



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

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XVB*

# **STATEMENT OF ESSENTIAL FACTS**

## **NO. 544**

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

**EXPORTED FROM MALAYSIA AND  
THE SOCIALIST REPUBLIC OF VIETNAM**

**9 December 2020**

**SEF 544 - Aluminium Extrusions - Malaysia and Vietnam**

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## ABBREVIATIONS

\$	Australian dollars
AANZFTA	ASEAN-Australia-New Zealand Free Trade Area
ABF	Australian Border Force
ADN	Anti-Dumping Notice
AEP	Ascertained Export Price
Alumac	Alumac Industries Sdn Bhd
ANV	Ascertained Normal Value
Aus Star	Aus Star Holdings International Pty Ltd
Capral	Capral Limited
China	Peoples Republic of China
CTMS	Cost to make and sell
EAA	East Asia Aluminium Company Ltd
EPR	Electronic Public Record
EverPress	EverPress Aluminium Industries Sdn Bhd
FOB	Free On Board
GAAP	Generally accepted accounting principles
GoM	Government of Malaysia
ICD	Interim Countervailing Duty
IDD	Interim Dumping Duty
MCC	Model Control Code
MITI	Ministry of International Trade and Industry, Malaysia
NIP	Non-injurious Price
OCOT	Ordinary Course of Trade
PAD	Preliminary Affirmative Determination
PMAA	Press Metal Aluminium Australia
PMAH	Press Metal Aluminium Holdings Berhad
PMB	Press Metal Berhad
PMBA	PMB Aluminium Sdn Bhd
PMBK	PMB (Klang) Sdn Bhd
Premium	Premium Aluminium (M) Sdn Bhd
REP	Final Report
REQ	Response to Exporter Questionnaire
Review period	1 January 2019 to 31 December 2019
RGQ	Response to Government Questionnaire
RIQ	Response to Importer Questionnaire
SEF	Statement of Essential Facts
SG&A	Selling, General & Administration costs
the Act	<i>Customs Act 1901</i>

## PUBLIC RECORD

the applicant	Capral Limited
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the Customs Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Guidelines	<i>Guidelines on the Application of Forms of Dumping Duty November 2013</i>
the Manual	<i>Dumping and Subsidy Manual</i>
the Minister	Minister for Industry, Science and Technology
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
USP	Unsuppressed Selling Price
Vietnam	Socialist Republic of Vietnam

# 1 SUMMARY AND RECOMMENDATIONS

## 1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Minister for Industry, Science and Technology (the Minister) in relation to a review of the anti-dumping measures applying to aluminium extrusions (the goods) from Malaysia (in the form of a dumping duty notice and a countervailing duty notice) and from the Socialist Republic of Vietnam (Vietnam) (in the form of a dumping duty notice).

On 30 January 2020, the Minister requested the Commissioner carry out this review of measures about whether the variable factors relevant to the taking of the measures changed.<sup>1</sup> In this case, the relevant variable factors are the export price, normal value and non-injurious price (NIP) in relation to Malaysia and Vietnam and the amount of countervailable subsidies received in relation to Malaysia.

## 1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)<sup>2</sup> sets out among other things, the procedures to be followed by the Commissioner in dealing with a request from the Minister for a review of anti-dumping measures.<sup>3</sup>

Division 5 set out that upon receipt of a request from the Minister to undertake a review, he is required to publish a notice indicating it is proposed to review the measures.<sup>4</sup> The Commissioner must, within 110 days after the publication of the notice, or such longer period as allowed, place on the public record a statement of the essential facts (this SEF) on which the Commissioner proposes to base his recommendation to the Minister relating to the review of measures.<sup>5</sup>

## 1.3 Preliminary findings

The Commissioner is satisfied that all variable factors relevant to the taking of the anti-dumping measures changed for all exporters of the goods (that are currently subject to the measures) from Malaysia and Vietnam during the review period (1 January 2019 to 31 December 2019), such that:

- the ascertained export price (AEP) changed;
- the ascertained normal value (ANV) changed;
- the NIP changed; and

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<sup>1</sup> ADN No. 2020/014 refers.

<sup>2</sup> All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

<sup>3</sup> Refer specifically to section 269ZA(3) which provides the Minister may request the Commissioner initiate a review of anti-dumping measures under Division 5.

<sup>4</sup> Section 269ZC(5).

<sup>5</sup> Section 269ZD(1).

- the amount of countervailable subsidy received in respect of the goods exported to Australia from Malaysia has changed.

## **1.4 Proposed recommendation**

The Commissioner proposes to recommend to the Minister that:

- the dumping duty notice and countervailing duty notice have effect for all exporters from Malaysia as if different variable factors had been ascertained; and
- the dumping duty notice has effect for all exporters from Vietnam as if different variable factors had been ascertained.

## **1.5 Responding to this SEF**

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Minister. Interested parties may make submissions in response to the SEF. All submissions submitted to the Commission within 20 days of the date of publication of this SEF will be considered when preparing the final report.<sup>6</sup>

The final report will recommend whether the dumping duty notice should be varied, and the extent of any interim duties that are, or should be payable.

As a result of the date of publication of the SEF, the 20 day period set out in the initiation notice puts the due date for submissions at 28 December 2019. As this date coincides with the Australian public holidays for the Christmas and New Year period, the Commissioner considers it is necessary to specify a further period for interested parties to lodge a submission in response to the SEF.<sup>7</sup>

Interested parties are therefore invited to lodge written submissions in response to this SEF no later than the close of business on **5 January 2021**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.<sup>8</sup>

Submissions should preferably be emailed to [investigations3@adcommission.gov.au](mailto:investigations3@adcommission.gov.au). Alternatively, submissions may be posted to:

The Director – Investigations 3  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601  
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available on the Anti-Dumping Commission (Commission) website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

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<sup>6</sup> The due date for submissions is 28 December 2020.

<sup>7</sup> Section 269SMG.

<sup>8</sup> Section 269ZDA(4).

## PUBLIC RECORD

The electronic public record (EPR) contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports, and other publicly available documents. The EPR can be viewed online at [www.adcommission.gov.au](http://www.adcommission.gov.au). Documents on the EPR for this review (EPR 544) should be read in conjunction with this SEF.<sup>9</sup>

### 1.6 Final report

The Commissioner's final report and recommendations must be provided to the Minister by **23 February 2021** or within such longer period as may be allowed.<sup>10</sup>

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<sup>9</sup> EPR 544 refers.

<sup>10</sup> Section 269ZDA(1).

## 2 BACKGROUND

### 2.1 Initiation

On 24 February 2020, the Commissioner initiated a review of the anti-dumping measures applying to the goods exported to Australia from Malaysia and Vietnam. The anti-dumping measures are in the form of a dumping duty notice (Malaysia and Vietnam) and a countervailing duty notice (Malaysia only).

This review examines whether the variable factors (normal value, export price, amount of countervailable subsidy received, and NIP) relevant to the taking of the anti-dumping measures as they affect exporters of the goods from Malaysia and Vietnam generally have changed.

The review period is 1 January 2019 to 31 December 2019 and covers all exporters of the goods currently subject to the measures from Malaysia and Vietnam.

### 2.2 Previous cases

Anti-dumping measures currently apply to aluminium extrusions exported to Australia from the People's Republic of China (China)<sup>11</sup>, Malaysia<sup>12</sup><sup>13</sup><sup>14</sup>, and Vietnam. A history of the main cases relating to aluminium extrusions exported to Australia from Malaysia and Vietnam is summarised below in Table 1. Further information is also available on the EPR for these cases on the Commission's website.

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<sup>11</sup> The anti-dumping measures in respect of China (in the form of a dumping duty notice and a countervailing duty notice) apply to all exporters with the exception of Guangdong Jiangsheng Aluminium Co. Ltd. and Guangdong Zhongya Aluminium Co Ltd.

<sup>12</sup> In the form of a dumping duty notice and a countervailing duty notice for all exporters 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. These exporters were not subject to the notice due to a finding of no dumping or negligible dumping/countervailing.

<sup>13</sup> The countervailing duty notice against Alumac industries Sdn Bhd was revoked following Review No. 490 (ADN No. 2019/61) with effect from 24 August 2018.

<sup>14</sup> The countervailing duty notice against EverPress Aluminium Industries Sdn Bhd was revoked following Review No. 509 (ADN No. 2020/05) with effect from 26 April 2019.



## PUBLIC RECORD

Case type and report	ADN No.	Date	Country of export	Findings
<b>Investigation</b> REP 362	2017/072 (dumping) 2017/073 (countervailing)	27 June 2017	Malaysia and Vietnam	Dumping duty notice imposed on all exporters from Vietnam. Dumping and countervailing notices imposed on certain exporters from Malaysia.
<b>Review</b> REP 490	2019/060	31 May 2019	Malaysia	Countervailing duty notice revoked in relation to Alumac Industries Sdn Bhd.
<b>Review</b> REP 494	2019/061	31 May 2019	Malaysia	Variable factors changed in relation to Alumac Industries Sdn Bhd.
<b>Exemption Inquiry</b> REP EX0074	2019/136	17 December 2019	China, Malaysia and Vietnam	Exemption granted to certain aluminium channel extrusions.
<b>Exemption Inquiry</b> REP EX0075	2019/136	17 December 2019	China, Malaysia and Vietnam	Exemption granted to certain aluminium flat bar extrusions.
<b>Exemption Inquiry</b> REP EX0076	2019/136	17 December 2019	China, Malaysia and Vietnam	Exemption granted to certain aluminium angle line extrusions.
<b>Review</b> REP 509	2020/005	14 February 2020	Malaysia	Countervailing duty notice revoked in relation to EverPress Aluminium Industries Sdn Bhd. Variable factors changed in relation to EverPress Aluminium Industries Sdn Bhd.
<b>Accelerated Review</b> REP 534	2020/021	31 March 2020	Malaysia	Variable factors changed in respect of Premium Aluminium (M) Sdn Bhd.

**Table 1 History of anti-dumping measures in relation to Malaysia and Vietnam**

### 2.3 Current measures

The measures currently applying to exports of the goods from Malaysia and Vietnam are outlined in below;

## PUBLIC RECORD

Country	Exporter	Interim Dumping Duty (IDD) (%)	Duty method
Malaysia	Everpress Aluminium Industries Sdn Bhd	0	Floor price.
	Premium Aluminium (M) Sdn Bhd	0	
	Alumac Industries Sdn Bhd	0	
	Uncooperative and all other exporters	13.0	Combination of fixed and variable.
Vietnam	East Asia Aluminium Company Ltd	7.7	Combination of fixed and variable.
	Mien Hua Precision Mechanical Co., Ltd	11.6	
	Global Vietnam Aluminium Co., Ltd	18.0	
	Uncooperative and All Other Exporters	34.9	

**Table 2 Current rates of IDD**

Country	Exporter	Interim countervailing duty (ICD) (%)	Duty method
Malaysia	Premium Aluminium (M) Sdn Bhd	0	Proportion of export price.
	Non-cooperative entities	3.2	

**Table 3 Current rates of ICD**

## 2.4 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter or exporters generally.<sup>15</sup> Accordingly, the affected party may apply for, or the Minister may request the Commissioner conduct, a review of those measures if one or more of the variable factors has changed.<sup>16</sup>

The Minister may request a review at any time. However, a review application must not be lodged earlier than 12 months after publication of the dumping duty notice or countervailing duty notice or the notice(s), declaring the outcome of the last review of the dumping or countervailing duty notice.

If an application for a review of anti-dumping measures is received and not rejected, within 110 days of the initiation of a review, or such longer time as the Minister may allow, the Commissioner must place on the public record a SEF on which he proposes to base recommendations to the Minister concerning the review of the anti-dumping measures.<sup>17</sup>

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<sup>15</sup> Sections 269ZA(1)(a), (b).

<sup>16</sup> Section 269ZA(1)(b).

<sup>17</sup> Section 269ZD(1).

## PUBLIC RECORD

The Commissioner has up to 155 days, or such longer time as allowed, to conduct a review and report to the Minister on the review of the anti-dumping measures.<sup>18</sup>

During the course of a review, the Commissioner will examine whether the variable factors have changed. Variable factors in this review are a reference to:<sup>19</sup>

- the AEP;
- the ANV;
- amount of countervailable subsidy received; and
- the NIP.

In making recommendations in his final report to the Minister, the Commissioner must relevantly have regard to:<sup>20</sup>

- the application for review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- this SEF; and
- any submission made in response to this SEF that is received by the Commissioner within 20 days of it being placed on the public record.

The Commissioner may also have regard to any other matter considered to be relevant to the review.<sup>21</sup>

At the conclusion of the review, the Commissioner must provide a final report making a recommendation to the Minister that the dumping duty notice and/or countervailing duty notice:<sup>22</sup>

- remain unaltered; or
- has effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

Following the Minister's decision, the Minister must give notice of the decision.<sup>23</sup>

The Commissioner granted four extensions<sup>24</sup> of time for the completion of this SEF and the final report.<sup>25</sup> As a result, this SEF was due to be placed on the public record by no later than **9 December 2020**.

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<sup>18</sup> Section 269ZDA(1).

<sup>19</sup> Section 269T(4E).

<sup>20</sup> Section 269ZDA(3)(a).

<sup>21</sup> Section 269ZDA(3)(b).

<sup>22</sup> Section 269ZDA(1)(a).

<sup>23</sup> Section 269ZDB(1).

<sup>24</sup> EPR 544, Nos. 007, 011, 013 and 018.

<sup>25</sup> On 14 January 2017, the powers and functions of the Minister under section 269ZHI were delegated to the Commissioner. Refer to [ADN No. 2017/10](#) for further information.

### **2.4.1 Australian industry**

As part of Investigation 540 and 541, and Continuation Inquiry 543, the Commission undertook a verification visit to Capral Limited (Capral), the largest Australian industry member in respect like goods. That verification visit satisfied the Commissioner that there is an Australian industry for like goods. For the purpose of this review the Commissioner continues to be satisfied that there is an Australian industry producing like goods relevant to the notices the subject of this review.

The report made in relation to the verification visit to Capral is available on the EPR.<sup>26</sup>

### **2.4.2 Importers**

The Commission identified several importers in the ABF import database that imported the goods from Malaysia and Vietnam during the review period. The Commission forwarded importer questionnaires to 9 importers and placed a copy of the importer questionnaire on the Commission's website for completion by other importers who were not contacted directly.

The Commission received one questionnaire responses from Aus Star Holdings International Pty Ltd (Aus Star), an importer of the goods from Vietnam. Following a request from the Commission Aus Star agreed to participate in a verification of its response to importer questionnaire (RIQ).

The reports made in relation to the verification of Aus Star's RIQ is available on the EPR.<sup>27</sup>

The Commission received a submission<sup>28</sup> from Capral in response to the Aus Star verification report, refer to discussion at section 4.4.2.

### **2.4.3 Exporters**

Due to the manageable number of exporters identified in relation to the goods exported to Australia from Malaysia and Vietnam attempts were made to contact all exporters using the available contact information already on the Commission's files, information provided by importers and publically available information.

The Commission forwarded exporter questionnaires to 9 exporters and placed a copy of the exporter questionnaire on the Commission's website for completion by exporters who were not contacted directly or could not be contacted using the available details.

The following exporters subsequently replied to the Commission with a response to exporter questionnaire (REQ);

- Alumac Industries Sdn Bhd (Alumac);
- EverPress Aluminium Industries Sdn Bhd (EverPress);

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<sup>26</sup> EPR 540, EPR 541.

<sup>27</sup> EPR 544, No. 015.

<sup>28</sup> EPR 544, No. 016.

## PUBLIC RECORD

- Premium Aluminium (M) Sdn Bhd (Premium); and
- East Asia Aluminium Company Ltd (EAA).

With the exception of EverPress, the above exporters' REQs were considered acceptable and capable of verification. Further discussion regarding the treatment of EverPress' REQ is outlined at section 4.2.4.

### 2.4.4 The Government of Malaysia

On 26 January 2020 the Commission wrote to the Government of Malaysia's (GoM) Ministry of International Trade and Industry (MITI) to:

- advise it of the commencement of the review; and
- seek its views regarding information relevant to the countervailing measures applicable to exporters from Malaysia; and
- comment on a proposal to utilise its 13 June 2019 questionnaire response to *Review of Measures No. 509* (Review 509) for this review. That was because the period examined in Review 509 overlapped with the review period. The information in its 13 June 2019 questionnaire response was considered likely relevant by the Commission.

The MITI responded to the Commission on 30 March 2020 and accepted the Commission's proposal to utilise its response to Review 509 for the purpose of this review.

The non-confidential version of the GoM's response to government questionnaire (RGQ) for Review 509 is provided at **Non-Confidential Attachment 1** to this report.

## 2.5 Submissions received from interested parties

The Commission received 6 submissions from interested parties prior to the publication of this SEF. These submissions have been considered by the Commissioner in reaching the conclusions contained within this SEF.

Public Record Item No.	Interested Party	Date Received
02	Capral Limited	01/02/2020
08	Capral Limited	22/06/2020
09	Capral Limited	22/06/2020
14	Capral Limited	19/10/2020
16	Capral Limited	26/10/2020
19	Capral Limited	23/11/2020

Table 4: Submissions considered in this SEF

## 2.6 Public record

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available online via the EPR at [www.industry.gov.au](http://www.industry.gov.au).

## **PUBLIC RECORD**

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

### 3 THE GOODS AND LIKE GOODS

#### 3.1 The goods

The goods the subject to measures (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), mechanical, anodized or painted or otherwise coated, 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 include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. For example, 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 subject to the anti-dumping measures do not include 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.

#### 3.2 Tariff classification

Import 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 (Schedule 3 of the Customs Tariff Act 1995)			
Tariff code	Statistical code	Unit	Description
7604.10.00	06	Kg	Non alloyed aluminium bars, rods and profiles
7604.21.00	07	Kg	Aluminium alloy hollow angles and other shapes
7604.21.00	08	Kg	Aluminium alloy hollow profiles
7604.29.00	09	Kg	Aluminium alloy non hollow angles and other shapes
7604.29.00	10	Kg	Aluminium alloy non hollow profiles
7608.10.00	09	Kg	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 5 Tariff classification of the goods**

### 3.3 Model Control Code (MCC)

As detailed in the initiation notice<sup>29</sup>, the Commission proposed the model control code (MCC) structure below.<sup>30</sup>

Category	Sub-category		Sales data	Cost data
Finish	A	Anodise	Mandatory	Mandatory
	BD	Bright dip		
	M	Mill		
	PC	Powder coating		
	MC	Mechanical		
Alloy code	6A	6060, 6063	Mandatory	Optional
	6B	6106		
	6C	6101, 1350, 6082, 6351, 6061		
	6D	6005A		
	O	Other*		
Temper code	T1	T1, T4, T5, T6	Optional	Optional
	T50	T591, T595, T52		
	O	Other*		
Anodising microns	0	Not anodised	Optional	Optional
	1	<20µm		
	2	>20µm		

**Table 6 Proposed MCC Structure**

\* Specify alloy code and temper code

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.
Anodising microns	Anodising microns of the extrusion.

<sup>29</sup> EPR 544, No. 01.

<sup>30</sup> Further information regarding the application of MCC structures is provided at Chapter 14 in the Anti-Dumping Commission Dumping and Subsidy Manual.



**Table 7 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.

### **3.4 Like goods**

The Commission had regard to:

(a) its examination of the Australian industry and the goods in previous cases;<sup>31</sup> and

(b) verification of exporters in Malaysia and Vietnam in the current review;<sup>32</sup> ; and

is satisfied the locally produced goods closely resemble the goods the subject of the review and are like goods given that:

- the primary physical characteristics of the locally produced goods closely resemble the imported goods;
- the imported and locally produced goods are commercially alike as they are sold to the same customers and/or compete in the same markets;
- the imported and locally produced goods are functionally alike as they have the
- same end uses and/or are substitutable; and
- the imported and locally produced goods are manufactured in a similar manner.

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<sup>31</sup> REP 362 and SEF 540 and 541.

<sup>32</sup> EPR 544, No's. 010, 012, and 017.

## 4 EXPORT PRICE AND NORMAL VALUE

### 4.1 Preliminary findings

The Commission found the export price and normal value relevant to the taking of anti-dumping measures changed.

The Commission calculated the dumping margins set out in the following table.

Exporter	Dumping margin (%)
EAA	1.9
Alumac	negative 1.0
Premium	0
PMB Aluminium Sdn Bhd (PMBA)	8.6
EverPress	10.7
All other exporters (Malaysia)	10.7
All other exporters (Vietnam)	1.9

**Table 8 Dumping margins during review period**

### 4.2 Legislative and policy framework

The export price and normal value of goods are determined under sections 269TAB and 269TAC, respectively.

#### 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.

#### 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 that are 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).<sup>33</sup> As per the Dumping and Subsidy 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 Cooperative exporters**

Section 269T(1) provides that, in relation to a review of measures, an exporter is a 'cooperative exporter' where the exporter's exports were examined as part of the review and the exporter was not an uncooperative exporter. The Commission received fully completed REQs from the following exporters:

- EAA;
- Alumac; and
- Premium.

In response to the REQs received, Capral made submissions<sup>34</sup>. These submissions were considered by the Commission during verification and in the course of examining the variable factors.

#### **4.2.4 Uncooperative exporters**

Section 269T(1) provides that an exporter is an "uncooperative exporter" where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the review within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the review.

The *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Customs Direction) states at section 8 that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response or fails to request a longer period to do so within the legislated period.

The Commissioner considered the Customs Direction and determined that all exporters which did not:

- provide a REQ to the Commission; or
- request a longer period to provide a response within the legislated period; or
- address requests for further information where REQ's were given to the Commission<sup>35</sup>

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<sup>33</sup> Section 269TAC(14).

<sup>34</sup> EPR 544, Nos. 02, 08 and 09.

<sup>35</sup> Requests for further information are contained in deficiency letters.

are uncooperative exporters for the purposes of this review.

One exporter, EverPress, submitted an REQ to the Commission. After conducting a deficiency check of EverPress' REQ, the Commission sent a deficiency letter to EverPress requesting for the deficiencies to be rectified. EverPress did not address the deficiencies in its REQ by the due date outlined in the deficiency letter. As a result, the Commissioner was satisfied that EverPress was an uncooperative exporter.

### **4.3 Exporter questionnaires and verification**

The Commissioner temporarily suspended onsite exporter verification activities from 20 March 2020. As a result, the verification of all cooperating exporters was undertaken remotely.<sup>36</sup>

## **4.4 EAA**

### **4.4.1 Verification**

The Commission is satisfied that EAA is the producer of the goods and like goods. The Commission is satisfied that the information provided by EAA 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>37</sup>

### **4.4.2 Consideration of submissions received in relation to EAA**

In response to the EAA verification report Capral raised the following issues in a submission<sup>38</sup>:

- concerns surrounding the completeness and accuracy of sales revenue and cost data;
- concerns surrounding the validation of specific adjustments made by the Commission;
- Capral's view that upward adjustments should be made to the normal value to factor in the use of a trader; and
- Capral's support of the Commission's position on not to adjusting for die moulds.

#### Completeness and accuracy of data

Capral referred to section 1.3 of EAA's verification report, where the verification team stated that:

- a proportion of costs and revenue in relation to EAA's export sales to Australia are attributed to a related party and are not recorded in EAA's audited financial statements;

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<sup>36</sup> Refer to ADN No. 2020/029.

<sup>37</sup> EPR 544, No. 010.

<sup>38</sup> EPR 544, No. 014.

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- the related party did not prepare its own audited financial statements, or other management reports, relating to the review period; and
- the verification team were unable to determine whether the costs incurred by the related party were held in accordance with generally accepted accounting principles in the country of export.

The Commission notes that EAA's related party was incorporated outside of Vietnam. The related party is not required to prepare audited financial statements in Vietnam or elsewhere. On this basis, the verification team could not rely on audited financial statements (or any other statement by an auditor) that the costs and revenues attributable to the related party were in accordance with generally accepted accounting principles. Despite this, the verification team were able to verify the costs and revenues attributed to EAA's related party, to other sources as outlined in the verification report<sup>39</sup> at sections 3.1 and 5.1. In doing so, the following is noted:

- EAA's related party is essentially a shell company, set up for reasons unrelated to anti-dumping;
- EAA and its related party, despite being separate legal entities, are essentially the same company, being that the related party does not have separate employees or offices to EAA;
- EAA staff prepare internal management accounts in relation to the revenues and costs attributed to EAA's related party. That information is recorded in management accounts by EAA consistently with costs and revenues that EAA reported in its own audited financial statements. For example, the costs and revenues of EAA's related party which were in relation to export sales only, were consistent with EAA's reported costs and revenues in relation to EAA's domestic sales (where the related party was not involved in the transactions). Although the costs and revenue of the related party do not get consolidated in EAA's audited financial statements they are nonetheless accounted for by EAA.

Having verified that the costs and revenues reported by EAA (on behalf of itself and its related party) are relevant, accurate and complete, the Commission is able to rely on this information. The Commission does not consider there to be any additional selling, general and administration (SG&A) or profit in relation to the export sales, not already captured and reported by EAA to the Commission. For this reason, there is no need for an adjustment to normal values as queried in Capral's submission.

### Specification adjustment

Capral's submission highlights that EAA exported M-B and PC-B MCCs to Australia, but that there was an absence of such domestic sales by EAA. The verification team calculated the normal values for those two models under section 269TAC(1) using selling prices of M-A and PC-A with a specification adjustment. Capral's submission stated that it is not clear from the EAA verification report the basis upon which the specification adjustment was made. The Commission confirms that the specification adjustment was based on an internal price list maintained by EAA in relation to the review period. The price list contained "price extras" in relation to the different MCC category of alloy. The

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<sup>39</sup> EPR 544, No. 010

price extras were used as the basis of the adjustment. The adjustment was not based on costs as assumed in Capral's submission.

Capral subsequently made a submission<sup>40</sup> to the investigation in response to Aus Star's importer verification report and raised the following issues:

- concerns surrounding the reliability of information provided based on Aus Star's reluctance to provide certain information;
- concerns surrounding the completeness of sales data provided by Aus Star;
- concerns surrounding the reliability of SG&A costs; and
- Capral's view that the Commission's conclusion on the arms length nature of Aus Star's purchases from EAA is incorrect.

In relation to Capral's submission on Aus Star's verification report the Commission outlines the following:

Reliability and completeness of information

Capral's submission refers to the verification report in which the Commission noted it was unable to be satisfied that the sales listing provided at Part C of Aus Star's RIQ represents a complete and relevant listing of its sales of the goods imported from Vietnam.

The Commission assessed the available information regarding Aus Star's Australian sales data and determined that it was sufficient to undertake assessments of profitability, arms length and export price, within the context of the limitations outlined in the verification report.<sup>41</sup>

Reliability of SG&A costs

Capral's submission challenges whether the claimed SG&A costs can be considered reliable. As part of the verification process, the Commission verified Aus Star's allocation methodology and considered that the approach was acceptable, the verification team was satisfied that the SG&A calculation is relevant and accurate.

Arms-length

The Commission undertook assessment of Aus Star's recoverability of losses and overall profitability in assessing the arms length nature of sales. Verification undertaken by the Commission found no evidence that there was any consideration payable for, or in respect of the goods other than its price or that 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.

In addition to this assessment, the Commission also undertook verification of Aus Star's supplier, EAA, and found that there is no evidence that EAA directly or indirectly reimbursed, compensated or otherwise conferred a benefit to Aus Star for the sale of

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<sup>40</sup> EPR 544, No. 016.

<sup>41</sup> EPR 544, No. 015.

goods.<sup>42</sup> The Commission therefore considers that the sales between EAA and Aus Star are likely arms length transactions.

#### **4.4.3 Export price**

In respect of Australian sales of the goods by EAA, the verification team found that the importer has not purchased the goods from the exporter, therefore the export price cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b).

The verification team recommends that the export price be calculated under section 269TAB(1)(c) having regard to all the circumstances of the exportation. Specifically, the verification team recommends that the appropriate method of calculating the Free on Board (FOB) export price as the price paid by the importer to EAA's related party, less transport and other costs arising after exportation.

#### **4.4.4 Normal value**

As detailed in EAA's verification report, the Commission was satisfied that there were sufficient domestic sales of like goods sold in OCOT during the review period such that normal values can be ascertained under section 269TAC(1).

As discussed above, for two MCCs exported to Australia, the Commission is not satisfied that there were sufficient domestic sales of like goods sold in OCOT on the basis that there was an absence, or low volume, of sales in the country of export of the identical MCC. For these MCCs, the Commission is satisfied that there were sufficient domestic sales volumes of surrogate models based on the MCCs with the closest physical characteristics under the MCC hierarchy structure. Accordingly, the normal value for these MCCs could be determined under section 269TAC(1) with an appropriate specification adjustment applied.

One MCC was found to only have sales in a single quarter of the review period. For this model, the Commission considers that it is not appropriate to apply a timing adjustment across the remaining three quarters, and has instead used a surrogate model matching the closest physical characteristics under the MCC hierarchy structure. The Commission has determined the normal value for this model under section 269TAC(1), with an appropriate specification adjustment applied.

#### **4.4.5 Adjustments**

In calculating normal values under section 269TAC(1), the Commission considers that certain adjustments in accordance with section 269TAC(8) are necessary to ensure fair comparison of normal value with export prices, as summarised in Table 9.

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic credit terms	<b>Deduct</b> an amount for domestic credit
Domestic inland transport	<b>Deduct</b> an amount for domestic inland transport
Specification adjustment	<b>Add</b> an amount for specification (alloy extra) for certain models
Export trolley costs	<b>Add</b> an amount for export trolley costs

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<sup>42</sup> EPR 544, No. 010.



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Adjustment Type	Deduction/addition
Export inland transport, port handling, loading and ancillary expenses	<b>Add</b> an amount for export inland transport, port handling, loading and ancillary expenses
Export credit terms	<b>Add</b> an amount for export credit terms

**Table 9 EAA summary of adjustments**

### 4.4.6 Dumping margin

The dumping margin in respect of the goods exported to Australia by EAA for the review period is **1.9%**.

The Commissions calculations are included at **Confidential Attachments 1 to 5**.

## 4.5 Alumac

### 4.5.1 Verification

The Commission is satisfied that Alumac is the producer of the goods and like goods. The Commission is satisfied that the information provided by Alumac 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>43</sup>

### 4.5.2 Consideration of submissions received in relation to Alumac

In response to the Alumac verification report Capral raised the following issues in a submission<sup>44</sup>:

- Capral contends that the Commission should require full details of any payments made (or credits provided) to all parties (including related parties) in order to further validate the arms length nature of transactions with related parties; and
- it is unclear from the verification report how ‘outsourced’ and ‘anodising service’ costs have been accounted for.

In relation to Capral’s submission on Alumac’s verification report the Commission outlines the following:

- an upwards sales reconciliation of Alumac’s sales did not identify the presence of transactions which offset the amount payable by Alumac’s related party customers, this informed the arms lengths finding that there was no evidence to support that Alumac’s related party customer’s received a reimbursement, compensation or otherwise in relation to their purchases;
- production costs arising from the procurement of external service providers were reported against the relevant sales transactions in

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<sup>43</sup> EPR 544, No. 017.

<sup>44</sup> EPR 544, No. 019.



Alumac's sales listing, rather than in its cost to make and sell (CTMS), the exception resolution outlined at Item 5 in Table 4 of the Alumac verification report refers

- the Commission only identified issues relevant to an incorrect allocation of direct labour arising from the provision of anodising services, the exception resolution outlined at Item 1 in Table 7 of the Alumac verification report refers.

#### **4.5.3 Export price**

The Commission is satisfied that the goods were exported to Australia otherwise than by the importer and were purchased in an arms length transaction by the importer from the exporter.

Therefore the export price for Alumac was calculated under section 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

#### **4.5.4 Normal value**

As detailed in Alumac's verification report, the Commission was satisfied that there were sufficient domestic sales of like goods sold in OCOT during the review period such that normal values can be ascertained under section 269TAC(1).

#### **4.5.5 Adjustments**

The following adjustments have been made under section 269TAC(8) to ensure that the normal value so ascertained is properly compared with the export price of those goods.

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic credit terms	Deduct an amount for domestic credit
Domestic commission	Deduct an amount for domestic commission costs
Domestic packaging	Deduct an amount for domestic packaging costs
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
Export port charges	Add an amount for port charges
Export fumigation costs	Add an amount for fumigation costs
Export bank charges	Add an amount for bank charges
Export credit terms	Add an amount for export credit terms
Specification adjustment (extrusions with additional working for machining/precision cutting)	Deduct an amount for the machining/precision cutting costs for domestic sales; and Add an amount for machining/precision cutting costs for export sales.

**Table 10 Alumac summary of adjustments**

#### **4.5.6 Dumping margin**

The dumping margin in respect of the goods exported to Australia by Alumac for the review period is **negative 1.0%**.

The Commissions calculations are included at **Confidential Attachments 6 to 10**.

## **4.6 Premium**

### **4.6.1 Verification**

The Commission is satisfied that Premium is the producer of the goods and like goods. The Commission is satisfied that the information provided by Premium 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>45</sup>

### **4.6.2 Export price**

In respect of Australian sales of the goods by Premium, the verification team found that Premium is yet to export the goods to Australia.

Therefore, the Commission determined an export price under section 269TAB(3) having regard to all relevant information, on the basis that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections.

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 review, as it is:

- contemporary to the review period;
- specific to Premium Aluminium;
- representative of an un-dumped export price;
- likely to resemble models that may be exported to Australia by Premium Aluminium in the future; and
- the period examined in this review represents a six month extension to the review examined in REP 534 in relation to Premium's application for an accelerated review.

Taking the above considerations into account the Commission considers it appropriate to determine the AEP to be the same amount as that determined to be the ANV. In ascertaining the export price the Commission has accounted for inland transport and export related costs relevant to FOB terms.

### **4.6.3 Normal value**

As detailed in Premium's verification report, the Commission was satisfied that there were domestic sales of like goods sold in OCOT during the review period such that normal

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<sup>45</sup> EPR 544, No. 012

values can be ascertained under section 269TAC(1). On the basis that Premium did not export the goods, the finding of whether the volume of sales ascertained under section 269TAC(1) is sufficient is not considered necessary.

#### 4.6.4 Adjustments

In calculating normal values under section 269TAC(1), the Commission considers that certain adjustments in accordance with section 269TAC(8) are necessary to ensure fair comparison of normal value with export prices, as summarised in Table 11.

Adjustment Type	Deduction/addition
Domestic packaging	Deduct an amount for domestic packaging
Domestic inland transport	Deduct an amount for domestic inland transport
Domestic commissions	Deduct an amount for domestic commissions
Export packaging	Add an amount for export packaging
Export inland transport and handling	Add an amount for export inland transport and handling costs
Export commissions	Add an amount for export commissions
Export bank charges	Add an amount for export bank charges
Export stillage return costs	Add an amount for export stillage return costs

**Table 11 – Premium summary of adjustments**

#### 4.6.5 Dumping margin

As a result of the finding that Premium's export price is determined under section 269TAB(3) will be equal to normal value, Premium's effective dumping margin is **zero**.

The Commissions calculations are included at **Confidential Attachments 11 to 13**.

### 4.7 PMBA

#### 4.7.1 Assessment of PMBA's status as the exporter

PMBA's related party, Press Metal Berhad (PMB) was examined as part of Investigations 540 and 541. During the verification of PMB's REQ supplied for the purpose of both investigations it was ascertained by the Commission that PMB's status as a producer of aluminium extrusions exported to Australia had changed as a result of a 22 November 2019 asset sale to related entity PMB (Klang) Sdn. Bhd. (PMBK), since renamed to PMBA.<sup>46</sup>

Upon commencing verification in the investigations it also emerged that the sales and cost data presented in PMB's REQ was an aggregation of the data (particularly the December 31 2019 quarter) relevant to two separate legal entities. That is, PMB and PMBA.

PMB had filed an REQ in relation to itself and a different, albeit related entity. Notwithstanding, it did nonetheless provide data that was capable of verification and

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<sup>46</sup> PMB provided information confirming that on 25 August 2020 PMBK was renamed to PMB Aluminium Sdn Bhd.

suitable for the task of assessing the variable factors relevant to PMB's exports to Australia or, if required, exports of goods to Australia produced and sold by PMBA.

However, as a result of the above change in circumstances relating to PMB's status as a producer of the goods exported to Australia in the period commencing 22 November 2019, the Commission considers two key issues relevant to this review need to be addressed;

1. whether PMB should be identified as the exporter of the goods that were produced by PMBA; or alternatively,
2. whether PMBA should be identified as the exporter of the goods.

The Commission considers that PMB was the exporter of the goods prior to the sale of its extrusions business to PMBA on 22 November 2019.

As will be demonstrated below, the goods exported to Australia were produced by PMBA who then sold those goods to PMB prior to their exportation to Australia. PMB then re-sold the goods the Australian customer.

The question before the Commission is, therefore, whether:

- PMB is an exporter for the purposes of section 269TAB(1)(a); or
- PMBA is the exporter for the purposes of section 269TAB(1)(c).

The Commission acknowledges that PMB has represented that it was the exporter of the goods for the purpose of any anti-dumping measures. This is clear from PMB's submission, dated 16 October 2020, where PMB argues it is and continues to be the exporter of the goods to Australia.<sup>47</sup>

In order to determine whether PMB is truly the exporter of the goods (from 22 November 2019), the Commission has examined;

- the circumstances relevant to the change in PMB's status as a producer of the goods;
- the selling arrangements between PMBA and PMB;
- the question of who was the principal in the transaction for the goods exported to Australia; and,
- the respective roles and functions of PMB and PMBA in relation to the export of the goods to Australia.

#### PMB's status as a producer

PMB's ultimate owner is Malaysian listed company Press Metal Aluminium Holdings Berhad (PMAH). Having regard for PMAH's 2019 Annual Report, outlined in the Directors' Report at part [v] to the section detailing Significant and Subsequent Events<sup>48</sup>, the following information relevant to PMB's status as a producer is summarised as follows:

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<sup>47</sup> EPR 540, No. 027

<sup>48</sup> PMAH 2019 Annual Report, p.112.

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- In August 2019, PMAH incorporated a new wholly-owned subsidiary, PMBK;
- PMBK is principally engaged in the manufacturing and trading of aluminium products;
- the extrusion business of PMB (inclusive of all manufacturing assets) was sold to PMBK in November 2019 (effective 22 November 2019);
- PMB continues to undertake certain functions within the PMAH group, however, it ceased being a manufacturer of goods of any kind from 22 November 2019 onwards;
- PMB and PMBA are both, ultimately, owned by PMAH and are therefore related; and
- the same individuals hold the director positions in PMB and PMBA.

The points set out above were also reflected in the entity-level audited financial statements for both PMB and PMBA (financial year ending 31 December 2019) obtained by the Commission and the Asset Sale and Purchase Agreement between PMB and PMBK (as it was then known).

During the verification of PMB's REQ, it was established that the extrusion and billet casting manufacturing operations previously owned and operated by PMB continued to be operated by PMBA, at the same location after the sale of those assets to PMBA. There was no cessation in production activities or any interval in its operations.

In light of the above, the Commission is satisfied that PMB's role as a producer ceased on 22 November 2019 and PMBA, thereafter, became the producer.

### Selling arrangements between PMBA and PMB

Having regard for the sales and cost information supplied by PMB in its REQ and during verification, the following describes the selling arrangements between PMBA and PMB from 22 November 2019;

- PMBA produced and sold the goods which were exported to Australia and the like goods sold on the Malaysian domestic market;
- the goods produced by PMBA for the Australian market were sold to PMB prior to those goods being exported from Malaysia and re-sold by PMB to Australian related customer PMAA;
- like goods produced by PMBA for related party domestic customers in Malaysia were initially sold to PMB and then re-sold by PMB to related party customers;
- like goods produced by PMBA for un-related party domestic customers in Malaysia were sold by PMBA directly to those customers;
- the available accounting records for PMB and PMBA were sufficient to permit the Commission to trace the sale of goods by PMBA and through PMB to the final customer, either in Australia, i.e. PMAA, or Malaysia.

Having regard for the information set out above, the Commission was satisfied that:

- PMBA was the producer and seller of the goods and like goods;
- PMB did not produce the goods and like goods;
- for the goods produced and sold by PMBA for the Australian market, PMB was an intermediary party in the transaction.

Identity of the principal in the transaction for the goods exported to Australia

The Manual states that the Commission will generally identify the exporter as;

1. a principal in the transaction located in the country of export from where the goods were shipped and who knowingly placed the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
2. a principal will be a person in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped.<sup>49</sup>

The Manual further states that

*“Typically the manufacturer, as a principal, and who knowingly sent the goods for export to any destination, will be the exporter. The export price will be the price received by that producer/exporter i.e. the manufacturer”<sup>50</sup>*

The Commission analyses the commercial arrangements of the relevant entities from the manufacture of the goods through to their exportation, to identify the principle in the transaction with the most influence/interest in the exportation of the goods. The manufacturer is typically the exporter, as they will typically have the greatest influence/interest in the goods being exported. To be identified as the exporter, an entity must be more than just an agent or facilitator for the movement of the goods into Australia.

In order to identify the principal in the transactions, the Commission has had regard to the following information about the sales of the goods produced by PMBA and exported to Australia from 22 November 2019:

- there was no mark-up on the price that PMB paid to PMBA for the goods prior to their sale and export to the Australian related customer, PMAA;
- the dates on PMBA’s and PMB’s invoices in relation to the sale of the same goods were identical and the invoice date reflected the date of departure from the port of export in Malaysia;
- PMB made payment for the goods it re-sold to the Australian customer into PMBA’s bank account;
- PMB confirmed that PMB staff play no role in the sale of the goods to Australia;
- PMBA staff undertook accounting functions on behalf of PMB;
- for the goods exported to Australia, PMBA’s invoices for the sale of the goods to PMB contained information, such as the Australian customer’s delivery address and purchase order references, thereby demonstrating that PMBA produced goods in the knowledge that they were being exported to Australia;
- Malaysian logistic vendor invoices cite PMBA as the customer, indicating that PMBA arranges the exportation of the goods to Australia;
- accounting entries confirmed the flow of goods out of PMBA’s accounts and through PMB’s accounts, before being re-sold by PMB to PMAA. However

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<sup>49</sup> The Manual, p. 29.

<sup>50</sup> The Manual, p. 30

these transactions were limited to various sales-related accounting entries, e.g. accounts payable and receivable. PMB advised the Commission that it does not enter those goods into inventory;

- PMB was named as the consigner/exporter on various logistics documentation, certificate of origin and ABF import declarations;
- PMB indicated that the arrangement with PMBA was transitional and would cease to continue once PMBA was in a position to issue a certificate of origin under its own name;<sup>51</sup>
- the Commission did not identify any specific contractual arrangement where PMBA was required to sell goods through PMB. However, PMB did refer the Commission to the PMAH 2020 Annual Report which contains clauses to promote related parties in the PMAH group to trade in a manner with the objective of reducing administrative burden without compromising the groups objectives<sup>52</sup>; and,
- Goods produced by PMBA for the Australian market are not held in inventory by PMB prior to their exportation.

The Commission is satisfied that;

- PMB was the manufacturer of the goods, and as a principal, knowingly sent the goods for export to Australia prior to 22 November 2019; and,
- PMBA was the manufacturer of the goods and as a principal, knowingly sent the goods for export to Australia from 22 November 2019.

#### Role and functions of PMB and PMBA in the export of the goods to Australia

The following section sets out the respective roles and functions of PMB and PMBA in respect of the export of the goods to Australia from 22 November 2019. The purpose being to consider if PMB merely acted as an intermediary to those export transactions, and therefore should be identified as such.

Having regard for the available information about the arrangement between PMB and PMBA in respect of the export of the goods to Australia from 22 November 2019, the Commission established the following:

- PMBA arranges and pays for the inland transport to the port of export;
- PMBA arranges and pays for the port handling charges at the port of export;
- PMBA arranges and pays for the ocean freight and marine insurance;
- the goods were not warehoused by PMB or held in inventory by PMB after being purchased from PMBA ;
- PMBA maintains inventory of the goods;
- PMBA was aware that the goods were being exported to Australia due to the presence of the Australian importer's (PMAA) delivery address, or

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<sup>51</sup> Under the AANZFTA Free Trade Agreement, imports into Australia that are accompanied with the relevant certificate of origin receive an exemption of Australian general import duty.

<sup>52</sup> Explanatory Note (vi) to Resolution 8, PMAH 2020 Annual Report.



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PMAA's customer, and purchase order references on PMBA's commercial invoices for the sale of the goods to PMB;

- PMB produces a certificate of origin which facilitates the exemption of Australian import duty pursuant to the AANZFTA Free Trade Agreement;
- although PMB owned the goods at the time of their exportation (having purchased them from PMBA), it is not considered to be the principal agent in the transaction for reasons to follow.

The available information about PMB's role in the sales of the goods to Australia indicates that PMB's function could at best be defined as 'records based' or 'on paper'. As confirmed by PMB during verification, documents issued in PMB's name were generated by staff at PMBA and PMB staff are not involved in the administration of the sale and manufacture of the goods exported to Australia under its name.

When identifying the exporter of the goods, the Commission examines the roles of the parties in the transactions, their functions and their responsibilities. While PMB was the owner of the goods at the time of their exportation, the Manual notes that

*"the exporter must have been the owner of the goods at one time but...ownership at the time the goods left for Australia is not treated as conclusive when identifying the exporter."*<sup>53</sup>

The Manual also contemplates the role of intermediaries who undertake a range of services or functions and how these activities are taken into consideration when establishing the identity of the exporter of the goods.<sup>54</sup> On balance, the Commission considers that PMB's ownership of the goods from 22 November 2019 and prior to their exportation does not override its limited role in the ongoing export of the goods, or the finding that PMBA was the manufacturer of the goods and as a principal, knowingly sent the goods for export to any destination.

The Manual outlines the rare circumstances in which it would be appropriate to identify the intermediary as the exporter. Typically this would only occur where the producer has no knowledge that the goods are destined for export and the essential role of intermediary is that of a distributor that holds its own inventory for all export sales.<sup>55</sup> The Commission considers that the rare circumstances outlined in the Manual do not apply in the current case.

As a result of the above findings, the Commission is satisfied that, from 22 November 2019, PMBA produced and sold the goods which were exported to Australia (and PMB facilitated those transactions as an intermediary).

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<sup>53</sup> The Manual, p. 29.

<sup>54</sup> Ibid.

<sup>55</sup> The Manual, p. 30.



#### **4.7.2 PMBA's status as a new exporter**

Following the finding that PMBA was the exporter of the goods, the Commission also considers that PMBA satisfies the definition of a new exporter pursuant to section 269T of the Act. As a result, exports by PMBA are subject to the notices the subject of this review.

However, as PMBA has not filed an REQ in its own right, PMBA is considered an uncooperative exporter pursuant to Section 269T(1) of the Act.

#### **4.7.3 Export prices**

Pursuant to section 269TACAB(1), the Commission has determined an export price pursuant to section 269TAB(3), having regard to all relevant information.

Specifically, the Commission considers that the information relevant to exports by PMBA is the information supplied by PMB in its REQ for Investigations 540 and 541 on the basis that the cost and sales data provided by PMB for the investigation period relevant to Investigations 540 and 541 contains data that was reflected in the accounts of PMBA.

The data provided by PMB was of sufficient detail to identify Australian sales transactions and various other selling costs that arose from the time PMBA became the producer of the goods it exported to Australia via PMB. Using this information the Commission has been able to calculate PMBA's export price by relying on the price received by PMBA, as evidenced on its commercial invoices, less charges arising after exportation, i.e. ocean freight, marine insurance and stillage return costs.

#### **4.7.4 Normal values**

Pursuant to section 269TACAB(1), the Commission determined the normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information.

Specifically, the Commission considers that the information relevant to exports by PMBA is the information supplied by PMB in its REQ for Investigations 540 and 541 on the basis that the cost and sales data provided by PMB for the investigation period relevant to Investigations 540 and 541 contains data that was reflected in the accounts of PMBA.

The data provided by PMB was of sufficient detail to identify domestic sales transactions that occurred from the time PMBA became the producer of the like goods it sold on the domestic market in Malaysia. Using this information the Commission has been able to calculate PMBA's domestic selling price by relying on the price received by PMBA, as evidenced on its commercial invoices for sales.

The resulting normal value for PMBA is based on an approach that is equivalent to the methodology required to determine normal value under section 269TAC(1) and adjusted under section 269TAC(8) to ensure fair comparison of normal value with export prices.

The adjustments to PMBA's normal value, based on relevant information sourced from PMB are outlined below.

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic credit terms	Deduct an amount for domestic credit.
Domestic inland transport	Deduct an amount for domestic inland transport.

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Adjustment Type	Deduction/addition
Domestic level of trade	Add/deduct amounts relevant to differences in price brought about by sales at a non-comparable level of trade.
Domestic packaging	Deduct an amount for domestic packaging.
Export packaging	Add an amount for export packaging.
Export inland transport to port of export	Add an amount for export inland transport.
Export port handling, loading and ancillary expenses	Add an amount for port charges.
Export credit terms	Add an amount for export credit terms.
Specification	Add/deduct amounts arising from differences in specification due to the application of the surrogate normal values.
Timing	For certain MCCs exported to Australia there was an absence of domestic sales in the corresponding quarter.

**Table 12 Summary of Adjustments (PMBA)**

### 4.7.5 Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by PMBA in the review period, i.e. from 22 November 2019. The dumping margin is **8.6%**.

The Commission's calculations are included at **Confidential Attachment 14 to 18**.

### 4.8 EverPress

The Commission considers EverPress to be an uncooperative exporter for the purposes of this review. That is because the Commission did not have relevant information about EverPress': Australian sales relevant to the review period at section B-2 of the REQ;

- reporting cost of production for only one quarter of the review period at sections G-3 and G-5 of the REQ;
- sales reconciliation, direct selling expenses, SG&A expenses at section B-4, B-5 and G-8 of the REQ.

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. Having regard to the approach to export price and normal value outlined in 269TACAB(1), the Commission has considered the available information relevant to EverPress.

The available information which was considered included information that EverPress filed in an REQ for duty assessment application covering the importation period 27 December 2018 to 26 June 2019 (first assessment).<sup>56</sup> EverPress also filed a further REQ for a

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<sup>56</sup> This date that this REQ was filed preceded the due date for the REQ it was requested to completed for this review

second duty assessment covering the subsequent importation period of 27 June 2019 to 26 December 2019 (second assessment).

The data provided by EverPress in its REQ for the first duty assessment was examined, however, was not considered to be an advancement of the data it filed in its REQ for this review. Specifically, the data in its REQ for the first duty assessment did not present sales and cost data relevant to the whole of this review period or was it prepared in the manner required by the questionnaire it was requested to complete for this review.

After EverPress contacted the Commission on the due date to respond (26 May 2020) to the deficiency advice relating to its REQ filed for this review, it lodged its REQ for the second duty assessment on 8 September 2020. The date on which this data was filed meant that it was not considered on the basis that the verification of the data would prevent the timely conduct of the review.

On the basis that the Commission did not receive further information it requested from EverPress in response to EverPress' REQ for this review, the available information about its exports was similarly found to be unsuitable or could not be considered.

The variable factors for its export price and normal value have been determined as follows in sections 4.8.1 and 4.8.2 of this SEF.

#### **4.8.1 Export prices**

Pursuant to section 269TACAB(1), the Commission determined an export price pursuant to section 269TAB(3), having regard to all relevant information. Specifically, the Commission has used the lowest of export prices of those that were established for cooperating exporters in the investigation period.

#### **4.8.2 Normal values**

Pursuant to section 269TACAB(1), the Commission determined the normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information. Specifically, the Commission used the highest of normal values of those that were established for the cooperating exporters in the investigation period.

#### **4.8.3 Dumping margin**

The Commission calculated a dumping margin in respect of the goods exported to Australia by EverPress for the investigation period. The dumping margin is **10.7%**.

The Commission's calculations are included at **Confidential Attachment 19**.

### **4.9 All other exporters**

As detailed in section 4.2.4, the Commission considers all other exporters of the goods from Malaysia and Vietnam that did not provide a response to the exporter questionnaire, or which did not request a longer period to provide a response within the legislated period, are uncooperative exporters for the purposes of this review.

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters.

#### **4.9.1 Export prices**

Pursuant to section 269TACAB(1), the Commission determined an export price pursuant to section 269TAB(3), having regard to all relevant information. Specifically, the Commission has used the lowest of export prices of those that were established for cooperating exporters in the review period.

#### **4.9.2 Normal values**

Pursuant to section 269TACAB(1), the Commission determined the normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information. Specifically, the Commission used the highest of normal values of those that were established for the cooperating exporters in the review period.

#### **4.9.3 Dumping margin**

The dumping margin for all other exporters of aluminium extrusions from Malaysia and Vietnam is as follows

- Malaysia **10.7%**; and
- Vietnam **1.9%**.

The Commission's calculations are included at **Confidential Attachment 19**.

## 5 COUNTERVAILABLE SUBSIDIES

### 5.1 Background

A countervailing notice applies in relation to the goods from Malaysia only. This chapter details the Commission's findings in relation to the variable factors relevant to the subsidy notice for Malaysia.<sup>57</sup>

### 5.2 Preliminary finding

The Commission found the variable factors relevant to the subsidy notice for Malaysia, being the export price, the amount of countervailable subsidy received and the NIP in respect of the goods exported to Australia during the review period has changed.

The Commission has calculated the subsidy margins as set out in the following table.

Exporter	Subsidy margin (%)
Premium	0.0
PMB Aluminium (based on the non-cooperating entities assessment)	0.0
Non-cooperative entities	0.0

Table 13 Subsidy margins during review period

### 5.3 Legislative framework

Section 269T(1) defines 'subsidy' as follows:

**subsidy**, in respect of goods exported to Australia, means:

(a) a financial contribution:

- (i) by a government of the country of export or country of origin of the goods; or
- (ii) by a public body of that country or a public body of which that government is a member; or
- (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

- (iv) a direct transfer of funds from that government or body; or
- (v) the acceptance of liabilities, whether actual or potential, by that government or body; or

<sup>57</sup> Under section 269T(4E)(b), a reference to variable factors relevant to a review of a subsidy notice under Division 5, in respect of goods is a reference:

- (i) to the amount of countervailable subsidy received in respect of the goods; and
  - (ia) to the export price of the goods; and
  - (ii) to the non-injurious price of the goods;
- as ascertained, or last ascertained, by the Minister for the purpose of the notice.

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- (vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or
  - (vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or
  - (viii) the purchase by that government or body of goods or services; or
  - (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;
- if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.<sup>58</sup>

Section 269TAAC defines a 'countervailable subsidy' as follows:

- (1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.
- (2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:
  - (a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or
  - (b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or
  - (c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or
  - (d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.
- (3) Subject to subsection (4), a subsidy is not specific if:
  - (a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
  - (b) eligibility for the subsidy is automatic; and
  - (c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
  - (d) those criteria or conditions are strictly adhered to in the administration of the subsidy.
- (4) The Minister may, having regard to:
  - (a) the fact that the subsidy program benefits a limited number of particular enterprises; or
  - (b) the fact that the subsidy program predominantly benefits particular enterprises; or
  - (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
  - (d) the manner in which a discretion to grant access to the subsidy has been exercised;determine that the subsidy is specific.

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<sup>58</sup> Section 269TACC sets out the steps for working out whether a financial contribution or income or price support confers a benefit.

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- (5) In making a determination under subsection (4), the Minister must take account of:
- (a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and
  - (b) the length of time during which the subsidy program has been in operation.

Section 269TACD provides that if the Minister is satisfied that a countervailable subsidy has been received in respect of the goods, the Minister must, if the amount of the subsidy is not quantified by reference to a unit of the goods, work out how much of the subsidy is properly attributable to each unit of the goods.

### 5.4 Investigated programs

In REP 362, the Commission investigated the following subsidy programs in relation to exporters of aluminium extrusions from Malaysia.

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
1	Income Tax Reductions ('Pioneer Status')	Income Tax	No
2	Investment Allowance	Income Tax	No
3	Double Deduction for Export Credit Insurance	Income Tax	No
4	Double Deduction for Freight Charges from Sabah or Sarawak	Income Tax	Yes
5	Double Deduction for Insurance Premiums for Exporters and Importers	Income Tax	No <sup>59</sup>
6	Reinvestment Allowance	Income Tax	Yes

**Table 14 Malaysian Subsidy Programs Investigated in REP 362**

In addition to the above programs relating to Malaysia, in REP 362 the Commission also investigated a number of programs in relation to exporters from Vietnam. The Commission's findings in relation to Vietnam resulted in termination of the investigation in relation to Vietnam on account that the exporters either received no subsidy or level of subsidisation was negligible.

Following the findings outlined in REP 362, the Minister published a subsidy notice for Malaysia that was based on Programs 4 and 6. The subsidy notice applied only to non-cooperative entities from REP 362, which excluded PMB, Milleon, LB Aluminium, Kamco, Superb and Genesis. In addition, the subsidy notice has since been revoked against:

- Alumac following Review 490 (which examined a review period of 1 July 2017 to 30 June 2018) with effect from 24 August 2018; and
- EverPress following Review 509 (which examined a review period of 1 April 2018 to 30 March 2019) with effect from 26 April 2019.

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<sup>59</sup> Refer to Section A7.7 regarding the cessation of this program from the 2016 year of assessment.



For the purpose of this review, the only cooperating entity from Malaysia is Premium. As outlined below, the Commission found that Premium was not in receipt of any countervailable subsidies during the review period.

## **5.5 Information considered by the Commission**

### **5.5.1 Information provided by exporters**

At the outset of the review, the Commission contacted all of the exporters relevant to the subsidy notice and invited those entities to submit a questionnaire response. The only response received was from Premium. For the purpose of section 269TAACA all other exporters are considered to be non-cooperating entities.

The Commission has relied upon information provided by Premium in this review for the purpose of ascertaining the variable factors for Premium and non-cooperative entities.

The Commission has also relied upon information provided by EverPress in Review 509 which examined a period which overlaps the review period for this review by one quarter for the purpose of ascertaining the variable factors for non-cooperative entities.

### **5.5.2 Information received from the GoM**

As noted in section 2.4.4, the Commission has utilised the GoM's RGQ it lodged for Review 509 for the purposes of this review. The information contained in the GoM's response is considered relevant to this review as the period being examined in this review and Review 509 overlap and the GoM indicated that its responses to Review 509 continued to remain valid.

The GoM also confirmed that it did not consider its response to Review 509 required alteration or amendment. On this basis the Commission was satisfied to also utilise the GoM's response to Review 509 for this review.

### **5.5.3 Submissions in relation to subsidies**

No submissions relating to the review of the countervailing measures have been received.

## **5.6 Subsidy assessment – Premium**

In Premium's verification report, the Commission found that Premium did not receive a benefit in relation to any programs and, as such, has calculated the subsidy margin for Premium Aluminium during the review period to be **0%**.

## **5.7 Subsidy assessment – PMBA**

As PMBA is considered a new exporter, the countervailing duty notice is considered to apply to its exports. However, as PMBA has not filed an REQ in its own right, PMBA is considered a non-cooperating entity. The level of subsidisation relevant to exports by PMBA has therefore been determined on the basis of all facts available and having regard to reasonable assumptions pursuant to section 269TAACA. The assessment of the subsidy margins relevant to non-cooperating entities is discussed further in 5.8.



## 5.8 Subsidy assessment – Non-cooperating entities

The subsidy margin for non-cooperative entities has been determined on the basis of all facts available and having regard to reasonable assumptions pursuant to section 269TAACA.

In determining the level of subsidisation for non-cooperative entities in this review the Commission has had regard to the following;

- The current findings in relation to Premium, the only exporter cooperating for the review of the subsidy notice;
- the outcome of Review 509 for EverPress<sup>60</sup> where the notice as it applied to this exporter was revoked;
- the GoM questionnaire response; and
- ABF importation data relevant to non-cooperating entities.

The GoM's questionnaire response confirmed that the programs<sup>61</sup> which formed the basis of the non-cooperative entities rate (Program 4 and 6) for the subsidy notice, continue to operate and could reasonably be available to certain exporters of the goods from Malaysia, provided the eligibility requirements are met.

A review of the ABF data indicates that, whilst not all of the producers listed in the GoM questionnaire exported the goods to Australia during the review period, a relative few exporters and trading companies were involved in the exportation of the goods to Australia. These companies may have benefited from countervailable subsidies, however the volume of exports was low compared to Premium and EverPress who exported during the review period and other exporters that are not subject to the subsidy notice (due to their zero or low levels of subsidisation).

On the available information, the Commissioner considers it reasonable to assume, in the absence of evidence to the contrary, that that the goods exported to Australia in the review period did not benefit from countervailable subsidies. Accordingly, the subsidy margin for non-cooperating entities is **0%**.

## 5.9 Summary of subsidy margins

Exporter	Program	Subsidy Margin (%)
Premium Aluminium	None	0.0
PMB Aluminium (based on the non-cooperating entities assessment)	None	0.0
Non-cooperating entities	Programs 4 and 6	0.0

**Table 15 Subsidy margin summary**

<sup>60</sup> REP 509.

<sup>61</sup> Programs 4 and 6.

## 6 NON-INJURIOUS PRICE

### 6.1 Preliminary finding

The Commission has found that the NIP relevant to the taking of anti-dumping and countervailing measures changed. The Commissioner proposes to recommend that the NIP to be equal to the normal value in relation to both Malaysia and Vietnam. As a result the Commissioner proposes that the Minister is not required to have regard to applying the lesser duty in relation to importer from either country.

### 6.2 Non-injurious price

The NIP is defined in section 269TACA as “the minimum price necessary to prevent the injury, or a recurrence of the injury” caused by the dumped or subsidised goods the subject of a dumping duty notice or a countervailing duty notice.

The method of calculating a NIP is not prescribed in the legislation, however there are several methods outlined in the Manual.<sup>62</sup>

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP).

The Commission’s preferred approach to establishing the USP is set out in the Manual and observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the USP, the Commission then calculates the NIP by deducting the costs incurred in transitioning the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

### 6.3 Lesser duty rule

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

Where the Minister is required to determine the interim dumping duty (IDD) section 8(5B) of the Dumping Duty Act applies. Where the Minister is required to determine both IDD and interim countervailing duty (ICD), sections 8(5BA) and 10(3D) of the Dumping Duty Act apply.

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<sup>62</sup> Method for calculating non-injurious price, section 24.3, p.138 (November 2018).

IDD may be applied where it is established that dumped imports have caused material injury to the Australian industry producing like goods. The level of IDD imposed by the Minister cannot exceed the margin of dumping.

Where the Minister is required to determine IDD, and the NIP of the goods is less than the normal value of the goods, the Minister must have regard to the 'lesser duty rule' in accordance with section 8(5B) of the Dumping Duty Act, unless one of the exceptions in section 8(5BAA) of the Dumping Duty Act applies.

IDD and ICD may be applied where it is established that dumped and subsidised imports have caused material injury to the Australian industry producing like goods. The level of IDD and ICD imposed by the Minister cannot exceed the combined margin of dumping and subsidisation.

Where the Minister is required to determine IDD and ICD, and the NIP of the goods is less than the normal value of the goods, the Minister must have regard to the 'lesser duty rule' in accordance with section 8(5BA) and 10(3D) of the Dumping Duty Act, unless one of the exceptions in section 8(5BAAA) and 10(3DA) of the Dumping Duty Act applies.

The Commission's examination of the available information relevant to the current review period has not identified grounds that warrant the exceptions outlined in section 8(5BAAA) or section 10(3DA) of the Dumping Duty Act should apply.

As the Commissioner recommends that the dumping duty notice and countervailing duty notice currently applying to exports of the goods from Malaysia be altered, and the dumping duty notice applying to exports of the goods from Malaysia also be altered, sections 8(5B), 8(5BA) and 10(3D) of the Dumping Duty Act require the Minister to consider applying a lesser rate of duty if applicable.

## **6.4 Preliminary assessment**

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

In the original investigation, in 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 un-subsidised import prices from Malaysia and un-dumped import prices from Vietnam. It was on this basis that the Commission calculated the NIP for each exporter be a price equal to an un-dumped and un-subsidised price.<sup>63</sup>

With respect to Malaysia, the then Parliamentary Secretary accepted the Commissioner's recommendation in REP 362 to have regard to the lesser duty rule for exports of the goods from Malaysia. However, because the NIP in relation to exports of the goods from

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<sup>63</sup> EPR 362 Item No.089

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Malaysia was 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 had no practical effect.

Having regard to the available information in relation to exports from Malaysia and Vietnam during the review period, the Commission has found that the goods exported to Australia from Malaysia and Vietnam continue to be dumped and in relation to Malaysia the subsidy margin was zero.

The Commission continues to consider that, in a market unaffected by goods from Malaysia at dumped and subsidised prices and from Vietnam at dumped prices, it is reasonable to expect that the Australian industry would be able to achieve as a minimum, selling prices that reflected un-dumped and un-subsidised import prices from Malaysia and un-dumped import prices from Vietnam.

In calculating the NIP for this review with respect to exports of the goods from Malaysia and Vietnam, the Commission considers it appropriate to follow the same methodology used in the original investigation.

In relation to Malaysia, it is proposed that for exporters who are not the subject of the dumping duty notice only the NIP be set to be equal to the normal value. In relation to those exporters that are the subject of the dumping duty and countervailing duty notice, the NIP be set to be equal to the sum of the normal value and amount of countervailable subsidy received.

In relation to Vietnam, it is proposed that the NIP is set to be equal to the normal value.

As a result of the above recommendations, application of the lesser duty rule will have not practical effect. The Commissioner therefore proposes to recommend the Minister is not required to have regard to applying the lesser duty in relation to imports of the goods from Malaysia or Vietnam.

## 7 PROPOSED MEASURES

### 7.1 Preliminary findings

The Commissioner finds that, in relation to the goods exported to Australia from Malaysia and Vietnam for all exporters generally during the review period:

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

### 7.2 Existing measures

#### 7.2.1 Malaysia

The IDD is currently calculated based on the combination duty method or the floor price duty method as the case requires for each exporter. The ICD is based on the proportion of the export price of the goods.

#### 7.2.2 Vietnam

The IDD in relation to Vietnam is based on the combination duty method for all exporters.

### 7.3 Form of measures available - dumping

The forms of duty available to the Minister when imposing anti-dumping measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013*. In relation to IDD, the forms of duty are:

- fixed duty method (\$X per tonne);
- floor price duty method;
- combination duty method; or
- *ad valorem* duty method (i.e. a percentage of the export price).<sup>64</sup>

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances than others. In considering which form of duty to recommend to the Minister, the Commissioner will have regard to the *Guidelines on the Application of Forms of Dumping Duty* (the Guidelines)<sup>65</sup> and relevant factors applicable to the market for the goods.

The form of measures currently applying to exporters of the goods from Malaysia involve application of the combination duty method and the floor price duty method as the case requires for each exporter. The form of measures currently applying to all exporters of the goods from Vietnam is the combination duty method.

<sup>64</sup> Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

<sup>65</sup> The Guidelines are available on the Commission [website](#).

## **7.4 Form of measures available – countervailing**

In relation to ICD, duty may be calculated:

- as a proportion of the export price of the goods;
- by reference to a measure of the quantity of those particular goods; or
- by reference to a combination of the above two methods.

Currently ICD in relation to the goods exported to Australia from Malaysia is calculated as a proportion of export price (*ad valorem*).

## **7.5 Proposed recommendations**

### Dumping duty notice

The Commission has not received any submissions on the most appropriate form of duty in continuing the measures.

The Commission considers it appropriate that, for the purpose of the dumping duty notice, the floor price form of measure be applied to exports of the goods to Australia by Alumac and Premium. This is on the basis that Alumac's exports were not dumped in the review period and Premium are yet to export the goods to Australia. Alumac and Premium's future exports will only attract IDD where the export price is below the AEP for this review.

For all exporters from Vietnam and the category of un-cooperative exporters from Malaysia the Commission has found that those goods were dumped and the current form of measures in place (the combination duty method) on those goods should continue to apply.

### Countervailing duty notice

For the category of un-cooperative entities from Malaysia the Commission has found that those goods were not in receipt of a countervailable subsidy in the review period. Hence, while the current form of measures in place on those goods should continue to apply, the rate of ICD will be 0%.

A summary of the proposed recommendations and effective rates of IDD and ICC are shown below in Table 16.

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Country	Exporter	Interim dumping duty		Interim countervailing duty	
		Proposed duty method	Effective IDD rate (%)	Proposed duty method	Effective ICD rate (%)
Malaysia	Alumac	Floor price	0	N/A	N/A
	Premium	Floor price	0	Proportion of export price	0.0
	PMB Aluminium <sup>66</sup>	Combination duty method	8.6	Proportion of export price	0.0
	EverPress	Combination duty method	10.7	N/A	N/A
	All other exporters <sup>67</sup>	Combination duty method	10.7		
	Non-cooperative entities <sup>68</sup>	N/A	N/A		
Vietnam	EAA	Combination duty method	1.9		
	All other exporters	Combination duty method	1.9		

**Table 16 - Summary of proposed effective interim dumping and countervailing duty**

<sup>66</sup> PMBA's variable factors were determined pursuant to the provisions relevant to un-cooperative exporters under section 269TACAB(1) and non-cooperating entities under section 269TAACA.

<sup>67</sup> Dumping.

<sup>68</sup> Countervailing.

## 8 APPENDICES AND ATTACHMENTS

<b>Non- Confidential Attachment 1</b>	Government of Malaysia - Response to Government Questionnaire
<b>Confidential Attachment 1</b>	EAA Export Price
<b>Confidential Attachment 2</b>	EAA CTMS
<b>Confidential Attachment 3</b>	EAA Domestic Sales
<b>Confidential Attachment 4</b>	EAA Normal Value
<b>Confidential Attachment 5</b>	EAA Dumping Margin
<b>Confidential Attachment 6</b>	Alumac Industries Export Price
<b>Confidential Attachment 7</b>	Alumac Industries CTMS
<b>Confidential Attachment 8</b>	Alumac Industries Domestic Sales
<b>Confidential Attachment 9</b>	Alumac Industries Normal Value
<b>Confidential Attachment 10</b>	Alumac Industries Dumping Margin
<b>Confidential Attachment 11</b>	Premium Aluminium CTMS
<b>Confidential Attachment 12</b>	Premium Aluminium Domestic Sales
<b>Confidential Attachment 13</b>	Premium Aluminium Normal Value
<b>Confidential Attachment 14</b>	PMB Aluminium Export Price
<b>Confidential Attachment 15</b>	PMB Aluminium CTMS
<b>Confidential Attachment 16</b>	PMB Aluminium Domestic Sales
<b>Confidential Attachment 17</b>	PMB Aluminium Normal Value
<b>Confidential Attachment 18</b>	PMB Aluminium Dumping Margin
<b>Confidential Attachment 19</b>	All Other Exporter Variable Factors



**STATEMENT OF ESSENTIAL FACTS No.544**

NON-CONFIDENTIAL ATTACHMENT 1

GOVERNMENT OF MALAYSIA QUESTIONNAIRE  
RESPONSE



**KEMENTERIAN PERDAGANGAN ANTARABANGSA DAN INDUSTRI**  
**MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY**

Menara Perdagangan Antarabangsa dan Industri,  
No.7, Jalan Sultan Haji Ahmad Shah,  
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Leisa Baynham  
Case Manager  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601  
AUSTRALIA  
(Attention to: Director Investigations 4)

13 June 2019

**SUBMISSION OF THE GOVERNMENT QUESTIONNAIRE RESPONSES RELATING  
TO THE REVIEW OF VARIABLE MEASURES IN RESPECT OF CERTAIN  
ALUMINIUM EXTRUSIONS EXPORTED TO AUSTRALIA FROM MALAYSIA BY  
EVERPRESS ALUMINIUM INDUSTRIES SDN BHD**


Reference is made to **Anti-Dumping Notice (ADN) No. 2019/59** dated **26 April 2019** regarding the review of anti-dumping measures relating to EverPress Aluminium Industries Sdn Bhd.

2. I attach herewith, the **submission of responses by the Government of Malaysia (GOM)** and the **accompanying appendices** for your further action. Should you require more information, please contact Ms. Norafizah Mohd Riza (+603-6208 4636 or [norafizahm@miti.gov.my](mailto:norafizahm@miti.gov.my)) or Mr. Ahmad Afif Abdul Aziz (+603-6208 4637 or [afif.aziz@miti.gov.my](mailto:afif.aziz@miti.gov.my)) for clarification.

3. On behalf of the GOM, the Ministry of International Trade and Industry hopes that the Commission would ensure that the investigation be conducted in a manner consistent with the WTO Agreement on Subsidies and Countervailing Measures. We truly appreciate the Australian Anti-Dumping Commission would make a fair assessment on the investigation.

Thank you.

Yours sincerely,

  
(**NORAZAH ABDUL JABBAR**)  
for Secretary General  
Ministry of International Trade and Industry  
Malaysia



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

NON-CONFIDENTIAL

## **Anti-Dumping Commission**

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### **GOVERNMENT QUESTIONNAIRE - MALAYSIA**

**PRODUCT CONCERNED:** CERTAIN ALUMINIUM EXTRUSIONS

**PERIOD OF REVIEW:** 1 APRIL 2018 TO 31 MARCH 2019

**RESPONSE DUE BY:** 13 JUNE 2019

**CASE MANAGER:** Leisa Baynham

**PHONE:** +61 2 6276 1404

**FAX:** +61 3 8539 2499

**E-MAIL:** [investigations4@adcommission.gov.au](mailto:investigations4@adcommission.gov.au)

**Anti-Dumping Commission website:** [www.adcommission.gov.au](http://www.adcommission.gov.au)

Return completed questionnaire  
to:

[investigations4@adcommission.gov.au](mailto:investigations4@adcommission.gov.au)

OR mail to:

Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601  
Australia

Attention: Director Investigations 4

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## SECTION A: BACKGROUND AND GENERAL INSTRUCTIONS

### 1. Background

The Anti-Dumping Commission (the Commission) is conducting a review of the variable factors and a revocation review of the anti-dumping measures (in the form of a countervailing duty notice) applying to certain aluminium extrusions (the goods) exported to Australia from Malaysia by EverPress Aluminium Industries Sdn Bhd (EverPress).

The review will examine whether the:

- variable factors relevant to the taking of the measures (being the export price, normal value and amount of countervailable subsidies received) have changed; and
- anti-dumping measures in the form of countervailing duty are no longer warranted for exports of the goods to Australia by Everpress.

The anti-dumping measures were initially imposed by public notice on 28 June 2017 following publication of Report 362.

Anti-Dumping Notice (ADN) No. 2019/59 outlines the details of this review. The procedures to be followed during reviews can be accessed on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

### 2. Product concerned

The goods under consideration (the goods) i.e. the goods exported to Australia, in receipt of subsidies, are:

*"Aluminium extrusions that:*

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

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

The following additional information assists in understanding the goods:

Extrusion is the process of shaping heated material by forcing it through a shaped opening in a die with the material emerging as an elongated piece with the same profile as the die cavity. For greater clarity, the goods do not include goods made by the process of impact extrusion or cold extrusion.

Alloys are metals composed of more than one metallic element. Alloys used in aluminium extrusions contain small amounts (usually less than five percent) of elements such as copper, manganese, silicon, magnesium, or zinc which enable characteristics such as corrosion resistance, increased strength or improved formability to be imparted to the major metallic element, aluminium.

Aluminium alloys are produced to specifications in "International Alloy Designations and Chemical Composition Limits for Wrought Aluminum and Wrought Aluminum Alloys" published by The Aluminum Association. It includes all alloy designations - these specifications are known in the industry as "Teal Sheets"). These specifications have equivalent designations issued by other certifying bodies such as the International Standards Organization.

#### Effects of Alloying Elements

The properties and characteristics of aluminium, such as density, conductivity, corrosion resistance, finish, mechanical properties, and thermal expansion, are modified by the addition of alloying elements. The resulting effect depends upon the principal alloying elements used, as detailed in the table below.

<b>Wrought Alloy Designation</b>	<b>Major Alloying Elements and Typical Alloy Characteristics</b>
1xxx Series	Minimum 99% aluminium High corrosion resistance. Excellent finishability. Easily joined by all methods. Low strength. Poor machinability. Excellent workability. High electrical and thermal conductivity.
2xxx Series	Copper High strength. Relatively low corrosion resistance. Excellent machinability. Heat treatable.
3xxx Series	Manganese Low to medium strength. Good corrosion resistance. Poor machinability. Good workability.
4xxx Series	Silicon Not available as extruded products.

5xxx Series	Magnesium Low to moderate strength. Excellent marine corrosion resistance. Very good weldability.
6xxx Series	Magnesium & Silicon Most popular extrusion alloy class. Good extrudability. Good strength. Good corrosion resistance. Good machinability. Good weldability. Good formability. Heat treatable.
7xxx Series	Zinc Very high strength. Good machinability. Heat treatable.

*Source: The Aluminum Association (US)*

**Profiles and shapes** - All aluminium extrusions are produced as either hollow or solid profiles. Hollow profile extrusions generally cost more to produce and obtain higher prices than solid profile extrusions. Extrusions are often produced in standard shapes such as bars, rods, pipes and tubes, angles, channels and tees but they are also produced in customised profiles.

**Finishes** - In addition to 'as extruded' or mill finish, extrusions can be finished mechanically by polishing, buffing or tumbling. Extrusions can have anodized finishes applied by means of an electro-chemical process that forms a durable, porous oxide film on the surface of the aluminium. Also, they can be finished by painting with liquid or powder coatings utilising an electrostatic application process.

For the purposes of this application, aluminium extrusions are further classified into four "finish" types:

- Mill Finish - Plain metal finish, uncoated (i.e. "as extruded from the die");
- Anodised - Surface converted to aluminium oxide (by electrolysis) and may be coloured by electrolytic or chemical dye means;
- Powder Coated - Charged powder particles are sprayed and adhere to electrically grounded surfaces, heated and fused into a smooth coating in a curing oven; and
- Painted or Other Finish - Painted or finished in other surface applications.

**Size range** - The ability to produce the full range of profiles is determined by the extrusion and ancillary equipment.

**"Working"** extrusions includes any operation performed other than mechanical, anodized, painted or other finishing, prior to utilisation of the extrusion in a finished product.

**Standards** - Aluminium extrusions are manufactured to a variety of Australian and International standards. Products exported to Australia are often claimed to comply with one or more of the following standards:

- ASTM B221M-88 (USA);
- BS 1474:1987 (UK); and
- GB 5237.1-2000 (China).

The most common Australian / New Zealand standard is AS/NZ 1866:1997, which specifies requirements for aluminium and aluminium alloy extruded rod, bar, solid and hollow products for general engineering purposes.

The table below provides examples of the coverage of the goods and like goods (and intended end-use applications) and will be used for this investigation. Examples of the goods and like goods are outlined in columns 1-4 and non-subject goods are outlined in columns 5 to 7.

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



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

<b>Tariff classification (Schedule 3 of the Customs Tariff Act 1995)</b>			
<i>Tariff code</i>	<i>Statistical code</i>	<i>Unit</i>	<i>Description</i>
7604.10.00	06	Kg	Non alloyed aluminium bars, rods and profiles
7604.21.00	07	Kg	Aluminium alloy hollow angles and other shapes
7604.21.00	08	Kg	Aluminium alloy hollow profiles
7604.29.00	09	Kg	Aluminium alloy non hollow angles and other shapes
7604.29.00	10	Kg	Aluminium alloy non hollow profiles
7608.10.00	09	Kg	Non alloyed aluminium tubes and pipes
7608.20.00	10	Kg	Aluminium alloy tubes and pipes
7610.10.00	12	Kg	Doors, windows and their frames and thresholds for doors
7610.90.00	13	Kg	Other

### **3. Review period**

The existence and amount of any subsidisation in relation to aluminium extrusions exported to Australia from Malaysia by EverPress will be determined on the basis of a review period of 1 April 2018 to 31 March 2019 (the Review period).

#### **4. Purpose of this questionnaire**

The purpose of this questionnaire is to assist the Commission to obtain information from the Government of Malaysia (GOM) it considers necessary for the review into countervailable subsidies received by EverPress, a Malaysian aluminium extrusion exporter.

Please note that the subsidy/countervailing sections of this questionnaire focus on the 6 programs identified in the original investigation, refer REP362. The Commission may also review any additional subsidy program(s) if additional information becomes available.

Any additional questions will be posed to the GOM using supplementary questionnaires.

A separate questionnaire has been sent to EverPress, a Malaysian exporter of aluminium extrusions. The exporter questionnaire also requests information on subsidies.

#### **5. Response to this questionnaire**

The GOM may elect not to respond to and complete the questionnaire.

However, if the GOM does not respond the Commission may be required to rely on information supplied by other parties (possibly information supplied by the Australian industry).

Therefore, it may be in the GOM's interests, and the interest of EverPress, a Malaysian exporter of aluminium extrusions, to provide a complete response.

If the GOM elects to respond to this questionnaire, the response is due by **3 June 2019**.

#### **6. If you decide to respond**

Should the GOM elect to provide a response to this questionnaire, please note the following.

##### Confidential and non-confidential versions

If the GOM elects to respond to this questionnaire, you are required to lodge a confidential and a non-confidential version of your submission by the due date.

In submitting these versions, please ensure that each page of the information you provide is clearly marked either "**IN-CONFIDENCE**" or "**NON-CONFIDENTIAL**" in the header and footer.

All information provided to the Commission in confidence will be treated accordingly. The non-confidential version of your submission will be placed on the Public Record, which all interested parties can access.

Your non-confidential submission must contain sufficient detail to allow a reasonable understanding of the substance of the confidential version. If, for some reason, you cannot produce a non-confidential summary, contact the investigation case officer (see contact details on Page 1 of this questionnaire).

#### Declaration

You are required to make a declaration that the information contained in the GOM's response is complete and correct. You must return the signed declaration of an authorised GOM official at Section D of this questionnaire with the GOM's response.

#### Coordination of responses

In completing the questionnaire, if a question requires information from other authorities (e.g. provincial or local Governments, state owned entities, etc.) please forward the questions to the correct source.

However, it is the responsibility of the GOM to ensure that a full and complete response to all sections of the questionnaire is submitted, and that responses from all levels of Government, agencies and/or other applicable entities are collated and coordinated in the one response.

#### Consultants/parties acting on your behalf

If you intend to have another party acting on your behalf please advise the Commission of the relevant details.

The Commission will generally require a written authorisation from the GOM for any party acting on its behalf.

#### Provision of documents

Numerous documents are requested from the GOM throughout this questionnaire. In many cases, the titles or description of these documents within the questionnaire may not correlate to the official title that the GOM has granted each document, but is rather a descriptor of the document to the best of the Commission's knowledge.

If the listed title is unknown to the GOM but a document that appears to be similar to the requested document, relates to a similar topic area, or otherwise would be considered to contain useful information is identified by the GOM, please provide this document.

Further, when providing requested documents, please indicate whether the documents:

- are current/in force;
- were current/in force during the review period; or
- have been repealed, revised or superseded.

Where the documents have been repealed, revised or superseded, where applicable:

- indicate when this revision occurred;
- provide any notice of repeal;
- provide the revised version;
- provide the document that supersedes the requested document; and
- indicate whether the revised version was in force during the investigation period.

### Lodgement

You may lodge your response by mailing it to the address for lodgement shown on the front cover of this questionnaire.

Alternatively you are welcome to lodge your response by email. The email address for lodgement is shown on the front cover of this questionnaire. If you lodge by email you are still required to provide a confidential and a non-confidential version of your submission by the due date.

In completing any lists of names and addresses requested throughout this questionnaire, electronic responses in a Microsoft Excel spreadsheet would be preferred. If lodging your response in hard copy, please include these lists in electronic format.

### General matters

Responses to questions should:

- be as accurate and complete as possible, and attach all relevant supporting documents,<sup>1</sup> even where not specifically requested in this questionnaire;
- be in English (with fully translated versions of all requested and other applicable documents submitted);
- list your source(s) of information for each question;
- identify all units of measurement used in any tables, lists and calculations;
- show any amounts in the currency in which they were originally denominated.

Please note that references throughout this questionnaire to companies benefiting from a particular program should be read as including any parent and

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<sup>1</sup> This includes, but is not limited to, any laws, decrees, regulations, statements of policy, or other administrative guidelines. In each case, include any legislative history as well as other descriptive materials and explanations of the criteria underlying the decisions relating to each of the programmes mentioned in this questionnaire. If applicable, a sample of each of the applications that a company must complete to participate in each of the programs should also be included.

associated companies, and, if the company has been subject to merger or acquisition, any former associated companies or former parent companies.

Please note that answers such as "Not Applicable", or an answer that only refers to an exhibit or an attachment without any explanation, may be considered to be inadequate by the Commission. We therefore suggest that in answering the questions you outline the key elements of your response in the primary submission document, and not merely refer to supporting documents the relevance and reliability of which has not been explained in your answer.

## **7. Clarification**

If you have any difficulties in completing the questionnaire, or require clarification on any questions asked, contact the case manager as soon as possible (contact details are provided on Page 1 of this questionnaire).

## **8. Future questions and verification**

The Commission may decide to visit the GOM to examine records and to verify the information provided. It is common practice for Commission officers to visit Government officials, exporters and manufacturers of the subject goods, in order to verify the information submitted. You will be contacted in advance of such a meeting in order to make arrangements.

A complete response, including all of the documentation requested, must be submitted to the Commission before a verification meeting will be considered.

If a verification visit is undertaken the key Government officials involved in preparing the response, and those who have knowledge of the source documentation and the information contained therein, should be available to meet with Commission officers and to provide additional clarification and explanation, as required.

If verification meetings are unreasonably delayed, cancelled, or otherwise hindered by the GOM, the assessment of a particular market situation and the assessment as to the amount of countervailable subsidy may be based on the facts available to the Commission.

The purpose of the verification meeting will be to verify the information provided in your questionnaire response. It is not intended to be a second opportunity for the GOM to provide new or additional information. Accordingly, it is important that your response be as complete and accurate as possible.

<b>SECTION B: GENERAL QUESTIONS</b>
-------------------------------------

- B1** Identify the administration co-ordinating the response to this questionnaire and provide the names and contact details of the official(s) (including email addresses). Please note that the Commission may have further inquiries concerning the questionnaire response and a contact must be available to respond to any further information requests.

**MS. NORAZAH ABDUL JABBAR**  
**DIRECTOR**  
**TRADE PRACTICES SECTION**  
**MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY**  
**LEVEL 9, MITI TOWER**  
**NO 7 JALAN SULTAN HAJI AHMAD SHAH**  
**50480 KUALA LUMPUR**  
**Email : [alltps@miti.gov.my](mailto:alltps@miti.gov.my)**  
**Phone: +603-6208 4632**  
**Fax : +603-6211 4429**

- B2** Describe the nature and structure of the aluminium extrusions industry and market sector in Malaysia. Also describe the nature and structure of the aluminium industry and market sector in Malaysia.

Without limiting your response, include information concerning the size and output (value and quantity) of these industries, the extent of vertical integration in the industries, the extent of the reliance on imported aluminium, and Government involvement at each level of the industry, the extent of any restrictions, quotas or limits for the production volumes in these industries.

A total of ■ companies were approved Manufacturing License to produce aluminium extrusion licensed manufacturers with and without incentive. For the period of 1 April 2018 - 31 March 2019, ■ were approved with manufacturing license without tax incentive. While, the remaining ■ companies are not in the GOM's database. ■

In Malaysia, the aluminium extrusion products such as profiles, frames, panels and etc. are mainly used for construction and general industrial applications. These products:

- are widely used for finished products like windows and door frames for housing, curtain wall cladding for building and high rises, grilles, ceiling and curtain railings or renovation works, furniture and other interior decoration parts; and

- can also be used in electrical & electronic (E&E) industry for parts, including television aerials, telecommunication parts, electrical tubes and piping.

**B3** Are any of the companies listed in **Appendix A** located in an area or economic zone which entitles them to preferential tax or other preferential policies provided by the GOM<sup>2</sup> including those provided by regional, provincial or municipal authorities?

**NONE**

If so identify which particular zone or area the company under investigation is located in.

**NONE**

**B4** Provide a list of all manufacturers/producers of aluminium<sup>3</sup> in Malaysia that produced aluminium during the investigation period. If possible, please provide this listing in Microsoft Excel format. Please see the GOM Questionnaire spreadsheet provided with this questionnaire.

This listing will be referred to as 'your response to Question B4' throughout this questionnaire.

Within this list, indicate the following:

- the business' address (including the city/town and province);
- the function and type of business;
- the ownership structure of the business, including indirect ownership through associated companies (i.e. State Invested Enterprises (SIE)<sup>4</sup>, private, co-operative, Foreign Invested Enterprise (FIE)<sup>5</sup> or joint venture);
- if the business is not an SIE, whether it is otherwise associated with the GOM;
- whether the business is a manufacturer of aluminium extrusions and whether it produces ingot, billet, or both;
- total production quantity of aluminium extrusions by the business during the investigation period;
- Is the GOM a shareholder in the business? If so, the percentage of GOM holdings;

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<sup>2</sup> Refer to this questionnaire's Glossary of Terms for a definition of the GOM.

<sup>3</sup> Throughout this questionnaire, aluminium has been used to refer to including primary aluminium, electrolytic aluminium, secondary aluminium, scrap aluminium, and aluminium cast into billets of aluminium alloy or alone.

<sup>4</sup> Refer to this questionnaire's Glossary of Terms for a definition of the SIE

<sup>5</sup> Refer to this questionnaire's Glossary of Terms for a definition of the FIE

- If there is GOV representation in the business; and
- The value of total benefit received annually.

For all companies that are SIEs, indicate the percentage ownership held by the GOM during the investigation period.

For all companies that are otherwise associated with the GOM, explain this association as it was during the investigation period.

[REDACTED]

[REDACTED]

- B5** It is the Commission's understanding that within Malaysia there are various zones, areas, or other regions that encourage the operations of industries/enterprises located within that region and/or entitle/facilitate entities to access differential treatment (this may include preferential tax programs or other preferential policies).

Provide:

- a listing of the names of all such zones, areas, or other regions in Malaysia;
- an explanation of each such type of zone, area or other region in Malaysia; and
- a listing and explanation of what location in each zone makes businesses eligible for (including any GOM assistance or differential treatment).

**NOT APPLICABLE**

- B6** Are any of the entities listed in **Appendix A** located in an area, zone or other region listed in your response to B5 above? If so identify which entities and which particular zone or area the entity is located in.

**NOT APPLICABLE**

- B7** Provide the names and addresses of all national, provincial and regional producer organisations that represent the interests of aluminium extrusions and aluminium manufacturers and traders in Malaysia.

**Federation of Malaysian Manufacturer  
Aluminium Manufacturers Group Malaysia (FMM-AMGM)  
Wisma FMM, No 3 Persiaran Dagang, PJU 9  
Bandar Sri Damansara, 52200 Kuala Lumpur.  
Tel: +603-62867200  
Fax: +603-62741266/7288  
E-mail: [webmaster@fmm.org.my](mailto:webmaster@fmm.org.my)**



**B8** Specify and provide supporting documentation for the standard corporate tax rate during the investigation period for:

- (a) companies that manufacture aluminium extrusions;
- (b) companies that trade in aluminium extrusions;
- (c) companies that manufacture aluminium;
- (d) companies that trade in aluminium.

**Corporate Tax Rate for all companies resident in Malaysia:**

- **Year of Assessment 2018 – 24%**
- **Year of Assessment 2019 – 24%**

**B9** Specify and provide supporting documentation for the corporate tax rates applicable in all provincial or local jurisdictions in Malaysia for those types of companies listed in (a) to (d) of Question B8 above.

**Refer to Paragraph 2 Schedule 1 Income Tax Act 1967 (Attachment B-2).**

## SECTION C: SUBSIDIES

### INVESTIGATED PROGRAMS

The following are programs that the Commission is currently reviewing:

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

*Note: the above titles of programs are to the best of the Commission's knowledge and in some cases may simply be descriptions of the program. Consequently, the above titles may not exactly reflect any official titles that the GOM has in place.*

### ANY OTHER PROGRAM NOT PREVIOUSLY ADDRESSED

If the GOM, any of its agencies, or any other authorised non-Governmental body, provides any other assistance programs not previously addressed (including market development assistance programs or any domestic support programs related to the manufacture of subject goods) to manufacturers of aluminium extrusions in Malaysia, identify these programs.

Such assistance programs are those that constitute a subsidy as defined in the Glossary of Terms.

Please provide the information requested in the following Section C-1 for each program identified above and any additional programs you have identified. In addition, please respond to the program-specific information requested.

### PART C1 - GENERAL QUESTIONS

For **each of the 6 programs** identified above, and any other additional programs the GOM identifies, answer the following questions.

*Note: In responding to the questions in this part you are required to provide information on each program, regardless of the year the benefit was granted by the GOM or the year that the benefit was received by the recipient company, as*

*well as those further identified by the GOM, where the program benefits impact on the production and sale of aluminium extrusions and aluminium during the investigation period.*

## **PROGRAM 1: INCOME TAX REDUCTIONS**

**C1.1** Provide details of the program including the following.

- (a) Title of the program.  
**Exemptions of Income**
  
- (b) Policy objective and/or purpose of the program.  
**To encourage high impact, high value-added, and strategic investments that can contribute to the future growth and development of the economy.**
  
- (c) Legislation under which the subsidy is granted.  
**Refer to Income Tax (Exemption) Order (No.11) 2006 [P.U.(A) 112/2006] (Attachment C-1).**
  
- (d) Nature or form of the subsidy.  
**The assistance is an exemption of statutory income.**
  
- (e) When the program was established.  
**2006**
  
- (f) Duration of the program.  
**This is an on-going program.**
  
- (g) How the program is administered and how it operates.  
**Companies are required to submit the applications for the program to the Malaysian Investment Development Authority (MIDA), an agency under Ministry of International Trade and Industry (MITI). This is to ensure that the company has complied with the conditions imposed. After MIDA is satisfied that the company has complied with the conditions, MIDA will determine the production date for the company and determine the start and ending date of the program. Subsequently,**

companies that were approved with the program will submit their claims to the Inland Revenue Board (IRB) together with their annual tax returns containing the calculation of claim for the tax exemptions. Please see Attachment C-2 for the application form.

- (h) To whom and how the program is provided.  
This program may be granted to any company intending to participate in high impact, high value-added, and strategic investments that can contribute to the future growth and development of the economy.

- (i) The eligibility criteria in order to receive benefits under the program.

[REDACTED]

- C1.2** Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period. Specify the sections that govern the program.

Refer to Income Tax (Exemption) Order (No.11) 2006 [P.U.(A) 112/2006] (Attachment C-1).

- C1.3.** Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.  
Refer to Income Tax (Exemption) Order (No.11) 2006 [P.U.(A) 112/2006] (Attachment C-1).

- C1.4** Identify the GOM department or agency administering the program.

**Granting authority:**

Secretary General of Treasury  
Ministry of Finance Complex,  
Precint 2, 62592 Putrajaya, Malaysia

**Administrative authorities:**

- 1) Chief Executive Officer  
Malaysian Investment Development Authority (MIDA)  
Level 30, MIDA Sentral  
No. 5, Jalan Stesen Sentral 5  
Kuala Lumpur Sentral  
50470 Kuala Lumpur Malaysia

**2) Chief Executive Officer  
Inland Revenue Board Malaysia  
Menara Hasil, Level 17  
Persiaran Rimba Permai, Cyber 8  
63000 Cyberjaya, Selangor, Malaysia.**

- C1.5** Identify and explain the types of records maintained by the relevant Government or Agency (e.g., accounting records, company-specific files, databases, budget authorisations, etc.) regarding the program.

**The IRB maintains a database of approved companies (based on companies' declaration) and softcopies of companies' return form as e-filing is compulsory for all companies starting from Year of Assessment 2014.**

- C1.6** Indicate which of the companies listed in **Appendix A** applied for, accrued, or received benefits under the program during the investigation period.

**This information is available with individual companies**

- C1.7** Answer the following questions regarding the application process:

- (a) Describe the application process (including any application fees charged by the Government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

**Companies are required to submit the applications for the program to MIDA, an agency under MITI. Please refer to Attachment C-2 for the application form.**

- (b) After an application is submitted, describe the procedures by which an application is analysed and eventually approved or refused.

**MIDA will evaluate the application based on information submitted by the company and will ask for additional information if needed. Upon completion of the evaluation, the recommendation for approval or rejection will be deliberated at the National Committee on Investment meeting for final decision.**

- (c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

[REDACTED]

- (d) If the application is refused, provide the refusal documents together with the reasons for refusal.

[REDACTED]

**C1.8** Answer the following questions regarding eligibility for and actual use of the benefits provided under this program.

- (a) Is eligibility for, or actual use of this program contingent, whether solely or as one of several other conditions, upon export performance? If so, please describe.

**NO**

- (b) Is eligibility for this program contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods? If so, please describe.

**NO**

- (c) Is eligibility for the subsidy limited to enterprises or industries located within designated regions? If so, specify the enterprises or industries and the designated regions.

**NO**

- (d) Is eligibility limited, by law, to any enterprise or group of enterprises, or to any industry or group of industries? If so, describe and specify the eligible enterprises or industries.

**NO**

**C1.9** Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

- (a) Describe the criteria governing the size of the benefit provided.
- (b) Provide a copy of any law, regulation or other official document detailing these criteria.
- (c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a

benefit or is final approval contingent upon the Government agency or authority that administers the program?

- (d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the Government agency or authority that administers the program determine the benefit amount?
- (e) Provide any contractual agreements between the GOM and the companies that are receiving the benefits under the program (e.g., loan contracts, grant contracts, etc.).

**No contractual agreements between the GOM and the companies.**

- C1.10** Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years 2015, 2016, 2017 and for the first half of 2018.

**This information is available with the company**

- C1.11** How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years 2015, 2016, 2017 and for the first half of 2018? Provide the main reasons why applicants have been rejected.

**Out of [REDACTED] applications in 2017, [REDACTED] of the companies were approved with tax incentive. [REDACTED]**

- C1.12** Describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the program. When is the last date that a company could receive benefits under the program?

**Changes will be made to the program as Malaysia is committed to adopt the Forum on Harmful Tax Practices program under the OECD. Please refer to Attachment C-6.**

- C1.13** If assistance under the program was provided by an entity other than a national, state or local Government entity, please respond to the following questions:

**NONE**

- (a) What is the legal status of the entity e.g. is it a separately incorporated entity and/or a Government corporation, Government lending institution, commercial entity?
- (b) Please explain how the entity was established and whether the entity operates pursuant to statutes, decrees and/or regulations. Please explain the relevant statute, decrees and regulations under which the entity was established and operates;
- (c) What is the legal basis that governs the entity's provision of assistance under the program? Please provide translated copies of the relevant legal measures.
- (d) Has the entity received any direct or indirect funding or support from a Government entity? Please specify if the Government provided any such direct or indirect funding for the purpose of providing assistance under this program.
- (e) Did the entity provide assistance under the program pursuant to specific guidelines and/or criteria under this program? Please describe those guidelines and/or criteria.
- (f) Please provide the ownership structure of each such entity and specify the amount of any direct or indirect Government ownership during the investigation period (and for each year in which the assistance was provided).
- (g) Please provide the translated annual report during the investigation period (and for each year in which the assistance was provided) for each such entity.
- (h) What are the core activities and functions of each entity that provided the assistance under the program?
- (i) Explain why the assistance under this program was provided by this entity rather than directly by the Government.

## **PART C2 – SPECIFIC QUESTIONS (ALL PROGRAMS)**

In addition to the general questions at C1 above, please answer the following specific questions in relation to any tax programs.

If any of the companies listed in **Appendix A** used the program to take deductions from taxable income, to receive credit towards taxes payable, to take exemptions from taxes owed, to reduce the tax rate, to defer payment of taxes, to carry forward losses from previous tax years, to use accelerated depreciation, or to benefit from other tax advantages on the tax return filed during the investigation period, please respond to the following questions.

**C2.1** Explain whether the assistance is a deduction from taxable income, a credit towards taxes payable, an exemption from taxes owed, a reduction in the tax rate, a deferral of taxes, a loss carry-forward from previous tax years, accelerated depreciation, or other tax benefit.

The assistance is an [REDACTED] of statutory income.



- C2.2** How do companies using this program calculate the tax benefit they claim? Please be specific and provide a sample calculation using a blank tax form.

[REDACTED]

- C2.3** If the company carried forward a loss from prior years and used that loss to offset taxes due on the tax return filed during the investigation period, demonstrate that this loss was not generated by use of any countervailable tax program.

**The assistance is an exemption of statutory income. Therefore, if the company experiences losses, no exemption is given and the losses will be carried forward until it is fully utilized from the statutory income.**

- C2.4** If the program involves a deferral of taxes owed, please provide the amount and length of the deferral, and the details of any interest charged on the deferral.

**NOT APPLICABLE**

- C2.5** If the tax assistance results in negative income for tax purposes, for example through accelerated depreciation, is the company able to carry forward this loss?

**NOT APPLICABLE**

- C2.6** For a program that provides a reduction in the tax rate or an exemption from taxes payable, please report the tax rate that was paid under the program and the tax rate that would have applied in absence of the program.

**NOT APPLICABLE**

**PROGRAM 2: EXEMPTION OF INCOME EQUIVALENT TO CAPITAL EXPENDITURE INCURRED<sup>6</sup>**

**C1.1** Provide details of the program including the following.

(a) Title of the program.

**Exemption of Income Equivalent to Capital Expenditure Incurred**

(b) Policy objective and/or purpose of the program.

**To encourage high impact, high value-added, and strategic investments that can contribute to the future growth and development of the economy.**

(c) Legislation under which the subsidy is granted.

**Please see Income Tax (Exemption) Order (No.12) 2006 [P.U.(A) 113/2006] (Attachment C-1).**

(d) Nature or form of the subsidy.

**The exemption of income equivalent to capital expenditure incurred is an allowance deducted from statutory income.**

(e) When the program was established.

**2006**

(f) Duration of the program.

**This is an on-going program.**

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<sup>6</sup> The alleged companies do not enjoy Investment Tax Allowance but granted Exemption of Income Equivalent to Capital Expenditure Incurred

- (g) How the program is administered and how it operates.

**Companies are required to submit the applications for the exemption of income equivalent to capital expenditure incurred program to MIDA, an agency under MITI. The company is then required to establish the commencement of this program period which is on the incurrence of the first capital expenditure duly certified by MIDA. Subsequently, companies that were approved with the program will submit their claims to the IRB together with their annual tax returns containing the calculation of claim for the tax allowance. Please refer Attachment C-2 for the application form.**

- (h) To whom and how the program is provided.

**This program may be granted to any company intending to participate in high impact, high value-added, and strategic investments that can contribute to the future growth and development of the economy. The allowance is only given on capital expenditure incurred on industrial buildings, plant and machinery directly used.**

- (i) The eligibility criteria in order to receive benefits under the program



- C1.2** Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period. Specify the sections that govern the program.

**Please refer Income Tax (Exemption) Order (No.12) 2006 [P.U.(A) 113/2006] (Attachment C-1).**

- C1.3** Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

**Please refer Income Tax (Exemption) Order (No.12) 2006 [P.U.(A) 113/2006] (Attachment C-1).**

**C1.4** Identify the GOM department or agency administering the program.

**Granting authority:**

**Secretary General of Treasury  
Ministry of Finance Complex,  
Precint 2, 62592 Putrajaya, Malaysia**

**Administrative authorities:**

**1) Chief Executive Officer  
Malaysian Investment Development Authority (MIDA)  
Level 30, MIDA Sentral  
No. 5, Jalan Stesen Sentral 5  
Kuala Lumpur Sentral  
50470 Kuala Lumpur Malaysia**

**2) Chief Executive Officer  
Inland Revenue Board Malaysia  
Menara Hasil, Level 17  
Persiaran Rimba Permai, Cyber 8  
63000 Cyberjaya, Selangor, Malaysia**

**C1.5** Identify and explain the types of records maintained by the relevant Government or Agency (e.g., accounting records, company-specific files, databases, budget authorisations, etc.) regarding the program.

**The IRB maintains a database of approved companies (based on companies' declaration) and softcopies of companies' return form as e-filing is compulsory for all companies starting from Year of Assessment 2014.**

**C1.6** Indicate which of the companies listed in **Appendix A** applied for, accrued, or received benefits under the program during the investigation period.

**This information is available with individual companies**

**C1.7** Answer the following questions regarding the application process:

- (a) Describe the application process (including any application fees charged by the Government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

**Companies are required to submit the applications for the program to MIDA, an agency under MITI. The company is then required to establish the commencement period which is on the incurrence of the first capital expenditure duly certified by MIDA. Please refer Attachment C-2 for the application form.**

- (b) After an application is submitted, describe the procedures by which an application is analysed and eventually approved or refused.

**MIDA will evaluate the application based on information submitted by the company and will ask for additional information if needed. Upon completion of the evaluation, the recommendation for approval or rejection will be deliberated at the National Committee on Investment meeting for final decision.**

- (c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

[REDACTED]

- (d) If the application is refused, provide the refusal documents together with the reasons for refusal.

[REDACTED]

**C1.8** Answer the following questions regarding eligibility for and actual use of the benefits provided under this program.

- (a) Is eligibility for, or actual use of this program contingent, whether solely or as one of several other conditions, upon export performance? If so, please describe.

**NO**

- (b) Is eligibility for this program contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods? If so, please describe.

**NO**

- (c) Is eligibility for the subsidy limited to enterprises or industries located within designated regions? If so, specify the enterprises or industries and the designated regions.

**NO**

- (d) Is eligibility limited, by law, to any enterprise or group of enterprises, or to any industry or group of industries? If so, describe and specify the eligible enterprises or industries.

**NO**

**C1.9** Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

- (a) Describe the criteria governing the size of the benefit provided.
- (b) Provide a copy of any law, regulation or other official document detailing these criteria.
- (c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the Government agency or authority that administers the program?
- (d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the Government agency or authority that administers the program determine the benefit amount?
- (e) Provide any contractual agreements between the GOM and the companies that are receiving the benefits under the program (e.g., loan contracts, grant contracts, etc.).

**No contractual agreements between the GOM and the companies.**

**C1.10** Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years 2015, 2016, 2017 and for the first half of 2018.

**The information is available with the companies.**

**C1.11** How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years 2015, 2016, 2017 and for the first half of 2018? Provide the main reasons why applicants have been rejected.

**In 2017, out of ■ applications , none of the companies were approved with tax incentive. Please refer to Attachment C-5.**

**C1.12** Describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the

program. When is the last date that a company could receive benefits under the program?

**There are no anticipated changes to the program.**

**C1.13** If assistance under the program was provided by an entity other than a national, state or local Government entity, please respond to the following questions:

**NONE**

- (a) What is the legal status of the entity e.g. is it a separately incorporated entity and/or a Government corporation, Government lending institution, commercial entity?
- (b) Please explain how the entity was established and whether the entity operates pursuant to statutes, decrees and/or regulations. Please explain the relevant statute, decrees and regulations under which the entity was established and operates;
- (c) What is the legal basis that governs the entity's provision of assistance under the program? Please provide translated copies of the relevant legal measures.
- (d) Has the entity received any direct or indirect funding or support from a Government entity? Please specify if the Government provided any such direct or indirect funding for the purpose of providing assistance under this program.
- (e) Did the entity provide assistance under the program pursuant to specific guidelines and/or criteria under this program? Please describe those guidelines and/or criteria.
- (f) Please provide the ownership structure of each such entity and specify the amount of any direct or indirect Government ownership during the investigation period (and for each year in which the assistance was provided).
- (g) Please provide the translated annual report during the investigation period (and for each year in which the assistance was provided) for each such entity.
- (h) What are the core activities and functions of each entity that provided the assistance under the program?
- (i) Explain why the assistance under this program was provided by this entity rather than directly by the Government.



PART C2 – SPECIFIC QUESTIONS -

In addition to the general questions at C1 above, please answer the following specific questions in relation to any tax programs.

If any of the companies listed in **Appendix A** used the program to take deductions from taxable income, to receive credit towards taxes payable, to take exemptions from taxes owed, to reduce the tax rate, to defer payment of taxes, to carry forward losses from previous tax years, to use accelerated depreciation, or to benefit from other tax advantages on the tax return filed during the investigation period, please respond to the following questions.

**C2.1** Explain whether the assistance is a deduction from taxable income, a credit towards taxes payable, an exemption from taxes owed, a reduction in the tax rate, a deferral of taxes, a loss carry-forward from previous tax years, accelerated depreciation, or other tax benefit.

**The program is a deduction of statutory income. Qualifying capital expenditure incurred in the basis period for a year of assessment which is deducted from the statutory income. The amount of allowance is either 60% or 100% of qualifying capital expenditure incurred. The amount of allowance can be off-set either 70% or 100% of statutory income.**

**C2.2** How do companies using this program calculate the tax benefit they claim? Please be specific and provide a sample calculation using a blank tax form.

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

- C2.3** If the company carried forward a loss from prior years and used that loss to offset taxes due on the tax return filed during the investigation period, demonstrate that this loss was not generated by use of any countervailable tax program.

**The assistance is an allowance deducted from statutory income. Therefore, if the company experiences losses, no deduction is given and the allowance will be carried forward until it is fully utilised from the statutory income.**

- C2.4** If the program involves a deferral of taxes owed, please provide the amount and length of the deferral, and the details of any interest charged on the deferral.

**NOT APPLICABLE**

- C2.5** If the tax assistance results in negative income for tax purposes, for example through accelerated depreciation, is the company able to carry forward this loss?

**NOT APPLICABLE**

- C2.6** For a program that provides a reduction in the tax rate or an exemption from taxes payable, please report the tax rate that was paid under the program and the tax rate that would have applied in absence of the program.

**NOT APPLICABLE**

**PROGRAM 3: DOUBLE DEDUCTIONS FOR EXPORT CREDIT INSURANCE**

**C1.1** Provide details of the program including the following.

(a) Title of the program.

**Double Deductions for Export Credit Insurance**

(b) Policy objective and/or purpose of the program.

**The double deduction of export credit insurance premiums aims to encourage Malaysia's exporters.**

(c) Legislation under which the subsidy is granted.

**Please refer Income Tax (Deductions of Premiums for Export Credit Insurance) Rules 1985 (P.U.(A) 526/1985) made under Section 154 of the Income Tax Act 1967 (Attachment C-7).**

(d) Nature or form of the subsidy.

**The double deduction to arrive at adjusted income.**

(e) When the program was established.

**1985**

(f) Duration of the program.

**This is an on-going program.**

(g) How the program is administered and how it operates.

Premium paid is in respect of export credit insurance insured with a company approved by the Minister of Finance. During the period of investigation, Export Import Bank of Malaysia Berhad (EXIM) is the only approved insurance company under this program. This program is effective from year of assessment 1986 and subsequent years of assessment. Any person is eligible to this deduction.

Upon request by policyholder, EXIM will issue a certificate under Income Tax (Deduction for Export Credit Insurance) Rules 1985 for policyholders to claim for double deduction. Policyholder has to retain the above mentioned certificate along with all official receipt issued by EXIM to the IRB for audit purposes.

- (h) To whom and how the program is provided.

**This program is available to all Malaysian incorporated companies.**

- (i) The eligibility criteria in order to receive benefits under the program.



- C1.2** Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period. Specify the sections that govern the program.

**Please refer Income Tax (Deductions of Premiums for Export Credit Insurance) Rules 1985 (P.U.(A) 526/1985) made under Section 154 of the Income Tax Act 1967 (Attachment C-7).**

- C1.3** Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

**Please refer Income Tax (Deductions of Premiums for Export Credit Insurance) Rules 1985 (P.U.(A) 526/1985) made under Section 154 of the Income Tax Act 1967 (Attachment C-7).**

- C1.4** Identify the GOM department or agency administering the program.

**Granting authority:**

**Secretary General of Treasury  
Ministry of Finance Complex  
Precint 2, 62592 Putrajaya, Malaysia**

**Administrative authority:**

**Chief Executive Officer  
Inland Revenue Board Malaysia  
Menara Hasil, Level 17  
Persiaran Rimba Permai, Cyber 8  
63000 Cyberjaya, Selangor Malaysia**

- C1.5** Identify and explain the types of records maintained by the relevant Government or Agency (e.g., accounting records, company-specific files, databases, budget authorisations, etc.) regarding the program.

**The IRB maintains a database of approved companies (based on companies' declaration) and softcopies of companies' return form as e-filing is compulsory for all companies starting from Year of Assessment 2014.**

- C1.6** Indicate which of the companies listed in **Appendix A** applied for, accrued, or received benefits under the program during the investigation period.

**This information is available with individual companies**

- C1.7** Answer the following questions regarding the application process:

- (a) Describe the application process (including any application fees charged by the Government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

**There is no application process for this program. The claims are made during submission of annual income tax return (self-assessment).**

- (b) After an application is submitted, describe the procedures by which an application is analysed and eventually approved or refused.

**NOT APPLICABLE**

- (c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

**NOT APPLICABLE**

- (d) If the application is refused, provide the refusal documents together with the reasons for refusal.

**NOT APPLICABLE**

**C1.8** Answer the following questions regarding eligibility for and actual use of the benefits provided under this program.

- (a) Is eligibility for, or actual use of this program contingent, whether solely or as one of several other conditions, upon export performance? If so, please describe.

**NO**

- (b) Is eligibility for this program contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods? If so, please describe.

**NO**

- (c) Is eligibility for the subsidy limited to enterprises or industries located within designated regions? If so, specify the enterprises or industries and the designated regions.

**NO**

- (d) Is eligibility limited, by law, to any enterprise or group of enterprises, or to any industry or group of industries? If so, describe and specify the eligible enterprises or industries.

**NO**

**C1.9** Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

- (a) Describe the criteria governing the size of the benefit provided.

**Actual amount claimed subject to the eligibility criteria.**

- (b) Provide a copy of any law, regulation or other official document detailing these criteria.

**Please refer Income Tax (Deductions of Premiums for Export Credit Insurance) Rules 1985 (P.U.(A) 526/1985) made under Section 154 of the Income Tax Act 1967 (Attachment C-7).**

- (c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the Government agency or authority that administers the program?

**The applicant will claim when the eligibility criteria are met and IRB will ensure that the claims are in order during tax audits.**

- (d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the Government agency or authority that administers the program determine the benefit amount?

**The amount of the benefit provided is exclusively determined by established criteria found in the Income Tax (Deductions of Premiums for Export Credit Insurance) Rules 1985 (P.U.(A) 526/1985) made under Section 154 of the Income Tax Act 1967 (Attachment C-7).**

- (e) Provide any contractual agreements between the GOM and the companies that are receiving the benefits under the program (e.g., loan contracts, grant contracts, etc.).

**No contractual agreements between the GOM and the companies.**

- C1.10** Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years 2015, 2016, 2017 and for the first half of 2018.

**DATA IS NOT AVAILABLE**

- C1.11** How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years 2015, 2016, 2017 and for the first half of 2018. Provide the main reasons why applicants have been rejected.

**DATA IS NOT AVAILABLE**

- C1.12** Describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the program. When is the last date that a company could receive benefits under the program?

**There are no anticipated changes to the program.**

- C1.13** If assistance under the program was provided by an entity other than a national, state or local Government entity, please respond to the following questions:

**NONE**

- (a) What is the legal status of the entity e.g. is it a separately incorporated entity and/or a Government corporation, Government lending institution, commercial entity?
- (b) Please explain how the entity was established and whether the entity operates pursuant to statutes, decrees and/or regulations. Please explain the relevant statute, decrees and regulations under which the entity was established and operates;
- (c) What is the legal basis that governs the entity's provision of assistance under the program? Please provide translated copies of the relevant legal measures.
- (d) Has the entity received any direct or indirect funding or support from a Government entity? Please specify if the Government provided any such direct or indirect funding for the purpose of providing assistance under this program.



- (e) Did the entity provide assistance under the program pursuant to specific guidelines and/or criteria under this program? Please describe those guidelines and/or criteria.
- (f) Please provide the ownership structure of each such entity and specify the amount of any direct or indirect Government ownership during the investigation period (and for each year in which the assistance was provided).
- (g) Please provide the translated annual report during the investigation period (and for each year in which the assistance was provided) for each such entity.
- (h) What are the core activities and functions of each entity that provided the assistance under the program?
- (i) Explain why the assistance under this program was provided by this entity rather than directly by the Government.

## **PART C2 – SPECIFIC QUESTIONS -**

In addition to the general questions at C1 above, please answer the following specific questions in relation to any tax programs.

If any of the companies listed in **Appendix A** used the program to take deductions from taxable income, to receive credit towards taxes payable, to take exemptions from taxes owed, to reduce the tax rate, to defer payment of taxes, to carry forward losses from previous tax years, to use accelerated depreciation, or to benefit from other tax advantages on the tax return filed during the investigation period, please respond to the following questions.

**C2.1** Explain whether the assistance is a deduction from taxable income, a credit towards taxes payable, an exemption from taxes owed, a reduction in the tax rate, a deferral of taxes, a loss carry-forward from previous tax years, accelerated depreciation, or other tax benefit.

**A deduction to arrive at adjusted income.**

**C2.2** How do companies using this program calculate the tax benefit they claim? Please be specific and provide a sample calculation using a blank tax form.

[REDACTED]

[REDACTED]

[illegible]

**C2.3** If the company carried forward a loss from prior years and used that loss to offset taxes due on the tax return filed during the investigation period, demonstrate that this loss was not generated by use of any countervailable tax program.

**The loss making company can carry forward the deduction until it is fully utilised.**

**C2.4** If the program involves a deferral of taxes owed, please provide the amount and length of the deferral, and the details of any interest charged on the deferral.

**NOT APPLICABLE**

**C2.5** If the tax assistance results in negative income for tax purposes, for example through accelerated depreciation, is the company able to carry forward this loss?

**NOT APPLICABLE**

**C2.6** For a program that provides a reduction in the tax rate or an exemption from taxes payable, please report the tax rate that was paid under the program and the tax rate that would have applied in absence of the program.

**NOT APPLICABLE.**

**PROGRAM 4: DOUBLE DEDUCTION FOR FREIGHT CHARGES  
FROM SABAH OR SARAWAK**

**C1.1** Provide details of the program including the following.

(a) Title of the program.

**Double Deduction for Freight Charges from Sabah or Sarawak**

(b) Policy objective and/or purpose of the program.

**To encourage products from Sabah and Sarawak to be shipped  
to Peninsular Malaysia.**

(c) Legislation under which the subsidy is granted.

**The Income Tax (Deductions For Freight Charges From Sabah or  
Sarawak) Rules 2000 (P.U.(A) 50/2000) (Attachment C-8)**

(d) Nature or form of the subsidy.

**Deduction to ascertain adjusted income.**

(e) When the program was established.

**2000**

(f) Duration of the program.

**This is an on-going programme.**

(g) How the program is administered and how it operates.

**The freight charges incurred by manufacturers for the shipment of their manufactured goods from Sabah or Sarawak to any ports in Peninsular Malaysia is given double deduction.**

(h) To whom and how the program is provided.

**To any manufacturing companies located in Sabah or Sarawak.**

(i) The eligibility criteria in order to receive benefits under the program.

[REDACTED]

**C1.2** Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period. Specify the sections that govern the program.

**The Income Tax (Deductions For Freight Charges From Sabah or Sarawak) Rules 2000 (P.U.(A) 50/2000) (Attachment C-8)**

**C1.3.** Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

**The Income Tax (Deductions For Freight Charges From Sabah or Sarawak) Rules 2000 (P.U.(A) 50/2000) (Attachment C-8)**

**C1.4** Identify the GOM department or agency administering the program.

**Granting authority:**

**Secretary General of Treasury  
Ministry of Finance Complex  
Precint 2, 62592 Putrajaya, Malaysia**

**Administrative authority:**

**Chief Executive Officer  
Inland Revenue Board Malaysia  
Menara Hasil, Level 17  
Persiaran Rimba Permai, Cyber 8  
63000 Cyberjaya, Selangor, Malaysia**

**C1.5** Identify and explain the types of records maintained by the relevant Government or Agency (e.g., accounting records, company-specific files, databases, budget authorisations, etc.) regarding the program.

**The IRB maintains a database of approved companies (based on companies' declaration) and softcopies of companies' return form as e-filing is compulsory for all companies starting from Year of Assessment 2014.**

- C1.6** Indicate which of the companies listed in **Appendix A** applied for, accrued, or received benefits under the program during the investigation period.

**The information is available with the companies.**

- C1.7** Answer the following questions regarding the application process:

- (a) Describe the application process (including any application fees charged by the Government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

**There is no application process for this program. The claims are made during submission of annual income tax return (self-assessment).**

- (b) After an application is submitted, describe the procedures by which an application is analysed and eventually approved or refused.

**NOT APPLICABLE**

- (c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

**NOT APPLICABLE**

- (d) If the application is refused, provide the refusal documents together with the reasons for refusal.

**NOT APPLICABLE**

- C1.8** Answer the following questions regarding eligibility for and actual use of the benefits provided under this program.

- (a) Is eligibility for, or actual use of this program contingent, whether solely or as one of several other conditions, upon export performance? If so, please describe.

**NO**

- (b) Is eligibility for this program contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods? If so, please describe.

**NO**

- (c) Is eligibility for the subsidy limited to enterprises or industries located within designated regions? If so, specify the enterprises or industries and the designated regions.

**Manufacturing companies located in Sabah or Sarawak.**

- (d) Is eligibility limited, by law, to any enterprise or group of enterprises, or to any industry or group of industries? If so, describe and specify the eligible enterprises or industries.

**Manufacturing companies located in Sabah or Sarawak.**

**C1.9** Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

- (a) Describe the criteria governing the size of the benefit provided.

**Actual amount claimed subject to the eligibility criteria.**

- (b) Provide a copy of any law, regulation or other official document detailing these criteria.

**The Income Tax (Deductions For Freight Charges From Sabah or Sarawak) Rules 2000 (P.U.(A) 50/2000) (Attachment C-8)**

- (c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is

final approval contingent upon the Government agency or authority that administers the program?

**The applicant will claim when the eligibility criteria are met and IRB will ensure that the claims are in order during tax audits.**

- (d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the Government agency or authority that administers the program determine the benefit amount?

**NOT APPLICABLE**

- (e) Provide any contractual agreements between the GOM and the companies that are receiving the benefits under the program (e.g., loan contracts, grant contracts, etc.).

**No contractual agreements between the GOM and the companies.**

- C1.10** Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years 2015, 2016, 2017 and for the first half of 2018.

**DATA NOT AVAILABLE**

- C1.11** How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years 2015, 2016, 2017 and for the first half of 2018? Provide the main reasons why applicants have been rejected.

**DATA NOT AVAILABLE**

- C1.12** Describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the program. When is the last date that a company could receive benefits under the program?

**There are no anticipated changes to the program.**



**C1.13** If assistance under the program was provided by an entity other than a national, state or local Government entity, please respond to the following questions:

**NONE**

- (a) What is the legal status of the entity e.g. is it a separately incorporated entity and/or a Government corporation, Government lending institution, commercial entity?
- (b) Please explain how the entity was established and whether the entity operates pursuant to statutes, decrees and/or regulations. Please explain the relevant statute, decrees and regulations under which the entity was established and operates;
- (c) What is the legal basis that governs the entity's provision of assistance under the program? Please provide translated copies of the relevant legal measures.
- (d) Has the entity received any direct or indirect funding or support from a Government entity? Please specify if the Government provided any such direct or indirect funding for the purpose of providing assistance under this program.
- (e) Did the entity provide assistance under the program pursuant to specific guidelines and/or criteria under this program? Please describe those guidelines and/or criteria.
- (f) Please provide the ownership structure of each such entity and specify the amount of any direct or indirect Government ownership during the investigation period (and for each year in which the assistance was provided).
- (g) Please provide the translated annual report during the investigation period (and for each year in which the assistance was provided) for each such entity.
- (h) What are the core activities and functions of each entity that provided the assistance under the program?
- (i) Explain why the assistance under this program was provided by this entity rather than directly by the Government.

## **PART C2 – SPECIFIC QUESTIONS**

In addition to the general questions at C1 above, please answer the following specific questions in relation to any tax programs.

If any of the companies listed in **Appendix A** used the program to take deductions from taxable income, to receive credit towards taxes payable, to take exemptions from taxes owed, to reduce the tax rate, to defer payment of taxes, to carry forward losses from previous tax years, to use accelerated depreciation, or to benefit from other tax advantages on the tax return filed during the investigation period, please respond to the following questions.

**C2.1** Explain whether the assistance is a deduction from taxable income, a credit towards taxes payable, an exemption from taxes owed, a reduction in the tax rate, a deferral of taxes, a loss carry-forward from previous tax years, accelerated depreciation, or other tax benefit.

### A deduction to arrive at adjusted income

**C2.2** How do companies using this program calculate the tax benefit they claim?  
Please be specific and provide a sample calculation using a blank tax form.

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**If the deduction allowed above results in a loss, the loss can be carried forward.**

**C2.3** If the company carried forward a loss from prior years and used that loss to offset taxes due on the tax return filed during the investigation period, demonstrate that this loss was not generated by use of any countervailable tax program.

**The loss making company can carry forward the deduction until it is fully utilized.**

**C2.4** If the program involves a deferral of taxes owed, please provide the amount and length of the deferral, and the details of any interest charged on the deferral.

**NOT APPLICABLE**

**C2.5** If the tax assistance results in negative income for tax purposes, for example through accelerated depreciation, is the company able to carry forward this loss?

**NOT APPLICABLE**

**C2.6** For a program that provides a reduction in the tax rate or an exemption from taxes payable, please report the tax rate that was paid under the program and the tax rate that would have applied in absence of the program.

**NOT APPLICABLE**

**PROGRAM 5: DOUBLE DEDUCTIONS FOR INSURANCE PREMIUMS FOR EXPORTERS AND IMPORTERS**

This program has been revoke from year of assessment 2016.

Please refer to the following attachments:

- 1) The Income Tax (Deductions of Insurance Premiums for Exporters) Rules 1995/[P.U(A) 79/1995] (Attachment C-9)
- 2) Income Tax (Deductions of Insurance Premiums for Exporters) (Revocation) Rules 2012 - Revoke from Year of Assessment 2016 (Attachment C-10)
- 3) The Income Tax (Deductions of Insurance Premiums for Importers) Rules 1982/[P.U(A) 72/1982] (Attachment C-11)
- 4) Income Tax (Deductions Of Insurance Premiums For Importers)(Revocation) Rules 2012 - Revoke from Year of Assessment 2016 (Attachment C-12)

## **PROGRAM 6: REINVESTMENT ALLOWANCE**

**C1.1** Provide details of the program including the following.

(a) Title of the program.

**Reinvestment Allowance (RA)**

(b) Policy objective and/or purpose of the program.

**To encourage reinvestment by existing company which is resident in Malaysia engaged in manufacturing and selected agricultural projects.**

(c) Legislation under which the subsidy is granted.

**Please see Schedule 7A, Income Tax Act 1967. (Attachment C-13)**

(d) Nature or form of the subsidy.

**Where a company or a person qualifies to claim RA, RA shall be given in respect of capital expenditure incurred in the basis periods for fifteen (15) consecutive years of assessment beginning from the year of assessment for the basis period in which a claim for that RA is made by the company or the person**

(e) When the program was established.

**RA was established in 1980 under Schedule 7A ITA 1967.**

(f) Duration of the program.

**This is an on-going program.**

(g) How the program is administered and how it operates.

**The IRB is responsible for the administration of this programme. A company or a person are required to make the claim for the incentive by completing a form and substantiate the claims together with copies of supporting documents pertaining to the capital expenditure incurred. The original supporting documents have to be retained by the company for audit purposes by the IRB. The claim can be made in the annual tax returns for the basis period in which the capital expenditure is incurred.**

(h) To whom and how the program is provided.

**This program is eligible to all companies or any person who fulfils the conditions as stated in paragraph (i).**

(i) The eligibility criteria in order to receive benefits under the program.

**A company or a person resident in Malaysia is granted RA upon fulfilling the following conditions:**

- i. the business has been in operation for not less than thirty six (36) months;**
- ii. the company or person has incurred in the basis period for a year of assessment, capital expenditure on a factory, plant or machinery used in Malaysia for the purposes of a qualifying project.**

**C1.2** Provide translated copies in English of the decrees, laws and regulations relating to the program and any reports pertaining to the program published during or since the investigation period. Specify the sections that govern the program.

**Please see Schedule 7A, Income Tax Act 1967. (Attachment C-13)**

**C1.3** Provide copies together with translations in English of all legislative, regulatory, administrative and public documents relating to this program.

**Please see Schedule 7A, Income Tax Act 1967. (Attachment C-13)**

**C1.4** Identify the GOM department or agency administering the program.

**Administrative authority:**

**Chief Executive Officer  
Inland Revenue Board Malaysia  
Menara Hasil, Level 17  
Persiaran Rimba Permai, Cyber 8  
63000 Cyberjaya, Selangor Malaysia**

**C1.5** Identify and explain the types of records maintained by the relevant Government or Agency (e.g., accounting records, company-specific files, databases, budget authorisations, etc.) regarding the program.

**The IRB is responsible for the administration of this programme. A company or a person is required to make claims for the incentive by completing a form and substantiate the claims together with copies of supporting documents pertaining to the capital expenditure incurred. The original supporting documents have to be retained by the company for audit purposes by the IRB. The claim can be made in the annual tax returns for the basis period in which the capital expenditure is incurred.**

**C1.6** Indicate which of the companies listed in **Appendix A** applied for, accrued, or received benefits under the program during the investigation period.

**This information is available with individual companies**

**C1.7** Answer the following questions regarding the application process:

- (a) Describe the application process (including any application fees charged by the Government agency or authority) for the program and provide a blank copy of the application form (translated, if necessary).

**There is no application process for this program. The person claims in the Income Tax Return Form under self-assessment.**

- (b) After an application is submitted, describe the procedures by which an application is analysed and eventually approved or refused.
- (c) If the application is approved, provide the approval documents together with any conditions or criteria subject to which the approval is made.

- (d) If the application is refused, provide the refusal documents together with the reasons for refusal.

**C1.8** Answer the following questions regarding eligibility for and actual use of the benefits provided under this program.

- (a) Is eligibility for, or actual use of this program contingent, whether solely or as one of several other conditions, upon export performance? If so, please describe.

**NO**

- (b) Is eligibility for this program contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods? If so, please describe.

**NO**

- (c) Is eligibility for the subsidy limited to enterprises or industries located within designated regions? If so, specify the enterprises or industries and the designated regions.

**NO**

- (d) Is eligibility limited, by law, to any enterprise or group of enterprises, or to any industry or group of industries? If so, describe and specify the eligible enterprises or industries.

**NO**

**C1.9** Respond to the following questions regarding the criteria governing the eligibility for and receipt of any benefit under this program.

- (a) Describe the criteria governing the size of the benefit provided.
- (b) Provide a copy of any law, regulation or other official document detailing these criteria.



- (c) If the eligibility criteria as listed in the applicable law, regulation or other official documents are met, will the applicant always receive a benefit or is final approval contingent upon the Government agency or authority that administers the program?
- (d) Is the amount of the benefit provided exclusively determined by established criteria found in the law, regulation or other official document or does the Government agency or authority that administers the program determine the benefit amount?
- (e) Provide any contractual agreements between the GOM and the companies that are receiving the benefits under the program (e.g., loan contracts, grant contracts, etc.).

**No contractual agreements between the GOM and the companies.**

- C1.10** Provide a list by industry and by region of the companies that have received benefits under this program in the year the provision of benefits was approved and in each of the years 2015, 2016, 2017 and for the first half of 2018.

**This information is available with the individual companies.**

- C1.11** How many applicants have received financial assistance/benefit and how many applicants have been rejected in the year the financial assistance/benefit was approved and in each of the years 2015, 2016, 2017 and for the first half of 2018 Provide the main reasons why applicants have been rejected.

**This information is available with the individual companies and withdrawal of the incentives is upon audit.**

- C1.12** Describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the program. When is the last date that a company could receive benefits under the program?

**There are no anticipated changes to the program.**

- C1.13** If assistance under the program was provided by an entity other than a national, state or local Government entity, please respond to the following questions:

**NONE**

- (a) What is the legal status of the entity e.g. is it a separately incorporated entity and/or a Government corporation, Government lending institution, commercial entity?
- (b) Please explain how the entity was established and whether the entity operates pursuant to statutes, decrees and/or regulations. Please explain the relevant statute, decrees and regulations under which the entity was established and operates;
- (c) What is the legal basis that governs the entity's provision of assistance under the program? Please provide translated copies of the relevant legal measures.
- (d) Has the entity received any direct or indirect funding or support from a Government entity? Please specify if the Government provided any such direct or indirect funding for the purpose of providing assistance under this program.
- (e) Did the entity provide assistance under the program pursuant to specific guidelines and/or criteria under this program? Please describe those guidelines and/or criteria.
- (f) Please provide the ownership structure of each such entity and specify the amount of any direct or indirect Government ownership during the investigation period (and for each year in which the assistance was provided).
- (g) Please provide the translated annual report during the investigation period (and for each year in which the assistance was provided) for each such entity.
- (h) What are the core activities and functions of each entity that provided the assistance under the program?
- (i) Explain why the assistance under this program was provided by this entity rather than directly by the Government.

## **PART C2 – SPECIFIC QUESTIONS -**

In addition to the general questions at C1 above, please answer the following specific questions in relation to any tax programs.

If any of the companies listed in **Appendix A** used the program to take deductions from taxable income, to receive credit towards taxes payable, to take exemptions from taxes owed, to reduce the tax rate, to defer payment of taxes, to carry forward losses from previous tax years, to use accelerated depreciation, or to benefit from other tax advantages on the tax return filed during the investigation period, please respond to the following questions.

- C2.1** Explain whether the assistance is a deduction from taxable income, a credit towards taxes payable, an exemption from taxes owed, a reduction in the tax rate, a deferral of taxes, a loss carry-forward from previous tax years, accelerated depreciation, or other tax benefit.

RA is given to a company or a person at [REDACTED] on the capital expenditure incurred in the basis period for a year of assessment which is [REDACTED] of statutory income.

Any RA unutilised in the basis period in which the capital expenditure was incurred can be carried forward to the following years of assessment until fully absorbed.

**C2.2** How do companies using this program calculate the tax benefit they claim?  
Please be specific and provide a sample calculation using a blank tax form.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
[REDACTED]	[REDACTED]
	[REDACTED]
[REDACTED]	[REDACTED]
	[REDACTED]
[REDACTED]	

**C2.3** If the company carried forward a loss from prior years and used that loss to offset taxes due on the tax return filed during the investigation period, demonstrate that this loss was not generated by use of any countervailable tax program.

**The assistance is an allowance deducted from statutory income. Therefore, if the company experience losses, no deduction is given and the allowance will be carried forward until it is fully utilised from the statutory income.**

**C2.4** If the program involves a deferral of taxes owed, please provide the amount and length of the deferral, and the details of any interest charged on the deferral.

**None.**

**C2.5** If the tax assistance results in negative income for tax purposes, for example through accelerated depreciation, is the company able to carry forward this loss?

**Yes.**


**C2.6** For a program that provides a reduction in the tax rate or an exemption from taxes payable, please report the tax rate that was paid under the program and the tax rate that would have applied in absence of the program.

**[REDACTED]**

**SECTION D - DECLARATION****DECLARATION**

The undersigned certifies that all information supplied herein in response to the questionnaire (including any data supplied in an electronic format) is complete and correct to the best of his/her knowledge and belief.

Date 13 June 2019

  
**Signature of authorised official**  
 NORAZAH ABDUL JABBAR  
 Director  
 Trade Practices Section  
 Ministry of International Trade and Industry  
 Malaysia

**Title of authorised official**



<b>GLOSSARY OF TERMS</b>
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*Throughout this questionnaire certain words and terminology have been used and they have the following meanings:*

***Associated Persons and/or Companies***

Persons shall be deemed to be associates of each other if:

(a) both being natural persons:

- (i) they are connected by a blood relationship or by marriage or adoption; or
- (ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;

(b) both being bodies corporate:

- (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate); or
- (ii) both of them together control, directly or indirectly, a third body corporate; or
- (iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them; or

(c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate); or

(d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or

(e) they are members of the same partnership.

***Enterprise***

"Enterprise" includes a group of enterprises, an industry and a group of industries.

***Foreign Invested Enterprise (FIE)***

An FIE may be:

1. Malaysian-foreign equity joint venture:

Joint venture between a Malaysian company, enterprise, or other business organisation and a foreign company, enterprise, business organisation or individual set up in the form of a Malaysian limited liability company.

The characteristics of a Malaysian-foreign equity joint venture are joint investment, joint operation, and the participants share profits, risks and losses in proportion to their respective contributions to the registered capital of the joint venture.

The proportion of the investment by the foreign party is no less than 25% in the registered capital of equity joint venture.

## 2. Malaysian-foreign contractual joint venture:

A joint venture established between foreign enterprises and other economic organisations or individuals, and Malaysian enterprises or other economic organisations within the territory of Malaysia. The rights and obligations of each party are determined in accordance with the agreement specified in the contractual joint venture contract. The investment or conditions for cooperation contributed by the Malaysian and foreign parties may be provided in cash or in kind, or may include the right to the use of land, industrial property rights, non-patent technology or other property rights.

## 3. Wholly foreign owned enterprises:

A wholly foreign owned enterprise is established by foreign enterprises and other economic organisations or by individuals pursuant to the Malaysian laws within the territory of Malaysia. All of the wholly foreign owned enterprise's capital is invested by foreign investors. It may also be referred to as a Foreign Enterprise (FE).

### ***Government of Malaysia (GOM)***

For the purposes of this questionnaire, GOM refers to all levels of Government, i.e., central, provincial, regional, city, special economic zone, municipal, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed.

It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of any law passed by, the Government of that country or that provincial, state or municipal or other local or regional Government.

### ***Program(s)***

The term "program", as used throughout this questionnaire in reference to alleged subsidies, refers to broad categories of subsidies that the Commission has reason to believe may be available to exporters of the goods.

In this regard, the term "program" as used in this questionnaire should not be taken to necessarily refer to formal programs maintained by the GOM, nor should it be taken to refer to one specific subsidy. Rather, "program"

as used in this questionnaire can refer to informal subsidies provided by the GOM, and can also refer to multiple individual, albeit similar, subsidies.

### ***Economic Zone***

Refers to a Special Economic Area, Economic and Technical Development Zone, Bonded Zone, Export Processing Zone, High Technology Industrial Development Zone, or any other designated area where benefits from the GOM (including central, provincial, municipal or county Government) accrue to a company because of being located in such an area.

### ***State Invested Enterprises (SIE)***

For the purposes of this questionnaire, SIE refers to any company or enterprise that is wholly or partially owned by the GOM as defined above (either through direct ownership or through association).

### ***Subsidy***

Subsidy, in respect of goods exported to Australia, means:

(a) a financial contribution:

(i) by a Government of the country of export or country of origin of the goods; or

(ii) by a public body of that country or a public body of which that Government is a member; or

(iii) by a private body entrusted or directed by that Government or public body to carry out a Governmental function;

that involves:

(iv) a direct transfer of funds from that Government or body; or

(v) the acceptance of liabilities, whether actual or potential, by that Government or body; or

(vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that Government or body; or

(vii) the provision by that Government or body of goods or services otherwise than in the course of providing normal infrastructure; or

(viii) the purchase by that Government or body of goods or services; or

(b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a Government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia