



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

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XV B*

**FINAL REPORT NO. 514**

**ACCELERATED REVIEW**

**OF THE DUMPING DUTY NOTICE AND COUNTERVAILING  
DUTY NOTICE APPLYING TO**

**CERTAIN ALUMINIUM EXTRUSIONS EXPORTED FROM THE  
PEOPLE'S REPUBLIC OF CHINA**

**BY**

**FOSHAN MINGHUA DOORS & WINDOWS  
ALUMINIUM CO., LTD**

**21 August 2018**

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### ABBREVIATIONS

Accelerated review period	1 April 2018 to 31 March 2019
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant	Foshan Minghua Aluminium Co., Ltd (Foshan Minghua)
the Minister	Minister for Science, Jobs and Innovation
Capral	Capral Limited
China	the People's Republic of China
CIF	Cost, insurance and freight
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	Cost to make
CTMS	Cost to make and sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FOB	Free on board
the goods	the goods the subject of the accelerated review (also referred to as the goods under consideration)
GAAP	Generally Accepted Accounting Principles
GOC	Government of China
GUC	Goods under consideration
LME	London Metal Exchange
MJP	Major Japanese Port
NIP	Non-injurious price
the notices	the dumping duty notice and countervailing duty notice
OCOT	ordinary course of trade
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
SG&A	Selling, general and administrative costs
SOE	State-owned enterprises
SIE	State-invested enterprises
VAT	Value added tax

## **1 SUMMARY AND RECOMMENDATION**

### **1.1 Background**

This Accelerated Review No.514 has been conducted in response to an application from Foshan Minghua Doors & Windows Aluminium Co., Ltd (Foshan Minghua) seeking an accelerated review of the dumping duty notice and countervailing duty notice ('the notices') in respect of certain aluminium extrusions (aluminium extrusions or 'the goods') exported to Australia from the People's Republic of China (China) in so far as the notices affect Foshan Minghua.

Foshan Minghua did not export aluminium extrusions to Australia during the period subject to the original investigation and is therefore a 'new exporter' as defined in section 269T(1) of the *Customs Act 1901* (the Act).<sup>1</sup>

### **1.2 Application of law to facts**

Division 6 of Part XVB of the Act enables eligible parties to apply for an accelerated review of anti-dumping measures. This Division, among other matters:

- sets out the procedures to be followed and the matters to be considered by the Commissioner of the Anti-Dumping Commission (the Commissioner) in conducting accelerated reviews for the purpose of making a report to the Minister for Science, Jobs and Innovation (the Minister); and
- empowers the Minister, after consideration of such report, to leave the dumping duty notice or countervailing duty notice unchanged or to alter them as if the Minister had fixed specified different variable factors relevant to the determination of duty.

### **1.3 Findings**

Based on all relevant and available information, the Commissioner, in relation to the variable factors for Foshan Minghua's exports of aluminium extrusions to Australia, considers that:

- the export price shall be determined under section 269TAB(3), having regard to all relevant information (Chapter 3 of this report refers);
- the normal value shall be constructed under section 269TAC(2)(c) in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation) (Chapter 4 of this report refers);
- the dumping margin is 21.0 per cent (Chapter 5 of this report refers); and
- the amount of countervailable subsidy is zero per cent (Chapter 6 of this report refers).

### **1.4 Recommendation**

Based on the above findings, the Commissioner, pursuant to section 269ZG(1), recommends that the Minister alter the notices so as to apply to Foshan Minghua as if different variable factors had been fixed.

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<sup>1</sup> All legislative references in this report are to the *Customs Act 1901* unless otherwise specified.

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Further, the Commissioner recommends that:

- the Minister determine that the interim dumping duty (IDD) be worked out on Foshan Minghua's exports to Australia in accordance with the **combination of fixed and variable** duty method pursuant to section 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*; and
- the interim countervailing duty (ICD) applicable to Foshan Minghua's exports to Australia is **zero per cent**.

If the Minister accepts these recommendations, to give effect to the decision, the Minister must by public notice, declare that:

- the Act and the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) have effect as if the dumping duty notice and countervailing duty notice had applied to Foshan Minghua but the Minister had fixed different variable factors relevant to the determination of the duty payable by Foshan Minghua;

and determine that:

- pursuant to section 8(5) of the Dumping Duty Act, that the IDD payable on the goods exported to Australia from China by Foshan Minghua is an amount worked out in accordance with the combination of fixed and variable duty method as set out in section 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

If accepted by the Minister, the individual rates applicable to Foshan Minghua will take effect retrospectively from 13 May 2019 (the date the application was lodged).

## **2 BACKGROUND**

### **2.1 The goods**

#### **2.1.1 Description**

The goods that are the subject of the original notices and the subject of this application are:

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

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

The goods do not extend to intermediate or finished products that are processed or fabricated to such an extent that they no longer possess the nature and physical characteristics of an aluminium extrusion, but have become a different product.

Table 1 provides guidance as to the categorisation of aluminium extrusions into the types captured by interim duties, being the goods under consideration (GUC) and those that are not captured (Non GUC).

< 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
<b>&lt; Examples &gt;</b>						
Mill finish, painted, powder coated, anodised, or otherwise coated aluminium extrusions	Precision cut, machined, punched or drilled aluminium extrusions	Aluminium extrusions designed for use in a door or window	Carpet liner, fence posts, heat sinks	Shower frame kits, window kits, unassembled unitised curtain walls	Unglazed window or door frames	Windows, doors

**Table 1: Goods under consideration and like goods**

### 2.1.2 Tariff classification

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

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

**Table 2: Tariff classifications of the goods**

### 2.1.3 Like goods

Section 269T(1) defines like goods as:

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

The definition of like goods is relevant in the context of this accelerated review in determining the normal value of goods exported to Australia, the non-injurious price (NIP) and the goods subject to the dumping duty notice and the countervailing duty notice. The Commission's framework for assessing like goods is outlined in Chapter 2 of the Commission's *Dumping and Subsidies Manual* (the Manual).<sup>2</sup>

## 2.2 Accelerated review process

If a dumping duty notice or a countervailing duty notice has been published in respect of certain goods, a new exporter may request an accelerated review of that notice as it affects that particular exporter.<sup>3</sup> A new exporter is defined in section 269T(1) as an exporter who did not export the goods to Australia during the investigation period in relation to the original application for anti-dumping measures.

If an application for an accelerated review of a dumping duty notice or countervailing duty notice is received and not rejected, the Commissioner has up to 100 days after the application is lodged to inquire and report to the Minister on the accelerated review.<sup>4</sup>

<sup>2</sup> Available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au)

<sup>3</sup> Section 269ZE(1).

<sup>4</sup> Section 269ZG(2).

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Under section 269ZG(1), the Commissioner must, after considering the application and making such inquiries as the Commissioner deems appropriate, recommend to the Minister that the dumping duty notice and/or countervailing duty notice:

- remain unaltered; or
- be altered so as to apply to the applicant as if different variable factors had been fixed.

Following the Minister's decision, a notice is published on the Commission's website advising of the decision.

### 2.3 Existing measures

The anti-dumping measures on exports of the goods from China have been in place since 2010. On 9 May 2019 the Minister revised the variable factors and effective rates of duty applicable to the goods following a review of anti-dumping measures as they affect exporters from China (Review 482).

The existing measures implemented as a consequence of this review are as follows.

Exporter	Fixed rate of combined IDD and ICD
Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd	39.2%
PanAsia Aluminium (China) Co., Ltd	55.7%
Guangdong Zhongya Aluminium Company Limited	0.2%
Guangdong Jinxiecheng AL Manufacturing Co. Ltd	15.8%
Foshan Shunde Beijiao Jiawei Aluminium Factory	20.1%
Goomax Metal Co. Ltd., Fujian	43.5%
Residual exporters	29.5%
Uncooperative and all other exporters	101.9%

**Table 3: Current anti-dumping measures<sup>5</sup>**

Foshan Minghua is currently subject to the uncooperative and all other exporter rate of 101.9 per cent.

Further details of the measures in place on exports from China are available in the *Dumping Commodity Register* on the Commission's website.<sup>6</sup>

### 2.4 Notification and participation

On 13 May 2019, Foshan Minghua lodged an application for an accelerated review of the notices applying to certain aluminium extrusions exported to Australia from China in so far as the notices affect Foshan Minghua.

<sup>5</sup> *Anti-Dumping Commission Report No. 482 (REP 482)* and Anti-Dumping Notice (ADN) No. 2019/044 refer.

<sup>6</sup> [www.adcommission.gov.au](http://www.adcommission.gov.au)

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The Commissioner considered the application to determine if it was made in accordance with sections 269ZE and 269ZF. The Commissioner was satisfied that: the circumstances in which an accelerated review can be sought under section 269ZE(1) were satisfied;

- the conditions for rejection under section 269ZE(2) were not satisfied; and
- the application satisfied the requirements of section 269ZF(1).

Accordingly, the Commissioner did not reject the application. The commencement of this accelerated review was notified in ADN No. 2019/071, which was published on 3 June 2019 and made available on the public record on the Commission's website.<sup>7</sup>

ADN No. 2019/071 advised that the Commissioner's recommendation will be made in a report on or before **21 August 2019**.

For the purposes of the accelerated review, the period examined is **1 April 2018 to 31 March 2019** (the accelerated review period).

### 2.5 Exporter questionnaire response

#### 2.5.1 Foshan Minghua's exporter questionnaire response

Upon the commencement of the accelerated review, the Commission sent an exporter questionnaire to Foshan Minghua for completion.

On 24 June 2019, the Commission received a completed exporter questionnaire response from Foshan Minghua. A non-confidential version of this response is available on the public record.<sup>8</sup>

Foshan Minghua has co-operated with the accelerated review and has provided comprehensive financial data in its exporter questionnaire response within the required timeframe.

A number of tests have been undertaken on Foshan Minghua's data for the purpose of this accelerated review. Those tests include comparison of Foshan Minghua's data to:

- contemporary information and data compiled and verified as part of Review 482; and
- source documents including tax returns, financial statements, sales invoices and bank statements.

Additionally, the Commission sought clarification and further responses from Foshan Minghua on a range of matters throughout the conduct of this review, including additional source documents relating to domestic sales and products, general information relating to its production facilities and practices, and financial accounts relating to subsidy programs (if any) availed to it.

Foshan Minghua co-operated and provided responses to the queries within the designated timeframes. The Commission is satisfied as to the accuracy, relevance and completeness of the data supplied by Foshan Minghua upon which the findings of this accelerated review are based.

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<sup>7</sup> Section 2.6 refers.

<sup>8</sup> Document No. 3 on the public record refers.

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### **2.6 Public record**

There is no legislative requirement for the Commissioner to maintain a public record for accelerated reviews. However, in the interests of ensuring this process is conducted in an open and transparent manner, a public record for this accelerated review has been maintained and is accessible on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

## 3 EXPORT PRICE

### 3.1 Findings

The Commission has found that Foshan Minghua did not export the goods to Australia during the accelerated review period.

As such, the export price of the goods cannot be determined under section 269TAB(1). Specifically, sufficient information is not available to determine the export price of the goods using:

- the price paid or payable by the importer;<sup>9</sup>
- the price in Australia less prescribed deductions;<sup>10</sup> or
- the price having regard to all the circumstances of the exportation.<sup>11</sup>

Therefore, the Commission has determined an export price under section 269TAB(3) having regard to all relevant information.

As the accelerated review period has one quarter in common with the review period examined for the purposes of determining the variable factors in Review 482 (1 April 2018 to 30 June 2018),<sup>12</sup> the Commission considers it appropriate in this circumstance to have regard to the verified export prices of the goods established in Review 482.

Foshan Minghua has claimed that it is only capable of manufacturing mill finish aluminium extrusions and only intends exporting mill finish aluminium extrusions to Australia in the future. Based on the available evidence the Commission is satisfied with Foshan Minghua's claim. The Commission has relied on the export price for residual exporters from Review 482 for mill finish aluminium extrusions exported to Australia in the 1 April 2018 to 31 June 2018 quarter to calculate Foshan Minghua's export price.

Export price calculations are provided at **Confidential Appendix 6**.

### 3.2 Submissions

Capral's submission dated 21 June 2019 states that it understands the Commission's policy is that in the absence of exports to Australia, it sets the ascertained export price for the new exporter equal to the normal value.<sup>13</sup>

### 3.3 Assessment

Where a new exporter has never exporter to Australia before, the Commission has regard to all relevant information.<sup>14</sup> The Commission's practice is to assess all relevant information on a case-by-case basis when determining the relevant export price. In situations where no contemporaneous verified data was present, the Commission has

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<sup>9</sup> Section 269TAB(1)(a).

<sup>10</sup> Section 269TAB(1)(b).

<sup>11</sup> Section 269TAB(1)(c).

<sup>12</sup> Review 482 examined the period 1 July 2017 to 30 June 2018.

<sup>13</sup> Capral's submission is document no. 3 on the public record

<sup>14</sup> Section 269TAB(3)

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previously set the export price to be the normal value for the purposes of the accelerated review. In this accelerated review however, contemporaneous and verified data from Review 482 exists and is available to the Commissioner for the purposes of determining an export price for Foshan Minghua. Namely, the verified data from Review 482 for mill finish aluminium extrusions exported in the 1 April 2018 to 31 June 2018 period. The Commissioner is satisfied that it is preferable to have regard to the contemporaneous and verified data from Review 482 in establishing an export price for Foshan Minghua.

## 4 NORMAL VALUE

### 4.1 Findings

Due to a particular market situation in the Chinese domestic aluminium extrusions market, the normal value has been established in accordance with section 269TAC(2)(c), using the constructed normal value method. Relevant adjustments have been made to the normal value to ensure comparability to the export price of Foshan Minghua's future exports to Australia.

### 4.2 Applicable legislation

Under section 269TAC(1) the normal value of any 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 the country of export in sales that are arms length transactions.

Section 269TAC(2) sets out how normal value is to be ascertained if it cannot be ascertained under section 269TAC(1). In particular, if, in accordance with section 269TAC(2)(a)(ii), the Minister is satisfied that the normal value of the goods exported to Australia cannot be ascertained under section 269TAC(1) because *the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under [section 269TAC(1)]*, normal value is such amount as the Minister determines in accordance with section 269TAC(2)(c).

Where the Minister is satisfied that such a market situation exists, normal value cannot be established on the basis of domestic sales in the country of export. Instead, the normal value of the goods is determined on the basis of a cost construction, including any profit applicable (section 269TAC(2)(c)) or third country sales (section 269TAC(2)(d)).

### 4.3 Particular market situation – the Commission's assessment

In assessing whether a market situation exists in relation to the Chinese aluminium extrusions market during the accelerated review period, the Commission has relied on contemporary evidence available to it, submissions made to the accelerated review and the outcomes of previous cases conducted by the Commission.

In a previous review of the goods exported from China, it was determined, in accordance with section 269TAC(2)(a)(ii), a situation exists in the domestic Chinese aluminium extrusions market that renders domestic selling prices in that market unsuitable for the purpose of determining the normal value for aluminium extrusions under section 269TAC(1). The reasons underlying this finding are contained in *Anti-Dumping Commission Report No. 248* (REP 248) at Non-Confidential Appendix 1 – Market Situation Assessment.

In subsequent reviews of the goods, it was again established that, in accordance with section 269TAC(2)(a)(ii), a situation exists in the domestic Chinese aluminium extrusions market that renders domestic selling prices in that market unsuitable for the purpose of determining the normal value for aluminium extrusions under section 269TAC(1). The grounds for this conclusion are set out in *Anti-Dumping Commission Report No. 392* (REP 392) and *Anti-Dumping Commission Report No. 482* (REP 482) at Non-Confidential Appendix A.

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During this accelerated review, the Commission has considered all relevant information, including the evidence in REP 248, REP 392 and REP 482. The Commission notes that the accelerated review period has one quarter in common with the review period examined in Review 482 - 1 April 2018 to 30 June 2018.

In the context of all the information before the Commission, it is the Commissioner's view that a particular market situation existed in respect of the domestic market for aluminium extrusions in China for the accelerated review period that renders sales in that market not suitable in determining the normal value under section 269TAC(1). As such, the Commission has considered the alternative methods for determining normal value as provided for in the Act.

### **4.4 Constructed normal value**

The Commission has constructed normal values under section 269TAC(2)(c), and has done so in accordance with sections 43, 44 and 45 of the Regulation, with which the relevant aspects are outlined below.

#### **4.4.1 Applicable legislation, policy and practice**

Where the Minister is satisfied that normal value cannot be determined under section 269TAC(1), normal value may be determined under section 269TAC(2)(c).

As required by sections 269TAC(5A) and 269TAC(5B), the construction of normal values under section 269TAC(2)(c) is required to be undertaken in accordance with sections 43, 44 and 45 of the Regulation.

To determine costs of manufacture or production in relation to constructing normal values, section 43(2) of the Regulation requires that if:

- an exporter or producer of the goods keeps records relating to the goods that are in accordance with generally accepted accounting principles (GAAP) in the country of export; and
- those records reasonably reflect competitive market costs associated with the production or manufacture of the goods;

the Minister must work out the cost of production or manufacture using the information set out in the exporter or producer's records.

It is the Commission's view that, where an exporter's records are otherwise in accordance with GAAP, and are reliable, but the records do not reasonably reflect competitive market costs associated with the production or manufacture of the goods, it is open to the Minister, if practicable, to adjust the records so they reasonably reflect competitive market costs associated with the production or manufacture of the goods in the country of export. In making such adjustments, the Commission considers that the Minister may have regard to all relevant information.

#### **4.4.2 Reasonableness of exporters' costs of production**

In this accelerated review, the Commission has found that Foshan Minghua's records relating to the goods have been maintained in accordance with GAAP in the country of export.

However, the Commission is of the view that, owing to the influence of the Government of China (GOC) in the domestic market for primary aluminium, Foshan Minghua's records do not reasonably reflect competitive market costs for the

production or manufacture of the goods. Specifically, the Commission considers that aluminium costs in China, which represent a significant proportion of the total cost of production of aluminium extrusions are distorted by GOC influence<sup>15</sup> and do not reasonably reflect competitive market costs associated with the production or manufacture of the goods in terms of section 43(2)(b)(ii) of the Regulation. Accordingly, the Commissioner considers it appropriate that aluminium costs relating to the costs of production in Foshan Minghua's records be adjusted to align with competitive market costs and that the methodology outlined below be applied in making such adjustments.

### 4.4.3 Aluminium cost adjustment

For the reasons set out in this section, the Commission has determined that the constructed normal values should not consist solely of the actual aluminium costs incurred by exporters in the relevant costs of production. Having regard to all relevant information, the Commission believes that it is appropriate to use Foshan Minghua's records, but only after an adjustment is made to the records relating to the costs of aluminium. Such adjustment ensures that Foshan Minghua's records reflect competitive market costs. In doing so, the Commission has considered the circumstances of Foshan Minghua's purchases of aluminium and adjusted Foshan Minghua's records to incorporate costs that would be incurred in China without the distortion arising from the influence of the GOC.

The Commission has established in previous cases, and continues to maintain the view, that aluminium costs in competitive markets in Asian regions are often priced according to:

- a published price for primary aluminium;
- a regional premium;
- inland transport costs; and
- a billet premium reflecting an additional cost to convert ingots to a billet for use in the production of the goods.<sup>16</sup>

Consistent with the approach in the most recent review, Review 482,<sup>17</sup> the Commission has included each of the above components in establishing a competitive benchmark cost for aluminium, as outlined below.

#### Primary aluminium (ingot) – London Metal Exchange cash price

The Commission has relied on the average monthly London Metal Exchange (LME) official cash price data.

#### Regional premium

The Commission has relied on the published Major Japanese Ports (MJP) regional premium sourced from Argus Metals under subscription.<sup>18</sup> Shipments under the MJP premium are made on a cost, insurance and freight (CIF) basis. This means that the premium is inclusive of all costs associated with transporting the goods from the

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<sup>15</sup> See REP 248 at 4.5, REP 392 at 4.9 and REP 482 at 4.6.

<sup>16</sup> See REP 248 at 4.9, REP 392 at 4.9 and REP 482 at 4.6.

<sup>17</sup> See REP 482 at 4.6.6.

<sup>18</sup> The MJP premium reflects an uplift over the LME cash contract prices. An MJP contract is a cash settlement contract that enables participants to mitigate regional Asian aluminium premium price risk exposure.

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country of export to the destination port except for those costs relating to port of arrival charges and inland transport from the port of arrival to the final destination.

### Inland transport costs

As there was no data for actual inland transport costs for primary aluminium purchases, the Commission applied verified data from Review 482 to calculate inland transport costs as this would approximate a reasonable amount of actual inland transport costs incurred by Foshan Minghua. The Commission calculated and applied the verified weighted average inland transport costs incurred by two exporters in that review for their export sales of aluminium extrusions to Australia. The two exporters chosen were located in the same region as Foshan Minghua.

### Billet premiums

The Commission has determined a billet premium using the Australian industry's billet price schedules relevant to the accelerated review period.

The competitive market benchmark prices used for the purpose of this accelerated review are at **Confidential Appendix 1**.

#### **4.4.4 Calculation of adjustment**

The aluminium costs have been determined by comparing the competitive benchmark cost to Foshan Minghua's actual costs for its primary aluminium purchases, and applying the resulting variation as an adjustment to its records.

### **4.5 The Commission's assessment of normal value**

#### **4.5.1 Cost of production**

As Foshan Minghua has made no export sales of the goods during the accelerated review period, there is an absence of cost to make (CTM) data relating to exports, upon which to construct the normal value. Consequently, the Commission believes it reasonable to use Foshan Minghua's CTM for like goods sold domestically during the accelerated review period for the purpose of constructing normal value.

As the aluminium costs provided by Foshan Minghua were not commensurate with competitive market costs for the accelerated review period, the Commissioner considers it appropriate to apply aluminium cost adjustments in the manner described at sections 4.4.3 and 4.4.4 of this report.

#### **4.5.2 Selling, general and administrative costs**

As required by section 269TAC(5A)(b), in ascertaining the normal value of the goods under section 269TAC(2)(c), the SG&A costs were established in accordance with section 44 of the Regulation.

Foshan Minghua has provided information on SG&A costs associated with the domestic sales of the goods. Consistent with the requirements of section 44(2) of the Regulation, the Commission is satisfied that Foshan Minghua's records are in accordance with the GAAP in China, and the records reasonably reflect the SG&A costs associated with the sale of like goods in China. As such, the Commission has used the available SG&A information to construct Foshan Minghua's normal value.

Refer to **Confidential Appendix 2** for Foshan Minghua's SG&A costs.

## 4.5.3 Profit

As required by section 269TAC(5B), when ascertaining the normal value of the goods under section 269TAC(2)(c), the amount of profit included in the normal value was determined having regard to section 45 of the Regulation.

Section 45(2) of the Regulation requires that, where reasonably practicable, profit for constructed normal values under section 269TAC(2)(c)(ii) must be worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the OCOT. In this case, the Commissioner considers it reasonably practicable to use Foshan Minghua's data to calculate a profit margin.

The Commission calculated a weighted average profit margin for the goods based on all like goods sold domestically by Foshan Minghua. The calculation of this profit margin was based on domestic sales of aluminium extrusions in the OCOT, the selling prices of which were compared to the company's domestic cost to make and sell (CTMS) for those goods as reported in the company's response to the exporter questionnaire (prior to the adjustments made to the cost of primary aluminium discussed above). This profit rate has been applied to the CTMS to calculate an amount of profit for the purposes of section 269TAC(2)(c)(ii).

Refer to **Confidential Appendices 3 and 4** for the calculation of Foshan Minghua's profit.

## 4.5.4 Adjustments

As the normal value has been ascertained in accordance with section 269TAC(2)(c), the Commission considers the following adjustments are required in accordance with section 269TAC(9), in order to ensure the normal value is properly comparable with the export price of the goods and expressed on a Free on Board (FOB) basis:

- inland freight and handling – an upwards adjustment was made to incorporate export related inland transport costs to the port of export, sourced from verified and comparable data collected from Review 482;
- export packaging – an upwards adjustment was made to account for export related packaging costs sourced from verified and comparable data collected from Review 482;
- VAT adjustment – an upwards adjustment was made to account for the difference in the amount of residual value added tax (VAT) that would apply to export sales of the goods. The Commission is aware from previous cases that export sales of aluminium extrusions attract a partial VAT rebate. The residual amount has been calculated at the rate of 3 per cent, which is the standard domestic VAT rate of 16 per cent less<sup>19</sup> the 13 per cent VAT rebate that applies to export sales of the goods. This is in line with the verified data in Review 482.

Normal value calculations are at **Confidential Appendix 4**.

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<sup>19</sup> In May 2018, the standard domestic VAT payable for aluminium extrusions changed from 17% to 16%

## 4.6 Submissions on normal value

On 21 June 2019, Capral made a submission on the following points:

- That a benchmark aluminium cost should include the cost of primary aluminium (typically lined to LME price); a regional premium; inland transport costs; and a billet premium reflecting the additional cost to convert an ingot into a billet for use in the manufacture of goods;
- That the Commission examine Foshan Minghua's extrusion costs, including fixed overheads, allocation of overheads and the exporter's selling and general and administrative expenses, and contrast these with verified Chinese exporters as undertaken in Review 482;
- That Foshan Minghua's costs should confirm higher packaging costs for export than domestic packaging costs;

On 26 July 2019, Foshan Minghua responded to Capral's submission, noting that while it disagrees with the Commission's proposed methodology for replacing actual incurred raw material aluminium costs, it notes and understands that this practice has been adopted and applied in review following the imposition of duties.

Both Capral and Foshan Minghua's submissions are available on the public record.<sup>20</sup>

## 4.7 The Commission's assessment of submissions

The Commission considers that a particular market situation existed in respect of the domestic market for aluminium extrusions in China for the accelerated review period that renders sales in that market not suitable for application in determining the normal value under section 269TAC(1). As such, the normal value of the goods has been ascertained under section 269TAC(2)(c), using Foshan Minghua's verified costs of production, SG&A expenses plus an amount of profit.

The Commission has determined the aluminium cost benchmark as outlined above at section 4.4.3, and notes that this is consistent with the method proposed by Capral.

The Commission agrees that the CTMS should include higher packaging costs for export than domestic sales. This is in line with the Commission's previous findings in relation to aluminium extrusions where the cost of packaging for export sales was generally higher than for domestic packaging.

Capral's submission requests the Commission examine Foshan Minghua's costs. The Commission, as is its practice, examined and compared Foshan Minghua's extrusion costs to other verified Chinese exporters as undertaken in Review 482 and found its costs to be within the range of the verified costs of other exporters. As such, the Commission found Foshan Minghua's costs to be reasonable.

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<sup>20</sup> Capral's submission is document no. 3 on the public record, Foshan Minghua's submission is document no. 6.

## **5 DUMPING MARGIN**

### **5.1 Findings**

The Commission has calculated a dumping margin by comparing the export price<sup>21</sup> with the corresponding normal value<sup>22</sup> in accordance with subsection 269TACB(2)(a).

The dumping margin in respect of the goods for Foshan Minghua is **21.0 per cent**.

The dumping margin calculation is provided at **Confidential Appendix 5**.

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<sup>21</sup> Chapter 3 refers.

<sup>22</sup> Chapter 4 refers.

## **6 COUNTERAVAILABLE SUBSIDIES**

### **6.1 Findings**

The Commission has found that Foshan Minghua did not receive countervailable subsidies during the accelerated review period and, as such, the countervailing margin is determined to be **zero per cent**.

### **6.2 Legislative requirement for countervailable subsidies**

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

### **6.3 Programs reviewed**

In Review 482, the Commission found that the following programs are countervailable in respect of aluminium extrusions exported to Australia from China:

Program Number	Program Name	Program Type
2	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant
3	Provincial Scientific Development Plan Fund	Grant
4	Export Brand Development Fund	Grant
5	Matching Funds for International Market Development for Small and Medium Enterprises (SME)	Grant
6	Superstar Enterprise Grant	Grant
7	Research & Development (R&D) Assistance Grant	Grant
8	Patent Award of Guangdong Province	Grant
9	Training Program for Rural Surplus Labour Force Transfer Employment	Grant
15	Aluminium provided at less than adequate remuneration	Less than adequate remuneration
18	Preferential tax policies in the Western Regions	Tax
21	Tariff and Value Added Tax (VAT) Exemptions on Imported Materials and Equipment	Tariff and VAT Exemptions
26	Innovative Experimental Enterprise Grant	Grant
29	Special Support Fund for Non-State-Owned Enterprises	Grant
32	Venture Investment Fund of Hi-Tech Industry	Grant
35	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant
47	Preferential tax policies for high and new technology enterprises	Tax
48	Provincial Government of Guangdong (PGOG) tax offset for R&D	Tax

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Program Number	Program Name	Program Type
56	PGOG special fund for energy saving technology reform	Grant
58	Development assistance grants from the Zhaoqing New and High Tech Industrial Development Zone (ZHTDZ)	Grant
59	Processing trade special fund	Grant
60	Trade insurance support fund	Grant
61	Enterprise employment fixed point monitoring work subsidy	Grant
62	Special funds for provincial enterprises to transfer and upgrade equipment	Grant
63	Reserve funds for enterprise development	Grant
64	High integrity enterprise award 2014	Grant
65	Jiangmen engineering technology research centre award	Grant
66	2016 Shanghai Automotive Commodities Exhibition special fee subsidy	Grant
67	Corporate remuneration survey subsidy	Grant
68	Energy saving project subsidy	Grant
69	Science and technology project subsidy	Grant
70	Provincial engineering and technology research centre 2016	Grant
71	Foreign trade development fund subsidy of Jiangmen City	Grant
72	2015 Special Funds of Technology Renovation technical renovation project with environmental protection	Grant
73	Provincial Market Development Grant for foreign trade exhibitions and SMEs International market development	Grant
75	Subsidy for Supporting Foreign Trade Enterprises of Nan'an city in 2017	Grant
76	Fund for Supporting Foreign Trade Export in 2017 of Nan'an Municipal Bureau of Financial	Grant
77	Power consumption award for production and efficiency increase in December 2016	Grant
78	integration of informationization and industrialization management system (Note changed from market development due to info provided from Goomax)	Grant
79	Subsidy for invention patents	Grant
80	No. 269: Special project for technology reform- subsidy for technology reform	Grant
81	Madrid Trademark grant by Fujian Provincial Administration for Industry and Commerce	Grant
82	2016 Award for brand value from Finance Bureau	Grant
83	Social security fund Guangzhou Social Insurance Fund	Grant
84	Patent supporting fund	Grant
85	Unemployment fund Guangzhou Social Insurance Fund	Grant
86	Technology supporting fund	Grant
87	Special fund Industry technology development and research	Grant
88	Industry technology R&D fund	Grant
89	Technology innovation fund	Grant
90	Social security fund Zencheng City	Grant

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Program Number	Program Name	Program Type
91	2016 Jiangmen support fund for technology development	Grant
92	Funds for EFT16 technical reform	Grant
93	Funds for 2016 technical renovation	Grant
94	EFT provincial Industry and informatization Special research expenses supplement fund	Grant
95	2017 Enterprise Compensation Survey Fund	Grant
96	VOCs treatment fund for the process of injection workshop	Grant
97	Economic investigation fund	Grant
98	2017 Provincial Motor Energy Efficiency Promotion Special Fund	Grant
99	2017 Jiangmen Enterprise Major technology platform construction Fund	Grant
100	Receiving the payment from Taishan Finance Bureau	Grant
101	2017 Jiangmen Enterprise Research and Development Financial Aid Fund	Grant
102	Taishan High-integrity enterprise project fund	Grant
103	2017 Provincial Enterprise Research and Development Fund	Grant
104	Special funds for enterprises in large equipment manufacturing industry	Grant
105	2017 Provincial New enterprise Technology Reform Fund	Grant

**Table 4: Countervailable subsidy programs<sup>23</sup>**

### **6.3.1 Program 15 – Aluminium provided by government at less than adequate remuneration**

Foshan Minghua stated that none of its suppliers of aluminium were state-owned enterprises (SOEs) or state-invested enterprises (SIEs). Accordingly, Foshan Minghua submitted that it did not receive any financial contribution or assistance from the government or a public body of China in respect of its aluminium purchases.

An analysis of Foshan Minghua’s aluminium billet purchase data over the accelerated review period did not indicate that Foshan Minghua’s suppliers of aluminium were SOEs or SIEs. As such, the Commission has concluded that Foshan Minghua did not receive a benefit from the provision of aluminium by the government at less than adequate remuneration.

### **6.3.2 Preferential income tax programs**

Capral provided confidential information that suggests Foshan Minghua is in receipt of a taxation benefit from the GOC. Capral presented this confidential information to the Commission as an attachment in its submission dated 21 June 2019. Capral said that this information is confidential and could not be disclosed to Foshan Minghua. Foshan Minghua’s submission dated 26 July 2019 rejects Capral’s comments, stating that:

- In relation to Capral’s confidential information suggesting Foshan Minghua has been in receipt of tax benefits, Foshan Minghua supports the Commission’s request that Capral present this information to assess it;

<sup>23</sup> For additional information on the countervailable subsidy programs refer to REP 482.

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- In relation to countervailing, Capral's submission misquotes Foshan Minghua's application in saying that '*only two of the 65 subsidy programs... identified by the Commission are available to companies in that location*'. Foshan Minghua clarifies that in its application, it states that "[i]n the case of the grants,...'*only two of the grant programs... are available to entities in this location*". The reference to two programs being applicable to entities specifically in Guangdong, applies only to the grant programs countervailed by the Commission;
- Foshan confirms that it did not receive any preferential tax rate or deduction to the corporate base rate of 25% which is confirmed by source documents.

The Commission examined the confidential information and while some of the information in it correlated to Foshan Minghua's questionnaire response, other parts were in direct conflict. Foshan Minghua's income tax returns for the years 2016, 2017 and 2018 indicate that the company was subject to the standard corporate tax rate in China of 25 per cent. A reconciliation of Foshan Minghua's tax records to the 2017 and 2018 audited financial statements is consistent with this finding.

In assessing Capral's confidential information and Foshan Minghua's documents, the Commission has given more weight to Foshan Minghua's documents as the tax records, including receipts showing payment and the financial statements audited by a certified public accountant. Accordingly, the Commission has concluded that Foshan Minghua was not in receipt of any income tax benefits from the GOC during the accelerated review period.

### 6.3.3 Grants and preferential policies

In its exporter questionnaire, Foshan Minghua asserted that it had not been aided by grants or preferential policies and this claim has been further corroborated by the Commission's review of detailed income accounting records provided by Foshan Minghua.

### 6.3.4 Tariff and VAT exemptions on imported materials and equipment

Foshan Minghua advised that it had not benefitted from tariff and VAT exemptions on any imported materials or equipment. The Commission's assessment of all available information and data, including detailed transaction listings extracted from Foshan Minghua's tax accounting ledgers did not find evidence to the contrary.

## 6.4 Amount of countervailable subsidy received

Following an evaluation of all relevant information and the data provided by Foshan Minghua, the Commission found that no countervailable subsidies were received during the accelerated review period in respect of aluminium extrusions manufactured by Foshan Minghua.

The subsidy margin applicable to Foshan Minghua is **zero per cent**.

## 7 NON-INJURIOUS PRICE

### 7.1 Background

Where the Minister is required to determine IDD in respect of the goods and a countervailing duty notice has been published in respect of those goods, section 8(5BA) of the Dumping Duty Act applies. Section 8(5BA) requires the Minister, in determining the IDD payable, to have regard to the 'lesser duty rule' which requires consideration of the desirability of fixing a lesser amount of duty, such that the export price, together with IDD and ICD, do not exceed the NIP.<sup>24</sup>

In January 2014, legislative provisions introduced certain circumstances, where if they exist, the Minister is not required to have mandatory regard to the desirability of fixing a lesser amount of duty. These include:<sup>25</sup>

- where there is a situation in the market that renders domestic selling prices unsuitable for the purpose of determining normal value under section 269TAC(1);
- where there is an Australian industry in respect of like goods consisting of at least two small to medium sized enterprises (as defined in the *Customs (Definition of "small-medium enterprise") Determination 2013*); and
- where the country in relation to which the subsidy has been provided, has not complied with Article 25 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement) for the compliance period.

These changes apply to dumping duty and countervailing duty notices that were published before 1 January 2014, but are continued on or after this date.<sup>26</sup>

The Commission has found that there is a situation in the market that makes domestic selling prices unsuitable for the purpose of determining normal value under section 269TAC(1). As such, the Minister is not required to have regard to the desirability of fixing a lesser amount of duty due to the operation of section 8(5BAAA) of the Dumping Duty Act.

### 7.2 Commissioner's Recommendation

The Commissioner recommends that the Minister be satisfied that, in accordance with section 269TAC(2)(a)(ii), the situation in the Chinese aluminium extrusions market is such that sales in that market are not suitable for use in determining a price under section 269TAC(1).

Accordingly, for this accelerated review, the Commissioner considers that section 8(5BAAA)(a) of the Dumping Duty Act apply, and as a result, the Minister is not required to consider the lesser duty rule for the purposes of section 8(5BA) of the Dumping Duty Act.

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<sup>24</sup> Under subsections 269TACA(a) and (c), the NIP of the goods exported to Australia is the minimum price necessary to prevent the injury, or a recurrence of the injury, to the Australian industry caused by dumped or subsidised goods.

<sup>25</sup> Subsection 8(5BAAA) of the Dumping Duty Act in relation to the calculation of dumping duty and subsection 10(3DA) of the Dumping Duty Act in relation to the calculation of countervailing duty.

<sup>26</sup> Specifically, the legislative changes apply in circumstances where the Assistant Minister publishes a notice under subsection 269ZHG(1) to continue the measures concerned.

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As the Minister is not required to consider the lesser duty rule in this case, the Commissioner recommends that the full dumping margin be applied to any IDD taken in relation to aluminium extrusions exported to Australia from Foshan Minghua. The Commissioner notes that, notwithstanding the proposed recommendation, the Minister is not obliged to, but still may, consider the desirability of applying a lesser amount of duty.

## 8 FORM OF MEASURES

### 8.1 Current form of measures

Foshan Minghua is currently subject to “all other exporters” effective rate of duty of 101.9 per cent,<sup>27</sup> which is a combination of fixed and variable duty.

### 8.2 Recommended form of measures

Consistent with the current form of anti-dumping measures for exporters of the goods from China, the Commissioner recommends to the Minister that the IDD payable on the goods the subject of the notices is an amount which will be worked out using the combination of fixed and variable duty method, pursuant to section 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

### 8.3 Submissions on form of measures

Capral submitted that the proposed form of measures should be applied on a “combination form” basis.<sup>28</sup>

Foshan Minghua disagreed with Capral’s suggested approach and noted that in accelerated reviews the Commission has commonly utilised the floor price measure, which allows for a variable component of duty to be collected to ensure that export prices do not fall below the ascertained normal value.<sup>29</sup>

The Commission has calculated a dumping margin for Foshan Minghua in this accelerated review and as such, finds it appropriate that the form of measures for Foshan Minghua be consistent with the current measures applicable to all other exporters from China for which IDD applies.

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<sup>27</sup> As determined in Review 482

<sup>28</sup> Capral’s submission is document no. 3 on the public record

<sup>29</sup> Foshan Minghua’s submission is document no. 6 on the public record

## 9 EFFECT OF THE ACCELERATED REVIEW

If the Minister accepts the recommendations in this report, in respect of aluminium extrusions exported by Foshan Minghua to Australia from China:

- the notices will be altered so as to apply to Foshan Minghua as if different variable factors had been fixed;
- IDD will be worked out using the combination of fixed and variable duty method; and
- ICD will not be payable for the exported goods, reflecting a subsidy margin of **zero per cent**.

If the Minister accepts the recommendations in this report, these changes will take effect retrospectively from 13 May 2019 (being the date the application was lodged). The Commission notes that if the Minister declares that the Act and Dumping Duty Act have effect as if the notices had applied to the Foshan Minghua but the Minister had fixed specified different variable factors relevant to the determination of duty, pursuant to section 269ZG(3)(b), Foshan Minghua will not be eligible to seek another accelerated review.<sup>30</sup>

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<sup>30</sup> See section 269ZE(1).

## 10 RECOMMENDATIONS

The Commissioner has found that, in relation to aluminium extrusions exported to Australia from China by Foshan Minghua:

- the ascertained export price should be altered;
- the ascertained normal value should be altered; and
- the amount of countervailable subsidy received should be altered.

The Commissioner recommends that the Minister consider this report, and if agreed, issue a public notice to declare that:

- under section 269ZG(3)(b), that, with effect from 13 May 2019, the Act and the Dumping Duty Act have effect as if the notices had applied to Foshan Minghua but different variable factors had been fixed in respect of Foshan Minghua, relevant to the determination of duty;

and to determine that:

- pursuant to section 8(5) of the Dumping Duty Act, that the IDD on the goods exported to Australia from China by Foshan Minghua is an amount worked out in accordance with the combination of fixed and variable duty method as set out in section 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*, with effect from 13 May 2019.

The Commissioner recommends that the Minister be satisfied that:

- in accordance with section 269TAB(3), sufficient information is not available to enable export prices for the goods exported to Australia from China by Foshan Minghua the subject of this accelerated review to be ascertained under the preceding sections of section 269TAB; and
- in accordance with section 269TAC(2)(a)(ii), the normal value of the goods exported to Australia from China by Foshan Minghua cannot be ascertained under section 269TAC(1) because the situation in the market of China is such that sales in that market are not suitable for use in determining a price under section 269TAC(1),

The Commissioner recommends that the Minister determine:

- in accordance with section 269TAB(3), the export price for the goods exported to Australia from China by Foshan Minghua is the amount as set out in **Confidential Appendix 6**, which has been determined having regard to all relevant information;
- in accordance with section 269TAC(2)(c), the normal value for the goods exported to Australia from China is the sum of Foshan Minghua's:
  - cost of production or manufacture of the goods in China as set out in **Confidential Appendices 2 and 4**; and
  - on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in China, the administrative, selling and general costs associated with such a sale and the profit on that sale as set out in **Confidential Appendices 2, 3 and 4**;

as adjusted in accordance with section 269TAC(9) and set out in section 4.5.4 of, and **Confidential Appendix 4** to this report, to ensure that the normal value so ascertained is properly comparable with the export price; and

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- in accordance with section 269TACD(1), the amount of countervailable subsidy applicable to Foshan Minghua's exports of the goods is **zero**.

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### 11 APPENDICES

Confidential Appendix 1	Aluminium Benchmark
Confidential Appendix 2	Cost to Make and Sell
Confidential Appendix 3	Domestic Sales OCOT and Profit
Confidential Appendix 4	Constructed Normal Value
Confidential Appendix 5	Dumping Margin calculations
Confidential Appendix 6	Export Price calculations