



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

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 (Cth) - PART XVB*

**FINAL REPORT NO. 619**

**ACCELERATED REVIEW**

**OF THE DUMPING DUTY NOTICE AND  
COUNTERVAILING DUTY NOTICE APPLYING TO  
CERTAIN ALUMINIUM EXTRUSIONS EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

**BY**

**QINGYUAN XINYUEYA ALUMINUM  
INDUSTRY CO., LTD.**

**3 July 2023**

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**ABBREVIATIONS**

ADN	Anti-Dumping Notice
the accelerated review period	1 January 2022 to 31 December 2022
the Act	<i>Customs Act 1901 (Cth)</i>
aluminium extrusions	certain aluminium extrusions (also referred to as the goods)
Capral	Capral Limited
China	the People's Republic of China
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	cost to make
Customs Tariff Regulation	<i>Customs Tariff (Anti-Dumping) Regulation 2013</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	electronic public record
EXW	ex-works
GAAP	generally accepted accounting principles
GOC	Government of China
the goods	the goods the subject of the accelerated review (also referred to as the 'goods under consideration')
ICD	interim countervailing duty
IDD	interim dumping duty
the former Minister	the minister for Industry, Science and Technology
the Minister	the Minister for Industry and Science
NIP	non-injurious price
the notices	the dumping duty notice and countervailing duty notice
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 148	<i>Anti-Dumping Commission Report No. 148</i>
REP 543	<i>Anti-Dumping Commission Report No. 543</i>
REQ	response to the exporter questionnaire
SIE	state-invested enterprise
SOE	state-owned enterprise
VAT	value added tax
XinYueYa	The applicant, Qingyuan XinYueYa Aluminum Industry Co., Ltd.

# 1 SUMMARY AND RECOMMENDATION

## 1.1 Background

On 24 March 2023, Qingyuan XinYueYa Aluminum Industry Co., Ltd (XinYueYa) made an application to the Anti-Dumping Commission (the commission), seeking an accelerated review of the dumping duty notice and the countervailing duty notice (collectively, the notices) applying to certain aluminium extrusions (aluminium extrusions, or the goods) exported to Australia from the People's Republic of China (China).<sup>1</sup>

XinYueYa is currently subject to the combined rate of interim dumping duty (IDD) and interim countervailing duty (ICD) of 77.4%. This rate reflects the combined rate for 'all other exporters' as determined by the then Minister for Industry, Science and Technology (the former Minister) following *Anti-Dumping Commission Report No. 543* (REP 543).<sup>2</sup>

XinYueYa's application sought an accelerated review on the basis that the rates of duty set out in the notices for 'all other exporters' should not apply to XinYueYa's exports of the goods.

This report sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) is basing his recommendations to the Minister for Industry and Science (the Minister).

## 1.2 Application of law to facts

Division 6 of Part XVB of the *Customs Act 1901* (Cth) (the Act)<sup>3</sup> allows eligible parties to apply for an accelerated review of anti-dumping measures. This Division, among other matters:

- sets out the procedures to be followed and the matters to be considered by the Commissioner in conducting accelerated reviews for the purpose of making a report to the Minister and
- enables the Minister, after consideration of such reports, to leave the notices unchanged or to modify them as appropriate.

## 1.3 Findings

The commission has found that XinYueYa did not export the goods to Australia during the original investigation period. Consequently, XinYueYa meets the definition of a 'new exporter' under section 269T(1) and is eligible to apply for an accelerated review.

Based on all relevant and available information, concerning the variable factors for XinYueYa's exports of the goods to Australia, the Commissioner considers that:

- the export price should be determined under section 269TAB(3), having regard to all relevant information, being the normal value determined in this accelerated review;

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<sup>1</sup> Electronic public record (EPR) for case 619, document no. 1.

<sup>2</sup> EPR 543, document no 61.

<sup>3</sup> All legislative references in this report are to the *Customs Act 1901* (Cth) unless otherwise specified.

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- the normal value should be constructed under section 269TAC(2)(c) in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation)
- XinYueYa received countervailable subsidies in relation to the goods during the accelerated review period, such that the amount of countervailable subsidy should be changed.

### 1.4 Recommendation

Based on the above findings and pursuant to section 269ZG(1)(b), the Commissioner recommends that:

- (a) the Minister alter the notices, so as to apply to XinYueYa as if different variable factors had been fixed (excluding the non-injurious price (NIP)) and
- (b) the NIP be the same as the current NIP applicable to all exports of the goods from China.

Further, the Commissioner recommends that:

- the Minister determine that the IDD be worked out on XinYueYa's exports to Australia in accordance with the floor price duty method pursuant to sections 5(4) and 5(5) of the *Customs Tariff (Anti-Dumping) Regulation 2015 (Customs Tariff Regulation)*; and
- the ICD applicable to XinYueYa's exports to Australia is **0.2%**.

If accepted by the Minister, the recommendations applicable to XinYueYa will take effect retrospectively from 24 March 2023 (the date the application was lodged).

## 2 BACKGROUND

### 2.1 The goods

#### 2.1.1 Description

The goods subject to anti-dumping measures, in the form of the notices, are outlined in the table below.

<b>Full description of the goods the subject of the application</b>						
Aluminium extrusions that: <ul style="list-style-type: none"> <li>• are produced by an extrusion process;</li> <li>• 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);</li> <li>• have finishes being:                             <ul style="list-style-type: none"> <li>○ as extruded (mill);</li> <li>○ mechanically worked;</li> <li>○ anodized; or</li> <li>○ painted or otherwise coated, whether or not worked;</li> </ul> </li> <li>• have a wall thickness or diameter greater than 0.5 mm;</li> <li>• have a maximum weight per metre of 27 kilograms; and</li> <li>• have a profile or cross-section fitting within a circle having a diameter of 421 mm.</li> </ul>						
<b>Further information</b>						
The goods under consideration include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. For example, aluminium extrusion products that have been painted, anodised, or otherwise coated, or worked (e.g. precision cut, machined, punched or drilled) fall within the scope of the goods.						
The goods under consideration do not extend to intermediate or finished product that are processed or fabricated to such an extent that they no longer possess the nature and physical characteristics of an aluminium extrusion but have become a different product.						
The table below provides guidance to importers and brokers to assist in the categorisation of aluminium extrusions into the types covered by interim duties (GUC), and those not covered (Non GUC). In most cases, extrusions classified to headings 7604 or 7608 would be subject to IDD and/or ICD. Importers should use the table to categorise their goods and decide whether dumping and countervailing duties apply.						
< Goods Under Consideration (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	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	Kits that, at time of import, comprise all necessary parts to assemble finished goods. For example, shower frame kits, window frame kits, unassembled unitised curtain walls	Unglazed window or door frames	Windows, doors

**Table 1: The goods the subject of the application**

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Further information on the goods and existing measures is available on the Dumping Commodity Register on the commission website at: [www.adcommission.gov.au](http://www.adcommission.gov.au).

### 2.1.2 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995* (Cth):<sup>4</sup>

Tariff subheading	Statistical code	Description
7604.10.00	06	Non alloyed aluminium bars, rods and profiles
7604.21.00	07	Aluminium alloy hollow angles and other shapes
7604.21.00	08	Aluminium alloy hollow profiles
7604.29.00	09	Aluminium alloy non hollow angles and other shapes
7604.29.00	10	Aluminium alloy non hollow profiles
7608.10.00	09	Non alloyed aluminium tubes and pipes
7608.20.00	10	Aluminium alloy tubes and pipes
7610.10.00	12	Doors, windows and their frames and thresholds for doors
7610.90.00	13	Other

**Table 2: Tariff classifications of the goods**

### 2.1.3 Like goods

Section 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 respect to the goods under consideration, have characteristics closely resembling those of the goods under consideration.”

The commission’s framework for assessing like goods is outlined in Chapter 2 of the commission’s *Dumping and Subsidy Manual*.<sup>5</sup>

The commission examined XinYueYa’s domestic sales of aluminium extrusions in China having regard to the description of the goods in the table above and the applicable model control code structure.

The commission considers that the aluminium extrusions sold domestically in China by XinYueYa have characteristics closely resembling those of the exported aluminium extrusions and are, therefore, ‘like goods’ in accordance with section 269T(1).

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<sup>4</sup> These tariff classifications and statistical codes may include goods that are both subject and not subject to the anti-dumping measures. The listing of these tariff classifications and statistical codes is for convenience and reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to the anti-dumping measures.

<sup>5</sup> *Dumping and Subsidy Manual*, December 2021. Available on the commission website at: [www.adcommission.gov.au](http://www.adcommission.gov.au).

## **2.2 Accelerated reviews**

The legislative framework that underpins the making of, and the Commissioner's consideration of, an application for an accelerated review of dumping and countervailing duty notices is contained in Divisions 1 and 6 of Part XVB of the Act.

If the Commissioner does not terminate an accelerated review, no later than 100 days after the application is lodged the Commissioner must provide the Minister with a report. That report must recommend that the notices, the subject of the application:<sup>6</sup>

- (a) remain unaltered<sup>7</sup> or
- (b) be altered so as to apply to XinYueYa as if different variable factors had been fixed<sup>8</sup>

and set out the reasons for so recommending.<sup>9</sup>

Following the Minister's decision, a notice is published on the commission's website advising of the decision.<sup>10</sup>

## **2.3 Existing measures**

On 12 October 2020, the Minister revised the variable factors and effective rates of duty applicable to the goods following a continuation inquiry (see REP 543).<sup>11</sup> XinYueYa is currently subject to the 'all other exporter' rate of 77.4%, while its application for accelerated review is being considered.

No IDD and ICD can be collected on XinYueYa's exports of the goods while its application for the accelerated review is being considered,<sup>12</sup> but the Commonwealth is requiring and taking securities.

Further details of the measures in place on exports of the goods from China are available in the Dumping Commodity Register on the commission website.<sup>13</sup>

## **2.4 Notification and participation**

On 24 March 2023, XinYueYa lodged an application for an accelerated review of the notices applying to aluminium extrusions exported to Australia from China, insofar as the notices affect XinYueYa. The Commissioner considered the application to determine if it was made in accordance with sections 269ZE and 269ZF. The Commissioner did not reject the application because:

- the circumstances in which an accelerated review can be sought under section 269ZE(1) were satisfied

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<sup>6</sup> Section 269ZG(2).

<sup>7</sup> Section 269ZG(1)(a).

<sup>8</sup> Section 269ZG(1)(b).

<sup>9</sup> Section 269ZG(1).

<sup>10</sup> Section 269ZG(3).

<sup>11</sup> Refer to REP 543 and Anti-Dumping Notice (ADN) No. 2020/103.

<sup>12</sup> Section 269ZH.

<sup>13</sup> [www.adcommission.gov.au](http://www.adcommission.gov.au)



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- the conditions for rejection under section 269ZE(2) were not satisfied and
- the application satisfied the requirements of section 269ZF(1).

The commencement of this accelerated review was notified in ADN No. 2023/022, which was published on 13 April March 2023 and made available on the public record on the Commission's website.<sup>14</sup> ADN No. 2023/022 advised that the Commissioner's recommendation will be made in a report on, or before, **3 July 2023**.<sup>15</sup>

For the purposes of the accelerated review, the period examined is 1 January 2022 to 31 December 2022 (the accelerated review period).

## 2.5 Information gathered

### 2.5.1 Exporter questionnaire

Upon the commencement of the accelerated review, the commission sent an exporter questionnaire to XinYueYa for completion.

On 8 May 2023, the commission received the completed response to the exporter questionnaire (REQ) from XinYueYa. A non-confidential version of the REQ is available on the public record.<sup>16</sup>

This REQ contained information and data in relation to XinYueYa's:

- domestic and export (Australian and third country) sales of aluminium extrusions
- production and selling costs for aluminium extrusions
- company structure and organisation (and details of income tax paid and payable)
- adjustments requested (if any) to ensure fair comparison of export prices and normal values.

In addition, the REQ responded to questions concerning countervailable subsidy programs, including those that the commission identified in REP 543 in respect of aluminium extrusions.

The commission also sought clarification and further responses from XinYueYa on a range of matters throughout the conduct of this review. XinYueYa cooperated and provided responses to the queries within the designated timeframes. This includes further information on the additional grants programs XinYueYa received during the inquiry period. The commission also validated XinYueYa's data by comparing XinYueYa's domestic selling prices with other verified exporters of aluminium extrusions from China as part of Review 609, which is concurrently running with this case.

Consequently, the commission is satisfied

- that XinYueYa is a producer of the goods

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<sup>14</sup> Section 2.6 refers.

<sup>15</sup> Day 100 falls on Sunday 2 July 2023. The next business day is Monday 3 July 2023.

<sup>16</sup> EPR 619, document no. 3.

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- as to the accuracy, relevance and completeness of the data supplied by XinYueYa, upon which the findings of this accelerated review are based and
- that the information provided by XinYueYa is accurate and reliable for the purpose of ascertaining variable factors.

### 2.6 Public record

There is no legislative requirement for the Commissioner to maintain a public record for accelerated reviews. However, in the interests of ensuring this process is conducted in an open and transparent manner, a public record for this accelerated review has been maintained and is accessible on the commission's website at: [www.adcommssion.gov.au](http://www.adcommssion.gov.au).

### 2.7 Submissions

The commission invited interested parties to lodge submissions concerning this accelerated review before 22 May 2023.<sup>17</sup>

The commission received one submission in relation to this accelerated review. The submission was received from Capral Limited (Capral).<sup>18</sup> The commission has addressed the matters raised by Capral below.

- Capral noted that XinYueYa had claimed it had not exported aluminium extrusions to Australia previously. Capral stated that the commission should ascertain the export price under subsection 269TAB(3), and this should be determined at the level applicable to the exporter's normal value. The commission found that XinYueYa did not export the goods to Australia during the inquiry period and, as such, the commission considers it is suitable to determine the export price to be the same amount as that of the normal value.
- Capral also noted that in the most recent continuation inquiry that normal values had been constructed under section 269TAC(2)(c) due to a finding that the particular market situation continued to apply in China for aluminium extrusions. The commission confirms that XinYueYa's normal value for this accelerated review was determined under section 269TAC(2)(c) because the situation in the market of the country of export was such that sales in that market were not suitable for use in determining a price under section 269TAC(1).
- Capral further noted that XinYueYa is labelled as a high tech enterprise and was likely in receipt of a concessional rate of taxation, together with a range of subsidies. The commission has examined the subsidies received by XinYueYa, including any reduced tax benefits and new subsidy programs. Chapter 5 of this report provides further details of the commission's assessment.
- Capral submitted that the Minister was not required to consider the lesser duty rule. The commission confirms that the Minister is not required to consider the application of the lesser duty rule in relation to the exports because the commission did not ascertain these exporter's normal values under section 269TAC(1) due to the operation of section 269TAC(2)(a)(ii). Chapter 6 provides further details of the commission's assessment in relation to the lesser duty rule.

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<sup>17</sup> See in ADN No. 2023/022. EPR 619, document no. 2.

<sup>18</sup> EPR 619, document no. 4.

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- Capral further submitted that the duty method payable should be based upon the combination method, and ICD payable should be based on the sum of the IDD and ICD on XinYueYa's exports to Australia in accordance with the floor price method. For the reasons specified in Chapter 7, the commission has recommended that the IDD be worked out on XinYueYa's exports to Australia in accordance with the floor price method.

### 3 EXPORT PRICE

#### 3.1 Findings

The commission found that XinYueYa did not export the goods to Australia during the accelerated review period.

As such, the export price of the goods cannot be determined under section 269TAB(1). Specifically, sufficient information is not available to determine the export price of the goods using:

- the price paid or payable for the goods by the importer<sup>19</sup>
- the price at which the goods were sold by the importer in Australia less prescribed deductions<sup>20</sup>
- the price having regard to all the circumstances of the exportation.<sup>21</sup>

The commission considered whether an export price could be determined under section 269TAB(3), for the purposes of this accelerated review, having regard to all relevant information.

In particular, for the purpose of determining duty payable, the commission considered whether sufficient and relevant information existed to establish an export price by determining the export price as equal to an amount determined to be the normal value.

The commission considers that the normal value is relevant to ascertain the export price, for the purposes of this accelerated review, as it is:

- contemporary
- specific to XinYueYa
- representative of an un-dumped export price
- likely to resemble models that may be exported to Australia by XinYueYa in the future.

As such, the commission considers it appropriate to determine the ascertained export price to be the same amount as that determined to be the normal value (refer to chapter 4 of this report). The commission has ascertained the export price at the ex-works (EXW) level.

The commission's export price calculation is set out in **Confidential Attachment 1**.

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<sup>19</sup> Section 269TAB(1)(a)

<sup>20</sup> Section 269TAB(1)(b)

<sup>21</sup> Section 269TAB(1)(c)

## 4 NORMAL VALUE

### 4.1 Finding

The commission has found that the normal value for XinYueYa is different to that currently applicable to exports subject to the 'all other exporters' rate and should be constructed under section 269TAC(2)(c), in accordance with sections 43, 44 and 45 of the Regulation.

### 4.2 Constructed normal value, adjustments and proper comparison

The commission is satisfied that, as a result of the findings in REP 543 and the preliminary findings in Review 609 regarding a situation in the domestic aluminium extrusions market in China, domestic selling prices are not suitable for use in determining a normal value under section 269TAC(1).

It was determined in REP 543, and preliminarily determined in recent Review 609<sup>22</sup>, that the presence of a particular market situation affects the Chinese market for aluminium extrusions, primarily through distortion of primary aluminium prices as a key cost component of the goods. The commission found that Government of China (GOC) influence in the primary aluminium and aluminium extrusion sectors has resulted in a significant variance in aluminium extrusion prices, in comparison to an environment where markets operated without significant GOC intervention. As a result, Chinese exporters enjoy a cost advantage that either manifests as an increased margin at the prevailing level of competitive pricing in the Australian market, a low export price that undercuts the prevailing level of competitive pricing, or a combination thereof. Thereby, the Chinese manufacturer can enjoy a higher margin while still undercutting other market participants. The effect of the market situation on export prices is to modify the conditions of competition in Australia to the benefit of Chinese exporters and, to the extent that benefit manifests as a low price that undercuts the prevailing level of competitive pricing in Australia, to the detriment of all other participants in that market.

On the other hand, the effect of the particular market situation on domestic sales prices in China does not result in any competitive advantages or disadvantages between the key market players, being Chinese producers. Consequently, the particular market situation modifies the conditions of competition in a consistent manner for the key market participants in China.

The commission therefore finds that the relative effect of the particular market situation on domestic and export prices is materially different in the relevant markets. For the reasons outlined above, and consistent with REP 543 and Review 609, the commission finds that XinYueYa's domestic sales prices are not suitable to use as the basis for normal value, pursuant to section 269TAC(1), because they would not permit a proper comparison with export prices for the purposes of determining the existence and margin of dumping into the Australian market.

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<sup>22</sup> See EPR 609, document number 28.

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The commission has, therefore, calculated a normal value under section 269TAC(2)(c), using the sum of:

- the cost of production of the goods in China, which was calculated using the cost to make (CTM) expenses for XinYueYa, with its primary aluminium costs adjusted by reference to a benchmark plus
- domestic selling, general and administrative costs based on the company's records in accordance with section 44(2) of the Regulation plus
- an amount for profit, based on data relating to the production and sale of like goods on the domestic market in the ordinary course of trade in accordance with section 45(2) of the Regulation.

The commission has assessed the raw material input costs in the CTM for XinYueYa. The commission notes that XinYueYa kept its records relating to the goods in accordance with the relevant generally accepted accounting principles (GAAP) and that the records reasonably reflect the costs associated with the production and sale of the goods.

However, the commission is not satisfied that XinYueYa's costs reasonably reflect competitive market costs associated with the production of like goods, due to the influence of the GOC in the domestic Chinese market for primary aluminium. As a result, section 43(2) of the Regulation, which requires the commission to use a producer's records to determine the cost of production of goods in the country of export where those records reasonably reflect competitive market costs, is not enlivened.

In this case, the commission considers it is not appropriate to rely on the primary aluminium costs in XinYueYa's records to determine the cost of production of the goods in China, because to do so would reintroduce the factors that warranted the commission's decision to construct the normal value in the first place. The commission considers it appropriate to adjust primary aluminium costs in XinYueYa's records by reference to an international benchmark cost for primary aluminium. The commission has not adjusted any of the other items recorded in XinYueYa's cost of production.

The commission consequently worked out the amount for the cost of production in XinYueYa's normal value under section 269TAC(2)(c) using this adjusted cost for primary aluminium and the costs for other items as set out in XinYueYa's records.

In determining XinYueYa's CTM, the commission has applied a competitive aluminium benchmark, using the benchmark specified in section 6.3.1 of this report.

The commission's normal value calculation and competitive benchmark cost of aluminium are set out at **Confidential Attachment 2**, **Confidential Attachment 3** and **Confidential Attachment 6**, respectively.

## 5 COUNTERAVAILABLE SUBSIDIES

### 5.1 Findings

The commission has found that the amount of countervailable subsidy for XinYueYa is different to that currently applicable to exports subject to the 'all other exporter' rate. The countervailable subsidy rate for XinYueYa is 0.2%.

### 5.2 Legislative requirement for countervailable subsidies

A countervailable subsidy is defined at section 269TAAC. Further, sections 269TACC and 269TACD concern determinations by the Minister as to whether a benefit has been conferred by a financial contribution or price support, and the amount of this benefit. Generally, the existence of a benefit is determined by comparison of costs with a benchmarked market price for the respective cost. For example, if the alleged benefit relates to tax revenue foregone, the existence of a benefit is determined by comparing the actual tax rate applied to the tax rates of the country in question.

### 5.3 Programs reviewed

In REP 543, the commission found that certain programs are countervailable in respect of aluminium extrusions exported to Australia from China. Appendix A (below) provides further details of these countervailable subsidy programs.

For this review, XinYueYa reported that it had received subsidy programs that are listed in Appendix A and 3 additional grant programs. The assessment of these programs is below.<sup>23</sup>

#### 5.3.1 Program 15 – Aluminium provided by government at less than adequate remuneration

In REP 543, the commission found a countervailable subsidy program (Program 15) existed whereby primary aluminium used for the manufacture of aluminium extrusions was being produced and supplied by government owned enterprises at less than adequate remuneration (LTAR).

During this accelerated review, the commission did not find any further information to depart from the finding in REP 543 in relation to the existence of Program 15. As such, the commission adopted the assessment made in REP 543.

Consistent with the original investigation and subsequent cases, the commission sought information from XinYueYa to establish the quantity and cost of primary aluminium purchases, the form (ingot or billet), origin of product, the identity of the supplier (trader or original manufacture) and if the supplier was a State Invested Entity (SIE) or State Owned Entity (SOE).

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<sup>23</sup> The commission notes that in Review 609, which the commission has been undertaking concurrently with this accelerated review, the commission sent a questionnaire to the Government of China (GOC) seeking information regarding previously identified subsidy programs, any changes to those programs and other programs not previously addressed. The GOC did not provide a response to the government questionnaire.

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XinYueYa reported that they did not purchase primary aluminium from SIEs or SOEs during the inquiry period. The commission found no evidence to suggest otherwise, as a consequence, the commission is satisfied that XinYueYa did not benefit from subsidy program 15 during the inquiry period.

### **5.3.2 Preferential income tax programs**

In its REQ, XinYueYa declared that it had received a benefit from preferential income tax rate under program 47. The reduced income tax rate under this program is a financial contribution by a government which involves the foregoing (or not collecting) of revenue by a government.

Due to the nature of this program (reduced income tax rate), the commission considered that a financial contribution would be made in connection to the production, manufacture or export of XinYueYa's goods.

The commission considers that this constitutes a benefit in relation to the exported goods.

The financial contributions made under these programs meet the definition of a subsidy under section 269T.

Consequently, the commission is satisfied that XinYueYa did benefit from preferential income tax programs, in the form of reduced company income tax, during the review period.

### **5.3.3 Grants and preferential policies**

In its REQ, XinYueYa indicated that it received benefits from certain grants. XinYueYa reported 3 such grants, the commission assessed two of them as countervailable under section 269TAACA(b)(i).

In accordance with section 269TACD(2), the subsidy margin for these 2 programs has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price. The subsidy amount attributed to the goods has been calculated based on the total benefit received as a proportion of company turnover or export turnover, as is relevant to the grant received.

### **5.3.4 Amount of countervailable subsidy received**

XinYueYa has received benefits from countervailable subsidies and the commission has determined that the subsidy margin, when expressed as a percentage of the ascertained export price determined, is **0.2%**. The commission's subsidy margin calculation is set out in **Confidential Attachment 5**.



## 6 NON-INJURIOUS PRICE

### 6.1 Legislative framework

Where a dumping duty notice and countervailing duty notice apply to the same goods, and the notices were published at the same time, the Minister must have regard to the desirability of specifying a method such that the sum of the ascertained export price, the IDD payable and the ICD payable do not exceed the NIP.<sup>24</sup>

However, the Minister is not required to have regard to the desirability of fixing a lesser amount of duty in the following circumstances:<sup>25</sup>

- where there is a situation in the market that makes domestic selling prices unsuitable for the purpose of determining a normal value under section 269TAC(1)
- there is an Australian industry in respect of the goods consisting of at least two small to medium sized enterprises (as defined in the *Customs (Definition of "small-medium enterprise") Determination 2013*) or
- the country in relation to which the subsidy has been provided, has not complied with Article 25 of the *Agreement on Subsidies and Countervailing Measures*<sup>26</sup> for the compliance period.

Where any of the above exceptions apply, the Minister is not required to have mandatory consideration of the lesser duty rule but may still wish to exercise a discretion to do so.

### 6.2 The commission's assessment

The commission recommends that the NIP applicable to exports by XinYueYa be the same as the current NIP applicable to all exports of the goods from China.

For the reasons outlined in REP 543 and Review 609, the commissioner recommends that the Minister be satisfied that, in accordance with section 269TAC(2)(a)(ii), the situation in the aluminium extrusion market in China is such that sales in that market are not suitable for use in determining a price under section 269TAC(1).

As such, the Minister is not required to have regard to the desirability of fixing a lesser amount of duty, due to the operation of section 8(5BAAA) and 10(3DA) of the Dumping Duty Act.

The Commissioner recommends that the Minister not consider the desirability of applying the lesser duty rule under section 8(5BA) and 10(3D) of the Dumping Duty Act. As such, the full dumping and subsidy margins will be applied to any IDD and ICD applying to aluminium extrusions exported by XinYueYa to Australia from China.

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<sup>24</sup> Section 10(3D) of the Dumping Duty Act.

<sup>25</sup> Section 10(3DA) of the Dumping Duty Act.

<sup>26</sup> Marrakesh Agreement Establishing the World Trade Organization, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A ('Agreement on Subsidies and Countervailing Measures').

## 7 FORM OF MEASURES

### 7.1 Current form of measures

XinYueYa's exports of the goods are currently subject to the 'all other exporters' effective rate of duty of 77.4%.<sup>27</sup>

In respect of any IDD that may become payable, duty is collected using the combination of fixed and variable duty method. In respect of any ICD that may become payable, duties are calculated as a proportion of the export price of the goods.

### 7.2 Recommended form of measures

The Commissioner recommends to the Minister that duties be calculated:

- in respect of any IDD that may become payable, using the floor price method, pursuant to section 5(4) and 5(5) of the Customs Tariff Regulation
- in respect of any ICD that may become payable, as a proportion of the export price of the goods (ad valorem method).

With regards to IDD, the floor price method is considered appropriate, on the basis that, where a floor price is set equal to an exporter's normal value, exports of the goods will only attract interim dumping duties when exported at dumped prices.

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<sup>27</sup> As determined in REP 543.

## 8 EFFECT OF THE ACCELERATED REVIEW

If the Minister accepts the recommendations in this report, in respect of aluminium extrusions exported by XinYueYa to Australia from China:

- the notices will be altered, so as to apply to XinYueYa as if different variable factors had been fixed
- the NIP will be the same as the current NIP applicable to all exports of the goods from China
- IDD will be worked out using the floor price method and
- ICD will be payable for the exported goods, as a proportion of the export price, at a rate of 0.2%.

If the Minister accepts the recommendations in this report, these changes will take effect retrospectively from 24 March 2023 (being the date the application was lodged).

The commission notes that if the Minister declares that the Act and Dumping Duty Act have effect as if the notices had applied to XinYueYa, but the Minister had fixed specified different variable factors relevant to the determination of duty, pursuant to section 269ZG(3)(b), XinYueYa will not be eligible to seek another accelerated review.<sup>28</sup>

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<sup>28</sup> Section 269ZE(1).

## 9 RECOMMENDATIONS

The Commissioner found that, in relation to aluminium extrusions exported to Australia from China by XinYueYa:

- the ascertained export price should be altered
- the ascertained normal value should be altered and
- the amount of countervailable subsidy received should be altered.

The Commissioner recommends that the Minister consider this report, and if agreed, issue a public notice to:

- declare under section 269ZG(3) that, with effect from 24 March 2023, the Act and the Dumping Duty Act have effect as if the notices had applied to XinYueYa but different variable factors (with the exception of the NIP) had been fixed in respect of XinYueYa, relevant to the determination of duty;
- determine, pursuant to section 8(5) of the Dumping Duty Act, that the amount of IDD on the goods exported to Australia from China by XinYueYa is an amount worked out in accordance with the floor price duty method as set out in section 5(4) and 5(5) of the Customs Tariff Regulation, with effect from 24 March 2023, and
- direct, pursuant to section 10(3B) of the Dumping Duty Act, that the amount of ICD payable on the goods the subject of the countervailing notice be ascertained as a proportion of the export price of the goods. The rate of countervailing duty applying to XinYueYa's export of aluminium extrusions will be 0.2%.

The Commissioner recommends that the Minister be satisfied that:

- in accordance with subsection 269TAB(3), sufficient information is not available to enable the export price of the goods exported to Australia from China by XinYueYa to be ascertained under the subsection 269TAB(1)
- in accordance with subsection 269TAC(2)(a)(ii), the normal value of the goods exported to Australia from China cannot be ascertained under subsection 269TAC(1) because the situation in the market of China is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1)
- in accordance with subsection 269TACD(1), countervailable subsidies have been received in respect of the goods by XinYueYa.

The Commissioner recommends that the Minister determine:

- having had regard to subsections 269TAAC(2) and (3), and in accordance with subsections 269TAAC(4) and (5), that the subsidies set out in chapter 5.3 and Confidential Attachment 5 to Anti-Dumping Commission Report No. 619 (REP 619) are specific having regard to the fact that the subsidies benefits a limited number of particular enterprises
- 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 China are as set out in Confidential Attachment 2 of

## PUBLIC RECORD

REP 619 and the administrative, selling and general costs associated with the sale of those goods are as set out in Confidential Attachment 2 of REP 619

- in accordance with subsection 269TAB(3), having regard to all relevant information, that the export price for XinYueYa is as set out in chapter 3.1 and Confidential Attachments 1 and 3 to REP 619
- in accordance with subsection 269TAC(2)(c), that the normal value of the goods exported from China is the sum of:
  - the cost of production or manufacture of the goods in China as set out in Confidential Attachments 2 and 3 to REP 619, also detailed in chapter 4.2 to REP 619 and
  - on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in China, the administrative, selling and general costs associated with the sale and the profit on that sale as set out in Attachments 2 and 3 to REP 619 as detailed in chapter 4.2 to REP 619.
- in accordance with subsection 269TACC(1), that, having regard to all relevant information and subsections 269TACC(2) and (3), the financial contributions received under the subsidy programs set out in chapter 5 and Confidential Attachment 5 to REP 619 confers a benefit;
- in accordance with subsection 269TACD(1), that the amount of countervailable subsidy received in respect of certain aluminium extrusions by XinYueYa, expressed as a percentage of the ascertained export price, is 0.2 per cent.

**PUBLIC RECORD**

**10 APPENDIX A – LIST OF COUNTERAVAILABLE PROGRAMS IN REP 543**

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

**PUBLIC RECORD**

<b>Program Number</b>	<b>Program Name</b>	<b>Program Type</b>	<b>Countervailable in relation to the goods (Yes/No)</b>
61	Enterprise employment fixed point monitoring work subsidy	Grant	Yes
62	Special funds for provincial enterprises to transfer and upgrade equipment	Grant	Yes
63	Reserve funds for enterprise development	Grant	Yes
64	High integrity enterprise award 2014	Grant	Yes
65	Jiangmen engineering technology research centre award	Grant	Yes
66	2016 Shanghai Automotive Commodities Exhibition special fee subsidy	Grant	Yes
67	Corporate remuneration survey subsidy	Grant	Yes
68	Energy saving project subsidy	Grant	Yes
69	Science and technology project subsidy	Grant	Yes
70	Provincial engineering and technology research centre 2016	Grant	Yes
71	Foreign trade development fund subsidy of Jiangmen City	Grant	Yes
72	2015 Special Funds of Technology Renovation technical renovation project with environmental protection	Grant	Yes
73	Provincial Market Development Grant for foreign trade exhibitions and SMEs International market development	Grant	Yes
75	Subsidy for Supporting Foreign Trade Enterprises of Nan'an city in 2017	Grant	Yes
76	Fund for Supporting Foreign Trade Export in 2017 of Nan'an Municipal Bureau of Financial	Grant	Yes
77	Power consumption award for production and efficiency increase in December 2016	Grant	Yes
78	Integration of informationization and industrialization management system (Note changed from market development due to info provided from Goomax)	Grant	Yes
79	Subsidy for invention patents	Grant	Yes
80	No. 269: Special project for technology reform- subsidy for technology reform	Grant	Yes
81	Madrid Trademark grant by Fujian Provincial Administration for Industry and Commerce	Grant	Yes
82	2016 Award for brand value from Finance Bureau	Grant	Yes
83	Social security fund Guangzhou Social Insurance Fund	Grant	Yes
84	Patent supporting fund	Grant	Yes

**PUBLIC RECORD**

<b>Program Number</b>	<b>Program Name</b>	<b>Program Type</b>	<b>Countervailable in relation to the goods (Yes/No)</b>
85	Unemployment fund Guangzhou Social Insurance Fund	Grant	Yes
86	Technology supporting fund	Grant	Yes
87	Special fund Industry technology development and research	Grant	Yes
88	Industry technology R&D fund	Grant	Yes
89	Technology innovation fund	Grant	Yes
90	Social security fund Zencheng City	Grant	Yes
91	2016 Jiangmen support fund for technology development	Grant	Yes
92	Funds for EFT16 technical reform	Grant	Yes
93	Funds for 2016 technical renovation	Grant	Yes
94	EFT provincial Industry and informatization special research expenses supplement fund	Grant	Yes
95	2017 Enterprise Compensation Survey Fund	Grant	Yes
96	VOCs treatment fund for the process of injection workshop	Grant	Yes
97	Economic investigation fund	Grant	Yes
98	2017 Provincial Motor Energy Efficiency Promotion Special Fund	Grant	Yes
99	2017 Jiangmen Enterprise Major technology platform construction Fund	Grant	Yes
100	Receiving the payment from Taishan Finance Bureau	Grant	Yes
101	2017 Jiangmen Enterprise Research and Development Financial Aid Fund	Grant	Yes
102	Taishan High-integrity enterprise project fund	Grant	Yes
103	2017 Provincial Enterprise Research and Development Fund	Grant	Yes
104	Special funds for enterprises in large equipment manufacturing industry	Grant	Yes
105	2017 Provincial New enterprise Technology Reform Fund	Grant	Yes
106	Jiangmen supported science and technology development projects 2018	Grant	Yes
107	2018 special fund support project fund	Grant	Yes
108	Jiangmen municipal support science and technology development funds in 2019	Grant	Yes
109	Subsidy for employment of the disabled	Grant	Yes



**PUBLIC RECORD**

<b>Program Number</b>	<b>Program Name</b>	<b>Program Type</b>	<b>Countervailable in relation to the goods (Yes/No)</b>
110	Environmental Protection Subsidy from Nan'an City Dongtian Government	Grant	Yes
111	Electricity Incentive Reward for Promoting Industrial Enterprise to Increase Production and Increase Efficiency of April to June of 2018	Grant	Yes
112	Subsidy for Foreign Economic and Trade Enterprise of 2018	Grant	Yes
113	Fund for Natural Disaster Relief	Grant	Yes
114	Subsidy for Chief Technology Officer	Grant	Yes
115	Electricity Incentive Reward of Production Increase and Efficiency Increase for Eligible Enterprise of the First Quarter of 2019	Grant	Yes
116	Trade Promotion Fund of 2019	Grant	Yes
117	Subsidy from Guangzhou Industry and Information Technology Bureau	Grant	Yes

**PUBLIC RECORD**

**11 ATTACHMENTS**

<b>Confidential Attachment 1</b>	Export Price
<b>Confidential Attachment 2</b>	Cost to Make and Sell
<b>Confidential Attachment 3</b>	Normal Value
<b>Confidential Attachment 4</b>	Dumping margin calculation
<b>Confidential Attachment 5</b>	Subsidy margin calculation
<b>Confidential Attachment 6</b>	Aluminium benchmark