



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

REPORT NO. 362

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

May 2017

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ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
ABRA	ABRA Metals Pty Ltd
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
<i>Agreement on Subsidies</i>	<i>Agreement on Subsidies and Countervailing Measures</i>
Alumac	Alumac Industries Sdn Bhd
aluminium extrusions	certain aluminium extrusions
AluShapes	Aluminium Shapemakers Pty Ltd
APA	Aluminium Profiles Australia Pty Ltd
ASH	Aus Star Holdings International 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>
Crystal	Crystal Group Aluminium Extrusion (M) Sdn Bhd
CTMS	cost to make and sell
Customs Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
Dumping Duty Act	Customs Tariff (Anti-Dumping) Act 1975
EA	Extrusions Australia Pty Ltd
EAA	East Asia Aluminium Co Ltd
Everpress	Everpress Aluminium Industries Sdn Bhd
EXIM	Export Import Bank of Malaysia Berhad
FOB	free on board
FIS	free into store
GAAP	generally accepted accounting principles
Genesis	Genesis Aluminium Industries Sdn Bhd
G. James	G. James Extrusion Co Pty Ltd
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
INEX	Independent Extrusions Australia Pty Ltd

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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
MITI	Ministry of International Trade and Industry
MJP	Major Japanese Port
MYR	Malaysian Ringgit
NIP	non-injurious price
OCOT	ordinary course of trade
Olympic	Olympic Aluminium Co Pty Ltd
PAD	preliminary affirmative determination
PAD 362	<i>Preliminary Affirmative Determination No. 362</i>
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>
ROI	return on investment
SEF	statement of essential facts
SG&A	selling, general and administrative
SME	small, medium sized enterprise
SME Determination	<i>Customs (Definition of "small-medium enterprise") Determination 2013</i>
Superb	Superb Aluminium Industries Sdn Bhd
Tong Heer	Tong Heer Aluminium Industries Sdn Bhd
Ullrich	Ullrich Aluminium Pty Ltd
USP	unsuppressed selling price

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Vietnam	the Socialist Republic of Vietnam
VND	Vietnamese Dong

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This report number 362 (this Report) has been prepared in response to an application by Capral Limited (Capral) for the publication of a dumping duty notice and a countervailing duty notice in respect of certain aluminium extrusions ('aluminium extrusions' or 'the goods') exported to Australia from Malaysia and the Socialist Republic of Vietnam (Vietnam).

Capral alleges that the Australian industry has experienced material injury caused by aluminium extrusions exported to Australia from Malaysia and Vietnam at dumped and subsidised prices.

This Report makes recommendations to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary)¹ and sets out the findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) bases those recommendations.

The Parliamentary Secretary exercises the functions and powers of the Minister under Part XVB of the *Customs Act 1901* (the Act).²

1.2 Recommendations to the Parliamentary Secretary

Based on the findings in this report, the Commissioner makes the recommendations to the Parliamentary Secretary as contained in Chapter 12 of this Report, in summary that:

- a dumping duty notice be published in respect of certain aluminium extrusions exported to Australia from the category of uncooperative and all other exporters from Malaysia and all exporters from Vietnam; and
- a countervailing duty notice be published in respect of exporters from Malaysia who are non-cooperative entities.

1.3 Termination of part of the investigation

Based on the findings contained in *Termination Report No. 362* (TER 362) the Commissioner has, in relation to the dumping investigation, found that:

- for the goods exported to Australia from Malaysia by Press Metal Berhad (PMB) and Superb Aluminium Industries Sdn Bhd (Superb), there has been no dumping of any of the goods and therefore the Commissioner has terminated the dumping investigation in accordance with subsection 269TDA(1)(b)(i) in so far as it relates to these exporters; and
- the dumping margin for aluminium extrusions exported to Australia from Malaysia by LB Aluminium Berhad (LBA) and the category of 'residual exporters' was

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

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

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negligible (less than 2 per cent), and therefore the Commissioner has terminated the dumping investigation in accordance with subsection 269TDA(1)(b)(ii) in so far as it relates to these exporters.

In relation to the countervailing investigation, the Commissioner found that:

- in relation to Mien Hua Precision Mechanical Co., Ltd (Mien Hua) from Vietnam, no countervailable subsidy has been received in respect of any of the goods exported to Australia and therefore, the Commissioner terminated the countervailing investigation in accordance with subsection 269TDA(2)(b)(i) in so far as it relates to this exporter; and
- in relation to PMB, Superb and LBA and the category of residual exporters from Malaysia, and all exporters other than Mien Hua from Vietnam, countervailable subsidies have been received in respect of some or all of the 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) and therefore the Commissioner has terminated the countervailing investigation in accordance with subsection 269TDA(2)(b)(ii) in so far as it relates to those exporters.

TER 362 and the related termination notice (Anti-Dumping Notice (ADN) No. 2017/74) were placed on the public record³ on 24 May 2017.⁴

1.4 Authority to make decision

Division 2 of Part XVB of the Act describes, among other things, 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). Division 2 of Part XVB describes, among other things, 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).

1.4.1 Application

On 28 June 2016, Capral lodged an application alleging that the Australian industry has experienced 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.

³ An electronic version of the public record is available at www.adcommission.gov.au.

⁴ TER 362 and ADN 2017/74 are respectively at items 87 and 88 of Case No. 362 Public Record, on the Commission's website at address <http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR-362.aspx>

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Consideration Report No. 362 (CON 362) and the public 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.⁵

1.4.2 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 a countervailable duty notice, or if satisfied that it appears that there will be sufficient grounds for the publication of such a notice 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. As a result, the Commissioner made *Preliminary Affirmative Determination No. 362* (PAD 362) on 17 October 2016.⁶ ADN No. 2016/108⁷ provides further details and is available on the public record.

Following PAD 362, 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 2017.⁸

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 and Vietnam, entered for home consumption on or after 20 April 2017.⁹

1.4.3 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Parliamentary Secretary allows under subsection 269ZHI(3),¹⁰ place on the public record a statement of essential facts on which the Commissioner proposes to base a recommendation to the Parliamentary Secretary in relation to the application.¹¹

⁵ Case No. 362 public Record Item Nos. 2 and 3

⁶ Subsection 269TD(1).

⁷ Case No. 362 public record Item No. 34.

⁸ ADN No. 2017/37 refers.

⁹ ADN No. 2017/52 refers.

¹⁰ Note that this power has been delegated to the Commissioner. ADN 2017/10 provides further explanation.

¹¹ Subsection 269TDAA(1).

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Statement of Essential Facts No. 362 (SEF 362) was originally due to be placed on the public record by 5 December 2016. However, the due date for the SEF and final report was extended on three occasions.¹² The Commissioner placed the SEF on the public record on 10 April 2017.¹³

1.4.4 Final report

This Report and the recommendations in relation to this investigation were provided to the Parliamentary Secretary on 24 May 2017.

In making the recommendations in this report the Commission had regard to:

- the application;
- all submissions concerning and subsequent to the publication of the notice initiating the investigation (ADN 2016/77) and submissions received which the Commissioner had regard for the purpose of formulating SEF 362;
- SEF 362;
- all submissions made in response to SEF 362 received by the Commission on or before 1 May 2017¹⁴; and
- any other matters that the Commissioner considered to be relevant.

This report includes a statement of the Commissioner's reasons for the recommendations contained in this Report.¹⁵ The statement of the Commissioner's reasons:

- sets out the material findings of fact on which the recommendations are based; and
- provides particulars of the evidence relied on to support those findings.

1.5 Findings and conclusions

A summary of the Commissioner's findings and conclusions is provided in the following and further detailed in the remainder of this Report.

1.5.1 The goods and like goods (Chapter 3)

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 nine Australian producers.

¹² Further details are in ADN Nos. 2016/126, 2017/14 and 2017/36.

¹³ Further details are in ADN No. 2016/37. The actual due date was 9 April 2017, however as this day was a Sunday, the effective due date was the next working day, 10 April 2017.

¹⁴ Under section 269TEA(4), the Commissioner is not obliged to have regard to any submissions made in response to SEF 362 that were received by the Commissioner after the end of the SEF submission response period if to do so would prevent the timely preparation of this report to the Parliamentary Secretary by the due date.

¹⁵ In accordance with subsection 269TEA(5).

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1.5.2 Australian market (Chapter 4)

The Australian aluminium extrusions market is supplied from local production and by imports from several countries, including Malaysia and Vietnam, the major country being the People's Republic of China (China).

1.5.3 Dumping margins (Chapters 5)

The Commission's assessment of dumping margins is set out in Table 1.

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%
	Uncooperative and All Other Exporters	13.0%
Vietnam	East Asia Aluminium Company Ltd	7.7%
	Mien Hua Precision Mechanical Co., Ltd	11.6%
	Global Vietnam Aluminium Co., Ltd	18.0%
	Uncooperative and All Other Exporters	34.9%

Table 1 – Dumping margins

1.5.4 Subsidy margins (Chapter 6)

The Commission's assessment of subsidy margins is set out in Table 2.

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%
	Non-cooperative and all other entities	3.24%
Vietnam	East Asia Aluminium Company Ltd	0.03%
	Mien Hua Precision Mechanical Co., Ltd	N/A
	Global Vietnam Aluminium Co., Ltd	0.02%
	Non-cooperative and all other entities	0.08%

Table 2 – Subsidy margins

1.5.5 Economic condition of the Australian industry (Chapter 7)

The Commissioner considers that the Australian industry has experienced injury in the forms of:

- price depression;
- price suppression;

- loss profits;
- reduced profitability;
- reduced capital expenditure;
- increased closing stock levels; and,
- reduced return on investment (ROI).

1.5.6 Causation assessment (Chapter 8)

The Commissioner is satisfied that the Australian industry has experienced material injury as a result of exports of aluminium extrusions at dumped and subsidised prices from Malaysia and dumped prices from Vietnam.

1.5.7 Will dumping, subsidisation and material injury continue? (Chapter 9)

The Commissioner is of the view that exports of aluminium extrusions may continue in the future at dumped and subsidised prices from Malaysia and at dumped prices from Vietnam, and that continued dumping and subsidisation from these countries may continue to cause material injury to the Australian industry.

1.5.8 Non-injurious price (Chapter 10)

The Commission has calculated a non-injurious price (NIP) for exports of aluminium extrusions that is considered to be the minimum price necessary to prevent the injury, or a recurrence of the injury, caused by the dumped and subsidised goods from Malaysia and the dumped goods from Vietnam. The Commission has calculated the NIP for each exporter to be a price equal to an un-dumped and un-subsidised price. As such, the lesser duty rule does not come into effect.

1.5.9 Form of anti-dumping measures (Chapter 11)

The Commissioner recommends to the Parliamentary Secretary that anti-dumping measures (in the form of a dumping duty notice for Malaysia and Vietnam and countervailing duty notice for Malaysia) be imposed:

- in respect of countervailing duty that may become payable by exporters from Malaysia, as a proportion of the export price of the goods; and
- in respect of dumping duty that may become payable by exporters from Malaysia and Vietnam, using the combination duty method (i.e. the combination of fixed and variable duty).

2 BACKGROUND

2.1 Initiation

On 28 June 2016, Capral lodged an application under subsection 269TB(1) requesting that the Parliamentary Secretary publish a dumping duty notice and a countervailing duty notice in respect of aluminium extrusions exported to Australia from Malaysia and Vietnam.

Capral alleges that the Australian industry has experienced material injury caused by exports of aluminium extrusions from Malaysia and Vietnam at dumped and subsidised prices. Capral alleges that the Australian industry has been injured through:

- price suppression;
- loss of profits;
- reduced profitability;
- reduced capital expenditure;
- reduced ROI; and
- increased closing stocks.

Having received further information on 8 July 2016, 18 July 2016 and 8 August 2016¹⁶ from Capral and 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.

ADN No. 2016/77 and CON 362 provides further details relating to the initiation of the investigation and is available on the public record.

In respect of the investigation:

- the investigation period¹⁷ for the purpose of assessing dumping, subsidisation and material injury is 1 July 2015 to 30 June 2016; and
- the injury analysis period is from 1 July 2012.¹⁸

2.2 Anti-dumping measures from China

Anti-dumping measures currently apply to aluminium extrusions exported to Australia from China. A history of the main cases is summarised below in Table 3. Further information is also available on the public record.

¹⁶ In accordance with subsection 269TC(2A), the application was taken to have been lodged and received when the further information was lodged and received on 8 August 2016.

¹⁷ As that term is defined in subsection 269T(1).

¹⁸ 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.

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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>
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>, 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

2.3 SEF 362

SEF 362 set out the facts on which the Commissioner proposed to base the recommendations in this Report to the Parliamentary Secretary. SEF 362 informed interested parties of the facts established to the date SEF 362 was placed on the public record and allowed them to make submissions in response.

Following its publication on the public record, interested parties had 20 days to respond to SEF 362. Responses to SEF 362 were to be provided to the Commissioner by no later than 1 May 2017.¹⁹

The Commissioner considered submissions received in response to SEF 362 in making this Report and recommendations to the Parliamentary Secretary. The Commissioner was not obliged to have regard to any submission made in response to the SEF received after 1 May 2017, if to do so would have, in the opinion of the Commissioner, prevented the timely preparation of this Report.²⁰

¹⁹ Subsection 269TEA(3)(a)(iv).

²⁰ The due date was 30 April 2017, however as this falls on a Sunday, the effective due date was taken to be the next working day, 1 May 2017.

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2.4 Submissions from interested parties

The Commission received 38 submissions from interested parties prior to the publication of SEF 362. These submissions were considered by the Commissioner in reaching the conclusions contained within SEF 362. All submissions received are available on the public record.

Prior to the publication of SEF 362, the Commission had insufficient time to consider further information from Global Vietnam Aluminium Co., Ltd (GVA) received on 6 April 2017. The Commissioner did not have regard to GVA's further information as to do so would, in the Commissioner's opinion, prevent the timely placement of SEF 362 on the public record (as per subsection 269TDAA(3)). GVA's further information has been considered in preparing this Report.

Following the publication of SEF 362, the Commission received eight submissions as detailed in Table 4 below. The Commission considered these submissions in making this report and recommendations to the Parliamentary Secretary.

EPR Item No.	Entity	Date Received
86	Global Vietnam Aluminium Company Ltd	15/5/2017
85	Capral Limited	8/5/2017
84	Government of Vietnam	5/5/2017
83	Focus Merchant Management Sdn Bhd	4/5/2017
82	Mien Hua Precision Mechanical Co Ltd	2/5/2017
81	East Asia Aluminium Co Ltd	1/5/2017
80	Aus Star Holdings International Pty Ltd	1/5/2017
79	Global Vietnam Aluminium Company Ltd	1/5/2017
78	Capral Limited	1/5/2017

Table 4 – Submissions in response to SEF 362

2.5 Public record

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

3 THE GOODS AND LIKE GOODS

3.1 Findings

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 nine Australian producers.

3.2 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.

3.3 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);*
 - *mechanically worked*
 - *anodized; or*
 - *painted or otherwise coated, whether or not worked;*

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- *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”.*

Table 5 below provides examples of the coverage of the goods and like goods (and intended end-use applications) and is being 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 5 - The goods and like goods

3.4 Tariff classification

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

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

Table 6 - Tariff classifications of the goods

3.5 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.

Capral’s application identified the following companies as comprising the Australian industry:

- Capral;
- G. James Extrusion Co Pty Ltd (G. James);
- Independent Extrusions Pty Ltd (INEX);
- Aluminium Shapemakers Pty Ltd (AluShapes);
- Almax Aluminium Pty Ltd;
- Aluminium Profiles Australia Pty Ltd;
- Extrusions Australia Pty Ltd (EA);
- Olympic Aluminium Co Pty Ltd (Olympic); and
- Ullrich Aluminium Pty Ltd (Ullrich).

The Commission visited Capral’s Bremer Park facility to examine its 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 are manufactured in Australia, there is an Australian industry producing like goods.

Further information regarding Capral’s production processes is available in CON 362.²¹

3.6 Commissioner’s assessment - like goods

The Commissioner considers that the Australian industry produces goods that are ‘like’ to the goods the subject to the application 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.

²¹ Case No. 362 Public Record Item No. 3.

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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).

4 AUSTRALIAN MARKET

4.1 Findings

The Commissioner finds that the Australian market for aluminium extrusions is supplied by the Australian industry and imports from a number of countries, including Malaysia and Vietnam. The Commission estimates that the size of the Australian market during the investigation period was approximately 178,000 tonnes.

4.2 Introduction

The Australian aluminium extrusions market is supplied by Australian producers and importers. The goods are supplied by a number of countries, including Malaysia and Vietnam, with the largest supply coming from China.

Aluminium extrusions are used in a wide variety of applications including: commercial and residential buildings for window and door frame systems, prefabricated houses/building structures, roofing and exterior cladding, curtain wall, shop fronts, fencing, road and rail vehicle, marine, electrical and general engineering.

Imported and locally produced aluminium extrusions are generally used interchangeably across these applications. Aluminium extruders (both local and importers) supply distributors, fabricators, processors and original equipment manufacturers.

4.3 Market structure

4.4 Australian producers

The application was lodged by Capral on behalf of the Australian industry producing aluminium extrusions. The application was supported by Capral, G. James, INEX, Ullrich, AluShapes, EA and Olympic. The Commission estimates that collectively these producers account for over 80 per cent of Australian production.

In addition to the data submitted as part of Capral's application, the Commission invited all Australian producers of like goods to complete an Australian industry questionnaire. The Commission received two additional completed Australian industry questionnaire responses from INEX and G. James.

The Commission undertook a verification visit to the applicant, Capral, and is satisfied that the information it provided is relevant, accurate and complete. A verification visit report is available on the electronic public record.²²

The Commission also undertook a verification visit to G. James, the second largest aluminium extrusion producer in Australia in March 2017, and is satisfied that the information it provided is relevant, accurate and complete. A verification visit report is available on the electronic public record.²³

²² Case No. 362 Public Record Item No. 74

²³ Case No. 362 Public Record Item No. 75.

In this instance, as INEX's production volume is a relatively low proportion of the total production volume of the Australian industry, the Commission elected not to undertake a verification visit to INEX.

4.5 Importers

Following the initiation of this investigation, the Commission identified the importers of aluminium extrusions from Malaysia and Vietnam using the Australian Border Force's (ABF) import database. Based on individual import volumes, the following three importers were considered to be 'major' importers, accounting for 78 per cent of imports of aluminium extrusions from Malaysia and Vietnam during the investigation period:

- ABRA Metals Pty Ltd (ABRA);
- Aus Star Holdings International Pty Ltd (ASH); and
- Press Metal Aluminium (Australia) Pty Ltd (PMAA).

The Commission requested that these companies complete an importer questionnaire and return them in a timely manner. ABRA's exporter did not cooperate with the investigation, therefore the Commission elected not to verify the data provided by ABRA.

The Commission verified the data provided by PMAA and ASH remotely. Both companies participated with the investigation and provided their internal records and source documents for import and sales transactions. The importer verification reports for PMAA and ASH are published on the public record.²⁴

Following SEF 362, Capral submitted²⁵ that the Commission ought to have conducted an on-site verification to PMAA as it is the largest importer of Malaysian sourced goods. The Commission notes Capral's concerns but considers there to be various means for testing the accuracy, relevance and completeness of PMAA's data. As outlined in PMAA's verification report, PMAA purchases goods from its related party supplier PMB on a delivered duty paid (DDP) basis. As such, at the exporter visit to PMB, the Commission collected a significant amount of verified information relating to PMAA's imports including all post exportation expenses. Additionally, the Commission was able to compare PMB's export sales to data reported by PMAA in the ABF import database. As such, in this instance, the Commission decided not to conduct an onsite verification visit to PMAA on the basis that it was only required to verify certain aspects of PMAA's importer questionnaire response to supplement previously verified information.

4.6 Market size

The Commission has relied on data from the ABF import database, the sales volumes reported by the participating Australian industry producers, and Capral's estimate of the sale volumes of other aluminium extrusions producers in Australia, as well as verified exporter sales data to estimate the size of the Australian market for aluminium extrusions.

²⁴ Case No. 362 Public Record Item Nos 51 and 64

²⁵ Case No. 362 Public Record Item No.78

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Figure 1 below summarises the size of the Australian aluminium extrusion market for each year of the injury analysis period.²⁶

The Commission's filtered information obtained from the ABF import database based on the following criteria:

- relevant tariff classifications and statistical codes;
- goods description to exclude import transactions that appear not to be the goods;
- a free on board (FOB) price per tonne range of \$2 to \$10 AUD per kilogram (kg) in order to exclude outlying data; and
- exclusion of goods sourced from China, which were declared exempt from ICD and/or IDD for not being the 'goods'.

The Commission's assessment of the Australian market for aluminium extrusions reveals that in each year of the injury analysis period, total Australian production volume and total Australian market size increased.

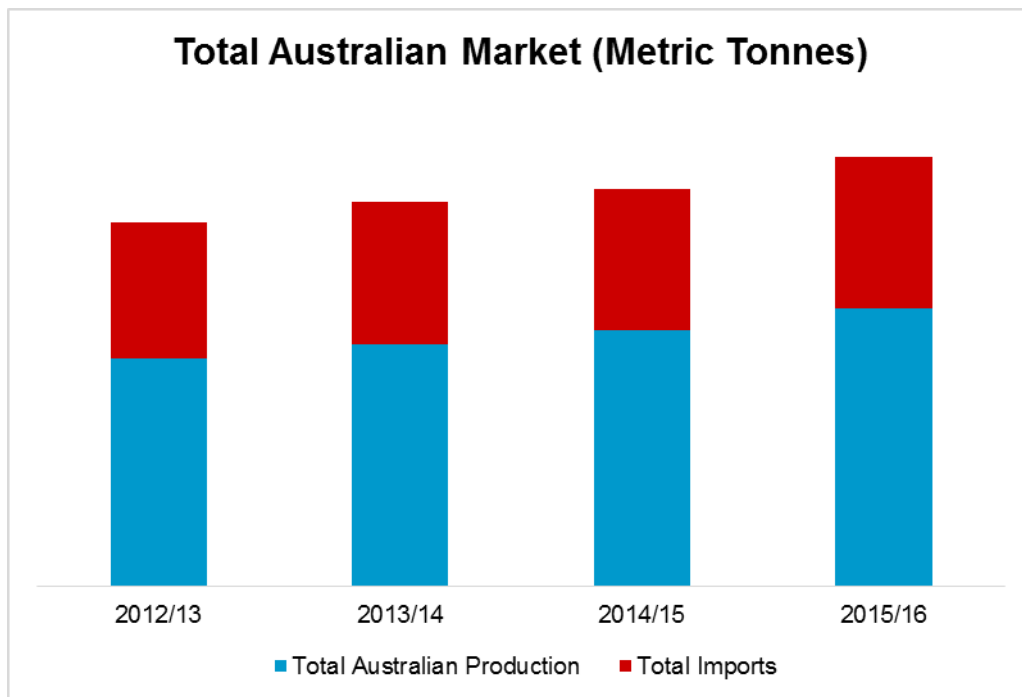


Figure 1 - Aluminium extrusions total Australian market

4.7 Import volumes

Figure 2 below, which is based on verified data from exporters and the Commission's estimates of import volumes, shows that, over the injury analysis period, imports from:

- China, the largest source of imports, decreased by 5 per cent;
- Malaysia increased by 30 per cent;
- Vietnam increased significantly from a low base; and
- all other countries decreased by 9 per cent.

²⁶ All years in Figure 1, and subsequent figures, align with the investigation period, e.g. years spanning July to June, unless otherwise stated.

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Collectively, the Commission estimates that, by the end of the injury analysis period, imports from Malaysia and Vietnam represented approximately 30.6 per cent of the total volume of imports.

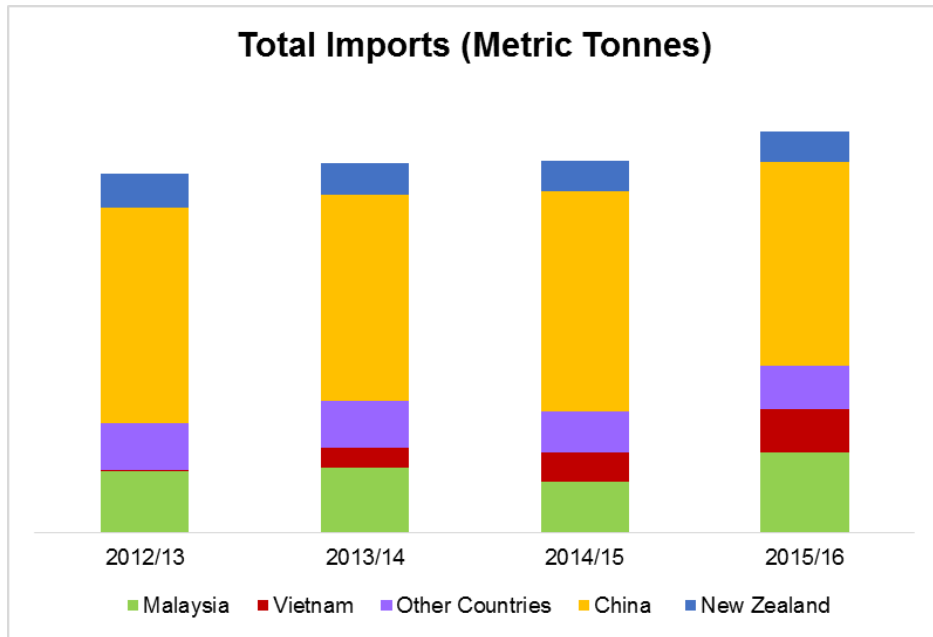


Figure 2 - Aluminium extrusion import volumes

5 DUMPING INVESTIGATION

5.1 Findings

The Commissioner has found that:

- with the exception of PMB and Superb from Malaysia, the goods exported to Australia from Malaysia and Vietnam during the investigation period were dumped;
- the dumping margin for LBA and the category of residual exporters from Malaysia was negligible;
- the volume of dumped goods from Malaysia and Vietnam were not negligible.

5.2 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 in this chapter.

Dumping margins are determined under section 269TACB. For all dumping margins calculated for the purposes of this Report, 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).

5.3 Exporter questionnaire responses

The Commission received exporter questionnaire responses from the following exporters:

Exporter	Country
PMB	Malaysia
LBA	
Superb	
Milleon Extruder Sdn Bhd (Milleon)	
Genesis Aluminium Industries Sdn Bhd (Genesis)	
Kamco Aluminium Sdn Bhd (Kamco)	
Tong Heer Aluminium Industries Sdn Bhd (Tong Heer)	
Everpress Aluminium Industries Sdn Bhd (Everpress)	
Crystal Group Aluminium Extrusion (M) Sdn Bhd (Crystal)	
Alumac Industries Sdn Bhd (Alumac)	

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Exporter	Country
East Asia Aluminium Company Ltd (EAA)	Vietnam
Mien Hua	
GVA	

Table 7 - Exporter questionnaires received

5.4 'Uncooperative and all other' exporters and non-cooperative entities

Tong Heer

Pursuant to the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Customs Direction), the Commissioner considered that Tong Heer's exporter questionnaire response contained deficiencies that could not, in his view, be quickly and easily rectified in a further response. On 28 September 2016, the Commissioner notified Tong Heer of his decision to treat it as an uncooperative exporter pursuant to subsection 269T(1) and a non-cooperative entity pursuant to section 269TAACA.²⁷

Crystal

Pursuant to the Customs Direction, the Commissioner considered that Crystal's exporter questionnaire response contained deficiencies that could not, in his view, be quickly and easily rectified in a further response. On 28 September 2016, the Commissioner notified Crystal of his decision to treat it as an uncooperative exporter pursuant to subsection 269T(1) and a non-cooperative entity pursuant to section 269TAACA.²⁸

Everpress

Pursuant to the Customs Direction, the Commissioner considered that Everpress' exporter questionnaire response contained deficiencies that could not, in his view, be quickly and easily rectified in a further response. On 29 September 2016, the Commissioner notified Everpress of his decision to treat it as an uncooperative exporter pursuant to subsection 269T(1) and a non-cooperative entity pursuant to section 269TAACA.²⁹

Alumac

On 6 October 2016, Alumac provided a late response to the exporter questionnaire, which was outside the legislated period. On 12 October 2016, the Commissioner notified Alumac of his decision not to have regard to Alumac's response and, by operation of subsections 8(a) and 9(a) of the Customs Direction, to treat it as an uncooperative exporter pursuant to subsection 269T(1) and a non-cooperative entity pursuant to section 269TAACA.³⁰

²⁷ Refer to Case No. 362 EPR Item 13

²⁸ Refer to Case No. 362 EPR Item 14

²⁹ Refer to Case No. 362 EPR Item 16

³⁰ Refer to Case No. 362 EPR Item 32

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All other exporters that did not provide an exporter questionnaire response

As part of PAD 362, having regard to the Customs Direction, the Commissioner noted, in relation to this investigation, that the legislated period for providing an exporter questionnaire response had expired. Therefore, under sections 8 and 9 of the Customs Direction, the Commissioner determined all exporters who did not provide a response to the exporter questionnaire or request a longer period to provide a response within the legislated period to be uncooperative exporters pursuant to subsection 269T(1) and non-cooperative entities pursuant to section 269TAACA.

5.4.1 Submissions in response to SEF 362

Focus Merchant Management Sdn Bhd

In a submission received 3 May 2017,³¹ Focus Merchant Management Sdn Bhd (FMM), a trader of the goods exported to Australia from Malaysia, stated, among other things that:

- it disagreed that it should be included in the category of ‘uncooperative and all other exporters’;
- it had changed its address effective 13 June 2016 (prior to initiation of the investigation) and did not receive a letter upon initiation of the investigation because the Commission sent a letter to the former address. FMM claims it was not aware that there was an exporter questionnaire to respond to; and
- it did not intend to ignore the exporter questionnaire.

Commission’s response to submissions

The Commission notes that in its submission, FMM describes itself as the exporter of the goods. The term exporter is not defined in the Act, however, the Commission’s practice of identifying which entities are exporters is outlined in the *Anti-Dumping Commission Dumping and Subsidy Manual* (the Manual) at section 6.2.

In summary, the exporter is typically the manufacturer of the goods, as a principal who knowingly sent the goods for export to any destination. Although it is common for traders and other intermediaries to play a role in the exportation of the goods, only in rare circumstances would the trader or other intermediary be found to be the exporter.

FMM’s role in the exportation of the goods was explained in ABRA’s importer questionnaire response, two submissions³² received prior to SEF 362 and in a telephone conversation between the Commission and FMM in September 2016. In summary:

- FMM purchases the goods from related party manufacturer, P.A. Extrusions (PAE);
- PAE loads the material into a container and FMM arranges for shipping details to the Malaysian port at Klang; and
- FMM invoices the importer and receives payment from the Australian customers.

Based on the information available, the Commission considers PAE to be the exporter of the goods and not FMM. As such, PAE was the entity required to submit an exporter

³¹ Refer to Case No. 362 EPR Item 83

³² Refer to Case No. 362 EPR Item 25 and 26.

questionnaire response. PAE did not submit a questionnaire response or request a longer period to provide a response to the exporter questionnaire within the legislated period.

On this basis, for the purposes of this investigation, the Commission considers PAE to be the relevant entity classified as an uncooperative exporter pursuant to subsection 269T(1) and a non-cooperative entity pursuant to section 269TAACA. Goods exported by PAE through FMM will attract ICD and IDD at the rates applicable to 'uncooperative and all other exporters'. This finding is not affected by the matters raised by FMM in its submission of 3 May 2017.

5.5 Sampling of cooperating exporters from Malaysia³³

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

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

The investigation regarding Malaysia has proceeded on the basis of information obtained from an examination of a selected number of Malaysian exporters who are responsible for the largest volume of exports to Australia because it was not practicable to examine the exports of all cooperating Malaysian exporters.³⁴

In determining which cooperative exporters from Malaysia to examine, the Commissioner took into account:

- the number of exporters who submitted exporter questionnaires from Malaysia that the Commission can practically verify;
- the number of cooperative exporters from Malaysia required to sufficiently cover the various finish types of aluminium extrusions sold to Australia and on the Malaysian domestic market; and
- the individual volume of each identified exporter and the cumulative volume of a manageable number of the largest volume exporters.

As such, the Commission examined the exporter questionnaire responses of PMB, LBA and Superb in relation to Malaysia. These exporters (the selected exporters) represent approximately 64 per cent of the total volume of aluminium extrusions exported to Australia from Malaysia during the investigation period.

All remaining exporters fall within the definitions of either 'residual exporters', 'uncooperative and all other' exporters and 'non-cooperative entities'.

³³ The sampling exercise undertaken in relation to Malaysia applies to both the dumping and the countervailing investigation, therefore this section applies equally to Chapter 6.

³⁴ The Commission did not consider it necessary to limit the examination to a selected number of exporters for Vietnam, given that there are only three cooperating exporters from Vietnam.

A residual exporter is an exporter whose exportations were not examined as part of the investigation and who was not an uncooperative exporter or a non-cooperative entity.

An uncooperative exporter is defined as an exporter that did not provide information considered to be relevant to a dumping investigation within the specified timeframe, or an exporter that significantly impeded the investigation.³⁵

A non-cooperative entity is defined as an entity that did not provide information considered to be relevant to a countervailing investigation within the specified timeframe, or an entity that significantly impeded the investigation.³⁶

The residual exporters from Malaysia are Kamco, Milleon and Genesis. PAD 362 noted that the Commission may choose to extend its examination to the residual exporters following PAD 362 provided it does not prevent the timely completion of the investigation

Following PAD 362, the Commission did not choose to extend its examination to the residual exporters, as to do so would have prevented the timely completion of this investigation.

The uncooperative exporters and non-cooperative entities are identified at section 5.4. All other exporters refers to those exporters who did not export to Australia during the investigation period.

5.6 Model matching

For each exporter, the Commission applied model matching criteria based on the finish type of the goods (e.g. mill finish, powder coated finish, bright dip finish or anodised finish). The Commission also considered it appropriate to adopt alloy type in the model matching for PMB, given that it was shown to impact on its selling prices and PMB kept records, e.g. its cost to make and sell (CTMS) at this level.

5.7 Dumping assessment - PMB (Malaysia)

5.7.1 Verification

The Commission conducted an in-country visit to PMB's facility in Kuala Lumpur, 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 goods and like goods.

A report covering the visit findings is available on the public record.³⁷

³⁵ Residual exporter and uncooperative exporter are defined terms under subsection 269T(1) .

³⁶ Subsection 269TAACA(1).

³⁷ Case No. 362 Public Record Item No. 47.

5.7.2 Export price

The verification findings contained in PMB's verification report and PMAA's 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.

5.7.3 Submissions received 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.³⁸

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

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 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:

³⁸ Case No. 362 Public Record Item Nos. 45, 52, 54 and 67.

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- 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.³⁹

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.

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

³⁹ Subject to subsection 269TAA(1A).

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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 Metal 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 to 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;
- 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.

5.7.4 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.⁴⁰

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

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsections 269TAC(8)⁴¹ and (9)⁴² as follows:

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

⁴⁰ In terms of section 269TAAD.

⁴¹ 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).

⁴² 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).

Table 8 - Adjustments to PMB's normal value

5.7.5 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.⁴³ The December submission follows an earlier submission from Capral on 4 November 2016.⁴⁴ 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.⁴⁵ Capral cites a submission lodged 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.⁴⁶

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 2017.⁴⁷

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

⁴³ Case No. 362 Public Record Item No.52

⁴⁴ Case No. 362 Public Record Item No.41

⁴⁵ Case No. 362 Public Record Item No.39

⁴⁶ Case No. 362 Public Record Item No.52

⁴⁷ Case No. 362 Public Record Item No.62

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.⁴⁸ 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.⁴⁹ The Commission observed that the prices paid by PMB for its purchases of ingots and billets from related party suppliers, PMBTU and PMS, 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.⁵⁰ 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.

5.7.6 Dumping margin - PMB

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

⁴⁸ Case No. 362 Public Record Item No.35

⁴⁹ Case No. 362 Public Record Item No.47

⁵⁰ Case No. 362 Public Record Item No.28

5.8 Dumping assessment - LBA (Malaysia)

5.8.1 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.⁵¹

5.8.2 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.

5.8.3 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.⁵²

Adjustments

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

⁵¹ Case No. 362 Public Record Item No.49

⁵² In terms of section 269TAAD.

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

Table 9 - Adjustments to LBA normal value

5.8.4 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.⁵³ 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.

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.⁵⁴

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.⁵⁵ 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.

⁵³ Case No. 362 Public Record Item No.53

⁵⁴ Case No. 362 Public Record Item No.65

⁵⁵ Case No. 362 Public Record Item No.49

5.8.5 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.⁵⁶

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

5.8.6 Dumping margin - LBA

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

5.9 Dumping assessment - Superb (Malaysia)

5.9.1 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.⁵⁷

5.9.2 Export price

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

- Superb was the exporter of the goods to Australia;

⁵⁶ Case No. 362 Public Record Item No.78

⁵⁷ Case No. 362 Public Record Item No.63

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- 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.

5.9.3 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.⁵⁸

Adjustments

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

Adjustment Type	Deduction/addition
Domestic inland transport and other charges	Deduct domestic inland transport costs
Export inland transport and handling and other charges	Add export inland transport costs
Domestic credit terms	Deduct domestic credit terms costs
Export credit terms	Add export credit terms costs
Domestic packaging costs	Deduct domestic packaging costs
Export packaging costs	Add export packaging costs ⁵⁹

Table 10 - Adjustments to Superb normal value

5.9.4 Dumping margin - Superb

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

5.10 Residual exporters - Malaysia

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

⁵⁸ In terms of section 269TAAD.

⁵⁹ 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.

5.10.1 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 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.

5.10.2 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.

5.10.3 Dumping margin – Residual exporters

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

5.11 Dumping assessment - EAA (Vietnam)

5.11.1 Verification

The Commission conducted an in-country visit to EAA in Vietnam during November 2016 to verify the information disclosed in its exporter questionnaire.

The verification team toured EAA's facility and confirmed that it was the producer of the goods and like goods.

A report covering the visit findings is available on the public record.⁶⁰

5.11.2 Export price

The Commission 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 EAA was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

5.11.3 Normal value

The Commission is satisfied that EAA made sufficient sales of like goods in the OCOT. Therefore the Commission has determined that normal value under subsection 269TAC(1), using the price paid or payable for like goods sold in the OCOT for home consumption in Vietnam, in sales that are arms length transactions by EAA.

Adjustments

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

⁶⁰ Case No. 362 Public Record Item No. 48

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Adjustment Type	Deduction/addition
Domestic credit	Less an amount for domestic credit
Domestic inland transport	Less an amount for domestic inland transport
Export inland transport	Add an amount for inland transport
Export credit	Add an amount for export credit
Domestic packing costs	Less an amount for domestic packing costs
Export packing costs	Add an amount for export packing costs (including the cost of stillages)

Table 11 - Adjustment to EAA's normal value

5.11.4 Submissions regarding EAA's normal value prior to SEF 362

EAA

The Commission's verification report in relation to EAA found that a downwards adjustment claimed by EAA for volume discounts was not warranted based on the evidence available at the time.⁶¹ The verification team relied on the guidance in the Manual on this particular type of adjustment.⁶²

In its 4 April 2017 submission, EAA reiterated its claim that a downwards adjustment to normal value to account for volume discounts is required, contrary to the verification team's findings.⁶³

Key to the verification team's finding is the analysis of EAA's prices to domestic customers which did not show a correlation between discounts and sales volume.

Capral

In a submission received from Capral on 22 December 2016, Capral notes that EAA made related party purchases of raw materials from related party suppliers.⁶⁴ Capral requested that the Commission ensure that the cost of raw materials paid by EAA reflects a competitive market costs which includes the LME and MJP price benchmarks.

Commission's response to submissions prior to SEF 362

Prior to SEF 362, the Commission reviewed the verification team's findings for EAA and was satisfied that there was no correlation between purchase volume and purchase price of the goods in relation to EAA's domestic sales.

During verification, EAA provided the Commission with a package of source documents including a price list for one domestic customer to support its claim that the volume discount adjustment should apply to its normal value. The Commission compared the price list provided to the other sales documents provided as part of the package of source

⁶¹ Case No. 362 Public Record Item No. 48

⁶² *Anti-Dumping Commission Dumping and Subsidy Manual*, pp.70-71.

⁶³ Case No. 362 Public Record Item No. 58

⁶⁴ Case No. 362 Public Record Item No. 55

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documents. The customer shown on the price list was not the same customer shown on the other sales documents, e.g. invoices and payment documents.

With respect to EAA's questionnaire response, the Commission noted that despite claiming that discounts were given for both domestic and exports sales, EAA's questionnaire response at Appendix B-4 and D-4 reported "N/A" in the column relating to 'discounts' in relation to all sales transactions.

Further to the verification team's findings and analysis, the Commission concluded in SEF 362 that insufficient evidence existed to allow an adjustment for volume discounts.

In response to Capral's submission regarding related party purchases the Commission reviewed the verification team's findings. The Commission compared the prices EAA paid to related and unrelated suppliers for raw materials and was satisfied that EAA's purchases from related parties were arms length.

The price for EAA's aluminium purchases were also found to be above the combined LME and MJP price and comparable to the price paid by other extrusion manufacturers in the South East Asian region. The shipping terms reported by EAA in its aluminium purchase data indicates that delivery expenses were also included. The Commission also observed that the majority of EAA's aluminium purchases are produced by unrelated parties who set prices with reference to the LME and MJP price.

The Commission is therefore satisfied that EAA's purchases of aluminium through related parties were based on competitive market prices.

5.11.5 Submissions in response to SEF 362

Capral

As outlined at section 5.8.5, in a submission dated 29 April 2017, Capral requested further examination as to whether adjustments to account for differences in export and domestic packaging costs were consistently applied across all exporters.⁶⁵

Commission's response to submissions

Following SEF 362, the Commission sought and received further information from EAA regarding its packing costs. The Commission also visited the Melbourne facility of EAA's importer, ASH and contacted a second importer who purchased goods from GVA in Vietnam. Both avenues of enquiry confirmed the use of stillages in goods exported to Australia from Vietnam.

EAA provided revised cost data which confirmed that the total packing costs and sales volume relied on in SEF 362 had not changed, however the Commission observed that export related stillage costs were incorrectly allocated to domestic sales. Relying on the additional cost data provided by EAA, the Commission reallocated the stillage costs to export sales only. With the exception of stillages, the Commission remains satisfied that the packing materials used for domestic and export markets are the same.

⁶⁵ Case No. 362 Public Record Item No.78

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As a result of the above revision, the Commission has recalculated EAA's unit packing costs. EAA's domestic packing costs have reduced and its export packing costs have increased. The cost differential between the two has resulted in an increase in EAA's dumping margin of 0.8 per cent.

EAA

In a submission dated 1 May 2017, EAA requested further consideration of its due allowance claim in relation to volume based discounts.⁶⁶

EAA also made further claims to support an adjustment to account for differences in profile complexity. EAA claim that it uses a formula to take into account profile complexity. EAA also states that production cost records are not structured in such a way that profile complexity costs are separately identified.

EAA requested the Commission to take wall thickness into account as a model matching criteria and make an adjustment for profile complexity based on wall thickness.

In support of this approach EAA cites data from *Investigation No. 148* relating to aluminium extrusions exported from China.

Commission's response to submissions

EAA's submission regarding a volume based discount adjustment appears to imply that the Commission has not supported the verification findings, which is incorrect. The Commission refers to the opening paragraph in section 5.11.4 of SEF 362, and in this Report, which states that "*The Commission has reviewed the verification team's findings for EAA and is satisfied that there is no correlation between purchase volume and purchase price of the goods in relation to EAA's domestic sales.*"

EAA objected to the findings in SEF 362 where the Commission rejected its claim for a volume based discount adjustment, among other things, on the basis that it did not report the value of the discounts in its questionnaire response. EAA claims that this in contrast to the verification team's findings that EAA's sales data was relevant, accurate and complete.

In explaining why it did not report the value of volume discounts in its questionnaire response Appendix B-4 and D-4, EAA highlights that reporting the value of the discount applicable to each sales line is not relevant on the basis that export and domestic sales values already reflect the sales value net of discounts.

The Commission's Dumping and Subsidy Manual at page 76 outlines that adjustments for differences in rebates and discounts are not required if already taken into account in determining net prices.

Further, in relation to quantity discounts, page 71 of the Manual states that:

*"Evidence of the existence of a discount for quantity may be a price list, or an agreement showing the quantity discount scheme, **and confirmation***

⁶⁶ Case No. 362 Public Record Item No.81

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that sales occurred in accordance with that price list or agreement.”

[Emphasis added]

In response to the findings in SEF 362 EAA refer to the provision of contract agreements, price lists, invoices and proof of payment data which were provided to the Commission to establish that a volume discount is applied.

Notwithstanding the findings in SEF 362, following publication of SEF 362 and in response to its submission of 1 May 2017, the Commission sought further information from EAA regarding its claims for a volume based discount adjustment. Referring to the chart of accounts provided by EAA in its questionnaire response, the Commission requested EAA to provide general ledger entries for its sales revenue, cash, accounts receivable and discounts accounts to establish whether it records the discounts it allegedly provides.

In its 9 May 2017 response (confidential) EAA was unable to provide the accounting information requested by the Commission. EAA did provide further commentary regarding how the Commission could undertake a comparison between its sales invoices and the price list provided in relation to its Australian sales. However, in the absence of accounting records which can establish that discounts are separately recorded, the Commission is unable to verify that volume based discounts exist in accordance with the price list. EAA responded, confirming that the discount is already taken into account in the net price of the goods, which, as the Manual outlines, does not require the Commission to make any further adjustment.

The Commission therefore rejects EAA's claim for a volume discount adjustment based on the findings in EAA's verification report, the result of the further examinations of EAA's data undertaken prior to publication of SEF 362 and as a result of a further examination of EAA's data in relation to this Report.

In dealing with the second issue raised by EAA relating to due allowance for profile complexity the Commission has dealt with this matter in response to a 31 January 2017 submission made by ASH, an importer, prior to publication of SEF 362.⁶⁷ ASH argued that complexity of the aluminium extrusion profile is a relevant consideration which would have an effect on the outcome of a price undercutting analysis.

Whilst ASH's submission was made in relation to a price undercutting analysis, the issue of profile complexity is also relevant within the context of EAA's submission because it deals with price comparison. The Commission's response to ASH's submission contained in SEF 362 and in this Report at section 8.6.4 is as follows:

“The examination of the Australian industry and exporter price lists obtained by the Commission during the investigation revealed that the price of aluminium extrusions are primarily set with reference to the price of aluminium raw materials. Additional price determinants were observed for surface finish, and alloy. However, cross section complexity was not observed to influence price in any price list. The price undercutting analysis in relation to Vietnamese sourced goods is

⁶⁷ Case No. 362 Public Record Item No. 57

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also consistent with the model matching methodology outlined in section 5.6. The Commission remains satisfied that comparison at the finish level, and alloy, when the data permits, best captures price differences.”

EAA's submission states that *“it is impossible and unreasonable to expect aluminium extruders to separately record and maintain production costs for each profile, given the tens of thousands of profiles being produced each year.”* EAA's summation is in keeping with the cost records observed for other exporters and the Australian industry during the investigation. EAA's submission has also outlined one of the key reasons why the model matching criteria selected by the Commission in this investigation, and others before it, is restricted to criteria such as finish and alloy.

Whilst EAA have correctly stated the difficulties in keeping costs for each profile, its fails to provide further information about the price setting formula referred to in its submission. EAA's price list provided with its questionnaire response also fails to provide details relating to price differences for profile complexity, which are both relevant to assessing whether an adjustment should be made under subsection 269TAC(8).

In conclusion, EAA's submission fails to outline or refer to a reasonable approach which could be undertaken to account for price differences due to profile complexity. Its references to *Investigation No. 148*, although correct, were in relation to matters which were not ultimately adopted as a model matching criteria. The Commission remains satisfied that the evidence available in this investigation does not support making due allowance for profile complexity or differences in wall thicknesses.

5.11.6 Dumping margin - EAA

The Commission has calculated a dumping margin for EAA of 7.7 per cent.

5.12 Dumping assessment - Mien Hua (Vietnam)

5.12.1 Verification

Based on the volume of Mien Hua's exports relative to the total export volume during the investigation period the Commission elected not to conduct an on-site verification visit at Mien Hua's premises.

The Commission conducted a desktop verification of the data submitted by Mien Hua and is satisfied that the data is reasonably accurate, relevant and complete. This data was used to calculate a dumping margin.

The Commission's verification report is available on the public record.⁶⁸

⁶⁸ Case No. 362 Public Record Item No. 69

5.12.2 Export price

The Commission 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 Mien Hua was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

5.12.3 Normal value

The Commission is satisfied that Mien Hua made sufficient sales of like goods in the OCOT. Therefore the Commission has determined that normal value under subsection 269TAC(1), using the price paid or payable for like goods sold in the OCOT for home consumption in Vietnam, in sales that are arms length transactions by Mien Hua.

Adjustments

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

Adjustment Type	Deduction/addition
Domestic inland transport and other charges	Deduct domestic inland transport costs and other charges.
Export inland transport and handling and other charges	Add export inland freight and other charges.
Domestic credit terms	Deduct domestic credit terms costs.
Domestic packaging costs	Deduct domestic packaging costs
Export packaging costs	Add export packaging costs

Table 12 - Adjustments to Mien Hua's normal value

Regarding packing cost adjustments, the Commission clarifies that the Mien Hua's domestic and export packing costs are commensurate with the packing costs observed in relation to other exporters from Vietnam. By reference to these costs the Commission is satisfied that Mien Hua's export costs are inclusive of stillage costs.

5.12.4 Submissions in response to SEF 362

Mien Hua

In its 1 May 2017 submission⁶⁹ Mien Hua claims that the Commission is not required to make an adjustment to its normal value for differences in domestic and export packing costs. Mien Hua claims that, although certain customers may have additional packaging requirements, in most situations the packing costs are 'almost the same'.

⁶⁹ Case No. 362 Public Record Item No. 82

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Mien Hua states that the packing costs reported at question E-1.4 and E-2.7 of its exporter questionnaire response are a “*rough estimation which was inaccurate*”.

Mien Hua also claims that a specification adjustment to its normal value is necessary to account for differences in powder coating costs for the like goods it sells on the Vietnamese domestic market and the goods it sells to Australia. Mien Hua claims that the powder coated like goods it sells in Vietnam are predominantly used in outdoor applications which require a higher powder cost, involve a higher consumption rate and include a 10-20 year warranty. In comparison, the powder coated goods exported to Australia are said to require a cheaper powder, involve a lower consumption rate and do not include a warranty because these goods are predominantly used in indoor applications.

Despite its claims, Mien Hua concedes that it is unable to identify at a transactional level which sales would be used in certain end-use applications, e.g. indoor or outdoor. As such it proposes an alternate approach for applying a specification adjustment based on unit selling prices. The basis for this approach is not explained or supported by further evidence.

Commission’s response to submissions

Regarding Mien Hua’s claims in relation to packing costs, the Commission refers to the findings contained in sections 3.2.1 and 5.2.1 of Mien Hua’s verification report.⁷⁰ During verification, the Commission found that the packing costs reported by Mien Hua at Appendix B-4 and Appendix D-4 of its questionnaire could not be adequately reconciled to the general ledger data it provided. As a secondary measure, the Commission benchmarked Mien Hua’s packing costs to other exporters, however this failed to establish that Mien Hua’s packing costs were accurate and reliable.

The Commission did however find that the unit packing costs reported at E-1.4 and E-2.7 of its questionnaire response were comparable to other exporter’s packing costs in both the value and configuration of the packing.⁷¹ These other exporter’s also reported the use of stillages for their export sales. The Commission considers that the packing costs reported at E-1.4 and E-2.7 of Mien Hua’s questionnaire response are the most reliable data available and has applied these in Mien Hua’s dumping margin calculation. In doing so, the Commission is satisfied that Mien Hua’s export packing costs cover the cost of stillages.

Mien Hua’s submission in response to SEF 362 fails to provide any further evidence to persuade the Commission to alter its assessment of Mien Hua’s packing costs.

In relation to Mien Hua’s claim for a specification adjustment, the Commission’s assessment of the data which Mien Hua provided in support of its claims is discussed in section 6.6 of its verification report.⁷²

⁷⁰ Case No. 362 Public Record Item No. 69

⁷¹ Case No. 362 Public Record Item No. 22

⁷² Case No. 362 Public Record Item No. 69, p.13.

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Mien Hua's submission in response to SEF 362 does not contain any new information to address the issues with the level and detail of the data assessed during verification.

In the absence of any new information, the Commission has not accepted the claimed specification adjustment.

On a broader level, the Commission was able to identify the total cost of all powder consumed by Mien Hua during the investigation period and reconcile this back to the relevant financial records. For the purpose of assessing Mien Hua's domestic sales in the OCOT, the cost of powder applied in Mien Hua's domestic CTMS data is the weighted average cost of all powder consumed during each quarter of the investigation period.

5.12.5 Dumping margin – Mien Hua

The Commission has calculated the dumping margin for Mien Hua as 11.6 per cent.

5.13 Dumping assessment - GVA (Vietnam)

5.13.1 Verification

Based on the volume of GVA's exports relative to the total export volume during the investigation period and given that GVA did not sell like goods on the domestic market in Vietnam, the Commission elected not to conduct an on-site verification visit at GVA's premises.

The Commission conducted a desktop verification of the data submitted by GVA and is satisfied that the data is reasonably accurate, relevant and complete. This data was used to calculate a dumping margin.

The Commission's verification report is available on the public record.⁷³

5.13.2 Export price

The Commission 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 GVA was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

5.13.3 Normal value

GVA did not sell like goods on the domestic market in Vietnam during the investigation period. The normal value for GVA has been established in accordance with subsection 269TAC(1) based on other seller's domestic sales. As outlined in Chapter 8.2 of the Manual, where an exporter is known to have not made any domestic sales, already

⁷³ Case No. 362 Public Record Item No. 71

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available domestic sales information from other sellers in the country of export will be considered before turning to the other methods for establishing normal value.

The Commission considers that there are suitable and relevant sales made by EAA and Mien Hua of the same finish types of aluminium extrusions (e.g. mill finish, powder coated and anodised aluminium extrusions) at a comparable level of trade as the goods exported to Australia by GVA.⁷⁴ As such, the normal value for GVA has been calculated for each finish type of aluminium extrusions, by taking the weighted average net invoice prices of like goods sold in the ordinary course of trade in arms length transactions at ex-works and at cash terms by other sellers and adding GVA's export related adjustments in accordance with subsection 269TAC(8) to arrive at a normal value at FOB terms.

Adjustments

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

Adjustment Type	Deduction/addition
Export packaging costs	Add export packaging costs
Export inland transport and handling and other charge	Add export inland transport and other charges.

Table 13 - Adjustments to GVA's normal value

Regarding packing cost adjustments, the Commission clarifies that GVA's export packing costs are a weighted average of EAA's and Mien Hua export packing costs. By reference to these costs the Commission is satisfied that GVA's export costs are inclusive of stillage costs. Following publication of SEF 362 the Commission's enquiries with an importer who purchased the goods from GVA further confirmed that it used stillages for its exports to Australia. As a result of the increase in packing costs determined for EAA, GVA's dumping margin has increased by 0.5 per cent.

5.13.4 Submissions in response to SEF 362

GVA

In its 30 April 2017 submission GVA detailed its objections to the Commission's approach to determining its normal value under subsection 269TAC(1) using other seller's data.⁷⁵ GVA claims that it has not been granted an opportunity to properly understand the circumstances of the other seller's domestic sales so that it may present further information relating to the necessary adjustments to account for differences between the other seller's domestic sales and GVA's export sales.

GVA cited the Commission's policy at section 8.2 of the Manual which outlines that:

⁷⁴ To protect the confidentiality of EAA and Mien Hua's data relied upon in GVA's normal value, the Commission has calculated weighted average normal values for each finish type on a quarterly basis and the underlying transactional data has not been provided to GVA.

⁷⁵ Case No. 362 Public Record Item No. 79

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“the Commission will, subject to confidentiality, seek to provide the exporter with information about the other seller’s sales so that the exporter in question might defend its interests. Generally, this will involve identifying that other seller, providing information on the type of products being sold on the domestic market, and the other seller’s domestic distribution methods for level of trade comparisons.”

Also, GVA expands by stating that the Commission is required to have regard to all available and presented information which would require adjustment to ensure proper comparison, including the following seven factors:

- order volumes and associated discounts;
- complexity of profiles and associated production costs;
- overall cost structures due to location of operations;
- differences in payment terms;
- differences in selling costs in the domestic and export markets;
- different VAT implications in the domestic and export markets; and
- sales made at different levels of trade.

Among other things, GVA state that it has requested that the Commission provide sufficient information to allow GVA to understand the other seller’s circumstances to enable specific adjustment claims to be made as mandated by Article 2.4 of the ADA which states that:

“the authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those Parties”.

Commission’s response to submissions

The Commission is satisfied that it has made sufficient information available to GVA to enable it to understand the other seller’s circumstances and make claims regarding due allowance to ensure fair comparison. For example, GVA were provided with the names of the other sellers, EAA and Mien Hua, as well as quarterly weighted average ex-works selling prices of the other seller’s made in the OCOT. There is also further information available on the public record including:

- non-confidential versions of questionnaire responses lodged by EAA and Mien Hua;
- PAD 362;
- a verification report for the other sellers, noting that both reports were placed on the public record prior to verification of GVA’s questionnaire response;
- GVA’s verification report; and
- SEF 362.

GVA is also in possession of the packing cost figure used to determine its normal value. This figure was also based on EAA’s and Mien Hua’s weighted average export packing costs since GVA’s packing costs were found to be unreliable. This finding is contained in GVA’s verification report.

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Aside from claiming it has not been afforded an opportunity to defend its interests, GVA claims that the Commission should consider due allowance for credit terms, level of trade and profile complexity.

It also claims that since it has a different cost base to other exporters who pay Vietnamese VAT on goods and services when GVA does not, due to being located in a designated export processing zone, determining normal value based on other seller's domestic prices is not appropriate.

GVA concludes that the other sellers would have higher domestic selling prices due to their higher cost base and that GVA would achieve higher profits than the other sellers. GVA contends that proper comparison between its export price and a normal value can only be achieved by comparing to a constructed normal value.

The Commission has reviewed the cost data provided by all cooperating exporters from Vietnam. GVA was not observed to be the lowest cost producer. GVA's claims regarding its lower cost base and profits are therefore not supported.

The Commission's practice outlined in section 8.3 of the Manual discusses eight points of consideration regarding the approach to determining an exporter's normal value based on other seller's domestic sales. In relation to the eight points in section 8.3 of the Manual, the Commission has found that:

- the sales and cost data reported by EAA and Mien Hua were relevant, accurate and complete;
- the volume of like goods sold by EAA and Mien Hua in the Vietnamese domestic markets were found to exceed the sales volumes of like goods exported to Australia by GVA thereby satisfying subsection 269TAC(14);
- the other seller's domestic selling prices in OCOT were observed to exceed GVA's export CTMS;
- consideration for a level of trade adjustment are not warranted as a result of the findings made in relation to EAA, whose claim for a volume based level of trade discount adjustment has not been accepted and the finding that Mien Hua did not recognise level of trade in setting prices;
- a separate evaluation of domestic sales reported by both EAA and Mien Hua did not reveal price differences for various customers at different levels of trade; and,
- due allowance for profile complexity has not been accepted by the Commission for any exporter.⁷⁶

Regarding GVA's submission on credit terms, the Commission notes the approach in section 5.13.3 which states that GVA's normal value was based on other seller's domestic prices at ex-works terms on a cash basis. This is equivalent to GVA's export sales terms which are on a L/C at sight basis so due allowance for credit terms is not required. This approach was also outlined in SEF 362.

In conclusion the Commission is satisfied that;

⁷⁶ Submissions received regarding due allowance for profile complexity are addressed in section 5.11.5, pp.44-45.

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- GVA has had access to, or has been in possession of sufficient information, for a significant duration during the investigation, so that it would be able to identify the circumstances of other sellers and was not precluded from defending its interests in relation to due allowance claims; and
- sufficient evidence has been obtained and applied by the Commission from GVA and other relevant sources to allow fair comparison between GVA's export price and normal value.

5.13.5 Dumping margin

The Commission has calculated a dumping margin for GVA of 18.0 per cent.

5.14 Uncooperative and all other exporter dumping margins

As detailed in section 5.4 above, the Commission is treating all exporters of aluminium extrusions from Malaysia and Vietnam in the investigation period other than the cooperating exporters and the category of residual exporters from Malaysia, as uncooperative exporters as defined in subsection 269T(1).

Subsection 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative exporters, export prices are to be calculated under subsection 269TAB(3) and normal values are to be calculated under subsection 269TAC(6).

The Commission has therefore determined an export price pursuant to subsection 269TAB(3) after having regard to all relevant information. Specifically, the Commission has used the lowest of export prices of those that were established for cooperating exporters in the investigation period.

The Commission has determined normal value for the uncooperative exporters pursuant to subsection 269TAC(6) after having regard to all relevant information. Specifically, the Commission has used the highest of normal values of those that were established for the cooperating exporters in the investigation period.

This dumping margin for uncooperative and all other exporters from Malaysia and Vietnam are as follows:

- Malaysia – 13.0 per cent
- Vietnam – 34.9 per cent

5.15 The Commissioner's assessment

The Commissioner has assessed that aluminium extrusions exported to Australia by:

- PMB and Superb were not dumped during the investigation period;
- LBA and the category of 'residual exporters' from Malaysia were at dumped prices during the investigation period, however the dumping margin was negligible;
- EAA, Mien Hua, GVA and the category of 'uncooperative and all other exporters' from Malaysia and Vietnam were at dumped prices where the dumping margin was not negligible.

A summary of the Commission's preliminary dumping margins are set out in Table 14.

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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%
	Uncooperative and All Other Exporters	13.0%
Vietnam	East Asia Aluminium Company Ltd	7.7%
	Mien Hua Precision Mechanical Co., Ltd	11.6%
	Global Vietnam Aluminium Co., Ltd	18.0%
	Uncooperative and All Other Exporters	34.9%

Table 14 - Dumping margins

5.16 Volume of dumped imports

Pursuant to subsection 269TDA(3), 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 dumped is a negligible volume. Subsection 269TDA(4) defines a negligible volume as less than three per cent of the total volume of goods imported into Australia over the investigation period if subsection 269TDA(5)(c) does not apply. Pursuant to subsection 269TDA(6), the volume of goods at negligible dumping margins are not prevented from being taken into account for the purposes of subsection 269TDA(3).

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 dumped goods from each of Malaysia and Vietnam was greater than three per cent of the total import volume and is therefore not negligible.

6 SUBSIDY INVESTIGATION

6.1 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;⁷⁷ 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.

6.2 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;

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.

⁷⁷ Subsection 269TDA(16).

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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.

6.3 Malaysia

6.3.1 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.

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A questionnaire response was received from the GOM on 6 October 2016.⁷⁸ 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.⁷⁹

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.⁸⁰

6.3.2 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.

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 2016.⁸¹ Therefore, despite PMBTU's eligibility for Program 1,

⁷⁸ Case No. 362 Public Record Item No. 27

⁷⁹ GOM Questionnaire Response, Section C-1.1(e), p.43.

⁸⁰ Case No. 362 Public Record Item No. 73

⁸¹ 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)

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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

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.

6.3.3 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.

6.3.4 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

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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.

6.3.5 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.

6.3.6 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'.⁸² 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.

6.3.7 Non-cooperative entities - Malaysia

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 Malaysia have received the highest level of subsidisation of the selected cooperating exporters. Inputs to the subsidy margin calculation include a unit of measure (sales volume) and export price which were based on the lowest amounts of the selected cooperating exporters.

Subsidy margin

The Commission has calculated a subsidy margin for exporters in the non-cooperative entity category from Malaysia of 3.24 per cent.

6.4 Vietnam

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

- **Program 1** – Preferential Import Tariffs;
- **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 2016.⁸³

6.4.1 EAA

Program 1: Preferential Import Tariffs

⁸² Case No. 362 Public Record Item No. 78

⁸³ Case No. 362 Public Record Item No. 31

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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

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.

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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.

6.4.2 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.

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.

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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.

6.4.3 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

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.

6.4.4 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.

6.5 Subsidy margins

The following table summarises the subsidy margins calculated 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%
	Non-cooperative and all other entities	3.24%
Vietnam	East Asia Aluminium Company Ltd	0.03%
	Mien Hua Precision Mechanical Co., Ltd	N/A
	Global Vietnam Aluminium Co., Ltd	0.02%
	Non-cooperative and all other entities	0.08%

Table 15 - Subsidy margins

6.6 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

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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.

7 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

7.1 Findings

The Commissioner has considered the relevant facts and has found that the Australian industry has experienced injury in the form of:

- price depression;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced capital expenditure;
- increased closing stock levels; and
- reduced ROI.

7.2 Introduction and approach to injury analysis

7.2.1 Legislative background

Under sections 269TG, 269TJ and 269TJA, one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty and/or countervailing duty notice is that the Australian industry has experienced material injury.⁸⁴

The matters that may be considered in determining whether the industry has experienced material injury are set out in section 269TAE.

In assessing material injury, the Commission also has regard to the *Ministerial Direction on Material Injury 2012* (Material Injury Direction).⁸⁵

7.2.2 Background

Capral alleges that the Australian industry has experienced material injury caused by exports of aluminium extrusions to Australia from Malaysia and Vietnam at dumped and subsidised prices. Capral alleges that the Australian industry has been injured through:

- price suppression;
- loss of profits;
- reduced profitability;
- reduced capital expenditure;
- reduced ROI; and
- increased closing stocks.

⁸⁴ Section 269TJA relates to concurrent dumping and countervailable subsidisation. This provision provides that, where goods are both dumped and subsidised, and because of the combined effects of the dumping and the amount of countervailable subsidy received in respect of the goods material injury to an Australian industry producing like goods has been or is being caused, the Parliamentary Secretary may publish a notice under either subsection 269TG(1), 269TJ(1), or notices under both subsections 269TG(1) and 269TJ(1) at the same time. Section 269TJA is relevant in this investigation due to the combined effects of dumping and subsidisation in relation to goods exported to Australia from Malaysia by certain exporters.

⁸⁵ Ministerial Direction on Material Injury 2012, 27 April 2012, available at www.adcomission.gov.au

As part of its application, Capral provided its sales and cost data relating to its sales of aluminium extrusions.

Following initiation of the investigation, the Commission sought sales and cost data from other Australian aluminium extrusion producers. The Commission received responses from INEX and G James. The Commission considers that there is an appropriate representation of the Australian industry (approximately 72 per cent of Australian production of like goods) and the Commission has aggregated Capral, INEX and G James' data.

This chapter analyses the economic condition of the aggregated Australian industry and provides an assessment as to whether the Australian industry has experienced injury.

All figures below compare years ending 30 June, unless otherwise specified.

7.2.3 Commencement of injury

At the initiation of the investigation, the injury analysis period was set to start from July 2012. However, the Commission considers that it is necessary to analyse the Australian industry's data by keeping in mind Capral's claims that:

*"The injury from the dumping and subsidised exports from Malaysia commenced following the imposition of measures on exports from China in 2009. The level of injury escalated as volumes from Vietnam increased in 2013/14. 'Material' injury from the dumped and subsidised exports commenced in 2015/16."*⁸⁶

Therefore, the Commission focused mostly on data relating to the investigation period for the purposes of injury assessment and has mostly used the data relating to prior periods for context.

7.3 Volume effects

Capral did not claim lost sales volume or lost market share as an injury factor in its application. However, the Commission has prepared the following volume analysis for context.

7.3.1 Sales volume

The Australian industry's sales volumes of all finish types of aluminium extrusions on the Australian domestic market for the injury analysis period is illustrated below in Figure 3. Figure 3 shows that the Australian industry achieved year on year growth in sales volumes across the injury analysis period. Overall, the Australian industry's sales volumes increased by approximately 18 per cent across the injury analysis period.

⁸⁶ Further discussion of Capral's claims is at section 8.3.

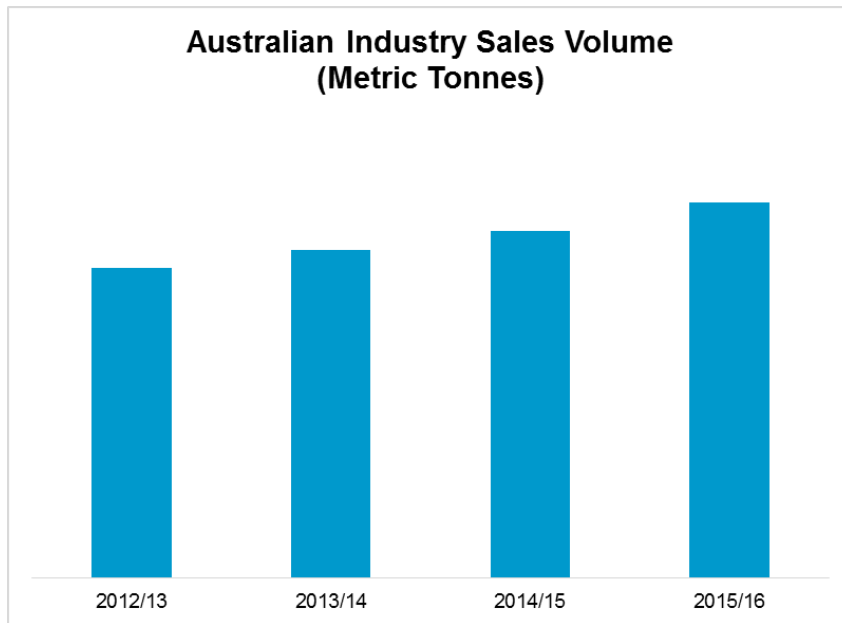


Figure 3 - Australian industry sales volume

7.3.2 Market share

Figure 4 below illustrates the Australian market share of aluminium extrusions during the injury analysis period. Figure 4 shows that the Australian industry has experienced year on year growth in market share across the injury analysis period. The market share of aluminium extrusions sourced from Malaysia and Vietnam have also increased over the injury analysis period, with:

- Malaysian market share increasing from 6.4 per cent to 7.1 per cent; and
- Vietnamese market share increasing from 0.2 per cent to 3.8 per cent.

In contrast, Chinese market share decreased from 22.7 per cent to 18.3 per cent.

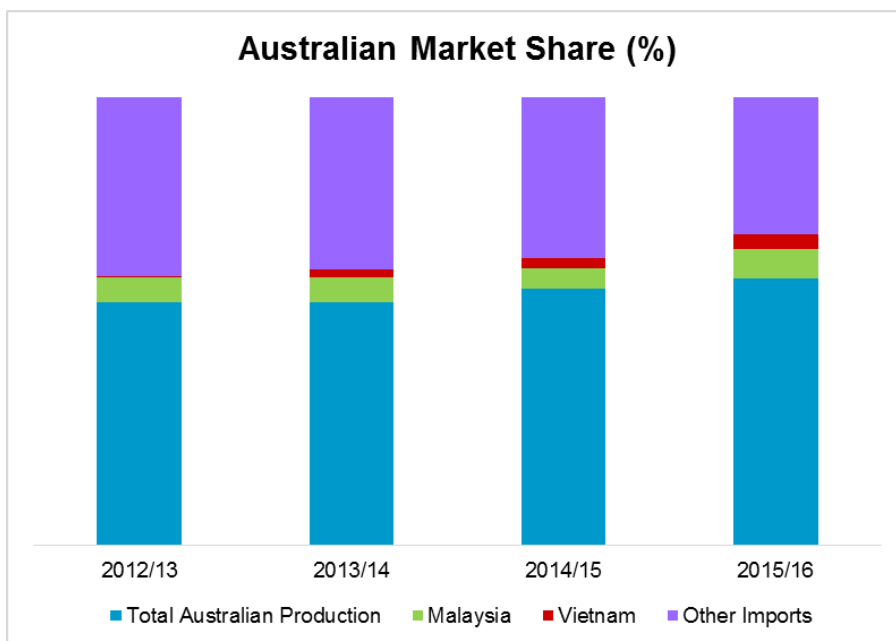


Figure 4 - Australian market share

7.3.3 Conclusion – volume effects

Based on the above analysis, the Commission considers that the Australian industry has not experienced injury in terms of lost sales volumes or lost market share.

7.4 Price effects

7.4.1 Price depression

Price depression occurs when a company, for some reason, lowers its prices.

As indicated in Figure 5 below, the Australian industry’s unit sales price increased marginally over the injury analysis period, but declined in the investigation period, which is indicative of price depression.

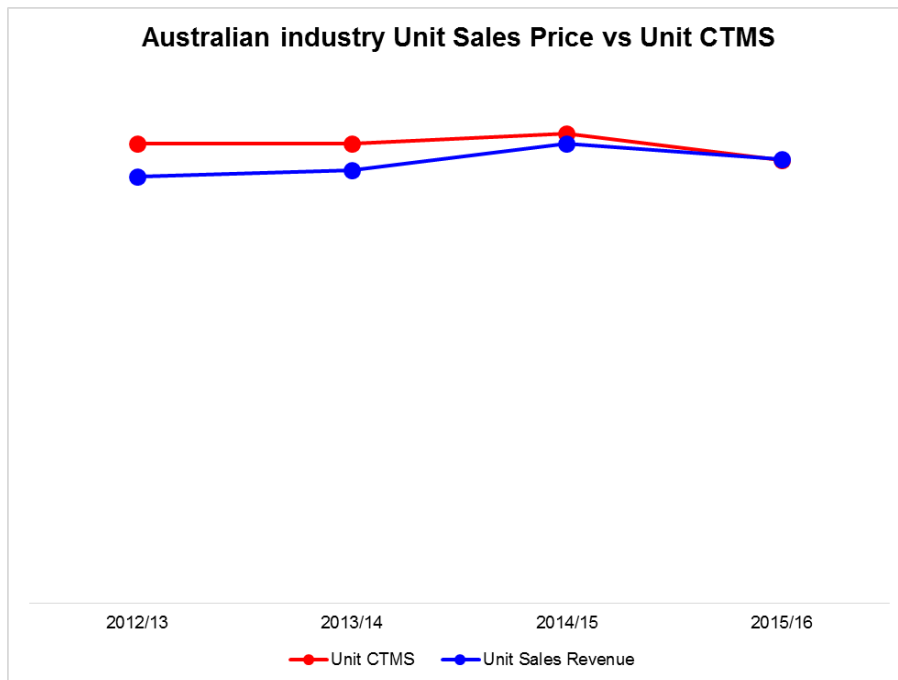


Figure 5 - Australian industry unit sales prices vs unit CTMS

7.4.2 Price suppression

Price suppression occurs when price increases, which otherwise would have occurred, have been prevented.

In determining whether price suppression has occurred, the Commission has:

- compared the Australian industry’s sales prices with costs to assess the relative movements over time; and
- assessed whether the prices for the Australian industry’s product are lower than prices that may have been achieved in the absence of dumping and subsidisation from Malaysia and dumping from Vietnam.

Figure 5 shows movements in the Australian industry’s domestic weighted average unit CTMS and unit sales prices for all finish types of aluminium extrusions over the injury analysis period.

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Figure 5 illustrates that Australian industry's unit CTMS exceeded its unit sales price for the first three years of the injury analysis period, however the difference between unit CTMS and unit sales price reduced during the injury analysis period ending with the Australian industry being marginally profitable in the investigation period.

Figure 5 also illustrates that unit sales prices increased in the first three years of the injury analysis period. However both unit sales price and unit CTMS reduced in the investigation period, and the reduction in unit CTMS was greater than the reduction in unit sales prices.

As is outlined further in Chapter 8, the Australian industry's unit sales prices have not maintained 2014/15 levels into the investigation period, therefore any benefit that may have been realised by the Australian industry achieving cost reductions has been partially offset by downward pressure on prices.

7.4.3 Conclusion – price effects

Based on the analysis above, the Commission is satisfied that the Australian industry has experienced injury in the form of price depression and price suppression.

7.5 Profits effects

7.5.1 Loss of profits and profitability

The Australian industry's profit and profitability across the injury analysis period is depicted in Figure 6 below.

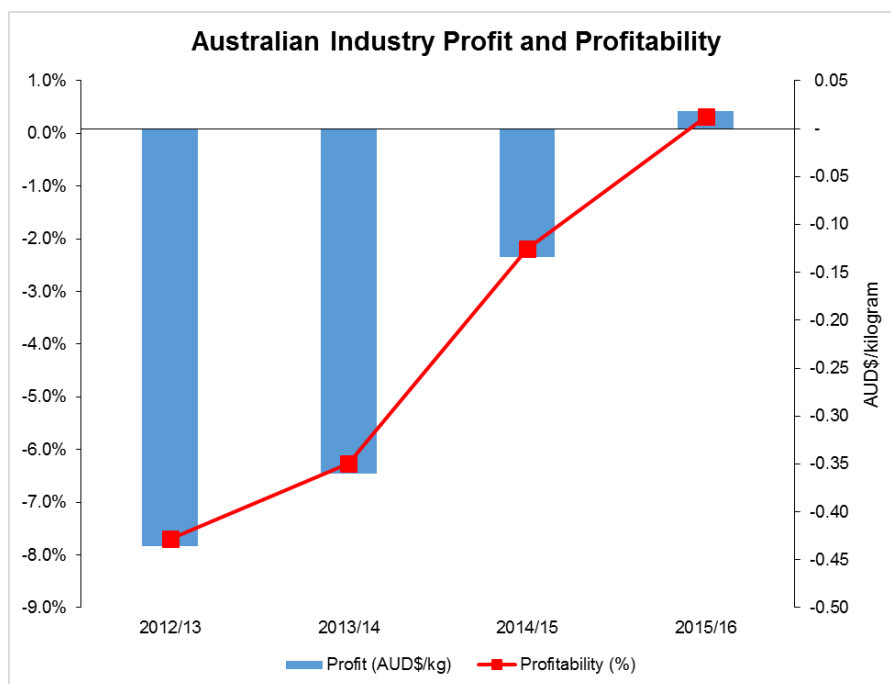


Figure 6 - Australian industry profit and profitability

Subsection 269TAE(3)(e) refers to the level of profits earned in an industry as a relevant economic factor that may be considered in assessing material injury.

Commensurate with the data illustrated in Figure 6, the Australian industry's sales of aluminium extrusions in the investigation period were profitable. However, the profit margin was less than 0.5 per cent. The Commission does not consider this level of profit is sufficient to allow Australian industry to re-invest in its business.

The Commission also notes that the profit margin achieved by the Australian industry in the investigation period is due in part to its cost reductions. If the downward trend in sales prices in the period between 2014/15 and 2015/16 was to continue, then the Australian industry will return to incurring losses. Whilst it is difficult to predict whether the Australian industry could offset continued price reductions by further reducing cost, the Commission observes that Australian industry's CTMS levels shown in the investigation period are similar to those reported for 2012/13 and 2013/14.

7.5.2 Conclusion – profit effects

The Commission is satisfied that Australian industry has experienced injury in the form of loss of profit and reduced profitability due to its depressed and suppressed sales prices in the investigation period.

7.6 Other economic factors

7.6.1 Revenue

Consistent with the increase in sales volume across the injury analysis period, the Australian industry's sales revenue increased by approximately 33 per cent during the injury analysis period.

7.6.2 Employment numbers

Data provided by the Australian industry shows an increase of approximately 20 per cent in employment numbers in the manufacture of aluminium extrusions in Australia throughout the injury analysis period.

7.6.3 Capacity and capacity utilisation

The total capacity of the Australian industry remained steady across the injury analysis period. Capacity utilisation has increased from approximately 65 per cent in 2012/13 to approximately 81 per cent in the investigation period. The increase in capacity utilisation is expected as a result of the increase in Australian industry sales volumes in recent years.

7.6.4 Reduced capital expenditure

The Australian industry reported varying levels of capital expenditure through the injury analysis period. As a whole, the Australian industry reported capital expenditure of less than 2 per cent of revenue. The Commission found that capital expenditure levels were mostly attributed to the purchase and replacement of extrusion dies with the remainder limited to maintaining existing operations rather than undertaking major improvements to facilities.

The evidence presented by the Australian industry regarding injury in the form of reduced capital expenditure was not persuasive to the extent that it did not outline future plans and

strategies which would be implemented if economic conditions improved or if dumped and subsidised goods were no longer present on the Australian market. As a result the Commission has found it difficult to gauge what an appropriate level of capital expenditure would be in order to conclude whether injury has occurred.

However, the Commission has had regard to the Australian industry's manufacturing capacity, capacity utilisation levels and profits as secondary indicators of whether or not the potential for increased levels of capital expenditure exist.

The Commission has observed that the Australian industry's capacity levels have remained unchanged over the injury analysis period. Submissions made to the Commission highlight that the Australian industry invested in new and replacement extrusion press capacity prior to the beginning of the injury analysis period.

The Commission has further observed that since 2012/13, the Australian industry generally has achieved greater levels of capacity utilisation which by the investigation period had reached over 80 per cent. At these levels the Commission considers that manufacturers would be contemplating introducing new capacity or updating existing capacity with more efficient plant and equipment.

Referring to the Australian industry's profitability, the Commission finds that a lack of profitable trading for extended periods in the injury analysis period has precluded the Australian industry from committing to capital expenditure in the investigation period outside of maintaining ongoing existing operations. The Commission is therefore satisfied that the Australian industry has experienced injury in the form of reduced capital expenditure.

7.6.5 Reduced ROI

Figure 7 below shows the aggregated ROI performance for the Australian industry in the injury analysis period. The ROI has been presented using the operating income divided by revenue method. A poor ROI is an indicator that a company may be unable to commit to increased capital investment, attract funding or increase its share price.

Commensurate with the data illustrated at Figures 5 and 6, the Australian industry had not achieved a positive ROI up to the period ending 30 June 2015. Given the Australian industry has experienced loss of profits and reduced profitability, the Commission is therefore satisfied that the Australian industry has suffered injury in the form of reduced ROI.

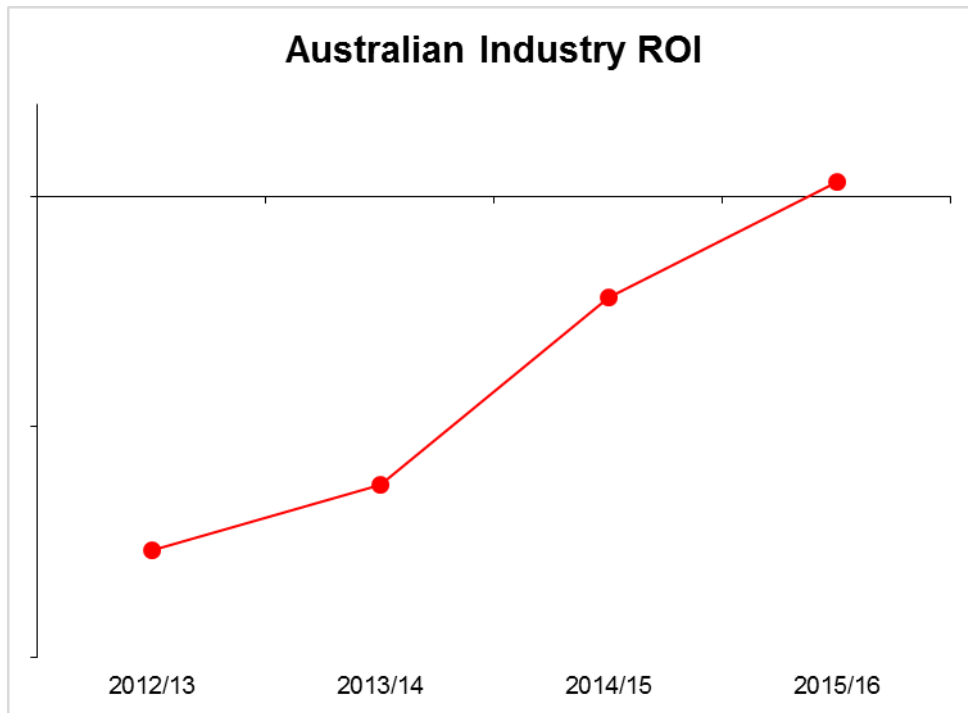


Figure 7 - Australian industry ROI

7.6.6 Increased closing stock levels

In Capral's application it claimed injury had occurred in the form of increasing closing stock levels. The Commission obtained closing stock level data from all three Australian industry participants.

Figure 8 below shows that closing stock levels have increased generally over the injury analysis period. However, in relative terms, closing stock levels in the investigation period improved in comparison to the prior year. This observation is particularly relevant in the context that Capral has stated in its application the injury due to dumped and subsidised goods arriving from Malaysia and Vietnam commenced in 2015/16.

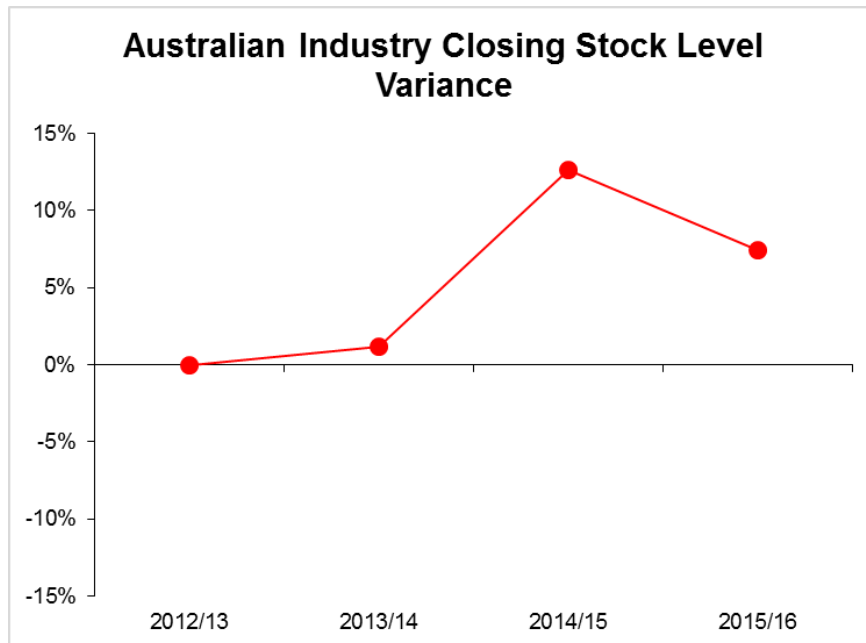


Figure 8 - Australian industry closing stock level variance

In discussions with Capral it reiterated that in the South East Asia and Australia region, aluminium extrusion and billet is priced with reference to the LME primary aluminium price, MJP premium and a billet premium. Injury in the form of closing stock levels occurs in a falling market when manufacturers incur expenses due to downwards revaluations on raw material stocks and finished goods stocks and are unable to recover these costs in the price for finished goods. This form of injury is further compounded in a falling market when manufacturers are required to hold stock for longer periods leading to disparity between selling prices and the prices paid of raw material purchases.

The Commission is of the view that higher closing stock levels alone are not a primary indicator of injury and should be viewed in the context of gains and losses as a result of revaluations on assets. In relation to Capral's particular circumstances, the Commission obtained detailed information from Capral to ascertain whether injury due to closing stock levels had occurred. This information involved a comparison between monthly purchases of raw materials and production output, the movement in the LME and MJP price, analysis of sales volumes of finished goods and an examination of the relevant accounts from Capral's general ledger.

The Commission found that as a result of finished goods and raw material stock on hand revaluations, Capral had realised a net loss on revaluations during the investigation period. In the prior period, 2014/15, Capral reported net gain however this gain was wholly offset in the following period by revaluation losses. Overall, Capral realised a net loss on revaluations during the injury analysis period however the largest loss was reported in the investigation period. For the purpose of identifying injury, the Commission is satisfied that Capral, and by reference to it, the Australian industry, has experienced injury in the form of increased closing stock levels. Further analysis of the causes of this form of injury is provided in the following chapter.

7.6.7 Cash flow

Consistent with a year on year growth in sales revenue across the injury period, the Australian injury has reported a steady increase in inventory turnover and accounts receivables. Receivables turnover throughout the injury period has remained relatively steady.

7.7 Finding

The Commissioner has considered the relevant facts and has found that the Australian industry has experienced injury in the form of:

- price depression;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced capital expenditure;
- reduced ROI; and
- increased closing stocks.

8 HAS DUMPING AND SUBSIDISATION CAUSED MATERIAL INJURY?

8.1 Finding

The Commissioner is satisfied that the Australian industry has experienced injury as a result of the export of aluminium extrusions at dumped and subsidised prices from Malaysia and dumped prices from Vietnam in the forms of:

- price depression;
- price suppression;
- reduced profits and profitability; and
- reduced capital expenditure.

The Commissioner is satisfied that the injury from the dumped and subsidised goods is material, particularly because the Australian industry would have achieved higher prices and profits in the absence of exports of aluminium extrusions at dumped and subsidised prices from Malaysia and dumped prices from Vietnam.

8.2 Cumulative effects of exportations

8.2.1 Legislative framework

Before considering whether injury has been caused by dumping and subsidisation, the Commission has first considered whether this analysis should be undertaken on a cumulative basis. Subsection 269TAE(2C) sets out the requirements for assessing the cumulative effects of goods exported to Australia from different countries.

In relation to a dumping investigation, where exports from more than one country are the subject of investigations resulting from applications under section 269TB that were lodged on the same day (as is the case in this investigation), the cumulative effects of such imports may be assessed if:

- the margin of dumping established for exporters in each country is not negligible; and
- the volume of imports from each country is not negligible; and
- cumulative assessment is appropriate having regard to the conditions of competition between the imported goods and between the imported goods and like goods that are domestically produced.

Similarly, subsection 269TAE(2C)(da) also allows cumulation of subsidised exports if the amount of the countervailable subsidy is not negligible and the volume of subsidised imports from each country is not negligible.

8.2.2 Dumping and subsidy margins

As outlined in chapter 5, the Commission has established that the margin of dumping for the exporters in the non-cooperative entities category (13.0 per cent) from Malaysia and all exporters from Vietnam (ranging between 7.7 per cent and 34.9 per cent) were not negligible.

As outlined in chapter 6, the Commission established that the amount of subsidisation for the exporters in the non-cooperative entities category Malaysia (3.24 per cent) was not negligible.

8.2.3 Import volumes

As outlined at sections 5.16 and 6.6, the volume of dumped imports from each country was not negligible and that the volume of subsidised imports from Malaysia was not negligible.

8.2.4 Conditions of competition – Malaysia and Vietnam

The Commission has considered whether the conditions of competition between aluminium extrusions imported from Malaysia and Vietnam, and domestically produced aluminium extrusions and the aluminium extrusions imported from Malaysia and Vietnam are similar.

Relying on a comparison of sales data provided by exporters and importers who submitted questionnaire responses and the Australian industry's sales data, the Commission has established that imported aluminium extrusions from Malaysia and Vietnam and domestically produced aluminium extrusions were sold into similar market segments during the investigation period.

The Commission also observed in the sales data that the same customers had purchased extrusions sourced from both Australian industry and from Malaysian and Vietnamese suppliers either directly or through an importer. This particular buying behaviour is commonly referred to as 'dual sourcing'. The Commission also understands that purchasers of aluminium extrusions can readily switch suppliers if lower priced offers become available in the market. However, it is also evident that price is not always the only factor in a purchaser's buying decision.

It should be noted that aluminium extrusions are produced not only in certain finishes, but also in a vast range of cross sections (in the many 000s) so analysis of the type of cross section desired by a customer is not practical. The Commission has however been able to assess the market in terms of customer type. The Commission has identified at least four main customer segments: large window and door, general industrial, fabricators and distributors. The Commission has established that imports of aluminium extrusions sourced from exporters in Malaysia and Vietnam were predominantly sold into each of the main customer segments that have been identified during the investigation.

The Commission considers that, due to the degree of price sensitivity in the market, price competition is a major condition of competition between the imported goods and between the imported goods and the domestically produced goods. Further, market volume analysis indicates the volumes of domestically produced and imported aluminium extrusions from each of the nominated countries are large enough to materially impact on competition in the market place.

8.2.5 The Commissioner’s assessment – cumulative effect of exports

The Commission considers the requirements of subsection 269TAE(2C) are met and that it is appropriate to consider the cumulative effect of the dumped and subsidised exports from Malaysia and dumped exports from Vietnam.

8.3 Approach to causation analysis

As outlined in chapter 7, the Commission considers that the Australian industry has experienced injury. This injury has coincided with the presence of dumped and subsidised goods from Malaysia and dumped goods from Vietnam.

This chapter will analyse whether injury to the Australian industry was caused by dumping and subsidisation and whether that injury is material.

In assessing the materiality of injury, the Commission notes chapter 21 of the Manual, which states that causal effects may be examined using what is termed a ‘coincidence’ analysis; by comparing the state of the Australian industry in the investigation period to a point in time prior to the injury having commenced; or using a ‘but for’ analytical method.

In its application, Capral stated that it experienced ongoing material injury during the injury analysis period, due to the circumvention of anti-dumping measures, which were imposed in 2010, by PanAsia. Capral state that the circumvention activities were not addressed until an anti-circumvention inquiry was completed in February 2015, the year immediately preceding the investigation period. Capral claims that despite the positive outcome of the anti-circumvention inquiry, the state of the Australian industry has improved but has not recovered as expected in the investigation period, due to the emergence of dumped and subsidised imports from Malaysia and dumped imports from Vietnam.

The Commission considers that Capral’s claims are supported by evidence because, following the anti-circumvention inquiry, as outlined at section 4.7, Chinese exports to Australia decreased in comparison to the increased Malaysian and Vietnamese exports to Australia in an expanding market. Capral has also acknowledged that the outcomes of Review No. 248 (which concluded in August 2015) led to some improvement to its profit levels.⁸⁷ As outlined in the table below, with the exception of one exporter, Review No. 248 resulted in increased anti-dumping measures against Chinese exporters.

Exporter	Original Measures	REP 241	Current Measures
Kam Kiu	2.1%	N/A	22.2%
PanAsia	10.1%	57.6%	21.8%
Guang Ya Aluminium Industries Co Ltd	N/A	N/A	4.5%
Guangdong Zhongya	7.6%	N/A	0.6%
Residual exporters	8.2%	N/A	17.5%
Uncooperative and all other exporters	27.6%	N/A	48.4%

Table 16 - Chinese anti-dumping measures

⁸⁷ www.capral.com.au/ArticleDocuments/238/Annual%20Report%202016.pdf.aspx

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A timeline showing the investigation periods and publication dates of various findings during the injury analysis period is provided in Figure 9 below.

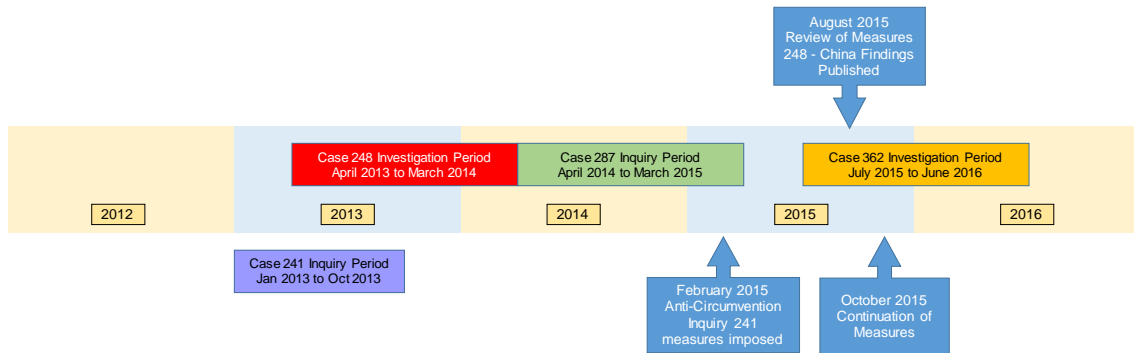


Figure 9 - Aluminium extrusions anti-dumping measures timeline

The existence of such events throughout the injury analysis period, can make it difficult for the Commission to assess the materiality of injury using a ‘coincidence analysis’.

Where a ‘coincidence analysis’ is not possible, the Commission may undertake an alternate analytical method, such as a ‘but for’ analysis, when examining causal effects. Under a ‘but for’ analytical analysis it may be possible to compare the current state of the Australian industry to the state that the Australian industry would likely have been in if there had been no dumping and/or subsidisation.

Noting the effects of Chinese exports of the goods on earlier years of the injury analysis period, in this instance the Commission has, where necessary, conducted a ‘but for’ analysis to determine what the economic condition of the Australian industry, for example, in terms of prices and profits, would have been if aluminium extrusions were not exported from Malaysia at dumped and subsidised prices and from Vietnam at dumped prices.

A but for analysis is supported by the Material Injury Direction which states that in cases where it is asserted that the Australian industry would have been more prosperous if not for the presence of dumped or subsidised goods, the Commissioner is directed to be mindful that a decline in the Australian industry’s rate of growth may be just as relevant as the movement of an industry from growth to decline.

The Commission’s but for analysis is supported by evidence including:

- verified sales data from the Australian industry to determine sales volumes and sales prices it achieved;
- evidence of market intelligence related to price offers in the Australian aluminium extrusions market;
- verified information from the Australian industry, importers and exporters of aluminium extrusions to determine the competitive market conditions and practices, dumping and subsidy margins and price setting processes;
- production, revenue and cost data from the Australian industry to determine production levels and profitability it achieved;
- the Australian industry’s target profits and returns;
- information from the ABF import database to determine exporters, importers, import volumes, export prices and terms of export; and
- information from past anti-dumping cases involving Chinese exports.

8.4 Size of the dumping and subsidy margins

8.4.1 Dumping margins

Subsection 269TAE(1)(aa) provides that regard may be given to the size of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia.

With the exception of PMB, LBA, Superb and the category of residual exporters from Malaysia, the dumping margins outlined above at section 5.15, ranging between 7.7 per cent and 34.9 per cent are above negligible levels (i.e. above 2 per cent). The magnitude of dumping provided exporters with the ability to offer aluminium extrusions to importers at lower prices than would otherwise have been the case, as is demonstrated in the price undercutting analysis at section 8.6.

8.4.2 Subsidy margins

Subsection 269TAE(1)(ab) provides that regard may be given to the particulars of any countervailable subsidy received in respect of the goods exported to Australia.

The subsidy margin of exporters in the non-cooperative category from Malaysia has been assessed as 3.24 per cent. When considered together with the dumping margin for the category of uncooperative and all other exporters, the particulars of the countervailable subsidies received are considered to contribute to exporters' ability to offer aluminium extrusions to importers at lower prices than would otherwise have been the case, as is demonstrated in the price undercutting analysis at section 8.6.

8.5 Volume effects

As noted above, the Commission found that market share and sales volumes of the Australian industry increased over the injury analysis period, and that the Australian industry remains the major avenue of aluminium extrusions to the Australian market. As such, the Commissioner does not consider that aluminium extrusions exported from Malaysia at dumped and subsidised prices and Vietnam at dumped prices have caused injury to the Australian industry in the form of volume effects.

The Commission considers that Malaysian and Vietnamese exports have displaced other export sources of aluminium extrusions, e.g. China and other countries as opposed to capturing market share from the Australian industry.

The Commission also notes that the Australian market for aluminium extrusions appears to have expanded over the injury analysis period. In accordance with the Material Injury Direction, anti-dumping action is possible in cases where an industry is expanding and dumping or subsidisation has slowed the rate of the industry's growth without causing it to contract.

Whilst the Australian industry has not experienced injury in terms of lost sales volume or loss of market share, the Commission considers that the volume of dumped and subsidised imports from Malaysia and dumped imports from Vietnam (at approximately 18.5 per cent of total imports) are substantial enough to have impacted the Australian industry's sales prices and profit as outlined below. Therefore, the Commission is

satisfied that the increased volumes achieved by the Australian industry do not detract from the below findings in regard to price and profit.

8.6 Price undercutting

8.6.1 Background

Price undercutting occurs when imported goods are sold at a price below that of the Australian produced like goods. The Commission has conducted an analysis of price undercutting based on verified sales data sourced from cooperating importers, data from the ABF import database and data provided by the Australian industry (the vast majority of which has been verified). All sales price comparisons in this chapter are on a free into store (FIS) basis.

8.6.2 Price undercutting – all finish types

Vietnam

The Commission compared the weighted average sales prices of dumped goods imported by one of the cooperating importers who sourced aluminium extrusions from Vietnam with the Australian industry's weighted average sales prices for aluminium extrusions over the investigation period. This cooperating importer accounts for approximately 90 per cent of aluminium extrusions imported from Vietnam.

The volume of dumped goods from Vietnam accounts for approximately 11 per cent of total imports to Australia and is therefore relevant to the causation analysis.

Malaysia

Given that none of the selected cooperating exporters or residual exporters were found to be dumping or in receipt of subsidies at above de minimis levels, to assess the level of price undercutting in relation to dumped and subsidised goods imported from exporters from Malaysia who are in the uncooperative and all other exporters, and non-cooperative and all other entities category, the Commission has relied on the ABF import database to obtain FOB prices and other relevant information such as verified importation costs from Malaysia to derive an Australian FIS sales price.

The volume of dumped and subsidised goods imported from Malaysia accounts for approximately 38 per cent of all aluminium extrusions imported from Malaysia and accounts for approximately 7.5 per cent of total imports to Australia and is therefore relevant to the causation analysis.

Level of undercutting

Figure 10 below shows the weighted average sales prices of the Australian industry and imports from Malaysia and Vietnam, for all finish types. Figure 10 shows that the sales price of goods sourced from Malaysia and Vietnam have undercut the Australian industry's sales prices.

It also shows that whilst goods sourced from Vietnam have undercut Australian industry's prices at a consistent level, undercutting in relation to goods sourced from Malaysia has fluctuated. For the majority of the investigation period, Vietnamese prices were the

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lowest. In the last four months of the investigation period the level of undercutting in relation to dumped and subsidised goods from Malaysia was similar to the dumped goods from Vietnam.

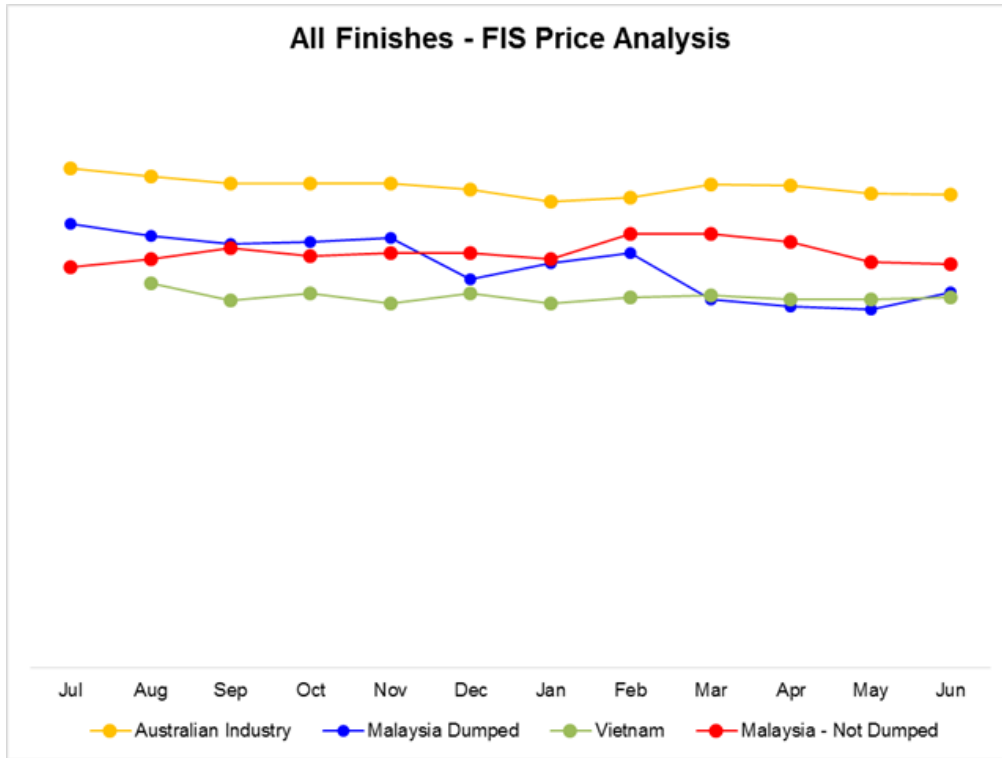


Figure 10 - Price Undercutting Analysis

The Commission observed that price undercutting of dumped exports of goods sourced from Vietnam ranged between 21 per cent and 25 per cent.

The Commission observed that price undercutting of dumped and subsidised exports of goods sourced from Malaysia ranged between 11 per cent and 25 per cent. The dumped and subsidised goods from Malaysia undercut the un-dumped and un-subsidised goods from Malaysia in most months of the investigation period.

The data supports a conclusion that dumped goods sourced from Vietnam and dumped and subsidised goods from Malaysia have undercut the Australian industry’s prices.

8.6.3 Price undercutting – by customer importing from Vietnam

In relation to Vietnamese imports, the Commission is able to undertake a more detailed price undercutting analysis at the customer level, by comparing prices paid to the Australian industry and goods imported from Vietnam by specific customers that dual source aluminium extrusions. The tables below details the Commission’s observations of unit price and the percentage of price undercutting.

					All Mill Finish
Vietnam					

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					All Mill Finish

Table 17 - Unit Price Undercutting Analysis (\$/kg)

					All Mill Finish
	-5%	8%	-4%	-1%	-9%
	-18%	-17%	-23%		-32%
	-9%	-17%	-8%		-18%
					-3%

Table 18 - Price Undercutting Analysis (%)

The Commission has observed that the customers who dual source aluminium extrusions from the Australian industry and from Vietnamese imports, predominately purchase one finish type of aluminium extrusions, being mill finish. The analysis has therefore sought to compare mill finish prices in relation to specific customers and all customers generally.

Mill finish is also the most relevant on the basis that this model represented the vast majority of the importer’s Australian sales and was the model which was most commonly purchased from both the Australian industry and the importer. Customers included in the analysis were selected on the basis that they represented the largest sales volume reported by both the importer and Australian industry. Sales volumes in relation to these customers represented a significant proportion of all extrusions sourced from Vietnam.

Price undercutting in relation to all mill finished extrusions was observed in the range of 3 and 32 per cent. Within the sample of customers selected, price undercutting was observed in the range of no undercutting to undercutting of 23 per cent.

The Commission observed that the Australian industry’s sales prices of mill finish extrusions had not been undercut in relation to one customer included in Table 18. In this instance Australian industry’s price was 8 per cent below the price of the goods sourced from Vietnam.

In addition to the customers contained in Table 17 and Table 18 the Commission reviewed price undercutting in relation to several other customers who purchased from both the Australian industry and sourced goods imported from Vietnam. In this extended sample several instances were observed where Australian industry’s price were between 0.3 per cent and 6.1 per cent above the price of the mill finished extrusions sourced from Vietnam. However, this observation should be contrasted with the observation that the sales volumes in relation to the customers where prices were not undercut represented less than 2 per cent the total Australian market. Overall, the weighted average FIS price of mill finished extrusions sourced from Vietnam consistently undercut the Australian industry’s weighted average sales prices in every month of the investigation period by a weighted average of 15 per cent.

8.6.4 Submissions regarding price undercutting prior to SEF 362

Aus Star Holdings

In its submission of 31 January 2017, ASH, an importer, submits that the price undercutting analysis undertaken in PAD 362 at a FIS level do not provide a meaningful and accurate assessment.⁸⁸ ASH also stated that the complexity of the aluminium extrusions profile would have an effect on a price undercutting analysis.

Commission's response to submissions prior to SEF 363

The Commission's price undercutting analysis in relation to Vietnam at section 8.6.3 sought to compare the prices of goods of the same finish type. ASH's submission implies that most of the extrusions it sources from Vietnam are 'standard/easy profiles'. The Commission is of the view that a comparison of similar finish types, when the data permits, is sufficiently accurate considering the comparisons involved a large volume of goods which include a multitude of different profiles of varying complexities. Further, the complexity of a cross section and how this affects price is somewhat subjective.

The examination of the Australian industry and exporter price lists obtained by the Commission during the investigation revealed that the price of aluminium extrusions are primarily set with reference to the price of aluminium raw materials. Additional price determinants were observed for surface finish, and alloy. However, cross section complexity was not observed to influence price in any price list. The price undercutting analysis in relation to Vietnamese sourced goods is also consistent with the model matching methodology outlined in section 5.6. The Commission is satisfied that comparison at the finish level, when the data permits, best captures price differences.

8.6.5 Submission in response to SEF 362

In its 1 May 2017 submission, ASH raised concerns with the Commission's approach to the price undercutting analysis undertaken in SEF 362 in relation to imports of aluminium extrusions from Vietnam.⁸⁹

The issues raised by ASH include that:

- price undercutting which compares all finishes is inadequate;
- the volume of mill finished extrusions from Vietnam is compared to a disproportionate amount of mill finish sold by the Australian industry;
- the product mix of imports from both Malaysia and Vietnam has caused erratic movements in selling prices from month to month;
- profile complexity has not been taken into account; and
- SEF 362 may not be reliable because there is no explanation as to whether the price undercutting at a customer level took into consideration whether those customers were purchasing similar profiles, e.g. standard vs custom made profiles.

Commission's response to submissions in response to SEF 362

⁸⁸ Case No. 362 Public Record Item No. 57

⁸⁹ Case No. 362 Public Record Item No. 80

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The Commission reiterates that its price undercutting analysis in relation to Vietnam was undertaken at different levels and for the following reasons:

- sales of all finish types - for contextual purposes;
- sales of the finish type which represented the vast majority of goods exported to Australia from Vietnam, e.g. mill finish - to capture the most influential model matching criteria and price determinant; and
- sales of mill finish goods to customers that dual source from Vietnam and the Australian industry - to supplement the existing analysis and to focus on similar terms of trade.

In relation to ASH's claims that profile complexity may have caused an incorrect or misleading analysis, the Commission notes that there are many thousands of potential individual profiles that can fall within the goods definition. These profiles can be delineated in a number of ways including finish, alloy, shape, size, wall thickness, weight, quality, and combinations thereof. In relation to this investigation, profile complexity has not been employed as a key model matching criteria. In relation to Vietnam, the Commission has found that the main model matching criteria is finish type. As discussed earlier, the price undercutting analysis has taken this into account. Notwithstanding that price could also be set with reference to other criteria, for the reasons contained in the Commission's response to submissions regarding profile complexity at section 5.11.6, the Commission is not able to undertake the detailed level of price undercutting put forward by ASH and, as stated in SEF 362, to do so would involve an unacceptable degree of subjectivity.

Given that ASH have not put forward a reasonable basis (supported by evidence) in its submission to achieve the level of detail in the price undercutting analysis considered necessary by ASH, the Commission has adopted the most reasonable approaches available.

The Commission notes that the price undercutting found in relation to Vietnam is significant. For example, in the column at Table 18 marked "All Mill Finish" the Commission observed price undercutting from Vietnamese sourced mill finish goods in the range of 3 to 32 per cent. The price undercutting analysis in relation to mill finish goods covers over 80 per cent of the goods exported to Australia from Vietnam. This volume is relevant and material and is suitably comparable to like goods sold by the Australian industry, of which 65 per cent were mill finish. ASH has not satisfied the Commission that profile complexity accounts for the price undercutting observed.

Following SEF 362, the Commission further analysed the remaining 20 per cent of goods imported from Vietnam and has observed price undercutting in relation to powder coated and anodised goods sold by the Australian industry. This additional analysis shows that Vietnamese imports were also below the prices of goods imported from Malaysia.

8.6.6 The Commissioner's assessment – price undercutting

The Commissioner considers that there is sufficient evidence from the price undercutting analysis to conclude that dumping and subsidisation from Malaysia and dumping from Vietnam at the levels outlined in chapters 5 and 6 respectively created a competitive advantage to importers sourcing goods from Malaysia and Vietnam, and demonstrates

that the Australian industry faced price pressure from the dumped and subsidised imported goods.

8.7 Price effects

8.7.1 Background

The Australian industry has provided comprehensive evidence to the Commission of its price setting practices. At its verification visit, Capral explained that the price suppression it is experiencing is more evident in the 'spread' component of its sales prices. Spread is an amount which is normally inclusive of conversion costs plus an amount for profit and is in addition to the main raw material cost, being aluminium billet. Since the majority of the cost of producing aluminium extrusions is represented by the cost of aluminium billet, which is based on the LME benchmark, MJP premium and a billet premium, aluminium extrusion producers are mainly competing on spread.

This evidence indicates that, in addition to taking into account the cost of raw materials (LME + MJP + billet premium), the Australian industry, in particular Capral, constantly monitors price offerings in the market and that a key determinant for its prices to external customers was the price of imports.

Based on the results of this investigation, as well as previous investigations, reviews and inquiries into aluminium extrusions from China, it has been established that the Australian market for aluminium extrusions is price sensitive. Movements in the price of imported aluminium extrusions are leveraged by customers to negotiate prices with the Australian industry. In order to remain competitive, the Australian industry is required to respond to the price of imports.

The Commissioner is satisfied that prices of aluminium extrusions exported from Vietnam are the lowest in the market and, in a price sensitive market, these imports are having a depressing effect on prices in the overall market, including un-dumped and un-subsidised exports from Malaysia.⁹⁰

8.7.2 FOB export price and import volume comparisons

In Figure 11 and Figure 12 below, the Commission has compared the FOB export prices and import volumes of the goods exported from China, Malaysia and Vietnam over the injury analysis period.

⁹⁰ As outlined in Case No. 362, Public Record item no 54, Capral submits that the price of Vietnamese imports are the lowest in the Australian market and are likely to have influenced the price of Malaysian imports.

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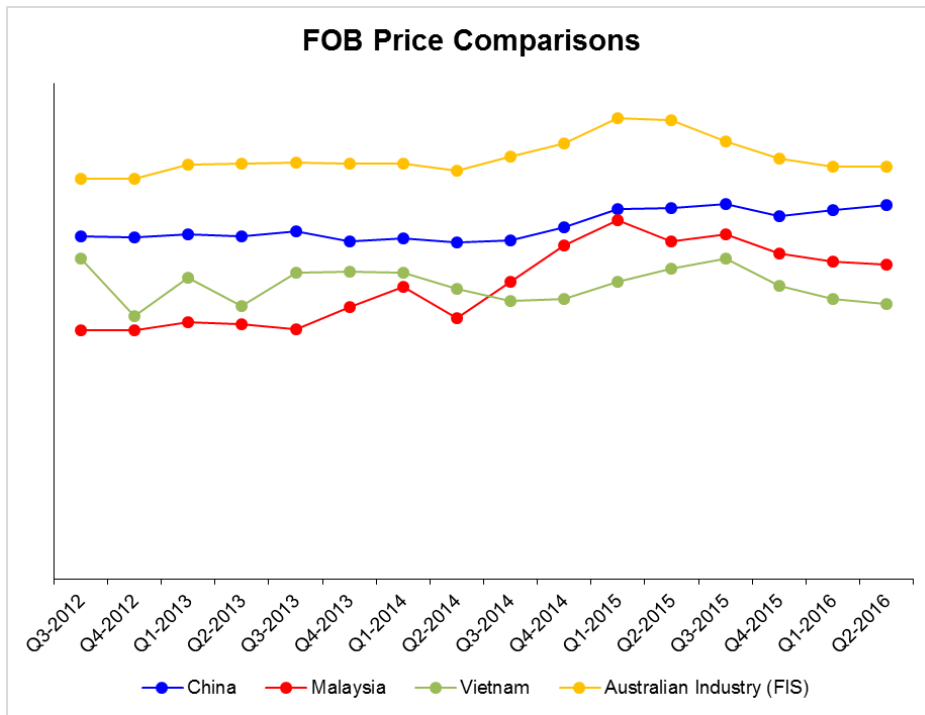


Figure 11 - FOB price comparison ⁹¹

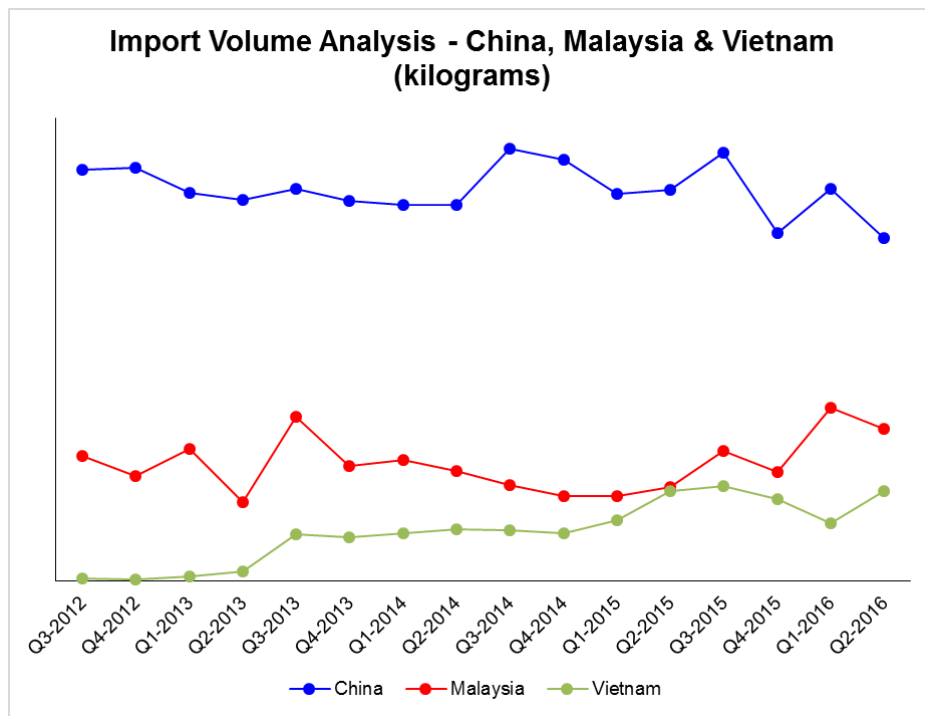


Figure 12 - Quarterly import volumes

Figure 11 shows that FOB export prices for Chinese sourced goods have gradually increased across the injury analysis period, in particular from Q4-2014. In contrast, Figure

⁹¹ Although Australian industry's prices are shown on FIS terms, the Commission has included this data for trend analysis purposes.

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12 shows Chinese import volumes have gradually decreased across the injury analysis period, in particular from Q3-2014 which includes the investigation period.

The FOB export prices for Malaysian sourced goods increased between Q3-2012 and Q1-2015, at which point they were at similar levels as Chinese exports, before decreasing from Q1-2015 to Q2-2016. The trends in the import volumes show that import volumes from Malaysia have steadily increased since Q1-2015.

The FOB export prices for Vietnamese sourced goods fluctuated from Q3-2012 to Q3-2015 at which point they decreased rapidly. Figure 11 shows that the FOB export prices for goods from Vietnam were lower than Malaysian FOB export prices at the same time when the volume of goods from Vietnam increased. The fall in Vietnamese FOB export prices coincides with the outcome of Review 248, which generally saw an increase in anti-dumping measures applicable to exporters from China. Following a period of 18 months of relatively similar trade flows, the volume of goods exported from Vietnam increased in Q1-2015.

During the investigation period, the prices for the Australian industry and Malaysian sourced goods declined in every quarter, following Vietnamese prices.

The analysis of the relative movements in prices and volumes relating to exports from China, Malaysia and Vietnam, in comparison to the Australian industry's prices, shows that:

- Vietnamese prices were the lowest in the investigation period;
- the reduction in the FOB export price of goods from Malaysia from Q2-2015 is likely a reaction to the rapid increase in goods from Vietnam at lower prices;
- cheaper goods from Malaysia and Vietnam have replaced volumes of higher priced goods from China and other countries; and
- the Australian industry's FIS prices appear to have reduced in reaction to lower priced goods from Vietnam and Malaysia.

The above supports a finding that price depression and price suppression has been caused by dumped and subsidised goods from Malaysia and dumped goods from Vietnam.

8.7.3 Conclusion - Price effects

Drawing on the observations made from the data in Figure 11 and Figure 12 the Commission concludes that the presence of large volumes of dumped goods sourced from Vietnam caused price depression and price suppression in the Australian market in the investigation period.

This price depression and price suppression was likely to have been further exacerbated by a reduction in the price of Malaysian sourced goods, which aimed to remain competitive with dumped Vietnamese goods.

The Commissioner considers that the Australian industry would have been able to achieve increased prices in a market not affected by aluminium extrusions exported from Malaysia at dumped and subsidised prices and Vietnam at dumped prices.

8.8 Profit effects

As explained in section 7.4 of this report, the Commissioner has found that the Australian industry has experienced injury in the form of price depression and price suppression and that injury was caused by sales of aluminium extrusions exported from Malaysia at dumped and subsidised prices and Vietnam at dumped prices.

The Australian industry recorded losses over the majority of this injury analysis period and a small profit in the investigation period. Improvements in profits across the injury analysis period were driven in part by the outcomes of an anti-circumvention inquiry and Review 248 in relation to China and by cost efficiencies achieved by the Australian industry.

Injury from price depression and price suppression has in turn impacted negatively on the Australian industry's profits and profitability over the investigation period, as the Commissioner considers that the Australian industry's unit sales revenue would be higher if price suppression and price depression were not occurring.

Based on the price undercutting observed, the dumping and subsidy margins and the price effects experienced by the Australian industry, the Commissioner considers that the Australian industry has experienced injury in the form of loss of profits and reduced profitability and that injury was caused by sales of aluminium extrusions from Malaysia at dumped and subsidised prices and Vietnam at dumped prices.

8.9 Other relevant economic factors

As explained in section 7.6 and based on the causation analysis outlined above, the Commission has found that the Australian industry has experienced injury in the form of other economic factors related to the production of aluminium extrusions.

The Commissioner considers that the link between aluminium extrusions exported from Malaysia at dumped and subsidised prices and Vietnam at dumped prices and injury experienced by Australian industry in the form of price and profit effects has had a negative impact on Australian industry's decisions in respect of other economic factors.

The Commissioner considers that Australian industry has experienced injury in the form of:

- reduced capital expenditure; and
- reduced ROI,

relating to the production of aluminium extrusions and that this injury has been caused by aluminium extrusions exported from Malaysia at dumped and subsidised prices and Vietnam at dumped prices.

However, the Commission does not consider that dumping and subsidisation from Malaysia and dumping from Vietnam was the cause of injury in the form of closing stock levels. The Commission considers that this form of injury factor is a function of sales volume (as noted at section 7.3 volume injury has not been found in relation to this investigation), and movements in the price of aluminium (noting that there is no evidence that this is influenced by dumping and subsidisation from Malaysia and Vietnam).

8.10 Injury caused by factors other than dumping and subsidisation

Subsection 269TAE(2A) requires consideration of whether injury to an Australian industry is being caused or threatened by factors other than the exportation of the goods. This provision contains a list of factors that the Parliamentary Secretary may have regard to when considering whether injury is being caused by factors other than exportation of the goods. This is not an exhaustive list.

During the investigation, the Commission considered the following other possible causes of injury:

- contraction in demand or changes in the pattern of consumption in the Australian market for aluminium extrusions;
- aluminium raw material costs; and
- volume and prices of imports from other countries.

8.10.1 Contraction in demand or changes in the pattern of consumption

Based on the analysis of the Australian industry's sales data and ABF import data the Commission observed year on year growth in sales volumes. In addition, the Commission did not identify any significant changes in the pattern of consumption, e.g. a shift to substitutable products.

The Commission does not consider that contraction in demand or changes in the pattern of consumption were a factor which has caused material injury to Australian industry.

8.10.2 London Metal Exchange prices

In determining whether price depression and price suppression was caused by dumping and subsidisation from Malaysia and dumping from Vietnam, the Commission has attempted to remove the effects that changes in raw material prices, e.g. LME price, the MJP premium and billet premium (which are widely regarded as key determinants for the price of aluminium extrusions) have had on the Australian industry's prices.

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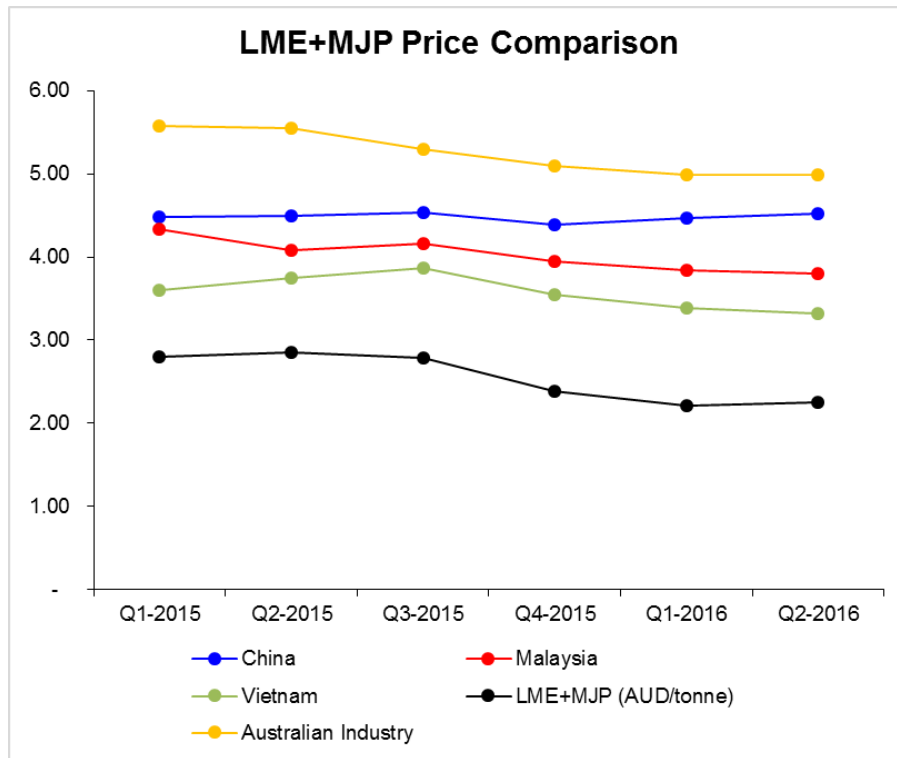


Figure 13 - LME + MJP Price Comparison

Figure 13 above shows that the combined LME+MJP price reduced in Q4-2015 and further reduced by a lesser amount in Q1-2016. The price then increased in Q2-2016.

The FOB price of goods from Malaysia and Vietnam appear to exhibit similar trends to the trend in the LME+MJP price, as does the Australian industry's FIS prices. Figure 13 shows that the LME+MJP price influenced the prices of aluminium extrusions during the investigation period. The price depression observed in the Australian industry's sales prices is partly attributable to the reduction in LME+MJP during the investigation period. However, the Commission notes that, consistent with the Material Injury Direction, dumping and/or subsidisation need not be the sole cause of injury.

Notwithstanding the reduction of raw material prices, the Commission considers that dumping, in particular from Vietnam as the source of the lowest prices in the market, has provided a competitive advantage to importers, which has caused the prices in the Australian market to be suppressed. In the absence of dumping from Vietnam, the Australian industry and importers of the goods would not have had to reduce their prices to the same extent. As such, the Commission considers that the overall LME+MJP price reduction in the investigation period does not, of itself, detract from the overall finding that price depression and price suppression have been caused by dumping and subsidisation from Malaysia and dumping from Vietnam.

8.10.3 Volume and prices of imports from other countries

In its submission of 31 January 2017, ASH submitted that Capral's imports from other countries at prices which are comparable to those for goods from Vietnam and Malaysia are contributing to injury to the Australian industry.⁹²

In a counter submission Capral stated that the proportion of its total company sales sourced from overseas is immaterial.⁹³

The volume of all goods imported by the Australian industry represented approximately 0.5 per cent of the Australian market and approximately 1.6 per cent of total imports in the investigation period.

The estimated FIS price of the goods imported by the Australian industry did not appear to undercut prices for goods produced in Australia.

The Commission notes that apart from China, Malaysia and Vietnam, the next largest volumes of imports is from Indonesia, New Zealand and Thailand. Given the relatively low volumes from those countries, it is unlikely that imports from these countries have impacted materially on prices in the broader Australian market. This is further demonstrated by the FOB export prices recorded in the ABF import database for these three countries, which is above those of Malaysia and Vietnam in the investigation period.

The Commission is therefore satisfied that imports from other countries have not contributed to price suppression due to undercutting.

8.10.4 Other factors raised by Aus Star

In its 31 January 2017 submission, Aus Star claims that the Australian industry is not experiencing injury, and highlighted that:

- Capral reported a profit in its 2016 half year report;
- Capral could shift profit from its manufacturing business to its distribution business;
- the Australian industry has expanded its capacity, which is a sign of confidence and not injury;
- Capral's market share has been eroded by other Australian producers;
- the volumes of the Australian industry have increased; and
- imports from Vietnam were non-existent when Capral's losses were greatest.

In response to Aus Star's submission, the Commission refers to:

- Capral's verification visit report⁹⁴ which outlines that the Commission verified Capral's cost and sales data upwards to financial statements and downwards to source documents, which means that Capral's data is relevant, accurate and complete;

⁹² Case No.362 Public Record Item No. 57

⁹³ Case No.362 Public Record Item No. 61

⁹⁴ Case No. 362, Public Record item no. 74.

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- the findings at section 7.6 which shows that the Australian industry did not increase its production capacity within the injury analysis period and experienced injury in the form of reduced capital expenditure;
- sections 7.2.2 and 8.3 which outline that the Commission's assessment of injury is to the total Australian industry; and
- section 8.7 and 8.8 which found that the Australian industry, despite recording a profit in the investigation period, could have achieved higher prices and profits in the absence of dumped and subsidised goods from Malaysia and dumped goods from Vietnam.

Based on the above, and given other findings in this report, i.e. that dumped goods from Vietnam at low prices and increased volumes have coincided with injury to the Australian industry, the Commission considers that ASH's claims that the Australian industry did not experienced injury are not supported by evidence.

8.11 Materiality of injury

8.11.1 Prices and profits in the absence of dumping

Notwithstanding that the Australian industry was profitable in the investigation period, as noted at section 8.7 the Commissioner has found that the Australian industry would have achieved increased prices in a market not affected by aluminium extrusions exported from Malaysia at dumped and subsidised prices and Vietnam at dumped prices. Figure 14 below illustrates the relationship between the Australian industry's unit sales price and sales volume.

Figure 14 shows that:

- the Australian industry was able to increase its sales volumes in 2012/13, 2013/14 and 2014/15 despite increased unit sales prices in each of those years; and
- the Australian industry's prices reduced in the investigation period which coincided with an increase of dumped goods sourced from Vietnam.

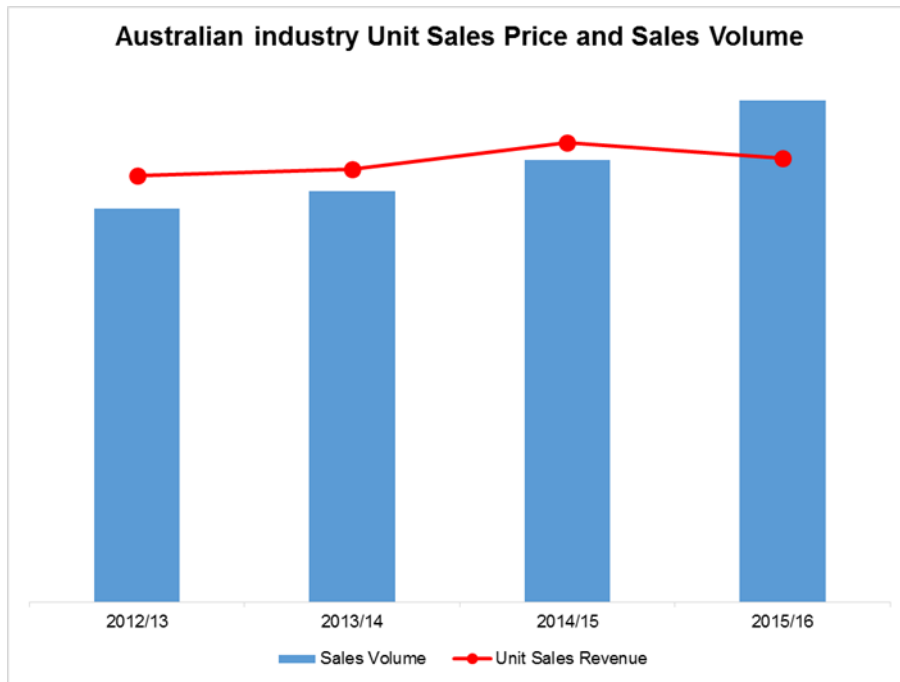


Figure 14 - Australian Industry Unit Sales Price and Sales Volume

As discussed in section 8.7.3, the Commission found that price undercutting due to exports of the goods from Malaysia at dumped and subsidised prices and Vietnam at dumped prices has caused price depression and price suppression in the investigation period.

To assess what price the Australian industry might have achieved in the absence of dumping and subsidisation from Malaysia and dumping from Vietnam, the Commission has considered two scenarios. Both scenarios rely on the assumption that Australian industry's sales volume would not have changed as a result of price increases.

Scenario 1

In the investigation period, the weighted average Australian industry sales price observed for the year prior to the investigation period, 2014/15, is achieved by the Australian industry because these were prices that the market was willing to bear and were the prevailing Australian industry prices in place prior to the emergence of goods exported to Australia from Malaysia at dumped and subsidised prices and Vietnam at dumped prices. This scenario should be considered in the context that the Australian industry's 2014/15 price was unprofitable and affected by Chinese exports. As a result the Commission considers this scenario to be conservative.

Scenario 2

The Commission has calculated an un-dumped Vietnamese FIS price by adding an amount of duty equivalent to the lowest dumping margin of the Vietnamese exporters (which happens to be the largest exporter from Vietnam) to the FOB export price of the goods to Australia.

The Commission then compared the revised FIS price to the FIS selling price for goods imported from Malaysia which were not dumped and not subsidised. The duty inclusive

FIS selling price for Vietnamese sourced goods was on average approximately 3.9 per cent higher than the un-dumped and un-subsidised FIS price for goods sourced from Malaysia.

Referring to the price suppression analysis at 8.6.2, the Commission considers it reasonable to presume that importers who purchase un-dumped and un-subsidised goods from Malaysia would seek to maintain parity with the price of dumped goods from Vietnam if not for dumping. It is possible that importers of Malaysian goods would hold their price, however, on the basis of the profit margin observed in the records of importers who sourced goods from Malaysia, the Commission finds it highly unlikely that importers would not also seek to increase their prices.

8.11.2 Commissioner's assessment – materiality of injury

The Commission has determined that, in both counterfactual scenarios above, the Australian industry's unit sales price would have increased by approximately 20 cents per kg and unit profitability would have been approximately 3.6 per cent higher.

As a result, total profit for the Australian industry would have increased by approximately 18 million dollars over what was earned in the investigation period. Further to the findings outlined in SEF 362, the increase in profit of 18 million dollar is based on the volumes reported by Capral, G.James and Inex. As these three companies represent approximately 75 per cent of the total Australian industry, the Commission considers the estimated profit increase for the whole Australian industry is likely to be even higher.

As directed under the Material Injury Direction, the Commissioner is mindful that a decline in an industry's rate of growth may be just as relevant as the movement of an industry from growth to decline where Australian industry would have been more prosperous if not for the presence of dumped or subsidised imports. Accordingly, the inability of the Australian industry to achieve higher profits for its sales of aluminium extrusions supports a conclusion that the Australian industry has experienced material injury from goods exported from Malaysia at dumped and subsidised prices and Vietnam at dumped prices.

As directed by the Ministerial Direction, the Commissioner considers that the range of factors in which the industry has experienced injury, when considered together, is material in degree and greater than that likely to occur in the normal ebb and flow of business.

8.11.3 Submissions received in response to SEF 362

In its 1 May 2017 submission ASH disputes the Commission's finding that the Australian industry's prices could have increased by 20 cents per kg in the absence of dumped goods from Vietnam and Malaysia on the Australian market.⁹⁵ ASH query how it would be possible for the Australian industry prices to be higher when the LME price was falling and non-dumped imports from Malaysia and China were undercutting the Australian industry's price.

⁹⁵ Case No.362 Public Record Item No.80

Commission's response to submissions

The Commission refers to Figure 13 which shows the relative movements in the Australian industry's FIS price, the LME price and the FOB price of goods from Malaysia, Vietnam and China during the investigation period. Contrary to ASH's submission, the Commission has not made a finding that the goods from China have undercut the Australian industry's prices during the investigation period. Figure 13 is not a price undercutting graph and Chinese FOB prices were included for contextual purposes only. As shown in Figure 13, the Vietnamese and Malaysian prices are the lowest in the market. In contrast, Chinese imports, although substantial in volume do not appear to have been the lowest priced imports in the market.

Figure 13 also shows that, during the investigation period, the fall in the LME price was not in direct proportion with prices for aluminium extrusions entering the Australian market. It therefore appears that prices are affected by other factors than the LME prices.

The Commission observes that, contrary to ASH's submission, the LME price reduction during the investigation period was greater than the price reductions of goods from Malaysia, Vietnam and those sold by the Australian industry. In relation to China, the FOB price remained stable. Overall, the price of the goods from Malaysia and Vietnam reduced by 8 and 14 per cent respectively during the investigation period. The Australian industry's price fell by approximately 5 per cent. It is apparent that the Australian industry's prices are reacting to both the movement of LME prices and the prices of the goods from Malaysia and Vietnam.

The Commission reiterates its previous findings that the goods from Malaysia were dumped and subsidised and from Vietnam were dumped. These goods undercut the Australian industry's prices and caused price suppression during the investigation period. In the absence of dumping and subsidisation from Malaysia and dumping from Vietnam the Commission is satisfied that the Australian industry's prices would have been higher as outlined above at 8.11.1 and 8.11.2. The higher price is relative to the level of dumping and subsidisation and separate to LME price movements.

8.12 Findings

The Commission has found that:

- aluminium extrusions exported to Australia from Malaysia at dumped and subsidised prices and Vietnam at dumped prices have undercut the Australian industry's prices;
- the price of aluminium extrusions exported from Malaysia and Vietnam would not have undercut the Australian industry's prices, at least not to the same extent, if the aluminium extrusions were not dumped and subsidised;
- throughout the investigation period, Vietnamese imports were the lowest priced imports in the market;
- prior to the investigation period, the volume of exports to Australia from Vietnam was immaterial, however this volume increased substantially during the investigation period;
- the volume of dumped and subsidised goods from Malaysia is not negligible:

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- but for sales of aluminium extrusions from, in particular, Vietnam at dumped prices, the weighted average delivered prices from other countries, including Malaysia, would be higher;
- undercutting of the Australian industry's prices by aluminium extrusions imported from Malaysia and Vietnam have prevented the Australian industry from obtaining a higher sales price for its aluminium extrusions, but for the price undercutting;
- the Australian industry would have been able to increase its prices in a market not affected by aluminium extrusions from Malaysia at dumped and subsidised prices and Vietnam at dumped prices. Such increases would have reflected positively on the Australian industry's profits and profitability over the investigation period;
- the injury from goods exported from Malaysia at dumped and subsidised prices and Vietnam at dumped prices can be separated from other potential causes of injury; and
- the link between aluminium extrusions exported from Malaysia at dumped and subsidised prices and Vietnam at dumped prices, in the form of price and profit effects has had a negative impact on the Australian industry's decisions in relation to other economic factors.

As such, the Commission considers that the Australian industry has experienced material injury in the form of:

- price depression;
- price suppression;
- less than achievable profits and profitability;
- reduced ROI; and,
- reduced capital expenditure,

and that this material injury is caused by sales of aluminium extrusions exported from Malaysia at dumped and subsidised prices and Vietnam at dumped prices.

9 WILL DUMPING, SUBSIDIES AND MATERIAL INJURY CONTINUE?

9.1 Findings

The Commissioner is of the view that exports of aluminium extrusions may continue in the future at dumped and subsidised prices from Malaysia and dumped prices from Vietnam, and that continued dumping and subsidisation from these countries may continue to cause material injury to the Australian industry.

9.2 Introduction

Pursuant to subsections 269TG(2), 269TJ(2), and 269J(2A) where the Parliamentary Secretary is satisfied that dumping and subsidisation may continue and because of that material injury to an Australian industry producing like goods has been caused or is being caused, anti-dumping measures may be imposed on future exports of like goods.

9.3 Will dumping continue?

9.3.1 Analysis

With the exception of PMB, LBA, Superb and the category of residual exporters from Malaysia, the dumping margins outlined above at section 5.15 ranging between 6.9 per cent and 34.9 per cent are above negligible levels (i.e. above 2 per cent).

The Commission notes that forward orders exist for exports from Malaysia and Vietnam and that aluminium extrusions exported from Malaysia and Vietnam have a significant market share and influence in the Australian market.

The Commission has examined import volumes from the ABF import database occurring during, and following the end of, the investigation period and has found that:

- the total import volume of dumped aluminium extrusions from Malaysia and Vietnam was approximately 11,800 tonnes during the investigation period;
- the total imports of aluminium extrusions exported from Malaysia and Vietnam is approximately 5,600 tonnes in the six months following the end of the investigation period. If these volumes of imports from Malaysia and Vietnam are sustained over the next six months, this would represent a 4 per cent decrease over the 12 month period following the investigation period. Despite this, the volumes of dumped goods from Malaysia and Vietnam will have remained at substantial volumes; and
- the weighted average FOB export prices from Malaysia and Vietnam as recorded in the ABF import database were lower than the weighted average export prices of aluminium extrusions from other countries during the investigation period and in the six months following the investigation period.

The Commission also analysed the capacity utilisation levels reported by the exporters who have cooperated with the investigation. Table 19 below summarises the Commission's observations in relation to these exporters.

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Exporter	Production Capacity (metric tonne)	Capacity Utilisation	Excess (metric tonnes)
██████████	██████████	78%	██████████
██████████	██████████	105%	██████████
██████████	██████████	27%	██████████
██████████	██████████	51%	██████████
██████████	██████████	74%	██████████
██████████	██████████	85%	██████████
██████████	██████████	49%	██████████
██████████	██████████	85%	██████████
██████████	██████████	65%	██████████
Overall	██████████	66%	██████████

Table 19 - Cooperating exporter capacity utilisation

The Commission has found that overall capacity utilisation reported by the cooperating exporters was 66 per cent.

In relation to the volume of exports originating from Malaysia which were found to be dumped and subsidised and from Vietnam which were found to be dumped, the exporters who sold these goods appear to have significant excess capacity. The Commission is of the view that this would be a motivating factor for these exporter's to continue to sell the goods to Australian.

9.3.2 The Commissioner's consideration

Based on the above analysis, and the magnitude of the dumping margins found, the Commissioner considers that dumping will continue if a dumping duty notice is not published in respect of Malaysia and Vietnam.

9.4 Will subsidisation continue?

As noted in section 6.5, the Commission has determined a subsidy margin of above 2 per cent for exporters from Malaysia for the category of non-cooperative entities and all other exporters.

In relation to Malaysia, with the exception of program 5, the other programs countervailed by the Commission are likely to continue. Therefore, the Commission is of the view that subsidisation will continue and exporters from Malaysia for the category of non-cooperative entities and all other exporters will continue to have the ability to benefit from these subsidies.

9.5 Will material injury continue?

As outlined above, the Commission has compared the condition of the Australian industry in the investigation period to what its condition would have been but for the presence of goods from Malaysia at dumped and subsidised prices and from Vietnam at dumped prices and found that these exports have caused material injury to the Australian industry.

The Commissioner considers that the continuation of price competition from goods exported from Malaysia at dumped and subsidised prices and from Vietnam at dumped prices will continue to have an adverse price and profit impacts of the Australian industry.

9.6 The Commissioner's assessment

Based on the available evidence, the Commissioner considers that exports of aluminium extrusions exported from Malaysia at dumped and subsidised prices and Vietnam at dumped prices will continue in the future and that the continued dumping and subsidisation from these countries may cause further material injury to the Australian industry.

10 NON-INJURIOUS PRICE

10.1 Assessment of NIP

The Commission has calculated a NIP for exports of aluminium extrusions that is considered to be the minimum price necessary to prevent the injury, or a recurrence of the injury, caused by the dumped and subsidised goods from Malaysia and the dumped goods from Vietnam. The Commission has calculated the NIP for each exporter to be a price equal to:

- in relation to exports from Malaysia, an un-dumped and un-subsidised price; and
- in relation to exports from Vietnam, an un-dumped price.

10.2 Introduction

IDD and ICD may be applied where it is established that dumped and subsidised imports have caused material injury to the Australian industry producing like goods. The level of IDD imposed by the Parliamentary Secretary cannot exceed the margin of dumping. Similarly, the level of ICD imposed by the Parliamentary Secretary cannot exceed the subsidy margin.

Where the Parliamentary Secretary is required to determine IDD and the NIP of the goods is less than the normal value of the goods, the Parliamentary Secretary must have regard to the 'lesser duty rule' in accordance with subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), unless one of the exceptions in subsection 8(5BAA) of the Dumping Duty Act applies.

As the Commissioner is recommending a dumping duty notice be published in relation to exports of the goods from Vietnam, subsection 8(5B) of the Dumping Duty Act requires the Parliamentary Secretary to consider applying a lesser rate of duty if applicable.

Where the Parliamentary Secretary is required to determine ICD and IDD in respect of the same goods and at the same time as a section 269TG notice is published, a notice under section 269TJ is also published, the Parliamentary Secretary must have regard to the 'lesser duty rule' in accordance with subsections 8(5BA) and 10(3D) of the Dumping Duty Act, unless one of the exceptions in subsections 8(5BAAA) and 10(3DA) of the Dumping Duty Act applies.

As the Commissioner is recommending that both dumping duty and countervailing duty notices be published in relation to exports of the goods from Malaysia, subsections 8(5BA) and 10(3D) of the Dumping Duty Act require the Parliamentary Secretary to consider applying a lesser rate of duty if applicable.

The NIP is relevant to the application of the lesser duty rule.

10.3 Calculation of the NIP

Under subsections 269TACA(a) and 269TACA(c), the NIP of the goods exported to Australia is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused by the dumping and/or subsidising of the goods.

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The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping and subsidisation. This price is referred to as the USP.

The Commission's preferred approach to establishing the USP, as outlined in chapter 23 of the Manual, observes the following hierarchy:

- industry selling prices at a time unaffected by dumping (and subsidisation);
- constructed industry prices – industry CTMS plus profit; or
- selling prices of un-dumped (and un-subsidised) imports.

Having calculated the USP, the Commission then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

10.4 Exceptions to the lesser duty rule

Pursuant to subsections 8(5BAAA) and 10(3DA) of the Dumping Duty Act the Parliamentary Secretary is not required to, but may still, have regard to the lesser duty rule where one or more of the following circumstances apply:

- a) the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii), i.e. a 'market situation' exists;
- b) there is an Australian industry in respect of like goods that consists of at least two SMEs, whether or not that industry consists of other enterprises; or
- c) a countervailable subsidy has been received in respect of the goods and the country in relation to which the subsidy has been provided has not complied with Article 25 of the Agreement on Subsidies for the compliance period.

10.4.1 Market Situation

In relation to this investigation, normal values were not ascertained under subsection 269TAC(2)(c) as there was no 'particular market situation' in Malaysia within the meaning of subsection 269TAC(2)(a)(ii). Accordingly, the circumstance in subsections 8(5BAAA)(a) and 10(3DA)(c) was not attracted in this investigation.

10.4.2 SMEs

A SME for the purpose of the Act is defined under the *Customs (Definition of "small-medium enterprise") Determination 2013* (the SME Determination) as:

"a producer or manufacturer with 200 or less full-time staff, which is independently operated and which is not a related body corporate for the purposes of the Corporations Act 2001."

In March 2017, the Commission contacted the following aluminium extrusion producers to determine whether they may meet the definition of a SME as defined by the SME Determination:

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- AluShapes;
- APA;
- EA; and,
- Olympic.

Based on the Commission's enquiries prior to SEF 362, AluShapes were the only producer identified as satisfying the definition of a SME.

Following SEF 362, Capral submitted that another entity qualifies as a SME. As a result, the Commission undertook further enquiries, however based on those further enquiries the Commissioner was not be satisfied that the entity identified by Capral qualifies as a SME as it was a related body corporate and did not meet the definition of a SME.

Accordingly the Commissioner will not be recommending to the Parliamentary Secretary that mandatory consideration of the lesser duty not apply on the basis that the Australian industry consists of two or more SMEs.

10.4.3 Compliance with Article 25 of the Agreement on Subsidies

In accordance with *Customs (Definition of "compliance period") Determination 2013*, for the purposes of subsection 269T(1), the term compliance period is defined to mean '*the two most recent biennial periods, ending prior to the date of initiation of a countervailing investigation...*'.

The Commission notes that Malaysia submitted its 2013 new and full subsidy notification but has not yet submitted its 2015 new and full subsidy notification.⁹⁶ Given that Malaysia submitted its 2013 new and full subsidy notification, it has not failed to comply with Article 25 of the Agreement on Subsidies within the compliance period as defined. As a result, the Commissioner will not be recommending to the Parliamentary Secretary that mandatory consideration of the lesser duty not apply on this basis.

10.5 Discussion

For the purpose of PAD 362, the Commission calculated a NIP by first calculating an USP using the weighted average unit selling price of the Australian industry's aluminium extrusions for the year immediately preceding the investigation period, e.g. 1 July 2014 to 30 June 2015, because it was considered to be a period unaffected by dumping from Malaysia and Vietnam. The Commission then deducted amounts from that USP for importer SG&A costs and profit, as well as into-store costs, Customs duty and overseas freight. These deductions were based on data provided by importers of the goods from Malaysia and Vietnam.

Following PAD 362, the Commission has reconsidered the approach to the NIP, noting earlier comments at section 8.3 that the year immediately preceding the investigation

⁹⁶ https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=232689,232485,232320,135544,128274,120734,120576,95212,31074,108003&CurrentCatalogueIdIndex=2&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

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period, e.g. 1 July 2014 to 30 June 2015 was affected by Chinese dumped and subsidised exports and was a period in which the Australian industry was unprofitable.

The Commission considers that, as outlined in chapter 8, in a market unaffected by goods from Malaysia at dumped and subsidised prices and from Vietnam at dumped prices, it is reasonable to expect that the Australian industry would be able to achieve as a minimum, selling prices that reflect un-dumped and un-subsidised import prices from Malaysia and un-dumped import prices from Vietnam. On this basis the Commission has calculated the NIP for each exporter be a price equal to an un-dumped and un-subsidised price.

In relation to Vietnam, the NIP is set to be equal to the normal value, therefore the Parliamentary Secretary is not required to have regard to applying the lesser duty rule in accordance subsection 8(5B) of the Dumping Duty Act.

In relation to Malaysia, because the Commissioner is recommending to publish a dumping duty notice and a countervailing duty at the same time, in relation to the same goods, in accordance with subsections 8(5BA) and 10(3D) of the Dumping Duty Act, the Parliamentary Secretary must have regard to applying the lesser duty rule. The Commissioner has recommended that the Parliamentary Secretary have regard to the lesser duty rule for exports of the goods from Malaysia. However, because the NIP in relation to Malaysia is set to be equal to the sum of the normal value and the amount of countervailable subsidy received in relation to those exports, the lesser duty rule will have no practical effect.

11 ANTI-DUMPING AND COUNTERVAILING MEASURES

11.1 Finding

The Commissioner recommends to the Parliamentary Secretary that anti-dumping measures (in the form of a dumping duty notice for Malaysia and Vietnam and a countervailing duty notice for Malaysia) be imposed:

- in respect of any ICD that may become payable by exporters from Malaysia, as a proportion of the export price of the goods; and
- in respect of any IDD that may become payable by exporters from Malaysia and Vietnam, using the combination duty method (i.e. the combination of fixed and variable duty).

11.2 Form of measures available

In relation to IDD, the methods that the Parliamentary Secretary may utilise to work out the duty are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* and include the:

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

11.3 Form of security taken in PAD 362

Following PAD 362, the Commonwealth took securities in respect of IDD that may become payable on goods exported from Malaysia and Vietnam. The securities were worked out in accordance with the combination duty method.

11.4 Commission's consideration

The Commission, in considering which form of measures to use, has had regard to the Commission's *Guidelines on the Application of the Form of Dumping Duty 2013* (the Guidelines), relevant factors in the aluminium extrusions market and submissions received.

The Guidelines set out issues to be considered when determining the form of duties. It is important to note that the various forms of dumping duty available all have the purpose of removing the injurious effects of the dumping. However, in achieving this purpose certain forms of duty will better suit particular circumstances more so than other forms of duty.

The Guidelines list the key advantages and disadvantages of each form of duty. The combination duty method is considered appropriate where circumvention behaviour is likely (particularly because of related party dealings), where complex company structures exist between related parties, and where there has been a proven case of price manipulation in the market. Conversely, the combination duty method is less suitable in

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situations where there are many model types of the goods under consideration which exhibit a large price differential or where a falling market exists.

On the other hand, the ad valorem duty method is one of the simplest and easiest forms to administer when delivering the intended protective effect, is common in other jurisdictions, is similar to other types of Customs duties, is advantageous where there are many models or types and is suitable where the market prices of goods fluctuate over time. The ad valorem duty method may also require fewer duty assessments and reviews than other duty methods. Conversely, the ad valorem duty method has a potential disadvantage in that export prices might be lowered to avoid the effects of the duty.

Figure 15 shows that in the past 10 years the LME futures market was observed to be at historically low levels during the investigation period. The investigation period is illustrated in yellow.

The Commission notes that towards the end of the investigation period the key price determinant in relation to aluminium extrusions, i.e. the LME price, began to increase. The LME futures price in February 2017 was 16 per cent higher than the price in June 2016.

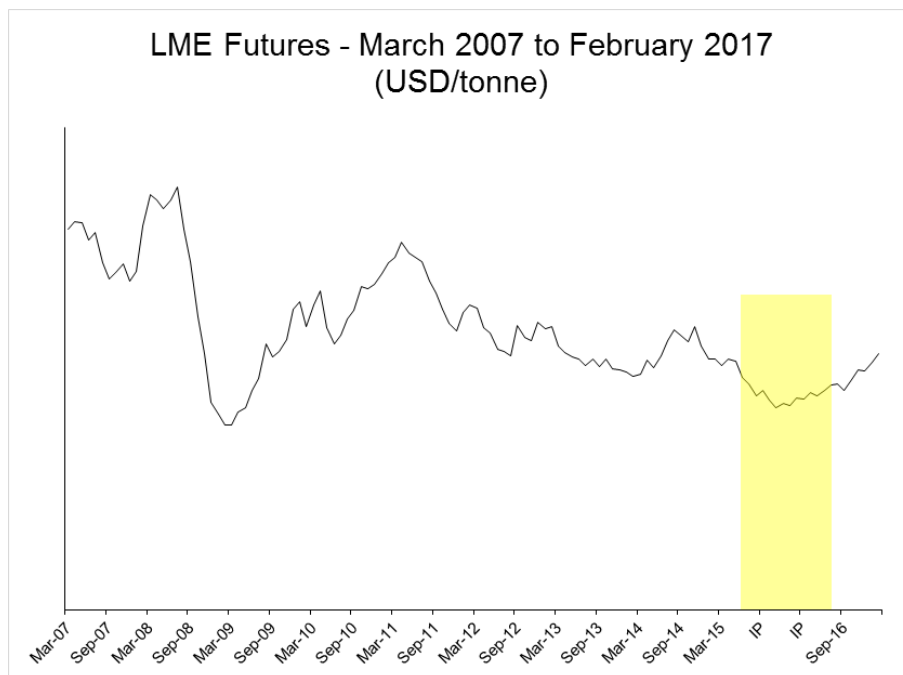


Figure 15 - LME Futures Price March 2007 to February 2017

Given that the market for aluminium following the investigation period appears to be indicative of a rising market it is unlikely that exporters will be disadvantaged if the combination duty method was imposed.

The fixed component of IDD that may become payable in relation to the goods exported to Australia from Malaysia and Vietnam is recommended to be at the rates specified in section 5.15. The variable component will be applicable where the actual export price is below the ascertained export price. The ICD that may become payable is recommended to be at the rates specified in section 6.5, noting that ICD will only be applicable to the non-cooperative entities and all other exporters from Malaysia.

11.5 Submissions following SEF 362

Capral

Following SEF 362, Capral submitted that the combination duty method is necessary to address the injurious dumping. Capral stated that there has been a rapid increase in the LME and MJP following the investigation period. In its opinion, this means that the variable factors relevant to the dumping duty notice will be at reduced levels. Capral claims that the variable factors established for the investigation period will not address the injurious effects of dumping in a rising market. Capral urged the Commission to consider whether it can adjust the variable factors for the investigation period to account for the “sustained” movements of LME and MJP following the investigation period.

Commission’s response

In conducting investigations, the Commission’s practice is to examine exporter’s sales and cost data for a defined period. As stated in the Manual, this is usually a 12 month period preceding the initiation date and ending on the most recently completed quarter. The investigation period is outlined in the notice of initiation and is not changed during an investigation.⁹⁷ Although this practice can lead to some degree of retrospectivity, setting a defined investigation period is transparent, provides certainty to all interested parties about the conduct of the investigation and allows for the verification of data and timely delivery of findings. The investigation has been carried out on this basis.

The Commission also considers that, although the raw material prices are currently higher than those during the investigation period, having regard to the long term trends of MJP and LME prices, there is no evidence to establish that the current raw material prices are sustained or more representative than those verified in the investigation period.

The Commission does not recommend an adjustment to the variable factors for the investigation period to account for the movements of LME and MJP following the investigation period.

⁹⁷ Per subsection 269TC(5A).

12 RECOMMENDATIONS

The Commissioner is satisfied that:

- dumping and subsidisation of the goods exported to Australia by the categories of 'uncooperative and all other exporters' and 'non-cooperative and all other exporters' from Malaysia has caused material injury to the Australian industry producing like goods; and
- dumping of the goods exported to Australia from Vietnam has caused material injury to the Australian industry producing like goods.

The Commissioner recommends the Parliamentary Secretary impose:

- dumping duties on the goods exported to Australia by the category of 'uncooperative and all other exporters' from Malaysia and countervailing duties on the goods exported to Australia by the category of 'non-cooperative and all other exporters' from Malaysia; and
- dumping duties on the goods exported to Australia from Vietnam.

The Commissioner recommends the Parliamentary Secretary be satisfied:

- in accordance with subsection 269TAB(3), that sufficient information has not been furnished, and is not available, to enable the export price of the goods exported to Australia by the category of 'uncooperative and all other exporters' from Malaysia and Vietnam to be ascertained under subsection 269TAB(1);
- in accordance with subsection 269TAC(6), sufficient information has not been furnished and is not available to enable the normal value of the goods exported to Australia to be ascertained under the preceding provisions of section 269TAC by the category of 'uncooperative and all other exporters' from Malaysia and Vietnam;
- the weighted average of export prices over the investigation period is less than the weighted average of corresponding normal values over that period and therefore, in accordance with subsection 269TACB(4):
 - the goods exported to Australia by the category of 'uncooperative and all other exporters' from Malaysia and from all exporters from Vietnam is taken to have been dumped; and
 - the dumping margins for those goods is the difference between the weighted average of export prices during the investigation period and the weighted average of normal values during that period, as set out in chapter 5 of this Report;
- in accordance with subsection 269TAE(2C), the cumulative effect of exportations of the goods from Malaysia and Vietnam can be considered because of the matters outlined in section 8.2 of this Report;
- in accordance with subsection 269TG(1) the amount of the export price of the goods exported to Australia by the category of 'uncooperative and all other exporters and all exporters from Vietnam is less than the amount of the normal value of those goods and because of that, material injury to the Australian industry

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producing like goods would have been caused if security under section 42 had not been taken;

- in accordance with subsection 269TG(2) the amount of the export price of the goods that has already been exported to Australia by the category of 'uncooperative and all other exporters' and all exporters from Vietnam is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia from Malaysia and Vietnam in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused;
- in accordance with subsection 269TACD(1), countervailable subsidies have been received in respect of the goods by 'non-cooperative and all other entities' from Malaysia, as set out in Confidential Attachment 10 of this report;
- in accordance with subsection 269TJ(1), countervailable subsidies have been received in respect of the goods that has been exported to Australia by 'non-cooperative and all other entities' from Malaysia, and because of that, material injury to the Australian industry producing like goods would have been, caused if security under section 42 had not been taken;
- in accordance with subsection 269TJ(2), countervailable subsidies have been received in respect of the goods that have already been exported to Australia by 'non-cooperative and all other entities' from Malaysia, and may be received in respect of like goods that may be exported to Australia from Malaysia in the future and because of that, material injury to the Australian industry producing like goods has been caused;
- in accordance with subsection 269TJA(1), that as to the goods that have been exported to Australia by 'non-cooperative and all other entities' from Malaysia:
 - a) the amount of the export price of the goods is less than the amount of the normal value of the goods;
 - b) countervailable subsidies have been received in respect of the goods; and
 - c) because of the combined effect of the difference in paragraph (a) and of the subsidy referred to in paragraph (b), material injury to the Australian industry producing like goods has been and is being caused;
- in accordance with subsection 269TJA(2), that as to the goods that have already been exported to Australia from Malaysia by 'non-cooperative and all other exporters' from Malaysia:
 - a) the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods;
 - b) countervailable subsidies have been received in respect of the goods that have already been exported to Australia, and may be received in respect of like goods that may be exported to Australia in the future; and
 - c) because of the combined effect of the difference in paragraph (a) and of the subsidy referred to in paragraph (b), material injury to the Australian industry producing like goods has been and is being caused.

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The Commissioner recommends the Parliamentary Secretary determine:

- in accordance with subsection 269TAAD(4), and for the purpose of working out the cost of goods and determining whether the price paid for like goods sold in the country of export in sales that are arms length transactions are taken to have been in the ordinary course of trade, that the amounts for the cost of production or manufacture of the goods in Vietnam and the administrative, selling and general costs associated with the sale of those goods are as set out in Confidential Attachments 2-7 of this Report;
- in accordance with subsection 269TAB(1)(a), that the export prices of the goods exported to Australia from Vietnam by EAA, Mien Hua and GVA are as set out in Confidential Attachments 5-7 of this Report;
- in accordance with subsection 269TAB(3), export prices for the category of 'uncooperative and all other exporters' from Malaysia and Vietnam having regard to all relevant information, as set out in Confidential Attachments 8 and 9 of this Report;
- in accordance with subsection 269TAC(1), in accordance with subsection 269TAC(1), being satisfied that like goods are sold in the OCOT for home consumption in Vietnam in sales that are arms length transactions by EAA, Mien Hua and GVA, that the normal value of those goods exported to Australia from Vietnam are as set out in Confidential Attachments 5-7 of this Report (as adjusted in accordance with subsection 269TAC(8), in order that the matters set out in subsection 269TAC(8) would not affect the comparison of normal values and export prices);
- in accordance with subsection 269TAC(6), normal values for the category of 'uncooperative and all other exporters' from Malaysia and Vietnam having regard to all relevant information, as set out in Confidential Attachments 8 and 9 of this Report;
- having applied subsection 269TACB(2)(a) and in accordance with subsections 269TACB(1) and (4):
 - that the goods exported to Australia by the category of 'uncooperative and all other exporters' from Malaysia and all exporters from Vietnam is taken to have been dumped over the investigation period; and
 - the dumping margins for exporters in respect of those goods in that period is the difference between the weighted average of export prices over that period and the weighted average of corresponding normal values over that period as set out chapter 5 of this Report;
- in accordance with subsections 269TAAC(2) and (3), the subsidy programs referred to as Programs 4 and 6 in Appendix A of Report No.362 are specific in that they are subsidies in respect of the goods exported to Australia where the exporter has received a financial contribution by the government of the country of origin of the goods that involves the forgoing, or non-collection, of revenue, due to that government body, which has conferred a benefit in relation to the goods exported to Australia;
- in accordance with subsection 269TACC(1), that, having regard to all relevant information and subsections 269TACC(2) and (3), a financial contribution was

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received from the GOM by 'non-cooperative and all other exporters' from programs 4 and 6 in relation to Malaysia as outlined in chapter 6 of this Report confers a benefit;

- in accordance with subsection 269TACD(1), that the amount of countervailable subsidy received in respect of the goods by exported by 'non-cooperative and all other entities' from Malaysia, expressed as a percentage of the ascertained export price, is 3.24 per cent;
- in accordance with subsection 8(5) of the Dumping Duty Act, that the IDD payable on the goods the subject of a notice under subsection 269TG(1) or (2) is an amount which will be worked out in accordance with the combination fixed and variable duty method pursuant to subsection 5(2) and subsection 5(3) of the *Customs Tariff (Anti-Dumping) Regulation 2013*;
- in accordance with subsection 10(3B) of the Dumping Duty Act, that the ICD payable on the goods the subject of a notice under subsection 269TJ(1) or (2) be ascertained as a proportion of the export price of those particular goods.

The Commissioner recommends the Parliamentary Secretary direct:

- in accordance with subsection 269TAC(8), that as the normal value of the goods exported to Australia by EAA, GVA and Mien Hua is the price paid or payable for like goods sold in Vietnam, the normal value be adjusted for specified differences between like goods sold in Vietnam and export sales to ensure a fair comparison, as set out in Confidential Attachments 5, 6 and 7 of this Report.

The Commissioner recommends the Parliamentary Secretary have regard to:

- in accordance with subsection 8(5BA) of the Dumping Duty Act, the desirability of fixing a lesser amount of duty for exports of the goods from Malaysia such that the sum of the amounts outlined in subsections 8(5BA)(c), (d) and (e) do not exceed the NIP of goods of that kind as ascertained, or last ascertained, for the purposes of the dumping duty notice and countervailing duty notice;
- in accordance with subsection 10(3D) of the Dumping Duty Act, the desirability of fixing the amount of ICD for exports of the goods from Malaysia such that the sum of:
 - a) the export price of goods of that kind, as ascertained, or last ascertained; and
 - b) that amount of the ICD as so fixed; and
 - c) the amount of IDD as fixed under section 8 of the Dumping Duty Act;does not exceed the NIP of goods of that kind as ascertained, or last ascertained, for the purposes of those notices.

The Commissioner recommends the Parliamentary Secretary declare:

- in accordance with subsection 269TG(1), by public notice, that section 8 of the Dumping Duty Act applies to (subject to section 269TN):

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- the goods exported to Australia by the category of ‘uncooperative and all other exporters’ from Malaysia; and
- like goods that were exported from Malaysia after the Commissioner made a PAD under section 269TD on 19 October 2016 but before publication of the notice;
- in accordance with subsection 269TG(2), by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia by the category of ‘uncooperative and all other exporters’ from Malaysia after the date of publication of the notice;
- in accordance with subsection 269TG(1), by public notice, that section 8 of the Dumping Duty Act applies to (subject to section 269TN):
 - the goods exported by all exporters from Vietnam to Australia; and
 - like goods that were exported to Australia by all exporters from Vietnam after the Commissioner made a PAD under section 269TD on 19 October 2016 but before publication of the notice;
- in accordance with subsection 269TG(2), by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from Vietnam, after the date of publication of the notice;
- in accordance with subsection 269TJ(1), by public notice, that section 10 of the Dumping Duty Act applies to (subject to section 269TN):
 - the goods exported by the ‘non-cooperative and all other entities’ from Malaysia, and
 - like goods that were exported to Australia from Malaysia, after the Commissioner made a PAD under section 269TD on 19 April 2017 but before publication of the notice;
- in accordance with subsection 269TJ(2), by public notice, that section 10 of the Dumping Duty Act applies to like goods that are exported to Australia by the ‘non-cooperative and all other entities’ from Malaysia, after the date of publication of the notice.

13 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Assessment of Australian market
Confidential Attachment 2	Dumping margin calculations – PMB
Confidential Attachment 3	Dumping margin calculations – LBA
Confidential Attachment 3A	LBA packing cost calculations
Confidential Attachment 4	Dumping margin calculations – Superb
Confidential Attachment 5	Dumping margin calculations – EAA
Confidential Attachment 5A	EAA packing cost calculations
Confidential Attachment 6	Dumping margin calculations – Mien Hua
Confidential Attachment 7	Dumping margin calculations – GVA
Confidential Attachment 8	Dumping margin calculations – ‘residual’ and ‘uncooperative and all other’ exporters from Malaysia
Confidential Attachment 9	Dumping margin calculations – ‘uncooperative and all other’ exporters from Vietnam
Confidential Attachment 10	Subsidy margin calculations – Malaysia
Confidential Attachment 11	Subsidy margin calculations – Vietnam
Confidential Attachment 12	Australian industry injury analysis
Confidential Attachment 13	Price undercutting analysis
Confidential Attachment 14	Variable factors summary table

**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.

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
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 ⁹⁸
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 2014.⁹⁹

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

⁹⁸ Refer to Section A7.7 regarding the cessation of this program from the 2016 year of assessment .

⁹⁹ 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.

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 5.¹⁰⁰

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 2017.¹⁰¹

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.

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*.

¹⁰⁰ Case No. 362 Public Record Item No. 27

¹⁰¹ Case No. 362 Public Record Item No. 73

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.¹⁰² 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).¹⁰³

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 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

¹⁰² Subsection 269TAAC(1).

¹⁰³ *Anti-Dumping Commission Dumping and Subsidy Manual*, page 88

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

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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.¹⁰⁴

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 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

¹⁰⁴ 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.

enterprise would otherwise have had to pay the taxes associated with the exemption (i.e. the date the enterprise lodged its tax return).¹⁰⁵

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.

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.

¹⁰⁵ *Anti-Dumping Commission Dumping and Subsidy Manual*, page 88

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).¹⁰⁶

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

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

¹⁰⁶ *Anti-Dumping Commission Dumping and Subsidy Manual*, page 88

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.¹⁰⁷ 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

¹⁰⁷ Section 269TAACA.

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;
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.¹⁰⁸ 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

¹⁰⁸ Section 269TAACA.

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*.

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.¹⁰⁹ The highest of the cooperative exporter benefits has been applied to exporters in the non-cooperative entities category.

¹⁰⁹ 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.

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
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 2015.¹¹⁰

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.

¹¹⁰ 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 2016.¹¹¹

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.

B3.3 WTO notification

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

¹¹¹ Case No. 362 Public Record Item No. 27

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.¹¹² 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
- 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.

¹¹² Section 269TAACA.

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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.¹¹³

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.

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

¹¹³ Section 269TAACA.

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- 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

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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.¹¹⁴

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

¹¹⁴ Section 269TAACA.