



**Australian Government**  
**Department of Industry, Science,  
Energy and Resources**

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XVB*

# **TERMINATION REPORT**

## **NO. 540**

**ALLEGED DUMPING OF MILL FINISH ALUMINIUM  
EXTRUSIONS**

**EXPORTED TO AUSTRALIA FROM MALAYSIA**

**BY**

**SUPERB ALUMINIUM INDUSTRIES SDN BHD**

**29 April 2021**

**TER 540 - Mill Finish Aluminium Extrusions - Malaysia**

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**ABBREVIATIONS**

\$	Australian dollars
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant	Capral Limited
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Criterion	Criterion Industries Pty Ltd
CTMS	Cost to Make and Sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	Electronic Public Record
FOB	Free on Board
the goods	the goods the subject of the application (also referred to as the goods under consideration)
the Guidelines	<i>Guidelines on the Application of Forms of Dumping Duty November 2013</i>
ICD	Interim Countervailing Duty
IDD	Interim Dumping Duty
Kamco	Kamco Aluminium Sdn Bhd
LB Aluminium	LB Aluminium Sdn Bhd
LME	London Metal Exchange
the Manual	<i>Dumping and Subsidy Manual</i>
Material Injury Direction	<i>Ministerial Direction on Material Injury 2012</i>
MCC	Model Control Code
Milleon	Milleon Extruder Sdn Bhd
the Minister	The Minister for Industry, Science and Technology
NIP	Non-Injurious Price
OCOT	Ordinary Course of Trade
PAD	Preliminary Affirmative Determination
PAD Direction	<i>Customs (Preliminary Affirmative Determinations) Direction 2015</i>
PMAA	Press Metal Aluminium (Australia) Pty Ltd
PMAH	Press Metal Aluminium Holdings Berhad
PMB	Press Metal Sdn Bhd
PMBA	PMB Aluminium Sdn Bhd
PMBK	PMB (Klang) Sdn Bhd
the Regulation	<i>Customs (International Obligations) Regulation 2015 (Cth)</i>
REQ	Response to Exporter Questionnaire
SEF	Statement of Essential Facts

**PUBLIC RECORD**

subject exporters	The exporters the subject of Capral's application
Superb	Superb Aluminium Industries Sdn Bhd

# 1 SUMMARY AND CONCLUSIONS

## 1.1 Introduction

This *Termination Report No. 540* (TER 540) has been prepared in response to an application by Capral Limited (Capral, the Applicant) for the publication of a dumping duty notice in respect of mill finish aluminium extrusions (the goods) exported to Australia from Malaysia by the following exporters (the subject exporters);

- Press Metal Sdn Bhd (PMB);
- Milleon Extruder Sdn Bhd (Milleon);
- LB Aluminium Sdn Bhd (LB Aluminium);
- Kamco Aluminium Sdn Bhd (Kamco);
- Superb Aluminium Industries Sdn Bhd (Superb); and
- Genesis Aluminium Industries Sdn Bhd (Genesis).

Capral alleges that the Australian industry has suffered material injury caused by the goods exported to Australia from Malaysia at dumped prices.

This termination report set outs the Commissioner of the Anti-Dumping Commission's (the Commissioner) reasons for terminating part of the dumping investigation in relation to Superb.

## 1.2 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901*<sup>1</sup> (the Act) describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner when conducting investigations in relation to the goods covered by an application under section 269TB(1). Section 269TDA sets out the circumstances in which the Commissioner must terminate an investigation.

The Anti-Dumping Commission (the Commission) has prepared this report to support the Commissioner in his consideration of the application, pursuant to the Commission's function specified in section 269SMD.

### 1.2.1 Application

On 6 January 2020, Capral lodged an application alleging that the Australian industry has suffered material injury caused by the goods exported to Australia from Malaysia by;

- PMB;
- Milleon;
- LB Aluminium;
- Kamco;
- Superb; and,
- Genesis,

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

at dumped prices.

Having considered the application, the Commissioner decided not to reject the application and initiated an investigation into the alleged dumping of the goods from Malaysia on 24 February 2020.

*Consideration Report No. 540* (CON 540) and a public notice (Anti-Dumping Notice (ADN) No. 2020/018) provide further details relating to the initiation of the investigation. CON 540 is available on the Anti-Dumping Commission's (the Commission) website at: [www.adcommission.gov.au](http://www.adcommission.gov.au)<sup>2</sup>

### **1.2.2 The goods and like goods (Chapters 3)**

The subject goods of this report are further described in Chapter 3 of this report.

### **1.2.3 Dumping assessment (Chapter 4)**

In relation to the dumping investigation, the Commissioner has found that the dumping margin for the goods exported to Australia from Malaysia by Superb was negligible (less than 2%). Therefore, the investigation must be terminated in accordance with section 269TDA(1)(b)(ii) of the Act, in so far as it relates to Superb.

Table 1 summarises the dumping margins relevant to this termination report as assessed by the Anti-Dumping Commission (the Commission).

<b>Country</b>	<b>Exporter</b>	<b>Dumping margin (%)</b>
Malaysia	Superb Aluminium Industries Sdn Bhd	0.2

**Table 1 Dumping Margin**

## **1.3 Conclusion**

Section 269TDA provides that the Commissioner must terminate an investigation if all dumping margins found during an investigation are negligible. Based on the findings set out in this report, it is recommended that the Commissioner terminate part of the investigation in relation to the subject exporter Superb, in accordance with section 269TDA(1)(b)(ii), on the basis that the dumping margin for the goods was negligible.

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<sup>2</sup> EPR 540, Nos. 002 and 003.

## 2 BACKGROUND

### 2.1 Initiation

On 6 January 2020, Capral lodged an application for the publication of dumping duty notices in respect of the goods exported to Australia from Malaysia by the following exporters:

- PMB;
- Milleon;
- LB Aluminium;
- Kamco;
- Superb; and
- Genesis.

Following consideration of the application, the Commissioner decided not to reject the application and initiated *Investigation No. 540* on 24 February 2020<sup>3</sup>. ADN No. 2020/018 and CON 540 and 541<sup>4</sup> provide further details relating to the initiation of the investigation.

In respect of the investigation:

- the investigation period for the purpose of assessing dumping is 1 January 2019 to 31 December 2019; and
- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped goods is from 1 January 2016.

### 2.2 Conduct of the investigation

#### 2.2.1 Preliminary Affirmative Determination

In accordance with section 269TD, the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice, or if satisfied that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation of the goods into Australia.

Where a PAD is not made 60 days after initiation of the investigation, the *Customs (Preliminary Affirmative Determinations) Direction 2015* (PAD Direction) directs the Commissioner to publish a status report providing reasons why a PAD was not made.

On 24 April 2020, being 60 days after the initiation of the investigation, the Commissioner published a status report.<sup>5</sup>

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<sup>3</sup> ADN No. 2020/018.

<sup>4</sup> Capral submitted two applications both relating to aluminium extrusions (mill finish and surface finish). The Commission published a combined consideration report, CON 540 & 541, covering both of these applications.

<sup>5</sup> EPR 540, No. 008.

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As required by section 9 of the PAD Direction, if the Commissioner has published a status report in relation to an investigation, the Commissioner must reconsider whether or not to make a PAD at least once prior to the publication of the SEF.

In preparation of the statement of essential facts (SEF), the Commissioner was satisfied that there appeared to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported to Australia from Malaysia from Milleon, LB Aluminium, and Kamco. As a result, the Commissioner made a combined *Statement of Essential Facts No. 540* (SEF 540) and *Preliminary Affirmative Determination No. 540* (PAD 540) on 9 December 2020.<sup>6</sup> ADN No. 2020/142 provides further details and is available on the public record.<sup>7</sup>

### 2.2.2 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows under section 269ZHI(3)<sup>8</sup>, place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.<sup>9</sup>

The SEF was originally due to be placed on the public record by 15 June 2020. However, the due date for the SEF was extended.<sup>10</sup> The Commissioner placed *Statement of Essential Facts No. 540* (SEF 540) on the public record on 9 December 2020.<sup>11</sup>

### 2.2.3 Australian Industry

The Commissioner is satisfied that the applicant for the investigation, Capral and other Australian manufacturers, represent the Australian industry producing like goods to the goods the subject of the investigation.

The Commission conducted a verification visit to Capral's premises in March 2020. The report made in relation to the visit is available on the public record.<sup>12</sup>

### 2.2.4 Importers

The Commission identified several importers in the Australian Border Force (ABF) import database that imported the goods from Malaysia during the investigation period. The Commission forwarded importer questionnaires to six importers and placed a copy of the

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<sup>6</sup> EPR 540, No. 039.

<sup>7</sup> EPR 540, No. 040.

<sup>8</sup> Note that this power has been delegated to the Commissioner. ADN No. 2017/10 provides further explanation.

<sup>9</sup> Section 269TDAA(1).

<sup>10</sup> EPR 540, Nos. 016, 021, 025 and 031.

<sup>11</sup> EPR 540, No. 039.

<sup>12</sup> EPR 540, No. 009.



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importer questionnaire on the Commission's website for completion by other importers who were not contacted directly.

The Commission received fully completed questionnaire responses from two importers, Criterion Industries Pty Ltd (Criterion) and Press Metal Aluminium (Australia) Pty Ltd (PMAA). The Commission verified the information provided by Criterion and PMAA by undertaking remote verifications of each importer. Verification reports relating to Criterion<sup>13</sup> and PMAA<sup>14</sup> are available on the public record.

### 2.2.5 Exporters

At the outset of the investigation, the Commission forwarded questionnaires to the six subject exporters of the goods from Malaysia and also placed a copy of the exporter questionnaire on the Commission's website.

After granting extensions between 14 and 28 days to the initial deadline for the receipt of questionnaires by 29 April 2020,<sup>15</sup> the Commission received completed responses to the exporter questionnaire (REQ) from the following five Malaysian exporters:

- PMB;
- Milleon;
- LB Aluminium;
- Superb; and
- Genesis.

The Commission received a REQ from Kamco, however, the Commission identified material deficiencies within the data submitted in its REQ. The Commissioner was satisfied that Kamco is an uncooperative exporter, pursuant to section 269T(1).

Based on verified data provided by each of the above exporters and data obtained from the ABF import database, the Commission has ascertained that the goods exported by these exporters constitutes a significant portion of total volume of exports which were imported into Australia in the investigation period from 1 January 2019 to 31 December 2019.

Non-confidential versions of the REQs are available on the Commission's website.<sup>16</sup> The Commission conducted desktop verifications of the data provided by the subject exporters. The exporter verification reports are on the Commission website.<sup>17</sup>

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<sup>13</sup> EPR 540, No. 026, Criterion Verification Report.

<sup>14</sup> EPR 540, No. 038, PMAA Verification Report.

<sup>15</sup> EPR 540, No. 007.

<sup>16</sup> EPR 540, Nos. 011, 012, 013, 014 and 015.

<sup>17</sup> EPR 540, Nos. 019, 020, 026, 032 and 037.

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### 2.3 Submissions received from interested parties

The Commission received 18 submissions from interested parties prior to the publication of SEF 540. These submissions were considered by the Commissioner in reaching the conclusions contained within SEF 540. All submissions received are available on the public record.

Prior to publication of SEF 540, the Commission had insufficient time to consider further information from Kamco received on 4 December 2020.<sup>18</sup> The Commissioner did not have regard to Kamco's further information as to do so would, in the Commissioner's opinion, have prevented the timely placement of SEF 540 on the public record.<sup>19</sup> However, Kamco's further information has been considered in the preparation of this report.

Following the publication of SEF 540, the Commissioner received the submissions detailed below in Table 2. With the exception of Item Nos. 60, 61 and 62, the Commissioner considered these submissions in making this report.<sup>20</sup>

Public Record Item No.	Entity	Date Received <sup>21</sup>
41	Kamco Aluminium Sdn Bhd - Response to uncooperative exporter determination	3/12/2020
42	Capral Limited - Comments on Kamco submission	21/12/2020
43	Capral Ltd - Response to SEF 540	24/12/2020
44	Kamco Aluminium Sdn Bhd - Response to SEF 540 Re uncooperative exporter determination	5/01/2021
45	Milleon Extruder Sdn Bhd - Response to SEF 540 Normal value adjustments	5/01/2021
46	Criterion Industries Pty Ltd - Response to SEF 540 Re injury factors other than dumping, form of measures	5/01/2021
47	Capral Limited - Counter response to Criterion	15/01/2021
48	Capral Limited - Counter response to Milleon	15/01/2021
49	Capral Limited - Counter response to Kamco	22/01/2021
50	Press Metal Berhad - Response to SEF 540 Re Variable Factors	22/01/2021
51	Press Metal Berhad - Response to SEF 540 Re Scope of Review	22/01/2021

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<sup>18</sup> EPR 540, No. 041.

<sup>19</sup> As per section 269TDAA(3).

<sup>20</sup> The Commissioner considered that having regard to the matters outlined in the submissions would prevent the timely completion of a report to the Minister. The submissions also do not relate to this decision to terminate the investigation.

<sup>21</sup> PMB was granted an extension to file its submission past the due date of 5 January 2021. The submissions at EPR 50 to 53 refer.

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Public Record Item No.	Entity	Date Received <sup>21</sup>
52	Press Metal Berhad - Response to SEF 540 Re NIP	22/01/2021
53	Press Metal Berhad - Response to SEF 540 Re Material Injury	22/01/2021
54	Capral Limited - Counter response to Press Metal Berhad	29/01/2021
55	Capral Limited - Counter response to Press Metal Berhad Re Scope, NIP and injury	1/02/2021
56	Criterion Industries Pty Ltd - Further comments Re Australian industry standing, factors other than dumping	15/02/2021
58	Press Metal Berhad - Further Comments Re Injury Assessment Australian industry participation	18/02/2021
60	Press Metal Berhad - Response to extension of time	6/04/2021
61	Capral Limited - Submission in response to Press Metal Berhad	16/04/2021
62	Press Metal Berhad – Capral’s economic condition	21/04/2021

**Table 2 Submissions received in response to SEF 540**

## 3 THE GOODS

### 3.1 Preliminary finding

The Commissioner finds that locally produced mill finish aluminium extrusions are 'like' to the goods the subject of the application.

### 3.2 Legislative framework

Section 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are "like" to the imported 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".*

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must, however, produce goods that are "like" to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other having regard for the following considerations:

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

### 3.3 The goods

The goods the subject of the application (the goods) 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 as extruded (mill) (excluding all other surface finishes), whether or not worked, having a wall thickness or diameter greater than 0.5 mm., with a maximum weight per metre of 27 kilograms and a profile or cross-section which fits within a circle having a diameter of 421 mm.*

The goods under consideration include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded

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through a die. For example, aluminium extrusion products that have been worked (e.g. precision cut, machined, punched or drilled) fall within the scope of the goods.

The goods under consideration 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.

### 3.4 Tariff classification

Imports of the goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

Tariff classification ( <i>Schedule 3 of the Customs Tariff Act 1995</i> )			
Tariff code	Statistical code	Unit	Description
7604.10.00	06	Kg	Non alloyed aluminium bars, rods and profiles
7604.21.00	07	Kg	Aluminium alloy hollow angles and other shapes
7604.21.00	08	Kg	Aluminium alloy hollow profiles
7604.29.00	09	Kg	Aluminium alloy non hollow angles and other shapes
7604.29.00	10	Kg	Aluminium alloy non hollow profiles
7608.10.00	09	Kg	Aluminium tubes and pipes, not alloyed
7608.20.00	10	Kg	Aluminium tubes and pipes, alloyed
7610.10.00	12	Kg	Aluminium doors, windows and their frames and thresholds for doors
7610.90.00	13	Kg	Other aluminium structures and parts thereof

**Table 3 Tariff Classification of the goods**

### 3.5 Model Control Code

As detailed in the initiation notice<sup>22</sup>, the Commission proposed the model control code (MCC) structure below.<sup>23</sup>

Category	Sub-category		Sales data	Cost data
Finish	<b>M</b>	Mill	Mandatory	Mandatory
Alloy code	<b>6A</b>	6060, 6063	Mandatory	Optional
	<b>6B</b>	6106		
	<b>6C</b>	6101, 1350, 6082, 6351, 6061		
	<b>6D</b>	6005A		
	<b>O</b>	Other		
Temper code	<b>T1</b>	T1, T4, T5, T6	Optional	Optional
	<b>T50</b>	T591, T595, T52		
	<b>O</b>	Other		

**Table 4 Proposed MCC structure**

To aid in assessing the application of an MCC structure, the Commission requested the following information be provided for all product models that the importer, exporter, and Australian industry sold.

Category	Characteristics of category
Product Identifier	Company's product ID or product code which will link to the sales listing.
Finish	Finish of the extrusion in terms of mill, powder coated, anodised or mechanical.
Alloy	The alloy of the extrusion.
Temper	Temper grade of the extrusion.

**Table 5 Product characteristics**

Interested parties were invited to make submissions with proposals to modify the MCC structure where the Commission would consider whether modifications were justified.

The Commission did not receive any submissions which contained a proposal to modify the MCC structure.

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<sup>22</sup> ADN No. 2020/018.

<sup>23</sup> Further information regarding the application of MCC structures is provided at Chapter 14 in the Anti-Dumping Commission Dumping and Subsidy Manual.

### **3.5.1 Verification of MCCs**

During the course of the verification of the subject exporters, the Commission identified exporter specific amendments to the MCC structure applicable to certain exporters. These amendments to the MCC structure are included in each subject exporter's verification report, which can be found on the public record for this investigation.<sup>24</sup>

## **3.6 Like goods assessment**

An application can only be made if there exists an Australian industry producing 'like goods' to the goods the subject of the application. The phrase 'like goods' is defined in section 269T(1). Sections 269T(2), 269T(3), 269T(4), 269T(4A), 269T(4B) and 269T(4C) are relevant to determining whether the like goods are produced in Australia and whether there is an Australian industry.

The following analysis sets out the Commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods the subject of the application and whether they are, therefore, 'like goods' to the goods exported to Australia.

### **3.6.1 Physical likeness**

The mill finish aluminium extrusions produced by the Australian industry for sale in the Australian market are considered to be physically alike to the goods, as they have the same (or similar) dimensions and are made of aluminium alloys, as specified in the goods descriptions.

### **3.6.2 Commercial likeness**

Mill finish aluminium extrusions sold by the Australian industry on the Australian market are considered commercially alike to the goods. The like goods are sold in the same market sectors, e.g. building and construction, renewable energy (solar), and compete at the same levels of trade and to the same customers, e.g. direct to end-users or via distribution sales channel. The Australian industry's 'like goods' and the goods are also sold on similar commercial terms with respect to price setting and other market references, e.g. London Metal Exchange (LME) prices for primary aluminium.

### **3.6.3 Functional likeness**

Mill finish aluminium extrusions sold by the Australian industry on the Australian market are considered functionally alike to the goods, as they have similar or identical end uses, e.g. these goods are used by manufacturers of aluminium window and door systems and solar panel installations.

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<sup>24</sup> EPR 540, Nos 019, 020, 026, 032, and 037.

### **3.6.4 Production likeness**

The mill finish aluminium extrusions, produced by the Australian industry are manufactured using processes that are identical to (or closely resemble) the processes used to produce the goods.

### **3.6.5 Like goods assessment**

Based on the above findings, the Commission considers that the mill finish aluminium extrusions manufactured by the Australian industry, whilst not identical, have characteristics closely resembling, the goods exported to Australia. The Commission considers that:

- the primary physical characteristics of the goods and the domestically produced goods are similar;
- the goods and the domestically produced goods are commercially alike, as they are sold to common users, and directly compete in the same market;
- the goods and the domestically produced goods are functionally alike, as they have a similar range of end uses; and
- the goods and the domestically produced goods are manufactured in a similar manner.

In light of the above, the Commissioner is satisfied that the Australian industry produces 'like goods' to the goods the subject of the application, as defined in section 269T.



## **4 DUMPING INVESTIGATION AND VARIABLE FACTORS**

### **4.1 Finding**

The Commission has found that, during the investigation period, the dumping margin in relation to the goods exported to Australia from Malaysia by Superb was negligible (less than 2%).

The dumping margin determined for Superb is summarised below in Table 6.

Country	Exporter	Dumping margin (%)
Malaysia	Superb	0.2

**Table 6 Dumping Margin**

The Commission’s calculations of export prices, normal values and dumping margins are set out at **Confidential Attachments 1 to 5**.

### **4.2 Legislative and policy framework**

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC, respectively.

In the report to the Minister under section 269TEA(1), the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Minister must be satisfied of in order to publish a dumping duty notice is that the goods have been dumped.

Section 269TDA(1) also requires that the Commissioner must terminate the investigation, in so far as it relates to an exporter, if satisfied that there has been no dumping by the exporter, or there has been dumping during the investigation period, but the dumping margin is less than 2%.

#### **4.2.1 Export price**

Export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods are arms length transactions under section 269TAA. Section 269TAB(1)(a) generally provides that the export price of any goods exported to Australia is the price paid (or payable) for the goods by the importer where the goods have been exported to Australia otherwise than by the importer, and have been purchased by the importer from the exporter in arms length transactions.

Section 269TAA outlines the circumstances in which the price paid or payable shall not be treated as being at arms length. These are where:

- there is any consideration payable for or in respect of the goods other than price;
- the price appears to be 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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- in the opinion of the Minister, the buyer (or an associate of the buyer) will, directly or indirectly, be reimbursed, compensated, or otherwise receive a benefit for, or in respect of, the whole (or any part of) the price.

### 4.2.2 Normal value

Section 269TAC(1) provides that 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 by the exporter, or, if like goods are not so sold by the exporter, by other sellers of like goods.

Section 269TAC(2)(a)(i) provides that the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1) where there is an absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under section 269TAC(1). Relevant sales are sales of like goods sold for home consumption comprising arms length transactions and sold in the OCOT.

Domestic sales of like goods are taken to be in a low volume where the total volume of like goods is less than 5% of the total volume of the goods under consideration that are exported to Australia (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison). As per the Anti-Dumping Commission *Dumping and Subsidy Manual* (the Manual), where the total volume of relevant sales is 5% or greater than the total volume of the goods under consideration, and where comparable models exist, the Commission also considers the volume of relevant domestic sales of like goods for each model (or MCC).

### 4.2.3 Dumping margin

For all dumping margins calculated for the purposes of this investigation, the Commission compared the weighted average export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of the investigation period.

## 4.3 Cooperative exporters

Section 269T(1) provides that, in relation to a dumping investigation, an exporter is a 'cooperative exporter' where the exporter's exports were examined as part of the investigation and the exporter was not an 'uncooperative exporter'. At the commencement of the investigation, the Commission contacted the exporters, the subject of the investigation, and invited them to complete an exporter questionnaire. The Commission received questionnaire responses from the following exporters that were assessed as not containing any deficiencies and were considered capable of verification:

- PMB;
- Milleon;
- LB Aluminium;
- Superb; and
- Genesis.

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The Commission undertook a desktop verification of PMB, Milleon, and LB Aluminium, and a remote verification of the data submitted by Superb.

### **4.4 Uncooperative exporters**

Section 269T(1) provides that an exporter is an “uncooperative exporter” if the Commissioner is satisfied that particular exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable (or if the Commissioner is satisfied that the particular exporter significantly impeded the investigation).

The Commission received a REQ from Kamco, however the Commission identified material deficiencies within the data submitted in its REQ. The Commissioner was satisfied that Kamco was an uncooperative exporter in accordance with section 269T(1).

For further discussion regarding Kamco’s uncooperative exporter status refer to SEF 540.<sup>25</sup>

### **4.5 Non-injurious price**

The Commission has calculated a non-injurious price (NIP) for exports of the goods that is considered to be the minimum price necessary to prevent the injury, or a recurrence of the injury, caused by the dumped goods from Malaysia. The Commission has calculated the NIP for each exporter to be an amount equal to an un-dumped price. The Commissioner recommends that the Minister have regard to the desirability of the lesser duty rule. However, based on the fact that the NIP is not less than the normal value, the lesser duty rule will have no practical effect (i.e. the NIP will not be operative).

### **4.6 Superb**

#### **4.6.1 Verification**

The Commission conducted a verification of Superb’s REQ by having regard to its audited financial statements and accounting system information, a sample of source documents for selected sales and cost items and market intelligence data relating to the aluminium industry sector.

The Commission is satisfied that Superb is the producer of the goods and like goods. The Commission is satisfied that the information provided by Superb is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

A report covering the verification findings is available on the public record.<sup>26</sup>

#### **4.6.2 Export price**

The Commission considers Superb to be the exporter of the goods, as Superb:

- is the manufacturer of the goods located in the country of export;

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<sup>25</sup> EPR 540, No. 039.

<sup>26</sup> EPR 540, No. 019.

## **PUBLIC RECORD**

- is the principal located in Malaysia, the country of export;
- knowingly placed the goods in the hands of a freight company for delivery to Australia;
- is named on the commercial invoice as the supplier;
- is named as the consignor on the bill of lading;
- arranges and pays for the transportation of the goods to the port of export to Australia; and
- pays the port handling charges at the port of export to Australia;

The Commission is satisfied that for all Australian export sales during the period, Superb was the exporter of the goods.

In respect of Superb's Australian sales of the goods to its unrelated customers during the period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than their price; or
- the price appeared to be 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
- 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 Commission therefore considers that all export sales made by Superb to its unrelated Australian customers during the period were arms length transactions.

In respect of the Australian sales of the goods by Superb, the Commission has determined an export price under section 269TAB(1)(a), being the price paid by the importer to the exporter, less transport and other costs arising after exportation.

### **4.6.3 Normal value**

Superb made sales to both related and unrelated customers in the Malaysian domestic market during the investigation period. The Commission examined whether there were any differences in approach to these customer types. The Commission notes that prices between related and unrelated customers were comparable.

In respect of Superb's domestic sales of like goods to its related and unrelated customers during the period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than their price, or;
- the price appeared to be influenced by a commercial or other relationship between the buyer (or an associated of the buyer) and the seller (or an associate of the seller) or;
- the buyer (or an associate of the buyer) was directly or indirectly reimbursed, compensated, or otherwise received a benefit for, or in respect of, the whole or any part of the price.

## PUBLIC RECORD

The Commission therefore considers that all domestic sales made by Superb during the investigation period were arms length transactions.

As detailed in the Superb verification report, the Commission assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia for the investigation period. The Commission found that the volume of domestic sales was 5% or greater and, therefore, was not a low volume. As a result, the Commission is satisfied that the normal value can be ascertained under section 269TAC(1).

As per the Manual, where the total volume of like goods is greater than 5% of the total volume of the goods under consideration, and where comparable models exist, the Commission also tests the suitability of domestic sales of like goods individually for each model. Sales volumes of the relevant models were observed to be in sufficient quantities.

### 4.6.4 Adjustments

The Commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The Commission considers these adjustments to be necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic packaging	Deduct an amount for domestic packaging
Domestic inland transport	Deduct an amount for domestic inland transport
Export packaging	Add an amount for export packaging
Export inland transport	Add an amount for export inland transport

**Table 7 Summary of Adjustments (Superb)**

### 4.6.5 Submissions

Capral made a submission prior to the Commission undertaking Superb's verification, providing comments on exporter questionnaire responses. That submission can be found on the Commission's electronic public record (EPR) for Investigation 540 (the relevant submission is labelled: EPR 017). The submission set out Capral's concerns regarding exchange rates, related party transactions and packing cost adjustments. The concerns raised in the submission were considered and addressed in the verification.

No further submissions were made regarding the Commission's findings in respect of Superb.

### 4.6.6 Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by Superb for the investigation period. The dumping margin is **0.2%**.

The Commission's calculations are included at **Confidential Attachments 1 to 5**.

## 5 PARTIAL TERMINATION OF THE INVESTIGATION

### 5.1 Termination

Section 269TDA sets out the circumstances in which the Commissioner must terminate an investigation in its entirety, or solely in respect of a specific exporter. Section 269TDA provides for rules of termination on the basis of volumes and scale of dumping by countries and exporters.

Section 269TDA(1)(b) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if satisfied that there has been no dumping by the exporter of any of those goods, or there has been dumping, but the dumping margin for the exporter's goods is less than 2%.

The Commission has found Superb's dumping margin as set out in Table 8.

Country	Exporter	Dumping margin (%)
Malaysia	Superb	0.2

Table 8 Dumping Margin

Based on the findings in this report, in accordance with section 269TDA(1)(b)(ii), the Commission recommends that the Commissioner terminate part of the investigation in relation to the exporter Superb, on the basis that the dumping margin for the goods exported to Australia from Malaysia was negligible (less than 2%).

**6 ATTACHMENTS**

<b>Confidential Attachment 1</b>	Superb Export Sales
<b>Confidential Attachment 2</b>	Superb CTMS
<b>Confidential Attachment 3</b>	Superb Domestic Sales
<b>Confidential Attachment 4</b>	Superb Normal Value
<b>Confidential Attachment 5</b>	Superb Dumping Margin