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Australian Government
Department of Industry, Innovation and Science

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

FINAL REPORT

NO. 497

REVIEW OF ANTI-DUMPING MEASURES APPLYING TO

ALUMINIUM EXTRUSIONS EXPORTED TO AUSTRALIA FROM THE PEOPLE'S REPUBLIC OF CHINA BY

GUANGDONG HUACHANG ALUMINIUM FACTORY CO., LTD

25 November 2019

CONTENTS

CONTENTS 2

ABBREVIATIONS 3

1 SUMMARY 4

1.1 INTRODUCTION 4
1.2 APPLICATION OF LAW TO FACTS 4
1.3 FINDINGS 5
1.4 RECOMMENDATIONS TO THE MINISTER 6

2 BACKGROUND 7

2.1 INITIATION 7
2.2 THE CURRENT ANTI-DUMPING MEASURES 7
2.3 REVIEW PROCESS 8
2.4 SUBMISSIONS PRIOR TO THE SEF 9
2.5 SUBMISSIONS TO THE SEF 10

3 THE GOODS AND LIKE GOODS 11

3.1 THE GOODS SUBJECT TO THE ANTI-DUMPING MEASURES 11
3.2 TARIFF CLASSIFICATION 12
3.3 LIKE GOODS 12

4 EXPORT PRICE AND NORMAL VALUE 13

4.1 FINDING 13
4.2 EXPORT PRICE AND NORMAL VALUE INFORMATION SUBMITTED TO THIS REVIEW 13
4.3 APPROACH TO CALCULATING EXPORT PRICE AND NORMAL VALUE 14
4.4 EXPORT PRICE 14
4.5 NORMAL VALUE 15
4.6 DUMPING MARGIN 15

5 AMOUNT OF COUNTERVAILABLE SUBSIDY 16

5.1 FINDINGS 16
5.2 RELEVANT LEGISLATION 16
5.3 PROGRAMS REVIEWED 18
5.4 SUBSIDY ASSESSMENT 21

6 NON-INJURIOUS PRICE 24

6.1 BACKGROUND 24
6.2 COMMISSIONER'S RECOMMENDATION 24

7 FINDINGS AND RECOMMENDATIONS 25

7.1 FINDINGS 25
7.2 RECOMMENDATIONS 25

8 APPENDICES AND ATTACHMENTS 27

ABBREVIATIONS

the Act	*Customs Act 1901*
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
Capral	Capral Ltd
China	The People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act 1975*
EPR	electronic public record
the goods	aluminium extrusions, as described at section 3.1
Huachang, or the applicant	Guangdong Huachang Aluminium Factory Co., Ltd.
ICD	interim countervailing duty
IDD	interim dumping duty
the Minister	Minister for Industry, Science and Technology
NIP	non-injurious price
the Regulation	*Customs (International Obligations) Regulation 2015*
REP 482	*Anti-Dumping Commission Report No. 482*
REQ	exporter questionnaire response
review period	1 January 2018 to 31 December 2018
SEF	statement of essential facts
VAT	value added tax

1 SUMMARY

1.1 Introduction

This report sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) recommends to the Minister for Industry, Science and Technology (the Minister)[1] in relation to a review of the anti-dumping measures (in the form of a dumping duty notice and a countervailing duty notice) applying certain aluminium extrusions (the goods) exported to Australia by Guangdong Huachang Aluminium Factory Co., Ltd (Huachang, or 'the applicant') from the People's Republic of China (China).

This review was initiated on 15 January 2019 after an application was lodged by Huachang. Huachang requested a review on the basis that the variable factors[2] relevant to the taking of the anti-dumping measures have changed (in particular, export price, normal value and the amount of countervailable subsidy received).

Huachang is currently subject to the 'residual exporters' from China interim duty rates.[3]

In making recommendations regarding the variable factors, a review period of 1 January 2018 to 31 December 2018 was examined.

1.2 Application of law to facts

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 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject the application, he is required to publish a notice indicating that it is proposed to review the anti-dumping measures covered by the application.[5]

The Commissioner must, within 110 days after the publication of the notice or such longer period as the Minister allows, place on the public record a statement of essential facts (SEF) on which the Commissioner proposes to base his recommendation to the Minister in relation to the review.[6]

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

2 In relation to a review of this nature, the variable factors are defined in section 269T(4E) of the *Customs Act 1901.* In relation to a dumping duty notice, the variable factors are export price, normal value and non-injurious price (NIP). In relation to a countervailing duty notice, the variable factors are export price, amount of countervailable subsidy received and the NIP.

3 This is discussed further in Chapter 2.

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

5 Section 269ZC(4).

6 Section 269ZD(1).

The Commissioner must, within 155 days, give the Minister a report with recommendations in relation to the review.[7]

On 16 April 2019, 5 July 2019 and 9 September 2019, the General Manager of Investigations (Commission) advised interested parties that the Commissioner had extended the deadlines to publish the SEF and to provide the final report to the Minister.[8]

The SEF was published on the extended due date of 11 October 2019.[9] The final report is due 25 November 2019.

1.3 Findings

The Commissioner has conducted a review of the anti-dumping measures in so far as they affect Huachang.

The Commissioner has found that, in relation to Huachang:

- information provided to this review in relation to the variable factors of export price and normal value is unreliable. The Commission considers that the export price and normal value should remain the same amount as previously ascertained in Report No. 482 (REP 482), which examined a contemporaneous review period and which relied on verified data relating to major exporters of the goods to Australia.[10] As a result, the variable factors of export price and normal value relevant to the taking of the measures have not changed. The dumping margin for Huachang remains at 29.1 per cent;
- information provided to this review relating to the amount of countervailable subsidy received is reliable. This variable factor in respect of the goods has changed. The subsidy margin applicable to Huachang is calculated to be 0.5 per cent. However, when added to the dumping margin, and after removing a double-count[11], the change in this variable factor is not significant enough to alter the fixed interim duty rate currently applicable to Huachang (29.5 per cent);
- no information has been provided to this review in relation to the NIP. The Commission considers that the NIP should remain the same amount as previously

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7 Section 269ZA(1).

8 ADN Nos. 2019/52, 91 and 115. It is noted that, the powers and functions of the Minister under section 269ZHI are delegated to the Commissioner. Refer to ADN No. 2017/10 for further information.

9 *Statement of Essential Facts No. 497.*

10 REP 482 examined a review period of 1 July 2017 to 30 June 2018 and this current review examined the review period of 1 January 2018 to 31 December 2018, meaning that there is a six month overlap between the two periods.

11 The combined fixed interim rate of duty (29.5 per cent) is the sum of the dumping margin (29.1 per cent) and subsidy margins (0.5 per cent), less an amount for the subsidy rate applying to Program 15 (Primary aluminium at less than adequate remuneration) (0.1 per cent). The removal of the subsidy rate for Program 15 in the combined fixed interim rate is necessary to remove any overlap or double-counting that may arise from the circumstances where the impact of a subsidy affects both the dumping and subsidy margin, which was the case in REP 482.

ascertained in REP 482 which examined a contemporaneous review period. As a result, the variable factor of NIP has not changed; and

- the Minister is not required to consider applying the lesser duty rule.

1.4 Recommendations to the Minister

The Commissioner recommends to the Minister that, in relation to Huachang, the dumping duty notice and the countervailing duty notice remain unaltered.[12]

[12] The Commissioner recommends that the Minister does not, in a notice under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), determine that the duty payable on the goods exported to Australia by Huachang be ascertained by reference to the NIP.

2 BACKGROUND

2.1 Initiation

Following consideration of Huachang's application, the Commissioner decided not to reject the application and on 15 January 2019, initiated a review of the anti-dumping measures applying as they affect Huachang.

Consideration Report No. 497 on the electronic public record (EPR) sets out the Commissioner's reasons for initiating the review.[13]

A notice of the Commissioner's intention to conduct the review was published on the Commission's website in ADN No. 2019/6. This ADN outlined that the SEF would be placed on the public record on or before 6 May 2019. Following three extensions of time, the due date for the SEF was extended to 11 October 2019 (ADN Nos. 2019/52, 91 and 115 refer).[14]

2.2 The current anti-dumping measures

Anti-dumping measures currently apply to the goods exported to Australia from China[15], Malaysia[16] and the Socialist Republic of Vietnam.[17]

The anti-dumping measures in relation to China were initially imposed by public notice on 28 October 2010 following consideration of *Trade Remedies Branch Report No. 148*.[18]

The current anti-dumping measures applying to the goods from China were last ascertained following Review No. 482, the findings of which are set out in REP 482.[19] Review No. 482 was initiated following the then Minister's request to review the anti-dumping measures as they affect exporters of the goods generally. REP 482 examined the period of 1 July 2017 to 30 June 2018.

As a result of Review No. 482, exports of the goods to Australia by Huachang became subject to the 'residual exporters' from China interim duty rates. This includes a fixed and variable interim dumping duty (IDD) and an *ad valorem* interim countervailing duty (ICD).

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13 *Consideration Report No. 497.*

14 All ADNs are available on the Commission's website via www.adcommission.gov.au.

15 In the form of a dumping duty notice and a countervailing duty notice for all exporters except Guangdong Jiangsheng Aluminium Co Ltd and Guangdong Zhongya Aluminium Company Ltd.

16 In the form of a dumping duty notice and a countervailing duty notice for all exporters except Press Metal Berhad, LB Aluminium Berhad, Superb Aluminium Industries Sdn Bhd, Kamco Aluminium Sdn Bhd, Milleon Extruder Sdn Bhd and Genesis Aluminium Industries Sdn Bhd.

17 In the form of a dumping duty notice for all exporters.

18 Since the anti-dumping measures were initially imposed, the Commission has conducted other cases relating to the goods exported to Australia. A history of the cases relating to the goods is available on the EPR via www.adcommission.gov.au.

19 *Anti-Dumping Commission Report No. 482.*

The combined fixed IDD and ICD rate for residual exporters as detailed in REP 482 is 29.5 per cent. The 29.5 per cent combined fixed IDD and ICD rate is based on a dumping margin of 29.1 per cent and a subsidy margin of 0.7 per cent, once a double count of 0.3 is removed.[20]

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[21], 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 the 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.[22]

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 allowed, to conduct a review and report to the Minister on the review of the anti-dumping reassures. [23]

During the course of the review, the Commissioner examined whether the variable factors have changed.

Variable factors in this particular review are a reference to:

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

Within 110 days of the initiation of a review, or such longer time as allowed[24], 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.

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[20] The combined fixed and variable rate of IDD and ICD is the sum of the dumping and subsidy margins, less an amount for the subsidy rate applying to Program 15 (Primary aluminium at less than adequate remuneration). The removal of the subsidy rate for Program 15 in the combined rate is necessary to remove any overlap or double-counting that may arise from the circumstances where the impact of a subsidy affects both the dumping and subsidy margin, which was the case in REP 482.

[21] Section 269ZA(1).

[22] Section 269ZA(2)(a).

[23] Section 269ZDA(1).

[24] 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.

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

- the application for variable factors review;
- 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 the 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. [25]

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. [26]

- remain unaltered; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

2.4 Submissions prior to the SEF

Capral

The Commission received two submissions in relation to this review prior to the SEF, both from Capral Ltd (Capral), a member of the Australian industry.

Capral's submission of 20 February 2019[27] referred to the Government of China's influence over the Chinese domestic aluminium industry and previous findings that a market situation exists in relation to like goods in China. Capral submitted that, on the basis that a market situation is found to exist in this review period, the normal value is required to be determined on a constructed basis in accordance with section 269TAC(2)(c). Capral noted that the constructed normal value should include amounts for cost of production, selling, general and administrative expenses and an amount of profit, consistent with the *Customs (International Obligations) Regulation 2015* (the Regulation).

Capral emphasised that, in constructing the normal value, Huachang's cost of production should reflect competitive market costs.

Capral also raised the need for specific adjustments to Huachang's normal value, in particular, to account for differences in domestic and export related packing costs and value added tax (VAT) liabilities.

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[25] Section 269ZDA(3)(b).

[26] Section 269ZDA(1)(a).

[27] Document 4, EPR.

On 1 April 2019,[28] Capral made a further submission in relation to the exporter questionnaire submitted by Huachang. The submission requested that the Commission investigate Huachang's cost allocation methodology, raw material purchases and countervailable subsidies and reiterated its earlier submission regarding packing cost and VAT adjustments.

The Commission's response to Capral's submissions

As outlined further in Chapter 4, the Commission is not satisfied that the response to the exporter questionnaire (REQ) submitted by Huachang is accurate and reliable in certain aspects. The Commission has identified that the REQ contains material deficiencies. These deficiencies primarily affect the variable factors of export price and normal value.

Further information submitted by the applicant, Huachang, did not address these deficiencies. As such, as outlined in Chapter 7, the Commissioner recommends that the dumping duty notice remain unaltered.

On this basis, the Commissioner has not addressed Capral's submissions relevant to the dumping duty notice.

In relation to countervailable subsidies, Capral submitted that:

- the Commission should further investigate Huachang's purchases of aluminium which are relevant to subsidy program 15;
- the Commission should further investigate Huachang's response that it has not received financial grants under a number of subsidy programs, given that other exporters of the goods have received benefits in relation to these programs in the past; and
- Huachang has confirmed receiving benefits from subsidy program 47 and additional programs.

The Commission has responded to Capral's submissions regarding countervailable subsidies at section 5.4.

2.5 Submissions to the SEF

The Commission received one submission in relation to the SEF from Capral, a member of the Australian industry. In this submission, Capral supported the Commissioner's proposed recommendations to the Minister.

[28] Document 7, EPR.

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 produced via an extrusion process, 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), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness or diameter greater than 0.5 mm, with a maximum weight per metre of 27 kilograms and a profile or cross-section which fits within a circle having a diameter of 421 mm.*

Table 1 below provides examples of the coverage of the goods and like goods (and intended end-use applications) and is being used for this review. 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 1 - The goods and like goods

The goods include aluminium extrusion products that have been further processed or fabricated to a limited extend, after aluminium has been extruded through a die. For example, aluminium extrusion products that have been painted, anodised, or otherwise coated, or worked (e.g. precision cut, machined, punched or drilled) fall within the scope of the goods.

3.2 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

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 2 - Tariff classifications of the goods

3.3 Like goods

Section 269T(1) defines like goods as:

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

The definition of like goods is relevant in determining the variable factors in relation to goods exported to Australia. The Commission's framework for assessing like goods is outlined in Chapter 2 of the Commission's *Dumping and Subsidy Manual*.[29]

[29] Available on the Commission's website via www.adcommission.gov.au.

4 EXPORT PRICE AND NORMAL VALUE

4.1 Finding

The Commissioner finds that the variable factors of export price and normal value relevant to the determination of duty payable under the Dumping Duty Act have not changed.

The Commissioner recommends to the Minister that the dumping duty notice remain unaltered.

4.2 Export price and normal value information submitted to this review

Following initiation of the review, the Commission requested that Huachang complete an exporter questionnaire. Huachang completed a REQ by the required due date. Following an examination of the REQ, the Commission advised Huachang that the REQ contained deficiencies (first deficiency advice). These deficiencies related generally to export sales data, domestic sales data, responses to claims for adjustments and cost to make and sell data. The Commission provided Huachang with an opportunity to rectify those deficiencies.

In response to the Commission's first deficiency advice, Huachang provided further information. Following an examination of the further information provided by Huachang, the Commission advised Huachang that deficiencies remained with the REQ (second deficiency advice). These deficiencies related specifically to the relevance, accuracy and completeness of the export sales data, domestic sales data and cost to make and sell data. The Commission provided Huachang with a further opportunity to rectify those deficiencies.

In response to the Commission's second deficiency advice, Huachang provided further information. Huachang's response to the second deficiency advice did not fully address the Commission's concerns. On 9 September 2019, the Commission sent a letter[30] to Huachang advising that, pursuant to section 6(b) of the *Customs (Extensions of Time and Non-cooperation) Direction 2015*, Huachang's REQ contained deficiencies that could not be quickly and easily rectified in a further response.

This letter also outlined that:

- the nature and scope of the deficiencies that remain in the REQ are extensive. As a result, the Commission is not satisfied that certain key information is accurate and reliable;
- the Commission has been unable to reliably determine individual variable factors (including calculation a dumping margin) for Huachang based on the information it has provided; and

[30] A public record version of this letter is available at Document 10 of the EPR and a confidential version is also attached to this report.

- based on Huachang's responses to date, additional time to provide a further response would significantly impede the proper conduct of this case in a timely and efficient manner, noting that further verification is likely to be necessary.

On the basis of the deficiencies that remain in relation to export sales, domestic sales, and cost to make and sell data, the Commissioner is not satisfied that the information provided by the applicant is accurate and reliable to determine the variable factors of export price and normal value.[31]

4.3 Approach to calculating export price and normal value

Export price

Section 269TAB(4) provides that the Minister, for the purposes of determining export price, may disregard any information considered unreliable. The Commissioner recommends that the Minister disregard the export sales information provided by Huachang. The Commissioner also recommends that the Minister be satisfied, pursuant to section 269TAB(3), that sufficient information has not been furnished or is not available to enable the export price to be ascertained under the preceding sections.

As such, the export price for Huachang must be determined under section 269TAB(3), having regard to all relevant information.

Normal value

Section 269TAC(7) provides that the Minister, for the purposes of determining normal value, may disregard any information considered unreliable. The Commissioner recommends that the Minister disregard the domestic sales and cost information provided by Huachang. The Commissioner also recommends that the Minister be satisfied, pursuant to section 269TAC(6), that sufficient information has not been furnished or is not available to enable the normal values to be ascertained under the preceding sections.

As such, the normal value for Huachang must be determined under section 269TAC(6), having regard to all relevant information.

4.4 Export price

The Commission considered all relevant information available to determine the export price under section 269TAB(3). In the Commission's view, the most relevant and reliable information to determine the export price is the same information used to make the findings in relation to REP 482. This information is relatively contemporaneous and relies on previously verified information from the largest exporters to Australia who account collectively for the majority of the goods exported to Australia.[32]

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[31] It is noted that the deficiencies did not relate to the amount of countervailable subsidy received, therefore the amount of subsidy received has been assessed at chapter 5.

[32] There is a six month overlap between the period investigated in REP 482 and this current review. REP 482 examined the period 1 July 2017 to 30 June 2018 and this current review examined the period 1 January 2018 to 31 December 2018.

The Commission recommends that the export price remain the same amount as previously ascertained in REP 482 in so far as it relates to exports of the goods by Huachang.

4.5 Normal value

The Commission considered all relevant information available to determine the normal value under section 269TAC(6). In the Commission's view, the most relevant and reliable information to determine the normal value is the same information used to make the findings in relation to REP 482. This information is relatively contemporaneous and relies on previously verified information from the largest exporters to Australia who account collectively for the majority of the goods exported to Australia.[33]

The Commission recommends that the normal value remain the same amount as previously ascertained in REP 482 in so far as it relates to exports of the goods by Huachang.

4.6 Dumping margin

The Commission recommends that the export price and normal value remain the same as previously ascertained in REP 482. As such, the dumping margin for the purposes of this current review is the same amount previously ascertained in REP 482 (a dumping margin of 29.1 per cent).

[33] There is a six month overlap between the period investigated in REP 482 and this current review. REP 482 examined the period 1 July 2017 to 30 June 2018 and this current review examined the period 1 January 2018 to 31 December 2018.

5 AMOUNT OF COUNTERVAILABLE SUBSIDY

5.1 Findings

The Commission has found that Huachang received subsidies during the review period under two programs deemed to be countervailable previously and four new programs deemed to be countervailable in this review.

The Commission has found that the variable factor relating to the amount of countervailable subsidy received has changed. The revised variable factor has resulted in a minor reduction in the subsidy margin applicable to Huachang.[34]

The subsidy margin has been calculated at 0.5 per cent.

5.2 Relevant legislation

Section 269T(1) defines 'subsidy' as follows:

> ***subsidy***, in respect of goods exported to Australia, means:
>
> (a) a financial contribution:
>
> (i) by a government of the country of export or country of origin of the goods; or
>
> (ii) by a public body of that country or a public body of which that government is a member; or
>
> (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;
>
> that involves:
>
> (iv) a direct transfer of funds from that government or body; or
>
> (v) the acceptance of liabilities, whether actual or potential, by that government or body; or
>
> (vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or
>
> (vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or
>
> (viii) the purchase by that government or body of goods or services; or
>
> (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;
>
> if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.[35]

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[34] As noted in chapter 7, despite a minor reduction in the subsidy margin, this minor reduction does not alter the effective rate of interim duties currently applicable to Huachang.

[35] Section 269TACC sets out the steps for working out whether a financial contribution or income or price support confers a benefit.

Section 269TAAC defines a 'countervailable subsidy' as follows:

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

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

(a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or

(b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or

(c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or

(d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.

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

(a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and

(b) eligibility for the subsidy is automatic; and

(c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and

(d) those criteria or conditions are strictly adhered to in the administration of the subsidy.

(4) The Minister may, having regard to:

(a) the fact that the subsidy program benefits a limited number of particular enterprises; or

(b) the fact that the subsidy program predominantly benefits particular enterprises; or

(c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or

(d) the manner in which a discretion to grant access to the subsidy has been exercised;

determine that the subsidy is specific.

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

(a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and

(b) the length of time during which the subsidy program has been in operation.

Sections 269TACC and 269TACD relate to determinations by the Minister as to whether a benefit has been conferred by a financial contribution or price support, and the amount of this benefit. Generally, the existence of a benefit is determined by comparison of costs with a benchmarked market price for the respective cost. If the alleged benefit relates to tax revenue foregone, the existence of a benefit is determined by comparing the actual tax rate applied to the tax rates of the country in question.

5.3 Programs reviewed

The Commission examined the programs relevant to the last review of the countervailing duty notice (Review No. 482), as well as four additional subsidy programs identified during this review.

The Commission has set out each program and its finding in respect of each program in the following table.

Program Number[36]	Program Name	Program Type	Countervailable subsidy received in relation to the goods (Yes/No)
Programs from Review No. 482			
2	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant	No
3	Provincial Scientific Development Plan Fund	Grant	No
4	Export Brand Development Fund	Grant	No
5	Matching Funds for International Market Development for Small and Medium Enterprises (SME)	Grant	No
6	Superstar Enterprise Grant	Grant	No
7	Research & Development (R&D) Assistance Grant	Grant	No
8	Patent Award of Guangdong Province	Grant	No
9	Training Program for Rural Surplus Labour Force Transfer Employment	Grant	No
15	Aluminium provided at less than adequate remuneration	Less than adequate remuneration	Yes
18	Preferential tax policies in the Western Regions	Tax	No
21	Tariff and VAT Exemptions on Imported Materials and Equipment	Tariff and VAT Exemptions	No
26	Innovative Experimental Enterprise Grant	Grant	No
29	Special Support Fund for Non-State-Owned Enterprises	Grant	No
32	Venture Investment Fund of Hi-Tech Industry	Grant	No
35	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	No

[36] Program numbers are based on Review No. 482. Some program numbers that were found not to be countervailable in the original investigation have been excluded, e.g. Program 1.

Program Number[36]	Program Name	Program Type	Countervailable subsidy received in relation to the goods (Yes/No)
47	Preferential tax policies for high and new technology enterprises	Tax	Yes
48	Provincial Government of Guangdong (PGOG) tax offset for R&D	Tax	No
56	PGOG special fund for energy saving technology reform	Grant	No
58	Development assistance grants from the Zhaoqing New and High Tech Industrial Development Zone (ZHTDZ)	Grant	No
59	Processing trade special fund	Grant	No
60	Trade insurance support fund	Grant	No
61	Enterprise employment fixed point monitoring work subsidy	Grant	No
62	Special funds for provincial enterprises to transfer and upgrade equipment	Grant	No
63	Reserve funds for enterprise development	Grant	No
64	High integrity enterprise award 2014	Grant	No
65	Jiangmen engineering technology research centre award	Grant	No
66	2016 Shanghai Automotive Commodities Exhibition special fee subsidy	Grant	No
67	Corporate remuneration survey subsidy	Grant	No
68	Energy saving project subsidy	Grant	No
69	Science and technology project subsidy	Grant	No
70	Provincial engineering and technology research centre 2016	Grant	No
71	Foreign trade development fund subsidy of Jiangmen City	Grant	No
72	2015 Special Funds of Technology Renovation technical renovation project with environmental protection	Grant	No
73	Provincial Market Development Grant for foreign trade exhibitions and SMEs International market development	Grant	No
75	Subsidy for Supporting Foreign Trade Enterprises of Nan'an city in 2017	Grant	No
76	Fund for Supporting Foreign Trade Export in 2017 of Nan'an Municipal Bureau of Financial	Grant	No
77	Power consumption award for production and efficiency increase in December 2016	Grant	No
78	Integration of informationization and industrialization management system (Note changed from market development due to info provided from Goomax)	Grant	No

Program Number[36]	Program Name	Program Type	Countervailable subsidy received in relation to the goods (Yes/No)
79	Subsidy for invention patents	Grant	No
80	No. 269: Special project for technology reform- subsidy for technology reform	Grant	No
81	Madrid Trademark grant by Fujian Provincial Administration for Industry and Commerce	Grant	No
82	2016 Award for brand value from Finance Bureau	Grant	No
83	Social security fund Guangzhou Social Insurance Fund	Grant	No
84	Patent supporting fund	Grant	No
85	Unemployment fund Guangzhou Social Insurance Fund	Grant	No
86	Technology supporting fund	Grant	No
87	Special fund Industry technology development and research	Grant	No
88	Industry technology R&D fund	Grant	No
89	Technology innovation fund	Grant	No
90	Social security fund Zencheng City	Grant	No
91	2016 Jiangmen support fund for technology development	Grant	No
92	Funds for EFT16 technical reform	Grant	No
93	Funds for 2016 technical renovation	Grant	No
94	EFT provincial Industry and informatization Special research expenses supplement fund	Grant	No
95	2017 Enterprise Compensation Survey Fund	Grant	No
96	VOCs treatment fund for the process of injection workshop	Grant	No
97	Economic investigation fund	Grant	No
98	2017 Provincial Motor Energy Efficiency Promotion Special Fund	Grant	No
99	2017 Jiangmen Enterprise Major technology platform construction Fund	Grant	No
100	Receiving the payment from Taishan Finance Bureau	Grant	No
101	2017 Jiangmen Enterprise Research and Development Financial Aid Fund	Grant	No
102	Taishan High-integrity enterprise project fund	Grant	No
103	2017 Provincial Enterprise Research and Development Fund	Grant	No
104	Special funds for enterprises in large equipment manufacturing industry	Grant	No

Program Number[36]	Program Name	Program Type	Countervailable subsidy received in relation to the goods (Yes/No)
105	2017 Provincial New enterprise Technology Reform Fund	Grant	No
New programs investigated during this review			
106	Subsidies received from Agricultural Bank of China	Grant	Yes
107	Public support fund received from Agricultural Bank of China	Grant	Yes
108	Innovation reward support funds	Grant	Yes
109	Government quality award received by Agricultural Bank of China	Grant	Yes

5.4 Subsidy assessment

The Commission has relied upon information provided by Huachang in its REQ in assessing the benefits received from the subsidy programs.[37] The Commission is satisfied that the information contained in the REQ is reliable for assessing the amount of countervailable subsidy received.

The Commission's findings are summarised below.

5.4.1 Program 15 – Aluminium at less than adequate remuneration

Huachang claimed not to have received a benefit under this program in its REQ. It stated that most of its primary aluminium purchases are from non-state-owned enterprises. Huachang provided a list of its aluminium purchases and supplier details. The Commission has relied on this information and has determined that a small percentage of purchases were from a state-owned enterprise. An amount of countervailable subsidy has been found to be received under this program.[38]

5.4.2 Program 47 – Preferential tax policies for high and new technology enterprises

In the REQ, Huachang reported receiving a benefit under this program. This program allows a 10 percentage point reduction in Huachang's corporate tax rate (a reduction from 25 per cent to 15 per cent). Huachang provided details of the application process (including the application form submitted to Guangdong High-tech Enterprise Management Recognition Office) in the REQ.

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[37] An assessment of the relevance, reliability and accuracy of the data is at Confidential Attachment 1.

[38] Confidential Appendix 3 refers.

The Commission's examination of Huachang's corporate tax returns for the calendar year 2018 (the review period) confirmed that Huachang's corporate tax rate was 15 per cent. The value of the benefit reported in the REQ reconciled to the value reported on the corporate tax returns. The Commission is satisfied that Huachang received a benefit under this program.

5.4.3 Programs 106-109

At section H-5 of the REQ, Huachang provided details of benefits received under additional programs. The additional programs from the review period were described as:

- Subsidies received from Agricultural Bank of China;
- Public support fund received from Agricultural Bank of China;
- Innovation reward support funds; and
- Government quality award received by Agricultural Bank of China.

The REQ confirms that Huachang has received benefits relating to the above programs from the Government of China or its agency (e.g. Agricultural Bank of China). The Agricultural Bank of China is a substantially owned by state-owned enterprise as detailed in its 2018 Annual Report.[39]

No other details were provided by Huachang regarding these programs. Huachang did not answer questions regarding the legal basis of the programs. In addition, Huachang did not provide details about eligibility criteria or the process by which the programs are accessed.

In the absence of detailed information from Huachang, the Commission has had regard to all available information in making findings in relation to these programs.

In responding to the REQ, Huachang provided a non-operating income sub-ledger sourced from the accounting system as an attachment. This confirms that the relevant payments were received. The value of the payments are substantially similar to the amount recorded in the non-operating income line of Huachang's income statement for 2018.

The Commission considers that payments under these programs are a financial contribution, which involve a direct transfer of funds to the applicant from a state controlled enterprise.

The Commission further considers that a benefit under these programs would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including the goods exported to Australia).[40]

In accordance with section 269TACC(2), this financial contribution is considered to confer a benefit to the applicant because it involves a direct financial payment from the Government of China and this would therefore confer a benefit in relation to the goods. The Commission considers that this financial contribution satisfies the definition of a subsidy under section 269T.

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[39] Accessed September 2019, via Agricultural Bank of China website, www.abchina.com and attached at Attachment 3.

[40] As per Huachang's REQ, Huachang operates almost solely as a producer of the goods and like goods.

The Commission relied on the details and information available to calculate a benefit under these programs. The Commissioner recommends to the Minister that these programs be found to be countervailable.

5.4.4 Financial grants

The Commission noted Capral's concerns regarding Huachang's response to the REQ section concerning financial grants. The Commission examined Huachang's 2018 income statement (non-operating income and subsidies revenue) and sub-ledger information. Having investigated Capral's claims, no evidence of additional financial grants were found (other than discussed above at section 5.4.3).

5.4.5 Amount of countervailable subsidies received

Following an evaluation of all relevant information and the data provided by Huachang, the Commission found that, during the review period, Huachang received financial contributions in respect of the goods that conferred a benefit under Programs 15, 47 and 106 to 109.

The subsidy margin applicable to Huachang is 0.5 per cent. The subsidy margin has been expressed as a proportion of the export price referred to in section 4.4.

The subsidy margin calculations are at **Confidential Appendix 1.**

6 NON-INJURIOUS PRICE

6.1 Background

In REP 482 the Commission calculated the NIP[41] for exports of the goods from China that were considered to be the minimum price necessary to prevent the injury, or the recurrence of the injury, caused by the dumped and subsidised goods.

The Minister accepted the recommendations of the Commissioner and did not specify a method of calculating interim duties such that the sum of the ascertained export price, IDD and ICD payable did not exceed the NIP (that is, the Minister did not apply the lesser duty rule).[42]

6.2 Commissioner's recommendation

The Commissioner recommends that the Minister be satisfied that the NIP calculated for REP 482 is appropriate for this review such that there is no change to the NIP.

There was no information before the Commission to revise its findings on the NIP made in REP 482. The Commission considers that the findings on the NIP in REP 482 are appropriate given the findings of REP 482 were based on an unsuppressed selling price in relation to the period 1 July 2017 to 30 June 2018, which covers half of the review period for the current review.

If the Minister accepts the Commissioner's recommendation and declares that the dumping duty notice and countervailing duty notice remain unaltered, the Minister is not required to determine interim duties under sections 8(5) and 10(3B) of the Dumping Duty Act. In such circumstances, the Minister is not required to consider applying the lesser duty rule.

[41] Under sections 269TACA(a) and (c), the NIP of the goods exported to Australia is the minimum price necessary to prevent the injury, or a recurrence of the injury, to the Australian industry caused by dumped or subsidised goods.

[42] Where the Minister is required to determine IDD and ICD in respect of the goods and a dumping duty notice and a countervailing duty notice has been published in respect of those goods, section 8(5BA) and section 10(3D) of the Dumping Duty Act apply. These provisions require the Minister, in determining the IDD payable, to have regard to the 'lesser duty rule' which requires consideration of the desirability of fixing a lesser amount of duty, such that the export price, together with IDD and ICD, do not exceed the NIP.

7 FINDINGS AND RECOMMENDATIONS

7.1 Findings

The Commissioner has conducted a review of anti-dumping measures in so far as they affect Huachang.

The Commissioner has found that, in relation to Huachang:

- information provided to this review in relation to the variable factors of export price and normal value is unreliable. The Commission considers that the export price and normal value should remain the same amount as previously ascertained in REP 482, which examined a contemporaneous review period and which was based on verified data relating to major exporters of the goods to Australia. As a result, the variable factors of export price and normal value relevant to the taking of the measures have not changed. The dumping margin for Huachang remains at 29.1 per cent;
- information provided to this review relating to the amount of countervailable subsidy received is reliable. This variable factor in respect of the goods has changed. The subsidy margin applicable to Huachang was calculated to be 0.5 per cent. However, when added to the dumping margin, and after removing a double-count, the change in this variable factor is not significant enough to alter the fixed interim duty rate currently applicable to Huachang (29.5 per cent);
- no information has been provided to this review in relation to the NIP. The Commission considers that the NIP should remain the same amount as previously ascertained in REP 482 which examined a contemporaneous review period. As a result, the variable factor of NIP has not changed; and
- the Minister is not required to consider applying the lesser duty rule.

7.2 Recommendations

The Commissioner recommends that the Minister by notice published on the Commission's website **declare**:

- in accordance with section 269ZDB(1)(a)(i), that, for the purposes of the Act and the Dumping Duty Act, the dumping duty notice and countervailing duty notice remain unaltered.[43]

The Commissioner recommends the Minister **be of the opinion that**:

- in accordance with section 269TAB(4), information provided by Huachang in relation to export prices as set out in section 4.2 is unreliable and therefore the Minister disregard that information; and
- in accordance with section 269TAC(7), information provided by Huachang in relation to normal values as set out in section 4.2 is unreliable and therefore the Minister disregard that information.

[43] This declaration is based on acceptance of the below.

The Commissioner recommends that the Minister **be satisfied that**:

- in accordance with section 269TAB(3), sufficient information has not been furnished or is not available to enable the export price of the goods exported to Australia from China by Huachang to be ascertained under the preceding sections;
- in accordance with section 269TAC(6), sufficient information has not been furnished or is not available to enable the normal value of the goods exported to Australia from China by Huachang to be ascertained under the preceding sections; and
- in accordance with section 269TACD(1), countervailable subsidies have been received in respect of the goods exported by Huachang as outlined in chapter 5, in the amounts set out in Confidential Appendices 1-3.

The Commissioner recommends the Minister **determine:**

- in accordance with section 269TAB(3), having regard to all relevant information, that the export price for Huachang is as set out in Confidential Appendix 4;
- in accordance with section 269TAC(6), having regard to all relevant information, that the normal value for Huachang is as set out in Confidential Appendix 4;
- having applied section 269TACB(2) and in accordance with sections 269TACB(1) and (4), that the goods exported to Australia from China are taken to have been dumped, and the dumping margins for Huachang in respect of those goods is the difference between the weighted average export prices of the goods over and the weighted average of corresponding normal values over that period as set out in Confidential Appendix 4;
- in accordance with section 269TACC(1), that, having regard to all relevant information and sections 269TACC(2) and (3), the subsidies received by Huachang during the review period under programs 15, 47 and 106 to 109, as outlined in chapter 5 and set out in Confidential Appendices 1-3, conferred a benefit in relation to the goods exported by Huachang to Australia;
- having had regard to sections 269TAAC(2) and (3), and in accordance with sections 269TAAC(4) and (5), that the subsidies received by Huachang during the review period under programs 15, 47 and 106 to 109, as outlined in chapter 5, are specific and therefore countervailable under section 269TAAC(1); and
- in accordance with section 269TACD(1), that the amount of countervailable subsidy received in respect of the goods by Huachang under programs 15, 47 and 106 to 109, to be the amounts set out in Confidential Appendices 1-3 such that the subsidy margin applying to Huachang’s exports of the goods, expressed as a percentage of the ascertained export price, is 0.5 per cent as set out in Confidential Appendices 1-3.

8 APPENDICES AND ATTACHMENTS

Confidential Appendix 1	Subsidy Margin
Confidential Appendix 2	Aluminium Benchmark for Program 15
Confidential Appendix 3	Program 15 Calculation
Confidential Appendix 4	Variable Factors (export price, normal value and dumping margin)
Confidential Attachment 1	Work Program – Subsidies
Confidential Attachment 2	List of Deficiencies with the REQ
Attachment 3	Agricultural Bank of China Annual Report 2018