



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS
NO. 509

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

EXPORTED FROM MALAYSIA

BY

EVERPRESS ALUMINIUM INDUSTRIES SDN BHD

21 October 2019

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ABBREVIATIONS

ADN	Anti-Dumping Notice
the Act	<i>Customs Act 1901</i>
Capral	Capral Limited
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
GOM	Government of Malaysia
the goods	the goods the subject of the application
ICD	interim countervailing duty
IDD	interim dumping duty
the Minister	the Minister of Industry, Science and Technology
NIP	non-injurious price
OCOT	ordinary course of trade
INV 362	Anti-Dumping Commission Investigation Number 362
the then Parliamentary Secretary	the then Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 362	<i>Report No. 362</i>
REQ	response to the exporter questionnaire
the review period	1 April 2018 to 31 March 2019
REV 509	Review of anti-dumping measures Number 509
SEF	Statement of Essential Facts
USP	unsuppressed selling price

1 SUMMARY

1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his 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).

1.2 Proposed recommendation

The Commissioner proposes to recommend 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 in its application to EverPress.⁶

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

The effect of the proposed recommendation to revoke the countervailing duty notice would be that 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 certain aluminium extrusions entered for home consumption on or after this date would be eligible for a refund.

1.3 Findings

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

Further, the Commissioner is not satisfied that, in relation to EverPress, revoking the countervailing measures applicable to the goods it exports from Malaysia to Australia,

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

² Refer ADN 2017/72.

³ Refer ADN 2017/71.

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

⁵ Refer ss.269ZDA(1)(a)(iii).

⁶ Refer ss.269ZDA(1)(a)(ii).

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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.

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).

1.4 Interested parties responding to the SEF

Interested parties, in responding to this SEF, should provide submissions to the Commissioner no later than **11 November 2019**.⁷ The Commissioner will consider these responses in making his recommendation to the Minister.

The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date.

⁷ Subsection 269ZDA(3)(iv) requires the Commissioner to have regard to any submission made in response to the SEF that is received by the Commissioner with 20 days after the SEF is placed on the public record. As this date is a Sunday, the effective due date for submissions is the next business day, being Monday, 11 November 2019.

2 BACKGROUND

2.1 Initiation

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

- the anti-dumping measures (in the form of a dumping duty notice) applying to certain aluminium extrusions exported to Australia from Malaysia by EverPress should be varied; and
- the anti-dumping measures (in the form of a countervailing duty notice) applying to certain aluminium extrusions exported to Australia from Malaysia by EverPress should be revoked or 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 countervailable subsidies, 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 Anti-Dumping Notice (ADN) No. 2019/59,⁸ which was published on the Anti-Dumping Commission's (the Commission's) website⁹ on 26 April 2019. On the same date, *Consideration Report No. 509*¹⁰ 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.¹¹

2.2 History of the anti-dumping measures

The full history in relation to anti-dumping measures relating to certain aluminium extrusions can be found on the Commission's website.

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 certain aluminium extrusions exported to Australia from Malaysia and the Socialist Republic of Vietnam (Vietnam).¹²

On 22 June 2017, the then Parliamentary Secretary accepted the Commissioner's recommendations in *Report No. 362* (REP 362)¹³ and published dumping and

⁸ Refer to document # 3 on the electronic public record (EPR) for REV 509.

⁹ All references to the Commission's website, unless otherwise stated, refer to: www.adcommission.gov.au

¹⁰ Refer to document # 2 on the EPR for REV 509.

¹¹ *Consideration Report No. 509* also discusses the reasons why EverPress' application for revoking measure with respect to the taking of IDD was rejected.

¹² Refer to document # 1 on the EPR for INV 362

¹³ Refer to document # 89 on the EPR for INV 362.

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countervailing notices for aluminium extrusions exported to Australia from Malaysia and Vietnam.

With respect to Malaysian exporters, the investigation found that three cooperating exporters and three residual exporters either did not export the goods to Australia at dumped 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 ‘uncooperative and all other exporters’ for the purposes of dumping, and the ‘non-cooperative and all other entities’ for the purposes of countervailing, exporting the goods from Malaysia, were found to have:

- exported the goods at dumped and subsidised prices;
- dumping and subsidy margins were not negligible; and
- dumped and subsidised exports caused material injury to the Australian industry producing like goods.¹⁴

The current effective rates of duty with respect to aluminium extrusions exported to Australia from Malaysia are detailed in Table 1 below. The ‘*All other exporters*’ rate is currently applicable to exports by EverPress.

Name of Malaysian Exporter	Measure	Effective rate of duty
Superb Aluminium Industries Sdn Bhd		Exempt
Milleon Extruder Sdn Bhd		Exempt
Kamco Aluminium Sdn Bhd		Exempt
LB Aluminium Bhd		Exempt
Press Metal Bhd		Exempt
Genesis Aluminium Industries Sdn Bhd		Exempt
Zinaco Industrial and Hardware Industries Ltd	IDD & ICD	64.4%
Foshan ZP Aluminium Co. Ltd ¹⁵	IDD & ICD	64.4%
Alumac Industries Sdn Bhd	IDD	Floor price
All other exporters	IDD & ICD	16.2%

Table 1 - 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,¹⁶ or the Minister

¹⁴ Refer to REP 362 on the Commission’s website for further details out findings with respect to exporters from Vietnam.

¹⁵ 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.

¹⁶ Subsection 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 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.¹⁷

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.¹⁸

During the course of this review, the Commissioner is examining 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 reference¹⁹ to:

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

Within 110 days of the initiation of a review, or such longer time as allowed,²⁰ the Commissioner must place on the public record a SEF on which he proposes to base recommendations to the Minister concerning the review of the anti-dumping measures.²¹

For this review, in making recommendations in his final report to the Minister, the Commissioner must have regard to:²²

- 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;
- this SEF; and
- any submission made in response to this SEF that is received by the Commissioner within 20 days of it being placed on the public record.

¹⁷ Subsection 269ZA(2)(a).

¹⁸ Subsection 269ZDA(1).

¹⁹ Subsection 269T(4E).

²⁰ 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.

²¹ Subsection 269ZD(1).

²² Subsection 269ZDA(3)(a).

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The Commissioner may also have regard to any other matter considered to be relevant to the review.²³

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:²⁴

- remain unaltered;
- be revoked; 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, the dumping or subsidisation and the material injury that that measures are intended to prevent.²⁵

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.²⁶

2.4 Extensions of time

On 5 August 2019, the Commissioner 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.²⁷

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 Commissioner on 26 September 2019.²⁸

2.5 Submissions received in relation to this review

2.5.1 Capral Limited

The Commission received three submissions from Capral in relation to the initiation of this review and responses to the Commission's exporter and government questionnaires.

²³ Subsection 269ZDA(3)(b).

²⁴ Subsection 269ZDA(1)(a).

²⁵ Subsection 269ZDA(1A).

²⁶ Subsection 269ZDB(1)(a)(ii).

²⁷ ADN No. 2019/99 refers.

²⁸ ADN No. 2019/114 refers.

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In its first submission dated 27 May 2019,²⁹ Capral highlights what it understands to be EverPress' level of production quantity of aluminium extrusions in the Malaysian domestic market and that exported to Australia.

Capral states that the Commission should consider the price components of the raw material, being aluminium purchases, other costs, and pay particular attention to the price differences between domestic and export packaging costs.

The Commission received a second submission from Capral, dated 25 June 2019,³⁰ in reply to the Government of Malaysia's (GOM's) response to the Commission's questionnaire. Capral requests the Commission fully assess if EverPress has received, or is likely to receive, a benefit from the identified subsidy programs.

In reply to EverPress' response to the Commission's exporter questionnaire, Capral made a third submission dated 10 July 2019,³¹ outlining what it considers to be relevant considerations the Commission should take in its examination of the information provided by EverPress.

2.5.2 The Commission's Assessment

The Commissioner has considered Capral's submissions as detailed throughout this report.

2.6 Responding to this SEF

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making its final report to the Minister.

Responses to this SEF should be received by the Commissioner no later than **11 November 2019**.³² The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.

Submissions should preferably be emailed to investigations4@adcommission.gov.au.

Alternatively, they may be sent to fax number +61 3 8539 2499, or posted to:

Director, Investigations 4
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601
AUSTRALIA

²⁹ Refer to document # 4 on the EPR for REV 509.

³⁰ Refer to document # 6 on the EPR for REV 509.

³¹ Refer to document # 9 on the EPR for REV 509.

³² Subsection 269ZDA(3)(iv) requires the Commissioner to have regard to any submission made in response to the SEF that is received by the Commissioner with 20 days after the SEF is placed on the public record. As this date is a Sunday, the effective due date for submissions is the next business day, being Monday, 11 November 2019.

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Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available at the Commission's website.

The public record contains non-confidential submissions by interested parties, which together with the Commission's visit reports and other publicly available documents are available on the Commission's.

Documents on the public record should be read in conjunction with this SEF.

2.7 Final report

The Commissioner must provide a final report and his recommendations to the Minister on or before **3 December 2019** or within such longer period as may be allowed.

3 THE GOODS AND LIKE GOODS

3.1 The goods subject to the anti-dumping measures

The goods the subject of this application are:

“Aluminium extrusions that:

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

Table 2 below provides examples of the coverage of the goods and like goods (and intended end-use applications) and is being used for this review. Examples of the goods and like goods are outlined in columns 1-4 and non-subject goods are outlined in columns 5 to 7.

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

Table 2 - The goods and like goods

3.2 Tariff classification

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

<i>Tariff code</i>	<i>Statistical code</i>	<i>Unit</i>	<i>Description</i>
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

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

3.3 Like goods

Subsection 269T(1) defines like goods as:

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

The definition of like goods is relevant in the context of this review in determining the normal value of goods exported to Australia, the NIP and the goods subject to the dumping duty and countervailing duty notices. The Commission’s framework for assessing like goods is outlined in Chapter 2 of the Commission’s *Dumping and Subsidies Manual – November 2018*.³³

³³ Available on the Commission’s website at www.adcommission.gov.au

4 VARIABLE FACTORS REVIEW

4.1 Finding

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 of certain aluminium extrusions exported to Australia from Malaysia by EverPress:

- export price;
- normal value;
- amount of benefit received from countervailable subsidies; and
- the NIP.

The Commissioner proposes to recommend 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 aluminium extrusions exported to Australia from Malaysia by EverPress.

The Commissioner does not propose to 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 proposes to revoke the countervailing duty notice in relation to aluminium extrusions exported to Australia from Malaysia by EverPress. This proposed recommendation is discussed further in chapter 5 of this report.

4.2 Determination of exporter cooperation

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

The Commission received a response to its exporter questionnaire 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,³⁴ the Commissioner must deem EverPress an uncooperative exporter and a non-cooperative entity for the purpose of the Review.

Notwithstanding this determination, the Commission will consider the submission from EverPress as a late response in accordance with section 7 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015*.

4.3 Export price

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

³⁴ As is allowed under Part XVB of the *Customs Act 1901*.

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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.³⁵

The Commission considers that EverPress exports certain aluminium extrusions 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.

4.4 Normal value

The normal value has been calculated in accordance with subsection 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 and non-cooperating entity. 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 within the OCOT. The Commission, therefore, 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 ex-works 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

Table 4 - Adjustments for fair comparison

³⁵ Full details of these findings are set out in EverPress' Verification Report at document # 15 on the EPR for REV 509.

4.5 Countervailable subsidies

4.5.1 Government questionnaire

On initiating REV 509, the Commission sent the GOM a questionnaire with questions relevant to the subsidy programs considered in Anti-Dumping investigation 362 (INV 362). These programs are detailed in table 5 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 ³⁶	Tax
6	Reinvestment Allowance	Tax

Table 5 - 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.

4.5.2 Countervailable programs

INV 362 determined that all six subsidy programs are countervailable subsidies, however, program 5 ceased in the 2016 financial year of assessment. Of the remaining five countervailable subsidies, the two programs applicable to the 'all other exporter' rate of duty are:

Program 4: Double deduction for freight charges from Sabah or Sarawak; and
Program 6: Reinvestment allowance.

The Commission has relied on the assessments made, as a result of the original investigation, INV 362, of each program.³⁷ Below is an assessment of whether EverPress received a benefit under those programs in the review period.

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

³⁶ 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.

³⁷ Further details of the findings made in respect of these countervailable subsidies can be found, in detail, in REP 362: *Appendix A – Assessment of countervailable subsidies – Malaysia*, which is on the EPR for INV 362

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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 Peninsular.

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

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.

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.

4.5.3 EverPress

Programs 1 and 2: Tax reduction and investment allowance

A company is not able to receive a benefit under these programs where the reinvestment allowance (program 6) has been claimed in an assessment year. As EverPress received a benefit under program 6, the Commission is satisfied that it did not receive a benefit under each of these programs 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. Based on the available information, the Commission considers that EverPress did not benefit from double deduction tax programs during the review period.

Program 6: Reinvestment allowance

In its 2018 tax return, EverPress did claim the reinvestment allowance, receiving a benefit from this program during the review period.

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 Subsidy margin

The Commission has calculated a 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 certain aluminium extrusions 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 determined the NIP for EverPress to be a price equal to an un-dumped and unsubsidised price. As such, the Minister will not be required to have regard to the lesser duty rule.

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.³⁸

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 unsuppressed 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.³⁹

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.

³⁸ Refer subsection 8(5B) of the Dumping Duty Act.

³⁹ Refer to document # 89 on the EPR for REP 362.

5 REVOCATION REVIEW

5.1 Finding

The Commissioner finds that revoking the countervailing duty measures, as it applies to aluminium extrusions 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.

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

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 response to the exporter questionnaire (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

As detailed in REP 362, the Commissioner found that, during the investigation period Press Metal Berhad, Superb Aluminium Industries Sdn Bhd, LB Aluminium Berhad, and the category of residual exporters from Malaysia had received benefit from financial contributions under two countervailable subsidy programs in respect of certain aluminium

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extrusions exported to Australia. However, the overall subsidy margin attributable to the goods exported by these exporters was considered to be negligible (less than two per cent).⁴⁰

In determining the 'non-cooperative entity' subsidy margin rate, the Commissioner had regard to all the available relevant information and determined that exporters in the non-cooperative category from Malaysia had received the highest level of subsidisation of the selected cooperating exporters. Inputs to the subsidy margin calculation included a unit of measure (relevant sales volumes) and an export price based on the lowest export price of the selected cooperating exporters.

EverPress, as detailed in REP 362, provided a response to the exporter questionnaire 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 had received a benefit during the review period, with respect the goods it exports to Australia, under program 6. In this section, the Commission details its consideration EverPress' eligibility for each of the countervailable subsidy programs assessed in INV 362, and the likelihood of 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 would benefit under this program on the basis that it is ineligible to receive a benefit if claimed 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 made in connection to the production, manufacture or export of certain aluminium extrusions.

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.

⁴⁰ Subsection 269TAD(16).

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 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 this program. Further discussion about the effect to material injury of the benefit received under this program, and any potential future benefit EverPress may receive, is discussed in section 5.4.3 of this report.

5.4 Material injury the measures are intended to prevent

The Commissioner does not consider that subsidised exports to Australia by EverPress contributes, or is likely to contribute, to the material injury that the measures are intended to prevent. Therefore, the Commissioner is not satisfied that it is likely that exports of aluminium extrusions by EverPress, at subsidised prices, will lead, or likely lead, to 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 aluminium extrusions 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 certain aluminium extrusions to Australia from Malaysia and Vietnam, the Commissioner terminated part of its investigation, as detailed in *Termination Report 362*.⁴¹

⁴¹ Refer to document # 87 on the EPR for INV 362.

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

- the cooperating and residual exporter cohorts 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 subsection 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 to Australia, however the subsidy received during the investigation period did not exceed the negligible level of countervailable subsidy under subsection 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 aluminium extrusions 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 measure in its application to EverPress would lead, or likely lead to a continuation or recurrence of the material injury that the measures are 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 are likely to 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 intended to prevent material injury associated with a significantly higher level of subsidisation of EverPress' exports.

Therefore the Commission is of the view that the Commissioner cannot be satisfied that the material injury that the measures were intended to prevent is likely to continue in the future.

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.

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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 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 an actionable level of subsidy margin for EverPress.

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 magnitude of change to factors required to calculate an actionable subsidy margin is at least 95 per cent, and for some factors, is over 4,000 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 consider this is unlikely to have an effect on price or profit in the Australian market for aluminium extrusions.

The Commission also considers that the magnitude of changes required to determine a subsidy margin rate that would contribute to the price and profit material injury, found to have been caused to the Australian industry, 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 aluminium extrusions to Australia by EverPress would result from competition and competitive pricing rather than subsidised pricing.

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

6 FINDINGS AND PROPOSED RECOMMENDATIONS

6.1 Findings

The Commissioner finds, in relation to exports of certain aluminium extrusions to Australia from Malaysia by EverPress during the review period, that:

- the non-injurious price has changed;
- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the amount benefit received from a countervailable subsidy has changed.

The Commissioner is satisfied that, in relation to EverPress, revoking the countervailing measures applicable to the goods EverPress exports from Malaysia to Australia, would lead, or be likely to lead, to a continuation of, or a recurrence of, the subsidisation of exported goods by EverPress.

However the Commissioner is not satisfied that, in relation to EverPress, revoking the countervailing measures applicable to the goods EverPress 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.

6.2 Proposed recommendations

6.2.1 Variable factors review

The Commissioner proposes to recommend to the Minister that the dumping duty notice in respect of exports of certain aluminium extrusions from Malaysia by EverPress have effect as if different variable factors had been ascertained.

As the dumping margin determined is negative, with respect to exports of the goods to Australia by EverPress, Commissioner proposes to recommend that duties be calculated, in respect of any IDD that may become payable, using the floor price method as set out in subsections 5(4) and (5) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

The proposed recommendation will take effect, should the Minister accept it, on the day the Minister's notice is published on the public record.

Floor price duty method

The floor price duty method sets a "floor" where duty is collected when the actual export price is less than the normal value. The floor price is either the normal value or the NIP, whichever becomes applicable under the duty collection system. In this instance the proposed recommendation is to set the floor price equal to the ascertained normal value.

6.2.2 Revocation review

The Commissioner proposes to recommend to the Minister that the countervailing duty notice in respect of exports of certain aluminium extrusions from Malaysia by EverPress be revoked with effect from 26 April 2019, a retrospective date as provided for under subsection 269ZDB(6)(a), being the date of the publication of the notice under subsection 269ZC(4) indicating the Commissioner's acceptance of EverPress' application of a revocation review.

7 APPENDICES

Confidential Appendix 1	Dumping margin calculations
Confidential Appendix 2	Subsidy margin calculations
Confidential Appendix 3	Likelihood of subsidy margin greater than negligible amount of two per cent

APPENDIX A