



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

REPORT NOS. 490 and 494

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

EXPORTED TO AUSTRALIA FROM MALAYSIA

by

ALUMAC INDUSTRIES SDN BHD

May 2019

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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
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 490	<i>Consideration Report No. 490</i>
CON 494	<i>Consideration Report No. 494</i>
the Amendment Act	<i>Customs Amendment (Anti-Dumping Measures) Act 2017</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	electronic public record
Ezy Tools	Ezy Tools Pty Ltd
FOB	free on board
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
LME	London Metals Exchange
the Minister	the Minister for Industry, Science and Technology
MCC	model control code
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
SG&A	selling, general and administration
USP	unsuppressed selling price
Vietnam	the Socialist Republic of Vietnam

1 SUMMARY

1.1 Introduction

This report sets out the Acting Commissioner of the Anti-Dumping Commission's (the Commissioner's)¹ recommendations to the Minister for Industry, Science and Technology (the Minister)² in relation to a revocation review and a variable factors review of the anti-dumping measures (in the form of a dumping duty notice and a countervailing duty notice) applying to certain aluminium extrusions (aluminium extrusions or the goods) exported to Australia from Malaysia by Alumac Industries Sdn Bhd (Alumac).

On 27 July 2018, Alumac applied to have the anti-dumping measures as they apply to Alumac revoked on the basis that they are no longer warranted. The Commissioner initiated a revocation review relating to the countervailing duty notice only (REV 490) on 24 August 2018.³

On 7 September 2018, Alumac lodged a further application. This application sought a revocation review of both notices. It also sought a review of the variable factors relevant to the taking of interim dumping duty (IDD) and interim countervailing duty (ICD), with respect to the aluminium extrusions it exports to Australia from Malaysia. The Commissioner initiated a review (REV 494) with respect to the variable factors only, on 27 September 2018.⁴

As REV 490 and REV 494 both relate to Alumac's exports of aluminium extrusions, for administrative convenience, the findings of both applications are combined in this report.⁵

The review examined whether:

- the countervailing duty notice applying to the goods exported to Australia from Malaysia by Alumac must be revoked; and
- the dumping duty notice and the countervailing duty notice applying to the goods exported to Australia from Malaysia by Alumac should remain unaltered or have effect, in relation Alumac, as if different variable factors had been ascertained.

1.2 Recommendations to the Minister

1. The Commissioner recommends that the countervailing duty notice applying to the goods exported to Australia from Malaysia by Alumac:

- be revoked; and

¹ Recommendations relating to this report have been made to the Minister by the Acting Commissioner. All other references to the Commissioner in relation to earlier aspects of the review (e.g. initiation, the SEF, extensions of time etc.) are references to the Commissioner of the Anti-Dumping Commission.

² For the purposes of this review, the Minister is the Minister for Industry, Science and Technology.

³ Anti-Dumping Notice (ADN) No. 2018/132 refers.

⁴ ADN No. 2018/149 refers.

⁵ Unless otherwise stated, 'the review' refers to REV 490 and REV 494 collectively.

- this decision by the Minister take effect from 24 August 2018.

The effect of the above recommendations would be that ICD will not apply to the goods exported by Alumac and 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 exports of the goods from Alumac, on and after 24 August 2018, would be eligible for a refund.

2. The Commissioner recommends that the dumping duty notice have effect as if different variable factors had been ascertained, in relation to exports of the goods to Australia from Malaysia by Alumac.

The Commissioner is not recommending that the countervailing duty notice, with respect to Alumac, have effect as if different variable factors had been ascertained on the basis that the Commissioner is recommending the countervailing duty notice, as it applies to Alumac, be revoked.

1.3 Application of law to facts

1.3.1 Authority to make decision

Division 5 of Part XVB of the *Customs Act 1901* (the Act)⁶ describes, among other things, the procedures to be followed, and the matters to be considered, by the Commissioner when undertaking a review of anti-dumping measures for the purpose of making a report to the Minister.

1.3.2 Initiation of the review

Section 269ZA allows for an affected party to make an application with the Commissioner, requesting the Commissioner initiate a review under Division 5, where the affected party considers that it is appropriate to review anti-dumping measures in respect of goods as they affect a particular exporter, or as they affect exporters of those good generally, because:

- (i) one or more of the variable factors relevant to the taking of the measures in relation to that exporter, or those exporters may have changed; or
- (ii) the anti-dumping measures are no longer warranted.

An application for a review of anti-dumping measures must not be made earlier than 12 months after the publication of the notice, or the publication of a notice declaring the outcome of the last review of the notice.

⁶ All references to legislation in this report are to the *Customs Act 1901*, unless otherwise specified.

1.3.3 Revocation of measures

The Commissioner 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.⁷

1.3.4 Statement of essential facts

The Commissioner must, within 110 days after the initiation of a review, or such longer period as allowed under subsection 269ZD(1),⁸ place on the public record a statement of essential facts (SEF) on which the Commissioner proposes to base a recommendation to the Minister in relation to the review.

Revocation review 490

On 6 November 2018, the Commissioner, under subsection 269ZHI(3), extended the deadline to publish the SEF and provide his final report and recommendation.⁹

On 12 December 2018 and 21 February 2019, the Commissioner approved two further extensions to the deadline to publish the SEF and provide his final report and recommendation.¹⁰

Review 494

On 12 December 2018, the Commissioner, under subsection 269ZHI(3), extended the deadline to publish the SEF and provide his final report and recommendation.¹¹

On 21 February 2019, the Commissioner approved a further extension to the deadline to publish the SEF and provide his final report and recommendation.¹²

Publication of SEF 490 and 494

The Commissioner placed SEF 490 and 494 on the public record on 25 March 2019.¹³

1.3.5 Final report

The report and recommendations in relation to this review were provided to the Minister on 3 May 2019.

⁷ Subsection 269ZDA(1A)(b).

⁸ On 14 January 2017, the then 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.

⁹ ADN No. 2018/156 refers.

¹⁰ ADN Nos. 2018/191 and 2019/24 refer.

¹¹ ADN 2018/191 refers.

¹² ADN 2019/24 refers.

¹³ Documents #14 and #13 on the electronic public records (EPRs) for REV 490 and REV 494, respectively.

In making the recommendations in this report, the Commissioner had regard to:

- the applications by Alumac for the reviews;
- all submissions to which the Commissioner had regard for the purpose of formulating SEF 490 and 494;
- all submissions made in response to SEF 490 and 494;
- SEF 490 and 494;
- submissions made prior to SEF 490 and 494 that, due to their timing, were not considered by the Commissioner for the purposes of SEF 490 and 494; and
- any other matters that the Commissioner considered to be relevant.

This report includes a statement of the Commissioner’s reasons for the recommendations in this report.¹⁴ The statement of the Commissioner’s reasons:

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

1.4 Findings and conclusions

A summary of the findings and conclusions is provided below.

1.4.1 Likelihood of subsidisation and injury continuing or recurring (chapter 4)

The Commissioner is not satisfied that revoking the countervailing duty notice 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.

1.4.2 Variable factors (chapter 5)

The Commissioner finds that the variable factors relevant to the determination of dumping duty payable and countervailing duty payable under the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) have changed.

1.4.3 Dumping and subsidy margins (chapter 5)

The Commission’s assessment of dumping and subsidy margins, with respect to exports of aluminium extrusions by Alumac is set out in the table below.

Exporter	Dumping margin	Subsidy margin
Alumac	-9.0%	0.0%

Table 1 - Dumping and subsidy margin summary

¹⁴ In accordance with subsection 269ZDA(5).

1.4.4 Non-injurious price (chapter 5)

The Commissioner finds that the ascertained export price and dumping margin for Alumac is lower than the non-injurious price (NIP) and therefore the NIP is not the operative measure. Consequently, the lesser duty rule does not come into effect.

1.4.5 Proposed form of IDD measure (chapter 5)

The Commissioner recommends to the Minister that IDD relevant to Alumac, be collected in relation to duty that may become payable, using the floor price duty method.

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 a revocation review in respect of the countervailing duty notice only. The application for a revocation of the measures, as it related 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 dumping duty notice was no longer warranted.

Notification of the initiation of the revocation review was made in ADN No. 2018/132, which was published on the Anti-Dumping Commission's (the Commission's) website¹⁵ on 24 August 2018. On the same date, *Consideration Report No. 490* (CON 490) was published on the Commission's website detailing the Commissioner's assessment 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 Alumac's exports.

After 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 dumping duty notice on the basis that there did not appear to be reasonable grounds for asserting that the dumping duty notice was no longer warranted. The Commissioner also rejected the application for a revocation review of measures, relevant to the countervailing duty notice, on the basis that Alumac did not include evidence in support, or a statement of opinion, that the countervailing duty notice was no longer warranted. The Commission notes however that a revocation review of measures, relevant to the countervailing duty notice in relation to aluminium extrusions exported by Alumac was already 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 website¹⁶ on 27 September 2018.

Consideration Report No. 494 (CON 494) was also published on the Commission's website detailing the Commissioner's assessment of the application.

¹⁵ Refer to document #3 on the EPR for Review 490.

¹⁶ 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 (the review period) was examined.

2.2 History of the anti-dumping measures

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 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, exported the goods at dumped and subsidised prices, and that these goods 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 2 - 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,¹⁷ 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 by an affected party 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.¹⁸

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.¹⁹

During the course of this review, the Commissioner examined 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 reference²⁰ to:

- the 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,²¹ 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.²²

For this review, in making recommendations in his final report to the Minister, the Commissioner must have regard to:²³

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

¹⁷ Subsection 269ZA(1).

¹⁸ Subsection 269ZA(2)(a).

¹⁹ Subsection 269ZDA(1).

²⁰ Subsection 269T(4E).

²¹ On 14 January 2017, the then 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.

²² Subsection 269ZD(1).

²³ 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;
- the 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.²⁴

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:²⁵

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

The 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.²⁶

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.²⁷

2.4 Submissions received with respect to initiation

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

²⁴ Subsection 269ZDA(3)(b).

²⁵ Subsection 269ZDA(1)(a).

²⁶ Subsection 269ZDA(1A).

²⁷ Subsection 269ZDB(1)(a)(ii).

2.4.1 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 dumping duty notice 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.

2.4.2 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 the dumping duty notice applicable to exports of the goods to Australia from Malaysia by Alumac.

With respect to the application for a revocation review of the countervailing duty notice 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 that raw material costs associated with the production of the goods have increased and therefore considers that the variable factors applicable to Alumac will also have increased.

2.4.3 The Commission's response

The Commission verified the information provided during the review. Verification included 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.²⁸ 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.

2.5 SEF 490 and 494

SEF 490 and 494 set out the facts on which the Commissioner proposed to base his recommendations to the Minister. SEF 490 and 494 informed interested parties of the facts established as of the date SEF 490 and 494 was placed on the public record and allowed them to make submissions in response.

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

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Following its publication on the public record, interested parties had 20 days to respond to SEF 490 and 494. Response to the SEF were to be provided to the Commissioner by no later than 15 April 2019.²⁹

2.6 Submissions received in response to the SEF

The Commission received submissions from three interested parties in response to the SEF within the prescribed period.

The Commissioner considered all submissions received in response to SEF 490 and 494 in making this report and recommendations to the Minister.

The Commission also received a submission from Capral immediately prior to publishing the SEF. The Commissioner had insufficient time to consider this submission prior to publication of the SEF. However, this submission has been considered in preparing this report.

A number of points raised by interested parties did not relate to the review and, as such, have not been addressed in this report. Otherwise, these submissions are considered in the relevant sections in this report.

A list of all submissions received is at **Non-confidential Appendix 1**.

2.7 Public record

The public record contains non-confidential submissions made by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. An EPR is available for inspection online at www.adcommission.gov.au. Documents on the public record should be read in conjunction with this report.

²⁹ The SEF was due to be published on the EPR on or before 24 March 2019. As this was a Sunday the effective due date to publish the SEF was the next working day, being Monday, 25 March 2019. 20 days from this date is 14 April 2019. As this was a Sunday the effective due date for submissions was the next working day, being Monday, 15 April 2019.

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 3 - 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 alloy hollow profiles
7604.29.00	09	Kg	Aluminium alloy non hollow angles and other shapes
7604.29.00	10	Kg	Aluminium alloy non hollow profiles
7608.10.00	09	Kg	Non alloyed aluminium tubes and pipes
7608.20.00	10	Kg	Aluminium alloy tubes and pipes
7610.10.00	12	Kg	Doors, windows and their frames and thresholds for doors
7610.90.00	13	Kg	Other

Table 4 - 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 of 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 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*.³⁰

³⁰ Available on the Commission’s website at www.adcommission.gov.au

3.4 Model control code

The model control code (MCC) is used to model match export models to identical or the most comparable domestic models and to determine the profitability of domestic sales in the ordinary course of trade (OCOT).

Details of the MCC structure used to categorise the goods in this review is detailed in the table below.

Category	Sub-category	Sales data	Cost data	Key category
Finish	A Anodise	Mandatory	Mandatory	Yes
	BD Bright dip			
	M Mill			
	PC Powder coating			
Alloy code	6A 6060, 6063	Mandatory	Optional	No
	6B 6106			
	6C 6101, 1350, 6082, 6351, 6061			
	6D 6005A			
	O Other*			
Temper code	T1 T1, T4, T5, T6	Optional	Optional	No
	T50 T591, T595, T52			
	O Other*			
Anodising microns	0 Not anodised	Optional	Optional	No
	1 <20µm			
	2 >20µm			

* Specify alloy code and temper code

Table 5 - Model control code

3.5 Submissions received regarding the goods

3.5.1 Capral

On 25 March 2019, prior to the publication of SEF 490 and 494, Capral made a submission in response to Alumac’s verification report³¹. In its submission, Capral highlights its concern about the broad categories defined by finish used for model matching purposes, stating that it is aware that some goods have different anodizing thicknesses, powder coating costs and warranty requirements.

3.5.2 The Commission’s response

The Commission considers the MCC used to model match goods, with respect to Alumac, is appropriate, as it categories the goods by finish, alloy type, temper code and the level of anodising microns. Alumac, as detailed in the Commission’s verification report, provided data that was consistent with the MCC outlined in its exporter questionnaire

³¹ Document #11 and #10 on the EPR for REV 490 and REV 494, respectively.

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response (REQ). Specifically, Alumac provided sales data for domestic and export sales to three levels, being finish, alloy type and temper code.

4 REVOCATION REVIEW

4.1 Findings and recommendation

The Commissioner is not satisfied that:

- revoking the countervailing duty measures, as it applies to aluminium extrusions exported to Australia from Malaysia by Alumac, would 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.

Based on the findings outlined below, the Commissioner recommends to the Minister that the countervailing duty notice, as it applies to aluminium extrusions exported to Australia from Malaysia by Alumac, be revoked.

4.2 Application for revocation review³²

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.

4.3 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.

³² Specifically the application that resulted in the initiation of Review 490.

4.4 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. In this review the Commissioner has had regard to programs found to be countervailable in the original investigation and any additional programs identified since the investigation as being received by the exporter.

4.4.1 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.³³

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*, to treat it as an uncooperative exporter³⁴ and a non-cooperative entity.³⁵

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**.

4.4.2 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:

³³ Subsection 269TAD(16).

³⁴ Subsection 269T(1).

³⁵ Subsection 269TAACA.

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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 6 - Countervailable subsidies found in INV 362

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

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

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.

4.4.3 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.

4.5 Submissions received relating to the revocation of measures

4.5.1 Alumac

On 12 April 2019, Alumac provided a submission in response to the SEF. In relation to the revocation review Alumac expressed agreement with the proposed recommendation to revoke the countervailing measures based on the finding that Alumac was not a beneficiary of any subsidies from the GOM.

Alumac also expressed a view that the Commission's decision to not accept the revocation review in relation to the relevant dumping measures as requested in its 7 September 2018 application was incorrect on the basis that Reviews 490 and 494 have shown that Alumac is not dumping. Alumac requested that the Commission recommend to the Minister that Alumac be exempt from the dumping measures.

4.5.2 Ezy Tools

Ezy Tools Pty Ltd (Ezy Tools), an importer of aluminium extrusions, made two submissions in response to the SEF. The first on 12 April 2019 and the second on 13 April 2019 following Alumac's submission. In relation to the revocation review Ezy Tools supported the finding and recommendation to revoke the countervailing measures.

Ezy Tools further requested that the Minister back-date the revocation decision to 28 June 2017 on the basis that countervailing duties should never have been applied in relation its imports from Alumac. Ezy Tools stated that this decision would be of an administrative benefit for them in order to claim duty refunds rather than through the duty assessment process.

Ezy Tools also requested that the revocation be extended to apply to the dumping duty measures.

4.5.3 Capral

In its submission in response to the SEF on 15 April 2019, Capral expressed agreement with the Commissioner's recommendations in relation to the revocation aspects of the review. Capral accepted the Commissioner's finding and evidence supporting the decision to propose a revocation of the countervailing measures applicable to Alumac.

In addition, Capral expressed support for the Commissioner's decision not to accept Alumac's application to initiate a revocation review in relation to dumping measures.

4.5.4 The Commission's consideration

4.5.4.1 Alumac

As set out in CON 490 and CON 494,³⁶ the Commission was not satisfied that Alumac's applications for a revocation of dumping measure complied with subsection 269ZC(2)(b)(ii), in respect of the evidence to support the applicant's view that the anti-dumping measures were no longer warranted. On this basis, the Commissioner did not accept Alumac's applications and there is no scope available under this review for the Commissioner to consider recommending to the Minister that the dumping duty notice be revoked.

4.5.4.2 Ezy Tools

The Minister's decision, with respect to a decision to revoke measures, is able to take effect retrospectively to the extent that it is backdated to the publication of the notice made under subsection 269ZC(4) indicating the Commissioner's acceptance of a revocation review application.³⁷ The Commission notes that subsection 269ZDB(6)(a) restricts the Minister's decision from taking effect prior to this date.

The Commission acknowledges the administrative burden expressed by Ezy Tools, however the duty assessment process is the mechanism available under the anti-dumping framework to recover any overpaid IDD and ICD. Further, as prescribed by subsection 269ZDB(6), the Commissioner is unable to recommend to the Minister that the revocation of the countervailing duty notice take effect any earlier than 24 August 2018.

In relation to Ezy Tools' request that the revocation extend to the dumping duty notice, the Commission notes that the initiation of both reviews (REV 490 and 494), did not include the initiation of a revocation review relating to the dumping duty notice. As such, pursuant to subsection 269ZDA(1A)(a), the Commission is unable to consider recommending to the Minister that the dumping duty notice be revoked. Further, it is not available to recommend to the Minister, pursuant to subsection 269ZDB(1AA), to make a revocation declaration in relation to the dumping duty notice.

³⁶ Document Nos. 2 and 2 on the EPR for REV 490 and REV 494 respectively.

³⁷ ADN No. 2018/132 refers.

5 VARIABLE FACTORS REVIEW

5.1 Findings and recommendation

The Commissioner finds that the variable factors relevant to the determination of dumping duty payable and countervailing duty payable under the Dumping Duty Act have changed with respect of aluminium extrusions exported to Australia from Malaysia by Alumac.

The Commissioner recommends that the dumping duty notice have effect, in relation to Alumac, as if different variable factors had been ascertained. The revised variable factors have resulted in different dumping margin. The Commissioner recommends a change in the form of measure applicable to IDD, from the combination fixed and variable duty method to the floor price duty method.

The Commissioner is not recommending that the countervailing duty notice, with respect to Alumac, have effect as if different variable factors had been ascertained. This is on the basis that the Commissioner is recommending, in chapter 4, that the countervailing duty notice, as it applies to Alumac, be revoked. However, this chapter also includes an assessment of the variable factors and subsidy margin relevant to the taking of ICD, should the Minister choose not accept the Commissioner's recommendation in chapter 4.

5.2 Cooperation with this review

Upon initiation of this review, the Commission provided Alumac with an exporter questionnaire to complete. Alumac provided detailed information and data in its REQ, including data relating to sales of the goods and details of the cost to make and sell. 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 EPR.³⁸

In addition, the Commission sent questionnaires to those importers supplied by Alumac, and the GOM. One importer and the GOM responded to the relevant questionnaires.

5.3 Export price

5.3.1 Determination of the Exporter

Based on information obtained as part of the verification, as well as information obtained from importers, the Commission found the following:

- Alumac manufactured the goods;
- Alumac was listed as the seller of the imported goods on its commercial invoices;
- Alumac was named as the shipper of the goods on the bill of lading for each consignment;

³⁸ Refer document #'s 11 and 10 on the EPR for review 490 and 494 respectively.

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- Alumac was named as the seller on the packing lists, purchase order and packing declaration; and
- documents provided in relation to payment for the goods established that Alumac received payment from the importers for the consignments of goods that it exported.

Having regard to the above information, the Commission considers that Alumac is the exporter of the goods the subject of this review.

5.3.2 Determination of the Importers

Alumac manufactures and exports extrusions to customers in Australia.

The Commission team considers these Australian customers are the beneficial owners of the goods at the time of importation, and therefore the importers, as they:

- are declared as the importer on the importation declaration to ABF;
- arrange and pay duties, customs clearance;
- pay for all the importation charges; and
- arrange delivery from the port to their customers.

5.3.3 Low volume assessment

Export price is determined in accordance with section 269TAB. The *Customs Amendment (Anti-Dumping Measures) Act 2017* (the Amendment Act), which came into force on 31 October 2017, specifies additional methodologies under section 269TAB by which the Minister may determine an export price during a review of measures³⁹ 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 considered whether the requirements of subsection 269TAB(2A) had been met, and therefore, whether Alumac's export price should be determined under subsection 269TAB(2B).

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:

- 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;

³⁹ Under Division 5 of Part XVB.

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- 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 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,⁴⁰ 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 memorandum⁴¹ 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 this indicates that there do not appear to be any factors (such as natural events) that are not with the control of Alumac that are affecting trade for like goods.

Commission's consideration – subsection 269TAB(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.

⁴⁰ Final report – Document #89 on the EPR for the original investigation 362.

⁴¹ Refer page 31 of the explanatory memorandum of the *Customs Amendment (Anti-Dumping Measures) Act 2017*.

5.3.4 Export price determination

The Commission considers the goods have been exported to Australia otherwise than by the importers, being the Australian customers as determined in paragraph 5.3.2 above, and the goods have been purchased by the importer from the exporter. The Commission came to this view on the basis that the importers were named as the customer on supplier invoices, named as the consignee on the bills of lading and paid the importation costs for the relevant goods.

The Commission also considers that the purchase of all goods by the importer was arms length transactions. The Commission came to this view on the basis that the information obtained from the desktop verification of Alumac's records and the information obtained from the cooperating importer, showed no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

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

5.3.5 Submissions regarding export price

5.3.5.1 Capral

In its submission of 15 April 2018, Capral states its concern that exports at the latter end of the review period were at dumped levels and asks the Commission to consider if there are any distorting effects of the timing of low volume exports when calculating the dumping margin over the whole period.

5.3.5.2 Commission's response

The Commission has had regard to Capral's concerns and remains satisfied with the current findings in regard to the low volume assessment, for the reasons described in section 5.3.2. The Commission is also satisfied that the timing of any exports during the review period does not have a distorting effect and the calculation of the dumping margin is appropriately calculated and weighted so that the final margin is accurately reflective of the circumstances of the exports (see section 5.5, and **Confidential Appendix 2**).

5.4 Normal value

5.4.1 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 OCOT for home consumption in the country of export in sales that are arms-length transactions.

5.4.2 Normal value method

The Commission was satisfied that the price paid in respect of Alumac's domestic sales of like goods sold in OCOT for home consumption, which were sales in arms length, were suitable for determining the normal value of the goods under subsection 269T(1).

The Commission compared revenue for each of Alumac's domestic sales of like goods to the corresponding cost to make and sell (CTMS) to test whether those sales were profitable. Where the volume of unprofitable sales was equal to or greater than 20 per cent for a particular model, the Commission tested the recoverability of the unprofitable sales by comparing the revenue for each transaction to the corresponding weighted average CTMS over the review period. The sales found to be unrecoverable were considered not to be in the OCOT. The Commission found that all models of like goods sold for home consumption were in OCOT.

Of the sales found to be in OCOT, the Commission assessed the suitability, for use in a fair comparison to export models, by confirming that sufficient volumes of each model were sold for home consumption.

In addition, the Commission considers that the domestic sales of like goods sold in OCOT for home consumption were arms length sales. The Commission came to this view on the basis that the information obtained from the desktop verification of Alumac's records showed no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

The normal value for Alumac was therefore determined in accordance with subsection 269TAC(1). Adjustments were also made to the normal value according to subsection 269TAC(8) to ensure comparability with corresponding export price. Adjustments to normal value were made for differences in:

- packaging;
- inland transport;
- cutting;
- machining; and

- credit terms.

5.4.3 Submissions regarding normal value

5.4.3.1 Capral

In its submission dated 25 March 2019, Capral requests the Commission re-examine the adjustments applied to Alumac's normal value with respect to cutting and machining costs. In particular, Capral queries whether cutting and machining costs are limited only to domestic sales or are relevant to all sales by Alumac.

5.4.3.2 The Commission's assessment

The Commission compared the prices of the goods exported to Australia with corresponding normal values⁴² and made necessary and appropriate adjustments to Alumac's normal value so as to fairly compare Alumac's export price and normal value.⁴³ Adjustments were made due to a difference in cutting and machining that affected price comparability between domestic and export sales. The Commission considers these adjustments are appropriate.

5.5 Dumping margin

The Commission has calculated a dumping margin, relevant to the taking of IDD with respect to exports by Alumac, based on the revised variable factors, being ascertained export price and ascertained normal value. For this review, Alumac's dumping margin for the review period has been calculated by comparing the weighted average of the Alumac's export prices with the corresponding normal values in accordance with subsection 269TACB(2)(a).

The dumping margin for Alumac is **negative 9.0 per cent**.⁴⁴

The Commission's dumping margin calculation is at **Confidential Appendix 2**.

5.6 Subsidies received

As detailed in chapter 4, the Commission is satisfied that Alumac did not receive a financial contribution conferring a benefit⁴⁵ in respect of the goods it exports to Australia.

⁴² Subsection 269TACB.

⁴³ Subsection 269TAC(8).

⁴⁴ The dumping margin has changed from what is reported in the verification visit report and from what is reported in SEF 490 and 494 due to the inclusion of the corrected upwards adjustment to normal value for export machining.

⁴⁵ Subsection 269TACC(2)(a)-(b).

5.6.1 Submissions regarding subsidies received

All submissions received in response to the SEF, as detailed and discussed in section 4.5 above, support or accept the finding that Alumac did not receive subsidies during the review period.

5.7 Subsidy margin

The Commissioner finds that the variable factors relevant to the determination of ICD, with respect to exports of aluminium extrusions by Alumac, 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 subsidy margin for Alumac is **zero per cent**.

5.8 Non-injurious price

5.8.1 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.⁴⁶

5.8.2 Lesser duty rule

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the Dumping Duty Act.⁴⁷

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 (the sum of the ascertained export price and dumping margin) of the goods, the Minister must, except in limited circumstances, also have regard to the desirability of fixing a lesser amount of duty.

5.8.3 The Commission's preferred approach to NIP

The Commission generally derives the NIP by 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 Manual⁴⁸ and observes the following hierarchy:

⁴⁶ Subsection 269TACA.

⁴⁷ Refer subsection 8(5B) of the Dumping Duty Act.

⁴⁸ Available on the Commission's website at: www.adcommission.gov.au

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- 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 USP, the Commission then calculates a NIP by deducting the costs incurred in getting the goods from the export free on board (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.

5.8.4 The Commissioner's proposed approach to NIP in the SEF

In the SEF, the Commission calculated a contemporary USP using Capral's 2017/18 financial year cost to make and sell and profit. From the USP, the NIP was calculated at FOB delivery terms by deducting from the USP amounts for:

- importer profit in relation to exports from the People's Republic of China (China);
- importer SG&A expenses in relation to exports from China;
- importation costs in relation to exports from China;⁴⁹ and
- freight and insurance costs recorded in ABF import database with respect to exports from Malaysia by Alumac.

5.8.5 The Commissioner's consideration in this report

The Commission notes that:

- no submissions have been received in relation to the calculation of the NIP. The Commissioner remains satisfied of the basis on which the NIP has been calculated; and
- 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 NIP calculation is located at **Confidential Appendix 3**.

⁴⁹ It is noted that certain importers of the goods from Alumac did not participate in this review. The Commission has been unable to calculate amounts for profit, SG&A expenses and importation costs in relation to Malaysian imports due to the limited information made available to the review. The Commission considers that it is more reliable to base these amounts using contemporaneous data sourced from cooperating importers participating in an all exporter review of measures, Review 482, with respect to aluminium extrusions exported from China. This data is in relation to a substantial volume of good exported to Australia and is considered representative of amounts that would be incurred by importers from Malaysia.

5.9 Form of IDD measures

5.9.1 Form of IDD measures in the original investigation

The form of measures that was imposed in the original investigation (INV 362) was the combination of fixed and variable duty method. This form of measures is consistent with measures applied to exporters from other countries, including China and Vietnam.

5.9.2 Commission's proposal regarding form of IDD measure in the SEF

As Alumac's dumping margin was determined to be negative in this review, the Commissioner proposed in the SEF that the form of measures be changed. It was proposed that IDD be collected in relation to duty that may become payable, using the floor price method.

The floor price duty method recommended sets a "floor" ensuring that IDD is only collected when the actual export price is less than the ascertained normal value.

5.9.3 Submissions regarding form of IDD measure

5.9.3.1 Alumac

In Alumac's 12 April 2019 submission it commented on the proposed floor price duty method recommended in the SEF. Alumac state that a floor price duty method is not preferable as it can quickly become out of date. Alumac evidence this statement with the London Metals Exchange (LME) price movements occurring after the review period that show a 12.2 per cent price decrease in aluminium. Alumac also state that the floor price method does not account for the export of a variety of models with associated price differences.

5.9.3.2 Ezy Tools

Ezy Tools' submissions following the SEF question the suitability of the floor price duty method and propose the application of an *ad valorem* duty method. Ezy Tools states that the floor price method is unsuitable because of the additional administrative burden for importers and price fluctuations of the goods, particularly driven by the LME.

Ezy Tools request the Commission recommend to the Minister that a 0 per cent *ad valorem* duty be applied to exports by Alumac. Ezy Tools states that this approach would lead to administrative advantages, increased suitability in the face of price fluctuations or model variations and reduced risk of circumvention or artificially lowering export prices.

5.9.3.3 Commissioner's consideration of submissions

As set out in the Commission's *Guidelines in the application of forms of duty*,⁵⁰ an advantage of the floor price form of duty is that it prevents price manipulation by the exporter, which is possible under an *ad valorem* duty method.

While the Commission recognises concerns in setting a floor price form of duty in a market where there are price fluctuations there are competing factors that must be considered to ensure the effectiveness of the measures. In this case, the Commission considers that a floor price form of duty is appropriate because it results in IDD not being payable on goods which are exported by Alumac at a price equal to or more than its ascertained normal value but ensures that IDD is payable on any goods that are exported at a price less than its ascertained normal value. The floor price in this respect will work similarly to the variable component of IDD payable by other Malaysian exporters who are subject to the combination of fixed and variable duty method.

Further, the Commission highlights that the Minister is not able to vary the notice by putting into effect different variable factors by model or finish type.⁵¹

The Commission also notes that Alumac may choose to sell above or below the normal value floor price at their own discretion. Alumac is able to apply for a review of measures 12 months after the notice is varied, where variable factors can be re-determined and a different normal value ascertained. In addition, importers, paying IDD, may apply for duty assessments where they believe IDD has been overpaid and should be refunded.

Should the goods be imported by Ezy Tools at a price below the floor price, resulting in IDD being paid, Ezy Tools are able to request a duty assessment be conducted to determine the final liability of those goods to duty.⁵²

Having regard to the above, the Commissioner recommends that IDD be collected in relation to duty that may become payable, using the floor price method.

⁵⁰ Available at the Commission's website.

⁵¹ Refer *PanAsia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 780.

⁵² Section 269V.

6 FINDINGS AND RECOMMENDATIONS

6.1 Findings

After conducting a revocation review, subsection 269ZDA(1A) provides that, the Commissioner must make a revocation recommendation, 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 the measures are intended to prevent.

With respect to the countervailing duty notice, the Commissioner is not satisfied, in relation to Alumac, that:

- revoking the measures would lead, or would 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.

After conducting a variable factors review, subsection 269ZDA(1) provides that, the Commissioner must give the Minister a report recommending that the dumping and countervailing duty notice remain unaltered, be revoked, or have effect as if different variable factors had been ascertained; noting that a revocation recommendation can only be made if a notice has been published, notifying of the Commissioner's intention to conduct a revocation review.

With respect to the dumping duty notice and countervailing duty notice, the Commissioner finds, in relation to Alumac, that:

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

6.2 Recommendations

On the basis of the reasons contained in this report, and in accordance with subsection 269ZDA, the Commissioner recommends that the Minister consider this report and if agreed, **determine** that:

- in accordance with subsection 269TAB(1)(a), the export price of aluminium extrusions exported to Australia from Malaysia by Alumac is the price paid or payable by the importer, as set out in Confidential Appendix 2;
- in accordance with subsection 269TAC(1), the normal value of aluminium extrusions exported to Australia from Malaysia by Alumac is the price paid or payable for like goods sold in the OCOT for home consumption in Malaysia in sales that are arms length transactions by Alumac and adjusted in accordance with subsection 269TAC(8), as set out in Confidential Appendix 2; and

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- in accordance with subsection 8(5) of the Dumping Duty Act, that the IDD payable on aluminium extrusions exported to Australia from Malaysia by Alumac is an amount which will be worked out in accordance with the floor price duty method pursuant to subsections 5(4) and (5) of the *Customs Tariff (Anti-Dumping) Regulation 2013* with effect from the date of the notice published pursuant to subsection 269ZDB(1).

The Commissioner recommends that the Minister **declare** that:

- in accordance subsection 269ZDB(1)(a)(ii), the countervailing duty notice is taken to be revoked in relation to aluminium extrusions exported to Australia from Malaysia by Alumac with effect from 24 August 2018, a retrospective date not prevented under subsection 269ZDB(6)(a); and
- in accordance with subsection 269ZDB(1)(a)(iii), the dumping duty notice in relation to aluminium extrusions exported to Australia from Malaysia by Alumac have effect as if different variable factors had been fixed, relevant to the determination of duty, as set out in Confidential Appendix 2, with effect from the date of the notice published pursuant to subsection 269ZDB(1).

7 APPENDICES AND ATTACHMENTS

Non-confidential Appendix 1	List of submissions
Confidential Appendix 2	Dumping margin calculation
Confidential Appendix 3	NIP calculation

NON-CONFIDENTIAL APPENDIX 1 – LIST OF SUBMISSIONS
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Date	Interested party	EPR document number	
		REV 490 ⁵³	REV 494 ⁵⁴
28/09/2018	Capral	4	n/a
30/10/2018	Capral	n/a	4
25/03/2019	Capral	13	12
12/04/2019	Alumac	15	14
12/04/2019	Ezy Tools	16	15
13/04/2019	Ezy Tools	17	16
15/04/2019	Capral	18	17

⁵³ EPR, available at: <https://www.adcommission.gov.au/cases/Pages/CurrentCases/490.aspx>

⁵⁴ EPR, available at: <https://www.adcommission.gov.au/cases/Pages/CurrentCases/494.aspx>