



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NO. 509**

**APPLICATION FOR A REVIEW OF VARIABLE FACTORS AND
REVOCAION REVIEW
IN RELATION TO
ALUMINIUM EXTRUSIONS
EXPORTED TO AUSTRALIA FROM
MALAYSIA BY
EVERPRESS ALUMINIUM INDUSTRIES SDN BHD**

26 April 2019

**CON 509 – Aluminium extrusions exported from Malaysia by EverPress – Review of Measures and
Revocation Review**

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ABBREVIATIONS

the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
Alumac	Alumac Industries Sdn Bhd
ABF	Australian Border Force
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
EverPress	EverPress Aluminium Industries Sdn Bhd
FOB	Free on Board
REP 362	<i>Anti-Dumping Commission Report No. 362</i>

1 SUMMARY AND RECOMMENDATIONS

1.1 Background

This report provides the results of the consideration by the Anti-Dumping Commission (the Commission) of an application lodged by EverPress Aluminium Industries Sdn Bhd (EverPress).

In relation to EverPress' exports of certain aluminium extrusions (the goods) to Australia from Malaysia, EverPress' application requests:

- a review of the anti-dumping measures (in the form of a dumping duty notice and countervailing duty notice) insofar as they relate to EverPress; and
- that the anti-dumping measures (in the form of a dumping duty notice and countervailing duty notice) be revoked on the basis that the anti-dumping measures are no longer warranted insofar as they relate to EverPress.

1.2 Application of law to facts

Division 5 of Part XVB of the *Customs Act 1901* (the Act)¹ sets out, among other things, the procedures to be followed by the Commissioner of the Anti-Dumping Commission (the Commissioner) in dealing with an application for a review of anti-dumping measures.

The Division empowers the Commissioner to reject or not reject an application for a review of anti-dumping measures.

1.3 Findings and conclusions

The Commission has examined the application and is satisfied that:

- the application complies with the requirements of section 269ZB (as set out in chapter 3 of this report); and
- there appear to be reasonable grounds for asserting that, insofar as the goods exported by EverPress are concerned, the:
 - variable factors relevant to the taking of the measures (being the export price, normal value and amount of countervailable subsidies received) have changed; and
 - anti-dumping measures in respect of the countervailing duty notice are no longer warranted (as set out in chapter 3 of this report).

The Commission is not satisfied that there appear to be reasonable grounds for asserting that the anti-dumping measures (in respect of the dumping duty notice) are no longer warranted (as set out in chapter 3 of this report).

1.4 Recommendation

The Commission recommends that the Commissioner does not reject EverPress' application requesting, in relation to EverPress, a review of the variable factors and a review seeking the revocation of the anti-dumping measures (in respect of the

¹ All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

countervailing duty notice) applying to exports to Australia from Malaysia by EverPress, for the reasons outlined at chapter 3.3 of this report.

If the Commissioner accepts this recommendation, to give effect to that decision, the Commissioner must publish the notice at **Attachment 1** indicating that the Commission will conduct a review of the variable factors and a review into whether the anti-dumping measures (in respect of the countervailing duty notice) should be revoked.

If the recommendation is accepted, the Commission will examine the period from 1 April 2018 to 31 March 2019 to assess the variable factors, and will obtain additional information from 1 April 2015 to assess whether the measures (in respect of the countervailing duty notice) are no longer warranted.

2 BACKGROUND

2.1 Application

On 5 April 2019, EverPress lodged an application requesting a review of measures and a revocation review.

EverPress claims that the variable factors relevant to the taking of measures have changed, being the export price, normal value and countervailable subsidies.

EverPress also claims that the anti-dumping measures are no longer warranted on the basis that:

- it is not dumping;
- it is not receiving countervailable subsidies, and it will not receive countervailable subsidies in the future; and
- aluminium extrusions exported by Everpress to Australia are not causing injury to the Australian industry.

A non-confidential version of EverPress' application will be available on the public record on the Commission's website if the review is initiated. A confidential version of the application is available at **Confidential Attachment 2**.

EverPress' claims are discussed further in chapter 3 of this report.

2.2 History of the anti-dumping measures

Anti-dumping measures currently apply to aluminium extrusions exported to Australia from the People's Republic of China (China),² Malaysia³ and Vietnam.⁴

A history of the main cases relating to aluminium extrusions exported to Australia from Malaysia are summarised below in Table 1. Further information is also available on the public record for these cases, available on the Commission website.⁵

² The anti-dumping measures in respect of China (in the form of a dumping duty notice and a countervailing duty notice), apply to all exporters with the exception of Guangdong Jiangsheng Aluminium Co. Ltd, and noting that Guangdong Zhongya Aluminium Co Ltd is subject to the countervailing duty notice only.

³ 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.

⁴ In the form of a dumping duty notice for all exporters.

⁵ The Commission's website is www.adcommission.gov.au.

Previous investigations	
2016	The Commissioner initiated an investigation, following an application from Capral Limited, into the alleged dumping and subsidisation of aluminium extrusions exported to Australia from Malaysia and Vietnam. On 27 June 2017, the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science published a dumping notice in respect of the goods exported from Malaysia and Vietnam and a countervailing notice in respect of Malaysia, following their consideration of <i>Anti-Dumping Commission Report No. 362 (REP 362)</i> . Certain aspects of this decision were subject to review by the Anti-Dumping Review Panel (ADRP). ⁶
2018	The Commissioner initiated a revocation review and review of variable factors in relation to aluminium extrusions exported from Malaysia by Alumac Industries Sdn Bhd (Alumac) following applications made by that exporter. The review examined the period 1 July 2017 to 30 June 2018 to determine whether the variables factors relevant to the taking of the existing anti-dumping measures in relation to Malaysia, as they affect Alumac, have changed, and whether 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 were intended to prevent. The <i>Statement of Essential Facts No. 490/494</i> was placed on the public record on 25 March 2019.

Table 1 – History of anti-dumping measures in relation to Malaysia

2.3 Current anti-dumping measures

The current anti-dumping measures relating to aluminium extrusions from Malaysia, applying to EverPress, were implemented following REP 362. REP 362 examined the period of 1 July 2015 to 30 June 2016 to determine whether dumping and subsidisation had occurred.

In REP 362, EverPress was considered to have not cooperated with the investigation and is therefore subject to the uncooperative and all other rates for dumping and countervailable subsidy. EverPress' exports are subject to a fixed rate of 16.2 per cent, being an interim dumping duty of 13.0 per cent and an interim countervailing duty of 3.2 per cent. A variable amount of interim dumping duty is also payable where Everpress' export price is below the export price as last ascertained.

The dumping and countervailing duty notices will expire (unless continued) on 27 June 2022.

2.4 The goods subject to the measures

The goods subject to the anti-dumping measures and therefore this review are:

“Aluminium extrusions that:

- *are produced by an extrusion process;*

⁶ ADRP Review No. 61 available at www.adreviewpanel.gov.au refers.

- 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 review. Examples of the goods and like goods are outlined in columns 1 to 4 and non-subject goods are outlined in columns 5 to 7.

< GUC >				< Non GUC >		
1	2	3	4	5	6	7
Aluminium extrusions	Aluminium extrusions with minor working	Aluminium extrusions that are parts intended for use in intermediate or finished products	Aluminium extrusions that are themselves finished products	Unassembled products containing aluminium extrusions, e.g. 'kits' that at time of import comprise all necessary parts to assemble finished goods	Intermediate or partly assembled products containing aluminium extrusions	Fully assembled finished products containing aluminium extrusions
< Examples >						
Mill finish, painted, powder coated, anodised, or otherwise coated aluminium extrusions	Precision cut, machined, punched or drilled aluminium extrusions	Aluminium extrusions designed for use in a door or window	Carpet liner, fence posts, heat sinks	Shower frame kits, window kits, unassembled unitised curtain walls	Unglazed window or door frames	Windows, doors

Table 2 - The goods, like goods and non-subject goods

2.4.1 Tariff classification

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

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

Table 3 - Tariff classifications of the goods

2.5 Australian industry producing like goods

Based on its findings in REP 362 and other recent cases concerning aluminium extrusions, the Commission considers that there is an Australian industry producing like goods, which is made up of the following companies:

- Capral Limited;
- G. James Extrusion Co Pty Ltd;
- Independent Extrusions Pty Ltd;
- Aluminium Shapemakers Pty Ltd;
- Aluminium Profiles Australia Pty Ltd;
- Extrusions Australia Pty Ltd;
- Olympic Aluminium Co Pty Ltd; and
- Ullrich Aluminium Pty Ltd.

The Commission is not aware of any evidence which suggests that any of the above-listed companies have ceased to produce like goods.

The Commission therefore remains satisfied that there is an Australian industry producing like goods.

3 CONSIDERATION OF THE APPLICATION

3.1 Legislative framework

Pursuant to section 269ZA, where anti-dumping measures have been taken in respect of goods, an affected party⁷ may, by application lodged with the Commissioner, request that the Commissioner initiate a review of measures.

Subsection 269ZA(2) states, inter alia, that an application for review of anti-dumping measures must not be made earlier than 12 months after the publication of a notice declaring the outcome of the last review of the anti-dumping notice.

The application can be made by the affected party who considers that it may be appropriate to review those measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally, on the grounds that the anti-dumping measures are no longer warranted.

Subsection 269ZB(1) requires that an application be in writing, be in a form approved by the Commissioner for the purposes of this section, contain such information as the form requires, be signed in the manner indicated by the form and be lodged in a manner approved under section 269SMS.

Subsection 269ZB(2) requires an applicant to provide:

- a description of the kind of goods to which the measures the subject of the application relate; and
- a description of the measures the subject of the application; and
- if the application is based on a change in variable factors, a statement of the opinion of the applicant concerning:
 - the variable factors relevant to the taking of the anti-dumping measures that have changed; and
 - the amount by which each such factor has changed; and
 - the information that establishes that amount;
- if the application is based on circumstances that, in the applicant's view, indicate that the anti-dumping measures are no longer warranted, the applicant must provide evidence in accordance with the approved form, of the circumstances.

Subsection 269ZC(2) specifies the matters which must be considered in making a decision whether to reject an application. These matters are:

⁷ An "affected party", in relation to an application under Division 5 for review of anti-dumping measures imposed on particular goods, is defined under section 269T to be:

- a) a person who is directly concerned with the exportation to Australia of the goods to which the measures relate or who has been directly concerned with the exportation to Australia of like goods; or
- b) a person who is directly concerned with the importation into Australia of the goods to which the measures relate or who has been directly concerned with the importation into Australia of like goods; or
- c) a person representing, or representing a portion of, the Australian industry producing like goods; or
- d) the Government of a country from which like goods have been exported to Australia.

- that the application complies with section 269ZB; and
- that there appear to be reasonable grounds for asserting either, or both, of the following:
 - that the variable factors relevant to the taking of anti-dumping measures have changed;
 - that the anti-dumping measures are no longer warranted.

3.2 Compliance with sections 269ZA and 269ZB

When considering the requirements of subsections 269ZA(1), 269ZB(1) and (2), the Commission notes that the application submitted:

- meets the definition of an affected party as EverPress is a producer of the goods to which the measures relate and sells these goods directly to an Australian importer, therefore EverPress can be considered to be directly concerned with the exportation of the goods;
- was lodged 12 months after the publication of the anti-dumping notice;⁸
- is in writing;
- is in the approved form (*Form B602 – Application for a review of measures*) and contains such information as the form requires. This includes evidence in support of the view that there are reasonable grounds for asserting that the:
 - variable factors relevant to the taking of anti-dumping measures have changed; and
 - countervailing measures are no longer warranted;
- is signed in the manner required by the form;
- was lodged in a manner approved under section 269SMS, being by email to the Commission’s nominated email address (as nominated in the Commissioner’s instrument made under section 269SMS);
- provides a description of the kind of goods to which the anti-dumping measures the subject of the application relates;
- provides a description of the anti-dumping measures the subject of the application; and
- includes a statement of the opinion of the applicant concerning the circumstances that in the applicant’s view indicate that the anti-dumping measures are no longer warranted.

The Commission considers that EverPress has satisfied the requirements of subsections 269ZA(1), 269ZB(1) and (2).

3.3 Compliance with section 269ZC - assessment of ‘the appearance of reasonable grounds’

3.3.1 Grounds for a review of variable factors

The Commission has assessed whether there appear to be reasonable grounds for EverPress asserting that the variable factors relevant to the taking of anti-dumping

⁸ The relevant anti-dumping notices were published on 27 June 2017. There have been no subsequent alterations to the notices.

measures have changed in relation to Everpress, being the export price, normal value and amount of countervailable subsidies received.

Export price

EverPress stated that the export price relevant to the taking of anti-dumping measures is based on the lowest export price of cooperating exporters from REP 362, in accordance with subsection 269TAB(3).

EverPress claims that the export price relevant to the taking of anti-dumping measures has changed. To support its view, EverPress provided information in relation to its export price, including direct selling adjustments to the Free on Board (FOB) point and a credit term adjustment, for aluminium extrusions it exported to Australia during calendar years 2015 to 2018.

The Commission's assessment – export price

The Commission identified an error in EverPress' export packaging expense calculation. The Commission also considers that in estimating the export price, it is preferable to rely on the invoice terms relevant to the goods which it exported to its Australian customer.

To rectify the above issues, the Commission re-calculated EverPress' export price for calendar years 2017 and 2018 having regard to:

- the invoice terms applying to its exports; and
- estimated packaging expenses by using comparable expenses incurred by another Malaysian exporter.

The Commission considers that the re-calculated export prices for calendar years 2017 and 2018 support a view that the export price has changed (**Confidential Attachment 3**).

Normal value

EverPress stated that the normal value relevant to the taking of anti-dumping measures is based on the highest normal value of cooperating exporters from REP 362, in accordance with subsection 269TAC(6).

EverPress claims that the normal value relevant to the taking of anti-dumping measures has changed. To support its view, EverPress estimated normal values for calendar year 2018 based on its domestic sales of aluminium extrusions on the Malaysian market, with adjustments to the FOB level for packaging, direct selling expenses and credit terms.

The Commission's assessment – normal value

The Commission considers that in estimating the normal value, it is appropriate to ensure it is comparable to the export price. As the Commission re-calculated the export price with respect to invoice terms and packaging expenses, the Commission also re-calculated an estimated normal value for calendar year 2018 to ensure comparability with the export price.

The Commission considers that the re-calculated export prices for calendar years 2017 and 2018 support a view that the export price has changed (**Confidential Attachment 3**).

Countervailable subsidy

EverPress claimed that it does not receive any countervailable subsidies. To support its claim, EverPress provided information for financial years 2016 and 2017, including audited

financial reports, tax returns, income tax and depreciation calculations, and a billet purchase listing.

The Commission's assessment – countervailable subsidy

The Commission considers that EverPress has provided information that indicates there are reasonable grounds for asserting that it has not received countervailable subsidies. The Commission's consideration is at **Confidential Attachment 3**.

3.3.2 Grounds for revocation

The Commission has assessed whether there appear to be reasonable grounds for EverPress asserting that the anti-dumping measures, in the form of dumping and countervailing duty notices, are no longer warranted in relation to Everpress.

EverPress claims that:

- it is not currently exporting the goods at dumped and/or subsidised prices;
- as a result of no dumping or subsidisation, injury cannot be being caused;
- it sells customised goods exclusively to its Australian customer, and that it has exported low quantities in recent years;
- its Australian customer has continued to import the goods exclusively from EverPress despite EverPress being subject to the measures;
- a recurrence or continuation of dumping and subsidisation, and of the injury, is unlikely if the measures were revoked, given that Everpress:
 - is not currently dumping the goods or exporting the goods at subsidised prices;
 - has exported relatively low quantities of the goods to Australia in recent years; and
 - all cooperating Malaysian exporters investigated by the Commission are exempt from anti-dumping measures.

Using the information provided in relation to export price and normal value, EverPress calculated dumping margins on a monthly basis for calendar year 2018 (**Confidential Attachment 3**). EverPress' estimation of the dumping margin on a weighted average basis for calendar year 2018 was negative.

EverPress also provided information to support its view that it has not received countervailable subsidies (**Confidential Attachment 3**). In relation to one of the two countervailable subsidy programs relevant to Malaysia, EverPress provided commentary that indicates it is unlikely to receive a benefit under that program in the future.

Commission's assessment – revocation of the dumping duty notice

Claims of no dumping

The Commission re-calculated the dumping margin for calendar year 2018 based on the Commission's re-calculated export prices (refer chapter 3.3.1) and EverPress' estimate of the normal value. The Commission found that the re-calculated dumping margin was negative, similar to EverPress' estimation.

As such, the Commission considers that there appear to be reasonable grounds for asserting that EverPress is not dumping. Therefore the Commission considers there appear to be reasonable grounds for asserting that injury to the Australian industry is not being caused by EverPress.

Whether dumping is unlikely in future if the measures were revoked

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An application for the revocation of dumping measures must provide an assessment of why there will be no dumping in future, and of the injury, if the measures were revoked.

While EverPress has provided evidence to support its assertions that it is not currently dumping, the Commission considers that no current dumping does not, of itself, mean that the dumping measures are no longer warranted with respect to EverPress. That is, no current dumping is not a reasonable basis for asserting that EverPress will not dump in the future.

The Commission assessed EverPress' claim that it has exported relatively low quantities of the goods to Australia in recent years. Based on analysis of Australian Border Force (ABF) import data and Everpress' Australian sales, the Commission found that EverPress' claim regarding export volume appears to be correct for calendar years 2016 to 2018 (**Confidential Attachment 4**). However, based on the ABF import data, in calendar years 2014 and 2015 EverPress exported the goods in volumes that were significantly higher relative to its export volumes in 2016 to 2018. The Commission notes that Investigation 362 was initiated 16 August 2016, the timing of which appears to coincide with a reduction in export volume by EverPress. The Commission considers that EverPress' claim regarding low volumes does not, of itself, form a reasonable basis for asserting that EverPress will not dump and cause injury in the future.

EverPress has provided evidence to support its claims regarding no current dumping and relatively low export volumes of the goods in recent years. However, the Commission is not satisfied that EverPress has provided sufficient evidence that future dumping, and therefore injury, is unlikely were the measures to be revoked.

Therefore, the Commission considers that there is insufficient evidence to be satisfied that there are reasonable grounds for asserting that the dumping measures are no longer warranted.

Commission's assessment – revocation of the countervailing duty notice

Claims of no countervailable subsidisation

As found under chapter 3.3.1, based on EverPress' information provided in the application, the Commission considers there are reasonable grounds for asserting that EverPress did not receive any countervailable subsidies in recent years.

Whether countervailable subsidisation is unlikely to recur if the measures were revoked

In relation to the countervailable subsidy programs relevant to Malaysia, EverPress provided a discussion to support its claim that a recurrence or continuation of the subsidisation, and of the injury, is unlikely were the measures revoked. For one of the two subsidy programs, this discussion was based on EverPress' terms of trade with certain suppliers.

On balance, and taking into consideration the nature of the subsidy programs previously countervailed in REP 362 and Everpress' patters of trade and circumstances over time, the Commission considers that there appear to be reasonable grounds for asserting that the countervailing measures are no longer warranted in relation to Everpress.

Commission's conclusion – grounds for revocation

Based on the information contained in the application, the Commission considers that there appear to be reasonable grounds for asserting that the anti-dumping measures, in

respect of the countervailing duty notice as it relates to EverPress, are no longer warranted in accordance with subsection 269ZC(2)(b)(ii).

However, the Commission does not consider that there appear to be reasonable grounds for asserting that the anti-dumping measures, in respect of the dumping duty notice as it relates to Everpress, are no longer warranted in accordance with subsection 269ZC(2)(b)(ii).

3.4 Conclusion and recommendation

The Commission has considered EverPress' application in accordance with sections 269ZA, 269ZB and 269ZC. The Commission is satisfied, on the basis of the information provided in the application, EverPress' supporting evidence and other available relevant information (including from previous cases), that EverPress:

- is an affected party in accordance with section 269ZA;
- has submitted an application that complies with section 269ZB; and
- in accordance with section 269ZC, has provided reasonable grounds for asserting that the:
 - variable factors relevant to the taking of the measures have changed, being the export price, normal value and countervailable subsidy; and
 - anti-dumping measures, in respect of the countervailing duty, are no longer warranted.

The Commission therefore recommends that the Commissioner:

- *not reject* the application for a review of the anti-dumping measures and revocation review in respect to the countervailing duty notice;
- *reject* the application for a revocation review in respect to the dumping duty notice; and
- publish a notice that the Commission will conduct a review in relation to whether the:
 - variable factors relevant to the taking of the measures, in the form of the dumping and countervailing duty notices, have changed insofar as they relate to EverPress; and
 - anti-dumping measures, in respect of the countervailing duty notice, as they relate to EverPress are no longer warranted.

4 ATTACHMENTS

Attachment 1	Anti-Dumping Notice for initiation
Confidential Attachment 2	EverPress' confidential application
Confidential Attachment 3	Commission's analysis of EverPress' data
Confidential Attachment 4	Commission's analysis of ABF import data and EverPress' Australian sales