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Australian Government
Department of Industry, Science,
Energy and Resources

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

FINAL REPORT NO. 534

ACCELERATED REVIEW

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

**CERTAIN ALUMINIUM EXTRUSIONS
EXPORTED FROM MALAYSIA**

BY

PREMIUM ALUMINIUM (M) SDN BHD

28 FEBRUARY 2020

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ABBREVIATIONS

the accelerated review period	1 July 2018 to 30 June 2019
the Act	<i>Customs Act 1901</i>
AND	Anti-Dumping Notice
aluminium extrusions	certain aluminium extrusions (also referred to as the goods)
the applicant	Premium Aluminium (M) SDN BHD
Capral	Capral Limited
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
Customs Tariff Regulation	<i>Customs Tariff (Anti-Dumping) Regulation 2013</i>
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)
GUC	goods under consideration
ICD	interim countervailing duty
IDD	interim dumping duty
the Manual	the Dumping and Subsidy Manual, November 2018. Available on the Commission's website at www.adcommission.gov.au .
the Minister	Minister for Industry, Science and Technology
NIP	non-injurious price
the notices	the dumping duty notice and countervailing duty notice
OCOT	ordinary course of trade
REP 362	<i>Anti-Dumping Commission Report No. 362</i>
REQ	response to the exporter questionnaire
USP	unsuppressed selling price

1 SUMMARY AND RECOMMENDATION

1.1 Background

On 20 November 2019, Premium Aluminium (M) SDN BHD (Premium Aluminium) made an application to the Anti-Dumping Commission (the Commission), seeking an accelerated review of the dumping and countervailing duty notices (the notices) applying to certain aluminium extrusions (aluminium extrusions or the goods) exported to Australia from Malaysia.

Premium Aluminium's application seeks an accelerated review on the basis that the notices are inappropriate insofar as they apply to Premium Aluminium because it is currently subject to the combined interim dumping duty (IDD) and interim countervailing duty (ICD) rate of 16.2 per cent. This rate reflects the combined rate for 'All other exporters' as determined in *Anti-Dumping Commission Report No. 362* (REP 362).

Premium Aluminium did not export the goods 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).¹

This report sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) is basing his recommendations to the Minister for Industry, Science and Technology (the Minister).

1.2 Application of law to facts

Division 6 of Part XVB of the Act allows 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 in conducting accelerated reviews for the purpose of making a report to the Minister; and
- allows the Minister, after consideration of such reports, to leave the notices unchanged or to modify them as appropriate.

1.3 Findings

Based on all relevant and available information, the Commissioner, in relation to the variable factors for Premium Aluminium's exports of the goods to Australia, considers that:

- the export price should be determined under section 269TAB(3), having regard to all relevant information, being the normal value determined in this accelerated review;
- the normal value should be determined under section 269TAC(1) with certain adjustments, in accordance with section 269TAC(8); and

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

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- Premium Aluminium did not receive any countervailable subsidies in relation to the goods during the accelerated review period. Consequently, the amount of countervailable subsidy received has changed.

1.4 Recommendation

Based on the above findings and because of section 269ZG(1), the Commissioner recommends the Minister alter the notices so as to apply to Premium Aluminium as if different variable factors had been fixed.

Further, the Commissioner recommends that:

- the Minister determine that the IDD be worked out on Premium Aluminium's exports to Australia in accordance with the **floor price** duty method pursuant to section 5(4) of the *Customs Tariff (Anti-Dumping) Regulation 2013* (Customs Tariff Regulation); and
- the ICD applicable to Premium Aluminium's exports to Australia is **zero per cent**.

If Premium Aluminium's actual export prices of the goods are less than the floor price calculated, the IDD payable will be equal to the difference between the actual export price and the ascertained export price.

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

- declare that:
the Act and the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) have effect as if the notices had applied to Premium Aluminium but the Minister had fixed different variable factors relevant to the determination of the duty payable by Premium Aluminium; to
- determine that:
because of section 8(5) of the Dumping Duty Act, the IDD payable on the goods exported to Australia from Malaysia by Premium Aluminium is an amount worked out in accordance with the floor price duty method as set out in section 5(4) of the Customs Tariff Regulation;

If accepted by the Minister, the recommendations applicable to Premium Aluminium will take effect retrospectively from 20 November 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, anodised or painted or otherwise coated, whether or not worked, having a wall thickness or diameter greater than 0.5 millimetres, with a maximum weight per metre of 27 kilograms and a profile of cross-section which fits within a circle having a diameter of 421 millimetres.

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
< 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 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 generally 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:

[in relation to GUC]...goods that are identical in all respects to the [GUC] or that, although not alike in all respects to the [GUC], have characteristics closely resembling those of the [GUC].

During this accelerated review, the definition of like goods is relevant in:

- a. determining the normal value of goods exported to Australia;
- b. the non-injurious price (NIP); and
- c. the goods subject to the notices.

The Commission's framework for assessing like goods is outlined in Chapter 2 of the Commission's *Dumping and Subsidy Manual*.

2.2 Accelerated review process

If a dumping duty notice and/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 exporter.² Section 269T(1) provides that a new exporter:

in relation to goods the subject of an application for a dumping duty notice or countervailing duty notice or like goods, means an exporter who did not export such goods to Australia at any time during the investigation period in relation to the application.

If an application for an accelerated review of a dumping duty notice and/or countervailing duty notice is received and not rejected, the Commissioner has up to

² Section 269ZE(1).

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100 days after the application is lodged to inquire and report to the Minister on the accelerated review.³

Under section 269ZG(1), the Commissioner must, after considering the application and making such inquiries as the Commissioner thinks appropriate, give the Minister a report recommending 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 Malaysia have been in place since 2017. On 27 June 2017, the Minister imposed measures in the form of IDD and ICD to the goods following REP 362.

The anti-dumping measures apply to all exporters from Malaysia except Press Metal Berhad, LB Aluminium Berhad, Superb Aluminium Industries Sdn Bhd, Kamco Aluminium Sdn Bhd, Milleon Extruder Sdn Bhd and Genesis Aluminium Industries Sdn Bhd. In addition, the countervailing duty notice no longer applies to Alumac Industries Sdn and Everpress Aluminium Industries Sdn Bhd, following reviews 490 and 509.

The existing measures are as follows:

Exporter	Fixed rate of combined IDD and ICD
Superb Aluminium Industries Sdn Bhd	NA
Milleon Extruder Sdn Bhd	NA
Kamco Aluminium Sdn Bhd	NA
Genesis Aluminium Industries Sdn Bhd	NA
LB Aluminium Bhd	NA
Press Metal Bhd	NA
Alumac Industries Sdn Bhd	IDD (Floor Price)
EverPress Aluminium Industries Sdn Bhd	IDD (Floor Price)
All Other Exporters	16.2%

Table 3: Current anti-dumping measures

Premium Aluminium is currently subject to the uncooperative and all other exporter rate of 16.2 per cent (in the form of a security), while its application for accelerated review is being considered.

³ Section 269ZG(2).

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Further details of the measures in place on exports from Malaysia are available in the *Dumping Commodity Register* on the Commission's website.⁴

2.4 Notification and participation

On 20 November 2019, Premium Aluminium lodged an application for an accelerated review of the notices applying to certain aluminium extrusions exported to Australia from Malaysia in so far as the notices affect Premium Aluminium.

The Commissioner considered the application to determine if it was made in accordance with sections 269ZE and 269ZF. The Commissioner did not reject the application because:

- 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).

The commencement of this accelerated review was notified in Anti-Dumping Notice (ADN) No. 2019/146, which was published on 5 December 2019 and made available on the public record on the Commission's website.⁵

ADN No. 2019/146 advised that the Commissioner's recommendation will be made in a report on or before **28 February 2020**.

For the purposes of the accelerated review, the period examined is **1 July 2018 to 30 June 2019** (the accelerated review period).

2.5 Exporter questionnaire response

2.5.1 Premium Aluminium exporter questionnaire response

Upon the commencement of the accelerated review, the Commission sent an exporter questionnaire to Premium Aluminium to complete.

On 24 December 2019, the Commission received the completed response to the exporter questionnaire (REQ) from Premium Aluminium, having addressed minor deficiencies identified in its original response, received by the Commission on 18 December 2019. A non-confidential version of the REQ is available on the public record.

Premium Aluminium cooperated with the accelerated review and provided financial data in its REQ within the required timeframe.

The Commission elected not to conduct an on-site verification of the information and data provided in Premium Aluminium's REQ. The Commission has various other means for testing the accuracy, relevance and completeness of data to a satisfactory level. A number of tests have been undertaken on Premium Aluminium's data for the purpose of this accelerated review. Those tests include comparison of Premium Aluminium's data to the data of other previously verified Malaysian aluminium

⁴ www.adcommission.gov.au

⁵ Section 2.6 refers.

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extrusion exporters, data from the Australian Border Force import database, and verification to source documents.

The Commission also sought clarification and further responses from Premium Aluminium on a range of matters throughout the conduct of this review, including additional source documents connected to related party transactions and production quantity records.

Premium Aluminium cooperated and provided responses to the Commission's queries within the designated timeframes.

During the verification of the REQ, the Commission identified the following exceptions.

2.5.2 Exceptions

No.	Exception	Resolution
1.	The domestic sales listing included sales of finished goods purchased by Premium Aluminium and on-sold. Those goods were not manufactured by Premium Aluminium. These goods were manufactured by a related party.	Premium Aluminium was able to identify the relevant sales. Premium Aluminium revised the domestic sales listing to include an identifier. As outlined further in section 4.2, the Commission was not able to determine if these sales were in the ordinary course of trade (OCOT) because it did not have access to information to fully assess the profitability and recoverability of these sales. These sales also occurred in the first quarter of the accelerated review period only. On this basis, the relevant sales were excluded from the normal value calculation as outlined in section 4.2.
2.	The selling, general and administration (SG&A) expenses reported by Premium Aluminium were calculated incorrectly, having under reported Net Revenue and excluding a number of SG&A expense accounts.	Amendments were made to the SG&A calculation to include the company's total revenue for the review period and all relevant SG&A expenses.

Table 4: REQ Exceptions

Having resolved the above exceptions, the Commission is satisfied as to the accuracy, relevance and completeness of the data supplied by Premium Aluminium upon which the findings of this accelerated review are based.

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.

2.7 Submissions received

The Commission received one submission in relation to this accelerated review.

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2.7.1 Capral's submission

On 11 December 2019, the Commission received a submission from Capral Ltd (Capral) regarding Premium Aluminium's application.⁶

In its submission, Capral notes that this application is the third lodged by the applicant and that the public version of the application is dated with the same date as that which was placed on the public record for accelerated review 510.⁷

Capral further notes that current the application is deficient, highlighting that Premium Aluminium did not adequately "*address the question as to why the dumping and countervailing duty notices to which exported goods apply are "inappropriate" to Premium Aluminium*".

Capral requests that the Commission terminate this accelerated review as sufficient grounds had not been provided to warrant the conduct of an accelerated review.

2.7.2 The Commission's response

The Commission acknowledges that the public version of the application, provided by the applicant in relation to this accelerated review, shows a date consistent with its previous accelerated review application. However, the Commission confirms that the confidential version of the current application is dated and signed with a date 20 November 2019 and the remaining application content was consistent with the public version. This particular application is consistent with previous applications from Premium Aluminium which were not rejected by the Commissioner.

With respect to Capral's request for the Commission to terminate this accelerated review, section 269ZE(3) states that the Commissioner may terminate the review if he becomes satisfied that:

- the applicant is refusing to co-operate with any aspect of the review; or
- the applicant is related to an exporter whose exports were examined in relation to the original investigation.

The Commission does not consider there is grounds to make a recommendation to the Commissioner to terminate this accelerated review.

⁶ Document #3 EPR 534.

⁷ Document #2 EPR 510. The Commission notes that this is the fourth application by Premium Aluminium. Accelerated Review 498 was terminated on 9 January 2019 following a materially deficient REQ. Accelerated Review 510 was terminated on 20 June 2019 at Premium Aluminium's request. Accelerated Review 525 was terminated on 15 November 2019 following a materially deficient REQ.

3 EXPORT PRICE

3.1 Findings

The Commission found that Premium Aluminium 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;⁸
- in Australia less prescribed deductions;⁹ or
- having regard to all the circumstances of the exportation.¹⁰

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

In circumstances where an applicant has not yet exported the goods to Australia, and there is an absence of other relevant information such as an all exporter investigation or review, the Commission's practice is to determine the export price as being equal to the ascertained normal value.

The Commission considers that the normal value is relevant to ascertain the export price, for the purposes of this accelerated review, as it is:

- contemporary;
- specific to Premium Aluminium;
- representative of an un-dumped export price; and
- likely to resemble models that may be exported to Australia by Premium Aluminium in the future.

As such, the Commission considers it appropriate to determine the ascertained export price to be the same amount as that determined to be the normal value (refer to section 4 of this report). In ascertaining the export price the Commission has accounted for inland transport and export related costs, to ensure the export price is at the Free on Board (FOB) level.

⁸ Section 269TAB(1)(a).

⁹ Section 269TAB(1)(b).

¹⁰ Section 269TAB(1)(c).

4 NORMAL VALUE

4.1 Findings

The Commission found that there were sufficient domestic sales that were arms length transactions and sold at prices that are in the OCOT. Accordingly, the Commission has ascertained the normal value in accordance with section 269TAC(1).

4.2 Normal value method

Background

During the accelerated review period, Premium Aluminium sold like goods on the domestic market in Malaysia. Of those sales, the majority were like goods manufactured by Premium Aluminium, however a portion were finished goods purchased by Premium Aluminium from a related party and on sold.

Finished goods on sold by Premium Aluminium

In relation to the finished goods on sold by Premium Aluminium, the Commission had insufficient information to test the profitability and recoverability of each of the sales to determine if they were sold in the OCOT. The Commission also notes that these sales were unusual in that they occurred in the first quarter of the accelerated review period only. The Commission has therefore, in this instance, excluded the sales of these goods in ascertaining Premium Aluminium's normal value as it is not satisfied that they are in the OCOT.

Like goods manufactured by Premium Aluminium

The Commission is satisfied that the like goods manufactured and sold by Premium Aluminium were in the OCOT for home consumption in Malaysia, and were arms length sales. Accordingly, these sales were suitable for determining the normal value of the goods under subsection 269T(1).

In determining this, the Commission compared the revenue for each domestic sale of like goods to the corresponding cost to make and sell (CTMS) to test whether those sales were profitable.

Where the volume of unprofitable sales for a particular model was equal to or greater than 20 per cent, the Commission tested the recoverability of the sale by comparing the revenue to the weighted average CTMS for that model over the accelerated review period. Those sales found to be unprofitable and unrecoverable were considered not to be in the OCOT. For the purpose of this accelerated review, the Commission found that all models of like goods sold for home consumption had sales in the OCOT.

In addition, the Commission considers that the domestic sales of like goods sold in OCOT for home consumption were arms length sales. The Commission came to this view on the basis that the information obtained from the desktop verification of Premium Aluminium's records showed no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

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- the buyer, or an associate of the buyer, was directly or indirectly reimbursed compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

The normal value for Premium Aluminium has, therefore, been established in accordance with section 269TAC(1) using Premium Aluminium's domestic sales of the goods that were arms length transactions and at prices that were in the OCOT.

4.3 Adjustments

The Commission considers the following adjustments are required, in line with section 269TAC(8), to ensure the normal value is properly comparable with the export price of goods exported to Australia on an FOB basis.

Adjustment Type	Deduction/addition
Domestic inland transport	Deduct an amount for Premium Aluminium's domestic inland transport
Domestic packaging	Deduct an amount for Premium Aluminium's domestic packing
Domestic commission	Deduct an amount for Premium Aluminium's domestic commission
Export packaging	Add an amount for export packaging, based on verified costs of other Malaysian exporters
Export inland transport	Add an amount for export inland transport, based on verified costs of other Malaysian exporters
Export port handling charges	Add an amount for port charges, based on verified costs of other Malaysian exporters
Export commission	Add an amount for export commission based on verified costs of other Malaysian exporters
Export stillage returns	Add an amount for export stillage returns, based on verified costs of other Malaysian exporters

Table 5: Normal Value Adjustments

5 COUNTERAVAILABLE SUBSIDIES

5.1 Findings

The Commission has found that Premium Aluminium did not receive a benefit from countervailable subsidies during the accelerated review period. Therefore, the countervailing margin is determined to be **zero per cent**.

5.2 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. For example, 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.

5.3 Programs reviewed

In REP 362, the Commission found that the following programs are countervailable in respect of aluminium extrusions exported to Australia from Malaysia:

Program number	Program name	Program type
1	Income Tax Reductions	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	Tax
6	Reinvestment Allowance	Tax

Table 6: Countervailable subsidy programs¹¹

5.4 Preferential income tax programs

In its REQ, Premium Aluminium claimed that it had not received a benefit from preferential income tax programs. The Commission examined the company's income accounting records and is satisfied that Premium Aluminium did not receive a benefit during the accelerated review period.

The Commission found evidence that Premium Aluminium may have previously benefited from programs 3 and 5, however the Commission had evidence that this benefit was negligible and had ceased being received since 2017.

¹¹ For additional information on the countervailable subsidy programs refer to REP 362.

5.5 Other Grants and preferential policies

In its exporter questionnaire, Premium Aluminium asserted that it had not been aided by any other grants or preferential policies. This claim has been corroborated by the Commission's review of income accounting records provided by Premium Aluminium. The Commission found no evidence Premium Aluminium was benefiting from any other or new subsidy programs.

5.6 Amount of countervailable subsidy received

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

6 NON-INJURIOUS PRICE

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

The Commissioner has recommended that the Minister have regard to the lesser duty rule for exports of the goods from Malaysia by Premium Aluminium, as required by section 8(5BA) of the Dumping Duty Act. The Commission has calculated the NIP, with respect to exports by Premium Aluminium, to be a price equal to an undumped and unsubsidised price, setting the NIP equal to the sum of the normal value and the amount of countervailable subsidy of those exports. As the sum of the ascertained export price, the interim dumping duty payable and the countervailing duty payable do not exceed the NIP, there is no basis to apply a lesser rate of duty.

6.1 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.

6.2 Lesser duty rule

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the Dumping Duty Act.¹²

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.

6.2.1 The Commission’s preferred approach to establishing unsuppressed selling price (USP) and NIP as part of a review

When establishing the USP and NIP as part of an accelerated 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, REP 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 unsubsidised import prices from Malaysia and un-dumped import prices from Vietnam.

¹² Refer section 8(5B) of the Dumping Duty Act.

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It was on this basis that the Commission calculated the NIP for each exporter be a price equal to an un-dumped and unsubsidised price.¹³

With respect to Malaysia in REP 362, the relevant Minister 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 has no practical effect since the sum of the ascertained export price, the interim dumping duty payable and the countervailing duty payable does not exceed the NIP.

In calculating the NIP for this review with respect to any exports of the goods by Premium Aluminium, the Commission considers it appropriate to follow the same methodology used in REP 362. On this basis the Commission calculated the NIP for Premium Aluminium as a price equal to an un-dumped and unsubsidised export price, being equal to the sum of Premium Aluminium's normal value and the amount of countervailable subsidy.

The Commissioner has recommended that the Minister have regard to the lesser duty rule for exports of the goods from Malaysia by Premium Aluminium, as required by section 8(5BA) of the Dumping Duty Act. However, as the NIP has been determined to be an amount equal to the sum of the normal value and the amount of countervailable subsidy, and as the sum of the ascertained export price, the interim dumping duty payable and the countervailing duty payable do not exceed the NIP, there is no basis to apply a lesser rate of duty.

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

7 FORM OF MEASURES

7.1 Current form of measures

Premium Aluminium is currently subject to the “all other exporters” rate of IDD of 13.0 per cent and ICD of 3.2 per cent.¹⁴

In respect of any IDD that may become payable, duty is currently collected using the combination of fixed and variable duty method. In respect of any ICD that may become payable, duties are calculated as a proportion of the export price of the goods.

7.2 Recommended form of measures

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 in accordance with the floor price duty method, pursuant to section 5(4) of the Customs Tariff Regulation.
- the ICD payable on the goods the subject to the notices is an amount which is worked out as a proportion of the export price of the goods;

The Commissioner considers that, in circumstances where an exporter has not exported the goods to Australia, as is the circumstance with respect to Premium Aluminium, the floor price duty method is the most suitable method of collecting IDD. This is on the basis that, where a floor price is set equal to an exporter’s normal value, exports of the goods will only attract interim duties when exported at dumped prices.

When collecting dumping and countervailing duties applicable to Premium Aluminium’s exports of aluminium extrusions, the IDD and ICD payable will be the sum of:

- the amount by which the actual export price of the goods is below the floor price applicable to Premium Aluminium exports; and
- the subsidy rate determined at section 5.6, i.e. zero per cent be applied as a proportion of the actual export price of the goods. No change is required to the form of measures currently used to determine the ICD.

¹⁴ As determined in REP 362.

8 EFFECT OF THE ACCELERATED REVIEW

If the Minister accepts the recommendations in this report, in respect of aluminium extrusions exported by Premium Aluminium to Australia from Malaysia:

- the notices will be altered so as to apply to Premium Aluminium as if different variable factors had been fixed;
- IDD will be worked out using the floor price duty method; and
- ICD will be payable for the exported goods, as a proportion of the export price at a rate of **zero per cent**.

If the Minister accepts the recommendations in this report, these changes will take effect retrospectively from 20 November 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 Premium Aluminium but the Minister had fixed specified different variable factors relevant to the determination of duty, pursuant to section 269ZG(3)(b), Premium Aluminium will not be eligible to seek another accelerated review.¹⁵

¹⁵ See section 269ZE(1).

9 RECOMMENDATIONS

The Commissioner found that, in relation to aluminium extrusions exported to Australia from Malaysia by Premium Aluminium the:

- ascertained export price should be altered;
- ascertained normal value should be altered;
- ascertained NIP should be altered; and
- 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 20 November 2019, the Act and the Dumping Duty Act have effect as if the notices had applied to Premium Aluminium but different variable factors had been fixed in respect of Premium Aluminium, relevant to the determination of duty; to
- determine that:
pursuant to section 8(5) of the Dumping Duty Act, the IDD on the goods exported to Australia from Malaysia by Premium Aluminium is an amount worked out in accordance with the floor price duty method as set out in section 5(4) of the Customs Tariff Regulation, with effect from 20 November 2019;

The Commissioner recommends 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 Malaysia by Premium Aluminium the subject of this accelerated review to be ascertained under the preceding sections of section 269TAB;
- in accordance with section 269TACD(1), countervailable subsidies have not been received by Premium Aluminium in respect to the goods.

The Commissioner recommends that the Minister determine:

- in accordance with section 269TAB(3), the export price for the goods exported to Australia from Malaysia by Premium Aluminium be the same amount as that determined to be the normal value, as set out in **Confidential Appendix 3**;
- in accordance with section 269TAC(1), being satisfied that like goods are sold in the ordinary course of trade for home consumption in Malaysia in sales that are arms length transactions by Premium Aluminium, that the normal value of aluminium extrusions exported to Australia from Malaysia is the price paid or payable for like goods as set out chapter 4 and **Confidential Appendix 3**; and
- in accordance with section 269TACD(1), that the amount of countervailable subsidy applicable to Premium Aluminium's exports, expressed as a percentage of the ascertained export price, is **zero per cent**;

PUBLIC RECORD

- in accordance with subsection 269TAAD(4), and for the purpose of working out the cost of goods and determining whether the price paid for like goods sold in the country of export in sales that are arms length transactions are taken to have been in the OCOT, that the amounts for the cost of production or manufacture of the goods in Malaysia and the administrative, selling and general costs associated with the sale of those goods are as set out in are as set out in **Confidential Appendix 1**;

The Commissioner recommends the Minister direct that:

- in accordance with section 269TAC(8), that, as the normal value of aluminium extrusions exported to Australia by Premium Aluminium is the price paid or payable for like goods sold in Malaysia, the normal value be adjusted for specified differences between like goods sold in Malaysia and export sales, as set out in section 4.3 of this report and **Confidential Appendix 3**.

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10 APPENDICES

Confidential Appendix 1	Cost to Make and Sell
Confidential Appendix 2	Domestic Sales OCOT and Profit
Confidential Appendix 3	Normal Value
Confidential Appendix 4	Variable Factors Summary