury or a recurrence of the injury.

Sections 269TACA(a) and (c) of the Act identifies the NIP of the goods exported to Australia as the minimum price necessary to remove the injury caused by the dumping.

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). Deductions from this figure are made for post-exportation costs to the relevant level of trade in Australia.

6.2. Commission assessment

During the original investigation, the ACBPS determined the USP utilising Australian industry's CTMS for the investigation period however no profit margin was applied.

For the purpose of this review, the USP has been determined using Capral's verified CTMS data during the review period. Given that the measures do not distinguish finish types, the Commission considers that in order to uphold an effective remedy for injurious dumping, the USP should be set at the highest value model.

Unlike the original investigation, Capral was found to have generated a profit on the goods during the period of investigation for this review. The USP has accordingly been calculated to include a reasonable profit level. Capral's visit verification report is available on the case public record at item 43. The NIP has been calculated to FOB delivery terms by deducting from the USP amounts for:

- SG&A costs
- importer expenses; and
- Australian customs duty.

These deductions were based on data provided by verified importers of the goods from China during the review period. This approach is consistent with the approach taken in the original investigation.

³⁷ Section 8(5BA) of the *Customs Tariff (Anti-Dumping) Act 1975*

³⁸ Section 10(3C) of the *Customs Tariff (Anti-Dumping) Act 1975*

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NIP calculations are at **Confidential Attachment 3**

7. EFFECT OF THE REVIEW

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

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

Consistent with the Federal Court finding discussed in section 2.3, the review recommends to apply the measures based on a weighted average dumping and countervailing duty for all finish types.

The forms of duty available when implementing measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* (Anti-dumping Regulations) and include:

- combination of fixed and variable duty method (combination method);
- floor price duty method;
- fixed duty method (\$X per tonne); or
- ad valorem duty method (i.e. a percentage of the export price).

The method of duty measure currently applied to aluminium extrusions is the combination method pursuant subregulation 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*. The Commissioner proposes to recommend that this form of duty continues to apply to exports of aluminium extrusions from China.

Consistent with the current form of measures, the Commissioner also recommends that the collective interim dumping duty and interim countervailing duty imposed on the exporters subject to the combination method in relation to aluminium extrusions exported from China to be the sum of:

- the subsidy rate calculated for all countervailable programs; and
- the dumping rates 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 that includes a major cost component that is based on surrogate data.

Table 9 below lists the fixed rate of dumping and countervailing duty that has been calculated having regard to the desirability of ensuring that the amount of dumping and countervailing duty is not greater than is necessary to prevent injury or a recurrence of the injury.

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Exporter	Effective rate of combined dumping and countervailing duty
Kam Kiu	3.8%
Pan Asia	21.9%
Guang Ya	4.5%
Guangdong Zhongya	0.6%
Residual Exporters	17.5%
Uncooperative and all other exporters	48.5%

Table 9 – Combined dumping and countervailing duty

8. RECOMMENDATION

The Commissioner recommends that the Parliamentary Secretary consider this report and sign the attached public notice (**Non-Attachment 4**) to **declare**, under s. 269ZDB(1)(a)(iii), that, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, the dumping duty notice and countervailing duty notice is to be taken to have effect in relation to goods exported by;

- Kam Kiu;
- Guangdong Zhongya;
- PanAsia Aluminium China;
- Guang Ya;
- Residual exporters; and,
- all other exporters;

as if different variable factors had been ascertained.

APPENDICES AND ATTACHMENTS

Non-Confidential Appendix 1	Market Situation Assessment.
Non-Confidential Appendix 2	Assessment of Countervailability of subsidies.
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 Attachment 4	Public notice under section 269ZDB.

NON-CONFIDENTIAL APPENDIX 1 – MARKET SITUATION ASSESSMENT

PART I Introduction

A. Allegations of a market situation

In a submission to the Commission, Capral alleged that during the review period, a particular market situation existed in the primary aluminium market. Capral cited the findings made in the dumping and countervailing investigation into ARWs, as set out in REP 181, which was completed in December 2012, following the original aluminium extrusions investigation, as set out in REP 148.

Capral submitted that in REP 181, ACBPS found that domestic selling prices were not suitable due to the influence of the GOC on the aluminium industry in China. Capral noted that, in particular, ACBPS found that the GOC's actions directly impacted the price of aluminium in China, causing prices to be lower than they would without the intervention of the government. Capral argues that the same market distortions caused by the GOC and found in REP 181 "must affect the price of aluminium extrusions to an equal or greater degree given that primary aluminium represents approximately 60% of the cost to produce extrusions" compared to 48% of the cost to produce ARWs.³⁹ Capral suggested, it is therefore reasonable to conclude that Chinese domestic prices of aluminium extrusions are lower than they otherwise would be without GOC intervention".⁴⁰

B. Australian legislation, policy and practice

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 WTO.

Irrespective of the country the subject of the investigation, the Australian anti-dumping framework allows for rejection of domestic selling prices in market economies as the basis for normal value where there is a 'market situation' making the sales unsuitable, as outlined below.

1. The Act

Market situation

Section 269TAC(1) of the Act provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold domestically in the ordinary course of trade in arm's length transactions.

³⁹ Capral submission, dated 19 June 2014, Case 248 Public Record Item 5

⁴⁰ *Ibid.*

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However, section 269TAC(2)(a)(ii) provides that the normal value of the goods exported to Australia cannot be determined under subsection (1) where the relevant Minister 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 on the basis of a cost construction or third country sales. Therefore, a determination as to whether there is a market situation has potential consequences for the assessment of normal value and dumping margins.

Section 269TAC(2)(c) provides that a cost construction of normal value comprises the sum of what the Minister determines to be the cost of production or manufacture in the country of export and (on the assumption the goods were sold domestically in the ordinary course of trade rather than being exported) the administrative, selling and general costs associated with the sale and the profit on that sale.

Section 269TAC(2)(d) provides that where the Minister 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 ordinary course of trade in arms length transactions for exportation from the country of export to a third country.

Determination of costs

In constructing normal value based on costs, section.269TAC(5A) provides that these costs must be worked out in accordance with the Regulations.

In terms of costs of manufacture or production, subsection 43(2) of the Regulations requires that if:

1. an exporter keeps records relating to like goods that are in accordance with generally accepted accounting principles (GAAP) in the country of export; and
2. 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.

In terms of administrative, selling and general costs, subsection 44(2) provides that if:

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

the Minister must work out the cost of selling, general and administrative expenses using information set out in the exporter's records.

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Where the conditions of subsection 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 their costs, and the Commission may resort to other information to calculate these costs.

2. Policy and practice

Market situation

In relation to market situation, the Commission's Dumping and Subsidy Manual⁴¹ states:

In considering whether sales are not suitable for use in determining a normal value under s. 269TAC(1) of the Act 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.*⁴²

[Emphasis added]

It is considered that the underlined quote partially reflects the nature of the Commission's assessment in this report in relation to the existence of a market situation in the Chinese aluminium extrusions market.⁴³

It is considered that the assessment as to whether a market situation exists in a particular market constitutes a positive test. That is, before actual selling prices are rejected, the Commission needs to identify a 'market situation', and be satisfied that the 'market situation' renders the sales in that market not suitable for normal value purposes.

⁴¹ Available online at <http://www.customs.gov.au/site/page5719.asp>

⁴² Anti-Dumping Commission Dumping and Subsidy Manual, December 2013, pp 26-27

⁴³ It noted that the Commission considers it is possible for a degree of government influence to exist in a market without rendering the situation in the market such that sales are unsuitable for establishing normal value under s.269TAC(1). However, the Commission considers that significant government intervention in relevant market factors could distort prices to a degree that those prices may be unsuitable for normal value.

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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, it is considered that the pricing effect does not necessarily have to be quantified.

Determination of costs

In relation to the determination of reasonableness of costs under subregulations 43(2) and 44(2) of the Regulations, it must be assessed:

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

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

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

3. Previous relevant investigations

Certain Aluminium Extrusions (REP 148)

ACBPS's 2009 investigation into aluminium extrusions from China (REP148) involved an investigation into allegations of a particular market situation in the Chinese aluminium extrusions market. During this investigation, ACBPS found significant evidence of GOC intervention in the primary aluminium market (the raw material for aluminium extrusions) in China, but limited evidence of GOC influence on the domestic market for aluminium extrusions.

In that investigation, ACBPS considered that market situation 'factors' were limited (or isolated) to the market for the raw material for aluminium extrusions, rather than the market for aluminium extrusions itself. ACBPS found that all other costs of production and selling, general and administrative costs of Chinese exporters of aluminium extrusions were reasonable. Other factors identified in the investigation included GOC regulations for market entry and production efficiency, taxes and tariffs and State Reserve Bureau purchases of primary aluminium.

Consequently, ACBPS determined normal value by:

- substituting the cost of primary aluminium in the cost records of exporters with acceptable costs (in this case, the prevailing London Metals Exchange (LME) price for primary aluminium), and using domestic selling prices under s.269TAC(1) found to be in sufficient volumes in the ordinary course of trade after this test was performed using the substituted costs; or

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- constructing normal value under s.269TAC(2)(c) using the substituted acceptable primary aluminium costs (again, the LME price) and all other costs recorded by exporters (as these were considered reasonable).

This was summarised in Appendix 2 of REP148 as follows:

...ACBPS considers that certain identified domestic selling prices, or constructed domestic selling prices, of aluminium extrusions in China within the investigation period were not artificially low, and are suitable as a basis for determining normal value under either s. 269TAC(1) or s. 269TAC(2)(c).

Aluminium Road Wheels (REP 181)

ACBPS's 2012 investigation into aluminium road wheels (ARW) from China (REP181) also involved an investigation into allegations of a market situation in the ARW market. As primary aluminium is a significant component of ARWs, findings in relation to the market for primary aluminium in the ARWs case may be relevant to this case, as aluminium extrusions also rely on primary aluminium as a significant component for production.⁴⁴

The ARW investigation concluded that GOC macroeconomic policies in relation to the aluminium industry, and related implementing measures demonstrated that the GOC plays a significant role in the aluminium industry in China, through its various policies, plans and implementing measures.

The GOC influence was summarised in four broad categories as follows:

1. measures to drive structural adjustment;
2. technological, efficiency and environmental development measures;
3. tariffs, taxes, rebates and licences; and
4. subsidisation of encouraged practices and products.

REP181 determined that the price of ARWs in China is likely to have been influenced by directly, lower input costs and general changes in the determinants of supply in both the ARWs and upstream industries.

ACBPS considered that the impact on ARW prices had been brought about in a significant part by the GOC influence within the aluminium industry. It was considered that this influence had resulted in different ARW prices when compared to what would have been the case if the relevant markets operated without GOC intervention.

The ARW case formed the view that the GOC influence in the aluminium industry is pronounced in the parts of that industry upstream from ARW production. In particular, GOC-driven market distortions resulted in artificially low prices for the key raw materials used in ARW production in China – aluminium and aluminium alloy. In terms of

⁴⁴ Pursuant to section 269ZDA(3)(b), the Commissioner may have regard to any other matter that the Commissioner considers relevant to the review in deciding on the recommendations to be made to the Parliamentary Secretary.

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subsection 43(2) of the Regulations, these costs were not considered to reasonably reflect competitive market costs.

The main observation that supported this view was the comparison between the LME benchmark price and the Shanghai Futures Exchange (SHFE) benchmark. In every month of the investigation period, the LME price was higher than the SHFE. As the SHFE benchmark was determined to be a distorted price, the LME benchmark was used as it was considered to be a reasonable reflection of competitive market costs for aluminium and aluminium alloy.

The ARW case constructed normal values using section 269TAC(2)(c) to replace the costs of aluminium and aluminium alloy for each Chinese exporter. The substituted costs were based on LME data, plus an adjustment for alloy manufacture where appropriate (benchmark cost). In each case, application of this benchmark resulted in an uplift to an exporters' aluminium and/or alloy costs (i.e. the actual costs incurred by ARW exporters for aluminium and/or alloy were lower than the benchmark amount).

C. Information relied upon

In addition to the information contained in PanAsia application for this investigation, the Commission has also received the following that provide information relevant to the assessment of the existence of a particular market situation in China, and the reasonableness of Chinese exporters' costs for the purposes of the Regulations:

- various submissions from interested parties; and
- responses to the Chinese Exporter Questionnaire;

In addition, independent research into these matters has been conducted.

This information has been analysed, assessed, and considered in arriving at the conclusions in this paper.

PART II GOC influence on the Chinese aluminium industry

A. Introduction

In this review of measures, the Commission has identified various GOC influences and interventions that have affected the markets for primary aluminium and aluminium extrusions in China. These have been identified in the form of:

1. The GOC's broad, macroeconomic policies and plans that outline aims and objectives for the Chinese aluminium industry, as set out in the 12th Five-Year Plan (FYP); and
2. Implementing measures that go towards executing the aims and objectives of the 12th FYP and any other pressing government concern.

B. GOC macroeconomic policies and plans - Five-Year Plans

As set out in REP 181, at the central government level, the GOC develops and issues FYPs establishing a social and economic blueprint for Chinese policy. The GOC creates a set of targets and guidelines covering various social, economic and environmental issues that outline China's developmental direction. The first of these national FYPs was issued in 1953, and subsequent FYPs have been issued periodically since this time.

The Commission understands that the GOC's National Development and Reform Commission (NDRC) leads the development of these FYPs. The NDRC's website provides a detailed and comprehensive list of the NDRC's functions. The Commission observed, among other things, the following NDRC functions:

- To coordinate and address major issues in economic operation and adjust economic performance;
- To set and adjust the prices of important commodities that are regulated by the state;
- To push forward strategic economic restructuring; to organize the formulation of comprehensive industrial policies, coordinate key issues in the development of primary, secondary and tertiary industries as well as balance and coordinate industrial plans, major policies and plans for the national economic and social development;
- To maintain the aggregate balance and overall control of important commodities; and
- To formulate plans for the overall volume of import and export of important agricultural products, industrial products and raw materials, supervise the implementation of these plans and adjust them in accordance with the performance of the national economy.

Once the NDRC submits a draft FYP, it is debated and given final approval by the Central Committee of the Communist Party of China (CPC).

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In December 2014, the General Guidelines were established, setting out the scope for the 13th FYP. The Commission understands that from February to October 2015, the NDRC will be preparing a Consultative Draft that will lead into the finalisation of the 13th FYP in March 2016.⁴⁵

For the purposes of this investigation, the Commission analysed the application of the current national FYP, the *Guidelines of the 12th Five-Year (2011-2015) Plan of the People's Republic of China for the National Economic and Social Development* (12th FYP). The Commission considered the 12th FYP's treatment of industries relating to non-ferrous metals and aluminium.

Improve and promote manufacture

Section 1 of Chapter 9 of the 12th FYP refers to promoting the restructuring of key industries. The GOC has identified the smelting and building material industries as a key industry under the 12th FYP. The FYP states that the smelting and building material industries should:

- Control overall volume expansion;
- Optimise variety structure;
- Make progress in product R&D;
- Integrate resources utilization;
- Conserve energy; and
- Reduce emission based on domestic demand.

Section 2 applies to the orderly relocation of urban enterprises for non-ferrous metals. The GOC requires that key industries follow the orderly relocation of urban enterprises, such as those relating to non-ferrous metals. The GOC also indicated that it would guide the “clustering” of factories in order to create “advanced manufacturing bases with international competitiveness”.

Section 4 applies to the GOC's plan to guide the merger and reorganisation of enterprises. The GOC explained that its motivation is to encourage “alliance, cross-regional merger and reorganization, and increase industry concentration with focus on ...electrolytic aluminium...industries”.

C. Implementing measures

During the investigation, the Commission identified a series of GOC measures that it considers go towards meeting at least some of the objectives mentioned in the GOC's macroeconomic policies in relation to the domestic aluminium industry.

The most prominent of these are discussed below:

⁴⁵ <http://epi.yale.edu/visuals/china-five-year-plan/>

1. 12th Nonferrous Metals Five Year Plan

On 30 January 2012, the Ministry of Industry and Information Technology (MIIT) published the 12th Nonferrous Five Year Plan (Nonferrous Metals FYP).⁴⁶ The 2012 Nonferrous FYP sets out to:

- Accelerate the construction of nonferrous mines and promote mining exploration overseas;
- Encourage the development of alumina refineries in a number of regions that are thought to be rich in bauxite;
- Promote the ‘circle economy’ or use of recycled materials, such as the recovery of alumina from power generation coal ash;
- Establish guidelines that sees the movements of aluminium smelters from Easter and Central China to Western China to encourage development in Western China; and
- Set absolute production targets.

The Nonferrous Metals FYP specifically seeks to increase bauxite capacity to increase its production of alumina to 8 million tonnes by 2015. Alumina is a semi-finished product used to make primary aluminium. The Nonferrous Metals FYP also seeks to provide “encouragement” to the development of the aluminium sector, including the manufacture of auto aluminium sheet, heat treated aluminium plate, and high strength aluminium extrusions.

While the Nonferrous Metals FYP aims to increase bauxite and alumina production and to encourage the development of the aluminium sector, it seeks to curb the expansion of smelters in the production of nonferrous metals like copper and aluminium. The nonferrous metals FYP sets a national annual aluminium output cap at 24 million metric tons by 2015. The *Bloomberg News* reports that the GOC’s attempt to cap aluminium production is designed to “curb surging raw-material prices, protect the environment and contain inflation”.⁴⁷

The Nonferrous Metals FYP seeks to set aluminium production at 24 million tonnes per annum by 2015, however, industry expert, CRU, was of the view that Chinese primary aluminium production was expected to reach 24 million tonnes in 2012 (when the article was published), three years ahead of the target. As a result of unrealistic production targets, CRU opined that the GOC’s attempts to curtail the expansion of non-ferrous smelting capacity would most likely fail.⁴⁸ CRU:

⁴⁶ www.crugroup.com/about-cru/cruinsight/chinanonferrousmetalsFiveYearPlan, “Implications from China’s 12th nonferrous metals Five Year Plan”, 24 April 2012.

⁴⁷ Bloomberg News, “China to Curb Nonferrous metal Production Growth Through 2015”, 16 January 2012.

⁴⁸ CRU, “Implications from China’s 12th non ferrous metals Five Year Plan”, www.crugroup.com/about-cru/cruinsight/chinanonferrousmetalsFiveYearPlan, 24 April 2012.

“CRU believes that the central government will fail to control the growth of non ferrous smelting capacity. China is an investment driven economy and there are few technical barriers to construction. These facts, combined with strong growth in consumption explain why smelting overcapacity has existed in non ferrous metals. CRU sees no fundamental reason why this will not continue throughout the next Five Year Plan period.

2. The Directory Catalogue on Readjustment of Industrial Structure

As noted in REP 181, in 2011, the NDRC issued the *Directory Catalogue on Readjustment of Industrial Structure (Version 2011)* (2011 Directory Catalogue) to implement the 12th FYP.⁴⁹ The 2011 Directory Catalogue is described as providing an “important basis for the government to guide the direction of investments, to administer investment projects, and to formulate and implement policies on public finance, taxation, credit loan, land, imports, and exports”.

Under the 2011 Directory Catalogue, each industry sector is identified as either an “encouraged”, “restricted” or “eliminated” investment industry. As noted in REP 181, the 2011 Directory Catalogue describes the non-ferrous metals industry as an encouraged industry. As a result, the non-ferrous metals industry is eligible to receive preferential treatment, such as in the form of credit loans. Encouraged industries can also take advantage of exemptions from customs duties and import value added taxes in the importation of equipment.

REP 181 indicated that the 2011 Directory Catalogue describes aluminium-related areas as an encouraged investment industry:

- Recycling of scrapped and miscellaneous non-ferrous metal;
- Comprehensive utilisation of valuable elements;
- Comprehensive utilisation of red mud and melting slag;
- Alumina extracted from high-alumina fly ash; and
- Production of new non-ferrous metal materials for eras (sic) such as transportation and high end manufacturing.

3. Guidelines for Accelerating the Restructuring of the Aluminium Industry

In REP 181, the ACBPS described the NDRC’s publication of the *Guidelines for Accelerating the Restructuring of the Aluminium Industry* (Restructuring Guidelines) in 2006 as an indication of the GOC’s influence in the aluminium industry. The ACBPS noted that the Guidelines set out “how the industry should ideally operate”.⁵⁰

The Commission understands that the Restructuring Guidelines continue to operate. An industry article states that on 24 July 2013, the MIIT published new standards for the alumina and aluminium sectors in support of the GOC’s general directions to accelerate the restructuring of the aluminium sector.⁵¹ Platts noted that the July 2013 standards are

⁴⁹ <http://www.kslaw.com/library/newsletters/TradeManufacturingAlert/2011/June/article2.html>

⁵⁰ REP 181, page 12.

⁵¹ Platts, “China rolls out new standards for alumina projects, focus on bauxite supply,” 25 July 2013.

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aimed at preventing unlicensed mining and waste of resources, accelerating the restructuring of the aluminium industry and monitoring smelter expansion.

The Commission understands that the standards issued by the GOC relate to a number of requirements for the aluminium industry, including:

- Setting long-term bauxite supply source and access;
- Minimum capacity (800,000 mt/year) for new alumina projects;
- Locations for new smelters needing to be near the coal flu ash production zones; and
- Refining aluminium smelting projects requiring approvals from relevant authorities and compliance with state requirements for alumina, power and transport.

In addition to the Restructuring Guidelines, the MIIT issued the *Guiding Opinion on Accelerating the Promotion of Merger and Reorganization of Enterprises in Key Industries* (Merger Guidelines). The Merger Guidelines encourage nine of China's key industries, which includes electrolytic aluminium, to "increase their merger activities in an effort to become more competitive overseas, and more efficient".⁵² It requires that the top 10 enterprises in the electrolytic aluminium industry reach a concentration of 90% of the whole industry by 2015.

4. Nonferrous Metal Industry Adjustment and Revitalisation Plan

In response to the Global Financial Crisis, the GOC released a series of industrial revitalisation plans from January to March 2010 (Revitalisation Plans). The China National Machinery Industry Corporation (SINOMACH), a state-owned enterprise, reported that the Revitalisation Plans were designed to curb any downward trends in the economy, to continue the restructure of industries and to restore market confidence.⁵³ SINOMACH summarised the Revitalisation Plans affecting the nonferrous metal industry:

Nonferrous Metal Industry

- *Efforts will be made to stabilize and expand the domestic market and improve the export environment. Product portfolios need to be restructured to meet the demands of various industrial sectors like power, transportation, construction, machinery and light industries. Supports will be extended to those exports that are featured with high technical contents and high added values.*
- *Strict control will be exercised over the total production capacity and on phasing out of backward production technologies.*

⁵² China Legal Briefing (April 25 – May 03 2013), www.wenfei.com

⁵³

http://www.sinomach.com.cn/templates/T_news_en/content.aspx?nodeid=320&page=ContentPage&contentid=3028

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- *Greater efforts will be made to promote technical modernization and R&D programs. Cutting-edge generic technologies will be further developed to improve the processing strength for mechanical equipment and critical materials.*
- *More efforts will be made to improve the competitive advantages of enterprises, by promoting enterprise restructuring, optimizing industrial distribution, enhancing management skills and safety supervision. Resources both from home and abroad shall be fully utilized to ensure readily access to resources.*
- *Speedy efforts shall be made on establishing a non-ferrous metal recycling system that covers the whole society. Circular economy shall be developed to improve the comprehensive utilization of resources.*⁵⁴

5. Notice of the State Council on Further Strengthening the Elimination of Backward Production Capacities

As indicated in REP 181, the Commission identified the *Notice on Strengthening Work on the Elimination of Backward Production Capacity* (Backward Production Notice) issued by the GOC in 2010 as another example of the GOC's implementing measures. The Backward Production Notice targets and provides a timeline for eliminating production capacity in major industries, such as the nonferrous metal industry.⁵⁵ The *China Business Review* indicated that the GOC released the Backward Production Notice in order to reduce per unit consumption of energy by 20% by the end of 2010. In keeping with the Backward Production Notice, in May 2010, the *China Business Review* also reported that the MIIT called on local governments to curb the production of 18 additional industries involved in energy-intensive and highly polluting enterprises.⁵⁶

The Commission understands that the Backward Production Notice operates to date and in particular, during the review period.

News articles published during the review period suggest that:

- In May 2013, the State Council issued a new plan to tackle overcapacity in a number of industries. The article stated, "The long-awaited plan, published by China's cabinet, said it would focus on "establishing and perfecting" market mechanisms, marking a change of approach after years spent trying to strong-arm the sectors into submission...As well as blocking new approvals, the new plan will seek to absorb overcapacity by stimulating domestic demand, and will also offer tax incentives to encourage firms to relocate plants overseas". The news article also suggested that previous

⁵⁴ Ibid.

⁵⁵ <http://www.chinabusinessreview.com/china-accelerates-efforts-to-combat-overcapacity/>, 1 September 2010.

⁵⁶ <http://www.chinabusinessreview.com/china-accelerates-efforts-to-combat-overcapacity/>, 1 September 2010.

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efforts in curbing overcapacity had not succeeded due to the "...growth-obsessed local governments, which had encouraged rapid capacity expansions with subsidies, access to credit and favourable oversupply".⁵⁷

- In July 2013, the GOC issued further directions in its attempts to control China's "bloated" aluminium sector⁵⁸. Further examples of the ongoing GOC intervention in reducing the overcapacity of aluminium production in China are set out below. The GOC:
 - directed 1,400 companies in 19 industries, including the electrolytic aluminium industry, to cut excess production capacity in 2013;⁵⁹
 - tightened regulations for operating smelters, including setting stricter limits on power consumption and emissions;
 - banned the construction of new aluminium smelters in environmentally sensitive areas; and
 - raised the production capacity of alumina refiners that use bauxite imports.
- In December 2013, the NDRC announced that efficient aluminium producers will continue to pay the same electricity rates, however less-efficient producers (requiring 13,700 kilowatts plus to produce a ton of liquid aluminium) will be charged a higher electricity tariff. The article noted, "The NDRC is trying to address the effects of protective local governments. It said...that they won't be allowed to offer lower power prices to their aluminium producers and asked them to roll back any existing...preferential power prices".⁶⁰
- In March 2014, a news article predicted the closure of 2 million tonnes of aluminium smelter production capacity as a result of the low aluminium price and the GOC's drive to curb production capacity. The article observed that the low aluminium price was "below full production costs of almost all smelters in China...". The article suggested that local governments have propped up unprofitable smelters by offering subsidies. More recently, the central government had prohibited local governments from providing subsidies. With the low domestic price and apparent limitation of subsidies, several smelter operators have exited the industry or have gone into bankruptcy. The article suggested that while the central government had made tackling overcapacity as a priority, it was unlikely to allow many smelters to go into bankruptcy due to possible widespread financial fallouts.⁶¹

⁵⁷ <http://www.reuters.com/article/2013/10/15/us-china-overcapacity-idUSBRE99E05620>, "China to ban new projects, strengthen market in new overcapacity plan", 1 May 2013.

⁵⁸ <http://www.reuters.com/article/2013/07/24/china-restructuring-aluminium-idUSL4N0FU0IZ20130724>

⁵⁹ <http://www.bloomberg.com/news/articles/2013-07-25/china-cuts-capacity-in-some-industries-to-reshape-economy>

⁶⁰ The Wall Street Journal, "China Moves to Cut Aluminium Overcapacity," 23 December 2013. <https://blogs.wsj.com/moneybeat/2013/12/23/china-moves-to-cut-aluminium-overcapacity>.

⁶¹ www.reuters.com/article/2014/03/05/china-aluminium-idUSL3NOMO35520140305, "Low prices forcing aluminium smelters in China to cut output-trade", 5 March 2014.

6. State Bureau of Material Reserve

In REP 148, the ACBPS found that the China State Reserve Bureau's (CSRB's) intervention in the primary aluminium market through the purchase and stockpiling of large quantities of primary aluminium from the Chinese domestic market did impact domestic aluminium prices. REP 148 stated:

The CSRB purchases of primary aluminium are regarded by ACBPS to be significant government interventions in the primary aluminium market. Irrespective of the motivation for two such interventions, the apparent outcomes were that aluminium prices responded; in the first instance by stabilising and even increasing from a falling trend; and in the second instance by further increases in prices.⁶²

In the current review, the Commission understands that the State Bureau of Material Reserve (SBMR) (formerly known as the CSRB), situated within the NDRC, continues to exert influence on the Chinese primary aluminium market.

As the government unit responsible for managing strategic material reserves, it continues to purchase and sell aluminium when it considers necessary. For example in March 2013, the SBMR announced that it would buy up 300,000 tonnes of aluminium for delivery between 1 April and 31 May 2013.⁶³ The industry article suggested that the government's purchase of excess aluminium in the market "perpetuate[d] the oversupply situation". It further observed that the GOC's decision to intervene in the market was "designed solely to support China's domestic market".

The SBMR's role is not limited to purchasing aluminium due to the widely-perceived glut in the Chinese aluminium market. At times, the SBMR has also been known to sell aluminium to ease supply shortages. For example, in November 2010, the SBMR sold 117,000 tonnes of aluminium ingot reserves in order to address supply shortages resulting from the government's policies of limiting aluminium production.⁶⁴

7. Export tariffs on primary aluminium

In REP 181, ACBPS found the following:

When combined with the observation that export taxes on primary aluminium were at significant levels with no VAT export rebates, and processed aluminium products attracted lesser export taxes and considerable VAT export rebates, it seems to indicate a policy desire to minimise exports of primary aluminium and encourage exports of processed aluminium products.

ACBPS considers these observations relevant in so far as it is reasonable to expect such factors caused a significant increase to the supply of primary

⁶² REP 148, p36.

⁶³ www.aluminiumtoday.com/news/view/china-state-reserves-bureau-buys-300kt, Aluminium International Today, 22 March 2013.

⁶⁴ www.worldal.com/news/china/2010-11-18/12900422583, "State Reserve Bureau to sell aluminium ingot reserves", 18 November 2010.

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*aluminium in China as exporters' competitiveness would have been seriously eroded by the export taxes and lack of VAT export rebate. As a result it is reasonable to consider this exerted downward pressure upon the domestic price of primary aluminium in China.*⁶⁵

In this review, the Commission has found that the 15% export tax on primary aluminium has not been abolished in spite of requests from a number of smelter operators. The industry article notes that this export tax serves to encourage the manufacture and export of value-added products, curb the flow of ingots overseas and conserve energy. The article indicated that due to China's limited power generating capacity, the GOC was against abolishing the tax as it perceives the export of primary aluminium as "exporting electricity and importing pollution".⁶⁶

In the original investigations into dumped aluminium extrusions and ARWs, both cases found that exports taxes applied to exports of primary aluminium. The ARW case made the observations that the export tax on primary aluminium was reduced from 30% to 0% in 2007 but was reintroduced in 2009 at a rate of 15%, and remained at that rate through to June 2011. The aluminium extrusions case also made similar findings in relation to the level of taxes imposed on exports of primary aluminium.

In both cases the view was formed that the existence of export taxes and VAT export rebates on processed aluminium was an indication of GOC policy to minimise exports of primary aluminium and encourage exports of processed aluminium products.

A recent Platts Financial report in December 2014 indicates that the 15% export tax continues to apply to exports of primary aluminium and through the Commission own verification process it was found that exporters are receiving a 13% VAT rebate for exports for aluminium extrusions.

Information received from the GOC in its questionnaire for the current ARW review of measures case supports media reports and demonstrates a continuation of the policies that existed in the original extrusions and ARW cases.

The GOC response confirms that a 15% export tariff applies to non-alloyed aluminium and bauxite and VAT rebates are not available for these products. Reflecting on the original case finding that suggests these policies are designed to minimise exports of primary aluminium, the Commission has compared the export volumes of primary aluminium to the national output volumes. Both sets of data have been provided by the GOC in its ARW review of measures questionnaire.

The GOC primary aluminium export data is provided for the period July 2008 to June 2014. When compared to the figures provided in the original case, between June 2011 and June 2014, China exported 2.1 million tonnes of primary aluminium. The total volume of exports equates to 3.4 per cent of the national output of 62 million tonnes over the same period.

⁶⁵ REP181,p34.

⁶⁶ Platts, "China unlikely to cut 15% export tax on primary aluminium: sources", www.platts.com/latest-news/metals/sydney/china-unlikely-to-cut-15-export-tax, 9 December 2014.

8. State owned aluminium smelters

Further evidence of the GOCs involvement in the primary aluminium industry is shown in data provided by the GOC for the ARW of measures case. This data shows that SOEs and SIEs continue to account for a combined 60% of the total national volume of primary aluminium produced in China in 2013 and approximately 55% in the six months commencing 2014. This is consistent with the original investigation which found that almost half of the production volume was sourced from SOE and SIE companies. Total production of primary aluminium in China in 2013 was reported to be 22 million tonnes.

The information provided to the ARW case by the GOC also contained a listing of 50 SIE primary aluminium producers. It is noted that SIE companies (also referred to as collectively-owned enterprise) accounted for 989,000 tonnes of production in 2013 compared to 12.2 million tonnes produced by SOE companies and 5.5 million tonnes from privately owned enterprises. Notably, the data demonstrates that the proportion of SOE sourced primary aluminium production volume remains significant.

D. Commission's assessment

After identifying relevant GOC macroeconomic policies in relation to the primary aluminium industry and related implementing measures, the Commission considers there is significant evidence on the record to show that the GOC influences the primary aluminium industry in China.

Notwithstanding the GOC's more recent attempts to reform the aluminium industry, the Commission continues to be of the view that the significant GOC influences and interventions continue to distort the competitive conditions in the primary aluminium industry

1. Macroeconomic policies

As the architect of the FYPs, the Commission considers that the NDRC's functions illustrate the situation in the Chinese market. That is, a main government body is tasked to manage and control China's macroeconomy instead of allowing market forces to shape commercial dynamics and outcomes. As noted by the Commission above, the State Council released a plan in May 2013 to tackle overcapacity in a number of industries, including the aluminium industry. The State Council indicated that this plan would not force industries into submission, rather it would focus on "establishing and perfecting" market mechanisms⁶⁷.

While a number of the GOC policies identified in the 2011 Directory Catalogue and Backward Production Capacity relate to certain environmental and social policies, such as reduction of outdated and high-cost technologies, the Commission considers that overall, the GOC policies can reasonably be considered to go towards the GOC's policies of management and control of industries, as embodied in the NDRC's functions:

- pushing forward strategic economic restructuring;

⁶⁷ <http://www.reuters.com/article/2013/10/15/us-china-overcapacity-idUSBRE99E05620>, "China to ban new projects, strengthen market in new overcapacity plan", 1 May 2013.

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- setting and adjustment of prices of important commodities that are regulated by the state;
- control of important commodities;
- planning of import and export volumes; and
- coordination of industrial development.

2. Nonferrous metals and aluminium-specific measures

Similar to findings in REP 181, the Commission considers that the 2011 Directory Catalogue and Backward Production Notice are examples of sub-policies and measures of GOC macroeconomic policies designed to implement the ‘aspirational’ aims of GOC policies, in particular the 12th FYP.

The Commission considers that the Nonferrous Metals FYP, Restructuring Guidelines, Merger Guidelines and Revitalisation Plans strongly suggest the GOC’s influences and interventions in the aluminium industry. These policies establish GOC expectations of industry behaviours in mergers and acquisitions, business expansion, product development, exporting and resource management.

The promulgation of these GOC measures suggests that competition and normal market forces are diminished or are supplanted by government policies and measures. As described in Part II above, the Commission identified examples of the GOC’s policies that influenced the primary aluminium industry by mandating measures, such as the following:

- intervention by the GOC in reducing the overcapacity of aluminium production, for example by capping the national annual aluminium output;
- increasing mergers in the electrolytic aluminium industry in order to make it more competitive in the overseas market;
- increasing bauxite and alumina production (key materials for the production of aluminium);
- revitalisation plans designed to curb downward trends in key industries, such as the nonferrous metal industry; and
- imposing greater scrutiny of and additional government authorisations for new aluminium smelters.

The Commission notes that the GOC’s attempts to curb local government subsidies to aluminium smelters highlight the continuing efforts by local governments to support aluminium producers by providing preferential pricing, such as electricity prices. It also highlights the apparent conflict between the central government and local governments in their policies towards aluminium smelters.

In addition, the SBMR continues to purchase and stockpile significant quantities of aluminium from the domestic market, depending on the GOC’s assessment of supply levels and domestic pricing. The GOC also influences the production of aluminium through state-owned aluminium smelters. As noted above, SOEs and SIEs together account for over 60% of the total national output. Further, the GOC actively controls the primary aluminium supply in China by limiting its exportation by imposing a 15% export tax. These GOC interventions underlines the GOC’s active role in controlling the supply and demand (and hence pricing) of aluminium in the domestic aluminium market.

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3. GOC reforms

During the review period, the Commission observed several examples of the GOC's attempts to reform the nonferrous metals and electrolytic aluminium industry. Certain GOC policies, such as capping of production capacity and limitation of smelters' power usage and restricting access to local government subsidies, were unveiled during the review period. News articles published during the review period report that the GOC seems to have made the reform of the aluminium industry as a priority. The Commission notes that the GOC's attempts at reforming the aluminium industry were also cited in REP 148 and REP 181. Both REP 148 and 181 referred to the GOC's attempts to address overcapacity through structural reforms and elimination of backwards capacity.

The Commission considers that while the GOC has signalled attempts to lessen government influence on the aluminium industry by way of local government subsidies, there has not been sufficient time for recent GOC reforms to address fully the chronic issues of government subsidies in the production of aluminium and other factors contributing to the glut of primary aluminium in the Chinese market. While there appears to be reform in local government subsidies, the central government continues to exert its influence through other policies and measures. The Commission also considers that certain industry analysts have expressed doubt about these reform programs succeeding due to:

- conflicts between the central government's policies and local governments policies;
- potential fallouts, such as widespread bankruptcy of aluminium producers; and
- unrealistic expectations concerning production caps.

PART III The Commission's assessment of the likely impact of the GOC's influence on the aluminium extrusions industry

A. Introduction

After identifying numerous GOC influences on the primary aluminium industry, the Commission has undertaken an assessment as to whether it is reasonable to consider that a market situation existed in the Chinese aluminium extrusions industry during the review period, such that sales in that market are unsuitable for determining normal value under section 269TAC(1).

In examining whether a market situation existed in the Chinese market for aluminium extrusions, the Commission has examined the likely impact of the various GOC macroeconomic policies and plans and their implementing measures on the price of primary aluminium, the primary input to the manufacture of aluminium extrusions. Consistent with the findings detailed in REP181, the Commission has identified that the cost of primary aluminium is a major cost component in aluminium extrusions. Finally, the Commissioner has considered the GOC's direct influences on the aluminium extrusions industry.

B. Impact on price of aluminium – cost of primary input to aluminium extrusion

1. LME and SHFE prices

Other relevant investigations have previously referred to the LME and SHFE in assessing the impact of government influence on the price of aluminium.

In REP 148, ACBPS observed that SHFE prices were lower than LME prices. This observation was a significant factor in explaining the impact of the GOC influence on primary aluminium prices. ACBPS replaced the exporters' cost of primary aluminium with costs that reasonably reflected competitive market costs associated with the production or manufacture of aluminium extrusions. ACBPS determined that there was no situation in the market distorting the price of aluminium extrusions that rendered the domestic sales unsuitable for normal value purposes.

On the other hand, REP 181 analysed the SHFE and conducted a comparative analysis of the aluminium prices between the LME and the SHFE. ACBPS observed that the SHFE spot market prices were consistently lower than the LME prices during the investigation period. In this investigation, ACBPS determined that:

“...available information and ACBPS's analysis indicates that these influences are likely to have had a material impact on the domestic price of ARWs in the investigation period, such that prices of ARWs in that market are no longer suitable for determining normal value under s.269TAC(1)”.

In this review, the applicant, PanAsia, claims that a comparison of LME prices from the original investigation period to the year to date ending March 2014 shows a significant change in prices between the periods. PanAsia claims that LME prices are now approximately 5% lower than those during the original investigation period.

The Commission considers that the significant GOC influence and intervention (as described in detail in Part II of this Appendix) has resulted in domestic aluminium prices that are materially distorted and therefore, unsuitable for normal value purposes. In the circumstances, the Commission considers that it would not be reasonable to compare the LME, a global competitive market, to the SHFE, a closed exchange that is restricted to Chinese nationals only, because the SHFE is affected by the distorted aluminium prices in China.

The Commission refers to relevant findings made in the United States Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada (Softwood Lumber case). The Commission notes that this investigation also casts doubt over the use of a benchmark price where that price was affected by market distortion. In this case, the Import Administration inquired whether the Canadian provincial government's stumpage programs conferred a benefit on Canadian softwood lumber producers. The Import Administration applied its regulations in considering three categories of comparison benchmarks for determining whether a government good or service is provided for less

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than adequate remuneration⁶⁸. The Import Administration concluded that there were market-based internal Canadian benchmarks. It referred to the preamble to the relevant regulations in stating its reasons:

“Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it.”⁶⁹

While the Softwood Lumber case focused on a government’s provision of service, rather than primary aluminium or aluminium extrusions, the analysis is relevant to the Commission’s consideration of an appropriate benchmark in determining the GOC’s influence on the price of aluminium. The Commission considers that the significant examples of GOC control and management of the aluminium industry renders the primary aluminium prices in the Chinese market, including the SHFE prices, materially distorted. Like in the Softwood Lumber case, using the SHFE as a benchmark for comparative analysis, would render the analysis “...circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect”.⁷⁰

2. Production of aluminium and smelters’ costs

The Commission considers that the smelters’ cost of production of aluminium provides a meaningful illustration of the situation in the Chinese market. In a detailed submission provided by Capral to the Commission, Capral wrote:

“China accounts for over 40% of global production of primary aluminium, yet the average cash cost to produce primary aluminium in China is around 30% higher than the rest of the world, primarily due to the higher cost of alumina and energy. For example, in the March quarter of 2014 the cash cost in China was USD 2,097 per metric tonne (MT), compared to an average for USD 1,573 per MT for the rest of the world, and this was driven by higher alumina and energy costs (USD 210 and 388 per MT higher respectively). For this same period analysis shows that 100% of China’s aluminium production is unprofitable (on a cash cost basis), compared to only 6% for the rest of the world.”⁷¹

Analysis by Harbor Aluminium Intelligence Unit

In support of its submission, Capral relied on data obtained from an independent analysis performed by Harbor Aluminium Intelligence Unit (Harbor Aluminium). Harbor Aluminium provides industry expert analysis and consultancy services, including strategic aluminium industry and outlook reports. It provides specific reports on the Chinese aluminium

⁶⁸ Issues and Decision Memorandum: Final Results of the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada, 67 FR 15545, 2 April 2002.

⁶⁹ Ibid, p32.

⁷⁰ Ibid.

⁷¹ Submission, Australian industry – Capral Ltd, EPR 248, no 038.

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industry and in-depth cost curves analysis in aluminium smelting, aluminium refining and bauxite mining. Capral sourced the smelting cost data through its commercial subscription with Harbor Aluminium⁷².

Relying on Harbor Aluminium's 'aluminium smelting cost curve analysis' reports, Capral submitted that SHFE prices were lower than the estimated cash cost of production across all quarters of the investigation period. Capral submitted that Chinese domestic aluminium prices are below the estimated cost of production.

Further, Capral relies on Harbor Aluminium's "Summary of Unprofitable Aluminium Operating Capacity by Smelter", which shows that of 23,894 Chinese smelters, after casting, 100% are unprofitable and are operating at a loss. The Commission understands that Harbor Aluminium has estimated these costs of production based on costs that are unsubsidised. The smelting cost data is the cash cost of production and does not include depreciation, sustained capital expenses, working capital and amortisation. The cash cost is exclusive of VAT of 17% which is paid by Chinese smelters for raw materials, energy and services.

The Commission contacted Harbor Aluminium in order to gain a better understanding of how Harbor Aluminium calculated its smelter costs. In response, Harbor Aluminium provided the detailed cost elements that underpin the cost figures. Harbor Aluminium's data, like most of that provided by information brokers, is based on its ability to acquire detailed cost information through its relationship with industry participants. Like most other information providers of the kind, Harbor Aluminium's information products are key to its reputation in providing information to industry stakeholders. Noting that Harbor Aluminium has a commercial incentive to provide accurate, impartial information to its subscribers, and as a result of the Commission's verification of Harbor Aluminium's data, the Commission considers that the data from Harbor Aluminium is reliable.

In contrast to the Commission's views set out in 4.9.3 regarding the suitability of using the smelter cost data for constructed normal value, the Commission is of the opinion that the Harbor Aluminium smelting cost data is suitable in the context of this part of the report to assess the impact of the market for primary aluminium on the price of aluminium extrusions.

The Commission compared this data to the cooperative exporters' primary aluminium purchases and found that a significant proportion of purchases were at prices which were below the cost of production.

Other evidence supporting that Chinese smelters are operating at a loss

Other information before the Commission are consistent with the Harbour Aluminium analyses that: (1) domestic aluminium is sold at below the cash cost of production; and (2) Chinese smelters are operating at a loss. As set out in Part II of this Appendix, the non-ferrous metals industry's status, as an "encouraged industry", allows aluminium producers to receive more favourable rates and charges from local and provincial government. For example, electricity tariff data for 2013 available on the public record

⁷² *Ibid*

from the US Countervailing Investigation into Boltless Steel Shelving Units Pre-packaged for Sale from China shows that the primary aluminium, or electrolytic aluminium, industry receives preferential tariffs that are lower than the rates generally available to large industry⁷³. Much of the “*Chinese aluminium capacity operates at a loss and is reliant on subsidies from local and regional governments to survive.*”⁷⁴

C. Direct influence on the aluminium extrusions industry

The Commission understands that aluminium is a significant commodity in the rapid industrialisation of China. An industry article states, “Aluminium extrusion products, which have enormous potential for industrial applications, will play a key role in this economic transformative process. Among the country’s existing 124 industrial sectors, 113 (or 93%) use aluminium products”.⁷⁵

The GOC has also been trying to “boost the demand” for aluminium to address the industry’s overcapacity.⁷⁶ Similarly, government departments have issued guidelines on increasing the consumption of aluminium extrusion profiles. Under the *Notice on Guiding Opinions for Accelerating Aluminium Industrial Restructuring*, the NDRC, along with 9 other ministries and commissions, proposed increasing the proportion of high value-added aluminium extrusion products to achieve a 70:30 ratio between industrial aluminium extrusion profiles and construction aluminium extrusion profiles.

D. The Commission’s assessment

The Commission considers that the GOC’s actions have directly impacted the price of aluminium materials in China, causing prices to be materially distorted. The Commission understands that the cost of primary aluminium makes up 70-80% of the cost of aluminium extrusions, based on the Commission’s verification of exporters’ responses to the Commission’s questionnaires.

Direct impact on cost of primary input

As discussed above, the Commission has found that the price of primary aluminium is materially distorted by the GOC’s influences and interventions. Government influence has also impacted the price of aluminium extrusions by the reduction of input prices through subsidised production costs of primary aluminium and preferential treatment provided to primary aluminium producers. Direct intervention by the GOC through the purchase and stockpiling of large quantities of primary aluminium and export tariffs on aluminium were likely to have impacted the supply of aluminium extrusions.

⁷³ US ITA Case C-570-019 Countervailing Duty Investigation of Boltless Steel Shelving Units Pre-packaged for Sale from the People’s Republic of China: Preliminary Benchmark Memorandum, 23 January 2015.

⁷⁴ Reuters, “China aluminium surplus likely to cap price rally”, July 2014.

⁷⁵ China Zhongwang, “Aluminium Extrusion Industry: Overview and Outlook”, [www://lzhongwang.com](http://www.lzhongwang.com), 1 June 2011.

⁷⁶ South China Morning Post, “China’s demand for copper, aluminium expected to rise in 2014”, 7 October 2013.

Subsidisation

As set out in Appendix 2 below, the Commission has found that Chinese exporters of aluminium extrusions have been in receipt of countervailable subsidies from the GOC, and that evidence exists to suggest that upstream suppliers of aluminium materials have also potentially been in receipt of subsidies.

The likely impact of these subsidies on the costs of factors of production of aluminium extrusions and hence the price of aluminium extrusions through:

- improving the technology used by aluminium extrusions manufacturers, decreasing the cost of production, as well as affecting the supply and hence price of aluminium enterprises (and upstream industries that are also likely to have received subsidies); and
- directly reducing input prices of products at each stage of production if the subsidies are passed on by the recipient enterprises.

The Commission's conclusion

The Commission has determined that the price of aluminium extrusions in China is likely to have been influenced by changes in determinants of supply due to lower costs of production. The Commission considers that it is likely that there has been an impact on aluminium extrusions prices, brought about in a significant part by the GOC influence on the primary aluminium industry. The cost of primary aluminium has been found to contribute between 70% to 80% of the cost of aluminium extrusions. Therefore it is considered that this influence has resulted in aluminium extrusions prices which are lower than what would have been the case if the relevant markets operated without GOC influences and interventions.

The Commission considers that the extent of 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. The Commission considers that the quantification of price effects is not necessary in assessing the suitability of prices for normal value under section 269TAC(1). However, available information and the Commission's analysis indicates that these influences and interventions are likely to have had a material impact on the domestic price of aluminium extrusions in the investigation period, such that prices of aluminium extrusions in that market are no longer suitable for determining normal value under section 269TAC(1).

The Commission, therefore, considers that GOC influences and interventions in the Chinese aluminium industry have created a 'market situation' in the domestic aluminium extrusions market, as set out under section 269TAC(2)(a)(ii).

NON-CONFIDENTIAL APPENDIX 2 – ASSESSMENT OF COUNTERAVAILABILITY OF SUBSIDIES

PART I Overview

A. 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 19 were also investigated in the review.

The findings in relation to all investigated programs, and the Commission’s 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)
1	Preferential tax policies for FIEs in the coastal economic open areas and economic and technological development zones	Tax	No
2	One-time Awards to Enterprises Whose Products Qualify for ‘Well-Known Trademarks of China’ and ‘Famous Brands of China’	Grant	Yes
3	Provincial Scientific Development Plan Fund	Grant	Yes
4	Export Brand Development Fund	Grant	Yes
5	Matching Funds for International Market Development for SMEs	Grant	Yes
6	Superstar Enterprise Grant	Grant	Yes
7	Research & Development (R&D) Assistance Grant	Grant	Yes
8	Patent Award of Guangdong Province	Grant	Yes
9	Training Program for Rural Surplus Labour Force Transfer Employment	Grant	Yes
10	Preferential Tax Policies for FIEs – Reduced Tax Rate for Productive FIE’s scheduled to operate for a period of not less than 10 years	Tax	No
15	Aluminium provided at less than adequate remuneration	LTAR	Yes
16	Preferential tax policies for FIEs established in Special Economic Zones (excluding Shanghai Pudong area)	Tax	No
17	Preferential tax policies for FIEs established in Pudong	Tax	No

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Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
	area of Shanghai		
18	Preferential tax policies in the Western Regions	Tax	Yes
21	Tariff and VAT Exemptions on Imported Materials and Equipment	Tax	Yes
26	Innovative Experimental Enterprise Grant	Grant	Yes
29	Special Support Fund for Non-State-Owned Enterprises	Grant	Yes
32	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
35	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
44	Preferential lending programs – loans from Chinese policy banks and state owned commercial banks	Loans	No
45	Provision of land use rights for less than adequate remuneration	LTAR	No
46	Provision of electricity for less than adequate remuneration	LTAR	No
47	Preferential tax policies for high and new technology enterprises	Tax	Yes
48	Provincial Government of Guangdong tax offset for R&D	Tax	Yes
49	Exemption from city construction tax and education tax for FIEs	Tax	No
50	Refund of land-use tax for firms located in the Zhaoqing New and High Tech Industrial Development Zone (ZHTDZ)	Tax	No
51	Fund for SME bank-enterprise cooperation projects	Grant	No
52	Special fund for science and technology in Guangdong	Grant	No
53	Provincial fund for fiscal and technological innovation	Grant	No
54	Provincial loan discount special fund for SMEs	Grant	No
55	Export rebate for mechanic, electronic, high tech products	Grant	No
56	PGOG special fund for energy saving technology reform	Grant	Yes
57	PGOG science and technology bureau project fund	Grant	No
58	Development assistance grants from the ZHTDZ	Grant	Yes
59	Provision of water for less than adequate remuneration	LTAR	No
60	Provision of natural gas for less than adequate remuneration	LTAR	No
61	Provision of heavy oil for less than adequate remuneration	LTAR	No
62	Currency undervaluation		No

B. Relevant legislation

Section 269T of the Act defines a ‘subsidy’ as follows:

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"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:

(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 of the Act 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

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(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.

(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.

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

Under paragraph 269TJ(1)(a) of the Act, one of the matters that the Minister must be satisfied to publish a countervailing duty notice under the Dumping Duty Act is that a countervailable subsidy has been received in respect of the goods.

PART II Information considered by the Commission

A. 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 cooperating exporter group in the Exporter Questionnaire responses, as well as information provided at the verification visit and submission made to the Commission during the review.

B. INFORMATION PROVIDED BY THE GOVERNMENT OF CHINA

The Commission included questions relating to each program in a Government Questionnaire that was sent to the GOC on 25 July 2014. The requested deadline for receipt of the questionnaire was 3 September 2014.

A representative of the GOC wrote to the Commission 11 September 2014 to advise that the GOC questionnaire response was to be discussed during the 4th High Level Dialogue on Trade Remedies that was held in Canberra on 19 September 2014. The Commission

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advised the GOC representative that the High Level Dialogue was not appropriate forum for raising issues in relation to specific investigations and was contrary to the purpose of the dialogue. A final response from the GOC on 16 September 2014 advised of the GOC's position that the Commission's investigation on the new list of subsidy programs was inconsistent with the relevant WTO rules and thus would not be responding to the request to complete a questionnaire. The statement regarding the WTO rules reflects the GOC position contained in its submission to the Commission dated 24 July 2014⁷⁷

A copy of the correspondence between the Commission and the GOC is provided on the case public record at item 37. The Commission's response to the GOC's 24 July 2014 submission is also provided on the case public record at item 26.

Regarding the GOC's position on the initiation of new subsidy investigations, it was of the view that the Commission had not met its obligations under Article 13.1 of the WTO Agreement on SCM by not consulting with the GOC after receiving an application under Article 11 of the SCM. It also argues that the Commission had not met its obligations under Article 22 of the SCM to provide adequate information on the program beings investigated.

The Commission's response clarifies that the application for this review, made by PanAsia, is not an application under Article 11.1. The review of countervailing measures is being conducted under Article 21.2 of the SCM and pursuant to Article 21.4 the provisions of Article 12 of the SCM apply to this review. With respect to the obligations under Article 21 and the Article 22, the Commission advised the GOC that such obligations have been met by the publication of a public notice announcing the commencement of the review.

In a later submission to the Commission regarding Program 62 – Currency Undervaluation, the GOC's letter dated 24 September 2014⁷⁸ has been considered in the decision to determine if Program 62 is countervailable. The Commission's assessment of this program is contained in Part VI.

Whilst the GOC provided a submission regarding Program 62 the Commission considers that the GOC has not cooperated with the Commission's request for information about any of the programs identified in the Government Questionnaire.

C. INFORMATION CONSIDERED AS PART OF THIS ASSESSMENT

The Commission also considered as part of this assessment:

⁷⁷ Case 248 Public Record Item 22.

⁷⁸ Case 248 Public Record Item 41.

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- the findings from the December 2014 United States Department of Commerce International Trade Administration's (ITA) review of countervailing duty on aluminium extrusions from China⁷⁹;
- data collected from the public record of the ITA's review of countervailing duty on Boltless Steel Shelves exported from China; and
- findings from other subsidy investigations conducted by the Commission and other jurisdictions.

PART III Category One: Provision of Goods

A. Program 15 – Aluminium provided at less than adequate remuneration.

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 extrusion, was being produced and supplied by government owned enterprises at less than adequate remuneration.

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, the Commission sought information from the 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 or SIE.

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

In establishing a benchmark price for primary aluminium reflecting adequate remuneration, the Commission again considered whether prices from private enterprises were an appropriate basis.

The exporters from whom the Commission received questionnaire responses reported a collective 450,000 tonnes of aluminium purchases during the period of investigation from a mixture of SOE and SIE smelters, traders and privately owned firms.

Evidence of the presence of GOC influence is illustrated in new information provided to the review in relation to Chinese smelting costs.⁸⁰ This particular aspect of the Chinese

⁷⁹ United States Department of Commerce International Trade Administration - *Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review: Aluminium Extrusions from the People's Republic of China (22 December 2014)*.

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primary aluminium smelting industry was not assessed in the original investigation. The cost data shows that the prevailing SHFE price in China is below the cash cost of production for primary aluminium. Information obtained by the Commission also suggests that the primary aluminium industry receives local and provincial government assistance for electricity. Electricity is reported to represent at least 40% of the cost of make primary aluminium.

The Commission's examination of the cooperating exporter's primary aluminium purchases in this review illustrates that, with the exception on one exporter, the exporters had paid less than the cost to make primary aluminium and ex-VAT paid prices were found to closely track the SHFE price.

The exporter's purchasing data also revealed that aluminium was purchased from either an 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.

Consistent with the original investigation, the Commission continues to hold the view that prices of primary aluminium supplied by SOEs or SIEs are likely to have influenced domestic primary aluminium prices generally. The large proportion of SOE and SIE sourced primary aluminium production in China is considered to drive prices down generally and influencing the prices of privately owned smelters such that their prices are also below the cost to make.

The inference is made on the basis that that the effect of government owned and subsidised primary aluminium production in China has suppressed prices such that aluminium extruders are benefiting from lower input costs than would otherwise be available.

As set out in Appendix 1, the Commission has also taken into account the following factors which indicate the Government's involvement in the domestic aluminium market and the distorting effects on domestic prices:

- export taxes on primary aluminium;
- purchase of primary aluminium by the GOC;
- significant ownership of smelting capacity by SOE and SIE;
- preferential treatment provided to the aluminium smelting industry; and
- GOC policies that treat the aluminium smelting industry as an encouraged industry.

For these reasons, the Commission continues to consider that prices from privately owned suppliers of primary aluminium are distorted and unsuitable for use as a benchmark in determining whether a benefit is conferred by the program.

⁸⁰ Case 248 EPR Item 38.

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In ascertaining an appropriate benchmark, the original investigation had regard to the need to determine a price that reflects prevailing market conditions for like goods in China. This requirement is reflected in section 269TACC(5) of the Act.

The original investigation determined that the comparison of domestic prices reflected on the SHFE and equivalent prices for imported primary aluminium quoted on the LME was an important factor in purchasing decisions. This was evidenced in the switch to imported aluminium at about the same time that SHFE prices rose above LME prices.

However, analysis of purchasing data in this review has not identified a correlation between price fluctuations and purchasing behaviour. In fact, a significant proportion of the exporters' purchases are sourced from domestic suppliers. As noted earlier, the SHFE closely resembles the actual delivered price of aluminium into store. When compared with the price of imported aluminium purchased on the LME market, inclusive of all relevant premiums, the domestic price was found to be lower in all quarters of the investigation period and below the cost to make.

The Commission considers that LME based prices for primary aluminium are a suitable benchmark for determining whether primary aluminium was provided at less than adequate remuneration and conferred a benefit in relation to the goods exported.

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

The Commission's assessment of whether a SOE and SIE smelters providing primary aluminium constitutes a public body as that term is used in the definition of 'subsidy' in section 269T(1) of the Act is discussed below.

Under this program, a benefit to exported aluminium extrusions is conferred by the primary aluminium 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.

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).

WTO NOTIFICATION

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

ELIGIBILITY CRITERIA

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

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?

The definition of a subsidy under section 269T(1) of the Act requires the financial contribution to be provided by a government, public body or a private body entrusted by that government or public body to carry out a government function. The term 'public bodies', is not expressly defined under the Act, or the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement).

The original aluminium extrusions investigation (REP 148) determined that SOEs or SIEs aluminium producers were public bodies such that the provision of aluminium at less than adequate remuneration to aluminium extruders constituted a countervailable subsidy.

Since the original investigation REP 148 was completed, the *WTO Appellate Body in United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, dispute DS379, has considered the meaning of 'public bodies'⁸¹. The Commission's policy is to conduct its countervailing investigation involving allegations of subsidies being granted by public bodies in accordance with the findings of the Appellate Body in DS379⁸².

Further guidance on the meaning of public bodies was provided by the WTO Dispute Settlement Body (DSB) in *United States – Countervailing Measures (China)*, dispute DS437 and *United States – Carbon Steel (India)* dispute DS436.

DS379 and DS436 findings

In its findings report, the Appellate Body stated:

*... the determination of whether a particular conduct is that of a public body must be made by evaluating the core features of the entity and its relationship to government in the narrow sense. That assessment must focus on evidence relevant to the question of whether the entity is vested with or exercises governmental authority.*⁸³

[Emphasis added]

⁸¹ Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R

⁸² Refer to Australian Customs Dumping Notice 2011/27

⁸³ Appellate Body Report, at 345

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The Appellate Body provided further guidance on this point 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):⁸⁴

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 Appellate Body considered⁸⁵ that the existence of *mere formal links* (i.e. majority government ownership) between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority, because this does not automatically demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority.

The Appellate Body further advised that in all cases, an investigating authority must give due consideration to all relevant characteristics of the entity and avoid focussing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant⁸⁶.

The Appellate Body went on to acknowledge (in the context of examining state-owned enterprises in China):⁸⁷

...determining whether an entity is a public or private body may be a complex exercise, particularly where the same entity exhibits some characteristics that suggest it is a public body, and other characteristics that suggest that it is a private body.

In DS436, the WTO Panel 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".'

⁸⁴ Ibid at [318]

⁸⁵ Ibid

⁸⁶ Ibid at [319]

⁸⁷ Ibid at 345

The GOC questionnaire

In order for the Commission to make its assessment of whether SOE/SIEs primary aluminium producers are vested with or exercises governmental authority, the GOC was asked to respond to a number of questions, as part of the government questionnaire. These questions were intended to address the indicia outlined in DS379, and as such, included questions concerning: core features including ownership and control, governance, performance and profits, and functions of SOEs/SIEs primary aluminium producers.

As already indicated in this report, the GOC did not provide a response to the government questionnaire. In the absence of this information, the Commission has had regard to other relevant information in making its assessment of whether SOEs/SIEs primary aluminium producers are public bodies. The Commission considers that the most relevant information it is in possession of with regards to the SOEs/SIEs primary aluminium producers is the findings of the aluminium road wheels investigation contained in REP 181. The Commission considers that these findings are relevant to the review given that REP 181 examined SOEs/SIEs primary aluminium and aluminium alloy producers in China. The Commission acknowledges that the aluminium road wheels countervailing measures are currently subject to a review in case 263, however, at this time no preliminary or other findings have been made by the review which alter the findings outlined in REP 181

Aluminium Road Wheels Investigation (REP 181)

The aluminium road wheels investigation (REP 181) examined the three indicia outlined in DS379 (described above) and made the following findings with regard to SIEs producing aluminium and aluminium alloy⁸⁸. In regards to indicia 1, the existence of a statute or other legal instrument which expressly vests government authority in the entity concerned, the ACBPS found some evidence that a particular enterprise was vested with some government authority in relation to imposing state mandated pricing policies on its subsidiaries; however ACBPS was not aware of any statute or other legal instrument which expressly vested government authority in any SIE producing aluminium or aluminium alloy.⁸⁹

In relation to indicia 2, evidence that an entity is, in fact, exercising governmental functions, ACBPS considered that 'significant evidence exists to suggest that Chinese aluminium industry SIEs, including those that produce aluminium and/or alloy, play a leading and active role in implementing GOC policies and plans for the development of the aluminium industry'. ACBPS further considered that the development of the aluminium industry was a 'government function' and therefore considered that these SIEs were in fact exercising governmental functions.

⁸⁸ ACBPS Report to the Minister No. 181, Appendix B, pp. 9-31.

⁸⁹ ACBPS was at this time the administrative authority responsible for anti-dumping matters.

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For the third indicia of DS379, evidence that a government exercises meaningful control over an entity and its conduct, ACBPS concluded that sufficient evidence existed to determine that the GOC is exercising meaningful control over Chinese SIEs that produce aluminium and/ or aluminium alloy. In making this determination the ACBPS had regard to the GOC's plans, policies and implementing measures aimed at realising its overall policy aims in relation to the Chinese aluminium industry. As well as evidence that demonstrated that SIEs were leaders in the implementation of these policies and plans.

ACBPS concluded that evidence exists to show that at least 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 aluminium and/or alloy manufacturers. On this basis ACBPS considered sufficient evidence existed to reasonably consider that SIEs that produce and supply aluminium and/ or aluminium alloy should be considered 'public bodies' in that the GOC exercises meaningful control over these SIEs and their conduct.

Conclusion

In the absence of the evidence requested of the GOC, the Commission considers that its findings outlined in REP 181 with respect to the aluminium producers in the China are relevant to this review. On the basis of these findings, the Commission considers that aluminium producers in China exercise governmental authority and are therefore public bodies within the meaning of section 269T(1) of the Act.

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. an constructed price based on LME.

Where exporters of the goods during the investigation 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 s.269T.

IS THE SUBSIDY A COUNTERAVAILABLE SUBSIDY (SPECIFIC OR PROHIBITED)?

As provided for in paragraph 269TAAC(4)(a) of the Act, 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.

Set out in Part III of Appendix 1 is the Commission's assessment which found that the price of primary aluminium on the SHFE appears to be below the cost to make. All

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aluminium extrusion producers who purchase primary aluminium on the SHFE receive a favourable price and would therefore benefit from the provision of the input by the GOC at less than adequate remuneration.

For this reason the subsidy is determined to be specific.

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 investigation period, in accordance with paragraph 269TACC(3)(d) of the Act:

- PanAsia
- Guang Ya
- Kam Kiu
- Residual exporters
- All other exporters and residual exporters

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

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

In accordance with section 269TACD(2) of the Act, 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 the same rate of per unit subsidisation determined above for the cooperating exporters who received this program.

This was then calculated as a percentage of subsidisation by attributing this per unit amount over the weighted average export price of the three selected 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.

Pursuant to paragraph 269TAACA(1)(c) and 269TAACA(1)(d) of the Act, the Commissioner has acted on the basis of all the facts available and has made reasonable

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assumptions in order to determine whether a countervailable subsidy has been received in respect of the goods.

Considering the fact that:

- over half of primary aluminium production in China is from an SOE and/or an SIE;
- the prevailing aluminium price in China, the SHFE, is shown to be below the cost to make primary aluminium; and
- information contained from the cooperative exporters could not confirm the origin of primary aluminium sources.

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 section 269TACD(1) of the Act, 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 attributable to that benefit by reference to the subsidy price based on the difference between the SHFE price and the LME based import price (in the absence of other reliable information).

B. Program 46 – Electricity provided at less than adequate remuneration.

Capral's submitted that the Chinese aluminium extrusion industry is the recipient of electricity provided at less than adequate remuneration.

BACKGROUND AND WTO NOTIFICATION

US Findings

The 2011 findings of the US countervailing investigation into aluminium extrusions exported from China determined that Provision of Electricity for less than adequate remuneration (LTAR) to FIEs located in the Nanhai District of Foshan City was countervailable. This finding was made under the US adverse facts available provisions and in the absence of a response from the GOC. The investigation also determined that provision of electricity for LTAR to firms located in the Zhaoqing New and High Tech Industrial Development Zone (ZHITDZ) was not countervailable.

In a later countervailing review concluded in 2014, the US did not find that that electricity for LTAR to FIEs Located in the Nanhai District of Foshan City was countervailable.

The 2008 US Thermal Paper countervailing investigation found that electricity was provided at LTAR in the Zhanjiang Economic and Technological Development Zone (ZETDZ). The investigation found that tariff rates in Guangzhou were higher than those paid by firms in Zhanjiang and preferential pricing exists within Guangdong province. The amount of subsidy received was the difference between the rate paid by the exporter and the higher provincial rate.

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EU Findings

In its 2013 countervailing investigation relating to Coated Steel exported from China the EU determined that subsidies had occurred in relation to the provisions of electricity at LTAR. The EU make the observation that “*price differentials exist for different industrial users to pursue the industrial policies set by the GOC and reflected in the catalogue contained in Decision No. 40 (2005) of the NDRC (see further explanation in recital (182)).*” The EU case examined one exporter who was found to be benefiting from a lower rate than the generally applicable large industrial users rate on the basis that the exporter was located in a sub-category of certain industrial users. The subsidy amount was calculated by comparing the actual rate paid by the exporter to the large industrial users rate.

Australian and Canadian Findings

In separate countervailing investigations in relation to exports of Silicon Metal from China the Commission and Canadian authorities determined that producers of silicon metal had received electricity at LTAR.

Broadly speaking, both cases found that the ferro-alloy industry, of which the silicon metal producers are a part, was entitled to a specific rate of electricity that was found to be below the rate available to large industrial users. This is consistent with the findings of the EU coated steel case and to a lesser extent the findings of the US thermal paper case.

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).

ELIGIBILITY CRITERIA

The Commission is not aware of any specific eligibility criteria.

IS THERE A SUBSIDY?

In determining the existence of a subsidy, the review has followed the Commission's approach in Silicon Metal exported from the People's Republic of China (REP 237) and Canadian and EU subsidy investigations. As stated throughout this report, information about this program was requested in the questionnaire sent to the GOC on 25 July 2014. The GOC advised the Commission on 16 September 2014 that it would not be responding to the questionnaire.

In the absence of a GOC response, the Commission sought to establish if the aluminium extrusions industry was eligible for a specific rate of electricity that was below the rate available to large industry. Provincial electricity tariff data was obtained from the public

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record for the 2013 US countervailing investigation in relation to the boltless steel shelving units⁹⁰ exported from China.

The tariff data provided to the US case was submitted by the GOC and relates to 2013 electricity tariff schedules. The GOC data corresponds for the period of investigation for this review the data so is considered to be best available information.

As was summarised in other electricity for LTAR cases, the Commission's examination of the 2013 tariff data did not show a specific rate that was available to the aluminium extrusions industry in any province within China. The tariff data did not show that preferential pricing exists in Guangdong in province where the cooperative exporters are located.

AMOUNT OF SUBSIDY IN RESPECT OF THE GOODS

Based on the evidence available, the Commission is not satisfied that the requirements of paragraph 269TACC(3)(d) of the Act are met. This program will not be countervailed in respect of aluminium extrusions exported from China.

C. Program 59, 60 and 61 – Other goods provided at less than adequate remuneration.

Capral's submissions allege that the aluminium extrusion industry is the recipient of water, natural gas and heavy oil provided at less than adequate remuneration. The following outlines the Commission's findings in relation to these allegations.

Program 45 – Provision of land use rights at less than adequate remuneration

Capral cites investigations conducted by the US and EU to support its view that the Commission should also countervail the provision of land use rights at LTAR in this review.

The US case into dumping of laminated woven sacks exported from China in 2008 and the separate investigation in relation to dumping of aluminium extrusions exported from China made a positive finding that Chinese exporters were being provided land use rights at LTAR.⁹¹ An EU case in relation to coated steel exported from China also found that there was not functioning market for land in China.⁹²

The Commission has reviewed the cases cited by Australian industry and notes the following:

⁹⁰ US ITA Case C-570-019 Countervailing Duty Investigation of Boltless Steel Shelving Units Pre-packaged for Sale from the People's Republic of China: Preliminary Benchmark Memorandum, 23 January 2015.

⁹¹ US ITA Case C-570-917 Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Laminated Woven Sacks from the People's Republic of China, June 16 2008.

⁹² Council of the European Union Certain organic coated steel products originating in the People's Republic of China, 11 March 2013.

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- The US case relating to laminated woven sacks appears to have relied on the US adverse facts available provision;
- The US case relating to PV solar panels involved an in depth study of the Chinese land sector which included meeting with GOC officials⁹³; and
- The EU found that there was no functioning market for land in China and most land in China is state-owned.

Capral submits that the Commission adopts the methodology that is used by the US to calculate an appropriate benchmark for land in China. The proposed benchmark is the cost of land use for industrial parks outside of Bangkok in Thailand.

The Commission considers the findings of other countries are informative and provide a solid understanding of the issues that appear to relate to land use rights in China. However, the data provided by the exporters in this review revealed that there had not been any land use rights granted to aluminium extruders during the period of investigation. As a result, the Commission is not in possession of sufficient information to satisfy itself that the program should be found to be countervailable in relation to aluminium extrusions.

Program 59 - Water provided at less than adequate remuneration

Capral cites the March 2013 findings of an EU countervailing investigation on Coated Steel exported from China as the basis for arguing that water provided at less than adequate remuneration should also be countervailable in relation to aluminium extrusions.⁹⁴

The Commission has reviewed the EU case found that two sampled exporters did not pay sewerage treatment fees. The findings make the observation that the exporter did not pay the full price for water supply normally applicable to the category of users to which it belongs. The benefit was considered to be the amount of sewage treatment fee not paid for water consumption.

The EU's assessment of specificity was based on the possibility, rather than actual evidence, that a certain enterprise producing coated steel received water at LTAR and a discretionary benefit from the municipal government to waive part of the rate normally paid. No legal basis was identified that facilitated such practices, however, the investigation was able to confirm that the NDRC sets the basis price of water.

Relying on the information available about Program 59, the Commission is not satisfied that this program is countervailable.

Program 60 – Natural gas provided at less than adequate remuneration

⁹³ US ITA Case C-570-980 Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China, 9 October 2012.

⁹⁴ Council of the European Union Certain organic coated steel products originating in the People's Republic of China, 11 March 2013.

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Capral cites a publication on subsidies to Chinese industry which asserts that GOC subsidies, through pricing controls, keep prices 60% lower on average than international prices.⁹⁵ Similar to the evidence identified for electricity subsidies, gas prices are alleged to be regional or industry specific.

In a further submission to the investigation, Capral suggest that in-country benchmarks are unsuitable and an external country benchmark should be applied to compare against the price paid by the exporters in determining if natural gas has been provided at LTAR.⁹⁶

Australian industry is of the view that the aluminium extrusions industry is the recipient of subsidies for natural gas on account of this industry being an encouraged industry under the GOC's *Guidelines for Accelerating the Restructuring of the Aluminium Industry* and the *Non-ferrous Metal Industry Adjustment and Revitalization Plan*. These documents were provided to the Commission's original dumping and countervailing investigation in relation to Aluminium Road Wheels exported from China.

A review of the above documents, together with the available evidence about the operation of the natural gas market in China does not support a finding that Program 60 is countervailable at this time. The Commission has not been presented with evidence that suggests the aluminium extrusion industry receives preferential pricing for natural gas in the sense that the non-ferrous metals industry receives preferential pricing for electricity.

Program 61 – Heavy oil provided at less than adequate remuneration

Australian industry cites⁹⁷ a publication on subsidies to Chinese industry which asserts that GOC subsidises heavy oil by setting prices and issuing rebates to the refineries to cover losses. It is estimated that RMB 130 billion in subsidies was paid out to refineries in 2008⁹⁸. Similar to the evidence identified for electricity subsidies, gas prices are alleged to be specific on the basis that the aluminium extrusions industry in an encouraged industry.

The available evidence about the operation of the heavy oil market in China does not support a finding that Program 61 is countervailable at this time. The Commission has not been presented with evidence that suggests the aluminium extrusion industry receives preferential pricing for heavy oil, such as was found to be the case for electricity in the non-ferrous metals industry.

PART IV Category Two: Preferential Tax Policies

In the original investigation, six preferential taxation programs (1, 10, 16, 17, 18 and 21) were found to be countervailable by the ACBPS. In addition to those in the original case,

⁹⁵ Haley & Haley, 2013, *Subsidies to Chinese Industry, State Capitalism, Business Strategy and Trade Policy*, Oxford University Press.

⁹⁶ Capral Limited, 31 July 2014, Case 248 EPR Item No.21

⁹⁷ *Ibid*

⁹⁸ Haley & Haley, 2013, *Subsidies to Chinese Industry, State Capitalism, Business Strategy and Trade Policy*, Oxford University Press.

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submission's made to the Commission⁹⁹ for this review argued that four new programs (47, 48, 49 and 50) should be assessed as to whether these programs are countervailable subsidies in respect of aluminium extrusions.

A. Program 1, 10, 16 and 17

In relation to Program 10 (reduced tax rate for productive FIEs scheduled to operate for a period of not less than 10 years), the Commission has recently investigated this program as part of its investigation into the subsidisation of deep drawn stainless steel sinks¹⁰⁰ exported from China and the subsidisation of silicon metal¹⁰¹ exported from China. In response to the GOC questionnaire for the steel sinks investigation, the GOC responded:

"This program does not exist.

The GOC notes that in response to the government questionnaire in the hollow structural sections investigation (i.e. in relation to program 10), the GOC has pointed out that the alleged subsidy will be in operation until the end of 2012. The GOC reiterates that the alleged program does not exist anymore as the relevant law, i.e. the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise 1991, which granted the subsidy has been repealed and superseded by the Enterprise Income Tax Law of the People's Republic of China 2008. (Attachment 4). The Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax 2007 (Attachment 5) clearly provides that "enterprises enjoying the preferential policies in respect of enterprise income tax under the former tax law, administrative regulations and documents with the effects of administrative regulations shall be subject to a transition" by which at the end of 2012 they will be subject to the normal tax rate of 25%.

Accordingly, the GOC believes that there is no evidence demonstrating that the alleged program exists."¹⁰²

The GOC has provided information to indicate that this program no longer exists. The Commission is not in possession of evidence to suggest that this program was operable during its investigation period.

Accordingly, the Commission considers the information before it indicates that Program 10 is no longer an operable subsidy in respect of aluminium extrusions exported from China.

⁹⁹ Capral Aluminium, Case 248 EPR Item 6, 19 June 2014.

¹⁰⁰ SEF 238

¹⁰¹ SEF 237

¹⁰² This text and the supporting GOC documents are available on the Public Record (www.adcommission.gov.au/cases/EPR238.asp).

For the same reasons (i.e. changes to the income tax laws applicable to enterprises with foreign investment), the Commission considers it is reasonable to conclude that Programs 1, 16 and 17 in this review were not operable subsidies during the investigation period.

B. Program 18 Preferential tax policies in the Western Regions

In the original investigation, Program 18 was found to be countervailable. At the time of the original investigation, the information provided by the GOC indicated that Program 18 operated under the same laws as the other programs that provided an income tax reduction (10, 16 and 17). The GOC indicated in the original investigation that the relevant laws under which these programs operated were repealed with the introduction of the *Enterprise Income Tax Law 2008*. Transitional arrangements were put in place under the *2007 Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income*. The period of transition was set to conclude at the end of 2012.

Whilst the Commission has made the finding in previous cases that Programs 1, 10 16 and 17 are no longer operable, it is noted that these programs were considered specific to Foreign Invested Enterprises (FIE). On the basis that the GOC has not cooperated with the review and information contrary to the original investigation has not been received, the Commission is unable to establish the current status of Program 18. This finding is consistent with the Commission's 2015 investigation into silicon metal (REP 237).¹⁰³ On the basis of the Commission's recent findings in REP 237 and because this review has not received information contrary to the findings in REP 37, the Commission considers it appropriate to consider that Program 18 remains countervailable.

C. Program 21 Tariff and VAT Exemptions on Imported Materials and Equipment.

In REP 148, Program 21 was considered countervailable on the basis that this programme was a financial contribution by the GOC, to the extent that it was made in connection with the production/manufacture of aluminium extrusions in China that involves the foregoing, or non-collection, of revenue due to the GOC by eligible encouraged FIEs. To verify the ongoing existence of Program 21 the Commission sought the exporters' asset register for imports subject to Program 21 purchased between 1 April 2005 and 31 March 2014.

Zhongya indicated that Program 21 ceased to operate on 30 April 2009 however the Commission is not in possession of any supportive evidence that this is actually the case. The Commission sought to establish this statement by reviewing the assets registers of the 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 the review period and also confirmed that the most recent imported

¹⁰³ Anti-Dumping Commission Report 237 Dumping and Subsidisation of Silicon Metal Exported From The People's Republic Of China, 7 May 2015, p.

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purchase that predated the alleged end of the program was in March 2009. However, for those imports that pre-dated 30 April 2009 that received an exemption under Program 21, the asset registers indicated a depreciation period up to 10 years. Since the benefit received through Program 21 has been found to be amortised over a 10 year period, the benefit conferred is not expected to expire until at least 30 April 2019.

Apart from those exporters who provided the necessary information, the Commission also considers it is reasonable that other unknown exporters could also have made eligible purchases in the lead up to 30 April 2009. Relying on the data provided by the cooperating exporters, the Commission considers that Program 21 continues to remain countervailable on exports of aluminium extrusions from China until at least April 2019.

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

Program 47 is a new program that has not previously been countervailed in relation to aluminium extrusions from China. However, two recent investigations conducted by the Commission, deep drawn stainless steel sinks (REP 238) and silicon metal (REP 237), made the finding that Program 47 is countervailable.

During exporter verification Kam Kiu indicated it has received a reduced income tax rate of 15% 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*.

Kam Kiu argued that the program described in Capral 19 June 2014 submission is different to the one under which it received the reduced tax rate. Capral's submission cites a US case which required the HNTE to be located in specific area to benefit from the subsidy. From this perspective Kam Kiu appears correct however it also stated that the program under which it received the reduced income tax is open to all enterprises in China.

The program countervailed by the Commission in REP 238 and REP 237, is consistent with Kam Kiu's understanding that the program is available to all enterprises in China that qualify as a HNTE and not a region specific program. On the basis of the Commission's previous finding in relation to Program 47 and Kam Kiu's disclosure during verification, the Commission also finds that Program 47 is countervailable in relation to exports of aluminium extrusions from China.

E. Additional preferential tax programs

In addition to the existing six tax programs that were considered as part of this review, the Commission has also had regard to the following three additional tax programs, not including Program 47.

- Program 48 Provincial Government of Guangdong tax offset for R&D.
- Program 49 Exemption from city construction tax and education tax for FIEs.
- Program 50 Refund of land-use tax for firms located in the Zhaoqing New and High Tech Industrial Development Zone (ZHTDZ).

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Out of the above remaining three tax programs, the Commission found Program 48 to be countervailable, however Programs 49 and 50 were not. The Commission's detailed assessment of these programs is contained in Table 3.

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Table 1 – Category II Additional Tax Programs

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
<p>Program 48 - Provincial Government of Guangdong tax offset for R&D.</p>	<p>Australian industry cites the 2011 US countervailing investigation into aluminium extrusions exported from China as the basis for its allegations.</p> <p>This program is administered by the Provincial Government of Guangdong (PGOG) Science and Technology Department and the Economic Trade Commission.</p> <p>Fifty percent of R&D expenses incurred for developing new products and technologies that cannot be treated as intangible assets shall be deducted as a tax offset.</p> <p>Information about this program was requested in the questionnaire sent to the GOC on 25 July 2014. The GOC advised the Commission on 16 September 2014 that it would not be responding to the questionnaire.</p> <p>WTO Notification</p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>PGOG Science and Technology Department and the Economic Trade Commission pursuant to Article 5 of the current <i>Trial administrative measure for the pre-tax deduction of enterprises R&D Expenses</i> provides tax offsets for eligible R&D projects supporting national and Guangdong provincial technological policies and industrial policies.</p>	<p>The measure limits benefits to eligible R&D projects in Guangdong province that support national and provincial technological and industrial policies.</p>	<p>The reduction in corporate income tax provided under this program is a financial contribution by the GOC, which involves the foregoing of corporate income tax revenue otherwise due to the GOC.</p> <p>Where exporters of aluminium extrusions during the investigation period received tax offsets under the program 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(1) of the Act.</p> <p>This program has been countervailed by the US in relation to Chinese exporters of aluminium extrusions in 2011 and withstood a review in 2014.</p> <p>For this review the Commission has identified eligible R&D tax offsets received by one cooperative exporter.</p> <p>However this is not to say that such refunds are not being provided or are available to other exporters who have exported extrusions to Australia.</p>	<p>Preferential treatment is granted for enterprises investing in eligible R&D activities within Guangdong.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The exclusions to specificity described in section 269TAAC(3) do not apply to this program.</p> <p>For these reasons the subsidy is specific and meets the definition of countervailable subsidy in section 269TAAC(2) of the Act.</p>	<p><u>Cooperative exporters</u></p> <p>A subsidy rate will be applied to the cooperative exporter found to have benefited from this program.</p> <p>In accordance with s.269TACD(1) the amount of subsidy is determined to be the amount of tax revenue forgone by the GOC.</p> <p>In accordance with s.269TACD(2), the total amount of subsidy received by the cooperative exporter has been apportioned to each unit of the goods using that exporter's total sales volume¹⁰⁴.</p> <p>This per unit amount was then calculated as a proportion of that exporter's weighted average export price, to determine a subsidisation rate¹⁰⁵.</p> <p><u>Residual exporters</u></p> <p>Residual exporters have been attributed the same rate of per unit subsidisation determined above for the cooperative exporter who received this program.</p> <p>This was then calculated as a percentage of subsidisation by attributing this per unit amount over the weighted average export price of the three cooperative exporters.</p> <p><u>All other exporters</u></p> <p>As neither the GOC nor</p>

¹⁰⁴ In accordance with Section 269TACD(1), the amount of that benefit is taken to be equal to the sum granted.

¹⁰⁵ This approach differs to that taken in the relevant Exporter Visit Report, in which a unit subsidisation amount was determined by reference to total sales revenue. It is considered that the approach of using sales volume is more appropriate in the circumstances.

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Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
						<p>uncooperative exporters provided information as to whether benefits were conferred on exporters under this program, all relevant information¹⁰⁶ has been considered¹⁰⁶ to conclude that all other exporters had benefits conferred to them under this program during the investigation period in the form of a reduced taxation rate.</p> <p>The applicable subsidy rate for all other exporters was calculated on the assumption that they had been in receipt of this program (i.e. the quantum of taxation that would have been foregone in relation to each exporter had those exporters received this program).</p> <p>To determine this, the Commission:</p> <ul style="list-style-type: none"> • calculated the per unit rate of subsidisation that would have been applicable to all of the three cooperative exporters if they had received this program (in the same manner described for cooperative exporters above); • attributed the highest per unit subsidy amount for this program of the cooperative exporters to all uncooperative and all other exporters; and • calculated the subsidisation percentage for this program as the above

¹⁰⁶ Pursuant to Sections 269TAACA(1)(c) and 269TAACA(1)(d) of the Act, the Commission has assumed that all other exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this in respect of all products of these exporters, including aluminium extrusions. The Commission's finding was made in view of the fact that the program operates on a national level, and one cooperative Chinese exporter of the goods was found to have benefited from this program.

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Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
						unit amount over the lowest weighted average export price of the cooperative exporters.
Program 49 - Exemption from city construction tax and education tax for FIEs.	<p>The Australian industry submits that this program constitutes a financial contribution, namely that it constitutes amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.</p> <p>Australian industry cites the 2011 US countervailing investigation into aluminium extrusions exported from China as the basis for its allegations.</p> <p>According to the US case, local tax authorities exempt all FIEs and foreign enterprises from city maintenance and construction tax and education fee surcharge. The exemptions are financial contributions in the form of revenue forgone by the government and provide a benefit to the recipient in the amount of the savings.</p> <p>WTO Notification</p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The 2011 US countervailing investigation into aluminium extrusions exported from China cites the <i>Circular concerning temporary exemption from urban maintenance and construction tax and additional education fees for foreign-funded and foreign enterprises [1994]</i>.</p>	<p>Eligible production-oriented enterprises with foreign investment were eligible to benefit under this program.</p>	<p>Subsequent to its 2011 investigation, the 2014 decision of the US Countervailing Administrative Review for aluminium extrusions exported from China determined that this program did not confer a measurable benefit or not used.</p> <p>The Commission is not in possession of any other evidence to suggest that this program was operable during the investigation period (noting that none of the cooperative exporters received benefits under this program).</p> <p>The Commission therefore considers the available evidence indicates that this program was not an operable subsidy in respect of aluminium extrusions exported from China.</p>	<p>Not applicable – not an operable subsidy program.</p>	<p>Not applicable – not an operable subsidy program.</p>

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Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
<p>Program 50 -Refund of land-use tax for firms located in the ZHTDZ</p>	<p>Australian industry cites the 2011 US countervailing investigation into aluminium extrusions exported from China as the basis for its allegations.</p> <p>The US investigation identified a one-time refund of land-use taxes paid to the Zhaoqing New and High Tech Industrial Development Zone (ZHTDZ) local authority in 2007 was received by enterprises in the locality, which constitute the foregoing, or non-collection, of revenue.</p> <p>WTO Notification</p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The 2011 US countervailing investigation into aluminium extrusions exported from China does not identify any legal basis under which the refund operates.</p> <p>The Commission own inquiries could not establish if this scheme had any legal basis.</p>	<p>According the 2011 US investigation the program was specific to firms located in the ZHTDZ.</p> <p>The Commission did not identify any other published information on this GOC program.</p>	<p>Subsequent to its 2011 investigation, the 2014 decision of the US Countervailing Administrative Review for aluminium extrusions exported from China determined that this program did not confer a measurable benefit or not used.</p> <p>The Commission did not identify any other published information on this GOC program to suggest its existence.</p>	<p>Not applicable – not an operable subsidy program.</p>	<p>Not applicable – not an operable subsidy program.</p>

PART V Category Three: Grants

A. Programs 5, 7 and 26

Programs 5, 7 and 26 were countervailed in the original investigation and subsequently found to be countervailable in subsequent investigations conducted by the ACBPS and the Commission.

The Commission's verification of the exporters subject to the review established that one exporter received subsidies under Programs 5 and 26. This is strong 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 prior investigations into Aluminium Road Wheels¹⁰⁷, stainless steel deep drawn sinks¹⁰⁸ and silicon metal¹⁰⁹ which also determined Programs 5, 7 and 26 to be countervailable.

B. Program 8 - Patent Award of Guangdong Province

Regarding Program 8 (Patent Award of Guangdong Province), the Commission's investigation relating to silicon metal¹¹⁰ exports from China found that this program was not countervailable for silicon metal however not for the reason that this program is no longer operable. The Commission understands that to be eligible for this award, enterprises must establish that the relevant product is 'innovative with high creation and technical level' or that 'the industrial design has reached high level at shape, pattern and colour'¹¹¹.

Given the distinct differences between silicon metal and aluminium extrusions, the finding in the silicon metal case is not considered relevant to this review. Noting that Program 8 relates to the Guangdong Province, which is where a large number of aluminium extrusion exporters are located, the possibility that an exporter of aluminium extrusions could receive a grant under Program 8 remains likely. It is also noted that this program continued to be countervailable in relation to exports of aluminium road wheels from China. This finding is in the absence of any other information received in relation to the review which supports that Program 8 no longer operates.

C. Programs 2 to 4, 6, 9, 29, 32 and 35

These programs were found to be countervailable in the original investigation and with the exception of Programs 3, 4 and 9, were also found to be countervailable in the prior investigations into exports of aluminium road wheels and silicon metal.

¹⁰⁷ SEF 181

¹⁰⁸ SEF 238

¹⁰⁹ SEF 237

¹¹⁰ *Ibid*

¹¹¹ Refer to Program 16, Investigation 193

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In the absence of GOC response to this review, the Commission has sought to establish if the remaining grant programs remain operable by examining the GOC's February 2015 response to the current review of measures into Aluminium Road Wheels exported from China¹¹². Programs 2, 6, 29, 32 and 35 were countervailed in the original ARW investigation and accordingly included in the GOC questionnaire for the review of measures. The GOC response to the ARW case in relation to these programs indicates that "*No selected exporter has reported usage of this alleged program*".

The Commission considers the GOC's response to the ARW case was insufficient to verify whether or not these programs, as identified in the original investigation, still exist in relation to aluminium extrusions. For the purpose of this review, the GOC response to the ARW case is therefore inconclusive. With respect to Programs 3, 4 and 9, the Commission is not aware of the status of these programs on account that the GOC has declined to participate in the review and the exporter questionnaires did not provide any new information that would warrant a reconsideration of the determinations made in the original case.

D. Additional grant programs

In addition to the existing twelve grant programs that were considered as part of this review, the Commission has also had regard to eight additional grant programs in response to submissions made to the Commission¹¹³. The Commission's assessment of the following additional programs is contained in Table 4.

- Program 51 Fund for SME bank-enterprise cooperation projects
- Program 52 Special fund for science and technology in Guangdong
- Program 53 Provincial fund for fiscal and technological innovation
- Program 54 Provincial loan discount special fund for SMEs
- Program 55 Export rebate for mechanic, electronic, high tech products
- Program 56 PGOG special fund for energy saving technology reform
- Program 57 PGOG science and technology bureau project fund
- Program 58 Development assistance grants from the ZHTDZ

¹¹² Case 269 Public Record Item 21

¹¹³ Capral Aluminium 19 June 2013, Case 248 Public Record Item

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Table 2 – Category III Additional Grant Programs

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
<p>Program 51 - Fund for SME bank-enterprise cooperation projects</p>	<p>Australian industry cites the 2011 US countervailing investigation into aluminium extrusions exported from China as the basis for its allegations.</p> <p>Under this program eligible small medium enterprises (SMEs) receive loan interest assistance, which constitute a direct transfer of funds by the GOC.</p> <p>Information about this program was requested in the questionnaire sent to the GOC on 25 July 2014. The GOC advised the Commission on 16 September 2014 that it would not be responding to the questionnaire.</p> <p>WTO Notification</p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The US case on aluminium extrusions in 2011 referred to the PGOG's Department of Finance and the Bureau of SMEs pursuant to the <i>Circular on printing and distributing of the measures on implementing the 2009 Government-Bank-Enterprise Cooperation special Fund program</i>.</p> <p>The Commission was not able to find published information on this GOC program.</p>	<p>Information provided to the US case from the GOC indicated this program involved 1000 eligible SMEs and several financial institutions.</p> <p>Under the Bank Enterprise Cooperation Measures the top 500 SMEs deemed as having the greatest potential, involved in the manufacture of key equipment, pursue creative technology or advanced manufacturing that are also backed by the PGOG and corresponding city received preferential treatment.</p>	<p>Subsequent to its 2011 investigation, the 2014 decision of the US Countervailing Administrative Review for aluminium extrusions exported from China determined that this program did not confer a measurable benefit or not used.</p> <p>The Commission is not in possession of any other evidence to suggest that this program was operable during the investigation period (noting that none of the cooperative exporters were found to have received benefits under this program).</p> <p>The Commission therefore considers the available evidence indicates that this program was not an operable subsidy in respect of aluminium extrusions exported from China.</p>	<p>Not applicable – not an operable subsidy program.</p>	<p>Not applicable – not an operable subsidy program.</p>
<p>Program 52 - Special fund for science and technology in Guangdong</p>	<p>Australian industry cites the 2011 US countervailing investigation into aluminium extrusions exported from China as the basis for its allegations.</p> <p>Under this program the PGOG funds technology R&D and the promotion of technological achievements and diffusion of technological knowledge, which constitute a direct transfer of funds by the GOC.</p> <p>Information about this program was requested in the questionnaire sent to the GOC on 25 July 2014. The GOC advised the Commission on 16 September 2014 that it would not be responding to the questionnaire.</p> <p>The 2014 WTO Semi-Annual Report on Subsidies and Countervailable Measures submitted by Canada referred to countervailable subsidies imposed for the Special Fund for Significant Science and Technology in Guangdong Province, in relation to exported concrete reinforcing bars.</p> <p>The Commission determines that the current Special fund for significant science and technology in Guangdong Province and Program 52 are the same program.</p> <p>WTO Notification</p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The US case on aluminium extrusions in 2011 referred to the PGOG Science and Technology Department pursuant to the <i>Provisional Measures on Administration of Guangdong Important Science-Technology Project Special Fund (YEUCAIGONG (2009) No. 166)</i>.</p> <p>The Canadian government's 2014 investigation into countervailable subsidies in relation to concrete reinforcing bar from China found that this program was countervailable however is silent on the legal basis of this program.</p> <p>The Commission was not able to find published information on this GOC program.</p>	<p>Based on the information available to the Commission the eligibility for this program appears to be based on location, i.e. Guangdong province.</p>	<p>With regard to this review, the cooperative exporters were not found to have received a grant under this program.</p> <p>The Commission is not in possession of any other evidence to suggest that this program was operable during the investigation period (noting that none of the cooperative exporters received benefits under this program).</p> <p>The Commission therefore considers the available evidence indicates that this program was not an operable subsidy in respect of aluminium extrusions exported from China.</p>	<p>Only enterprises that undertake science and technology research and development in Guangdong province are eligible for the subsidy.</p> <p>However, due to the lack of information from the GOC the US relied on its adverse facts available provisions to determine that this program was specific.</p> <p>The Canadian concrete reinforcing bar case also did not receive a complete response to its requests for information from the GOC. The CBSA concluded it did not have sufficient information to warrant removal of this program (Program 110).</p> <p>The information available to the Commission does not establish that this program is countervailable. No evidence obtained from the cooperative exporters suggests that this program is operable.</p>	<p>Not applicable – not an operable subsidy program.</p>

PUBLIC RECORD

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
<p>Program 53 - Provincial fund for fiscal and technological innovation</p>	<p>Australian industry cites the 2011 US countervailing investigation into aluminium extrusions exported from China as the basis for its allegations.</p> <p>This program is administered by the PGOG to provide grants to firms for promoting technological and fiscal innovation.</p> <p>The US investigation identified that one exporter had received a grant under this program.</p> <p>Information about this program was requested in the questionnaire sent to the GOC on 25 July 2014. The GOC advised the Commission on 16 September 2014 that it would not be responding to the questionnaire.</p> <p>WTO Notification</p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p><i>Provisional Measures on Administration of Exploration and Renovation Provincial Level Fund</i> (YUECAIQI (2003) No. 140)</p> <p>The Commission's own inquiries could not establish if this scheme had any legal basis other than the information contained in the US case.</p>	<p>Based on the information available to the Commission, the eligibility for this program appears to be based on location, i.e. Guangdong province.</p>	<p>The US 2011 case found one exporter had received a grant under this program.</p> <p>With regard to this review, the cooperative exporters were not found to have received a grant under this program.</p> <p>The Commission did not identify any other published information on this GOC program to suggest its existence.</p>	<p>Only enterprises that undertake science and technology research and development in Guangdong province are eligible for the subsidy.</p> <p>However, due to the lack of information from the GOC, the US relied on its adverse facts available provisions to determine that this program was specific.</p> <p>Although the US case made a finding that this program was countervailable, the information available to the Commission does not establish that this program is countervailable. No evidence obtained from the cooperative exporters suggests that this program is operable.</p>	<p>Not applicable – not an operable subsidy program.</p>
<p>Program 54 - Provincial loan discount special fund for SMEs</p>	<p>Australian industry cites the 2011 US countervailing investigation into aluminium extrusions exported from China as the basis for its allegations.</p> <p>The US case described this program whereby the PGOG provides interest subsidy grants to promote and support SMEs, which constitute a direct transfer of funds by the GOC.</p> <p>Information about this program was requested in the questionnaire sent to the GOC on 25 July 2014. The GOC advised the Commission on 16 September 2014 that it would not be responding to the questionnaire.</p> <p>WTO Notification</p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>This case is administered by the PGOG Provincial Department of Finance and Economic and Trade Commission of Guangdong Province SME Bureau pursuant to the <i>Measures on Administration of SME Loan Interest Assistance Special Fund [2009]</i>.</p> <p>The Commission's own inquiries could not establish if this scheme had any legal basis other than the information contained in the US case.</p>	<p>Based on the information available to the Commission, the eligibility for this program appears to be based on the requirement that the recipient is an SME company.</p>	<p>Subsequent to its 2011 investigation, the 2014 decision of the US Countervailing Administrative Review for aluminium extrusions exported from China determined that this program did not confer a measurable benefit or not used.</p> <p>The Commission is not in possession of any other evidence to suggest that this program was operable during the investigation period (noting that none of the cooperative exporters were found to have received benefits under this program).</p> <p>The Commission therefore considers the available evidence indicates that this program was not an operable subsidy in respect of aluminium extrusions exported from China.</p>	<p>Not applicable – not an operable subsidy program.</p>	<p>Not applicable – not an operable subsidy program.</p>

PUBLIC RECORD

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
<p>Program 55 - Export rebate for mechanic, electronic, high tech products</p>	<p>Australian industry cites the 2011 US countervailing investigation into aluminium extrusions exported from China as the basis for its allegations.</p> <p>The US case does not provide details on how this program is administered or why the grants are provided.</p> <p>Information about this program was requested in the questionnaire sent to the GOC on 25 July 2014. The GOC advised the Commission on 16 September 2014 that it would not be responding to the questionnaire.</p> <p>WTO Notification</p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The US case does not cite any legal basis for the existence of this program.</p>	<p>The Commission is not in possession of any information that could establish the eligibility criteria for this program.</p>	<p>The US case found that one exporter located in Guangdong province received a grant under this program.</p> <p>The cooperative exporters who have participated in this review were not found to have received a grant under this program.</p> <p>The Commission considers it is not in possession of sufficient information to determine that this program meets the definition of a subsidy in section 269T(1).</p>	<p>Not applicable – not an operable subsidy program.</p>	<p>Not applicable – not an operable subsidy program.</p>
<p>Program 56 - PGOG special fund for energy saving technology reform</p>	<p>Australian industry cites the 2011 US countervailing investigation into aluminium extrusions exported from China as the basis for its allegations.</p> <p>The PGOG provides grants at a rate per metric ton (MT) of standard coal saved through increased energy efficiency during a given year, which constitute a direct transfer of funds by the GOC.</p> <p>Information about this program was requested in the questionnaire sent to the GOC on 25 July 2014. The GOC advised the Commission on 16 September 2014 that it would not be responding to the questionnaire.</p> <p>WTO Notification</p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>PGOG Provincial Department of Finance and Economic and Trade Commission of Guangdong Province pursuant to the <i>Provisional measures on administration of Guangdong energy saving special fund</i> which began in 2008.</p>	<p>The criteria for a grant under this program is limited to eligible entities located in the Guangdong province with demonstrated coal saving of 2,000 metric tonnes of coal per year.</p>	<p>Subsequent to its 2011 investigation, the 2014 decision of the US Countervailing Administrative Review for aluminium extrusions exported from China determined that this program did not confer a measurable benefit or not used.</p> <p>One cooperative exporter who has participated in this review advised it had received a grant under this program.</p> <p>Despite the US case finding, it would appear that this program is still operable.</p>	<p>Only enterprises that achieve coal consumption savings in Guangdong province are eligible for the subsidy.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The exclusions to specificity described in section 269TAAC(3) do not apply to this program.</p> <p>For these reasons the subsidy is specific and meets the definition of countervailable subsidy in section 269TAAC(2) of the Act.</p>	<p><u>Cooperative exporters</u></p> <p>A subsidy rate will be applied to the cooperative exporter found to have benefited from this program.</p> <p>For the cooperative exporter that received a financial contribution during the investigation period under this program, the total amount of grant received by the cooperative exporter has been apportioned to each unit of the goods using that exporter's total sales volume.</p> <p>This per unit amount was then calculated as a proportion of that exporter's weighted average export price, to determine a subsidisation rate (percentage).</p> <p><u>Residual exporters</u></p> <p>Residual exporters have been attributed the same rate of per unit subsidisation determined above for the one cooperative exporter who received this program.</p> <p>This was then calculated as a percentage of subsidisation by attributing this per unit amount over the weighted average export price of the three cooperative</p>

REP 248 Certain Aluminium Extrusions – China

PUBLIC RECORD

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
						<p>exporters.</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 investigation period in the form of direct transfers of funds (grants).</p> <p>In calculating the amount of subsidy attributable to that benefit, the Commission:</p> <ul style="list-style-type: none"> • worked out the full amount of the grant received by the cooperative exporter to the investigation that received this program; • determined the per unit subsidisation amount by reference to the lowest total sales volume of the three cooperative exporters; and • determined a subsidisation rate (margin) by reference to the lowest weighted average export price seen amongst the cooperative exporters.

PUBLIC RECORD

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
<p>Program 57 - PGOG science and technology bureau project fund</p>	<p>Australian industry cites the 2011 US countervailing investigation into aluminium extrusions exported from China as the basis for its allegations.</p> <p>Under this program the PGOG distributes grants to universities and firms to support, among other things, industrial development and innovation in Guangdong province.</p> <p>Information about this program was requested in the questionnaire sent to the GOC on 25 July 2014. The GOC advised the Commission on 16 September 2014 that it would not be responding to the questionnaire.</p> <p>WTO Notification</p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>This program is administered by the PGOG Department of Finance and Department of Science and Technology under the <i>Science and technology bureau project fund</i> (also known as Guangdong Industry, Research, University Cooperating Fund).</p> <p>The Commission has not identified any other basis for the operation of this program.</p>	<p>Based on the information available to the Commission, the eligibility for this program appears to be based on the requirement that the recipient is located in Guangdong province.</p>	<p>Subsequent to its 2011 investigation, the 2014 decision of the US Countervailing Administrative Review for aluminium extrusions exported from China determined that this program did not confer a measurable benefit or not used.</p> <p>The cooperative exporters who have participated in this review were not found to have received a grant under this program.</p> <p>The Commission is not in possession of any other evidence to suggest that this program was operable during the investigation period (noting that none of the cooperative exporters were found to have received benefits under this program).</p>	<p>Not applicable – not an operable subsidy program.</p>	<p>Not applicable – not an operable subsidy program.</p>
<p>Program 58 - Development assistance grants from the ZHTDZ</p>	<p>Australian industry cites the 2011 US countervailing investigation into aluminium extrusions exported from China as the basis for its allegations.</p> <p>Under this program the Zhaoqing New and High Technology Development Zone (ZHTDZ) local authority provides assistance grants to certain entities in the ZHTDZ based on their output, tax payments, level of foreign investment and whether they have received famous brand designation.</p> <p>Information about this program was requested in the questionnaire sent to the GOC on 25 July 2014. The GOC advised the Commission on 16 September 2014 that it would not be responding to the questionnaire.</p> <p>WTO Notification</p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The US case does not cite a legal basis for the operation of the program.</p> <p>It is noted that the US case found that a one time grant was provided to one exporter.</p>	<p>Relying on the findings of the US case, it appears that this program is available to companies located in the ZHTDZ.</p>	<p>Subsequent to its 2011 investigation, the 2014 decision of the US Countervailing Administrative Review for aluminium extrusions exported from China determined that this program did not confer a measurable benefit or not used.</p> <p>One cooperative exporter who has participated in this review advised it had received a grant under this program.</p> <p>Despite the US case finding, it would appear that this program is still operable.</p>	<p>Only enterprises that achieve coal consumption savings in Guangdong province are eligible for the subsidy.</p> <p>As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the program is considered to be specific.</p> <p>The specificity of the subsidy is not excepted by reference to s269TAAC(3).</p> <p>For these reasons the subsidy is specific.</p>	<p><u>Cooperative exporters</u></p> <p>A subsidy rate will be applied to the cooperative exporter found to have benefited from this program.</p> <p>For the cooperative exporter that received a financial contribution during the investigation period under this program, the total amount of grant received by the cooperative exporter has been apportioned to each unit of the goods using that exporter's total sales volume.</p> <p>This per unit amount was then calculated as a proportion of that exporter's weighted average export price, to determine a subsidisation rate (percentage).</p> <p><u>Residual exporters</u></p> <p>Residual exporters have been attributed the same rate of per unit subsidisation determined above for the one cooperative exporter who received this program.</p> <p>This was then calculated as a percentage of subsidisation by attributing this per unit amount over the weighted average export</p>

REP 248 Certain Aluminium Extrusions – China

PUBLIC RECORD

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
						<p>price of the three cooperative exporters.</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 investigation period in the form of direct transfers of funds (grants).</p> <p>In calculating the amount of subsidy attributable to that benefit, the Commission:</p> <ul style="list-style-type: none"> • worked out the full amount of the grant received by the cooperative exporter to the investigation that received this program; • determined the per unit subsidisation amount by reference to the lowest total sales volume of the three cooperative exporters; and <p>determined a subsidisation rate (margin) by reference to the lowest weighted average export price seen amongst the cooperative exporters.</p>

PUBLIC RECORD

PART VI Category Four: Other assessed programs

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
<p>Program 44 - Preferential lending programs – loans from Chinese policy banks and state owned commercial banks</p>	<p>Australian industry cites the 2011 US countervailing investigation into aluminium extrusions exported from China as the basis for its allegations.</p> <p>Under this program preferential lending rate are provided by Chinese policy banks and state-owned commercial bank which constitutes a financial contribution involving the foregoing of revenue.</p> <p>Information about this program was requested in the questionnaire sent to the GOC on 25 July 2014. The GOC advised the Commission on 16 September 2014 that it would not be responding to the questionnaire.</p> <p>WTO Notification</p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>Preferential loan rates are provided for in the 12th 5-yr plan, which points to non-ferrous metal products as one of the 'key fields of development of manufacturing':</p> <p>"Focus on the development of key materials required for aviation, spaceflight and electronic information. Support the extended application of cutting-edge smelting technologies, short and continuous processes, and energy conservation and emission reduction technologies, and encourage the recycling of renewable energy sources, and the integrated utilization of low-grade minerals, associated minerals, minerals that are difficult to recover and refine, tailings and waste residues."</p> <p>Article 34 of the Law on Commercial Banks [2003] states that banks 'carry out their loan business upon the needs of the national economy and the social development and under the guidance of the state industrial policy'. In a response received by the Commission from GOC in relation to case 181 (aluminium road wheels - ARWs) stated that the 5yr plans is a blueprint of development of the country.</p> <p>The WTO Trade Policy Review of China [2014] noted that 'The high degree of state ownership is another notable feature of the financial sector in China', and that "four big state-owned banks (Agricultural Bank, Bank of China, Construction Bank and Industrial and Commercial Bank) appear to represent more than half of the Chinese banking sector... Policy banks and other state-owned banks are more than 50 % state-owned."</p>	<p>Enterprises are eligible for low-interest rate loans from government policy banks and SOCBs pursuant to the GOC's policy to provide financial assistance in accordance to development needs of the country.</p>	<p>Preferential lending rates under this program are a financial contribution by the GOC which holds significant control over the financial sector, and involves the foregoing of revenue.</p> <p>This program has been countervailed by the US in relation to Chinese exporters of aluminium extrusions in 2011 and withstood a review in 2012.</p> <p>During verification, instances were found where exporters were dealing with state owned banking institutions. The interest rates paid however were found to be comparable to private sector banks in the region.</p> <p>The Commission therefore considers that on the available evidence no subsidy was being received in respect of preferential lending to exporters of aluminium extrusions from China.</p>	<p>Not applicable – not an operable subsidy program.</p>	<p>Not applicable – not an operable subsidy program.</p>

PUBLIC RECORD

Program	Background and WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy rate determination
<p>Program 55 - Currency undervaluation</p>	<p>Australian industry submits that GOC interventions in currency markets limit the appreciation of the Renminbi (RMB) against the US dollar and other currencies.</p> <p>The alleged benefit is the difference between the amount of RMB received in exchange for foreign currency and the amount of RMB an exporter would have received under a benchmark rate of exchange.</p> <p>The GOC provided a submission regarding this program on 10 October 2014. The submission is available to the case public record at item 41.</p> <p>The Commission detailed its assessment in an issues paper 2014/04 published on 9 December 2014. The paper is available on the case public record at item 44.</p> <p>WTO Notification</p> <p>The Commission is not aware of any WTO notification of this program.</p>	<p>The Commission is not aware of any legal basis that may apply to this program.</p>	<p>The Commission is not in possession of any information that could establish the eligibility criteria for this program.</p>	<p>The Commission is not satisfied that the currency valuation is a 'financial contribution' or a form of 'income or price support', nor that a benefit is conferred, within the meaning of Article 1 of the SCM in respect of aluminium extrusions exported to Australia from China.</p>	<p>The requirements of specificity under Articles 1.2 and Article 2 of the SCM do not appear to be met. The benefit received does not appear to be specific to a particular industry (or to a group of enterprises or industries) but is a broad macroeconomic policy. Therefore, even if currency valuation could be considered a 'subsidy' under Article 1 this requirement would not be met.</p>	<p>The Commission's assessment of this program determines that it is not a countervailable.</p>