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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

REPORT NO. 509

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

**EXPORTED TO AUSTRALIA FROM MALAYSIA
by
EVERPRESS ALUMINIUM INDUSTRIES SDN BHD**

January 2020

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ABBREVIATIONS

| | |
|-------------------|--|
| the Act | <i>Customs Act 1901</i> |
| ADN | Anti-Dumping Notice |
| Capral | Capral Limited |
| China | the People's Republic of China |
| the Commission | the Anti-Dumping Commission |
| the Commissioner | the Commissioner of the Anti-Dumping Commission |
| Dumping Duty Act | <i>Customs Tariff (Anti-Dumping) Act 1975</i> |
| EPR | electronic public record |
| EverPress | EverPress Aluminium Industries Sdn Bhd |
| the goods | the goods the subject of the application (also referred to as the goods under consideration) |
| GOM | Government of Malaysia |
| IDD | interim dumping duty |
| ICD | interim countervailing duty |
| INV 362 | <i>Investigation No. 362</i> or the original investigation |
| the Manual | <i>Dumping and Subsidy Manual</i> |
| the Minister | the Minister for Industry, Science and Technology |
| NIP | non-injurious price |
| OCOT | ordinary course of trade |
| REP 362 | <i>Anti-Dumping Commission Report No. 362</i> |
| REQ | response to the exporter questionnaire |
| REV 509 | <i>Review of Measures No. 509</i> |
| the review period | 1 July 2017 to 30 June 2018 |
| SEF | statement of essential facts |
| USP | unsuppressed selling price |
| Vietnam | the Socialist Republic of Vietnam |

1 SUMMARY

1.1 Introduction

This report sets out the Commissioner of the Anti-Dumping Commission's (the Commissioner's) recommendations to the Minister for Industry, Science and Technology (the Minister)¹ in relation to a revocation review and a variable factors review of the anti-dumping measures (in the form of a dumping duty notice² and countervailing duty notice³) applying to certain aluminium extrusions (the goods) exported to Australia from Malaysia by EverPress Aluminium Industries Sdn Bhd (EverPress).

The report also sets out the reasons for those recommendations.

1.2 Findings

A summary of the findings and conclusions is provided below. The Commissioner bases these findings on an examination of the goods exported by EverPress to Australia from Malaysia for the period 1 April 2018 to 31 March 2019 (the review period).

1.2.1 Variable factors (chapter 4)

The Commissioner finds that the variable factors with respect to exports of the goods to Australia from Malaysia by EverPress, in particular EverPress' export price, normal value, the amount of countervailable subsidy received and the non-injurious price (NIP), have changed since last ascertained.

1.2.2 Dumping and subsidy margins (chapter 4)

The Anti-Dumping Commission's (the Commission) assessment of dumping and subsidy margins, with respect to exports of the goods by EverPress is set out in the table below.

| Exporter | Dumping margin | Subsidy margin |
|-----------|----------------|----------------|
| EverPress | -10.1% | 0.0% |

Table 1 - Dumping and subsidy margin summary

1.2.3 Non-injurious price (chapter 4)

The Commission has calculated the NIP for exports of the goods by EverPress that is considered to be the minimum price necessary to prevent the injury, or a recurrence of injury, caused by dumped goods from Malaysia by EverPress. The Commission calculated the NIP for EverPress to be a price equal to an un-dumped price, being the normal value of the goods exported from Malaysia by EverPress.

The Commissioner recommends the Minister have regard to the lesser duty rule for exports of the goods from Malaysia by EverPress. However, because the NIP in relation

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

² Anti-Dumping Notice (ADN) No. 2017/72.

³ Refer ADN No. 2017/71.

to exports by EverPress is set equal to the normal value in relation to those exports, the lesser duty rule will have no practical effect.

1.2.4 Proposed form of measure (chapter 4)

The Commissioner recommends to the Minister that interim dumping duty (IDD) relevant to EverPress, be collected in relation to duty that may become payable, using the floor price duty method.

1.2.5 Material injury continuing or recurring (chapter 5)

The Commissioner is not satisfied that, in relation to EverPress, revoking the countervailing measures applicable to the goods it exports from Malaysia to Australia, would lead, or be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

1.3 Recommendations to the Minister

The Commissioner recommends to the Minister, in accordance with section 269ZDA of the *Customs Act 1901* (the Act)⁴ that:

1. the dumping duty notice have effect in relation to EverPress as if different variable factors had been ascertained;⁵ and
2. the countervailing duty notice be revoked insofar as it applies to exports of the goods to Australia by EverPress.⁶

Where the Minister accepts the first recommendation and declares that the dumping duty notice have effect in relation to EverPress as if different variable factors had been ascertained, the revised IDD rate will have effect from the date the Minister's notice of her declaration is published on the public record.

Where the Minister accepts the second recommendation and revokes the countervailing duty notice, interim countervailing duty (ICD), with respect to the goods exported to Australia from Malaysia by EverPress, will not apply to the goods entered for home consumption on and after 26 April 2019. If this recommendation is accepted by the Minister, importers who have paid ICD in relation to the anti-dumping measures applicable to the goods exported by EverPress that were entered for home consumption on or after this date would be eligible for a refund of the ICD paid.

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

⁵ Refer section 269ZDA(1)(a)(iii).

⁶ Refer section 269ZDA(1)(a)(ii).

2 BACKGROUND

2.1 Initiation

The Commissioner initiated this review of anti-dumping measures (REV 509) on 26 April 2019. The review has examined whether:

- the anti-dumping measures (in the form of a dumping duty notice) applying to the goods exported to Australia from Malaysia by EverPress should remain unaltered or should be varied; and
- the anti-dumping measures (in the form of a countervailing duty notice) applying to the goods exported to Australia from Malaysia by EverPress should be revoked, should remain unaltered or should be varied.

The Commissioner initiated this review after an examination of an application, made on 5 April 2019, by EverPress. In its application, EverPress sought a review of the variable factors relevant to the taking of IDD and ICD, being the export price, normal value and amount of countervailable subsidies received, and a revocation of the countervailing measures as they apply to EverPress on the basis that they are no longer warranted.

Notification of the initiation of the review was made in ADN No. 2019/59,⁷ which was published on the Commission's website⁸ on 26 April 2019. On the same date, *Consideration Report No. 509*⁹ was published, detailing the Commissioner's reasons for not rejecting the application as it relates to a change in variable factors with respect to IDD and ICD, and the revocation with respect to the ICD aspect of the application.¹⁰

2.2 History of the anti-dumping measures

The full history of the anti-dumping measures relating to the goods can be found on the Commission's website. A summary is below.

On 28 June 2016, Capral Limited (Capral) lodged an application requesting that the then Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the then Parliamentary Secretary) publish dumping and countervailing duty notices in respect of the goods exported to Australia from Malaysia and the Socialist Republic of Vietnam (Vietnam).¹¹

On 22 June 2017, the then Parliamentary Secretary accepted the Commissioner's recommendations in *Report No. 362* (REP 362)¹² and published dumping and countervailing notices for the goods exported to Australia from Malaysia and Vietnam.

⁷ Refer to document # 3 on the electronic public record (EPR) for REV 509.

⁸ All references to the Commission's website, unless otherwise stated, refer to: www.adcommission.gov.au

⁹ Refer to document # 2 on the EPR for REV 509.

¹⁰ *Consideration Report No. 509* also discusses the reasons why EverPress' application for revoking the measures with respect to the taking of IDD was rejected.

¹¹ Refer to document # 1 on the EPR for INV 362

¹² Refer to document # 89 on the EPR for INV 362.

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With respect to Malaysian exporters, the investigation found that three cooperating exporters and three residual exporters either did not export the goods to Australia at dumped and/or subsidised prices, or if they did, the margins of dumping and/or subsidisation were found to be *de minimis* (i.e. below two per cent). However, the Commission found that, in relation to the ‘uncooperative and all other exporters’ for the purposes of dumping, and the ‘non-cooperative and all other entities’ for the purposes of countervailing:

- the goods were exported at dumped and subsidised prices;
- the dumping and subsidy margins were not negligible; and
- the dumped and subsidised exports caused material injury to the Australian industry producing like goods.¹³

The duties with respect to the goods exported to Australia from Malaysia are detailed in Table 2 below. The ‘*All other exporters*’ rate is currently applicable to exports by EverPress.

| Name of Malaysian Exporter | Measure | Fixed rate of duty | Form of IDD |
|---|-----------|--------------------|--------------------------------|
| Superb Aluminium Industries Sdn Bhd | Exempt | | Not applicable |
| Milleon Extruder Sdn Bhd | Exempt | | |
| Kamco Aluminium Sdn Bhd | Exempt | | |
| LB Aluminium Bhd | Exempt | | |
| Press Metal Bhd | Exempt | | |
| Genesis Aluminium Industries Sdn Bhd | Exempt | | |
| Zinaco Industrial and Hardware Industries Ltd | IDD & ICD | 64.4% | Combination fixed and variable |
| Foshan ZP Aluminium Co. Ltd ¹⁴ | IDD & ICD | 64.4% | Combination fixed and variable |
| Alumac Industries Sdn Bhd | IDD | N/A | Floor price |
| All other exporters | IDD & ICD | 16.2% | Combination fixed and variable |

Table 2 - Effective rates of duty applicable to exports of the goods from Malaysia

2.3 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may apply for,¹⁵ or the Minister

¹³ Refer to REP 362 on the Commission’s website for findings made with respect to exporters from Vietnam.

¹⁴ The Commissioner found Foshan ZP Aluminium Co., Ltd of the People’s Republic of China exported to Australia through Malaysia and Thailand. For further information report to the final report for *Anti-Circumvention Inquiry Number 447*, which can be found on the Commission’s website.

¹⁵ Section 269ZA(1).

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may request that the Commissioner conduct, a review of those measures if one or more of the variable factors has changed.

The Minister may initiate a review at any time. However, a review application must not be lodged by an affected party earlier than 12 months after publication of the dumping duty notice and/or countervailing duty notice or the notice(s) declaring the outcome of the last review of the dumping or countervailing duty notice.¹⁶

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner has up to 155 days, or such longer time as is allowed, to conduct a review and report to the Minister on the review of the anti-dumping measures.¹⁷

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

Variable factors in this particular review are a reference¹⁸ to:

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

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:¹⁹

- remain unaltered;
- be revoked²⁰; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been fixed relevant to the determination of duty.

The Commissioner:

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

¹⁶ Section 269ZA(2)(a).

¹⁷ Section 269ZDA(1).

¹⁸ Section 269T(4E).

¹⁹ Section 269ZDA(1)(a).

²⁰ For this review, this applies only in relation to the countervailing duty notice and not the dumping duty notice, refer to section 2.5.

the dumping or subsidisation and the material injury that that measures are intended to prevent.²¹

Where the Minister decides to revoke the anti-dumping measures, the Minister can declare that the notice be revoked either in relation to a particular exporter, exporters generally, or in relation to a particular kind of goods.²²

2.3.1 Statement of essential facts

Within 110 days of the initiation of a review, or such longer time as allowed,²³ the Commissioner must place on the public record a statement of essential facts (SEF) on which he proposes to base recommendations to the Minister concerning the review of the anti-dumping measures.²⁴

The Commissioner placed SEF 509 on the public record on 21 October 2019.²⁵

2.3.2 Final report

The report and recommendations in relation to this review were provided to the Minister on 17 January 2020.

In making the recommendations in this report, the Commissioner had regard to:²⁶

- the applications for revocation and variable factors review;
- any application or request to extend the review that was not rejected;
- 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.²⁷

²¹ Section 269ZDA(1A).

²² Section 269ZDB(1)(a)(ii).

²³ 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.

²⁴ Section 269ZD(1).

²⁵ Refer to document # 17 on the EPR for REV 509.

²⁶ Section 269ZDA(3)(a).

²⁷ Section 269ZDA(3)(b).

2.3.3 Extensions of time

On 5 August 2019, the General Manager, Investigations of the Commission (the GM Investigations) notified affected parties of an extension of time of 45 days by which to publish the SEF and provide the final report to the Minister for this review.²⁸

A further extension of time of 21 days by which to publish the SEF and provide the final report to the Minister was granted and notified by the GM Investigations on 26 September 2019.²⁹ A third extension of time of 45 days by which to provide the final report to the Minister was granted and notified by the GM Investigations on 2 December 2019.³⁰

2.4 Submissions received during the review

The Commission received three submissions from Capral in relation to the initiation of this review and responses to the exporter and government questionnaires.³¹ These three submissions were addressed in SEF 509.

In response to SEF 509, the Commission received a submission from EverPress on 11 November 2019.³² In this submission, EverPress states that it made a similar submission dated 3 June 2019 to which it claims the Commission did not respond. EverPress also asserts that the Minister must either:

- revoke the dumping duty notice with respect to EverPress as the measures are no longer warranted; or
- set a floor price equal to zero.

Capral responded to EverPress' submission on 15 November 2019. Capral rejected EverPress' claims and supported the Commissioner's proposed recommendations in SEF 509.

EverPress' submission regarding revocation of the dumping duty notice is addressed at section 2.5. EverPress' submission regarding the floor price is addressed at section 4.9.

On 14 and 16 January 2020, the Commission received two further submissions from EverPress. The Commissioner did not have regard to either submission, received by the Commission after the prescribed period to respond to the SEF in the Act, as to have done so would, in the Commissioner's opinion, prevent the timely preparation of this report to the Minister.

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

²⁸ ADN No. 2019/99 refers.

²⁹ ADN No. 2019/114 refers.

³⁰ ADN No. 2019/145 refers.

³¹ Refer to document #'s 4, 6 and 9 on the EPR for REV 509.

³² Refer to document # 18 on the EPR for REV 509.

2.5 The Commission's consideration of the submission to revoke the dumping duty notice

On 4 June 2019, the Commission received an application by EverPress to extend the current review to include a revocation review with respect to the dumping duty notice, dated 3 June 2019. The Commission attempted to confirm with EverPress on 14 November 2019, that this application is the submission dated 3 June 2019, referred to in its submission in response to the SEF. The Commission did not receive confirmation from EverPress. In the absence of any other communication received from EverPress around 3 June 2019, the Commission is satisfied that the submission EverPress refer to in its post-SEF submission is the application dated 3 June 2019 received by the Commission on 4 June 2019.

With respect to an application to extend a review to include a revocation review, if the Commissioner is not satisfied that the application complies with section 269ZCB or is not satisfied there appear to be reasonable grounds for recommending that the anti-dumping measures are no longer warranted, the Commissioner must reject the application and inform the applicant in writing. If the Commissioner does not reject the application he is required to publish a notice on the Commission's website to state the review has been extended to include a revocation review of the relevant measures.

On 17 June 2019, after considering the application made by EverPress, the Commissioner advised EverPress in writing, in accordance with section 269ZCC(3), the reasons why he was not satisfied that the application complied with section 269ZCB and must reject the application under section 269ZCC(1)(b). Therefore, any such notice to extend the current review to include a revocation review of the dumping duty notice has not been published.

Section 269ZDA(1A)(a) states that the Commissioner must not make a revocation recommendation in relation to the measures unless a revocation review notice has been published in relation to the review.

The notice published on 26 April 2019, initiating the current review, provided notice that the review will consider if:

- the dumping duty notice should remain unaltered or have effect as if different variable factors had been ascertained; and
- the countervailing notice should remain unaltered, have effect as if different variable factors had been ascertained, or be revoked.³³

No revocation review notice has been published in relation to the review of the dumping duty notice. Therefore, the Commissioner is unable to consider recommending to the Minister that the dumping duty notice be revoked.

³³ ADN No. 2019/59 refers.

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2.6 Public record

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

3 THE GOODS AND LIKE GOODS

3.1 The goods subject to the anti-dumping measures

The goods the subject of this application are:

“Aluminium extrusions that:

- *are produced by an extrusion process;*
- *are of alloys having metallic elements falling within the alloy designations published by The Aluminium Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents);*
- *have finishes being:*
 - *as extruded (mill);*
 - *mechanically worked*
 - *anodized; or*
 - *painted or otherwise coated, whether or not worked;*
- *have a wall thickness or diameter greater than 0.5 mm;*
- *have a maximum weight per metre of 27 kilograms; and*
- *have a profile or cross-section fitting within a circle having a diameter of 421 mm”.*

Table 3 below provides examples of the coverage of the goods (and intended end-use applications) and is being used for this investigation. Examples of the goods are outlined in columns 1-4 and non-subject goods are outlined in columns 5 to 7.

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

Table 3 - The goods and non-subject goods

3.2 Tariff classification

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

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

Table 4 - Tariff classifications of the goods

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

3.3 Like goods

Section 269T(1) defines like goods as:

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

The definition of like goods is relevant in the context of this review in determining the normal value of goods exported to Australia, the NIP and the goods subject to the dumping duty and countervailing duty notices. The Commission’s framework for assessing like goods is outlined in Chapter 2 of the Commission’s *Dumping and Subsidy Manual* (the Manual).³⁴

The Commission assessed the goods produced by EverPress for domestic sale and found that these goods have characteristics closely resembling those of the goods exported to Australia and are therefore ‘like goods’ in accordance with section 269T(1).

³⁴ Available on the Commission’s website at www.adcommission.gov.au.

4 VARIABLE FACTORS

4.1 Findings and recommendation

The Commissioner finds that the following variable factors relevant to the determination of dumping and countervailing duty payable under the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) have changed with respect to the goods exported to Australia from Malaysia by EverPress:

- export price;
- normal value;
- amount of countervailable subsidy received; and
- the NIP.

The Commissioner recommends to the Minister that the dumping duty notice have effect as if different variable factors had been ascertained. The revised variable factors have resulted in a different dumping margin, relevant to the taking of IDD in relation to the goods exported to Australia from Malaysia by EverPress.

The Commissioner does not recommend to the Minister that the countervailing duty notice have effect as if different variable factors had been ascertained on the basis that the Commissioner is recommending the revocation of the countervailing duty notice in relation to the goods exported to Australia from Malaysia by EverPress. This recommendation is discussed further in chapter 5 of this report.

4.2 Determination of exporter cooperation

The Commissioner has determined EverPress to be an uncooperative exporter and non-cooperating entity for the purposes of REV 509.

The Commission received a response to the exporter questionnaire (REQ) from EverPress, however the response was received after the legislated due date. As EverPress provided a late response to the Commission's exporter questionnaire and did not request an extension of time within the legislated period,³⁵ the Commissioner must deem EverPress an uncooperative exporter and a non-cooperative entity for the purpose of the Review. Therefore the export price and normal value must be determined under section 269TAB(3) and 269TAC(6), respectively.

In accordance with section 7 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015*, the Commission considered the submission as a late response, as to do so would not delay key aspects of the review.

The Commission conducted a benchmark verification of the information provided in EverPress' REQ. The verification report for EverPress is available on the public record.³⁶

³⁵ As is allowed under Part XVB of the *Customs Act 1901*.

³⁶ Refer to document # 15 on the EPR for REV 509.

4.3 Export price

4.3.1 Determination of the exporter

The Act does not define an exporter, however, as outlined in the Manual, the Commission will generally identify the exporter as:

- a principal in the transaction located in the country of export from where the goods were shipped who knowingly placed the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal will be a person in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped.³⁷

Where there is no principal in the country of export, the Commission will normally consider the exporter to be the person who gave up responsibility for the goods as described above.

Based on the information available, the Commission verified that:

- EverPress manufactured the goods;
- EverPress was listed as the seller of the exported goods on its commercial invoices;
- EverPress was named as the shipper of the goods on the bill of lading for each consignment;
- EverPress was named as the seller on the packing lists, purchase order and packing declaration; and
- documents provided in relation to payment of the goods established that EverPress received payment for the consignments of goods that it exported.

Having regard to all the information obtained, the Commission considers that EverPress is the exporter of the goods the subject of this review.

4.3.2 Determination of the importer

Section 269T(1) defines the importer as the beneficial owner of the goods at the time of their arrival within the limits of the shipping port or airport in Australia at which they landed.

EverPress manufactures and exports the goods to one customer in Australia. The Commission considers this Australian customer to be the beneficial owner of the goods at the time of importation, and therefore the importer, as it:

- is named as the customer on supplier invoices from EverPress;
- is named as the consignee on the bills of lading;
- declares itself as the owner of the goods for entry to Australian Border Force;
- negotiates with EverPress for the purchase of the goods;

³⁷ Refer to the Manual, page 29, on the Commission's website.

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- arranges overseas freight, shipping, insurance, customs clearance, logistics, and storage of the goods after they have been delivered to the Australian port; and
- pays all duties associated with the importation of the goods, including IDD and ICD.

4.3.3 Export price determination

The export price for EverPress has been calculated in accordance with section 269TAB(3), having regard to all relevant information.

As stated above, EverPress has been determined to be an uncooperative exporter and non-cooperating entity. The Commission, in having regard to all relevant information, considers that:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporter; and
- the purchase of the goods by the importer were arms length transactions.³⁸

The Commission considers that EverPress exports the goods to Australia in sufficient volumes and can therefore establish the export price for EverPress as the price paid by the importer to the exporter, less costs arising after exportation.

In assessing all relevant information with respect to determining an export price for EverPress, the Commission considered if EverPress was a low volume exporter as set out in section 269TAB(2A). The Commission does not consider that there is insufficient or unreliable information to ascertain the export price due to an absence or low volume of exports of the goods by EverPress, relative to previous volumes of exports of the goods to Australia by EverPress.

4.4 Normal value

The normal value has been calculated in accordance with section 269TAC(6), having regard to all relevant information.

As stated in section 4.2 of this report, EverPress has been determined to be an uncooperative exporter. The Commission, in having regard to all relevant information, considers that the normal value of the goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade (OCOT) for home consumption in Malaysia by EverPress in sales that are arms length transactions.

4.4.1 Normal value method

The Commissioner is satisfied that the prices paid in respect of EverPress' domestic sales of like goods are suitable for assessing normal value on the basis that there were sufficient volumes of all models of domestic sales of the goods that were arms length transactions and at prices that were sold in the OCOT. The Commission, therefore,

³⁸ Full details of these findings are set out in EverPress' Verification Report at document # 15 on the EPR for REV 509.

established normal value for EverPress' goods using EverPress' weighted average domestic invoice prices for like goods, by model.

4.4.2 Adjustments

Having regard to all relevant information, and to ensure the comparability of normal values to FOB export prices, the Commission made the following adjustments:

| Adjustment Type | Deduction / addition |
|---|---|
| Domestic credit terms | Deduct the cost of domestic credit terms |
| Domestic packaging | Deduct the cost of domestic packaging |
| Export packaging | Add the cost of export packaging |
| Export credit terms | Add the cost of export credit terms |
| Export inland transport and handling fees | Add the cost of export inland transport and port handling fees ³⁹ |

Table 5 - Adjustments for fair comparison

4.5 Countervailable subsidies

4.5.1 Government questionnaire

On initiating REV 509, the Commission sent the Government of Malaysia (GOM) a questionnaire with questions relevant to the subsidy programs considered in *Anti-Dumping Commission Investigation No. 362 (INV 362)*. These programs are detailed in Table 6 below.

| Program number | Program name | Program type |
|----------------|--|--------------|
| 1 | Income Tax Reductions ('Pioneer Status') | Tax |
| 2 | Investment Tax Allowance | Tax |
| 3 | Double Deduction for Export Credit Insurance | Tax |
| 4 | Double deductions for freight charges relating to goods originating from Sabah and Sarawak | Tax |
| 5 | Double deductions for insurance premiums paid by exporters and importers ⁴⁰ | Tax |
| 6 | Reinvestment Allowance | Tax |

Table 6 - List of countervailable subsidy programs

A questionnaire response was received by the Commission from the GOM on 13 June 2019. In its questionnaire response, the GOM did not report any additional programs.

³⁹ EverPress exports the goods to Australia on an EXW basis. The inland transport and port handling fees adjustment has been derived from verified data obtained from other Malaysian exporters, who cooperated with Investigation 362 and applied to the export price and normal value calculations to derive an FOB price.

⁴⁰ In his recommendation to the then Parliamentary Secretary, the Commissioner did not recommend ICD be taken with respect to this program on the basis that it was revoked, effective in the 2016 assessment year.

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The GOM advised that program 5 ceased in the 2016 financial year of assessment. The GOM provided the following information in relation to the remaining five programs.

Program 1: Income Tax Reductions ('Pioneer Status')

The GOM outlined in its response to the government questionnaire that the income tax reduction for income tax purposes is to encourage high impact, high value-added, and strategic investments that contribute to the future growth and development of the economy.

It is noted that a company cannot receive a benefit from this program for a year of assessment where a reinvestment allowance has been claimed (program 6).

Program 2: Exemption of income equivalent to capital expenditure incurred

The GOM outlined in its response to the government questionnaire that it provides assistance in the form of a tax exemption equivalent to a proportion of certain capital expenditure incurred by companies qualifying for an income tax allowance. The purpose of the program is to encourage high impact, high value-added, and strategic investments that contribute to the future growth and development of the economy.

It is noted that a company cannot receive a benefit from this program for a year of assessment where a reinvestment allowance has been claimed (program 6).

Program 3: Double deductions for export credit insurance

The GOM outlined in its response to the government questionnaire that a double deduction for income tax purposes is provided to exporters for amounts incurred in relation to export credit insurance premiums, to encourage Malaysia's exporters.

To be eligible for this program a premium must be paid in respect of export credit insurance with an insurance company approved by the Minister of Finance.

Program 4: Double deduction for freight charges from Sabah or Sarawak

The GOM outlined in its response to the government questionnaire that a double deduction for income tax purposes is provided to encourage products from Sabah and Sarawak to be shipped to the Malaysian peninsula.

Manufacturers incurring freight charges for the shipment of manufactured goods from Sabah or Sarawak to any port on the Malaysian peninsula are entitled to a double deduction.

Program 6: Reinvestment allowance

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

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Companies can only claim the reinvestment allowance upon the completion of a qualifying project, i.e. after a building is completed or when the plant/machinery is put to operational use.

The reinvestment allowance will be given for a period of 15 consecutive years beginning from the year of assessment in which the first reinvestment is made.

4.5.2 EverPress

Following INV 362, the Minister determined that 'non-cooperative and all other entities', from Malaysia, including EverPress, received countervailable subsidies under programs 4 and 6. That is, the Minister determined that:

- 'non-cooperative and all other entities' received a financial contribution from the GOM under programs 4 and 6 which conferred a benefit in relation to the goods exported to Australia such that those exporters received subsidies; and
- the subsidies received by those exporters under programs 4 and 6 were specific and therefore countervailable.

In this Review, for each of the five programs (programs 1-4 and 6), the Commission has assessed whether the GOM provided a financial contribution to EverPress under that program in the review period. Where the GOM did provide a financial contribution to EverPress in the review period under a program, the Commission has assessed:

- whether that financial contribution conferred a benefit, from a government of the country of export or public body, on EverPress such that it amounted to a subsidy under section 269T; and
- whether the subsidy was specific, such that it was countervailable.

Programs 1 and 2: Tax reduction and investment allowance

A company is not able to claim an allowance under programs 1 and 2 where the company claims a reinvestment allowance under program 6. As EverPress claimed an allowance under program 6, the Commission is satisfied that the GOM did not provide a financial contribution to EverPress under programs 1 and 2 during the review period.

Programs 3 and 4: Double deduction tax programs

In its 2018 tax return, EverPress does not make any claims for double deductions under programs 3 and 4. Based on the available information, the Commission considers that the GOM did not provide a financial contribution to EverPress under the double deduction tax programs 3 and 4 during the review period.

Program 6: Reinvestment allowance

In its 2018 tax return, EverPress claimed a reinvestment allowance under program 6. The Commission has therefore assessed whether the allowance claimed by EverPress under Program 6 amounted to the receipt of a countervailable subsidy in the review period. That is, the Commission has assessed the following:

- whether that financial contribution conferred a benefit, from a government of the country or export or public body, on EverPress in the review period such that it amounted to a subsidy under section 269T; and if so
- whether the subsidy was specific, such that it was countervailable

4.5.3 Assessment of Program 6

Background

The GOM provides assistance under Program 6 in the form an exemption from statutory income for tax purposes to companies engaged in manufacturing, and selected agricultural activities that reinvest for the purposes of expansion, automation, modernisation or diversification of its existing business into any related products within the same industry in certain circumstances.

Legal basis

The legal basis for this program is Schedule 7A of the *Income Tax Act 1967*.

WTO notification

The Commission is not aware of any WTO notification of this program.

Eligibility criteria

The reinvestment allowance is an incentive awarded to a company that carries on manufacturing and selected agricultural activities.

Companies can only claim the reinvestment allowance upon the completion of a qualifying project, i.e. after a building is completed or when the plant/machinery is put to operational use.

The reinvestment allowance will be given for a period of 15 consecutive years beginning from the year of assessment in which the first reinvestment is made.

As part of 2016 Malaysian budget announcements, the GOM introduced a 'special reinvestment allowance' which extends the 15 year eligibility period by up to three years for (the years of assessment 2016 to 2018) for companies that would or would have completed the 15 year period in or before year of assessment 2015.

The reinvestment allowance is given at the rate of 60 per cent on the qualifying capital expenditure incurred by the company, and can be offset against 70 per cent of its statutory income for the year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised.

A company can offset the reinvestment allowance against 100 per cent of its statutory income for the year of assessment if:

- the company undertakes reinvestment projects in the promoted areas i.e. the States of Sabah, Sarawak, Perlis and the designated "Eastern Corridor" of Peninsular Malaysia; or

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- the company attains a productivity level exceeding the level determined by the Ministry of Finance.

Based on the information available, the Commission considers that EverPress is not eligible to offset 100 per cent of the reinvestment allowance against its statutory income.

Is there a subsidy?

Based on the information above, the Commission considers that the laws governing program 6 mandate a financial contribution by a government of the country of export, being the GOM which involves the foregoing, or non-collection, of revenue due to the GOM by eligible enterprises in Malaysia, as defined by section 269T(1).

Having regard to all relevant information about this program, as required by section 269TACC(1), the Commission considers that that financial contribution conferred a benefit in relation to the goods exported by EverPress to Australia. A benefit was conferred because of the tax savings realised by EverPress. That benefit was conferred in relation to the goods because the tax savings related to capital expenditure incurred by EverPress in connection with the manufacture or production of the goods.

The Commission recommends that the Minister determine that the financial contribution made by the GOM under program 6 conferred a benefit on EverPress in relation to the goods such that the financial contribution provided by the GOM meets the definition of subsidy under section 269T.

Is the subsidy a countervailable subsidy?

A subsidy is a countervailable subsidy if it is specific. Specificity is defined under section 269TAAC.

Section 269TAAC(2)(a) provides that a subsidy is specific if, subject to section 269TAAC(3), access to the subsidy is explicitly limited to particular enterprises.

Section 269TAAC(2)(b) provides that a subsidy is specific if, subject to section 269TAAC(3), it is limited to and predominantly benefits entities carrying on business within a designated geographical region.

As the criteria or conditions providing access to Program 6 is limited to particular enterprises (being those carry on manufacturing and selected agricultural activities) and enterprises located in designated geographical locations, the Commission considers that the subsidy is specific under sections 269TAAC(2)(a) and 269TAAC(2)(b) and there is no information before the Commission indicating that any of the circumstances in section 269TAAC(3) apply to this subsidy.

The Commission therefore recommends that the Minister be satisfied that a countervailable subsidy has been received under program 6.

4.5.4 Amount of countervailable subsidy received in review period

The Commission is satisfied that EverPress received a countervailable subsidy under program 6 during the review period.

The Commission has determined the amount of subsidy received by EverPress in the review period based on the amount of the allowance reported on its [2018/19] income tax reported in its questionnaire. The Commission has allocated that amount across all sales of the goods as a proportion of sales revenue to determine the amount of countervailable subsidy received by EverPress in the review period.

The details of this amount is set out in **Confidential Appendix 3**.

The amount of countervailable subsidy received by EverPress has therefore changed.

4.6 Dumping margin

The Commission has calculated a dumping margin of **negative 10.1 per cent** for EverPress.

The details of the calculations are at **Confidential Appendix 1**

4.7 Countervailable Subsidy margin

The Commission has calculated a countervailable subsidy margin of 0.04 per cent for EverPress. This rounded to the nearest tenth of a per cent is **0.0 per cent** (zero).

The details of the calculations are at **Confidential Appendix 2**

4.8 Non-injurious price

The Commission has determined a NIP for exports of the goods that is considered to be the minimum price necessary to prevent the injury, or a recurrence of the injury, caused by the dumped goods exported from Malaysia by EverPress.

The Commission has calculated the NIP, with respect to exports by EverPress, to be a price equal to an un-dumped price, setting the NIP equal to the normal value of those exports. On this basis, the lesser duty rule will have no practical effect.

4.8.1 Introduction

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

4.8.2 Lesser duty rule

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the Dumping Duty Act.⁴¹

⁴¹ Refer section 8(5B) of the Dumping Duty Act.

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

4.8.3 The Commission's preferred approach to establishing un-suppressed selling prices (USP) and NIP as part of a review

When establishing the USP and NIP as part of a review, the Commission will generally not depart from the approach taken in the original investigation or previous review, unless there has been a change in circumstances that either makes the earlier USP approach unreasonable, or less preferred amongst other available options.

In the original investigation, INV 362, the Commissioner considered that, in a market unaffected by goods from Malaysia at dumped and subsidised prices and from Vietnam at dumped prices, it is reasonable to expect that the Australian industry would be able to achieve as a minimum, selling prices that reflected un-dumped and un-subsidised import prices from Malaysia and un-dumped import prices from Vietnam. It was on this basis that the Commission calculated the NIP for each exporter be a price equal to an un-dumped and un-subsidised price.⁴²

With respect to Malaysia in INV 362, the then Parliamentary Secretary accepted the Commissioner's recommendation that he have regard to the lesser duty rule for exports of the goods from Malaysia. However, because the NIP in relation to Malaysia is set to be equal to the sum of the normal value and the amount of countervailable subsidy received in relation to those exports, the lesser duty rule will have no practical effect.

In calculating the NIP for this review with respect to exports of the goods by EverPress, the Commission considers it appropriate to follow the same methodology used in INV 362 on the basis that exports by EverPress were found to be sold at un-dumped prices.

The Commissioner has recommended that the Minister have regard to the lesser duty rule for exports of the goods from Malaysia by EverPress, however as the NIP is set to the normal value of those exports, the lesser duty rule will have no effect.

4.9 Form of IDD measures

4.9.1 Form of IDD measures in the original investigation

The form of measures that was imposed as a result of INV 362 was the combination fixed and variable duty method. This form of measures is consistent with measures applied to exporters from other countries, including the People's Republic of China and Vietnam.

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

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

⁴² Refer to document # 89 on the EPR for INV 362.

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The floor price duty method sets a “floor” at which IDD is only collected when an actual export price falls below the ascertained normal value.

The Commission, in considering which form of measure to use, has had regard to the Commission’s *Guidelines on the application of forms of dumping duty*⁴³ (the Guidelines) and the relevant factors in the aluminium extrusions market.

The form of measures considered appropriate in INV 362 were the combination fixed and variable duty method as the Commission considered factors such as complex company structures and related parties, and proven cases of price manipulation.

Setting a floor price, as opposed to an *ad valorem* rate at a *de minimis* level, acts to prevent price manipulation by an exporter, such as where an exporter artificially decreases its export price to decrease the amount of duty payable.

Further, IDD will not be payable on goods which are exported by EverPress at a price equal to or more than its ascertained normal value, but ensures that IDD is payable on any goods that are exported at a price less than its ascertained normal value. The floor price will work similarly to the variable component of IDD payable by other Malaysian exporters who are subject to the current dumping duty notice where the IDD payable is worked out with regard to the combination fixed and variable duty method.

Having regard to the above, the Commission considers, as is consistent generally where exporters are determined not to be exporting at dumped prices, that IDD be collected in relation to duty that may become payable, using the floor price method.

4.9.3 The Commission’s consideration of the submission on setting the form of measures

In its submission dated 11 November 2019, EverPress states that the floor price that the Commissioner proposed in the SEF as the method by which to determine an amount of duty collected should be set to zero. EverPress states:

“nothing in the legislation:

- *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”*

As outlined in the section above, the appropriate form of measures to determine the amount of IDD collected, in the Commission’s view, is the floor price duty method with the floor price set equal to EverPress’ ascertained normal value. IDD will not be collected on goods that are exported by EverPress at a price equal to or more than its ascertained normal value.

⁴³ Available on the Commission’s website.

5 REVOCATION REVIEW

5.1 Findings and recommendation

The Commissioner finds that revoking the countervailing duty notice, as it applies to the goods exported to Australia from Malaysia by EverPress:

- would lead, or be likely to lead, to a continuation of, or a recurrence of, subsidisation; however
- would not lead, or be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

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

5.2 Legislative background

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

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

5.3 Likelihood of subsidisation continuing or recurring

Of the subsidy programs found to be countervailable in INV 362, the Commissioner is not satisfied that it is likely that EverPress will receive a benefit with respect to:

- Program 1: Income tax reductions ('Pioneer Status');
- Program 2: Investment allowance;
- Program 3: Double deduction for export credit insurance;
- Program 4: Double deduction for freight charges from Sabah or Sarawak; and

The Commissioner is satisfied that it is likely that EverPress will continue to receive a benefit with respect to:

- Program 6: Reinvestment allowance.

The Commission reviewed the information provided by the GOM in its response to the Commission's questionnaire, and the REQ provided by EverPress, and did not find evidence of any new subsidy programs during the review period.

5.3.1 Subsidisation found in INV 362

EverPress, as detailed in REP 362, provided a REQ that contained deficiencies that could not, in the Commissioner's view, be quickly and easily rectified in a further response. Accordingly, the Commissioner notified EverPress of his decision to treat it as a non-cooperating entity pursuant to section 269TAACA.

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

5.3.2 Likelihood of subsidisation with respect to EverPress

As detailed in section 4.5.3, the Commissioner found that EverPress received a benefit during the review period, with respect to the goods it exports to Australia, under program 6. In this section, the Commission details its consideration of EverPress' eligibility for each of the countervailable subsidy programs assessed in INV 362, and the likelihood that EverPress will receive a benefit under each of these programs into the future.

Programs 1 and 2

The Commission found no evidence of EverPress receiving a benefit under programs 1 or 2 in its 2015 to 2018 income tax returns. Further, the Commission does not consider it likely that EverPress will receive a benefit under these programs in the future on the basis that it is ineligible to receive a benefit if it claims the reinvestment allowance (program 6).

Program 3

The Commission has considered the eligibility criteria of this program and considers that EverPress may be eligible to receive a benefit under this program. Due to the nature of the double deduction, (i.e. to encourage export) it is reasonable to consider that a financial contribution received under this program by EverPress could be received in connection to the production, manufacture or export of the goods.

However, on examination of EverPress' 2015, 2016, 2017 and 2018 income tax returns, the Commission found no evidence that EverPress has received a benefit. The Commissioner is, therefore, not satisfied that it is likely that EverPress will receive a benefit in the future under Program 3.

Program 4

EverPress is located in Batang Benar, Malaysia and has business operations in Selangor, Malaysia, and is therefore not eligible to access this program. This is supported by information provided by the GOM in its response to the Commission's government questionnaire.

Program 6

Any unutilised allowance under Program 6 can be carried forward to subsequent years until fully utilised. EverPress specified, in its 2018 income tax return, an amount of allowance to carry forward to future financial years. The Commissioner is, therefore, satisfied that EverPress will continue to receive a benefit under Program 6. Further discussion about the likely effect of the subsidisation of EverPress' goods under

Program 6 (in the review period and in future periods) on the Commission's injury analysis, is discussed in section 5.4.3 of this report.

5.4 Continuation or recurrence of material injury

The Commissioner does not consider that subsidised exports to Australia by EverPress currently contribute to the material injury that the measures are intended to prevent. Further, as outlined at 5.4.2, the Commissioner is not satisfied that it is likely that exports of the goods by EverPress, at subsidised prices, will lead, or likely lead, to a continuation of, or a recurrence of the material injury that the measures are intended to prevent.

5.4.1 Material injury found in INV 362

The then Parliamentary Secretary stated that he was satisfied that material injury to the Australian industry producing like goods would be caused by the goods exported to Australia from Malaysia at subsidised prices, consequently declaring that section 10 of the Dumping Duty Act be applicable to goods that are exported to Australia after the publication of that notice, ADN No. 2017/73.

The then Parliamentary Secretary stated the considerations relevant to his determination of material injury to the Australian industry caused by subsidisation were the size of the subsidy margins, the effect of subsidised imports on prices in the Australian market in the form of price undercutting and the consequent impact on the Australian industry, including:

- price depression;
- price suppression;
- reduced profits and profitability; and
- reduced capital expenditure.

In conducting the subsidy investigation that lead to the imposition of measures with respect to exports of the goods to Australia from Malaysia and Vietnam, the Commissioner terminated part of its investigation, as detailed in *Termination Report No. 362*.⁴⁴

With respect to the terminated countervailing investigation, the Commissioner considered that:

- the cooperating and residual exporters from Malaysia were found to have received a benefit from one or more countervailable programs in respect to some or all of those goods exported to Australia, however the subsidy received during the investigation period did not exceed the negligible level of countervailable subsidy under section 269TDA(16);
- one cooperating exporter from Vietnam did not receive a benefit from a countervailable program in respect of any of those goods exported to Australia; and
- all other exporters from Vietnam were found to have received a benefit from one or more countervailable programs in respect of some or all of those goods exported

⁴⁴ Refer to document # 87 on the EPR for INV 362.

to Australia, however the subsidy received during the investigation period did not exceed the negligible level of countervailable subsidy under section 269TDA(16)

However, the Commissioner was satisfied, as outlined in REP 362, that the Australian industry had experienced material injury as a result of exports of the goods at dumped and subsidised prices from Malaysia and dumped prices from Vietnam.

5.4.2 Likelihood of material injury continuing or recurring with respect to exports by EverPress

The Commissioner is not satisfied, that revoking the countervailable duty notice in its application to EverPress would lead, or likely lead to a continuation or recurrence of the material injury that the notice was intended to prevent.

In order to determine whether revoking the measures would lead or likely lead to a continuation or recurrence of the material injury that the measures were intended to prevent, the Commission considered the level of subsidisation that EverPress will likely benefit from in the future.

For the reasons set out below, the Commission is of the view that the benefit received by EverPress from countervailable subsidies in the future is unlikely to increase significantly above that received by EverPress in the review period. Further, the Commission is of the view that the countervailing duty notice was intending to prevent price depression, price suppression, reduced profits and profitability and reduced capital expenditure. As outlined below, the Commission does not believe that it is likely that the material injury the measures are intended to prevent will continue or recur as a result of the subsidised exports of EverPress.

Therefore, the Commission is not satisfied that, in relation to EverPress, the material injury that the countervailing duty notice was intending to prevent is likely to continue or recur.

In its assessment, the Commission considered:

- the factors used to determine a subsidy margin; and
- the magnitude of change required to these factors to significantly increase the benefit received from the countervailable subsidy so as to have an impact on the prices and profits of the Australian industry.

With respect to exports of the goods to Australia by EverPress, the Commission calculated subsidy margins that considered:

- the utilisation of all of the benefit received by EverPress under program 6 in any given financial year, keeping the ratio of export value to total revenue constant;
- the maximum amount of benefit that could have been claimed by EverPress, had it been available, for each of the 2015, 2016, and 2017 financial years; and
- required changes in exported volumes, export value, total revenue, benefits received from countervailable subsidy programs and an export price that would result in a subsidy margin of at least two per cent for EverPress.

PUBLIC RECORD

The Commission found that, in terms of assessing the subsidy margin where the total benefit was fully utilised or the maximum benefit was claimed in recent financial year periods, the calculated subsidy margin rate remained less than one per cent.

The injury factors found in INV 362 were in relation to price and profit effects. The Commission considers the current level of countervailable subsidy received by EverPress in respect to its exports of the goods to Australia is not at a level that contributes to the material injury to the Australian industry producing like goods. EverPress' subsidy margin, when rounded to one tenth of a per cent, is zero per cent. The Commission considers this is unlikely to have an effect on the price or profit injury experienced by the Australian industry.

The Commission also considers that the magnitude of changes required to find a level of subsidisation that would contribute to the price and profit injury, found to have been experienced by the Australian industry in INV 362, is unlikely to be realised by EverPress.

It is more likely that, with a subsidy margin of zero per cent, or one that is likely to be determined for EverPress in the future, any injury caused by exports of the goods to Australia by EverPress would result from competition and competitive pricing rather than subsidised pricing.

The Commission's assessment of the level of subsidisation required to calculate a countervailable subsidy margin of at least two per cent can be found at **Confidential Appendix 3**.

6 FINDINGS AND RECOMMENDATIONS

6.1 Findings

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

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

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

After conducting a revocation review, section 269ZDA(1A) provides that, the Commissioner must make a revocation recommendation, unless the Commissioner is satisfied as a result of the review that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the measures are intended to prevent.

With respect to revoking the countervailing duty notice, as it applies to the goods exported to Australia from Malaysia by EverPress, the Commissioner:

- is satisfied that revoking the notice would lead, or be likely to lead, to a continuation of, or a recurrence of, the subsidisation; however
- is not satisfied that revoking the notice, would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the notice is intended to prevent.

6.2 Recommendations

On the basis of the reasons contained in this report, and in accordance with section 269ZDA, the Commissioner recommends that the Minister, after considering this report, **declare** that:

- in accordance with section 269ZDB(1)(a)(ii), the countervailing duty notice is taken to have been revoked in relation to the goods exported to Australia from Malaysia by EverPress with effect from 26 April 2019, a retrospective date not prevented under section 269ZDB(6)(a); and
- in accordance with section 269ZDB(1)(a)(iii), the dumping duty notice in relation to the goods exported to Australia from Malaysia by EverPress have effect as if different variable factors had been fixed, relevant to the determination of duty, as set out in Confidential Appendix 2, with effect from the date of the notice published pursuant to section 269ZDB(1).

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

- in accordance with section 269TACD(1), countervailable subsidies have been received in respect of the goods exported by EverPress in the review period under Program 6 in the amounts set out in Confidential Appendix 2, as outlined in Chapter 4.

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

- in accordance with section 269TAB(3), the export price of the goods exported to Australia from Malaysia by EverPress, as set out in Confidential Appendix 2, having regard to all relevant information;
- in accordance with section 269TAC(6), the normal value for EverPress, having regard to all relevant information as set out in Confidential Appendix 2;
- in accordance with section 8(5) of the Dumping Duty Act, that the IDD payable on the goods exported to Australia from Malaysia by EverPress is an amount which will be worked out in accordance with the floor price duty method pursuant to sections 5(4) and 5(5) of the *Customs Tariff (Anti-Dumping) Regulation 2013* with effect from the date of the notice published pursuant to section 269ZDB(1);
- in accordance with sections 269TACC(1), (2) and (3), and having regard to the details of subsidy program 6 as set out in Chapter 4, that the financial contributions made by the GOM under program 6, conferred a benefit in relation to the goods exported to Australia by EverPress; and
- in accordance with section 269TACD(1), the amount of countervailable subsidy received in respect of the goods by EverPress in the review period, to be the amount set out in Confidential Appendix 2 such that the subsidy margin applying to EverPress' exports of the goods, expressed as a percentage of the ascertained export price, is 0.04 per cent as set out in Confidential Appendix 3.

7 APPENDICES AND ATTACHMENTS

| | |
|------------------------------------|--|
| Non-confidential Appendix 1 | List of submissions |
| Confidential Appendix 2 | Dumping margin calculation |
| Confidential Appendix 3 | Subsidy margin calculation and assessment of the likelihood of a subsidy margin greater than negligible amount of two per cent |

NON-CONFIDENTIAL APPENDIX 1 – LIST OF SUBMISSIONS

| Date | Interested party | EPR document number |
|------------------|--|---------------------|
| 27 May 2019 | Capral Limited | 4 |
| 25 June 2019 | Capral Limited | 6 |
| 10 July 2019 | Capral Limited | 9 |
| 11 November 2019 | EverPress Aluminium Industries Sdn Bhd | 18 |
| 15 November 2019 | Capral Limited | 19 |
| 14 January 2020 | EverPress Aluminium Industries Sdn Bhd | 21 ⁴⁵ |
| 16 January 2020 | EverPress Aluminium Industries Sdn Bhd | 22 ⁴⁶ |

⁴⁵ As outlined in section 2.4, the Commissioner did not have regard to this submission, as to do so would, in the Commissioner's opinion, prevent the timely preparation of this report to the Minister.

⁴⁶ As outlined in section 2.4, the Commissioner did not have regard to this submission, as to do so would, in the Commissioner's opinion, prevent the timely preparation of this report to the Minister.