



CUSTOMS ACT 1901 - PART XVB

**STATEMENT OF ESSENTIAL FACTS
No.s 490 and 494**

**REVIEW OF ANTI-DUMPING MEASURES APPLYING TO
CERTAIN ALUMINIUM EXTRUSIONS**

**EXPORTED TO AUSTRALIA FROM MALAYSIA
by
ALUMAC INDUSTRIES SDN BHD**

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ABBREVIATIONS

ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
Alumac	Alumac Industries Sdn Bhd
Capral	Capral Limited
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
the Customs Amendment	<i>Customs Amendment (Anti-Dumping Measures) Act 2017</i>
the Customs Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	electronic public record
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
GOM	Government of Malaysia
IDD	interim dumping duty
ICD	interim countervailing duty
INV 362	Investigation 362 or the original investigation
the Manual	<i>Dumping and Subsidies Manual – November 2018</i>
the Minister	The Minister for Industry, Science and Technology
NIP	non-injurious price
OCOT	ordinary course of trade
the then Parliamentary Secretary	the then Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
REQ	response to the exporter questionnaire
Rev 490 or review 490	Revocation review of measures 490
Rev 494 or review 494	Review of variable factors 494
the review	both review 490 and review 494, collectively.
The review period	1 July 2017 to 30 June 2018
SEF	statement of essential facts

1 SUMMARY

1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Minister for Industry, Science and Technology (the Minister)¹ in relation to a revocation and a variable factors review of the anti-dumping measures (in the form of a dumping duty notice and countervailing duty notice) applying to certain aluminium extrusions exported to Australia from Malaysia by Alumac Industries Sdn Bhd (Alumac).

On 27 July 2018, Alumac applied for a review of anti-dumping measures, in respect of the goods exported by Alumac, seeking a revocation of the measures as they apply to Alumac on the basis that they are no longer warranted. The Commissioner initiated this review (Rev 490) on 24 August 2018.

On 7 September 2018, Alumac lodged a further application seeking a review of the variable factors relevant to the taking of interim dumping and countervailing duties, with respect to aluminium extrusions it exports to Australia from Malaysia. The Commissioner initiated this review (Rev 494) on 27 September 2018.

As these reviews both relate to a proposed change of the variable factors relating to Alumac's exports of aluminium extrusions, the Commissioner has considered these applications together.

Following applications by Alumac, Review 490 and Review 494 (the review)² were initiated on 24 August 2018 and 27 September 2018, respectively.³

The review examines whether:

- the anti-dumping measures (in the form of a countervailing duty notice) applying to certain aluminium extrusions (the goods) exported to Australia from Malaysia by Alumac should be revoked or varied; and
- the anti-dumping measures (in the form of a dumping duty notice and countervailing duty notice) applying to the goods exported to Australia from Malaysia by Alumac should be varied.

¹ For the purposes of this review, the Minister is the Minister for Industry, Science and Technology.

² Unless otherwise stated, 'the review' refers to Review 490 or Review 494 collectively.

³ Anti-Dumping Notice (ADN) No's. 2018/132 and 2018/149 refers. The Minister at the time of the initiation was the then Assistant Minister for Science, Jobs and Innovation.

1.2 Legislative background

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

Division 5 also outlines the procedures to be followed by the Commissioner in considering an application and preparing a report for the Minister and empowers the Minister, after consideration of that report, to decide whether the measures be revoked, remain unaltered or have effect as if different variable factors had been fixed.

The Commissioner must, within 110 days after the publication of the notice or such longer period as the Assistant Minister allows, place on the public record a statement of essential facts (this SEF) on which the Commissioner proposes to base his recommendation to the Minister in relation to the review of anti-dumping measures.⁵

The Commission must make a revocation recommendation to the Minister in relation to the anti-dumping measures relevant to the application, unless he is satisfied that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the measures are intended to prevent.⁶

1.3 Preliminary findings

The Commissioner has examined Alumac's exports of the goods from Malaysia for the period 1 July 2017 to 30 June 2018 (the review period) and has found that the variable factors, in particular Alumac's export price and normal value, have changed since last ascertained.

Having regard to all available information, the Commissioner is not satisfied that, in relation to Alumac, revoking the countervailing duty measures, would lead, or be likely to lead, to a continuation of, or a recurrence of, the subsidisation and the material injury that the measures are intended to prevent.

1.4 Proposed recommendation

Based on the above findings and subject to any submissions received in response to this SEF, the Commissioner proposes to recommend to the Minister that:

- in accordance with subsection 269ZDA(1A)(b), the countervailing duty notice be revoked in relation to aluminium extrusions exported to Australia from Malaysia by Alumac; and

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

⁵ Subsection 269ZD(1).

⁶ Subsection 269ZDA(1A)(b).

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- the dumping duty notice have effect as if different variable factors had been ascertained, relevant to Alumac only.

The effect of this proposed recommendation to revoke the countervailing duty notice would be that interim countervailing duty (ICD), with respect to goods exported to Australia from Malaysia by Alumac, will not apply to the goods entered for home consumption on and after 24 August 2018. If this recommendation is accepted by the Minister, importers who have paid ICD in relation to the anti-dumping measures applicable to aluminium extrusions exported from Malaysia by Alumac on and after 24 August 2018 would be eligible for a refund.

Where the Minister accepts the recommendation that the dumping duty notice have effect as if different variable factors had been ascertained with respect to exports by Alumac, the amended interim dumping duty (IDD) rate will apply from day that the Minister's notice is published on the public record.

1.5 Final report

The Commissioner's final report and recommendations must be provided to the Minister by **8 May 2019** or within such longer period as may be allowed.

2 BACKGROUND

2.1 Initiation

On 24 August 2018, following consideration of an application for a revocation of the dumping and countervailing duty notices applying to Alumac the Commissioner initiated the application in respect of the countervailing duty notice only. The application for a revocation of the measures, as they relate to the dumping duty notice, was rejected by the Commissioner on the basis that there did not appear to be reasonable grounds for asserting that the anti-dumping measures were no longer warranted.

Notification of the initiation of the revocation review was made in Anti-Dumping Notice (ADN) No. 2018/132, which was published on the Anti-Dumping Commission's (the Commission's) website⁷ on 24 August 2018. On the same date, *Consideration Report No. 490* was published on the Commission's website detailing the Commissioner's reasons for not rejecting the countervailing aspect of the application.

On 7 September 2018, Alumac lodged a second application with the Commission, seeking a review of the anti-dumping measures (in the form of dumping and countervailing duty notices) in respect of aluminium extrusions exported to Australia from Malaysia, on the basis that one or more of the variable factors relevant to the taking of anti-dumping measures have changed. The second application again sought the revocation of both the countervailing and dumping duty notices in respect of their exports.

On consideration of this application, the Commissioner initiated a review of Alumac's variable factors, with respect to both dumping and countervailing measures, on 27 September 2018. On the same date, the Commissioner rejected that part of the application seeking a revocation review of measures, relevant to the taking of IDD on the basis that there did not appear to be reasonable grounds for asserting that the anti-dumping measures were no longer warranted. The Commissioner also rejected the application for a revocation review of measures, relevant to the taking of ICD, on the basis that Alumac did not include evidence in support, or a statement of opinion, that anti-dumping measures were no longer warranted. The Commission notes however that a revocation review of measures, relevant to the taking of ICD in relation to aluminium extrusions exported by Alumac was initiated on 24 August 2018, as noted previously.

Notification of the initiation of the variable factors review was made in ADN No. 2018/149, which was published on the Commission's website⁸ on 27 September 2018.

Consideration Report No. 494 was also published on the Commission's website detailing the Commissioner's reasons for not rejecting the application for a review of Alumac's variable factors.

⁷ Refer to document # 3 on the electronic public record (EPR) for Review 490.

⁸ Refer to document #3 on the EPR for Review 494.

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For the purposes of assessing Alumac's variable factors in this review, the period of 1 July 2017 to 30 June 2018 was examined.

2.2 History of the anti-dumping measures

2.2.1 Original investigation

The full history in relation to anti-dumping measures relating to certain aluminium extrusions can be found on the Commission's website at www.adcommission.gov.au.

On 28 June 2016, Capral Limited (Capral) lodged an application requesting that the then Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the then Parliamentary Secretary) publish dumping and countervailing duty notices in respect of certain aluminium extrusions exported to Australia from Malaysia and the Socialist Republic of Vietnam (Vietnam).

On 22 June 2017, the then Parliamentary Secretary accepted the recommendations in Report No. 362 and published dumping and countervailing notices for aluminium extrusions exported to Australia from Malaysia and Vietnam.

With respect to Malaysian exporters, the investigation found that three cooperating exporters and three residual exporters either did not export the goods to Australia at dumped or subsidised prices, or if they did, the margins of dumping were found to be *de minimis*. However, the Commission found that 'uncooperative and all other exporters' for the purposes of dumping, and the 'non-cooperative and all other exporters' for the purposes of countervailing, exporting the goods from Malaysia, were found to have caused material injury to the Australian industry producing like goods.

The current effective rates of duty with respect to aluminium extrusions exported to Australia from Malaysia are detailed in Table 1 below. The 'All other exporters' rate is currently applicable to exports by Alumac.

Exporter	Measure	Effective rate of duty
Superb Aluminium Industries Sdn Bhd	Exempt	
Milleon Extruder Sdn Bhd	Exempt	
Kamco Aluminium Sdn Bhd	Exempt	
LB Aluminium Bhd	Exempt	
Press Metal Bhd	Exempt	
Genesis Aluminium Industries Sdn Bhd	Exempt	
Zinaco Industrial and Hardware Industries Ltd	IDD & ICD	64.4%
Foshan ZP Aluminium Co. Ltd	IDD & ICD	64.4%
All other exporters	IDD & ICD	16.2%

Table 1 - Effective rates of duty applicable to exports of aluminium extrusions from Malaysia

2.3 Review process

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

The Minister may initiate a review at any time. However, a review application must not be lodged earlier than 12 months after publication of the dumping duty notice or countervailing duty notice or the notice(s) declaring the outcome of the last review of the dumping or countervailing duty notice.¹⁰

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

During the course of this review, the Commissioner is examining whether the variable factors have changed and with respect to the countervailing duty notice, whether anti-dumping measures are no longer warranted.

Variable factors in this particular review are a reference¹² to:

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

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

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

- the applications for revocation and variable factors review;
- any application or request to extend the review that was not rejected;

⁹ Subsection 269ZA(1).

¹⁰ Subsection 269ZA(2)(a).

¹¹ Subsection 269ZDA(1).

¹² Subsection 269T(4E).

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

¹⁴ Subsection 269ZD(1).

¹⁵ Subsection 269ZDA(3)(a).

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

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

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

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

The Commissioner:

- must not make a revocation recommendation in relation to the measures unless a revocation review notice has been published in relation to the review; and
- otherwise, must make a revocation recommendation in relation to the measures unless the Commissioner is satisfied as a result of the review that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that that measures are intended to prevent.¹⁸

Where the Minister decides to revoke the anti-dumping measures, the Minister can declare that the notice be revoked either in relation to a particular exporter, exporters generally, or in relation to a particular kind of goods.¹⁹

¹⁶ Subsection 269ZDA(3)(b).

¹⁷ Subsection 269ZDA(1)(a).

¹⁸ Subsection 269ZDA(1A).

¹⁹ Subsection 269ZDB(1)(a)(ii).

2.4 Extensions of time

2.4.1 Review 490

On 6 November 2018, the Commissioner notified affected parties of an extension of 34 days by which to publish the SEF and provide the final report to the Minister for this revocation review.²⁰ Due to the similarities in case characteristics, an extension of time was requested to align the relevant dates of Rev 490 to those relevant to Rev 494.

A further two extensions of 40 days and 28 days to publish the SEF and final report were granted and notified by the Commissioner on 12 December 2018 and 21 February 2019, respectively.²¹

2.4.2 Review 494

On 12 December 2018, the Commissioner notified affected parties of an extension of 40 days by which to publish the SEF and provide the final report to the Minister for this revocation review.²²

A further extension of 28 days to publish the SEF and final report was granted and notified by the Commissioner on 21 February 2019.²³

2.5 Submissions received in relation to this review

The Commission received submissions from Capral in response to the initiation of reviews 490 and 494, on 28 September 2018 and 31 October 2018 respectively.

2.5.1 Review 490

Capral states that it agrees with the Commissioner's decision not to initiate a revocation review of anti-dumping measures with respect to the IDD applicable to exports of the goods to Australia from Malaysia by Alumac.

Capral further stated that as it does not have access to the confidential tax records of Alumac, it is unable to comment on whether Alumac is in receipt of any countervailable subsidies, and recommends the Commission verify if any subsidies have been received.

2.5.2 Review 494

In its submission of 30 October 2018, Capral reaffirmed its comments with respect to the rejection of the second application for a revocation review of measures with respect to IDD applicable to exports of the goods to Australia from Malaysia by Alumac.

²⁰ ADN No. 2018/156 refers.

²¹ ADN No. 2018/191 and 2019/24 refers.

²² ADN No. 2018/191 refers.

²³ ADN No. 2019/24 refers.

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With respect to the application for a revocation review of ICD applicable to exports of the goods to Australia from Malaysia by Alumac, Capral expressed support for the Commission's part rejection of the application, stating:

"Capral supports the Commission's interpretation and confirms that it considers the countervailing measures are warranted to prevent injury to the Australian industry".

In relation to the review of variable factors, Capral notes the increases in raw material costs and therefore considers that the variable factors applicable to Alumac will also have increased.

2.5.3 The Commission's response

The Commission verified the information provided during the review, including the consideration of supporting documentation, testing and analysis of data, as well as undertaking a full quality assurance process of the verification of information provided by Alumac.²⁴ The Commission has carefully considered information relevant to the review including, as identified by Capral, Alumac's confidential tax records and costs associated with the manufacture and export of the goods.

2.6 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Minister. The SEF represents an important stage in the review as it informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner. The final report will recommend:

- whether or not the dumping and countervailing duty notices should be varied; and
- whether the countervailing duty notice should be revoked, and the extent of any countervailing duties that are, or should be, payable.

Interested parties are invited to make submissions to the Commissioner in response to the SEF within 20 days of the SEF being placed on the public record. The due date to lodge written submissions in response to this SEF therefore is 15 April 2019.²⁵ The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.²⁶

²⁴ Refer document #'s 11 and 10 on the EPR for review 490 and 494 respectively.

²⁵ The SEF is due to be published on the EPR on or before 24 March 2019. As this is a Sunday the effective due date by which to publish the SEF is the next working day, being Monday, 25 March 2019. 20 days from this date is 14 April 2019. As this is a Sunday the effective due date for submissions is the next working day, being Monday, 15 April 2019,

²⁶ Subsection 269ZDA(4).

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Submissions should preferably be emailed to investigations4@adcommission.gov.au. Alternatively, they may be sent to fax number +61 3 8539 2499, or posted to:

Director Investigations 4
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available at the Commission's website at www.adcommission.gov.au.

The public record contains non-confidential submissions by interested parties and other publicly available documents. It is available by request in hard copy in Melbourne (phone (03) 8539 2478 to make an appointment), or online at www.adcommission.gov.au

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

2.7 Final report

The Commissioner must provide a final report and recommendations to the Minister on or before **8 May 2019** or within such longer period as may be allowed.

3 THE GOODS AND LIKE GOODS

3.1 The goods subject to the anti-dumping measures

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;*
- *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 2 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 2 - The goods and like goods

3.2 Tariff classification

The goods are generally 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 allow 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 3 - Tariff classifications of the goods

These tariff classifications and statistical codes may include goods that are both subject and not subject to the review. The listing of these tariff classifications and statistical codes are for convenience or reference only and do not form part of the goods description. Please refer to the goods description for details of the goods the subject of this review.

3.3 Like goods

Subsection 269T(1) defines like goods as:

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

The definition of like goods is relevant in the context of this review in determining the normal value of goods exported to Australia, the non-injurious price (NIP) and the goods subject to the dumping duty and countervailing duty notices. The Commission's framework for assessing like goods is outlined in Chapter 2 of the Commission's *Dumping and Subsidies Manual – November 2018* (the Manual).²⁷

²⁷ Available on the Commission's website at www.adcommission.gov.au

4 VARIABLE FACTORS REVIEW

4.1 Preliminary finding

The Commissioner finds that the variable factors (being the export price and the normal value) relevant to the determination of dumping duty payable under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) have changed with respect of aluminium extrusions exported to Australia from Malaysia by Alumac.

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

4.2 Cooperation with this review - Alumac

Upon initiation of this review, the Commission provided Alumac with an exporter questionnaire to complete. Alumac provided detailed information and data in their response to the exporter questionnaire (REQ), including data relating to sales of the goods and details of the cost to make and sell (CTMS). Alumac provided additional information as requested by the Commission.

The Commission conducted a full remote desktop verification of the information provided in Alumac's REQ. A report of the verification is available on the electronic public record (EPR).²⁸

4.3 Low volume assessment

Export price is determined in accordance with section 269TAB of the Act. On 31 October 2017, the *Customs Amendment (Anti-Dumping Measures) Act 2017* (the Amendment Act) came into force specifying additional methodologies under section 269TAB by which the Minister may determine an export price during a review of measures²⁹ for exporters that have not exported the goods, or have exported low volumes of the goods, such that the export price cannot be reliably determined.

As Alumac exported a small volume of aluminium extrusions in the review period, the Commission has considered whether the requirements of subsection 269TAB(2A) of the Act have been met, and therefore, whether Alumac's export price is to be determined under subsection 269TAB(2B) of the Act.

Subsection 269TAB(2A) specifies that the export price of the goods exported to Australia may be determined by the Minister in accordance with subsection 269TAB(2B) if:

²⁸ Refer document #'s 11 and 10 on the EPR for review 490 and 494 respectively.

²⁹ Under Division 5 of Part XVB of the Act.

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- a) the price is being ascertained in relation to an exporter of those goods (whether the review is of the measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally); and
- b) the Minister determines that there is insufficient or unreliable information to ascertain the price due to an absence or low volume of exports of those goods to Australia by that exporter having regard to the following:
 - i. previous volumes of exports of those goods to Australia by that exporter;
 - ii. patterns of trade for like goods; and
 - iii. factors affecting patterns of trade for like goods that are not within the control of the exporter.

The Commission has considered these elements as set out above in regards to Alumac as follows:

Previous volumes of exports by Alumac – subsection 269TAB(2A)(b)(i)

Due to Alumac being determined to be an uncooperative exporter in the original investigation,³⁰ the Commission does not have past verified export volumes of exports of aluminium extrusions. In order to determine if volumes of exports were low during the review period in comparison to Alumac's previous volumes, the Commission has examined information from the Australian Border Force (ABF) import database.

The Commission examined the volume of aluminium extrusions exported by Alumac for the financial years, 2014-15 to 2017-18 and observed that the volume of exports in the 2017-18 financial year was the highest of the periods examined.

Patterns of trade for like goods – subsection 269TAB(2A)(b)(ii)

The Commission examined the ABF import database with respect to exports of aluminium extrusions to Australia from all exporters in Malaysia. The Commission observed a similar trend in the volume of exports of the goods to Australia by all exporters from Malaysia.

Factors affecting patterns of trade – subsection 269TAB(2A)(b)(iii)

The Commission notes that the explanatory memorandum³¹ for the Amendment Act identifies factors that may affect patterns of trade for like goods that are not within the control of the exporter. Such factors may include supply disruptions or natural events (such as flood, drought or fire) that affect production levels.

The Commission found that Alumac manufactured and sold like goods on the domestic market and to third countries during the review period. The Commission considers that

³⁰ Final report – Document #89 on the EPR for the original investigation 362.

³¹ Refer page 31 of the explanatory memorandum of the *Customs Amendment (Anti-Dumping Measures) Act 2017*.

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this indicates that there do not appear to be any factors (such as natural events) that are not within the control of Alumac that are affecting trade for like goods.

Commission's consideration – subsection TAB(2A)

Having regard to the above information, the Commission does not consider that in regards to Alumac, there is insufficient or unreliable information to ascertain an export price due to a low volume of exports to Australia.

4.4 Export price

As noted above, the Commission found that Alumac exported the goods to Australia during the review period. Based on information obtained as part of the desktop exporter verification, as well as information obtained from importers, the Commission considers that:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporter; and
- the purchase of the goods by the importer were arms length transactions.³²

The export prices for Alumac have therefore been calculated under subsection 269TAB(1)(a) using the invoiced price, less transport and other costs arising after exportation.

The Commission's export price calculation is at **Confidential Attachment 1**.

4.5 Normal value

4.5.1 Applicable legislation

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

4.5.2 Normal value method

The Commission is satisfied that the prices paid in respect of Alumac's domestic sales of the goods are suitable for assessing normal value in accordance with subsection 269TAC(1) on the basis that there were models with sufficient volumes of domestic sales of the goods, exported to Australia, that were arms length transactions and at prices that were within the OCOT. The Commission therefore established normal value for Alumac's goods using Alumac's weighted average domestic invoice prices for like goods, by model.

³² Full details of these findings are set out in Alumac's Verification Report at Document #'s 11 and 10 on the EPR for review 490 and 494 respectively.

4.5.3 Adjustments

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

Adjustment Type	Deduction / addition
Domestic packaging	Less the cost of domestic packaging
Domestic inland transport	Less the cost of domestic inland transport
Domestic cutting costs	Less the cost of cutting
Domestic machining costs	Less the cost of domestic machining
Domestic credit terms	Less the cost of domestic credit terms
Export packaging	Add the cost of export packaging
Export inland transport	Add the cost of export inland transport
Export machining costs	Add the cost of export machining ³³
Export credit terms	Add the cost of export credit terms

Table 4 - Adjustments for fair comparison

The normal value calculation is at **Confidential Attachment 2**.

4.6 Non-injurious price (NIP)

4.6.1 Introduction

The NIP is defined in section 269TACA as “the minimum price necessary ... to prevent the injury, or a recurrence of the injury” caused by the dumped or subsidised goods the subject of a dumping duty notice or a countervailing duty notice. The NIP is ordinarily determined by having regard to the Australian industry’s selling prices from a period where the industry is not affected by dumping.

4.6.2 Lesser duty rule

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the Dumping Duty Act.³⁴

The level of dumping duty imposed by the Minister cannot exceed the margin of dumping, however, where the NIP of the goods is less than the normal value of the goods, the Minister must also have regard to the desirability of fixing a lesser amount of duty.

³³ The verification visit report omitted adjustments to normal value for export machining, export credit terms and domestic credit terms. The Commission considers these adjustments necessary to enable a fair comparison to the ascertained export price. The report is document #11 and #10 on the EPR for review 490 and 494 respectively.

³⁴ Refer subsection 8(5B) of the Dumping Duty Act.

4.6.3 The Commission's preferred approach to establishing unsuppressed selling prices

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

The Commission's preferred approach to establishing the USP is set out in chapter 23 of the Dumping and Subsidy Manual³⁵ and observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the unsuppressed selling price, 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.

4.6.4 The Commission's assessment

During the original investigation, the Commission determined the USP utilising the weighted average unit selling price of the Australian industry's aluminium extrusions for the year immediately preceding the investigation period, being 1 July 2014 to 30 June 2015, as this period 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).

The Commission has been unable to calculate a NIP with reference to importer data for exports from Malaysia by Alumac, provided for this review. Therefore the Commission has calculated a NIP using importer data from cooperating importers participating in an all exporter review of measures, Review 482, with respect to aluminium extrusions exported from the People's Republic of China (China), and ABF import data with respect to aluminium extrusions exported from Malaysia by Alumac.

Specifically, the NIP has been calculated to FOB delivery terms by deducting the USP amounts for:

- importer profit for exports from China;
- importer SG&A expenses for exports from China;
- importation costs for exports from China; and
- freight and insurance costs recorded in ABF import database with respect to exports from Malaysia by Alumac.

³⁵ Available on the Commission's website at: www.adcommission.gov.au

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In the context of this review, the ascertained export price and the dumping margin for Alumac was lower than the NIP and therefore the NIP is not the operative measure and the lesser duty rule does not come into effect.

The non-injurious price calculation is located at **Confidential Attachment 3**.

4.7 Dumping margin

The Commission has calculated a preliminary dumping margin for Alumac based on the revised variable factors for the review period. The dumping margin has been calculated by comparing the Australian export prices of the goods during the review period, with the corresponding normal values.

The dumping margin in respect of the goods exported to Australia by Alumac is **negative 2.84 per cent.³⁶**

The dumping margin calculation is located at **Confidential Attachment 4**.

4.8 Subsidy margin

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

Exports of aluminium extrusions by Alumac to Australia are currently subject to the 'All other' ICD rate.

The Commission has examined the information provided by Alumac in its REQ and is satisfied that Alumac has not received any grants or subsidies, and therefore no countervailable subsidies, during the review period. Further detail about the review of ICD in respect of Alumac's exports is set out in section 5 of this report below.

³⁶ The dumping margin has changed from what is reported in the verification visit report due to the inclusion of an upwards adjustment to normal value for export machining. The dumping margin was reported as -6.78%. The report is document #11 and #10 on the EPR for review 490 and 494.

5 REVOCATION REVIEW

5.1 Preliminary assessment

The Commissioner preliminarily finds that:

- revoking the countervailing duty measures, as it applies to aluminium extrusions exported to Australia from Malaysia by Alumac, would not lead, or be likely to lead, to a continuation of, or a recurrence of, subsidisation and the material injury that the measures are intended to prevent.

5.2 Application for revocation review³⁷

In its application of 27 July 2018, Alumac asserts that the measures are no longer warranted as it is not eligible for any government subsidies or tax incentives with respect to aluminium extrusions it exports to Australia. Alumac states that the ICD rate applicable to the goods it exports to Australia from Malaysia is the ‘*all other exporters*’ rate, as a result of being determined a non-cooperative exporter in the original investigation (INV 362).

Further, Alumac states that it is not currently in receipt of, nor did it receive, during the period 1 July 2016 to 30 June 2017, any government subsidies or tax incentives.

In its application, Alumac did not make any comment or provide information on the likelihood of it receiving countervailing subsidies in the future.

5.3 Legislative background

Under section 269ZDA, the Commissioner must make a revocation recommendation to the Minister in relation to the measures, unless the Commissioner is satisfied as a result of the review that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of the subsidisation and the material injury that the measures are intended to prevent.

In examining the likelihood of receiving countervailing subsidies and material injury continuing or recurring, the Commissioner has had regard to *Siam Polyethylene Co Ltd v Minister for Home Affairs (No. 2)* [2009] FCA 838. In that case, at [49], the word “likely” in subsection 269ZHF(2) was taken to mean “more probable than not” by the Federal Court.

5.4 Likelihood of subsidisation continuing or recurring

The Commissioner may have regard to a number of factors in assessing the likelihood of subsidisation continuing or recurring. Such factors may include, but are not limited to, an

³⁷ Specifically the application that resulted in the initiation of Review 490.

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examination of any programs found to be countervailable in the original investigation and any additional programs identified as being received by the exporter.

5.4.1 Subsidisation found in the original investigation (INV 362)

Report 362 found that, during the investigation period Press Metal Berhad, Superb Aluminium Industries Sdn Bhd, LB Aluminium Berhad, and the category of residual exporters from Malaysia had 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 was considered to be negligible as it was less than two per cent.³⁸

In determining the ‘non-cooperative entity’ subsidy margin, the Commission had regard to all the available relevant facts and determined that exporters in the non-cooperative entity category from Malaysia had received the highest level of subsidisation of the selected cooperating exporters. Inputs to the subsidy margin calculation included a unit of measure (relevant sales volumes) and an export price based on the lowest export price of the selected cooperating exporters.

Alumac, as detailed in REP 362, did not provide a response to the exporter questionnaire until after the prescribed date. Accordingly, 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 (Extensions of Time and Non-cooperation) Direction 2015* (the Customs Direction), to treat it as an uncooperative exporter³⁹ and a non-cooperative entity.⁴⁰

The resulting rate of ICD applicable to exports of the goods to Australia from Malaysia by Alumac, as a non-cooperative exporter, was determined to be **3.2 per cent**.

5.4.2 Subsidisation identified with respect to Alumac

Investigation 362 found three relevant countervailable subsidies that are applicable to the ‘All other exporter’ rate of duty. In respect of this review, the Commission has considered Alumac’s eligibility for each of the following countervailable subsidies which were found countervailable in Investigation 362:

Program number	Program name	Program type
4	Double deduction for freight charges from Sabah or Sarawak	Income tax
5	Double deduction for insurance premiums for exporters and importers	Income tax
6	Reinvestment allowance	Income tax

Table 5 - Countervailable subsidies found in INV 362

³⁸ Subsection 269TAD(16) of the Act.

³⁹ Subsection 269T(1) of the Act.

⁴⁰ Subsection 269TAACA of the Act.

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The Government of Malaysia's response to the Commission's questionnaire

The Commission received a response to its questionnaire from the Government of Malaysia (GOM) on 2 November 2018. In this response, the GOM confirmed that the three identified countervailable subsidies remain available to eligible entities. In addition, it confirmed that Alumac did not receive benefits under these programs.

Program 4

The GOM provides a double deduction for income tax purposes to encourage products from Sabah and Sarawak to be shipped to the Malaysian Peninsular.

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 income tax returns.

Alumac is located in Selangor, Malaysia and is therefore not eligible to access this program. This is supported by information provided by the GOM in its response to the Commission's questionnaire.

Program 5

A double deduction for income tax purposes is provided to encourage exporters and importers to take out insurance to secure the risks of doing business.

Companies paying insurance premiums in respect of cargo exported by a person are eligible for this program, provided they are insured with any insurance company incorporated in Malaysia. There is no application process for this program, claims are made during submission of income tax returns. The double deductions under this program were revoked in 2012, effective from the 2016 year of assessment.

The Commission has no evidence that Alumac would be eligible to make a claim for this program and, on the basis that the double deduction under this program has been revoked, is satisfied that it will not be eligible to receive a benefit for this program in the future.

Program 6

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

For the purposes of this review, the Commission examined the 2015-16, 2016-17 and 2017-18 financial reports provided by Alumac and found no evidence that Alumac had received any financial benefit under the countervailable subsidy programs in respect of aluminium extrusions exported to Australia.

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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.

The Commission found no evidence of any unutilised allowance that can be carried forward, nor any evidence to suggest that Alumac would be eligible under this program.

Other programs

In addition to the above programs, the Commission requested information from Alumac about any other grants or subsidies it may have received. In its REQ, Alumac stated that it had not received any financial benefit from any new grant or subsidy during the review period.

The Commission verified the information provided by Alumac by examining its accounting records. The Commission is satisfied that Alumac has not received a financial benefit, grant or subsidy, during the examined periods, in respect of aluminium extrusions exported to Australia.

5.4.3 The Commission's assessment

The Commission considers that the evidence provided by Alumac, as verified by the Commission, demonstrates that Alumac did not receive a countervailable subsidy in respect of the goods during the review period.

In addition, the Commission considers information provided by the GOM supports the assessment of the information provided by Alumac.

Having regard to all relevant considerations discussed above, the Commission is satisfied that Alumac is not receiving, or continuing to receive, a countervailable subsidy.. Additionally, the Commission did not find any evidence to suggest that Alumac is likely to receive a countervailable subsidy in the future.. Therefore any material injury that measures are intended to prevent cannot be caused or likely to be caused by subsidisation of Alumac's exports.

On this basis the Commission is not satisfied that revoking the countervailing measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the subsidisation and the material injury that the measures are intended to prevent. Therefore the Commissioner must make a revocation recommendation to the Minister

6 FINDINGS AND PROPOSED RECOMMENDATIONS

6.1 Findings

The Commissioner finds that, in relation to exports of aluminium extrusions to Australia from Malaysia by Alumac during the review period:

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

6.2 Proposed recommendations

6.2.1 Review of variable factors

The Commissioner proposes to recommend to the Minister that the dumping duty notice in respect of exports of aluminium extrusions from Malaysia by Alumac have effect as if different variable factors had been ascertained.

As the preliminary dumping margin determined is negative, the Commissioner recommends that duties be calculated, in respect of any IDD that may become payable, using the floor price method as set out in subsections 5(4) and (5) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

The proposed recommendation will take effect, should the Minister accept it, on the day the Minister's notice is published on the public record.

6.2.1.1 Floor price duty method

The floor price duty method sets a “floor” where duty is collected when the actual export price is less than the normal value. The floor price is either the normal value or the NIP, whichever becomes applicable under the duty collection system. In this instance the proposed recommendation is to set the floor price equal to the ascertained normal value.

6.2.2 Revocation review

The Commissioner proposes to recommend to the Minister that the countervailing duty notice in respect of exports of aluminium extrusions from Malaysia from Alumac be revoked with effect from 24 August 2018, a retrospective date as provided for under subsection 269ZDB(6)(a), being the date of the publication of the notice under subsection 269ZC(4) indicating the Commissioner's acceptance of Alumac's application of a revocation review.

7 APPENDICES AND ATTACHMENTS

Confidential Appendix 1	Export price calculation
Confidential Appendix 2	Normal value calculation
Confidential Appendix 3	Non-injurious price calculation
Confidential Appendix 4	Dumping margin calculation