

14 January 2020

Anti-Dumping Commission  
[investigations4@adcommission.gov.au](mailto:investigations4@adcommission.gov.au)

**Submission**  
**SEF EverPress Aluminium Extrusions Review 509**

I represent EverPress

This follows the EverPress 3 June 2019 and 11 November 2019 submissions

Nothing in the law stops the Commissioner still recommending to the Minister revocation of the anti dumping measures—in the form of the current **dumping** duty notice ADN 2017/72

- A Rather than ADC not considering reasonable grounds for EverPress asserting that the anti dumping duties (in the form of the current dumping duty notice ADN 2017/72) no longer warranted, in CON 509 the ADC should have recommended to the Commissioner to not reject the EverPress 5 April 2019 application for revocation Review—269ZB (2) (d)/ZC (2) (b) (ii)—for the immediately following numbered reasons:**

Otherwise the recommendation/s/decision/s become judicially and ADRP reviewable

As distinct from anti dumping measures (in the form of the current **countervailing** duty notice ADN 2017/73) that in this EverPress 509 *Review* SEF the Commissioner already recommends revoking

- 1 Inconsistent with ADC 17 June 2019 rejection of EverPress 3 June 2019 revocation extension application accepting same level of evidence as in EverPress 5 April 2019 revocation application**  
CON 509 p14

*...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*

ADC 17 June 2019 letter 3rd last paragraph commenting on similar level of evidence provided by EverPress in its subsequent 269ZCB revocation review application:

*The application includes evidence of the circumstances that in EverPress' view indicate that the anti-dumping measures are no longer warranted*

*The application does comply with ss269ZCB (2)*

- 2 In determining *Whether dumping is unlikely in future if...revoked*, rather than considering (which ADC ignored) whether EverPress exported at dumped prices, ADC went off on a tangent and engaged in and took issue on the irrelevant EverPress higher pre-362 1 Jul 2015 to 30 Jun 2016 *Review shipments* v subsequent and this EverPress 509 1 Apr 2018 to 31 Mar 2019 *Review*

CON 509 p 14

*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 consider 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*

Despite this volume change, the only relevant consideration, justifying *dumping is unlikely in future if...revoked*, EverPress has proved extreme high **negative** dumping margins in:

- 4 below 28 February 2017 to 27 June 2019 *Assessment* periods and
- 3 below EverPress 509 1 April 2018 to 31 March 2019 *Review* period

In any event this volume reduction evidences only that EverPress and its sole Australian customer follow only normal commercial practice to limit purchases faced with post 362 *Review* 13% dumping/countervailing duty—outside of *Whether dumping is unlikely in future if...revoked*

The ADC tortures logic to draw the direct opposite conclusion

- 3 **10.1% negative dumping margin** in this EverPress 509 *Review* SEF evidenced in similar high negative margin in CON 509 p13

*The Commission recalculated the dumping margin for calendar year 2018 .....The Commission found that the recalculated dumping margin was negative, similar to EverPress' estimation*

That is, a similar order of magnitude high **negative** dumping margin

Contrast this to ADC rejecting the contemporary Alumac 490/494 aluminium extrusions from Malaysia revocation **applications** because, among other things:

*Alumac may be exporting aluminium extrusions at dumped prices and therefore (the Commission) does not consider there are reasonable grounds for Alumac to assert that dumping is not occurring*

which justified:

*the Commission is not satisfied that Alumac's application complies with.....the evidence to support the applicant's view that the anti-dumping measures **are no longer warranted**.*

No current dumping forms the best evidence, the strongest grounds and more than a *reasonable* basis that EverPress will continue selling to Australia with this similar order of magnitude of high **negative** margin and, it naturally follows, without dumping **and** without injury to Australian industry

Mirroring the Commissioner’s own view in contemporary aluminium extrusions from China REP 482 p75:

*past conduct is probably the most reliable indicator of future conduct*

Even more so in the case of EverPress with such **high** negative dumping margin agreed by the ADC after intense verification

**4 Prior and current dumping duty Assessments and an application** produced the following outcomes showing similar order of magnitude of Ever Press extreme high **negative** dumping margin

Assessment number/ application	Assessment/ Review shipments period	Application status	Negative dumping margin %—as agreed by ADC for finalised application /as proved in application	Result if/when finalised	Tonnes
1	28 Feb 17 to 27 Jun 17	Not considered by ADC contrary to Customs Act and administrative legal fairness	█		█
2 DA 0136	28 Jun 17 to 27 Dec 17	Finalised and refunds paid	█	100% refunds	█
3 DA 0158	28 Dec 17 to 27 Jun 18	Substantially finalised	█	100% refunds	█
4 DA 0171	28 Jun 18 to 27 Dec 18	Substantially finalised	█	100% refunds	█
5 DA 0183	28 Dec 18 to 27 Jun 19	Accepted currently under assessment	█	100% refunds	█
EverPress 509 Review	1 Apr 18 to 31 Mar 19	SEF	10.1		█

**5 EverPress shipments to Australia come to less than ████th Aust 180,000 tonnes order of magnitude market (approximately 40% Australian production) and ████ of ████% of EverPress Malaysian mill output**

Proves of EverPress shipments:

*dumping is unlikely in future if...revoked*

Even if double/triple/exponentially more EverPress shipments

**B 269ZDA (1A) (b) forces the Commissioner to recommending revoking—once, from above, nothing in 269ZB/ZC stops the Commissioner considering a revocation application**

Before going into these following first and second individual EverPress *Review 509* components, the Commissioner:

- must recommend revoking—no discretion here if falling short of the Commissioner's following *unless* threshold
- unless the Commissioner **satisfied**—which, rather than making the applicant prove otherwise, imposes a positive obligation on **the Commissioner** to find these—following 269ZDA (1A) (b)
- ADRP 104, paragraph 104, restates this ADC burden, particularly as it applies to like aluminium extrusions shipped to Australia and over a contemporary IP as the 482 *Review* considered in ADRP 104 aluminium extrusions from China
- fundamental procedural administrative legal fairness means this satisfaction can come from only the Commissioner's objective assessment and based on sufficient evidence. Restated often in ADRP 104:

*a reasoned explanation based on positive evidence*

- From *Siam Polyethylene Co-Ltd v Minister for Home Affairs* this *likely* satisfaction requires:

*dumping would be probable*

more than

*not simply if the evidence suggests that such a result might be possible or plausible*

## First component

*..revoking...lead or likely to lead to..continuation of, or...recurrence of the:*

*...dumping..*

- a **negative** anti-dumping margin as with the EverPress **negative** 10.1% dumping margin falls outside the intention of anti-dumping measures to prevent continuance or recurrence of dumping
- b the Commissioner (who has the 269ZDA (1A) (b) onus of proof) has provided insufficient/zero evidence that revocation of EverPress' dumping margin would lead or likely lead to a continuance or recurrence of actionable dumping. EverPress has proved the opposite

## Second component

*revoking...lead or likely to lead to..continuation of, or...recurrence of the:*

*..material injury the measures...intended to prevent.*

- c It automatically flows that absent, as in this EverPress Review 509 the Commissioner's satisfaction of the above:  
*lead or likely to lead to..continuation of, or...recurrence of the..... dumping*  
nor can there arise any *lead or likely to lead to..continuation of, or...recurrence material injury*
- d Even more so in this EverPress 509 review where, in addition to its substantial negative dumping margin, in relation to aluminium extrusion exports to Australia from any country, the EverPress virtually zero shipments from Malaysia can no way result in Australian producers *material injury*—4 & 5 above
- e **ADC admits EverPress**  
3.3.2 CON 509  
*had reasonable grounds for asserting the injury to the Australian industry is not being caused by EverPress*
- f EverPress repeats the same reasons in item 3 of its 3 June 2019 confidential submission on the CON 509—redacted from the public version
- g Given this high negative dumping margin, coupled with revoking the countervailing notice, when determining whether revocation would lead or likely lead to continuation of or recurrence of the material injury that the measures are intended to prevent, the ADC has yet give reasoned explanation as to how it excluded from its (continuation of or recurrence) injury analysis:

*..... the injurious effects of other (that is, other than the EverPress shipments) factors impacting upon the financial health of the Australian (aluminium extrusion) industry*

**C Set floor price at zero or de minimus**

Nothing in the law:

- prohibits this
- compels the Minister to set any particular *floor price* higher than zero, here in the case of EverPress with its such extremely high negative dumping margin

The fairest means to remedy SEF 509 *ascertained normal value* floor price recommendation because, among many other reasons, unfairly to EverPress:

- 1 Like most exporters into Australia and aluminium extrusions transactions worldwide, EverPress base their price on monthly changing LME which came out as follows simple average:

1 April 2018 to 31 March 2019 509 *Review* IP—\$US2,035

1 April 2019 to 31 December 2019—\$US1,759

This means 509 *Review* floor price *normal value* set high during consequent extremely high LME IP year relative to, as history has shown, significantly lower LME in following 9 months and projected into 2020

- 2 6 monthly retrospective *Assessments* gives no answer to overcome this effect because of disproportionate high costs relative to the value of refundable IDD



Geoff Cantelo