



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

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XVB*

# **TERMINATION REPORT**

## **NO. 362**

**ALLEGED DUMPING AND SUBSIDISATION OF  
CERTAIN ALUMINIUM EXTRUSIONS  
EXPORTED TO AUSTRALIA FROM  
MALAYSIA AND THE SOCIALIST REPUBLIC OF VIETNAM**

**May 2017**

<b>CONTENTS</b>
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<b>CONTENTS</b> .....	<b>2</b>
<b>ABBREVIATIONS</b> .....	<b>3</b>
<b>1 BACKGROUND AND SUMMARY</b> .....	<b>5</b>
1.1 SUMMARY .....	5
1.2 BACKGROUND.....	7
<b>2 THE GOODS AND LIKE GOODS</b> .....	<b>11</b>
2.1 PRELIMINARY FINDING.....	11
2.2 LEGISLATIVE FRAMEWORK.....	11
2.3 THE GOODS .....	11
2.4 TARIFF CLASSIFICATION .....	12
2.5 THE AUSTRALIAN INDUSTRY.....	13
2.6 COMMISSIONER’S ASSESSMENT - LIKE GOODS .....	13
<b>3 DUMPING INVESTIGATION</b> .....	<b>15</b>
3.1 FINDINGS .....	15
3.2 INTRODUCTION AND LEGISLATIVE FRAMEWORK .....	15
3.3 COOPERATIVE EXPORTERS.....	15
3.4 MODEL MATCHING .....	16
3.5 DUMPING ASSESSMENT – PMB (MALAYSIA) .....	16
3.6 DUMPING ASSESSMENT – LB ALUMINIUM (MALAYSIA).....	23
3.7 DUMPING ASSESSMENT – SUPERB (MALAYSIA).....	26
3.8 RESIDUAL EXPORTERS - MALAYSIA.....	27
3.9 THE COMMISSIONER’S ASSESSMENT .....	28
<b>4 SUBSIDY INVESTIGATION</b> .....	<b>30</b>
4.1 FINDINGS .....	30
4.2 RELEVANT LEGISLATION .....	30
4.3 MALAYSIA.....	32
4.4 VIETNAM .....	36
4.5 SUBSIDY MARGINS.....	40
4.6 VOLUME OF SUBSIDISED IMPORTS .....	41
<b>5 CONCLUSION</b> .....	<b>42</b>
<b>6 APPENDICES AND ATTACHMENTS</b> .....	<b>43</b>
<b>APPENDIX A ASSESSMENT OF COUNTERAVAILABLE SUBSIDIES - MALAYSIA</b> .....	<b>44</b>
A1 INTRODUCTION AND SUMMARY OF FINDINGS .....	44
A2 INFORMATION CONSIDERED BY THE COMMISSION .....	44
A3 PROGRAM 1: INCOME TAX REDUCTIONS (‘PIONEER STATUS’).....	45
A4 PROGRAM 2: INCOME TAX ALLOWANCE.....	48
A5 PROGRAM 3: DOUBLE DEDUCTIONS FOR EXPORT CREDIT INSURANCE .....	51
A6 PROGRAM 4: DOUBLE DEDUCTION FOR FREIGHT CHARGES FROM SABAH OR SARAWAK.....	52
A7 PROGRAM 5: DOUBLE DEDUCTIONS FOR INSURANCE PREMIUMS FOR EXPORTERS AND IMPORTERS .....	54
A8 PROGRAM 6: REINVESTMENT ALLOWANCE .....	56
<b>APPENDIX B ASSESSMENT OF COUNTERAVAILABLE SUBSIDIES – VIETNAM</b> .....	<b>59</b>
B1 INTRODUCTION AND SUMMARY OF FINDINGS .....	59
B2 INFORMATION CONSIDERED BY THE COMMISSION .....	59
B3 PROGRAM 1: PREFERENTIAL IMPORT TARIFFS .....	60
B4 PROGRAM 2: CORPORATE TAX INCENTIVES.....	62
B5 PROGRAM 3: INCENTIVES ON NON-AGRICULTURAL LAND TAX.....	64

**PUBLIC RECORD**

**ABBREVIATIONS**

\$	Australian dollars
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
<i>Agreement on Subsidies</i>	<i>Agreement on Subsidies and Countervailing Measures</i>
aluminium extrusions or the goods	certain aluminium extrusions
APA	Aluminium Profiles Australia Pty Ltd
Capral	Capral Limited
China	People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 362	<i>Consideration Report No. 362</i>
Customs Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
EAA	East Asia Aluminium Co Ltd
EXIM	Export Import Bank of Malaysia Berhad
FOB	free on board
FIS	free into store
Genesis	Genesis Aluminium Industries Sdn Bhd
the goods	the goods the subject of the application
GOM	Government of Malaysia
GOV	Government of Vietnam
GVA	Global Vietnam Aluminium
ICD	interim countervailing duty
IDD	interim dumping duty
IRB	inland revenue board
Kamco	Kamco Aluminium Sdn Bhd
KG	kilogram
LBA	LB Aluminium Berhad
LME	London Metals Exchange
the Manual	<i>Anti-Dumping Commission Dumping and Subsidy Manual</i>
MIDA	Malaysian Investment Development Authority
Mien Hua	Mien Hua Precision Mechanical Co., Ltd
Milleon	Milleon Extruder Sdn Bhd

**PUBLIC RECORD**

MITI	Ministry of International Trade and Industry
MJP	Major Japanese Port
OCOT	ordinary course of trade
PAD	preliminary affirmative determination
PanAsia	PanAsia Aluminium (China) Limited
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
PMAA	Press Metal Aluminium (Australia) Pty Ltd
PM Bintulu	Press Metal Bintulu Sdn. Bhd
PMB	Press Metal Berhad
PMS	Press Metal Sarawak Sdn Bhd
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 148	<i>Trade Remedies Branch Report No. 148</i>
REP 248	<i>Anti-Dumping Commission Report No. 248</i>
Review 248	<i>Review No. 248</i>
SEF	statement of essential facts
SME	small, medium sized enterprise
Superb	Superb Aluminium Industries Sdn Bhd
Tong Heer	Tong Heer Aluminium Industries Sdn Bhd
Vietnam	the Socialist Republic of Vietnam

# 1 BACKGROUND AND SUMMARY

## 1.1 Summary

This Termination Report No. 362 (TER 362) has been prepared in response to an application for a dumping duty notice and a countervailing duty notice by Capral Limited (Capral) in relation to its allegation that certain aluminium extrusions ('aluminium extrusions' or 'the goods') exported to Australia from Malaysia and the Socialist Republic of Vietnam (Vietnam) at dumped and subsidised prices have caused material injury to the Australian industry producing like goods.

This termination report sets out the Commissioner of the Anti-Dumping Commission's (the Commissioner) reasons for terminating part of the dumping investigation in relation to certain exporters from Malaysia and terminating part of the countervailing investigation in relation to Malaysia and Vietnam.

In relation to the dumping investigation, the Commissioner has found that:

- for the goods exported to Australia by Press Metal Berhad (PMB) and Superb Aluminium Industries Sdn Bhd (Superb), no evidence was found that dumping had occurred. Therefore the investigation must be terminated in accordance with subsection 269TDA(1)(b)(i) of the *Customs Act 1901* (the Act)<sup>1</sup> in so far as it relates to these exporters; and
- the dumping margin for the goods exported to Australia by LB Aluminium Berhad (LBA) and the category of 'residual exporters' from Malaysia, being Milleon Extruder Sdn Bhd (Milleon), Genesis Aluminium Industries Sdn Bhd (Genesis) and Kamco Aluminium Sdn Bhd (Kamco), was negligible (less than 2 per cent). Therefore the investigation must be terminated in accordance with subsection 269TDA(1)(b)(ii) in so far as it relates to LBA.

Table 1 summarises the dumping margins relevant to this termination report as assessed by the Anti-Dumping Commission (the Commission).

Country	Exporter	Dumping margin
Malaysia	Press Metal Berhad	-3.3%
	LB Aluminium Berhad	1.1%
	Superb Aluminium Industries Sdn Bhd	-0.2%
	Residual Exporters	1.1%

**Table 1 – Dumping margins**

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<sup>1</sup> All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

## PUBLIC RECORD

The Commissioner will make no recommendation to the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary) because the Commissioner is terminating part of the dumping investigation to the extent that it relates to the exporters listed in Table 1.<sup>2</sup>

In relation to the countervailing investigation, the Commissioner has found that, for the goods exported by:

- PMB, LBA, Superb and the category of ‘residual exporters’ from Malaysia, a countervailable subsidy has been received in respect of some or all of those goods exported to Australia but the subsidy never at any time during the investigation period exceeded the negligible level of countervailable subsidy under subsection 269TDA(16). Therefore the investigation must be terminated in accordance with subsection 269TDA(2)(b)(ii) in so far as it relates to these exporters;
- Mien Hua Precision Mechanical Co., Ltd (Mien Hua) from Vietnam a countervailable subsidy has not been received in respect of any of those goods exported to Australia. Therefore the investigation must be terminated in accordance with subsection 269TDA(2)(b)(i) in so far as it relates to Mien Hua; and
- all exporters from Vietnam (except Mien Hua) a countervailable subsidy has been received in respect of some or all of those goods exported to Australia but did not exceed the negligible level of countervailable subsidy under subsection 269TDA(16). Therefore the investigation must be terminated in accordance with subsection 269TDA(2)(b)(ii) in so far as it relates to these exporters.

Table 2 summarises the subsidy margins relevant to this termination report as assessed by the Commission.

Country	Exporter	Subsidy margin
Malaysia	Press Metal Berhad	<0.01%
	LB Aluminium Berhad	0.82%
	Superb Aluminium Industries Sdn Bhd	0.90%
	Residual Exporters	1.49%
	East Asia Aluminium Company Ltd	0.03%

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<sup>2</sup> On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this investigation, the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

## PUBLIC RECORD

Country	Exporter	Subsidy margin
Vietnam	Mien Hua Precision Mechanical Co., Ltd	N/A
	Global Vietnam Aluminium Co., Ltd	0.02%
	Non-cooperative entities	0.08%

**Table 2 - Subsidy margins**

The Commissioner will make no recommendation to the Parliamentary Secretary because the Commissioner is terminating part of the countervailing investigation to the extent that it relates to the exporters listed in Table 2.

## 1.2 Background

### 1.2.1 Authority to make decision

Division 2 describes, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application under subsection 269TB(1). Section 269TDA describes the circumstances in which the Commissioner must terminate an investigation.

### 1.2.2 Public record

The Commissioner maintains a public record of this investigation as required by section 269ZJ. The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available in hard copy by request in Melbourne or online at [www.adcommission.gov.au](http://www.adcommission.gov.au). Documents on the public record should be read in conjunction with this termination report.

### 1.2.3 Application and initiation

On 28 June 2016, Capral lodged an application alleging that the Australian industry has suffered material injury caused by aluminium extrusions exported to Australia from Malaysia and Vietnam at dumped and subsidised prices.

Having considered the application, the Commissioner decided not to reject the application and initiated an investigation into the alleged dumping and subsidisation of aluminium extrusions from Malaysia and Vietnam on 16 August 2016.

*Consideration Report No. 362 (CON 362)* and the Public Notice in Anti-Dumping Notice (ADN) No. 2016/77 provide further details relating to the initiation of the investigation and are available on the Anti-Dumping Commission's (the Commission) website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

### 1.2.4 Investigation period and injury analysis period

In respect of this investigation:

- the investigation period<sup>3</sup> for the purpose of assessing dumping and subsidisation is 1 July 2015 to 30 June 2016; and
- the injury analysis period is from 1 July 2012. The purpose of the injury period is to allow the Commission to identify and examine trends in the market which in turn assists the Commission in its examination of whether material injury has occurred over the investigation period.<sup>4</sup>

### **1.2.5 Preliminary affirmative determination**

In accordance with section 269TD, the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice, or if satisfied that it appears that there will be sufficient grounds subsequent to the importation of the goods into Australia.

The Commissioner, after having regard to the application, submissions and other relevant information, was satisfied that there appeared to be sufficient grounds for the publication of a dumping duty notice in respect of aluminium extrusions exported to Australia from Malaysia and Vietnam.<sup>5</sup> As a result, the Commissioner made a PAD on 17 October 2016.<sup>6</sup> ADN 2016/108 provides details of the decision and is available on the public record.<sup>7 8</sup>

Following the PAD, and to prevent material injury to the Australian industry occurring while the investigation continued, securities were taken in respect of interim dumping duty (IDD) that may become payable in respect of aluminium extrusions exported to Australia from Malaysia and Vietnam, entered for home consumption on or after 19 October 2016.

On 22 March 2017, the Commissioner revised the level of securities required and taken under section 42 in respect of IDD that may become payable in relation to the goods exported to Australia from Malaysia and Vietnam and entered for home consumption on or after 23 March 2017.<sup>9</sup>

On 19 April 2017, the Commissioner published a notice in accordance with subsection 269TD(5) requiring the taking of securities in respect of interim countervailing duty (ICD) that may become payable in respect of aluminium extrusions exported to Australia from Malaysia, entered for home consumption on or after 20 April 2017.<sup>10</sup>

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<sup>3</sup> Subsection 269T(1).

<sup>4</sup> As this report addresses termination in relation to dumping and subsidisation only, there is no need to examine whether material injury has occurred in this report.

<sup>5</sup> As noted in the PAD, further analysis was required to adequately consider whether the goods have been exported from Malaysia and Vietnam to Australia at subsidised prices.

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

<sup>7</sup> Case 362 public record Item No. 34.

<sup>8</sup> An electronic version of the public record is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

<sup>9</sup> ADN No. 2017/37 refers.

<sup>10</sup> ADN No. 2017/52 refers.



## PUBLIC RECORD

Given that the Commissioner is terminating the investigation, securities taken in respect of ICD and IDD currently applying to exports of the goods by the exporters listed in Tables 1 and 2 will be cancelled.

### 1.2.6 Submissions from interested parties

Following initiation of this investigation, the Commission received submissions from interested parties, the relevant aspects of which were taken into account in preparing this report.

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

### 1.2.7 Remaining aspects of the dumping investigation

The investigation continues in relation to the alleged dumping of aluminium extrusions from Malaysia by exporters other than those referred to above at section 1.1 and all exporters from Vietnam continues. The Statement of Essential Facts was published on 9 April 2017 and the final report is due to be provided to the Parliamentary Secretary by 24 May 2017.

### 1.2.8 Previous investigations

Anti-dumping measures currently apply to aluminium extrusions exported to Australia from China. A history of the main cases relating to aluminium extrusions exported to Australia from China are summarised below. This information is also available on the Commission's public record.

Year	Case Description
2009-2011	<p>The then Australian Customs and Border Protection Service initiated an investigation, following an application from Capral. Following the investigation, the then Attorney-General published a dumping duty notice and a countervailing duty notice (<i>Trade Remedies Branch Report No. 148</i> (REP 148) refers).</p> <p>Following a review by the former Trade Measures Review Officer, the then Attorney-General amended the dumping duty notice and countervailing duty notice as a result of a reinvestigation of certain findings made in REP 148. <i>International Trade Remedies Report No. 175</i> refers.</p>

**PUBLIC RECORD**

Year	Case Description
2015	<p>The Commissioner initiated <i>Anti-Circumvention Inquiry No. 241</i> into the avoidance of the intended effect of duty concerning certain aluminium extrusions exported to Australia by PanAsia Aluminium (China) Limited (PanAsia). Following Final Report No. 241 and ADN No. 2015/17 the then Parliamentary Secretary published a notice declaring that circumvention had occurred and altered the dumping duty notice and countervailing duty to have effect as if a different variable factor, the export price applied in relation to PanAsia.</p> <p>The Commissioner initiated an all exporter <i>Review of Measures No. 248</i> (Review 248) following an application from PanAsia. Following Review 248, the then Parliamentary Secretary to the Minister for Industry and Science published a notice declaring that she had altered the dumping duty notice and countervailing duty notice as if different variable factors had been ascertained for exporters generally.</p> <p>The Commission conducted <i>Continuation Inquiry No. 287</i> refers, following an application by Capral. The then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science continued the measures for a further five years, until 28 October 2020.</p>

**Table 3 – Summary of main cases involving China**

## 2 THE GOODS AND LIKE GOODS

### 2.1 Preliminary finding

The Commissioner considers that locally produced aluminium extrusions are 'like' to the goods the subject of the application and is satisfied that there is an Australian industry producing those like goods, which comprises of nine Australian producers.

### 2.2 Legislative framework

Subsection 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice and/or a countervailing duty notice if, inter alia, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are "like" to the imported goods. Subsection 269T(1) defines like goods as:

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

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are "like" to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

### 2.3 The goods

The goods the subject of this application are:

*"Aluminium extrusions that:*

- *are produced by an extrusion process;*
- *are 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);*
- *have finishes being:*
  - *as extruded (mill);*

## PUBLIC RECORD

- *mechanically worked*
- *anodized; or*
- *painted or otherwise coated, whether or not worked;*
- *have a wall thickness or diameter greater than 0.5 mm;*
- *have a maximum weight per metre of 27 kilograms; and*
- *have a profile or cross-section fitting within a circle having a diameter of 421 mm”.*

Tables 4 below provides examples of the coverage of the goods and like goods (and intended end-use applications) and will be used for this investigation. Examples of the goods and like goods are outlined in columns 1-4 and non-subject goods are outlined in columns 5 to 7.

< 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 4 – The goods and like goods**

## 2.4 Tariff classification

The goods are classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

<b>Tariff code</b>	<b>Statistical code</b>	<b>Unit</b>	<b>Description</b>
7604.10.00	06	Kg	Non alloyed aluminium bars, rods and profiles
7604.21.00	07	Kg	Aluminium alloy hollow angles and other shapes
7604.21.00	08	Kg	Aluminium alloy hollow profiles
7604.29.00	09	Kg	Aluminium alloy non hollow angles and other shapes
7604.29.00	10	Kg	Aluminium alloy non hollow profiles
7608.10.00	09	Kg	Non alloyed aluminium tubes and pipes
7608.20.00	10	Kg	Aluminium alloy tubes and pipes

<b>Tariff code</b>	<b>Statistical code</b>	<b>Unit</b>	<b>Description</b>
7610.10.00	12	Kg	Doors, windows and their frames and thresholds for doors
7610.90.00	13	Kg	Other

**Table 5 - Tariff classifications of the goods**

## **2.5 The Australian industry**

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

The Commission visited Capral’s Bremer Park facility to examine the manufacturing processes and to verify the claims in the application. The Commission has found that Capral undertakes a substantial process of manufacture in producing aluminium extrusions in Australia and, as the aluminium extrusions is manufactured in Australia, there is an Australian industry producing like goods.

Further information regarding Capral’s production processes and product range is available in Capral’s verification report on the public record.<sup>11</sup>

## **2.6 Commissioner’s assessment - like goods**

The Commissioner considers that the Australian industry produces goods that are ‘like’ to the goods under consideration for the following reasons:

- the primary physical characteristics of the goods and locally produced goods are similar;
- the goods and locally produced goods are commercially alike as they are sold to common users, and directly compete in the same market;
- the goods and locally produced goods are functionally alike as they have a similar range of end-uses; and
- the goods and locally produced goods are manufactured in a similar manner.

Further details on the Commissioner’s assessment of like goods can be found in CON 362, which has not changed.<sup>12</sup>

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<sup>11</sup> Case No.362 Public Record Item No. 74

<sup>12</sup> Case No.362 Public Record Item No. 3

## **PUBLIC RECORD**

Having regard to the above, the Commissioner is satisfied that the Australian industry produces 'like' goods to the goods the subject of the application, as defined in subsection 269T(1).

The Commissioner is satisfied that there is an Australian industry in respect of 'like goods' in accordance with subsection 269TC(1).

## **3 DUMPING INVESTIGATION**

### **3.1 Findings**

The Commissioner has found that, during the investigation period:

- in relation to the goods exported by PMB and Superb, no evidence was found that dumping had occurred; and
- the dumping margin in relation to the goods exported LBA and the category of ‘residual exporters’ from Malaysia was negligible (less than 2 per cent).

The dumping margins relevant to the termination are summarised in Table 6 below.

Country	Exporter	Dumping margin
Malaysia	Press Metal Berhad	-3.3%
	LB Aluminium Berhad	1.1%
	Superb Aluminium Industries Sdn Bhd	-0.2%
	Residual Exporters	1.1%

**Table 6 – Dumping margins**

### **3.2 Introduction and legislative framework**

In his report to the Parliamentary Secretary under subsection 269TEA(1), the Commissioner must recommend whether the Parliamentary Secretary ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that the goods have been dumped.

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively. Further details of the export price and normal value calculations for each exporter are set out below.

Dumping margins are determined under section 269TACB. For all dumping margins calculated for the purposes of this investigation, the Commission compared the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period, in accordance with subsection 269TACB(2)(a).

### **3.3 Cooperative exporters**

Subsection 269T(1) provides that, in relation to a dumping investigation, an exporter is a ‘cooperative exporter’ where the exporter’s exports were examined as part of the investigation and the exporter was not an ‘uncooperative exporter’. At the commencement of the investigation, the Commission contacted all known exporters of the goods and each

## PUBLIC RECORD

identified supplier of the goods within the relevant tariff subheadings for aluminium extrusions as identified in the Australian Border Force (ABF) import database and invited them to complete an exporter questionnaire.

The Commission received nine completed exporter questionnaire responses from the following exporters:

- PMB;
- LBA;
- Superb;
- Milleon;
- Genesis;
- Kamco;
- East Asia Aluminium Company Ltd (EAA);
- Mien Hua Precision Mechanical Co., Ltd (Mien Hua); and,
- Global Vietnam Aluminium Co., Ltd (GVA).

The Commission undertook verification visits to PMB, LBA and EAA. Superb, Mien Hua and GVA were not visited, however the Commission analysed the data submitted by each company and is satisfied that the data is reasonably accurate, relevant and complete. This data was used to calculate dumping margins. Milleon, Genesis and Kamco were not subject to verification on the basis of the sampling methodology adopted by the Commissioner, and these three exporters have been treated as residual exporters. The residual exporter's dumping margin has been determined with reference to the export prices and normal values of PMB, LBA and Superb.

### 3.4 Model matching

For each exporter, the Commission applied model matching criteria based on a combination of the following characteristics:

- for all exporters, surface finish, i.e. milled, powder coated, anodised and bright dipped; and
- in relation to PMB, alloy.

The Commission applied the most appropriate criteria depending on the specific circumstances of each exporter.

### 3.5 Dumping assessment – PMB (Malaysia)

#### 3.5.1 Verification

The Commission conducted an in-country visit to PMB's facility in Kuala Lumpur in Malaysia during November 2016 to verify the information disclosed in its exporter questionnaire response.

The verification team toured PMB's facility and is satisfied that it is the producer of the GUC.



A report covering the visit findings is available on the public record.<sup>13</sup>

### **3.5.2 Export price**

The verification findings contained in PMB's verification report and Press Metal Aluminium (Australia) Pty Ltd's (PMAA) verification report are that:

- PMB was the exporter of the goods to Australia;
- noting that PMB sells the goods to its Australian customers on a DDP basis, PMB was the beneficial owner of the goods at the time of importation and therefore the importer as defined by the Act; and
- the export sales between PMB and its Australian customers were the result of arms length transactions.

Based on the above, the Commission is unable to calculate the export price under subsections 269TAB(1)(a) or (b). The export price for PMB has been established under subsection 269TAB(1)(c), having regard to the circumstances of the exportation, using the invoiced price from PMB to its Australian customers, less deductions to the FOB level as required.

### **3.5.3 Submissions received prior to SEF 362 regarding PMB's export price**

#### Capral

In response to the Commission's findings detailed in PMB's verification report and PMAA's verification report, Capral submitted that the transactions between PMB and PMAA were not arms length.<sup>14</sup>

In particular, Capral highlighted that:

- information contained in PMAA's financial statements (which it obtained from ASIC), showed that PMAA had incurred consecutive net losses for 2012 to 2014;
- PMAA's 2015 financial statement showed a large trade-creditor liability owed by PMAA to PMB;
- common directorships between PMB and PMAA raises doubt that the outstanding trade creditor liability will be repaid;
- notes to the financial statements in relation to the trade creditor liability suggest that PMAA is afforded extended credit terms by PMB; and
- the goods 'transferred' by PMB to PMAA are not likely to have been sold at full cost recovery.

#### Commission's response to submissions

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<sup>13</sup> Case No.362 Public Record Item No.51

<sup>14</sup> Case No. 362 Public Record Item Nos. 45, 52, 54 and 67.

## PUBLIC RECORD

In determining whether the transactions between PMB and its Australian customers are arms length transactions, the Commission has had regard to the requirements of section 269TAA and Chapter 5 of the *Anti-Dumping Commission Dumping and Subsidy Manual* (the Manual).

The Commission notes that under subsection 269TAA(1), a purchase or sale of goods shall not be treated as an arms length transaction if:

- a) there is any consideration payable for or in respect of the goods other than their price; or
- b) the price appears to be 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
- c) in the opinion of the Minister the buyer, or an associate of the buyer, will subsequent to the purchase or sale, 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.<sup>15</sup>

Under subsection 269TAA(2), the Minister may treat sales of the goods by an importer (or associate) in Australia at a loss as indicating that the importer (or associate) will, directly or indirectly, be reimbursed, compensated or otherwise receive a benefit in respect of the whole or a part of the price.

To assess whether subsection 269TAA(1) or (2) applied, the Commission examined PMB's sales to its Australian customers in detail and relied upon the following evidence:

- PMB and PMAA's questionnaire responses;
- PMB's price setting practices;
- commercial invoices and other source documents between PMB and its Australian customers;
- proof of payment source documents in relation to a sample of export sales selected by the verification team;
- PMB's accounts receivable ledgers; and
- PMB and PMAA's financial statements, including PMB and PMAA's sales and cost ledgers.

Through verification, the Commission observed that PMAA paid PMB the value of the goods as stated on the commercial invoices. Total payments made by PMAA during the investigation period exceeded the total invoice values, which resulted in a net reduction of the accounts receivable balance by PMAA, thereby demonstrating that PMAA had paid for all of its imports during the investigation period. In addition, during the investigation period, the Commission observed that PMAA separately reduced its trade creditor liability owed to PMB from prior to the investigation period.

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<sup>15</sup> Subject to subsection 269TAA(1A).

## PUBLIC RECORD

The Commission notes that, by its mere existence, the trade creditor liability does not automatically support a conclusion that the transactions between PMAA and PMB are not arms length. The Commission is required to have regard to various other considerations when making a judgement on whether transactions are arms length. On the basis of the observations made during importer and exporter verification in relation to PMB's accounts, the trade creditor liability reported in PMAA's financial statements appears to have resulted from sales which occurred prior to the investigation period and have not impacted on prices within the investigation period.

With respect to the extended credit terms referred to in Capral's submission, the Commission has accounted for credit terms by making an upwards adjustment to PMB's normal value for the export credit term it extends to its Australian customers. The credit term adjustment was calculated based on the accounts receivable turnover ratio method described in Chapter 14 of the Manual. The Commission's calculations relied on the accounts receivable opening and closing balances for sales to PMAA as recorded in PMB's records.

The Commission also observed that PMB's exports to PMAA were profitable. This supports a finding that PMB's exports to PMAA have been sold at full cost recovery.

PMAA was also found to have sold goods sourced from PMB at a profit in Australia during the investigation period and in the 2015 financial year. This means that PMAA's sales of aluminium extrusions sourced from PMB have been sold at profitable levels for at least an 18 month period from 1 January 2015 to 30 June 2016.

Further analysis undertaken by the Commission reveals that PMB's export price is comparable with other Malaysian exporters.

A sample of price lists relating to PMB's Australian sales also demonstrated PMB's pricing formula which is based predominately on the London Metals Exchange (LME) benchmark and Major Japanese Port (MJP) premium plus conversion and shipping costs.

The Commission also compared the prices of goods exported by PMB to related and unrelated customers. This analysis revealed that PMB's prices to unrelated customers were on average marginally higher than to its related customers. However, this difference may be explained by the fact that PMB's sales volumes to related customers were much higher than to unrelated customers and could also be influenced by the product mix of those sales.

Based on the available evidence, the Commission finds:

- there was no consideration payable for or in respect of the goods other than their price;
- the price for the goods exported by PMB to PMAA does not appear be influenced by the relationship between PMB and PMAA, despite both companies sharing common directors;
- an examination of the exporter's and importer's records does not show any compensation or reimbursement mechanisms in operation;

## PUBLIC RECORD

- the transactions between PMB and PMAA appear to be the result of real bargaining based on a comparison between the prices and profit margins reported by PMB and other Malaysian exporters;
- trade creditor liabilities owed to PMB by PMAA appear to relate to historical sales from prior to the investigation period and do not appear to have influenced the price paid by PMAA to PMB during the investigation period; and
- PMAA's sales of aluminium extrusions sourced from PMB during the investigation period were not sold by PMAA in Australia at a loss.

The Commission therefore concludes that the sale of aluminium extrusions by PMB to PMAA during the investigation period were arms length transactions.

### 3.5.4 Normal value

For models where there were sufficient sales, the Commission determined that normal values should be calculated under subsection 269TAC(1), using the price paid or payable for like goods sold in the ordinary course of trade (OCOT) for home consumption in Malaysia, in sales that are arms length transactions by PMB.<sup>16</sup>

For models where there were insufficient sales in the OCOT and it was not possible to use an alternative model, the normal value was determined using a constructed method, as permitted under subsection 269TAC(2)(c).

As required by subsections 269TAC(5A) and 269TAC(5B), the costs of production or manufacture, the selling, general and administrative (SG&A) costs and profit are established in accordance with the regulations. The relevant regulations are sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation), respectively.

For PMB:

- the cost of production was calculated under subsection 43(2) of the Regulation, using the exporter's records;
- SG&A costs were calculated under subsection 44(2) of the Regulation, using the exporter's records; and
- the amount of profit was worked out under subsection 45(2) of the Regulation.

### Adjustments

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<sup>16</sup> In terms of section 269TAAD.

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsections 269TAC(8)<sup>17</sup> and (9)<sup>18</sup> as follows:

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic inland transport	<b>Deduct</b> domestic inland transport costs
Export inland transport and handling and other charges	<b>Add</b> export inland freight and port charges
Domestic credit terms	<b>Deduct</b> domestic credit terms costs
Export credit terms	<b>Add</b> export credit terms costs
Export sales commission	<b>Add</b> export sales commission
Export stillage return costs	<b>Add</b> export stillage return costs
Specification adjustment	<b>Add</b> price differences to account for piece length surcharges for subsection 269TAC(1) normal values only.

**Table 7 - Adjustments to PMB's normal value**

### **3.5.5 Submissions regarding PMB's normal value**

#### Specification adjustments

In its 16 December 2016 submission, Capral stated that the Commission did not adjust PMB's normal value to account for specification differences such as finish, billet grade, anodising thickness and piece length between PMB's domestically sold like goods and the goods it exported to Australia.<sup>19</sup> The December submission follows an earlier submission from Capral on 4 November 2016.<sup>20</sup> Capral highlights that due allowance may be required to account for physical differences should price comparability be affected.

#### Raw material purchases

In its 21 October 2016 submission, Capral submitted that the Commission must ensure that PMB's purchases of raw materials from related parties, Press Metal Bintulu (PMBTU) and Press Metal Sarawak (PMS) reflect competitive market prices in the event that PMBTU and PMS are found to be operating at a loss.<sup>21</sup> Capral cites a submission lodged

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<sup>17</sup> For all exporters, where the normal value was calculated under subsection 269TAC(1), to ensure the comparability of normal values to export prices, the Commission considers that adjustments are required for maintaining price comparability pursuant to subsection 269TAC(8).

<sup>18</sup> For all exporters, where normal value was calculated under subsection 269TAC(2)(c), to ensure the comparability of normal values to export prices, the Commission considers that adjustments are required for maintaining price comparability pursuant to subsection 269TAC(9).

<sup>19</sup> Case No. 362 Public Record Item No.52

<sup>20</sup> Case No. 362 Public Record Item No.41

<sup>21</sup> Case No. 362 Public Record Item No.39

by PMAA in which PMAA indicate that PMBTU and PMS reported a taxable loss during the investigation period as the basis for stating that PMBTU and PMS are not recovering the fully absorbed costs of the raw materials it sells to PMB.

In a submission received on 16 December 2016, Capral raises similar concerns regarding PMB's related party purchases of raw materials.<sup>22</sup>

Capral's submission also outlined that the cost of ingot and billet purchased by PMB from related parties should be inclusive of the LME price and a MJP premium and should reflect the fully absorbed cost of production. Capral reiterates the need for this approach in a further submission received on 14 February 2017.<sup>23</sup>

#### Commission's response to submissions

In response to Capral's submission regarding specification adjustments, the Commission confirms that the model matching methodology applied to PMB's dumping margin calculations considered surface finish and billet grade, therefore an adjustment for these elements is not necessary.

The Commission also model matched anodised models separately according to whether the anodised models were natural anodised or colour anodised. In relation to anodised extrusions exported to Australia, the Commission verified that the thickness of the anodising for goods exported to Australia was the same as that sold by PMB in its domestic market. As a result a specification adjustment for differences in anodising thickness was not found to be necessary.

Using price lists obtained during verification, the Commission observed that the prices for goods sold to PMAA included surcharges for piece length and linear weight. Goods sold in PMB's domestic market however do not have similar surcharges. The Commission has further considered the submissions received in relation to a specification adjustment and had regard to the matters raised by Capral in its exporter briefing materials.<sup>24</sup> Based on the price list data obtained by the Commission, an upwards specification adjustment relating to piece length surcharges has been applied on relevant sales. The specification adjustment did not have a material impact on the dumping margin. A linear weight adjustment was not found to be necessary as there were no applicable transactions in PMB's domestic sales data.

Regarding submissions received in relation to raw material purchases, PMB's verification report at section 4.3 discusses findings made in relation to verification of its related party purchases of raw materials.<sup>25</sup> The Commission observed that the prices paid by PMB for its purchases of ingots and billets from related party suppliers, PMBTU and PMS,

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<sup>22</sup> Case No. 362 Public Record Item No.52

<sup>23</sup> Case No. 362 Public Record Item No.62

<sup>24</sup> Case No. 362 Public Record Item No.35

<sup>25</sup> Case No. 362 Public Record Item No.47

correlated to the combined LME and MJP price in each month of the investigation period. In addition, PMAA provided data in its 6 October 2016 submission which compared PMBTU and PMS's prices to regional and worldwide selling prices.<sup>26</sup> The price comparison data provided by PMAA corresponded to the Commission's separate evaluation.

Further examination of PMBTU and PMS's financial statements relevant to the investigation period revealed that each company reported a pre-tax profit. This supports a conclusion that PMBTU and PMS are recovering the fully absorbed cost of production. The losses referred to in PMAA's submission related to each company's statutory income for tax purposes, which is an adjusted amount net of allowable deductions, rather than its pre-tax income.

Based on the above, the Commission concludes that the cost of aluminium raw materials reported in PMB's CTMS data reasonably reflects competitive market costs as required by subsection 43(2) of the Regulation.

### **3.5.6 Dumping margin – PMB**

The Commission has calculated the dumping margin for PMB as negative 3.3 per cent.

## **3.6 Dumping assessment – LB Aluminium (Malaysia)**

### **3.6.1 Verification**

The Commission conducted an in-country visit to LBA's facility in Kuala Lumpur, Malaysia during October 2016 to verify the information disclosed in its exporter questionnaire response.

The verification team toured LBA's facility and is satisfied that it is the producer of the goods and like goods.

A report covering the visit findings is available on the public record.<sup>27</sup>

### **3.6.2 Export price**

In relation to LBA's exports to Australia, the Commissioner is satisfied that the goods have been exported to Australia otherwise than by the importer and were purchased in an arms length transaction by the importer from the exporter.

Therefore, the export price for LBA has been established under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

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<sup>26</sup> Case No. 362 Public Record Item No.28

<sup>27</sup> Case No. 362 Public Record Item No.49

### 3.6.3 Normal value

For all export models the Commission found sufficient sales of like goods in the OCOT. The Commission determined that normal values should be calculated under subsection 269TAC(1), using the price paid or payable for like goods sold in the OCOT for home consumption in Malaysia, in sales that are arms length transactions by LBA.<sup>28</sup>

#### Adjustments

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsection 269TAC(8):

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic inland transport	<b>Deduct</b> domestic inland transport costs
Export inland transport	<b>Add</b> export inland transport costs
Domestic credit terms	<b>Deduct</b> domestic credit terms costs
Export credit terms	<b>Add</b> export credit terms costs
Export handling and other costs	<b>Add</b> export handling and other costs
Domestic packing costs	<b>Deduct</b> domestic packing costs
Export packing costs	<b>Add</b> export packing costs (including the cost of stillages)

**Table 8 - Adjustments to LBA normal value**

### 3.6.4 Submissions regarding LBA's normal value prior to SEF 362

#### Capral

In its 17 December 2016 submission relating to LBA's verification report, Capral questioned if an adjustment for export handling and other costs was applied and also questioned why an adjustment for packing costs was not made.<sup>29</sup> Capral also submitted that an upwards adjustment to normal values for costs relating to shipping stillages should be included based on its understanding of how aluminium extrusions are shipped to Australia.

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<sup>28</sup> In terms of section 269TAAD.

<sup>29</sup> Case No. 362 Public Record Item No.53



In a further submission from Capral received on 28 February 2017, Capral reiterated the issue of packing costs following publication of Superb's verification report, which found that, in relation to Superb, there was a difference in export and domestic packing costs.<sup>30</sup>

#### Commission response to submissions

The Commission considered Capral's claims that there is a difference in export and domestic packaging costs for each exporter based on their individual circumstances.

LBA's verification report details findings in relation to the assessment of LBA's packing costs.<sup>31</sup> During verification, the verification team did not observe different packing methods during an inspection of LBA's manufacturing facilities. The verification team found that in relation to LBA there was no difference in packaging for its domestic market and export market.

Regarding Capral's submission which queried the absence of an adjustment for export handling and other costs in LBA's verification report, in SEF 362 the Commission confirmed that the dumping margin determined for LBA in the verification report was inclusive of an upwards adjustment for export handling and other costs, however it was inadvertently omitted from the summary table of adjustments in the verification report.

#### **3.6.5 Submissions in response to SEF 362**

##### Capral

In a submission dated 29 April 2017, Capral noted that there appeared to be inconsistencies with the Commission's findings in relation to adjustments to account for differences in export and domestic packaging costs. In particular, Capral queried whether upwards adjustments were made for all exporters to account for the costs of stillages, also referred to as steel trolleys, which are typically only used in export sales and not in domestic sales.<sup>32</sup>

##### Commission's response to submissions

Following publication of SEF 362, the Commission sought and received further information from LBA regarding its packing costs. LBA confirmed that it used stillages for export sales to Australia and third countries and provided a detailed breakdown of its total packing expenses for the investigation period. The ledger accounts (where packing costs are recorded) separately recorded the stillage costs.

Relying on the data provided by LBA, the Commission reallocated LBA's unit packing costs for its domestic and export sales. As a result, LBA's domestic packing costs have reduced and its export packing costs have increased. The cost differential between the two increased the dumping margin calculated in SEF 362 by 0.6 per cent. With the

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<sup>30</sup> Case No. 362 Public Record Item No.65

<sup>31</sup> Case No. 362 Public Record Item No.49

<sup>32</sup> Case No. 362 Public Record Item No.78

exception of stillages, the Commission remains satisfied that all other packing materials used by LBA in domestic and export sales are the same.

### **3.6.6 Dumping margin - LBA**

The Commission has calculated a dumping margin for LBA of 1.1 per cent.

## **3.7 Dumping assessment – Superb (Malaysia)**

### **3.7.1 Verification**

The Commission did not undertake an in-country visit to Superb's facility in Kuala Lumpur, Malaysia. However, Superb's exporter questionnaire response was subject to remote verification during February 2017.

Relying on the information available the Commission is satisfied that Superb is the producer of the goods and like goods.

A report covering the verification findings is available on the public record.<sup>33</sup>

### **3.7.2 Export price**

The verification findings contained in Superb's verification report concluded that:

- Superb was the exporter of the goods to Australia;
- noting that Superb sells the goods to its Australian customers on a DDP basis, Superb was the beneficial owner of the goods at the time of importation and therefore the importer; and
- the export sales between Superb and its Australian customers were arms length transactions.

Based on the above, the Commission is unable to calculate the export price under subsections 269TAB(1)(a) or (b). The export price for Superb has been established under subsection 269TAB(1)(c), having regard to the circumstances of the exportation, using the invoiced price from Superb to its Australian customers, less deductions to the FOB level as required.

### **3.7.3 Normal value**

For all export models the Commission found sufficient sales of like goods in the OCOT. The Commission determined that normal values should be calculated under subsection 269TAC(1), using the price paid or payable for like goods sold in the OCOT for home consumption in Malaysia, in sales that are arms length transactions by Superb.<sup>34</sup>

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<sup>33</sup> Case No. 362 Public Record Item No.63

<sup>34</sup> In terms of section 269TAAD.

Adjustments

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsection 269TAC(8):

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic inland transport and other charges	<b>Deduct</b> domestic inland transport costs
Export inland transport and handling and other charges	<b>Add</b> export inland transport costs
Domestic credit terms	<b>Deduct</b> domestic credit terms costs
Export credit terms	<b>Add</b> export credit terms costs
Domestic packaging costs	<b>Deduct</b> domestic packaging costs
Export packaging costs	<b>Add</b> export packaging costs <sup>35</sup>

**Table 9 - Adjustments to Superb normal value**

**3.7.4 Dumping margin - Superb**

The Commission has calculated the dumping margin for Superb as negative 0.2 per cent.

**3.8 Residual exporters - Malaysia**

For the purpose of this investigation the category of ‘residual exporters’ from Malaysia, is comprised of Milleon, Genesis, and Kamco.

**3.8.1 Export price**

In relation to residual exporters from Malaysia, subsection 269TACAB(2)(c) requires that the export price must not be less than the weighted average export price for like goods of selected cooperative exporters from Malaysia. In relation to an investigation, subsection 269TACAB(3) requires that, in calculating the weighted average export price, the Commission is not to include any export price from a selected exporter that was found to not be dumping or where the dumping margin, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2 per cent.

The Commission notes that all three of the selected cooperative exporters from Malaysia were found not to be dumping or have a dumping margin, when expressed as a percentage of the export price or weighted average of export prices used to establish that

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<sup>35</sup> The Commission confirms that the packing costs applied to Superb’s dumping margin calculations in SEF 362 took into account the cost of stillages used in export sales, consistent with Superb’s verification report.

dumping margin, of less than 2 per cent. Therefore, because of the application of subsection 269TACAB(3), the Commission could not determine an amount that the residual exporters' export price must not be lower than under subsection 269TACAB(2)(c).

The Commission has established the export price for residual exporters from Malaysia under subsection 269TAB(3) having regard to all relevant information, as sufficient information was not available to ascertain the export price under the preceding subsections of 269TAB. Relevant information in these circumstances included the export price of the only selected cooperative exporter from Malaysia with a positive dumping margin. Accordingly, the Commission ascertained an export price for residual exporters from Malaysia at the same amount.

### **3.8.2 Normal value**

In relation to residual exporters from Malaysia, subsection 269TACAB(2)(d) requires that the normal value must not be more than the weighted average normal value for like goods of selected cooperative exporters from Malaysia. In relation to an investigation, subsection 269TACAB(3) requires that, in calculating the weighted average normal value, the Commission is not to include any normal value from a selected exporter that was found to not be dumping or where the dumping margin, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2 per cent.

The Commission notes that all three of the selected cooperative exporters from Malaysia were found not to be dumping or have a dumping margin, when expressed as a percentage of the export price or weighted average of normal values used to establish that dumping margin, of less than 2 per cent. Therefore, because of the application of subsection 269TACAB(3), the Commission could not determine an amount that the residual exporters' normal value must not be higher than under subsection 269TACAB(2)(d).

The Commission has established the normal value for residual exporters from Malaysia under subsection 269TAC(6) having regard to all relevant information, as sufficient information was not available to ascertain the normal value under the preceding subsections of 269TAC. Relevant information in these circumstances included the normal value of the only selected cooperative exporter from Malaysia with a positive dumping margin. Accordingly, the Commission ascertained a normal value for residual exporters from Malaysia at the same amount.

### **3.8.3 Dumping margin – Residual exporters**

The dumping margin for the residual exporters from Malaysia is 1.1 per cent.

## **3.9 The Commissioner's assessment**

- The Commissioner has assessed that:

## **PUBLIC RECORD**

- aluminium extrusions exported to Australia by PMB, Superb, Milleon, Genesis and Kamco from Malaysia were not dumped during the investigation period; and,
- aluminium extrusions exported to Australia by LBA from Malaysia were at dumped prices during the investigation period however the dumping margins were negligible (less than 2 per cent).

## 4 SUBSIDY INVESTIGATION

### 4.1 Findings

Having regard to all relevant information, the Commissioner considers that:

- during the investigation period, Mien Hua from Vietnam did not receive financial contributions under countervailable subsidy programs in respect of aluminium extrusions exported to Australia; and
- during the investigation period PMB, Superb, LBA, the category of residual exporters from Malaysia and all exporters from Vietnam other than Mien Hua, received financial contributions under countervailable subsidy programs in respect of aluminium extrusions exported to Australia. However the overall subsidy margin attributable to the goods exported by these exporters is considered to be negligible, as it is less than two per cent;<sup>36</sup> and
- the subsidy margin of the category of non-cooperative entities from Malaysia is not negligible and the volume of goods exported from Malaysia is not negligible.

### 4.2 Relevant legislation

Subsection 269T(1) defines a 'subsidy' as follows:

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

*(a) a financial contribution:*

- (i) by a government of the country of export or country of origin of the goods; or*
- (ii) by a public body of that country or a public body of which that government is a member; or*
- (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;*

*that involves:*

- (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;*

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<sup>36</sup> Subsection 269TDA(16).

## PUBLIC RECORD

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

This reflects Article 1.1 of the Agreement on Subsidies.

Section 269TAAC defines a countervailable subsidy as follows:

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

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

- a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or*
- b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or*
- c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or*
- d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.*

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

- a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and*
- b) eligibility for the subsidy is automatic; and*
- c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and*
- d) those criteria or conditions are strictly adhered to in the administration of the subsidy.*

*(4) 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.*

*(5) In making a determination under subsection (4), the Minister must take account of:*

- a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and*
- b) the length of time during which the subsidy program has been in operation.*

Sections 269TACC and 269TACD directs how it is to be determined whether a benefit has been conferred by a subsidy and the amount of this benefit.

## 4.3 Malaysia

### 4.3.1 Government questionnaire

At the time of initiating the investigation, the Commission forwarded the Government of Malaysia (GOM) a questionnaire with questions relevant to:

- **Program 1** – Income Tax Reductions ('Pioneer Status'); and
- **Program 2** – Income Tax Allowance.

A questionnaire response was received from the GOM on 6 October 2016.<sup>37</sup> In its questionnaire response, the GOM reported three additional programs:

- **Program 3** – Double deductions for export credit insurance;
- **Program 4** – Double deductions for freight charges relating to goods originating from Sabah and Sarawak; and
- **Program 5** – Double deductions for insurance premiums paid by exporters and importers.

In relation to Program 5, the GOM stated that the ability to claim a double deduction was revoked in 2012 effective for the 2016 year of assessment onwards.<sup>38</sup>

On 7 March 2017, following verification of selected cooperating exporters' data the Commission forwarded the GOM a supplementary questionnaire requesting further information about an additional potentially countervailable subsidy, **Program 6** – Reinvestment Allowance.

On 21 March 2017, the GOM responded to the supplementary questionnaire.<sup>39</sup>

### 4.3.2 PMB

#### Program 1: Income Tax Reductions/Exemptions

PMB did not benefit directly from Program 1. However, its related party supplier of ingot, PMBTU, has been awarded 'Pioneer Status' by the GOM and is eligible for income tax reductions (in the form of an exemption) relating to Program 1. The Commission considered whether there was a flow-through of subsidies from PMBTU to PMB during the investigation period.

From an examination of income tax returns for the years 2013 to 2015, income tax computation records and general ledgers, the Commission found no evidence to suggest that PMBTU will benefit from Program 1 during the investigation period.

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<sup>37</sup> Case No. 362 Public Record Item No. 27

<sup>38</sup> GOM Questionnaire Response, Section C-1.1(e), p.43.

<sup>39</sup> Case No. 362 Public Record Item No. 73



## PUBLIC RECORD

According to the GOM questionnaire response, any exemption of statutory income from Program 1 applies after capital allowances have been taken into account.

The Commission notes that, in the most recent tax return for 2015, PMBTU had capital deductions available which reduced its statutory income (on which tax is paid) to zero. Therefore, no income tax exemption was necessary.

Noting that 2015 covers only the first half of the investigation period, the Commission verified the capital deductions carried forward into 2016 and the purchases of further qualifying assets that increased the available capital deductions relating to the second half of the investigation period and is satisfied that those capital deductions will likely eliminate any tax payable in 2016.<sup>40</sup> Therefore, despite PMBTU's eligibility for Program 1, based on available evidence, the Commission considers that PMB did not benefit from any flow-through of subsidies from PMBTU in relation to Program 1 in the investigation period.

### Program 2: Income Tax Allowance

PMB did not benefit directly from Program 2. However, its related party supplier of billet, PMS, is eligible for income tax exemptions relating to Program 2. The Commission considered whether there was a flow-through of subsidy from PMS to PMB during the investigation period.

From the examination of income tax returns for the years 2013 to 2015, income tax computation records and general ledgers, the Commission found no evidence to suggest that PMS benefited from Program 2 during the investigation period.

According to the GOM questionnaire response, any exemption of statutory income from Program 2 applies after capital allowances have been taken into account.

The Commission notes that in the most recent tax return for 2015, PMS had substantial capital deductions available which reduced its statutory income to zero. Therefore no income tax exemption was necessary.

Noting that 2015 covers only the first half of the investigation period, the Commission verified the capital deductions carried forward into 2016 and its purchase of further qualifying assets that increase the available capital deductions for the second half of the investigation period and is satisfied that those other deductions will likely eliminate the majority, if not all, tax payable in 2016. Therefore, despite PMS' eligibility for Program 2, based on available evidence, the Commission considers that PMB did not benefit from any flow-through of subsidy from PMS in relation to Program 2 in the investigation period.

### Programs 3-5: Other Double Deduction Tax Programs

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<sup>40</sup> PMB, PM Bintulu and PMS's 2016 income tax return are due to be lodged within seven months from the date of closing of accounts. Source [http://taxsummaries.pwc.com/uk/taxsummaries/wwts.nsf/ID/Corporate-income-tax-\(CIT\)-due-dates](http://taxsummaries.pwc.com/uk/taxsummaries/wwts.nsf/ID/Corporate-income-tax-(CIT)-due-dates)

## PUBLIC RECORD

In its exporter questionnaire response, PMB disclosed income tax double deductions that were claimed by PMBTU and PMS in 2015, including import/export related insurance expenses and freight charges in relation to the shipping of goods from Sarawak to the Malaysian mainland. The Commission considered whether there was a flow-through of subsidy from PMBTU and PMS to PMB.

The Commission confirmed that the income tax double deductions were claimed by PMBTU and PMS in 2015. Although not disclosed in the exporter questionnaire response, an examination of PMB's 2015 tax return confirms that it also claimed certain income tax double deductions.

According to the GOM questionnaire response, the double deductions available from Programs 3-5 are deducted from a company's gross income in arriving adjusted income. Therefore despite reporting a statutory income of zero, a benefit was received in the form of reduced tax.

### Program 6 – Reinvestment allowance

PMB's 2015 income tax return does not include any exemptions from the reinvestment allowance. Based on available evidence, the Commission considers that PMB did not benefit from this program during the investigation period.

### Subsidy margin

The Commission has calculated a subsidy margin for PMB of less than 0.01 per cent.

### **4.3.3 LBA**

#### Programs 1 and 2

In its exporter questionnaire response, LBA stated it had not benefited from Program 1 and 2. From an examination of income tax returns for the years 2013 to 2015, the Commission did not find any evidence to suggest that LBA had benefited from Program 1 and 2.

However noting that LBA's tax year is from 1 May to 30 April, the 2015 tax return submitted initially as part of the exporter questionnaire response did not relate to the investigation period. In January 2017, the Commission obtained a copy of the completed 2016 income tax computation records and 2016 tax return from LBA. These documents cover 10 of the 12 months of the investigation period. From an examination of these documents, the Commission did not find any evidence that LBA benefited from Program 1 and 2 during the investigation period.

#### Programs 3-5: Other Double Deduction Tax Programs

The 2016 tax return does not include any claims for double deductions. Based on the available evidence, the Commission considers that LBA did not benefit from double deduction tax programs during the investigation period.

Program 6 – Reinvestment Allowance

The 2016 tax return confirmed that LBA received a benefit from the reinvestment allowance. LBA confirmed that it is eligible for a 'special reinvestment allowance' between the years of assessment 2016 to 2018.

Subsidy margin

The Commission has calculated a subsidy margin of 0.82 per cent for LBA.

**4.3.4 Superb**

Programs 1 and 2

In its exporter questionnaire response, Superb stated that it does not benefit from Program 1 and 2.

Noting that Superb's tax year is 1 August to 31 July, the 2016 tax return year is the most relevant to the investigation period as it covers 11 out of 12 months. However, the 2016 tax return had not been lodged at the time of undertaking verification. Superb provided its 2016 tax return computations on 4 April 2017.

The Commission's examination of Superb's income tax computation records for the years 2013 to 2016 did not reveal that Superb had benefited from an income tax reduction in relation to Programs 1 and 2.

Based on available evidence, including information disclosed by the GOM, the Commission is satisfied that income tax reductions from Program 1 and 2 will not apply to Superb during the investigation period.

Programs 3-5: Other Double Deduction Tax Programs

The Commission examined the relevant sections in Superb's tax returns and computation records for the 2013 to 2016 financial years.

Based on available evidence, the Commission is satisfied that double deductions from Program 3 to 5 will not apply to Superb during the investigation period.

Program 6 – Reinvestment Allowance

The 2016 tax return computation confirmed that Superb received a benefit from the reinvestment allowance. Superb confirmed that it was first eligible for a reinvestment allowance from year of assessment 2010 and is eligible until 2024.

Subsidy margin

Based on information currently available, the Commission has calculated a subsidy margin of 0.90 per cent for Superb.

#### **4.3.5 Residual exporters**

##### Amount of countervailable subsidy

The Commission has determined that the residual exporters will receive benefits from programs 4 and 6, based on its examination of the selected cooperative exporters. Inputs to the subsidy margin calculation for residual exporters, included a unit of measure (sales volume) and an export price calculated as the weighted average of selected cooperating exporters.

##### Subsidy margin

The Commission has calculated a subsidy margin for residual exporters of 1.49 per cent.

#### **4.3.6 Submissions in response to SEF 362**

##### Capral

In Capral's 30 April 2017 submission, it puts forward an alternative method of how the Commission could have calculated the subsidy margin for the category of residual exporters and queried whether this 'would have delivered a different outcome for each of the residual exporters'.<sup>41</sup> Specifically, Capral propose that the residual exporter's subsidy margin should be expressed as a proportion of each of the residual exporter's export prices rather than the weighted average export price of the selected exporters, as applied in SEF 362.

##### Commission's response to submissions

As discussed at section 5.5, the investigation regarding Malaysia has proceeded on the basis of information obtained from an examination of a selected number of Malaysian exporters. The Commission maintains that it is reasonable to calculate the residual exporter's subsidy margin using information of the selected exporters. This is consistent with the Commission's usual practice.

Adopting the approach outlined by Capral is contrary to the sampling approach undertaken because it would require reliance on data which was not examined by the Commission. As such, the Commission considers that there should be no change to the residual exporter's subsidy margin as a result of Capral's submission.

#### **4.4 Vietnam**

At the time of initiating the investigation, the Commission forwarded the Government of Vietnam (GOV) a questionnaire with questions relevant to:

- **Program 1** – Preferential Import Tariffs;

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<sup>41</sup> Case No. 362 Public Record Item No. 78

- **Program 2** – Corporate Tax Incentives; and
- **Program 3** – Incentives on Non-Agricultural Land Tax.

A questionnaire response was received from the GOV on 10 October 2016.<sup>42</sup>

#### **4.4.1 EAA**

##### Program 1: Preferential Import Tariffs

EAA received an import tariff exemption on certain equipment imported in 2008/09. The imported goods that received a tariff exemption have been depreciated over a 7 year period. Examination of the company's asset register shows that this equipment reached the end of its useful life for depreciation purposes in the period ending 31 December 2015.

The Commission verified the import tariff exemption declared in the exporter questionnaire by reconciling the amounts contained in the assets register to the ledger over the investigation period. The verification team was also able to verify the accuracy of the import tariff exemption by reconciling selected purchases downwards to the invoices, import declarations and shipping documents.

The benefit received in relation to the goods which were subject to an import tariff exemption was found to be relevant for the first six months of the investigation period and no benefit will be received in the future by EAA.

##### Program 2: Corporate Tax Incentive

The corporate tax rates in Vietnam were 22 per cent for the period 1 January 2015 to 31 December 2015 and 20 per cent for the period 1 January 2016 to 31 December 2016.

EAA received a corporate income tax benefit for the first half of the investigation period in the form of a lower corporate tax rate (20 per cent) than the standard tax rate (22 per cent). EAA received the benefit as it is located in the Chi Linh District, Hai Duong Province. This is considered to be an area of socio-economic difficulties under Appendix II of Decree 164/2003/ND-CP detailing the implementation of the Law on Corporate Income Tax 2003.

The Commission reconciled the tax incentive received to the audited financial statements, audited accounts and tax returns and found that this incentive was provided up to 31 December 2015. For the period after this date the Commission understands that the corporate tax rate for all companies in Vietnam is now 20 per cent, this includes EAA. Therefore, no benefit will be received under this program in the future by EAA.

##### Program 3: Non-Agricultural Land Tax Reduction

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<sup>42</sup> Case No. 362 Public Record Item No. 31

## PUBLIC RECORD

The tax on the use of land for non-agricultural purposes has been applied since 1 January 2012 at a rate 0.03 per cent. This amount is calculated by multiplying the tax rate with the land area and the land price. EAA states in its exporter questionnaire it is entitled to a 50 per cent reduction of non-agricultural land use tax from 2012 until the end of 2016 (as provided in Decision 5442/QD-CT of Hai Duong Tax Department dated 16 December 2015). As a result EAA's current land tax rate is 0.015 per cent.

EAA is entitled to the 50 per cent reduction as it employs more than 500 people, which is considered as an investment sector of encouragement under Point 29, Section B, Appendix I to Decree 108/2006/ND-CP detailing the implementation of the Law on Investment 2005. This criterion applies to enterprises of all industries and regions. It is not conditional on business exports, the use of domestic over imported inputs, the industry to which EAA belongs to, or the region where EAA is located.

The Commission verified the validation of the non-agricultural tax reduction declared in the exporter questionnaire by ensuring that EAA employed the specified number of staff and the required insurances for direct labour were being paid. This was verified by viewing the Direct Labour ledger.

### Subsidy margin

The Commission has calculated a subsidy margin for EAA of 0.03 per cent.

#### **4.4.2 Mien Hua**

##### Program 1: Preferential Import Tariffs

In its exporter questionnaire, Mien Hua stated that it does not benefit from this program.

The verification team obtained documentation relevant to assess whether Mien Hua benefited from this subsidy program. A list of plant and equipment imported in the 7 year period commencing 1 July 2010 was provided by the exporter. The verification team obtained import declarations for a selection of plant and equipment to ascertain if import duty had been paid. The details on the declarations subject to examination indicated a zero rate of duty which corresponded with the exporter questionnaire response.

The verification team also obtained import declarations for a sample of ingot and billet purchases. Based on these declarations, the importation of ingots and billets were not subject to import duty.

To verify the data provided by the exporter, the verification team has had regard to the tariff data available on the Vietnam Government Department of Customs tariff database webpage. For many of the tariff codes under which goods have been imported by the exporter, a zero rate of duty has applied since at least 2012. Special rates for imports from certain countries and in relation to a range of treaties, e.g. ASEAN, were also observed.

## PUBLIC RECORD

In most cases the general rate was the same as the treaty rate, although for some tariff codes differing rates of duty applied.

In particular, imports of alloyed and non-alloyed aluminium would normally be subject to a 2% rate of general duty during the investigation period. However, for goods imported from a country of origin for which there is a treaty arrangement in place, with the exception of India, the rate is zero. Mien Hua imports of ingot and billets were observed to be from countries where a treaty was in force and the import duty was zero.

### Program 2: Corporate Tax Incentive

An examination of Mien Hua's income tax returns for 2014 and 2015 revealed that it had paid the full rate of tax relevant to each year. With respect to the investigation period, since Mien Hua's tax year ends in December, its tax return for 2016 is yet to be completed. In the absence of any other information and the on the basis of the observations of the 2014 and 2015 tax returns, the verification team is satisfied that Mien Hua will be subject to the full rate of tax in the 2016 year of assessment and has not benefited from a corporate tax incentive.

### Program 3: Non-Agricultural Land Tax Reduction

An examination of Mien Hua's questionnaire response data indicates that it leased the land and buildings where it is located. In order to establish if Mien Hua had received a benefit under Program 3, the Commission obtained copies of Mien Hua's lease agreements, proof of lease payments and extracts from the relevant accounts in its general ledger showing the lease expenses. The documents confirmed that Mien Hua was the lessee and was paying the leases. The Commission's understanding is that a lease holder would not be subject to land tax payments therefore the Commission is satisfied that this program is not applicable to Mien Hua.

### Subsidy margin

The Commission has found that no subsidy was received by Mien Hua during the investigation period.

## **4.4.3 GVA**

### Program 1: Preferential Import Tariffs

GVA provided a list of imported plant and equipment in the 7 year period commencing 1 July 2010. The Commission obtained import declarations for a selection of plant and equipment to ascertain if import duty had been paid and to verify the information provided by the exporter. Having regard to the tariff data available on the Vietnam Government Department of Customs tariff database webpage, the Commission observed that certain imports attracted a special rate of duty in relation to a range of trade treaties. For some tariff codes the general rate and special rate were identical.

### Program 2: Corporate Tax Incentive

## PUBLIC RECORD

An examination of GVA's income tax returns for the years of assessment 2014 and 2015 revealed that it had paid the full rate of tax relevant to each financial year. With respect to the investigation period, since GVA's financial year ends in December, its tax return for the 2016 year of assessment is yet to be completed. In the absence of any other information and the on the basis of the observations of the earlier years, the Commission is satisfied that GVA will be subject to the full rate of tax relevant for the second half of the investigation period.

### Program 3: Non-Agricultural Land Tax Reduction

The Commission is satisfied that GVA leased the land and buildings where it is located. The Commission obtained copies of GVA's lease agreements, proof of lease payments and extracts from the relevant accounts in its general ledger showing the lease expenses. The documents confirmed that GVA was the lessee and was paying the lease amount. As a lease holder would not be subject to land tax payments, the Commission is satisfied that this program is not applicable to GVA.

### Subsidy margin

The Commission has calculated a subsidy margin for GVA of 0.02 per cent.

#### **4.4.4 Non-cooperative entities - Vietnam**

### Amount of countervailable subsidy

The Commission has had regard to the available relevant facts and determines that exporters in the non-cooperative entity category from Vietnam have received the highest level of subsidisation of the cooperating exporters from Vietnam. Inputs to the subsidy margin calculation included a unit of measures and export price which were based on the lowest amounts of selected cooperating exporters.

### Subsidy margin

The Commission has calculated a subsidy margin for the exporters in the non-cooperative entity category from Vietnam of 0.08 per cent.

## **4.5 Subsidy margins**

The following table summarises the subsidy margins calculated by the Commission.

<b>Country</b>	<b>Exporter</b>	<b>Subsidy margin</b>
Malaysia	Press Metal Berhad	<0.01%
	LB Aluminium Berhad	0.82%
	Superb Aluminium Industries Sdn Bhd	0.90%
	Residual Exporters	1.49%
Vietnam	East Asia Aluminium Company Ltd	0.03%



**PUBLIC RECORD**

<b>Country</b>	<b>Exporter</b>	<b>Subsidy margin</b>
	Mien Hua Precision Mechanical Co., Ltd	N/A
	Global Vietnam Aluminium Co., Ltd	0.02%
	Non-cooperative and all other entities	0.08%

**Table 10 - Subsidy margins**

#### **4.6 Volume of subsidised imports**

Pursuant to subsection 269TDA(7), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that are subsidised is a negligible volume.

Both Malaysia and Vietnam are subject to the volume threshold under subsection 269TDA(8)(b) which defines a negligible volume as less than four per cent of the total volume of goods imported into Australia over the investigation period and if subsections 269TDA(9), (10) and (11) do not apply. Pursuant to subsection 269TDA(12), the volume of goods at negligible subsidy margins are not prevented from being taken into account for the purposes of subsection 269TDA(7).

Using the ABF import database and having regard to the information collected and verified from the importers and exporters, the Commission determined the volume of imports in the Australian market. Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of allegedly subsidised goods from Malaysia and Vietnam was each greater than four per cent of the total import volume and is therefore not negligible.

## 5 CONCLUSION

Under subsection 269TDA(1), if the Commissioner is satisfied that there has been no dumping, or negligible dumping by an exporter, the Commissioner must terminate the investigation in so far as it relates to that exporter.

Based on the findings in Chapter 3, the Commissioner must terminate the dumping investigation in so far that it relates to the goods exported by:

- PMB and Superb, as no evidence was found that dumping had occurred. Therefore the investigation must be terminated in accordance with subsection 269TDA(1)(b) in so far as it relates to these exporters; and
- LBA and the category of residual exporters from Malaysia, as the dumping margins were found to be negligible (that is, less than 2 per cent. Therefore the investigation must be terminated in accordance with subsection 269TDA(1)(b) in so far as it relates to these exporters.

Under subsection 269TDA(2), if the Commissioner is satisfied that there has been no subsidies received, or a negligible amount of subsidisation has been received in relation to an exporter, the Commissioner must terminate the investigation in so far as it relates to that exporter.

Therefore, based on the findings in Chapter 4, the Commissioner must terminate the countervailing investigation in so far that it relates to the goods exported by:

- PMB, Superb LBA and the category of 'residual exporters' from Malaysia, a countervailable subsidy has been received in respect of some or all of those goods exported to Australia but did not exceed the negligible level of countervailable subsidy under subsection 269TDA(16). Therefore the investigation must be terminated in accordance with subsection 269TDA(2)(b)(ii) in so far as it relates to these exporters;
- Mien Hua from Vietnam a countervailable subsidy has not been received in respect of some or all of those goods exported to Australia. Therefore the investigation must be terminated in accordance with subsection 269TDA(2)(b)(i) in so far as it relates to Mien Hua.
- for the goods exported by all exporters from Vietnam (except by Mien Hua) a countervailable subsidy has been received in respect of some or all of those goods exported to Australia but did not exceed the negligible level of countervailable subsidy under subsection 269TDA(16). Therefore the investigation must be terminated in accordance with subsection 269TDA(2)(b)(ii) in so far as it relates to these exporters.

**6 APPENDICES AND ATTACHMENTS**

<b>Confidential Attachment 1</b>	Dumping margin calculations – PMB
<b>Confidential Attachment 2</b>	Dumping margin calculations – LBA
<b>Confidential Attachment 3</b>	Dumping margin calculations – Superb
<b>Confidential Attachment 4</b>	Dumping margin calculations – ‘residual’ exporters from Malaysia
<b>Confidential Attachment 5</b>	Subsidy margin calculations – Malaysia
<b>Confidential Attachment 6</b>	Subsidy margin calculations – Vietnam

**APPENDIX A ASSESSMENT OF COUNTERAVAILABLE SUBSIDIES - MALAYSIA**

**A1 Introduction and summary of findings**

This appendix details the Commission’s assessment of the subsidy programs investigated in relation to aluminium extrusions exported to Australia from Malaysia. The relevant legislation against which the subsidies are assessed is set out in subsection 269T(1) (definition of ‘subsidy’), sections 269TACC, 269TAAC and 269TACD.

The six investigated programs, and the Commission’s assessment of whether each program is countervailable in relation to the goods exported from Malaysia, is outlined in the table below.

<b>Program Number</b>	<b>Program Name</b>	<b>Program Type</b>	<b>Countervailable in relation to the goods (Yes/No)</b>
1	Income Tax Reductions (‘Pioneer Status’)	Income Tax	No
2	Investment Allowance	Income Tax	No
3	Double Deduction for Export Credit Insurance	Income Tax	No
4	Double Deduction for Freight Charges from Sabah or Sarawak	Income Tax	Yes
5	Double Deduction for Insurance Premiums for Exporters and Importers	Income Tax	No <sup>43</sup>
6	Reinvestment Allowance	Income Tax	Yes

**Table A1: Investigated subsidy programs - Malaysia**

**A2 Information considered by the Commission**

**A2.1 Capral’s application**

The Commission has relied upon information submitted by Capral in its application in respect to the alleged subsidy programs 1 and 2. Capral’s application included the World Trade Organisation’s (WTO) Trade Policy Review for Malaysia, dated January 2014.<sup>44</sup>

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<sup>43</sup> Refer to Section A7.7 regarding the cessation of this program from the 2016 year of assessment.

<sup>44</sup> Trade Policy Review, Report by the Secretariat – Malaysia, Document WT/TPR/S/292, 27 January 2014 at Non-Confidential Attachment C-1.1 of Capral’s application.

## **A2.2 Information provided by exporters**

The Commission has relied upon information provided by cooperating exporters in assessing the alleged subsidy programs. This includes information provided by exporters in the exporter questionnaire responses, as well as information provided by exporters during verification. An additional program was identified during exporter verification (Program 6).

## **A2.3 Information provided by the Government of Malaysia**

The Commission included questions relating to alleged subsidy programs 1 and 2 in a Government questionnaire that was sent to the GOM on 16 August 2016.

The GOM questionnaire response was received on 6 October 2016 and included information in relation to additional subsidy programs 3 to 5.<sup>45</sup>

The Commission sent a supplementary questionnaire in relation to subsidy program 6 to the GOM on 7 March 2017. The GOM responded to this questionnaire on 21 March 2017.<sup>46</sup>

## **A2.4 Other information considered as part of this assessment**

The Commission also considered as part of this assessment:

- information submitted by interested parties in general submissions to the investigation; and
- other relevant information obtained by the Commission during independent research into matters relevant to determining subsidisation in Malaysia, as described in relevant sections below.

## **A3 Program 1: Income Tax Reductions ('PIONEER STATUS')**

### **A3.1 Background**

The GOM provides assistance in the form of an exemption from tax to companies granted 'Pioneer Status'.

The purpose of this program is to encourage high impact, high value-added, and strategic investments that contribute to the future growth and development of the Malaysian economy.

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<sup>45</sup> Case No. 362 Public Record Item No. 27

<sup>46</sup> Case No. 362 Public Record Item No. 73

### **A3.2 Legal basis**

The legal basis for this program includes:

- *Income Tax Act 1967*: Income Tax Exemption Order (No.11) 2006 [P.U. (A) 112/2006]; and
- *Promotion of Investments Act 1986*.

The above order was made in 2006 and is deemed to have effect from the year of assessment 1998. This program is ongoing.

### **A3.3 WTO notification**

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

### **A3.4 Eligibility criteria**

#### Eligibility criteria

Pioneer status may be granted to any company intending to participate in high impact, high value-added, and strategic investments that can contribute to the future growth and development of the Malaysian economy. The GOM outlined the eligibility criteria for a company as:

1. *Value added;*
2. *Level of technology measured based on number of management and technical employees in the company; and*
3. *Compliance with a specific amount of fixed asset investment (excluding land cost) by specific time period.*

#### Application process

Companies are required to submit an application to the Malaysian Investment Development Authority (MIDA), an agency under the Ministry of International Trade and Industry (MITI).

The application process ensures that the applicant complies with the eligibility conditions. After MIDA is satisfied that the company has complied with the eligibility conditions, MIDA will determine the production date for the company and determine the start and end date of the program.

Later, companies approved with the program submit their claims to the Inland Revenue Board (IRB) together with their annual tax returns containing the calculation of claimed tax exemptions.

The GOM grants a company with Pioneer Status a 70 per cent exemption (or any other rate as prescribed by the Minister) on corporate tax, which is ordinarily payable at 25 per

cent of statutory income for the 2015 year of assessment and 24 per cent of statutory income in the 2016 year of assessment.

### **A3.5 Is there a subsidy?**

Based on the information above, the Commission considers that the laws governing this program mandate a financial contribution by the GOM, to the extent that it is made in connection with the production/manufacture of aluminium extrusions from Malaysia, which involves foregoing, or non-collection, of revenue due to the GOM (being corporate tax) by eligible enterprises in Malaysia.

Having regard to all relevant information about this program, as required by subsection 269TACC(1), the program is considered to confer a benefit to eligible enterprises because of the tax savings realised. Where exporters of aluminium extrusions during the investigation period received tax savings under this program in respect of the goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under section 269T.

### **A3.6 Is the subsidy a countervailable subsidy?**

A subsidy is a countervailable subsidy if it is specific.<sup>47</sup> As provided for in subsection 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours particular enterprises and noting that applicants are required to submit an application and meet eligibility criteria, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3). The Commission determines that program 1 is a countervailable subsidy in respect of aluminium extrusions.

### **A3.7 Amount of subsidy**

Benefits for income tax programs are expensed to the year in which the benefit is received, and the benefit is taken to have been received on the date on which the enterprise would otherwise have had to pay the taxes associated with the exemption (i.e. the date the enterprise lodged its tax return).<sup>48</sup>

The Commission has found that one of the selected cooperating exporters has a related party supplier that was eligible for the program and may be able to receive potential pass through benefits from this program. However, none of the selected cooperating exporters received financial contributions in respect of the goods under this program during the investigation period.

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<sup>47</sup> Subsection 269TAAC(1).

<sup>48</sup> Anti-Dumping Commission Dumping and Subsidy Manual, page 88

On the basis of information obtained from the selected cooperating exporters, the Commission has determined that for residual exporters, financial contributions were not received under this program during the investigation period.

For the non-cooperating and all other exporters, no information was provided by either the GOM or the individual exporters themselves regarding receipt of financial contributions under this program. The Commission considers that the necessary information to establish whether financial contributions had been received in respect of the goods is held by the granting authorities and the exporters themselves. In the absence of information from the GOM or individual exporters, the Commission has had regard to available relevant information.

It is noted that an enterprise cannot receive a benefit from this program for a year of assessment where a reinvestment allowance has been claimed (program 6). Therefore given the findings below at A8 (i.e. that non-cooperating and all other exporters benefited from program 6), the Commission considers that no benefit was received under program 1 during the investigation period for the non-cooperating and all other exporters.

## **A4 Program 2: Income Tax Allowance**

### **A4.1 Background**

The GOM provides assistance in the form of a tax exemption equivalent to a proportion of certain capital expenditure incurred by companies qualifying for an Income Tax Allowance.

The purpose of this program is to encourage high impact, high value-added, and strategic investments that contribute to the future growth and development of the Malaysian economy.

### **A4.2 Legal basis**

The legal basis for this program includes:

- Income Tax Act 1967: Income Tax Exemption Order (No.12) 2006 [P.U. (A) 113/2006]; and
- *Promotion of Investments Act 1986*.

The above order was made in 2006 and is deemed to have effect from the year of assessment 1998. This program is ongoing.

### **A4.3 WTO notification**

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

### **A4.4 Eligibility criteria**

#### Eligibility criteria



This program may be granted to any company intending to participate in high impact, high value-added, and strategic investments that can contribute to the future growth and development of the Malaysian economy.

The allowance is only given on capital expenditure incurred on industrial buildings, plant and machinery directly used. The GOM outlined the eligibility criteria for a company as:

1. *Value added;*
2. *Level of technology measured based on number of management and technical employees in the company; and*
3. *Compliance with a specific amount of fixed asset investment (excluding land cost) by specific time period.*

#### Application process

Companies are required to submit an application for the exemption to MIDA, an agency under MITI. The company will then be required to establish the commencement of this program period which is on the incurrence of the first capital expenditure duly certified by MIDA.

Later, companies approved with the program submit their claims to the IRB together with their annual tax returns containing the calculation of claim for the tax allowance.

A company granted an Income Tax Allowance is entitled to an allowance equivalent to 60 per cent (or any other rate as prescribed by the Minister) of its qualifying capital expenditure (factory, plant, machinery or other equipment used for the approved project) incurred within five years from the date the first qualifying capital expenditure is incurred.

The company can offset this allowance against 70 per cent of its statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised. The remaining 30 per cent of its statutory income will be taxed at the prevailing company tax rate.<sup>49</sup>

#### **A4.5 Is there a subsidy?**

Based on the information above, the Commission considers that the laws governing this program mandate a financial contribution by the GOM, to the extent that it is made in connection with the goods from Malaysia, which involves foregoing, or non-collection, of revenue due to the GOM (being corporate tax) by eligible enterprises in Malaysia.

Having regard to all relevant information about this program, as required by subsection 269TACC(1), the program is considered to confer a benefit to eligible enterprises because of the tax savings realised. Where exporters of aluminium extrusions during the investigation period received tax savings under this program in respect of the goods it

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<sup>49</sup> MIDA Official Website, April 2017, "Incentives in Manufacturing Sector – Item 1: Incentives for the Manufacturing Sector – Main Incentives for Manufacturing Companies" <http://www.mida.gov.my/home/incentives-in-manufacturing-sector/posts/>, viewed 6 April 2017.

would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under section 269T.

#### **A4.6 Is the subsidy a countervailable subsidy?**

As provided for in subsection 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours particular enterprises and noting that applicants are required to submit an application and meet eligibility criteria, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3). The Commission determines that program 2 is a countervailable subsidy in respect of aluminium extrusions.

#### **A4.7 Amount of subsidy**

Benefits for income tax programs are expensed to the year in which the benefit is received, and the benefit is taken to have been received on the date on which the enterprise would otherwise have had to pay the taxes associated with the exemption (i.e. the date the enterprise lodged its tax return).<sup>50</sup>

The Commission has found that one of the selected cooperating exporters has a related party supplier that was eligible for the program and may be able to receive potential pass through benefits from this program. However none of the selected cooperating exporters received financial contributions in respect of the goods under this program during the investigation period.

On the basis of information obtained from the selected cooperating exporters, the Commission has determined that for residual exporters, financial contributions were not being received under this program during the investigation period.

For remaining exporters in the non-cooperative entities category no information was provided, by either the GOM or the individual exporters themselves, regarding receipt of financial contributions under this program. The Commission considers that the necessary information to establish whether financial contributions have been received in respect of the goods is held by the granting authorities and the exporters themselves. In the absence of information from the GOM or individual exporters, the Commission has had regard to other relevant information.

It is noted that an enterprise cannot receive a benefit from this program for a year of assessment where a reinvestment allowance has been claimed (program 6). Therefore given the findings below at A8 (i.e. that exporters in the non-cooperative entities category benefited from program 6), the Commission considers that no benefit was received under program 2 for exporters in the non-cooperative entities category.

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<sup>50</sup> Anti-Dumping Commission Dumping and Subsidy Manual, page 88

## **A5 Program 3: Double Deductions for Export Credit Insurance**

### **A5.1 Background**

The GOM outlined in its response to the government questionnaire that a double deduction for income tax purposes is provided to exporters for amounts incurred in relation to export credit insurance premiums, to encourage Malaysia's exporters.

### **A5.2 Legal basis**

The legal basis for this program is:

- Income Tax (Deductions of Premiums for Export Credit Insurance) Rules 1985 (P.U. (A) 526/1985) made under Section 154 of the *Income Tax Act 1967*.

The program was established in 1985 and is an ongoing program. This program is effective from year of assessment 1986 and subsequent years of assessment.

### **A5.3 WTO notification**

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

### **A5.4 Eligibility criteria**

To be eligible for this program a premium must be paid in respect of export credit insurance with an insurance company approved by the Minister of Finance. During the investigation period, the Export Import Bank of Malaysia Berhad (EXIM) is the only approved insurance company under this program.

Upon request by a policyholder, the EXIM will issue a certificate under *Income Tax (Deduction for Export Credit Insurance) Rules 1985* for policyholders to claim a double deduction. The policyholder has to retain the above-mentioned certificate along with all official receipts issued by EXIM.

In relation to this program, there is no application process and claims are made during submission of an income tax return (self-assessment).

### **A5.5 Is there a subsidy?**

Based on the information above, the Commission considers that the laws governing this program mandate a financial contribution by the GOM, to the extent that it is made in connection with the production/manufacture of aluminium extrusions from Malaysia, which involves foregoing, or non-collection, of revenue due to the GOM by eligible enterprises in Malaysia.

Having regard to all relevant information about this program, as required by subsection 269TACC(1), the program is considered to confer a benefit to eligible enterprises because of the tax savings realised. Where exporters of aluminium extrusions during the investigation period received tax savings under this program in respect of the goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under section 269T.

Due to the nature of the double deduction, (i.e. to encourage export) it is reasonable to consider that a financial contribution received under this program by aluminium extrusion manufacturers could be made in connection to the production, manufacture or export of aluminium extrusions.

#### **A5.6 Is the subsidy a countervailable subsidy?**

As provided for in subsection 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing access to the subsidy favours export enterprises incurring premiums paid to the EXIM bank in relation to export credit insurance, over all other enterprises, the specificity of this subsidy is not excepted by reference to subsection 269TAAC(3).

#### **A5.7 Amount of subsidy**

Benefits for income tax programs are expensed to the year in which the benefit is received, and the benefit is taken to have been received on the date on which the enterprise would otherwise have had to pay the taxes associated with the exemption (i.e. the date the enterprise lodged its tax return).<sup>51</sup>

The Commission has found that none of the selected cooperating exporters received financial contributions in respect of the goods under this program during the investigation period.

On the basis of information obtained from the selected cooperating exporters, the Commission has determined that financial contributions have not been received under this program during the investigation period for the categories of residual exporters and exporters in the non-cooperative entities category.

### **A6 Program 4: Double Deduction for Freight Charges From Sabah Or Sarawak**

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<sup>51</sup> Anti-Dumping Commission Dumping and Subsidy Manual, page 88

## **A6.1 Background**

The GOM outlined in its response to the government questionnaire that a double deduction for income tax purposes is provided to encourage products from Sabah and Sarawak to be shipped to the Malaysian Peninsular.

## **A6.2 Legal basis**

The legal basis for this program is:

- Income Tax (Deductions for Freight Charges from Sabah or Sarawak) Rules 2000 (P.U. (A) 50/2000).

This program was established in 2000 and is an ongoing program.

## **A6.3 WTO notification**

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

## **A6.4 Eligibility criteria**

Manufacturers incurring freight charges for the shipment of manufactured goods from Sabah or Sarawak to any port on the Malaysian Peninsular are entitled to a double deduction.

There is no application process for this program and claims are made during submission of an income tax return (self-assessment).

## **A6.5 Is there a subsidy?**

Based on the information above, the Commission considers that the laws governing this program mandate a financial contribution by the GOM, to the extent that it is made in connection with the production/manufacture of aluminium extrusions from Malaysia, which involves foregoing, or non-collection, of revenue due to the GOM by eligible enterprises in Malaysia.

Having regard to all relevant information about this program, as required by subsection 269TACC(1), the program is considered to confer a benefit to eligible enterprises because of the tax savings realised. Where exporters of aluminium extrusions during the investigation period received tax savings under this program in respect of the goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under section 269T.

Due to the nature of the double deduction, (i.e. to encourage export) it is reasonable to consider that a financial contribution received under this program by aluminium extrusion manufacturers could be made in connection to the production, manufacture or export of aluminium extrusions.

## **A6.6 Is the subsidy a countervailable subsidy?**

As provided for in subsection 269TAAC(2)(b) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises in designated geographical regions. As the criteria or conditions providing access to the subsidy favours enterprises incurring certain expenses for goods originating from designated geographical regions in Malaysia, i.e. enterprises incurring freight charges for transport goods from Sabah or Sarawak to the Malaysian Peninsular, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3). The Commission determines that program 4 is a countervailable subsidy in respect of aluminium extrusions.

## **A6.7 Amount of subsidy**

The Commission found that two cooperating exporters received a benefit under this program during the investigation period. The Commission calculated the benefit for these exporters based on the income tax reported in their respective questionnaires.

In relation to the residual exporters, the Commission has calculated the benefit based on amounts received by the cooperating exporters.

The Commission is satisfied that exporters in the non-cooperative entities category have not given the Commission information relevant to the investigation within a reasonable period and so the Commission has determined that these exporters have received a countervailable subsidy under this program during the investigation period on the basis of all available facts and reasonable assumptions.<sup>52</sup> The highest of the cooperative exporter benefits has been applied to exporters in the non-cooperative entities category.

## **A7 Program 5: Double Deductions for Insurance Premiums For Exporters And Importers**

### **A7.1 Background**

The GOM outlined in its response to the government questionnaire that a double deduction for income tax purposes is provided to encourage exporters and importer to take insurance to secure the risks of doing business.

### **A7.2 Legal basis**

The legal basis of this program includes:

1. The Income Tax (Deductions of Insurance Premiums for Exporters) Rules 1995/[P.U(A) 79/1995];
2. Income Tax (Deductions of Insurance Premiums for Exporters)(Revocation) Rules 2012 - Revoked from Year of Assessment 2016;

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<sup>52</sup> Section 269TAACA.

3. The Income Tax (Deductions of Insurance Premiums for Importers) Rules 1982/[P.U(A) 72/1982]; and
4. Income Tax (Deductions of Insurance Premiums for Importers) (Revocation) Rules 2012 - Revoked from Year of Assessment 2016.

The double deduction of insurance premiums for exporters commenced in 1995 and the double deduction of insurance premiums for importers commenced in 1982.

The double deductions under this program was revoked in 2012, effective from the 2016 year of assessment.

### **A7.3 WTO notification**

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

### **A7.4 Eligibility criteria**

Companies paying insurance premiums in respect of cargo exported by a person are eligible for this program, provided the risks are insured with any insurance company incorporated in Malaysia.

There is no application process for this program. Claims are made during submission of an income tax return (self-assessment).

### **A7.5 Is there a subsidy?**

Based on the information above, the Commission considers that the laws governing this program mandate a financial contribution by the GOM, to the extent that it is made in connection with the production/manufacture of aluminium extrusions from Malaysia, which involves foregoing, or non-collection, of revenue due to the GOM by eligible enterprises in Malaysia.

Having regard to all relevant information about this program, as required by subsection 269TACC(1), the program is considered to confer a benefit to eligible enterprises because of the tax savings realised. Where exporters of aluminium extrusions during the investigation period received tax savings under this program in respect of the goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under section 269T.

Due to the nature of the double deduction, (i.e. to encourage exports and imports) it is reasonable to consider that a financial contribution received under this program by aluminium extrusion manufacturers could be made in connection to the production, manufacture or export of aluminium extrusions.

### **A7.6 Is the subsidy a countervailable subsidy?**

As provided for in subsection 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. As the criteria or conditions providing

access to the subsidy favours certain enterprises, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3). The Commission determines that program 5 is a countervailable subsidy in respect of aluminium extrusions.

### **A7.7 Amount of subsidy**

The Commission found that two cooperating exporters received a benefit under this program during the investigation period. The Commission calculated the benefit for these exporters based on the income tax reported in their respective questionnaires.

In relation to the residual exporters, the Commission has calculated the benefit based on amounts received by the cooperating exporters.

The Commission is satisfied that exporters in the non-cooperative entities category have not given the Commission information relevant to the investigation within a reasonable period and so the Commission has determined that these exporters have received a countervailable subsidy under this program during the investigation period on the basis of all available facts and reasonable assumptions.<sup>53</sup> The highest of the cooperative exporter benefits has been applied to exporters in the non-cooperative entities category.

The Commission notes that this program ceased to apply from the 2016 year of assessment. The Commission notes that this program ceased to apply from the 2016 year of assessment. As this program has ceased, the Commissioner is presently not satisfied that a countervailable subsidy under this program may be received in respect of like goods that may be exported to Australia in the future. Accordingly, the Commissioner recommends that any countervailing duty notice published under subsection 269TJ(2) not declare that ICD applies in respect of this program.

## **A8 Program 6: Reinvestment Allowance**

### **A8.1 Background**

The GOM provides assistance in the form an exemption from statutory income for tax purposes to companies engaged in manufacturing, and selected agricultural activities that reinvest for the purposes of expansion, automation, modernisation or diversification of its existing business into any related products within the same industry in certain circumstances.

### **A8.2 Legal basis**

The legal basis for this program is Schedule 7A of the *Income Tax Act 1967*.

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<sup>53</sup> Section 269TAACA.



### **A8.3 WTO notification**

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

### **A8.4 Eligibility criteria**

The reinvestment allowance is an incentive awarded to a company that carries on manufacturing and selected agricultural activities.

Companies can only claim the reinvestment allowance upon the completion of a qualifying project, i.e. after a building is completed or when the plant/machinery is put to operational use.

The reinvestment allowance will be given for a period of 15 consecutive years beginning from the year of assessment in which the first reinvestment is made.

As part of 2016 Malaysian budget announcements, the GOM introduced a 'special reinvestment allowance' which extends the 15 year eligibility period by up to three years for (the years of assessment 2016 to 2018) for companies that would or would have completed the 15 year period in or before year of assessment 2015.

The reinvestment allowance is given at the rate of 60 per cent on the qualifying capital expenditure incurred by the company, and can be offset against 70 per cent of its statutory income for the year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised. A company can offset the reinvestment allowance against 100 per cent of its statutory income for the year of assessment if:

- the company undertakes reinvestment projects in the promoted areas i.e. the States of Sabah, Sarawak, Perlis and the designated "Eastern Corridor" of Peninsular Malaysia; or
- the company attains a productivity level exceeding the level determined by the Ministry of Finance.

### **A8.5 Is there a subsidy?**

Based on the information above, the Commission considers that the laws governing this program mandate a financial contribution by the GOM, to the extent that it is made in connection with the production/manufacture of aluminium extrusions from Malaysia, which involves foregoing, or non-collection, of revenue due to the GOM by eligible enterprises in Malaysia.

Having regard to all relevant information about this program, as required by subsection 269TACC(1), the program is considered to confer a benefit to eligible enterprises because of the tax savings realised. Where exporters of aluminium extrusions during the investigation period received tax savings under the programs in connection with the production, manufacture or export of those goods it would confer a benefit in relation to

those goods and the financial contribution would meet the definition of subsidy under section 269T.

### **A8.6 Is the subsidy a countervailable subsidy?**

As provided for in subsection 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises and enterprises located in designated geographical locations. As the criteria or conditions providing access to the subsidy favours particular enterprises and enterprises located in designated geographical locations, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).

The Commission determines that program 6 is a countervailable subsidy in respect of aluminium extrusions.

### **A8.7 Amount of subsidy**

The Commission has determined that two of the selected exporters received financial contributions in respect of the goods under this program during the investigation period.

The Commission found that both cooperating exporters received a benefit under this program during the investigation period. The Commission calculated the benefit for these exporters based on the income tax reported in their respective questionnaires.

In relation to the residual exporters, the Commission has calculated the benefit based on amounts received by the cooperating exporters.

The Commission is satisfied that exporters in the non-cooperative entities category have not given the Commission information relevant to the investigation within a reasonable period and so the Commission has determined that these exporters have received a countervailable subsidy under this program during the investigation period on the basis of all available facts and reasonable assumptions.<sup>54</sup> The highest of the cooperative exporter benefits has been applied to exporters in the non-cooperative entities category.

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<sup>54</sup> Section 269TAACA.

**APPENDIX B ASSESSMENT OF COUNTERAVAILABLE SUBSIDIES – VIETNAM**

**B1 Introduction and summary of findings**

This appendix details the Commission’s assessment of the subsidy programs investigated in relation to aluminium extrusions exported to Australia from Vietnam. The relevant legislation against which the subsidies are assessed is set out in subsection 269T(1) (definition of ‘subsidy’), sections 269TACC, 269TAAC and 269TACD.

The three investigated programs, and the Commission’s assessment of whether each program is countervailable in relation to the goods exported from Vietnam, is outlined in the below table.

<b>Program Number</b>	<b>Program Name</b>	<b>Program Type</b>	<b>Countervailable in relation to the goods (Yes/No)</b>
1	Preferential Import Tariffs	Tariff	Yes
2	Corporate Tax Incentives	Income Tax	Yes
3	Incentives on Non-Agricultural Land Tax	Land Tax	Yes

**Table B1: Investigated subsidy programs - Vietnam**

**B2 Information considered by the commission**

**B2.1 Capral’s application**

The Commission has relied upon information submitted by Capral in its application in respect to the alleged subsidy programs 1 to 3. Capral’s application included the Government of Vietnam’s “*New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of The Agreement on Subsidies and Countervailing Measures*”, dated 25 September 2015.<sup>55</sup>

**B2.2 Information provided by exporters**

The Commission has relied upon information provided by cooperating exporters in assessing the alleged subsidy programs. This includes information provided by exporters in the exporter questionnaire responses, as well as information provided by exporters during verification.

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<sup>55</sup> WTO Committee on Subsidies and Countervailing Measures, G/SCM/N/253/VNM of 25 September 2015 at Non-Confidential Attachment C-1.4 of Capral’s application.

### **B2.3 Information provided by the Government of Vietnam**

The Commission included questions relating to alleged subsidy programs 1 to 3 in a Government questionnaire that was sent to the GOV on 16 August 2016.

The GOM questionnaire response was received on 10 October 2016.<sup>56</sup>

### **B2.4 Other information considered as part of this assessment**

The Commission also considered as part of this assessment:

- information submitted by interested parties in general submissions to the investigation; and
- other relevant information obtained by the Commission during independent research into matters relevant to determining subsidisation in Vietnam as described in relevant sections below.

## **B3 Program 1: Preferential Import Tariffs**

### **B3.1 Background**

The GOV provides preferential import tariff duties in the form of import tariff exemptions and reductions for enterprises investing in regions or sectors entitled to investment incentives.

The purposes of the preferential treatment is to encourage enterprises to invest in regions or sectors which require development.

### **B3.2 Legal basis**

The legal basis for this program includes:

- Law on Import Duty and Export Duty 2005 and from 1 September 2016 the Law on Import Duty and Export Duty 2016;
- Law on Import Duty and Export Duty, No. 45/2005/QH11 of June, 14th 2005;
- Circular 38/2015/TT-BTC;
- Decree No.87/2010/ND-CP dated 13 August 2010;
- Decree No.218/2013/ND-CP dated 2013; and
- Decree No.118/2015/ND-CP dated 2015.

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<sup>56</sup> Case No. 362 Public Record Item No. 27

### **B3.3 WTO notification**

The GOV notified this program in WTO document G/SCM/N/253/VNM, dated 25 September 2015.

### **B3.4 Eligibility criteria**

The Ministry of Finance is in charge of providing guidelines for the implementation of the law and government decrees. The provincial custom authority of the place where the importer implements the project or where the importer is located or which is closest to the importer's location administers the program.

There is no application process and the importer is not required to file any application for receiving import duty exemption. For purpose of management, Article 104 of Circular 38/2015/TT-BTC effective from 1 April 2015 requires the importer to submit a registration which identifies the imported goods to create its fixed assets subject to the duty exemption to the relevant provincial custom authority.

### **B3.5 Is there a subsidy?**

Based on the information above, the Commission considers that the laws governing this program mandate a financial contribution by the GOV, to the extent that it is made in connection with the production/manufacture of aluminium extrusions from Vietnam, which involves foregoing, or non-collection, of revenue due to the GOM by eligible enterprises in Malaysia.

Having regard to all relevant information about this program, as required by subsection 269TACC(1), the program is considered to confer a benefit to eligible enterprises because of the tax savings realised. Where exporters of aluminium extrusions during the investigation period received tariff savings under the program in connection with the production, manufacture or export of those goods it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under section 269T.

### **B3.6 Is the subsidy a countervailable subsidy**

As provided for in subsection 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises located in designated geographical regions. As the criteria or conditions providing access to the subsidy favours particular enterprises, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3). The Commission determines that program 1 is a countervailable subsidy in respect of aluminium extrusions.

### **B3.7 Amount of subsidy**

Benefits for tariff programs are expensed to the year in which the benefit is received, and the benefit is taken to have been received on the date on which the enterprise would otherwise have had to pay the tariff associated with the exemption or reduction.

The Commission has determined that one of the selected exporters received financial contributions in respect of the goods under this program during the investigation period.

The Commission calculated the benefit for this exporter based on the amount reported in the relevant questionnaire.

The Commission is satisfied that exporters in the non-cooperative entities category have not given the Commission information relevant to the investigation within a reasonable period and so the Commission has determined that these exporters have received a countervailable subsidy under this program during the investigation period on the basis of all available facts and reasonable assumptions.<sup>57</sup> The highest of the cooperative exporter benefits has been applied to exporters in the non-cooperative entities category.

## **B4 Program 2: Corporate Tax Incentives**

### **B4.1 Background**

The GOV provides various incentives regarding corporate income tax rates for enterprises operating in certain regions or sectors to encourage enterprises to invest in regions or sectors requiring development.

The standard corporate tax rate applicable during the investigation period was:

- 22 per cent applicable from 1 July 2015 to 31 December 2015; and
- 20 per cent applicable from 1 January 2016 to 30 June 2016.

The GOV provides for different levels of preferential tax treatment, in the forms of tax exemptions or reductions available depending on an individual company's circumstances.

### **B4.2 Legal basis**

The legal basis for this program includes:

- Law on Corporate Income Tax 2008 and amending law 2013 and 2014;
- Law on Amendments to Tax Law No 71/2014/QH1;
- Decree 108/2006/ND-CP;
- Decree 24/2000/ND-CP and Article 1.8 of Decree 27/2003/ND-CP;
- Decree 124/2008/ND-CP replaced by Decree 218/2013/ND-CP effective from 15 February 2014; and

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<sup>57</sup> Section 269TAACA.

- Decree 12/2015/ND-CP effective from 1 January 2015.

#### **B4.3 WTO notification**

The GOV notified this program in WTO document G/SCM/N/253/VNM, dated 25 September 2015.

#### **B4.4 Eligibility criteria**

The Ministry of Finance is in charge of providing guidelines for the implementation of the law and government decrees.

Provincial tax departments are in charge of receiving and examining tax declarations of the payers.

There is no application and approval process. Enterprises rely on the applicable tax law and regulations to identify the benefits they are entitled to, declare the benefits in the tax returns, and pay the income tax in accordance with the declaration.

#### **B4.5 Is there a subsidy?**

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.

Having regard to all relevant information about this program, as required by subsection 269TACC(1), the program is considered to confer a benefit to eligible enterprises because of the tax savings realised. The amount of benefits is the amount of difference between standard tax rate and preferential tax rate and/or the amount of tax payment in the absence of exemption or reduction.

#### **B4.6 Is the subsidy a countervailable subsidy?**

As provided for in subsection 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises or enterprises located in certain designated geographical regions located in Vietnam. As the criteria or conditions providing access to the subsidy favours particular enterprises, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3). The Commission considers that program 2 is a countervailable subsidy.

#### **B4.7 Amount of subsidy**

One cooperative exporter, EAA received a corporate income tax benefit during the investigation period in the form of a lower corporate tax rate than the standard tax rate. EAA received the tax benefit as it is a newly established company in the geographical region of Chi Linh Rural District, Hai Duong Province. This is considered to be an area of

socio-economic difficulties under Appendix II of Decree 164/2003/ND-CP detailing the implementation of the Law on Corporate Income Tax 2003.

The Commission found that this incentive benefited EAA up to 31 December 2015. For the period after this date the corporate tax rate for all companies in Vietnam became 20 per cent, this includes EAA.

For the exporters in the non-cooperative entities category, no information was provided by the individual exporters themselves to identify whether a financial contribution has been received under this program.

The Commission is satisfied that exporters in the non-cooperative entities category have not given the Commission information relevant to the investigation within a reasonable period and so the Commission has determined that these exporters have received a countervailable subsidy under this program during the investigation period on the basis of all available facts and reasonable assumptions.<sup>58</sup>

The highest of the cooperative exporter benefits has been applied to exporters in the non-cooperative entities category.

## **B5 Program 3: Incentives on Non-Agricultural Land Tax**

### **B5.1 Background**

The GOV provides exemption and reduction of non-agricultural land use tax for a project in a sector and region entitled to investment incentives under investment laws.

To encourage enterprise to invest in the sectors and regions which need for development.

### **B5.2 Legal basis**

The legal basis for this program includes:

- Law on Non-Agricultural Land Use Tax No.48/2010/QH12 effective from 1 January 2012;
- Decree No.53/2011/ND-CP dated 1 July 2011; and
- Decree 108/2006/ND-CP and Decree 118/2015/ND-CP.

### **B5.3 WTO notification**

The GOV notified this program in WTO document G/SCM/N/253/VNM, dated 25 September 2015.

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<sup>58</sup> Section 269TAACA.



## **B5.4 Eligibility criteria**

The Ministry of Finance is in charge of providing guidelines for the implementation of the law and government decrees.

Provincial tax departments are in charge of receiving and examining non-agricultural land use tax declarations of the payers.

With respect to a tax exemption, eligibility for the exemption includes:

- Land of investment projects in sector of special investment preferences;
- Land of investment projects in regions of exceptional socio-economic difficulties;
- Land of investment projects of investment preferences and in regions of socio-economic difficulties;
- Land of projects with more than 50% employees being war invalids and soldiers;
- Land of projects in the field of socialization, education, vocational training, healthcare, culture, sports or environment;
- Land of projects for public and social interest such as construction of memorial house, nurturing facility for aged people;
- Certain type of residential land;
- Taxpayers who face difficulties due to force majeure circumstances if the value of damage related to land and houses on land accounts for over 50% of the taxable price.

With respect to tax reduction, 50% reduction of non-agricultural land use tax is granted to:

- Land of investment projects in sectors of investment preferences;
- Land of investment projects in regions of socio-economic difficulties;
- Land of projects with 20- 50% employees being war invalids and soldiers;
- Certain residential land;
- Taxpayers who face difficulties due to force majeure circumstances if the value of damage related to land and houses on land accounts for between 20% and 50% of the taxable price.

There is no application and approval process. Enterprises rely on the applicable tax law and regulations to identify the benefits they are entitled to, declare the benefits in the tax declarations.

## **B5.5 Is there a subsidy?**

Due to the nature of this program (exemption on land tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise.

Where received, this financial contribution is considered to confer a benefit because of the land tax savings realised.

The amount of benefits is the amount of difference between standard land tax rate and preferential land tax rate and/or the amount of land tax payment in the absence of exemption or reduction.

### **B5.6 Is the subsidy a countervailable subsidy?**

As provided for in subsection 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises or enterprises located in designated geographical regions. As the criteria or conditions providing access to the subsidy favours particular enterprises, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3). The Commission considers that program 3 is a countervailable subsidy.

### **B5.7 Amount of subsidy**

One cooperative exporter, EAA received a benefit during the investigation period in the form of a lower land tax rate than the standard land tax rate.

For the exporters in the non-cooperative entities category, no information was provided by the individual exporters themselves to identify whether a financial contribution has been received under this program. The Commission considers that these entities have not given the Commissioner information considered to be relevant to the investigation within a reasonable period.

The Commission is satisfied that uncooperative and all other exporters have not given the Commission information relevant to the investigation within a reasonable period and so the Commission has determined that these exporters have received a countervailable subsidy under this program during the investigation period on the basis of all available facts and reasonable assumptions.<sup>59</sup>

The highest of the cooperative exporter benefits has been applied to exporters in the non-cooperative entities category.

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<sup>59</sup> Section 269TAACA.