



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

FINAL REPORT NO. 576

ACCELERATED REVIEW

**OF THE DUMPING DUTY NOTICE AND
COUNTERVAILING DUTY NOTICE APPLYING TO
CERTAIN ALUMINIUM EXTRUSIONS EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA**

BY

PANASIA ENTERPRISES (NANYANG) COMPANY LIMITED

22 April 2021

PUBLIC RECORD

CONTENTS

1	SUMMARY AND RECOMMENDATION	3
1.1	BACKGROUND.....	3
1.2	APPLICATION OF LAW TO FACTS	3
1.3	FINDINGS	3
1.4	RECOMMENDATION	4
2	BACKGROUND	5
2.1	THE GOODS	5
2.2	ACCELERATED REVIEWS.....	6
2.3	EXISTING MEASURES.....	7
2.4	NOTIFICATION AND PARTICIPATION.....	7
2.5	EXPORTER QUESTIONNAIRE RESPONSE.....	ERROR! BOOKMARK NOT DEFINED.
2.6	PUBLIC RECORD	8
3	EXPORT PRICE	10
3.1	VERIFICATION.....	ERROR! BOOKMARK NOT DEFINED.
3.2	FINDINGS	10
4	NORMAL VALUE	13
5	COUNTERAVAILABLE SUBSIDIES	15
5.1	FINDINGS	15
5.2	LEGISLATIVE REQUIREMENT FOR COUNTERAVAILABLE SUBSIDIES.....	15
5.3	PROGRAMS REVIEWED	15
5.4	AMOUNT OF COUNTERAVAILABLE SUBSIDY RECEIVED	20
6	NON-INJURIOUS PRICE	21
6.1	LEGISLATIVE FRAMEWORK.....	21
6.2	THE COMMISSION'S ASSESSMENT	21
7	FORM OF MEASURES	23
7.1	CURRENT FORM OF MEASURES	23
7.2	RECOMMENDED FORM OF MEASURES.....	23
8	EFFECT OF THE ACCELERATED REVIEW	24
9	RECOMMENDATIONS	25
10	APPENDICES	27

PUBLIC RECORD

ABBREVIATIONS

the accelerated review period	1 January 2020 to 31 December 2020
the Act	<i>Customs Act 1901</i> (Cth)
ADN	Anti-Dumping Notice
aluminium extrusions	certain aluminium extrusions (also referred to as the goods)
Capral	Capral Limited
China	the People's Republic of China
CIF	Cost, Insurance and Freight
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	cost to make
Customs Tariff Regulation	<i>Customs Tariff (Anti-Dumping) Regulation 2013</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i> (Cth)
PA Australia	Panasia Aluminium Pty Ltd
PA China	Panasia Aluminium (China) Limited
PA Nanyang, or the applicant	Panasia Enterprises (Nanyang) Company Limited
the goods	the goods the subject of the accelerated review (also referred to as the goods under consideration)
GAAP	generally accepted accounting principles
GOC	Government of China
ICD	interim countervailing duty
IDD	interim dumping duty
LME	London Metal Exchange
the Manual	the Dumping and Subsidy Manual, November 2018. Available on the Commission's website at www.adcommission.gov.au .
the Minister	Minister for Industry, Science and Technology
NIP	non-injurious price
the notices	the dumping duty notice and countervailing duty notice
OCOT	ordinary course of trade
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 543	<i>Anti-Dumping Commission Report No. 543</i>
REQ	response to the exporter questionnaire
SG&A	selling, general and administrative costs
SOE	state-owned enterprises
SIE	state-invested enterprises
VAT	value added tax

1 SUMMARY AND RECOMMENDATION

1.1 Background

On 12 January 2021, Panasia Enterprises (Nanyang) Company Limited (PA Nanyang) made an application to the Anti-Dumping Commission (the Commission), seeking an accelerated review of the dumping duty notice and countervailing duty notice (the notices) applying to certain aluminium extrusions (aluminium extrusions, or the goods) exported to Australia from the People's Republic of China (China).¹

PA Nanyang's application seeks an accelerated review on the basis that the notices are inappropriate because it is currently subject to the combined rate of interim dumping duty (IDD) and interim countervailing duty (ICD) of 77.4 per cent. This rate reflects the combined rate for 'All other exporters' as determined by the Minister following *Anti-Dumping Commission Report No. 543 (REP 543)*.

The application was also sought based on a unique set of circumstances including a rezoning of industrial land, which resulted in the shutdown of Panasia Aluminium (China) Limited's (PA China) manufacturing facility and the transition and restructure of a new manufacturing facility operated by PA Nanyang in a new province.

PA Nanyang did not export the goods to Australia during the period subject to the original investigation and is therefore a 'new exporter' as defined in section 269T(1) of the *Customs Act 1901* (the Act).²

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

1.2 Application of law to facts

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

- sets out the procedures to be followed and the matters to be considered by the Commissioner when conducting accelerated reviews for the purpose of making a report to the Minister; and
- enables the Minister, after consideration of such reports, to leave the notices unchanged or to modify them as appropriate.

1.3 Findings

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

- the export price should be determined under section 269TAB(1)(c), having regard to all the circumstances of the exportation;
- the normal value should be constructed under section 269TAC(2)(c) in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation); and

¹ [EPR 576](#), document no. 1

² All legislative references in this report are to the *Customs Act 1901* unless otherwise specified.

PUBLIC RECORD

- the amount of countervailable subsidy should be determined under section 269TACD, as one countervailable subsidy program (Program 15) has conferred a benefit on the goods exported to Australia by PA Nanyang.

1.4 Recommendation

Based on the above findings and because of section 269ZG(1)(b), the Commissioner recommends that:

- (a) the Minister alter the notices, so as to apply to PA Nanyang, as if different variable factors had been fixed (excluding the non-injurious price (NIP)); and
- (b) the NIP be the same as the current NIP applicable to all exports of the goods from China.

Further, the Commissioner recommends that:

- the Minister determine that the IDD be worked out on PA Nanyang's exports to Australia in accordance with the combination of fixed and variable duty method at a rate of **59.5 per cent** pursuant to section 5(4) of the *Customs Tariff (Anti-Dumping) Regulation 2013* (Customs Tariff Regulation); and
- the ICD applicable to PA Nanyang's exports to Australia is **1.0** per cent.

If accepted by the Minister, the individual rates applicable to PA Nanyang will take effect retrospectively from 12 January 2021 (the date the application was lodged).

2 BACKGROUND

2.1 The goods

2.1.1 Description

The goods subject to anti-dumping measures (the goods), in the form of a dumping duty notice and a countervailing duty notice (the notices), are outlined in the table below.

Full description of the goods the subject of the application
<p>Aluminium extrusions that:</p> <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> ○ 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.
Further information
<p>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.</p> <p>The goods under consideration do not extend to intermediate or finished product 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.</p>

Table 1: Tariff classifications of the goods

Further details on the goods and existing measures is available on the Dumping Commodity Register on the Anti-Dumping Commission's website (www.adcommission.gov.au).

2.1.2 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995* (Cth):³

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

Table 2: Tariff classifications of the goods

2.2 Accelerated reviews

The legislative framework that underpins the making of, and my consideration of, an application for accelerated review of dumping and countervailing duty notices is contained in Divisions 1 and 6 of Part XVB of the Act.

If I do not reject an application, or terminate an accelerated review, I must, no later than 100 days after the application is lodged, provide the Minister for Industry, Science and Technology a report recommending:⁴

- (a) that the dumping duty notice and countervailing duty notice the subject of the application, remain unaltered;⁵ or
- (b) that the dumping duty notice and countervailing duty notice the subject of the application be altered, so as to apply to the applicant as if different variable factors had been fixed;⁶

and set out my reasons for so recommending.⁷

Following the Minister's decision, a notice is published on the Commission's website advising of the decision.⁸

³ These tariff classifications and statistical codes may include goods that are both subject and not subject to the anti-dumping measures. The listing of these tariff classifications and statistical codes is for convenience and reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to the anti-dumping measures.

⁴ Section 269ZG(2)

⁵ Section 269ZG(1)(a)

⁶ Section 269ZG(1)(b)

⁷ Section 269ZG(1)

⁸ Section 269ZG(3)

2.3 Existing measures

On 12 October 2020, the Minister revised the variable factors and effective rates of duty applicable to the goods following a continuation of anti-dumping measures as they affect exporters from China (REP 543).⁹

The existing measures implemented are as follows:

Exporter	IDD Method	ICD Method	Fixed rate of combined IDD and ICD	Variable component of IDD
Goomax	Floor price	Ad valorem	1.0%	Applicable only where the actual export price is below the ascertained normal value.
Jinxiecheng	Floor price	Ad valorem	0.0%	
Yongya	Floor price	Ad valorem	0.0%	
Kam Kiu China	Combination	Ad valorem	25.6%	Applicable only where the actual export price is below the ascertained export price.
PA China	Combination	Ad valorem	70.3%	
Residual exporters	Combination	Ad valorem	11.5%	
All other exporters	Combination	Ad valorem	77.4%	

Table 3: Summary of effective interim dumping and countervailing duty

Exports from China by PA Nanyang are currently subject to securities at the all other exporters rate of 77.4% per cent, while its application for accelerated review is being considered.¹⁰

Further details of the measures in place on exports from China are available in the *Dumping Commodity Register* on the Commission's website.¹¹

2.4 Notification and participation

On 12 January 2021, PA Nanyang lodged an application for an accelerated review of the notices applying to certain aluminium extrusions exported to Australia from China in so far as the notices affect PA Nanyang.

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

- the circumstances in which an accelerated review can be sought under section 269ZE(1) have been satisfied;
- there are no grounds to reject the application under section 269ZE(2)(a);
- one of the conditions for rejection under section 269ZE(2)(b) applies, however due to the unique circumstances of this case the Commissioner exercised his discretion to not reject the application; and
- the application satisfies the requirements of section 269ZF.

⁹ Refer to *Anti-Dumping Commission Report No. 543* and Anti-Dumping Notice (ADN) No. 2020/103

¹⁰ Section 269ZH

¹¹ www.adcommission.gov.au

PUBLIC RECORD

The commencement of this accelerated review was notified in ADN No. 2021/013, which was published on 5 February 2021 and made available on the public record on the Commission's website.¹²

ADN No. 2021/013 advised that the Commissioner's recommendation will be made in a report on, or before, **22 April 2021**.

For the purposes of the accelerated review, the period examined is 1 January 2020 to 31 December 2020 (the accelerated review period).

2.5 Information gathered

2.5.1 Exporter questionnaire

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

On 22 February 2021, the Commission received a completed response to the exporter questionnaire (REQ) from PA Nanyang.

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

A number of tests were undertaken on PA Nanyang's data for the purpose of this accelerated review. Those tests include comparison of PA Nanyang's data to:

- information and data compiled and verified as part of REP 543; and
- source documents including financial statements, commercial invoices, sales ledgers and shipping documentation.

The Commission also sought clarification and further responses from PA Nanyang on a range of matters throughout the conduct of this review and PA Nanyang cooperated and provided responses to the queries within the designated timeframes. The Commission is satisfied as to the accuracy, relevance and completeness of the data supplied by PA Nanyang upon which the findings of this accelerated review are based.

2.5.2 Verification

The Commission conducted a desktop verification of PA Nanyang's REQ.

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

2.6 Public record

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

¹² Section 2.6 refers

2.7 Submission received

On 25 February 2021, the Commission received a submission from Capral Limited (Capral), a member of the Australian aluminium extrusion industry.¹³ Capral objects to the Commissioner accepting PA Nanyang's application for this accelerated review and exercising his discretion to not reject the application, despite one of the conditions for rejection under section 269ZE(2)(b) applying.¹⁴

In summary Capral says the following forms the basis as to why PA Nanyang's application for accelerated review should have been rejected:

- (a) the Commissioner's exercise of the discretion to not reject PA Nanyang's application for accelerated review appears to be based on PA Nanyang's relocation to Henan;
- (b) the exercise of such discretion was incorrectly exercised because the Commissioner has 'discarded' PA China's (and the PanAsia Group of companies) [alleged] history of continued dumping of aluminium extrusions into the Australian market; and
- (c) PA Nanyang is a related company to PA China and therefore Capral asserts that it will effectively operate as the same company with the same manufacturing assets, with only its location differing.

The Commissioner has carefully considered Capral's submissions but does not accept the application should have been rejected, because:

- (a) the accelerated review is a review of PA Nanyang only. Evidence shows that while PA Nanyang is part of the PanAsia Group, it is a separate legal entity;
- (b) the Commissioner considered information and data compiled and verified as part of REP 543;
- (c) PA Nanyang only commenced exporting the subject goods to Australia in July 2020;
- (d) there is no evidence of exports by PA Nanyang during the investigation period for the original investigation and there is evidence to show that PA Nanyang is a new exporter; and
- (e) the Guangdong Provincial Government's re-zoning of industrial land resulted in PA China's manufacturing facility closing down and the transfer of manufacturing to the Henan Province.

Based upon points (a) to (e) immediately above, the Commissioner maintains that the above circumstances are unique and persuasive as to the exercise of the discretion to not reject PA Nanyang's application for accelerated review.

¹³ [EPR 576](#), document no. 3

¹⁴ As set out in ADN No. 2021/013

3 EXPORT PRICE

3.1 Finding

The export price for PA Nanyang is different to that currently applicable to exports subject to the 'all other exporters' rate and should be determined under section 269TAB(1)(c), having regard to all the circumstances of the exportation.

3.2 The importer

Section 269T(1) defines the *importer* and sets out that the importer is the beneficial owner of the goods at the time of their arrival within the limits of the port in Australia at which they landed.

PA Nanyang sold the goods through related trading companies to its related Australian customer Panasia Aluminium Pty Ltd (PA Australia).

In relation to the exports to Australia, the Commission found that PA Australia:

- is named on the commercial invoice from its supplier;
- is named as the consignee on the bill of lading;
- is declared as the importer on the import declaration to the Australian Border Force;
- pays for all the importation charges; and
- arranges delivery from the port.

Having regard to this information, the Commission is satisfied that PA Australia was the beneficial owner of the goods at the time of importation into Australia, and therefore the importer of the goods.

3.3 The exporter

The Commission will generally identify the exporter as:¹⁵

- a principal in the transaction located in the country of export from where the goods were shipped who gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal 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.

In relation to the exports to Australia, the Commission found that PA Nanyang exported through a related trader, Macao Commercial Offshore Ltd (OPAL) until September 2020. It then exported through another related trader from October 2020. Both related traders were:

- named on the commercial invoice as the supplier;
- named as consignor on the bill of lading;
- arranged and paid for the inland transport to the port of export;

¹⁵ Refer to page 29 of the Manual.

PUBLIC RECORD

- arranged and paid for the port handling charges at the port of export; and
- arranged and paid for the ocean freight and marine insurance.

However, PA Nanyang:

- is named on the commercial invoice as the manufacturer; and
- is named as exporter and producer on the certificate of origin.

Accordingly, the Commission considers PA Nanyang to be the principal (the manufacturer of the goods) who placed the goods in the hands of a related trader for delivery to Australia. PA Nanyang is, therefore, the exporter of the goods.

3.4 Arms length assessment

In respect of exports of aluminium extrusions to Australia during the inquiry period examined in REP 543, the Commission found evidence 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. The Commission has formed this view because:

- PA China, its related trading companies, and PA Australia are all ultimately wholly owned by PanAsialum Holdings Company Limited;
- PA Australia was the sole Australian purchaser of the goods; and
- the prices between PA China and its related trading companies, and between the trading companies and PA Australia, are artificially set.¹⁶

The Commission was, therefore, not satisfied that the export sales were arms length transactions, pursuant to section 269TAA(1)(b).

PA Nanyang advised the Commission that the sales and negotiation process for the PanAsia Group has not changed from REP 543. Therefore the Commission is satisfied that PA Nanyang's export sales to Australia during the accelerated review period were not arms length transactions.

3.5 Export price determination

In relation to the goods exported to Australia during the accelerated review period by PA Nanyang, the goods were not purchased by the importer from the exporter. Instead, sales occurred between PA Nanyang (the exporter) and its related trading companies and, separately, the trading companies and PA Australia (the importer). Export price therefore cannot be determined under section 269TAB(1)(a) or 269TAB(1)(b).

Sufficient information exists to determine export price under section 269TAB(1)(c), having regard to all relevant information.

Noting that sales between PA Nanyang and its related trading companies and between the trading companies and PA Australia were found not to be arms length transactions, the export price has been calculated by reference to the invoice price

¹⁶ As detailed in the PA Australia verification report on [EPR 543](#) (document no. 51): the absence of negotiation on price and conditions in relation to the purchases of the goods, specifics relating to the price setting mechanisms between the trading company and PA Australia, and the common ownership of PA Australia, the trading company and PA China, indicated that the price is influenced by a commercial or other relationship.

PUBLIC RECORD

from PA Australia to its Australian customers, less all relevant deductions, to calculate a Free on Board (FOB) price from China reflective of what would otherwise be sales at arms length. The relevant deductions from the invoice price from PA Australia to its Australian customers are:

- Australian importation costs;
- IDD and ICD;
- ocean freight;
- marine insurance;
- PA Australia's selling, general and administrative (SG&A) expenses; and
- PA Australia's profit.

The verification team's export price calculations are at **Confidential Appendix 1**.

4 NORMAL VALUE

4.1 Finding

The normal value for PA Nanyang is different to that currently applicable to exports subject to the 'all other exporters' rate and should be constructed under section 269TAC(2)(c) in accordance with sections 43, 44 and 45 of the Regulation.

4.2 Constructed normal value and proper comparison

The Commission is satisfied that, as a result of the findings in REP 543 regarding a situation in the domestic aluminium extrusions market in China, domestic selling prices are not suitable for use in determining a normal value under section 269TAC(1) of the Act.

It was determined in REP 543 that Chinese exporters enjoy a cost advantage that either manifests as an increased margin at the prevailing level of competitive pricing in the Australian market, a low export price that undercuts the prevailing level of competitive pricing, or a combination thereof, whereby the Chinese manufacturer can enjoy a higher margin while still undercutting other market participants. The effect of the market situation on export price is to modify the conditions of competition in Australia to the benefit of Chinese exporters and, to the extent that benefit manifests as a low price that undercuts the prevailing level of competitive pricing in Australia, to the detriment of all other market participants in that market.

The Commission finds that the relative effect of the market situation on domestic and export prices is materially different in the relevant markets. For the reasons outlined above, and consistent with REP 543, the Commission finds that the domestic sales price of PA Nanyang are not suitable to use as the basis for normal value pursuant to section 259TAC(1), because they do not permit a proper comparison with the export price for the purposes of determining the existence and margin of dumping in the Australian market.

The Commission has, therefore, calculated a normal value under section 269TAC(2)(c) of the Act, using the sum of:

- the cost to make (CTM) the goods that reasonably reflects competitive market costs in accordance with section 43(2) of the Regulation; plus
- domestic SG&A, on the assumption that the goods, instead of being exported, were sold domestically, based on the company's records in accordance with section 44(2) of the Regulation; plus
- an amount for profit, based on data relating to the production and sale of like goods on the domestic market in the OCOT in accordance with section 45(2) of the Regulation.

The Commission considered the following adjustments in accordance with section 269TAC(9) of the Act, so as to ensure that the normal value was properly comparable with the export price of the goods:

- **domestic credit terms** – a downwards adjustment was made, determined by weighted average payment days, based on total sales revenue;

PUBLIC RECORD

- **export credit terms** – an upwards adjustment was made, determined by weighted average payment days, based on total sales revenue;
- **export inland transport** – PA Nanyang’s trader incurred the cost of transporting the goods to the port of export. PA Nanyang calculated the per unit rate by summing the trader’s actual total export inland transport expenses for containers shipped to Australia in the review period, divided by quantity shipped to Australia in the review period;
- **export port handling** – PA Nanyang’s trader incurred the cost of handling at the port of export. PA Nanyang calculated the per unit rate by dividing the total of PA Nanyang’s customs expenses by quantity shipped to all overseas countries in the review period;
- **trader SG&A cost** – PA Nanyang sells directly to its customers on the domestic market. For Australian sales, all of the goods were sold at EXW terms to a related trader for exportation to Australia. Therefore, additional indirect SG&A expenses are incurred for the export of the goods to Australia. As the trader’s selling activities are primarily export activities, the SG&A rate was calculated on all of its SG&A expenses;
- **trader profit** – in facilitating the export of the goods to Australia, the Commission considered that PA Nanyang’s trader would aim to achieve a profit on these sales. However, the Commission determined that the trader did not achieve a profit during the review period and therefore no profit margin was applied; and
- **trader export credit terms** – an upwards adjustment was made, determined by the trader’s weighted average payment days, based on total sales revenue.

As PA Nanyang traded with OPAL for the majority of the review period, the Commission considered it reasonable and appropriate to calculate the adjustments based on information relevant to PA Nanyang’s sales through OPAL.

The Commission has assessed the aluminium input costs in PA Nanyang’s CTM and determined that the costs do not reasonably reflect competitive market costs associated with the production of like goods due to the influence of the GOC in the domestic Chinese market for primary aluminium.

In determining PA Nanyang’s CTM under section 43(2) of the Regulation, the Commission has applied a competitive aluminium benchmark as detailed in REP 543.

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

5 COUNTERAVAILABLE SUBSIDIES

5.1 Finding

The amount of countervailable subsidy for PA Nanyang is different to that currently applicable to exports subject to the ‘all other exporters’ rate. The countervailable subsidy for PA Nanyang is **1.0** per cent of the export price.

5.2 Legislative requirement for countervailable subsidies

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

5.3 Programs reviewed

In REP 543, the Commission found that the following programs are countervailable in respect of aluminium extrusions exported to Australia from China:

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
2	One-time Awards to Enterprises Whose Products Qualify for ‘Well-Known Trademarks of China’ and ‘Famous Brands of China’	Grant	Yes
3	Provincial Scientific Development Plan Fund	Grant	Yes
4	Export Brand Development Fund	Grant	Yes
5	Matching Funds for International Market Development for Small and Medium Enterprises (SME)	Grant	Yes
6	Superstar Enterprise Grant	Grant	Yes
7	Research & Development (R&D) Assistance Grant	Grant	Yes
8	Patent Award of Guangdong Province	Grant	Yes
9	Training Program for Rural Surplus Labour Force Transfer Employment	Grant	Yes
15	Aluminium provided at less than adequate remuneration	Less than adequate remuneration	Yes
18	Preferential tax policies in the Western Regions	Tax	Yes
21	Tariff and VAT Exemptions on Imported Materials and Equipment	Tariff and VAT Exemptions	Yes
26	Innovative Experimental Enterprise Grant	Grant	Yes

PUBLIC RECORD

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
29	Special Support Fund for Non-State-Owned Enterprises	Grant	Yes
32	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
35	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
47	Preferential tax policies for high and new technology enterprises	Tax	Yes
48	Provincial Government of Guangdong (PGOG) tax offset for R&D	Tax	Yes
56	PGOG special fund for energy saving technology reform	Grant	Yes
58	Development assistance grants from the Zhaoqing New and High Tech Industrial Development Zone (ZHTDZ)	Grant	Yes
59	Processing trade special fund	Grant	Yes
60	Trade insurance support fund	Grant	Yes
61	Enterprise employment fixed point monitoring work subsidy	Grant	Yes
62	Special funds for provincial enterprises to transfer and upgrade equipment	Grant	Yes
63	Reserve funds for enterprise development	Grant	Yes
64	High integrity enterprise award 2014	Grant	Yes
65	Jiangmen engineering technology research centre award	Grant	Yes
66	2016 Shanghai Automotive Commodities Exhibition special fee subsidy	Grant	Yes
67	Corporate remuneration survey subsidy	Grant	Yes
68	Energy saving project subsidy	Grant	Yes
69	Science and technology project subsidy	Grant	Yes
70	Provincial engineering and technology research centre 2016	Grant	Yes
71	Foreign trade development fund subsidy of Jiangmen City	Grant	Yes
72	2015 Special Funds of Technology Renovation technical renovation project with environmental protection	Grant	Yes
73	Provincial Market Development Grant for foreign trade exhibitions and SMEs International market development	Grant	Yes
75	Subsidy for Supporting Foreign Trade Enterprises of Nan'an city in 2017	Grant	Yes
76	Fund for Supporting Foreign Trade Export in 2017 of Nan'an Municipal Bureau of Financial	Grant	Yes

PUBLIC RECORD

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
77	Power consumption award for production and efficiency increase in December 2016	Grant	Yes
78	Integration of informationization and industrialization management system (Note changed from market development due to info provided from Goomax)	Grant	Yes
79	Subsidy for invention patents	Grant	Yes
80	No. 269: Special project for technology reform- subsidy for technology reform	Grant	Yes
81	Madrid Trademark grant by Fujian Provincial Administration for Industry and Commerce	Grant	Yes
82	2016 Award for brand value from Finance Bureau	Grant	Yes
83	Social security fund Guangzhou Social Insurance Fund	Grant	Yes
84	Patent supporting fund	Grant	Yes
85	Unemployment fund Guangzhou Social Insurance Fund	Grant	Yes
86	Technology supporting fund	Grant	Yes
87	Special fund Industry technology development and research	Grant	Yes
88	Industry technology R&D fund	Grant	Yes
89	Technology innovation fund	Grant	Yes
90	Social security fund Zencheng City	Grant	Yes
91	2016 Jiangmen support fund for technology development	Grant	Yes
92	Funds for EFT16 technical reform	Grant	Yes
93	Funds for 2016 technical renovation	Grant	Yes
94	EFT provincial Industry and informatization special research expenses supplement fund	Grant	Yes
95	2017 Enterprise Compensation Survey Fund	Grant	Yes
96	VOCs treatment fund for the process of injection workshop	Grant	Yes
97	Economic investigation fund	Grant	Yes
98	2017 Provincial Motor Energy Efficiency Promotion Special Fund	Grant	Yes
99	2017 Jiangmen Enterprise Major technology platform construction Fund	Grant	Yes
100	Receiving the payment from Taishan Finance Bureau	Grant	Yes
101	2017 Jiangmen Enterprise Research and Development Financial Aid Fund	Grant	Yes
102	Taishan High-integrity enterprise project fund	Grant	Yes

PUBLIC RECORD

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
103	2017 Provincial Enterprise Research and Development Fund	Grant	Yes
104	Special funds for enterprises in large equipment manufacturing industry	Grant	Yes
105	2017 Provincial New enterprise Technology Reform Fund	Grant	Yes
106	Jiangmen supported science and technology development projects 2018	Grant	Yes
107	2018 special fund support project fund	Grant	Yes
108	Jiangmen municipal support science and technology development funds in 2019	Grant	Yes
109	Subsidy for employment of the disabled	Grant	Yes
110	Environmental Protection Subsidy from Nan'an City Dongtian Government	Grant	Yes
111	Electricity Incentive Reward for Promoting Industrial Enterprise to Increase Production and Increase Efficiency of April to June of 2018	Grant	Yes
112	Subsidy for Foreign Economic and Trade Enterprise of 2018	Grant	Yes
113	Fund for Natural Disaster Relief	Grant	Yes
114	Subsidy for Chief Technology Officer	Grant	Yes
115	Electricity Incentive Reward of Production Increase and Efficiency Increase for Eligible Enterprise of the First Quarter of 2019	Grant	Yes
116	Trade Promotion Fund of 2019	Grant	Yes
117	Subsidy from Guangzhou Industry and Information Technology Bureau	Grant	Yes

Table 4: Countervailable subsidy programs¹⁷

5.3.1 Program 15 – Aluminium provided by government at less than adequate remuneration

In REP 543, the Commission found a countervailable subsidy program (Program 15) existed whereby primary aluminium used for the manufacture of aluminium extrusions was being produced and supplied by government owned enterprises at less than adequate remuneration (LTAR).

¹⁷ For additional information on the countervailable subsidy programs refer to REP 543.

PUBLIC RECORD

The benefit received under Program 15 by an exporter in relation to its primary aluminium purchases was determined by comparing the prices of its purchases of primary aluminium from government owned enterprises to an appropriate competitive market price benchmark being the London Metals Exchange (LME) plus a premium. The value of the difference is considered to be the benefit conferred to the exporter.

During this accelerated review, the Commission did not find any further information to depart from the finding in REP 543 in relation to the existence of Program 15. As such, the Commissioner adopted the assessment made in REP 543.¹⁸

To establish whether the exporter in this accelerated review received a benefit under Program 15, the Commission collected information (in the form of a fully completed REQ) to establish whether the exporter's primary aluminium was supplied by and/or manufactured by a public body in the form of either a State Owned Enterprise (SOE) or State Invested Enterprise (SIE).

PA Nanyang did not give the Commission evidence that showed whether or not its suppliers of aluminium were SOEs or SIEs. Given the Commission's understanding of the primary aluminium market in China and the degree to which that market is distorted by GOC influence, the Commission considers it reasonable to conclude that PA Nanyang has received a benefit under Program 15, where it has not provided evidence to establish otherwise.

The subsidy rate applying to Program 15 is deducted from the interim dumping duty (IDD) to determine the effective rate of duty. This approach avoids any overlap or double-counting that may arise in the current circumstances where there are domestic subsidies (Program 15) and a constructed normal value both relating to a major cost component (primary aluminium) based on surrogate data.

5.3.2 Preferential income tax programs

In its REQ, PA Nanyang claimed that it had not received a benefit from prudential income tax programs because PA Nanyang did not earn any profits for the last three years and therefore was not subject to any income tax liability.

Consequently, the Commission is satisfied that PA Nanyang did not benefit from preferential tax benefits, in the form of company income tax, during the period.

5.3.3 Grants and preferential policies

In its REQ, PA Nanyang indicated that it received benefits from certain grants, namely grants under Programs 9, 26 and 62. In accordance with section 269TACD(2) of the Act, the subsidy margin for these programs has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price. The subsidy amount attributed to the goods has been calculated based on the total benefit received as a proportion of company turnover value.

5.3.4 Tariff and VAT exemptions on imported materials and equipment

PA Nanyang advised that it had not benefitted from tariff and value added tax (VAT) exemptions on any imported materials or equipment. Since 1 April 2019, a full refund exists on VAT paid on exported goods. Therefore no difference exists between export

¹⁸ See REP 543, pages 107 to 111.

PUBLIC RECORD

and domestic sales, as neither of these types of sales have a non-refundable VAT component.

The Commission found no evidence in its assessment of all available information and data that the company had benefitted under such a program.

5.4 Amount of countervailable subsidy received

Having found that PA Nanyang has received benefits under countervailable subsidy Programs 9, 15, 26 and 62 the Commission has determined that the subsidy margin, when expressed as a percentage of the ascertained export price, is **1.0** per cent. Refer to **Confidential Appendix 6** for PA Nanyang's subsidy margin calculation.

6 NON-INJURIOUS PRICE

6.1 Legislative framework

Where a dumping duty notice and countervailing duty notice apply to the same goods, and the notices were published at the same time, the Minister must have regard to the desirability of specifying a method such that the sum of the ascertained export price, the IDD payable and the ICD payable do not exceed the NIP.¹⁹

However, the Minister is not required to have regard to the desirability of fixing a lesser amount of duty in the following circumstances:²⁰

- where there is a situation in the market that makes domestic selling prices unsuitable for the purpose of determining normal value under section 269TAC(1);
- there is an Australian industry in respect of the goods consisting of at least two small to medium sized enterprises (as defined in the *Customs (Definition of "small-medium enterprise") Determination 2013*); or
- the country in relation to which the subsidy has been provided, has not complied with Article 25 of the *Agreement on Subsidies and Countervailing Measures*²¹ for the compliance period.

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

6.2 The Commission's assessment

For the reasons outlined in REP 543, the Commissioner recommends that the Minister be satisfied that, in accordance with section 269TAC(2)(a)(ii), the situation in the Chinese aluminium extrusions market is such that sales in that market are not suitable for use in determining a price under section 269TAC(1).

In REP543, the Commissioner considered that sections 8(5BAAA)(a) and 10(3DA)(c) of the Dumping Duty Act applied, and as a result, the Minister was not required to consider the lesser duty rule for the purposes of sections 8(5BA) and 10(3D) of the Dumping Duty Act.

The Commission has reviewed the evidence available for this accelerated review and is satisfied that circumstances have not changed. The Commission therefore recommends that the NIP applicable to exports by PA Nanyang be the same as the current NIP applicable to all exports of the goods from China.

The Commissioner recommends that the full dumping and subsidy margins be applied to any IDD and ICD applying to aluminium extrusions exported to Australia from China.

¹⁹ Section 10(3D) of the Dumping Duty Act

²⁰ Section 10(3DA) of the Dumping Duty Act

²¹ *Marrakesh Agreement Establishing the World Trade Organization*, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A ('*Agreement on Subsidies and Countervailing Measures*').

PUBLIC RECORD

The Commissioner notes that, notwithstanding his recommendation, the Minister is not obliged to, but still may, consider applying a lesser amount of duty.

7 FORM OF MEASURES

7.1 Current form of measures

PA Nanyang's exports of the goods are currently subject to the 'all other exporters' effective rate of duty of 77.4 per cent.²²

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

7.2 Recommended form of measures

The Commissioner recommends to the Minister that duties be calculated:

- in respect of any ICD that may become payable, as a proportion of the export price of the goods (ad valorem method); and
- in respect of any IDD that may become payable, using the combination of fixed and variable duty method.

The combined fixed rate of ICD and IDD will be the sum of:

- the subsidy rate calculated for all countervailable subsidy programs; and
- the dumping rate calculated, less an amount for the subsidy rate applying to Program 15.

²² As determined in REP 543.

8 EFFECT OF THE ACCELERATED REVIEW

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

- the notices will be altered so as to apply to PA Nanyang as if different variable factors had been fixed (excluding the NIP);
- the NIP be the same as the current NIP applicable to all exports of the goods from China;
- IDD will be worked out using the combination of fixed and variable duty method at a rate of **59.5 per cent**; and
- ICD will be payable for the exported goods, as a proportion of the export price at a rate of **1.0 per cent**.

If the Minister accepts the recommendations in this report, these changes will take effect retrospectively from 12 January 2021 (being the date the application was lodged).

The Commission notes that if the Minister declares that the Act and Dumping Duty Act have effect as if the notices had applied to PA Nanyang, but the Minister had fixed specified different variable factors relevant to the determination of duty, pursuant to section 269ZG(3)(b), PA Nanyang will not be eligible to seek another accelerated review.²³

²³ See section 269ZE(1)

9 RECOMMENDATIONS

The Commissioner found that, in relation to aluminium extrusions exported to Australia from China by PA Nanyang:

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

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

- declare that:

under section 269ZG(3)(b) that, with effect from 12 January 2021, the Act and the Dumping Duty Act have effect as if the notices had applied to PA Nanyang but different variable factors (except for the non-injurious price) had been fixed in respect of PA Nanyang, relevant to the determination of duty; to

- determine that:

pursuant to section 8(5) of the Dumping Duty Act, the IDD on the goods exported to Australia from China by PA Nanyang is an amount worked out in accordance with the combination of fixed and variable duty method at a rate of **59.5** per cent, as set out in section 5(4) of the Customs Tariff Regulation, with effect from 12 January 2021; and to

- direct that:

pursuant to section 10(3B) of the Dumping Duty Act, that the amount of ICD payable on the goods, the subject of the countervailing notice, be ascertained as a proportion of the export price of the goods. The rate of countervailing duty applying to PA Nanyang's exports of aluminium extrusions shall be **1.0** per cent.

The Commissioner recommends the Minister be satisfied that:

- in accordance with section 269TAB(1)(c), the export price for goods exported to Australia from China by PA Nanyang is the price at which the goods were sold by the respective importer to a person who is not an associate of the importer, less the prescribed deductions;
- in accordance with section 269TAC(2)(a)(ii), the normal value of the goods exported to Australia from China by PA Nanyang cannot be ascertained under section 269TAC(1) because the situation in the market of China is such that sales in that market are not suitable for use in determining a price under section 269TAC(1); and
- in accordance with section 269TACD(1), a countervailable subsidy has been received in respect of the goods by PA Nanyang.

The Commissioner recommends that the Minister determine:

- having regard to section 269TAAC(2) and (3), and in accordance with subsection 269TAAC(4) and (5), that the subsidies set out in section 5.3 are specific having regard to specificity of the subsidies program;

PUBLIC RECORD

- in accordance with section 269TAB(1)(c), the export price for goods exported to Australia from China by PA Nanyang is the price at which the goods were sold by the respective importer to a person who is not an associate of the importer, less the prescribed deductions, as set out in **Confidential Appendix 1**;
- in accordance with section 269TAC(2)(c), the normal value for the goods exported to Australia from China is the sum of PA Nanyang's:
 - cost of production or manufacture of the goods in China as set out in **Confidential Appendices 2 and 4**; and
 - on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in China, the administrative, selling and general costs associated with such a sale and the profit on that sale as set out in **Confidential Appendices 2, 3 and 4**;as adjusted in accordance with section 269TAC(9) and set out in section 4 of this report, and **Confidential Appendix 4** to this report, to ensure that the normal value so ascertained is properly comparable with the export price; and
- in accordance with section 269TACD(1), the amount of countervailable subsidy received in respect of aluminium extrusions by PA Nanyang are the amounts set out in **Confidential Appendix 6**.

PUBLIC RECORD

10 APPENDICES

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