



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

**Anti-Dumping  
Commission**

*CUSTOMS ACT 1901 - PART XVB*

**STATEMENT OF ESSENTIAL FACTS  
NO. 591**

**INQUIRY INTO THE CONTINUATION OF  
ANTI-DUMPING MEASURES APPLYING TO  
CERTAIN ALUMINIUM EXTRUSIONS  
EXPORTED TO AUSTRALIA FROM  
MALAYSIA AND THE SOCIALIST REPUBLIC OF VIETNAM**

**18 March 2022**

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**ABBREVIATIONS**

\$	Australian dollars
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
Alumac	Alumac Industries Sdn Bhd
ASIC	Australian Securities and Investments Commission
Capral	Capral Limited
China	the People's Republic of China
CIF	Cost, Insurance and Freight
COGS	cost of goods sold
combination duty method	combination of fixed and variable duty method
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	cost to make
CTMS	cost to make and sell
DDP	Delivered Duty Paid
the Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EAA	East Asia Aluminum Company Limited
EPR	electronic public record
EverPress	EverPress Aluminium Industries Sdn Bhd
EXW	Ex-Works
Ezy Tools	Ezy Tools Pty Ltd
FIS	Free Into Store
FOB	Free On Board
FY	financial year
G James	G James Extrusions Co. Pty Ltd.
GOM	Government of Malaysia
GOV	Government of Vietnam
the goods	certain aluminium extrusions, the goods the subject of the application (also referred to as the goods under consideration)

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the Guidelines	<i>Guidelines on the Application of Forms of Dumping Duty (November 2013)</i>
ICD	interim countervailing duty
IDD	interim dumping duty
INEX	Independent Extrusions Limited
the inquiry period	1 July 2020 to 30 June 2021
LME	London Metal Exchange
Louvre Lite	Louvre Lite Ltd
the Manual	<i>Dumping and Subsidy Manual, December 2021 version</i>
the Material Injury Direction	<i>Ministerial Direction on Material Injury 27 April 2012</i>
MCC	model control code
MITI	Ministry of International Trade and Industry, Malaysia
the Minister	the Minister for Industry, Energy and Emissions Reduction
MJP	Major Japanese Ports
MT	metric tonnes
MYR	Malaysian Ringgit
NIP	non-injurious price
the notices	collectively, the dumping duty and countervailing duty notices to which the goods are subject
OCOT	ordinary course of trade
OEM	original equipment manufacturer
PAD	Preliminary Affirmative Determination
PBS	polished bright silver
PGE	Perfect Gateway Enterprises Ltd
PMAA	Press Metal Aluminium (Australia) Pty Ltd
PMAH	Press Metal Aluminium Holdings Berhad
PMB	Press Metal Berhad
PMBA	PMB Aluminium Sdn Bhd
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 148	<i>Trade Remedies Branch Report No. 148</i>
REP 362	<i>Anti-Dumping Commission Report No. 362</i>
REP 490	<i>Anti-Dumping Commission Report No. 490</i>
REP 494	<i>Anti-Dumping Commission Report No. 494</i>
REP 509	<i>Anti-Dumping Commission Report No. 509</i>
REP 544	<i>Anti-Dumping Commission Report No. 544</i>

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REP 577	<i>Anti-Dumping Commission Report No. 577</i>
REQ	response to the exporter questionnaire
RGQ	response to the government questionnaire
RIQ	response to the importer questionnaire
ROI	return on investment
SEF	statement of essential facts
SG&A	selling, general, and administration
SME	small-medium enterprise
USD	United States Dollar
USP	unsuppressed selling price
Vietnam	the Socialist Republic of Vietnam
VND	Vietnamese Dong
WTO	World Trade Organization

# 1 SUMMARY AND RECOMMENDATIONS

## 1.1 Introduction

This statement of essential facts (SEF) concerns an inquiry into whether the continuation of the anti-dumping measures applying to certain aluminium extrusions (the goods) exported to Australia from Malaysia and the Socialist Republic of Vietnam (Vietnam) is justified.

The measures are in the form of a dumping duty notice (Malaysia and Vietnam) and a countervailing duty notice (Malaysia only), referred to collectively as ‘the notices’.<sup>1</sup> The anti-dumping measures currently applicable to exports of the goods to Australia from Malaysia and Vietnam are due to expire on 27 June 2022.<sup>2</sup>

There are a number of exporters from Malaysia that are excluded from the measures the subject of this inquiry:

- The dumping duty notice does not apply to Milleon Extruder Sdn Bhd, Superb Aluminium Industries Sdn Bhd, Kamco Aluminium Sdn Bhd, LB Aluminium Berhad, Press Metal Berhad and Genesis Aluminium Industries Sdn Bhd.<sup>3</sup>
- The countervailing notice does not apply to any of the above listed exporters, nor does it apply to Alumac Industries Sdn Bhd (Alumac) and EverPress Aluminium Industries Sdn Bhd.<sup>4</sup>

The anti-dumping measures in the form of a dumping duty notice are applicable to all exporters from Vietnam.

This 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, Energy and Emissions Reduction (the Minister), subject to any submissions received in response to this SEF. As set out in this report, at this stage of the investigation, the Commissioner considers there is insufficient evidence to recommend measures continue.

The Commissioner initiated the inquiry on 15 September 2021, following consideration of an application lodged by Capral Limited (Capral) seeking the continuation of the anti-dumping measures.<sup>5</sup> The Commissioner established an inquiry period of 1 July 2020 to 30 June 2021 (the inquiry period) for this continuation inquiry.<sup>6</sup>

## 1.2 Preliminary findings and proposed recommendation

The Commissioner considers that there is sufficient evidence to support a finding that exports of aluminium extrusions from Malaysia and Vietnam are likely to continue in the absence of the anti-dumping measures, and that future exports (apart from exports by

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<sup>1</sup> Anti-Dumping Notice (ADN) Nos. 2017/72 and 2017/73, respectively.

<sup>2</sup> Under section 269TM, dumping and countervailing duty notices expire 5 years after the date on which they were published, unless they are revoked earlier.

<sup>3</sup> The original investigation was terminated with respect to these exporters. Further information is available in *Termination Report No. 362*, available on the Anti-Dumping Commission (commission) website.

<sup>4</sup> Following review nos. 490, 509 and 544. Further information is available on the commission’s website.

<sup>5</sup> Refer to Capral’s application for the continuation of the measures on the electronic public record (EPR) for case 591, document no. 01.

<sup>6</sup> EPR 591, document no. 02.

Alumac) are likely to be dumped. The Commissioner does not consider it likely that future exports from Malaysia are likely to benefit from countervailable subsidies.

While the Commissioner considers dumping will continue, for the reasons set out in chapter 8.7, the Commissioner does not consider that the evidence before him at this stage of the investigation is sufficient to support a finding that material injury to the Australian industry is likely to be caused by future exports at dumped prices in the absence of the measures.

On the basis of the evidence currently available, the Commissioner is not satisfied that the expiration of the measures in respect of exports of aluminium extrusions from Malaysia and Vietnam would lead, or would be likely to lead, to a continuation of, or recurrence of dumping, subsidisation and the material injury that the measures are intended to prevent.<sup>7</sup> Based on these preliminary findings, the Commissioner proposes to recommend to the Minister that the notices in respect of the goods exported to Australia from Malaysia and Vietnam be allowed to expire on the specified day (being **27 June 2022**).

The commission notes that presentation of additional evidence, for example, evidence demonstrating Australian industry price responses to the presence of dumped goods in the market, may provide a basis for reconsidering the proposed recommendation.

### **1.3 Legislative framework**

Division 6A of Part XVB, *Customs Act 1901* (the Act) sets out, among other things, the procedures to be followed by the Commissioner when considering an application for the continuation of anti-dumping measures.<sup>8</sup>

Section 269ZHE(1) requires that the Commissioner publish a SEF on which he proposes to base his recommendations to the Minister concerning the continuation of the anti-dumping measures. Section 269ZHE(2) specifies that the Commissioner:

- must have regard to the application and any submissions received within 37 days of the initiation of the inquiry and
- may have regard to any other matters that he considers relevant.

Under section 269ZHE(3), the Commissioner is not obliged to have regard to any submissions relating generally to the inquiry that are received after the end of the 37 day period referred to in section 269ZHE(2)(a)(ii) if to do so, in the Commissioner's opinion, would prevent the timely placement of this SEF on the public record.

Section 269ZHF(1)(a) requires the Commissioner, after conducting an inquiry, to give the Minister a report that recommends:

- that the notice remain unaltered<sup>9</sup> or
- that the notice cease to apply to a particular exporter or to a particular kind of goods<sup>10</sup> or
- that the notice have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained<sup>11</sup> or

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<sup>7</sup> Section 269ZHF(2).

<sup>8</sup> All legislative references in this report are to the *Customs Act 1901* unless otherwise stated.

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

<sup>10</sup> Section 269ZHF(1)(a)(ii).

<sup>11</sup> Section 269ZHF(1)(a)(iii).

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- that the notice expire on the specified expiry day.<sup>12</sup>

Pursuant to section 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and/or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

### 1.4 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Minister.

This SEF represents an important stage in the inquiry. It informs interested parties of the facts established and allows them to make submissions in response to the SEF. It is important to note that the SEF may not represent the final views of the Commissioner.

Interested parties are invited to make submissions to the Commissioner in response to the SEF within 20 days of the SEF being placed on the public record. The due date to lodge written submissions in response to this SEF is **7 April 2022**.

As the current due date for the final report is **13 May 2022**, parties are strongly advised to make all submissions by **7 April 2022** and should note that late submissions are unlikely to be able to be considered. 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>13</sup>

Submissions may be provided by email to [investigations1@adcommission.gov.au](mailto:investigations1@adcommission.gov.au).

Alternatively, interested parties may post submissions to:

Director, Investigations Unit 1  
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. Information in relation to making submissions is available on the commission's website [www.adcommission.gov.au](http://www.adcommission.gov.au).

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. The electronic public record (EPR) is available on the commission's website. Interested parties should read this SEF in conjunction with other documents on the public record.

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<sup>12</sup> Section 269ZHF(1)(a)(iv).

<sup>13</sup> Section 269ZHF(4).

## **1.5 Final report**

The Commissioner's final report and recommendations must be provided to the Minister within 155 days after the publication of a notice under section 269ZHD(4) or such longer period as is allowed.<sup>14</sup>

The final report will include recommendations, including whether the relevant notices ought to:

- remain unaltered;
- cease to apply to a particular exporter or to a particular kind of goods;
- have effect in relation to a particular exporter or to exporters generally as if different variable factors had been ascertained; or
- expire on the specified expiry day.

An extension of time for the provision of the Commissioner's final report and recommendations to the Minister were previously granted under section 269ZHI(3).<sup>15</sup> As noted above, the current due date for the final report is **13 May 2022**.

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<sup>14</sup> Section 269ZHF(1). On 14 January 2017 the powers and functions of the Minister under section 269ZHI were delegated to the Commissioner, see Anti-Dumping Notice No. 2017/10.

<sup>15</sup> EPR 591, document no. 15.

## 2 BACKGROUND

### 2.1 Application and initiation

In accordance with section 269ZHB(1), the Commissioner published a notice on 15 September 2021 on the commission's website inviting the following persons to apply for the continuation of the anti-dumping measures:

- the person whose application under section 269TB resulted in the anti-dumping measures (section 269ZHB(1)(b)(i)); or
- persons representing the whole or a portion of the Australian industry producing like goods to the goods covered by the anti-dumping measures (section 269ZHB(1)(b)(ii)).<sup>16</sup>

On 24 August 2021, an application for the continuation of the anti-dumping measures was received from Capral. A non-confidential version of the application is available on the EPR.<sup>17</sup>

As set out in ADN No. 2021/119, the Commissioner was satisfied that the application complied with section 269ZHC and, in accordance with section 269ZHD(2)(b), there appeared to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

The Commissioner therefore decided not to reject the application and initiated the present inquiry on 15 September 2021.

#### 2.1.1 Submissions in response to the initiation of the inquiry

The commission received a submission regarding the Commissioner's consideration of Capral's application seeking the inquiry. Press Metal Aluminium Australia Pty Ltd (PMAA) submitted that Capral's application was not made out in accordance with section 269ZHD(2).<sup>18</sup> PMAA stated that the application did not provide reasonable grounds and evidence to comply with the requirements of the Act.

Capral strongly disagreed with PMAA's assertions in 2 submissions in response.<sup>19</sup>

The submissions from PMAA did not raise any matters which caused the commission or the Commissioner to reconsider the Commissioner's decision to not reject the application, as stated ADN No. 2021/119.

### 2.2 Current anti-dumping measures

The anti-dumping measures applying to aluminium extrusions exported from Malaysia and Vietnam, the subject of this continuation inquiry, were imposed by public notice on 27 June 2017 following consideration of *Anti-Dumping Commission Report No. 362 (REP 362)*, also referred to as 'the original investigation'.<sup>20</sup> The original investigation and the imposition of the anti-dumping and countervailing measures resulted from an application

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<sup>16</sup> ADN No. 2021/119.

<sup>17</sup> EPR 591, document no. 1.

<sup>18</sup> EPR 591, document no. 8.

<sup>19</sup> EPR 591, document nos. 12 & 13.

<sup>20</sup> ADN Nos. 2017/72 and 2017/73.

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made under section 269TB by Capral, representing the Australian industry producing like goods.

There are a number of exporters from Malaysia that are excluded from the measures the subject of this inquiry:

- The dumping duty notice does not apply to Milleon Extruder Sdn Bhd, Superb Aluminium Industries Sdn Bhd, Kamco Aluminium Sdn Bhd, LB Aluminium Berhad, Press Metal Berhad and Genesis Aluminium Industries Sdn Bhd.<sup>21</sup>
- The countervailing notice does not apply to all of the above listed exporters, plus Alumac and EverPress Aluminium Industries Sdn Bhd.<sup>22</sup>

The anti-dumping measures in the form of a dumping duty notice are applicable to all exporters from Vietnam.

On 24 February 2020, following a review of the anti-dumping measures outlined in *Anti-Dumping Commission Report No. 544* (REP 544), the Minister declared that the dumping duty notice and countervailing duty notice have effect as if different variable factors had been fixed in respect of exporters generally, relevant to the determination of duty.<sup>23</sup>

On 10 June 2021, following an accelerated review of the anti-dumping measures applying to exports from Malaysia by PMB Aluminium Sdn Bhd (PMBA), the Minister accepted the recommendations and reasons outlined in *Anti-Dumping Commission Report No. 577* (REP 577). The Minister altered the notices, insofar as they apply to PMBA, as if different variable factors had been fixed.<sup>24</sup>

Table 1 sets out the current measures applying to exports of the goods to Australia the subject of this inquiry.

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<sup>21</sup> The original investigation was terminated with respect to these exporters. Further information is set out in *Termination Report No. 362*, available on the commission website. Since the original investigation was terminated, however, other measures have been imposed on these exporters under more recent notices, which are not the subject of this continuation inquiry.

<sup>22</sup> Following review nos. 490, 509 and 544. Further information is available on the commission's website.

<sup>23</sup> ADN No. 2021/037.

<sup>24</sup> ADN No. 2021/062.

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Country	Exporter	Dumping Margin	Subsidy Margin	Effective rate	Form of anti-dumping measure <sup>25</sup>
Malaysia	Alumac	0%	N/A	0%	Dumping - Floor price
	Premium Aluminium (M) Sdn Bhd	0%	0%	0%	Dumping - Floor price Countervailing - Proportion of export price
	PMB Aluminium Sdn Bhd	2.6%	0%	2.6%	Dumping - Combination duty method Countervailing - Proportion of export price
	Everpress Aluminium Industries Sdn Bhd	10.7%	N/A	10.7%	Dumping - Combination duty method
	All other exporters	10.7%	0%	10.7%	Dumping - Combination duty method Countervailing - Proportion of export price
Vietnam	East Asia Aluminum Company Ltd <sup>26</sup>	1.9%	N/A	1.9%	Dumping - Combination duty method
	All other exporters	1.9%	N/A	1.9%	Dumping - Combination duty method

**Table 1: Current measures applying to exports of the goods**

### Summary of all anti-dumping measures on aluminium extrusions

Anti-dumping measures are currently applicable to all imports from Vietnam and, with the exception of 2 exporters, all imports from China. In relation to Malaysia, anti-dumping measures in the form of dumping duty are applicable to all imports with the exception of 2 exporters (an additional exporter is exempt from measures on mill finish goods). A countervailing duty notice still applies to certain exporters from Malaysia, however the rate of countervailing duty is currently zero.<sup>27</sup>

Further information concerning all cases relating to aluminium extrusions exported to Australia from Malaysia and Vietnam, including accelerated reviews and exemption inquiries, is on the commission's EPR.

## 2.3 Conduct of the inquiry

### 2.3.1 Inquiry period

The inquiry period for this continuation is 1 July 2020 to 30 June 2021.

For the purposes of examining the economic performance of the Australian industry, the commission has examined the period from 1 July 2016 to 30 June 2021 (the analysis period) noting that the anti-dumping measures were first imposed in June 2017.

The commission has also examined data from the Australian Border Force (ABF) import database from 2009, with a focus on the analysis period from 1 July 2016, to analyse

<sup>25</sup> The forms of dumping and countervailing duty available to the Minister when imposing anti-dumping measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013*. Further detail on the nature of these forms of measures is in Chapter 10 of this report.

<sup>26</sup> The countervailing duty notice does not apply to East Asia Aluminum Company Ltd

<sup>27</sup> Refer to the Dumping Commodity Register as it relates to Aluminium Extrusions:  
<[https://www.industry.gov.au/sites/default/files/adc/measures/dcr\\_-\\_aluminium\\_extrusions\\_53.pdf](https://www.industry.gov.au/sites/default/files/adc/measures/dcr_-_aluminium_extrusions_53.pdf)>

trends in the market for the goods. Throughout this report, where data is presented yearly it is based on the financial year (FY) 1 July to 30 June.

### **2.3.2 Australian industry**

The Commissioner is satisfied that the Australian industry representative who applied for the continuation of the measures, Capral, is the applicant specified under section 269ZHB(1)(b)(i). Capral lodged the application under section 269TB that resulted in the current measures.

The commission conducted a verification of the information provided by Capral in its application. The report made in relation to the verification process is available on the EPR.<sup>28</sup>

In addition, the commission sent out an Australian Market supplementary questionnaire to Capral and 8 other Australian industry members that produced like goods. The commission received questionnaire responses from Capral and G James Extrusions Co. Pty Ltd (G James).

In addition, INEX Independent Extrusions (INEX) provided sales and revenue data. However, INEX did not provide a complete response to the questionnaire. Accordingly, the commission has only placed the non-confidential questionnaire responses from Capral and G. James on the EPR.<sup>29</sup> The commission still had regard to INEX's data in its Australian industry and market analysis.

G James and INEX provided the commission with sales volume and revenue data for each year of the analysis period from the 1 July 2016. This permitted the commission to form a more reliable estimate of the part of the Australian market held by members of the Australian industry. The combined data from Capral, G James and INEX represented approximately 66% of the total sales by the Australian industry in the inquiry period.

### **2.3.3 Importers**

The commission identified several importers in the ABF import database that imported the goods from Malaysia and Vietnam during the inquiry period. The commission sent importer questionnaires to 12 importers and placed a copy of the importer questionnaire on the commission's website for completion by other importers not contacted directly. The 12 importers represented approximately 99% of imports of the goods subject to the notices in the inquiry period.

The commission received a response to the importer questionnaire (RIQ) from 2 importers, PMAA and Louvre Lite Ltd (Louvre Lite). These importers accounted for approximately 92% of all imports from Malaysia that are subject to this inquiry.

Louvre Lite did not provide a complete RIQ. The commission did not undertake verification of the information provided by Louvre Lite in its RIQ. However, the commission was able to use some of the information Louvre Lite provided in relation to its supplier links and role in the Australian market.

The commission conducted a verification of PMAA's RIQ and the report made in relation to this verification is available on the EPR.<sup>30</sup>

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<sup>28</sup> EPR 591, document no. 14.

<sup>29</sup> EPR 591, document nos. 7 and 11, respectively.

<sup>30</sup> EPR 591, document no. 20.

### **2.3.4 Exporters**

The commission sent exporter questionnaires to 8 exporters that had cooperated with recent reviews (REP 544 and REP 577) and placed a copy of the exporter questionnaire on the commission's website for completion by any other exporters. According to the ABF import database, these 8 exporters represented almost 100% of the volume of the goods exported to Australia from Malaysia and Vietnam in the inquiry period.

The commission received a response to the exporter questionnaire (REQ) from 3 exporters, Alumac and PMBA from Malaysia and East Asia Aluminum Company Ltd (EAA) from Vietnam. These 3 exporters accounted for approximately 95% of exports subject to the notice during the inquiry period.

### **2.3.5 Uncooperative, non-cooperative and all other exporters**

An uncooperative exporter is an exporter of like goods who did not give the Commissioner information the Commissioner considered relevant to the continuation inquiry within the period the Commissioner considered to be reasonable.

The Commissioner is satisfied that all exporters that did not provide a response to the exporter questionnaire are uncooperative exporters.<sup>31</sup>

### **2.3.6 Government of Malaysia (GOM) and Government of the Socialist Republic of Vietnam (GOV)**

The commission contacted the GOM and GOV to advise of the initiation of the inquiry.

The commission also sent a government questionnaire to the GOM seeking information regarding countervailable subsidies received by Malaysian aluminium exporters. The subsidy/countervailing sections of the questionnaire focused on the 6 programs identified in REP 362 and the identification of any additional relevant subsidy program(s).

The commission received a questionnaire response from the GOM. The non-confidential version of the response to the government questionnaire is at **Non-Confidential Attachment 1** to this report and on the EPR.<sup>32</sup>

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<sup>31</sup> Section 269T(1). Refer also to Section 269TAACA that sets out the determination of a countervailable subsidy if there is non-cooperation by relevant entities.

<sup>32</sup> EPR 591, document no. 05.

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### 2.4 Submissions received from interested parties

The commission received the following submissions from interested parties:

Interested Party	Date Published on EPR	Document Number
PMAA	9/11/2021	08
Capral	13/12/2021	12
Capral	13/12/2021	13
Capral	06/01/2022	16
Capral	06/01/2022	17
Capral	18/02/2022	18
Capral	17/03/2022	21
PMBA	18/03/2022	24

**Table 2: Submissions received**

The commission did not have regard to the submissions received from Capral and PMBA, published on 17 and 18 March 2022, as to do so, in the Commissioner's opinion, would have prevented the timely placement of this SEF on the public record.<sup>33</sup>

All other submissions have been considered by the commission and are addressed in the relevant chapters of this SEF.

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<sup>33</sup> Section 269ZHE(3).

## 3 THE GOODS, LIKE GOODS AND THE AUSTRALIAN INDUSTRY

### 3.1 Preliminary finding

The Commissioner preliminarily finds that:

- the locally manufactured aluminium extrusions are like goods to the goods subject to the anti-dumping measures
- there is an Australian industry producing like goods
- the like goods are wholly produced in Australia

### 3.2 Legislative framework

In order to be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or recurrence of, dumping or subsidisation, the Commissioner firstly determines whether the goods produced by the Australian industry are 'like' to the imported goods. Section 269T(1) defines like goods as:

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

The definition of like goods is relevant in the context of this inquiry in determining the scope of the Australian industry and whether the expiration of the measures would lead to a continuation of, or a recurrence of, the dumping and material injury that the measures are intended to prevent. The commission's framework for assessing like goods is outlined in Chapter 2 of the *Dumping and Subsidy Manual* (the Manual).

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

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

The Commissioner must also consider whether the 'like' goods are produced in Australia. Section 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be either wholly or partly manufactured in Australia. Under section 269T(3), in order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia. The following therefore establishes the scope of the commission's inquiry.

### 3.3 The goods subject to the measures

The goods that are the subject of the application are:

Aluminium extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by The Aluminium Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being 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.

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

### 3.3.1 Tariff classification

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

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

**Table 3: Tariff classifications of the goods**

### 3.3.2 Model control codes

The proposed model control code (MCC) structure described in ADN No. 2021/119<sup>34</sup> and in Table 4 describes the key characteristics of the goods and indicates whether providing the sales and cost data requested was mandatory or optional.<sup>35</sup>

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<sup>34</sup> EPR 591, document no. 02.

<sup>35</sup> The MCC structure proposed for this inquiry was used in REP 544, with the addition of the finish sub-category 'wood grain'.

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Category	Sub-category		Sales data	Cost data
Finish	<b>A</b>	Anodised	Mandatory	Mandatory
	<b>BD</b>	Bright dip		
	<b>M</b>	Mill		
	<b>PC</b>	Powder coating		
	<b>MC</b>	Mechanical		
	<b>W</b>	Wood grain		
Alloy code	<b>6A</b>	6060, 6063	Mandatory	Optional
	<b>6B</b>	6106		
	<b>6C</b>	6101, 1350, 6082, 6351, 6061		
	<b>6D</b>	6005A		
	<b>O</b>	Other <sup>36</sup>		
Temper code	<b>T1</b>	T1, T4, T5, T6	Optional	Optional
	<b>T50</b>	T591, T595, T52		
	<b>O</b>	Other <sup>37</sup>		
Anodising microns	<b>0</b>	Not anodised	Optional	Optional
	<b>1</b>	<20 µm		
	<b>2</b>	>20 µm		

**Table 4: MCC structure**

Further details about the application of the MCC structure to each cooperating exporter is explained in Chapter 6.

### 3.4 Like goods

The following sets out the commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods under consideration and whether they are, therefore, 'like goods'. For the purposes of the findings below, the commission has relied on information obtained from previous verification of Capral's manufacturing facilities, information provided by exporters of the goods and prior findings of the commission.

#### 3.4.1 Physical likeness

The aluminium extrusions produced by the Australian industry for sale in the Australian market are considered to be physically like to the goods. They have the same dimensions and are made of aluminium alloys, as specified in the goods description. They are also produced with the same (or similar) surface finishes.

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<sup>36</sup> The questionnaire requested that additional alloy codes be specified, if relevant.

<sup>37</sup> The questionnaire requested that additional temper codes be specified, if relevant.

### **3.4.2 Commercial likeness**

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

### **3.4.3 Functional likeness**

The aluminium extrusions produced by the Australian industry for sale in the Australian market are functionally like to the goods. They have similar or identical end uses, e.g. for use by manufacturers of aluminium window and door systems and solar panel installations.

### **3.4.4 Production likeness**

The aluminium extrusions produced by the Australian industry for sale in the Australian market are manufactured using processes that are the same or similar processes used to produce the goods.<sup>38</sup>

### **3.4.5 Conclusion – Like goods**

The Commissioner is satisfied that the domestically produced goods are ‘like goods’ as defined in section 269T(1) to the goods under consideration.

## **3.5 Australian industry**

In its application, Capral stated that the Australian industry is comprised of itself and 8 other manufacturers. These are:

- Almax Aluminium Pty Ltd
- Aluminium Profiles Australia Pty Ltd
- Aluminium Shapemakers Pty Ltd
- Extrusions Australia Pty Ltd
- G James
- INEX
- Olympic Aluminium Co Pty Ltd
- Ullrich Aluminium Pty Ltd

Letters of support from 5 of these manufacturers were included in Capral’s application.

Based on production information obtained from Capral’s application, G James’ supplementary questionnaire response, and letters of support provided by the other industry members as part of Capral’s application, the commission understands that Capral is the largest domestic manufacturer of aluminium extrusions and makes up a major proportion of the total Australian market for aluminium extrusions.

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<sup>38</sup> Please see chapter 3.5.1 for more information about the production process.

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In addition to the production of aluminium extrusions in the form of extrusion press capability, the Australian producers of like goods variously also possess anodising and powder coating capabilities. In connection to the coating processes, a sub-group of entities support the extrusion producers by providing anodising and powder coating services, and supply the market with the relevant raw materials for those purposes.

The Australian industry has manufacturing facilities in all mainland states of Australia.

### 3.5.1 Production process

The commission has an established understanding of Capral's production process of aluminium extrusions and its production facilities developed from prior cases and verification processes.<sup>39</sup>

The production of aluminium extrusions starts with the aluminium billets, otherwise referred to as 'logs', being taken from a storage yard facility and pre-heated in a furnace to the necessary temperature required for the extrusion process. Once pre-heated, the logs are cut into shorter lengths with a hydraulic shear and transferred into the extrusion press.

After the extrusions exit the extrusion press they undergo a stretching operation before entering a gas fired furnace to age the material and achieve the desired temper. At the conclusion of this stage, the product is a mill finished like good. Depending on production orders, the extrusions are prepared for packing and dispatched to the anodising or painting facilities to undergo further surface treatment.

The most obvious by-product of the extrusion production process is scrap aluminium. The pressing stage generates scrap aluminium where limitations prevent 100% utilisation of the log. The residual material volume that it generates is not useable and must be scrapped. The rate of scrap produced at this stage varies across the industry. Based on Capral's explanation during the verification process and past visits, this appears to be inherent in the production of extrusions and therefore unavoidable.

Various other points of the extrusion production process generate scrap. This is a result of defects or due to quality issues, which cause a small proportion of goods to be returned by customers.

### 3.5.2 Conclusion – Australian industry

Based on the information obtained from previous verification visits, the Commissioner is satisfied that:

- the like goods were wholly manufactured in Australia<sup>40</sup> and
- there is an Australian industry which produces like goods in Australia.<sup>41</sup>

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<sup>39</sup> REP 362, *Anti-Dumping Commission Report Nos. 540 and 541*, and *Anti-Dumping Commission Report No. 543*.

<sup>40</sup> Section 269T(2).

<sup>41</sup> Section 269T(4).

## 4 AUSTRALIAN MARKET

### 4.1 Preliminary finding

The Commissioner preliminarily finds that the Australian market for the goods includes supply from the Australian industry and a number of exporting countries. Exports are supplied from Malaysia and Vietnam, as well as from China and other countries.

### 4.2 Approach to analysis

The analysis detailed in this chapter uses:

- Capral's verified sales data provided for a number of investigations, including this inquiry<sup>42</sup>
- Capral's application, which included estimates of the sales of other Australian industry members<sup>43</sup>
- Sales volume and revenue data from G James and INEX, provided in response to the Australian Market supplementary questionnaire (chapter 2.3.2)
- import data from the ABF import database and
- verified importer and exporter sales data obtained from previous cases, including this inquiry.

The analysis uses data from the following investigations, reviews and inquiries:

- REP 362 - the original investigation, which examined the period 1 July 2015 to 30 June 2016
- *Anti-Dumping Commission Report No. 442* (REP 442)- investigation of exports from China by certain exporters, which examined the period 1 October 2016 to 30 September 2017
- *Anti-Dumping Commission Report Nos. 540 and 541* (REP 540 and REP 541)- investigation of exports from Malaysia by certain exporters of certain finishes, which examined the period 1 January 2019 to 31 December 2019
- *Anti-Dumping Commission Report No. 543* (REP 543)- continuation inquiry concerning the goods from China, which examined the period 1 January 2019 to 31 December 2019 and
- REP 544 - a review of the measures applying to the goods from Malaysia and Vietnam, which examined the period 1 January 2019 to 31 December 2019.

The commission's market analysis is at **Confidential Attachment 1**.

### 4.3 Market size

The Commission estimates that the Australian market for aluminium extrusions increased in size each year since the imposition of the anti-dumping measures on exports from Malaysia and Vietnam in June 2017. Anti-dumping measures were imposed on exports from China in October 2015.

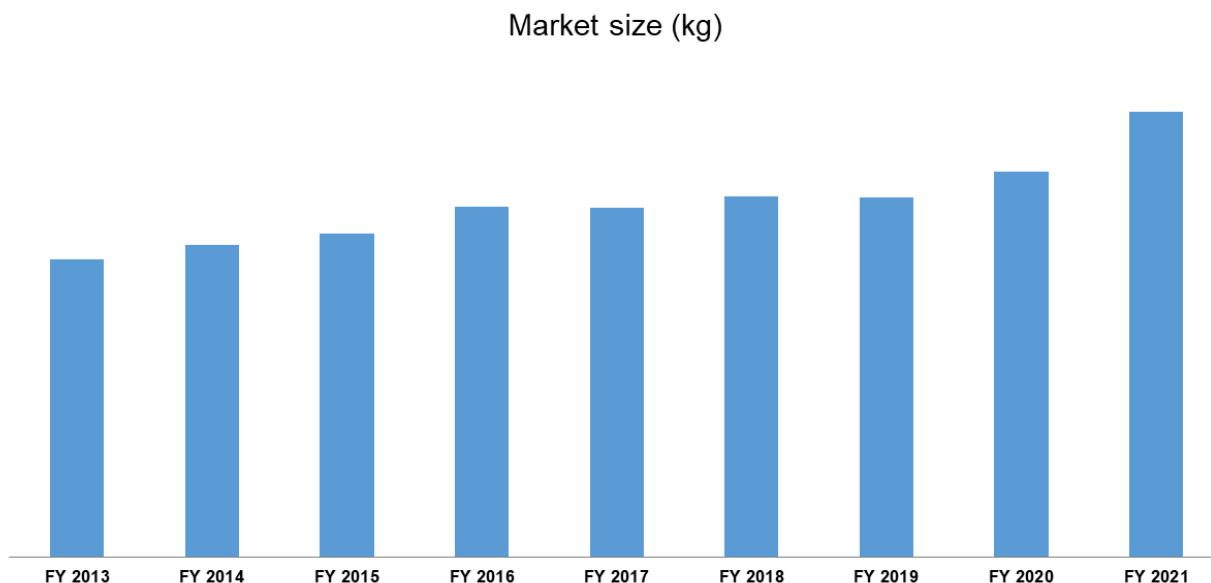
Figure 1 shows the annual volume of aluminium extrusions sold in the Australian market since 1 July 2013. The Australian market increased slightly between FY 2017 to FY 2019. However, there was a marked increase in the Australian market size over the 2020 and

<sup>42</sup> EPR 591, document no. 14.

<sup>43</sup> EPR 591, document no. 1.

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2021 FYs. The total Australian market size in FY 2021 was approximately 227 million kilograms.



**Figure 1: Australian market size for aluminium extrusions**

The commission's market analysis is at **Confidential Attachment 1**.

### 4.4 Market structure

The Australian market is broadly divided into downstream industry-based customer segments i.e. industrial, residential building and commercial construction. Residential building includes additions and alterations to housing, while industrial includes transport, marine and other manufacturing sectors.

Capral has stated that residential building and commercial construction make up the majority of the downstream Australian market.

#### 4.4.1 Australian market questionnaires

As outlined in chapter 2.3.2, the commission sent Australian Market supplementary questionnaires to Capral and the other Australian industry members.

The commission received confidential and non-confidential questionnaire responses from Capral and G James.<sup>44</sup> In addition to these responses, INEX provided sales data.

The market for like goods mainly includes:

- large original equipment manufacturers (OEM), such as large aluminium window manufacturers
- distributors of aluminium extrusions
- value-add finishers (e.g. anodisers, powder coaters/painters) and
- fabricators.<sup>45</sup>

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<sup>44</sup> EPR 591, document nos. 7 and 11, respectively.

<sup>45</sup> Fabricators buy directly from the producers, normally in circumstances where the size and simplicity of order is such as not to adversely affect relationships between the producer and major distributors.

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These groups include a wide range of small to medium retail and trade end-users (including smaller fabricators, manufacturers and other users) who order aluminium extrusions from distributors, metal service centres or retailers. The size and complexity of orders, as well as the type of trading relationships developed over time, results in a variety of sales channels between the producer of the extrusion and the end customer.

Based on the information obtained, the commission has identified 3 major market segments for aluminium extrusions:

- residential - including products such as windows and doors, security, internal fit out of showers and robes, external fit out, and fencing
- commercial - including commercial window and doors, internal and external fit out, and curtain walls and
- industrial - including automotive, sunshades, truck and trailer, bus, rail, electrical, solar, signage, marine, portable buildings, general fabrication, manufacturing and large industrial infrastructure.

### **4.4.2 Supply and distribution**

Aluminium extrusions are a commodity product, and provided the goods meet the relevant Australian Standard and the grade requirements for the desired end use, there are limited ways in which suppliers can differentiate their offering beyond price and service. In most circumstances, customers are able to change supplier readily. Depending on the specific extrusion a customer is purchasing, the ease with which this can occur will differ in terms of cost, lead-time and management of production quality.

Domestic producers such as Capral supply the Australian market with aluminium extrusions. Other entities referred to by Capral in its application who together represent the Australian industry, as well as aluminium extrusions producers from other countries who supply Australian customers directly or via Australian based intermediaries and distributors, also contribute to the Australian market for aluminium extrusions.

The Australian industry producing like goods sells directly to end users who transform the goods into products such as windows and doors, other residential solutions or for use in applications such as boat building. The Australian industry also caters for a large base of customers through its distribution centre networks. The ordering and lead-time arrangements differ between customers and depending on the sales channel through which the products are sold.

In relation to Capral, the Commissioner ascertains that its business in the sale of like goods was not generally by way of contractual arrangements.<sup>46</sup> However, Capral will and does quote for work on major projects and maintains key customers through ongoing negotiations on prices.

Imported aluminium extrusions on the Australian market are sourced from numerous countries. In recent years, the highest volumes originate from China, Malaysia and Vietnam.

### **4.4.3 Demand**

Capral has previously indicated that a key demand driver for sales of like goods is the residential building sector. Capral has provided data for annual dwelling commencements in the period 2012 through 2020. After peaking in 2016, the data indicated that the trend in annual dwelling commencements between 2016 and 2019 declined year on year, with

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<sup>46</sup> EPR 591, document no. 14.

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2019 being the lowest. The 2019 decline in dwelling commencements was most significant in the multi-residential high-rise segment and to a lesser extent the detached housing segment. There was a slight increase in 2020, however, according to Australian Bureau of Statistics (ABS) data, dwelling unit commencements fell by 16.3% in 2021.<sup>47</sup> Capral's sales volume mainly aligned with trends in the detached and low-rise dwelling segment.

Data provided by Capral in relation to sales volumes of like goods over the last 6 years illustrated a mild seasonal trend whereby sales in the second half of each calendar year were usually higher. The commission considers this marginal change is likely attributed to the slowdown in economic activity experienced during the Australian Christmas and New Year holiday period.

In other industry sectors, Capral provided data that indicated a decrease in 2019 and 2020 in the transport sector in relation to the volume of truck and van builds. This came after an upward trend in the period 2016 to 2019. According to Capral's data, the volume of truck and van builds peaked in 2018. However in 2020, it regressed back to near 2016 levels. The sector bounced back in 2021, with the first half of the year being 9.2% above 2020 levels.<sup>48</sup>

Capral has also referred to the current and future sources of like goods demand that included the defence, marine and renewable energy sectors, particularly in relation to solar panel mounting systems.

Capral's annual report states that after a solid start to 2020, demand for Capral's products plummeted during the period of COVID lockdown restrictions. However, market conditions rebounded strongly in the second half, resulting in higher than expected demand.

### 4.5 Pricing

The commission understands that manufacturers mainly sell aluminium extrusions to the next level of trade (distributors and OEM) based on a pricing formula, which reflects the following elements:

1. the LME primary aluminium base price
2. plus a premium (billet premiums, the Major Japanese Port (MJP) premium, alloy premiums)
3. plus a conversion or processing fee (to cover conversion costs, profit and freight to customer or port for export) plus
4. finish extras, if applicable (e.g. painting/powder coating or anodising).

The industry refers to the 'spread' as being the difference between the combined sum of the LME price and premiums, and the selling price.

In addition, product profiles made to customer specifications require special dies. This will involve a charge to the customer to cover the upfront cost of producing the die, or alternatively the manufacturer covering this cost, with the cost then amortised over the expected life of the die or the contract and built into the price of the extrusions.

Capral has previously explained that it seeks to remain competitive with other Australian and overseas suppliers by setting prices at levels that are desirable in the market place and consistent with movements in the price for primary aluminium. However, Capral also concedes that estimating the prices of aluminium extrusions sold by its competitors has

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<sup>47</sup> [https://www.abs.gov.au/statistics/industry/building-and-construction/building-activity-australia/sep-2021/87520\\_activity.xlsb](https://www.abs.gov.au/statistics/industry/building-and-construction/building-activity-australia/sep-2021/87520_activity.xlsb)

<sup>48</sup> Capral 2021 Half Year Results Presentation and Earnings Guidance.

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become increasingly difficult. This is due to the increasing difficulty in obtaining clear evidence of competitive offers from countries subject to the measures. As a result, its awareness of price in the market is generally via interactions with existing customers or other market intelligence that is available publicly.

Capral has mentioned that it has received increasing numbers of unsolicited offers, often sent via email or social media platforms, from traders or overseas aluminium extrusions mills.

## 5 ECONOMIC CONDITION OF THE INDUSTRY

### 5.1 Preliminary finding

The commission preliminarily finds that the economic condition of the Australian industry exhibited mixed results in the period from 1 July 2016 to 30 June 2021.

Since 1 July 2018, the Australian industry has seen some improvement in its economic position in relation to:

- sales volume
- production volume
- profit and profitability
- return on investment

Sales revenue, capacity utilisation, employment levels, and wages have also improved since 1 July 2019.

The marked improvement in economic conditions in FY 2020 and FY 2021 have corresponded with Australian industry being able to maintain relatively steady prices. While the prices are decreasing during FY 2020 and FY 2021, the decline is not as steep as the decline in costs over the same period. The price sensitivity of the Australian aluminium extrusions market is borne out in the fluctuating economic conditions experienced by the Australian industry since 1 July 2016.

### 5.2 Findings in the original investigation

The commission found that the Australian industry producing aluminium extrusions had suffered injury in REP 362 in the form of:

- price depression
- price suppression
- reduced profits
- reduced profitability
- reduced capital expenditure.

### 5.3 Approach to analysis

As discussed in chapter 3, the Australian industry for aluminium extrusions is comprised of several entities, with Capral being the largest domestic manufacturer of aluminium extrusions. Capral accounts for approximately 37% of the Australian industry manufacturing like goods in Australia. With the addition of the data obtained from G James and INEX (noted in chapter 2.3.2), the commission has detailed price and volume information which represents approximately 66% of the Australian industry in the inquiry period.

Where possible, the analysis in this chapter incorporates data from Capral, G James and INEX. Noting that detailed information about costs and other economic factors was only provided by Capral, some of the analysis is based solely on Capral's data (and this is noted in the text where relevant). The commission notes the overall consistent trends in prices achieved by the 3 Australian industry members that provided data. The commission also notes that movements in the LME price of aluminium is the chief cost driver for all market participants, and that prices tend to reflect that cost. The commission therefore considers that changes in Capral's economic condition is likely to provide a reasonable indicator of the performance of the Australian industry generally. In any event, the

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commission's analysis in this chapter is not intended to demonstrate whether injury has been experienced by the Australian industry as a whole in the inquiry period; rather, it is to provide a context for judging the likelihood of injury in the event the measures were to expire (which is addressed in chapter 8).

The analysis in this chapter therefore uses:

- verified financial, sales and cost data submitted by Capral
- sales data submitted by G James and INEX
- Capral's estimate of sales volumes by other Australian industry members
- import data from the ABF import database, verified importer and exporter data and
- information obtained from previous investigations, reviews and inquiries conducted by the commission into aluminium extrusions from Malaysia and Vietnam, as well as China.

The commission has considered the period since 1 July 2016, noting that the anti-dumping measures were imposed on 27 June 2017. As a result, all graphs are shown as FYs ending 30 June.

In its application for this inquiry, Capral claimed, among other things, that:

- The Australian market for aluminium extrusions is transparent with a high level of price sensitivity.
- The commission's recent cases (REP 540, REP 541, REP 543 and REP 544) confirm that the Australian industry is vulnerable to the injurious effects of dumping (and subsidisation).
- Should measures expire, Capral would be required to match the injurious prices in order to maintain production and sales volumes and would likely experience a reduction in prices, which would reduce profits and profitability.
- In the event of the anti-dumping measures expiring, the Australian industry contemplates a recurrence of the material injury that the measures were intended to prevent.

The commission has considered these claims when undertaking its analysis. The data and analysis on which the commission has relied to assess the economic condition of the Australian industry is set out at **Confidential Attachment 2**.

## 5.4 Volume effects

### 5.4.1 Sales Volume

The commission has compared the volume of sales by the Australian industry and by countries with certain exporters subject to measures over the 6 years to the FY ending 30 June 2021, as shown in Figure 2. The figure notes the point at which Malaysia and Vietnam became subject to measures. This analysis includes all imports from Malaysia and China, noting that not all exporters from these countries have been subject to measures during the period analysed. The commission has compared the data for subject and non-subject exporters from Malaysia in chapter 8.5.1.

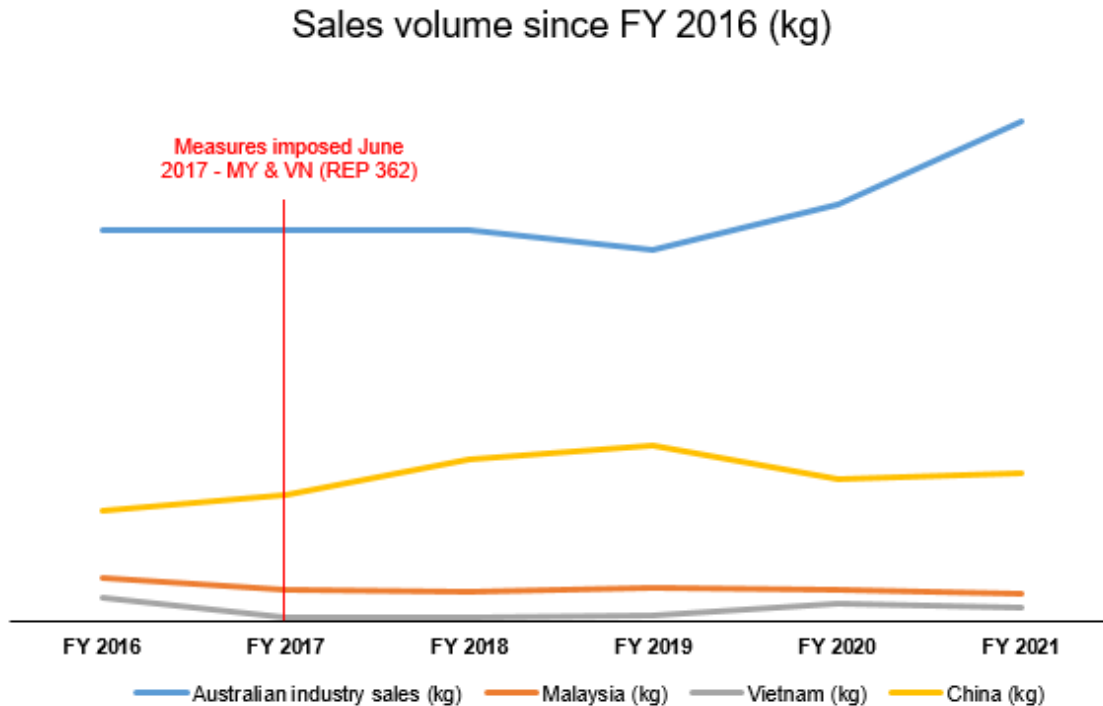


Figure 2: Comparison of sales volume since FY 2016<sup>49</sup>

Despite the implementation of measures in June 2017, Australian industry’s sales of aluminium extrusions remained steady in FY 2018 before decreasing in FY 2019. Sales volume then increased in FY 2020 and FY 2021. Sales of the goods from Malaysia in the Australian market have remained relatively consistent since the implementation of measures. Whereas, sales of the goods from Vietnam in the Australian market peaked in FY 2020, although remaining at relatively low volumes overall.

<sup>49</sup> Australian industry sales volume is based on all Australian members. The commission has used Capral’s estimate of other members’ volume where data was not provided.

### 5.4.2 Market share

Figure 3 shows the market shares held during the period examined.

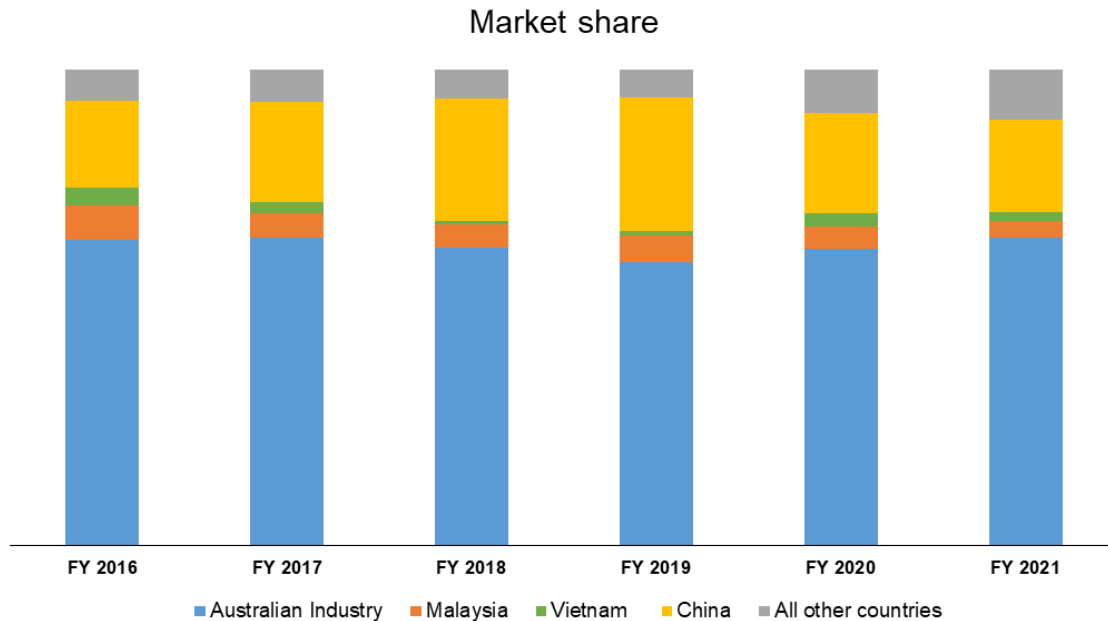


Figure 3: Australian market share by origin<sup>50</sup>

The implementation of measures had a substantial impact on market share of Malaysia and Vietnam. There was an instant decline in market share from both countries in FY 2017. While measures were not implemented until the end of FY 2017, a Preliminary Affirmative Determination (PAD) was made with effect from 19 October 2016.<sup>51</sup>

Since the imposition of anti-dumping measures on Malaysia and Vietnam in 2017:

- the share of imports from Malaysia has remained largely consistent
- the share of imports from Vietnam has increased (albeit from a low base)
- the Australian industry market share declined in FYs 2018 and 2019, before increasing in FYs 2020 and 2021.

The commission also found that imports from countries other than Malaysia, Vietnam and China remained consistent since FY 2017 with steady increases in FY 2020 and onwards.

### 5.4.3 Production volume

Since the imposition of measures, Australian industry initially reduced production volumes, before being able to increase production in FY 2021. Outlined in Figure 2, the sales volume across the whole Australian industry increased from FY 2020 onwards. This was slightly earlier than Capral's increase in production volume in FY 2021. The production volume in Figure 4, based on Capral's verified data, also correlated with its sales volume, with increases also experienced in FY 2021.

<sup>50</sup> Malaysia market share includes all the goods whether they are subject to this notice, or other notices.

<sup>51</sup> EPR 362, document no. 34.

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Production volume (kg)

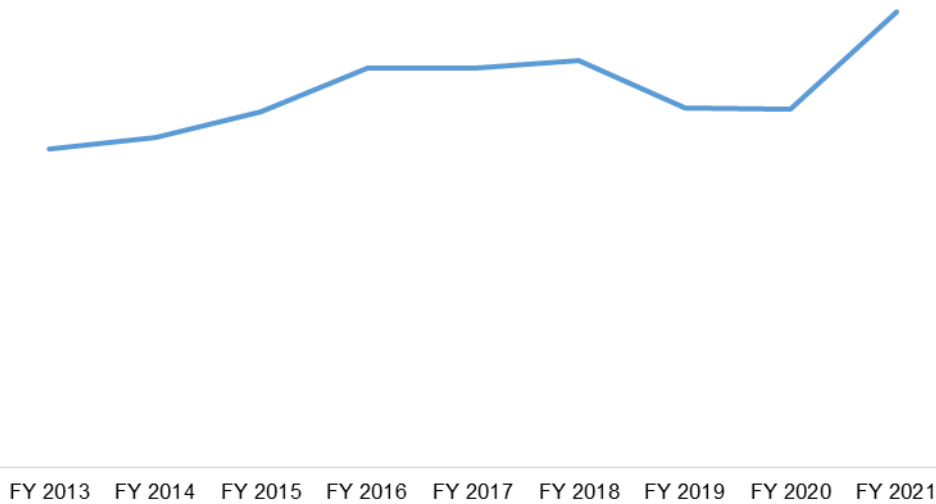


Figure 4: Like goods production volume (Capral)

### 5.5 Price effects

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs. A comparison of Capral's unit cost to make and sell (CTMS) and unit selling prices is in Figure 5.

Comparison of price and cost - all finishes

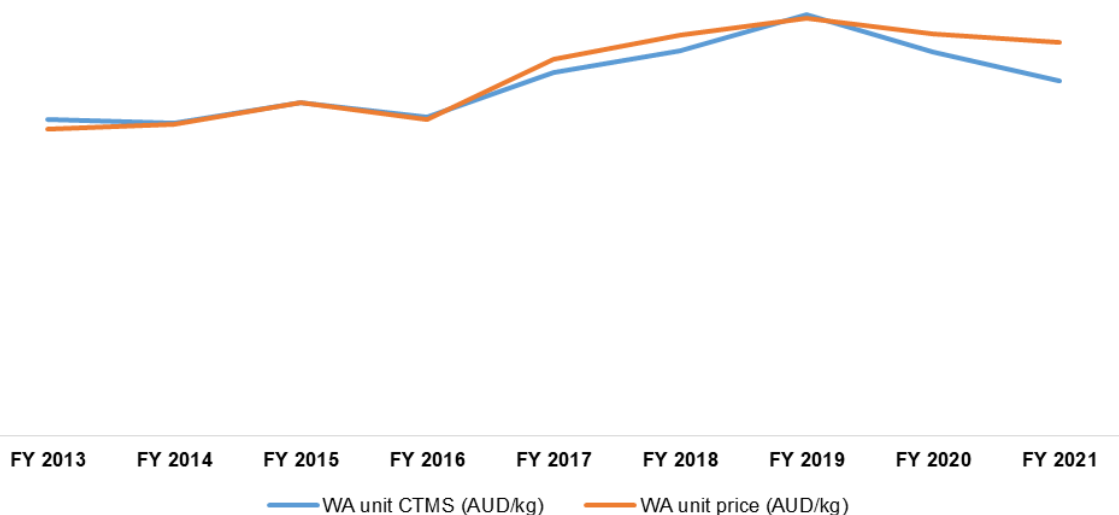


Figure 5: Capral's unit selling price vs CTMS - All finishes

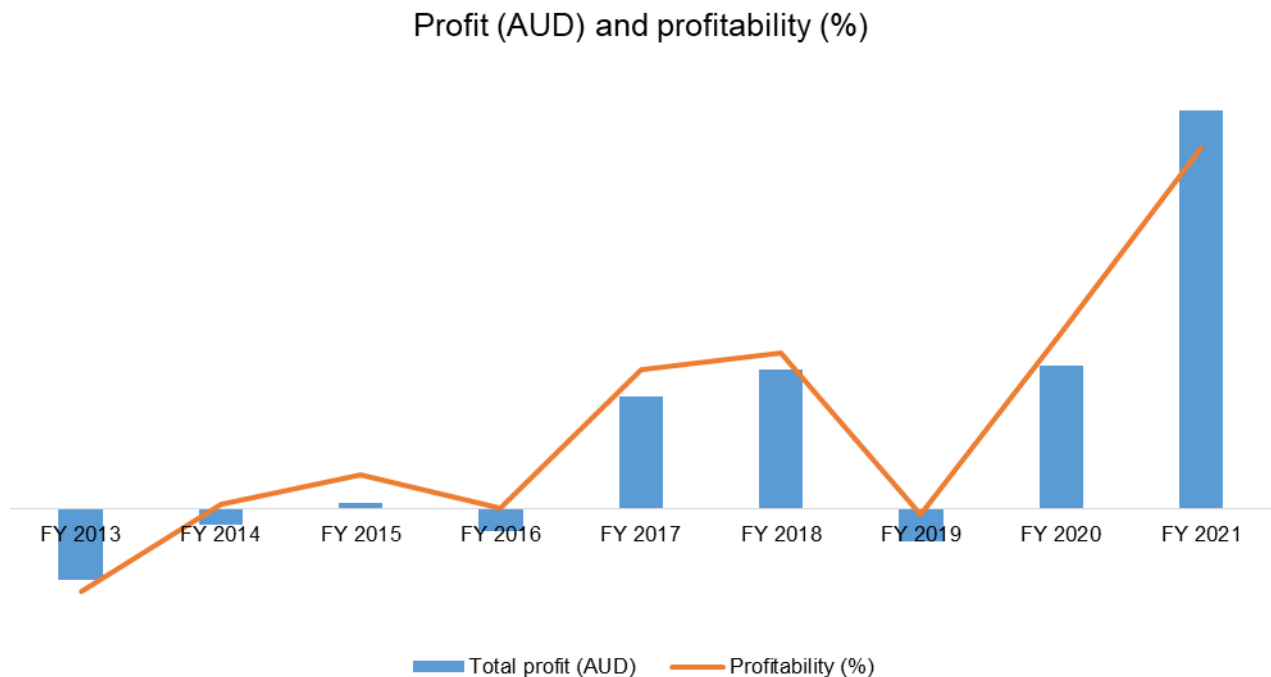
Having regard to the relationship between the trends in the above chart, the Commission makes the following observations:

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- the rate of increase in the prices for like goods was less than the rate of increase in CTMS from July 2017 to June 2019 during the period of analysis and
- CTMS then decreased from July 2019 at a steeper rate than prices over the same period.

### 5.6 Profit and profitability

Figure 6 charts Capral's total profit and profitability for all like goods as a percentage of revenue across the period of analysis.



**Figure 6: Profit and profitability**

The chart indicates that Capral has been profitable in most years, but with a high degree of volatility. Capral experienced its best profit and profitability result in FY 2021.

### 5.7 Other economic factors

As part of its application, Capral provided data relating to the period of analysis for a range of other economic factors. This included data relating to:

- revenue
- return on investment
- capacity utilisation
- employment and
- wages.

5.7.1 Revenue

Figure 7 shows revenue trends for Capral for aluminium extrusions. Sales volume is also shown on the chart, to demonstrate its relationship to revenue over time.

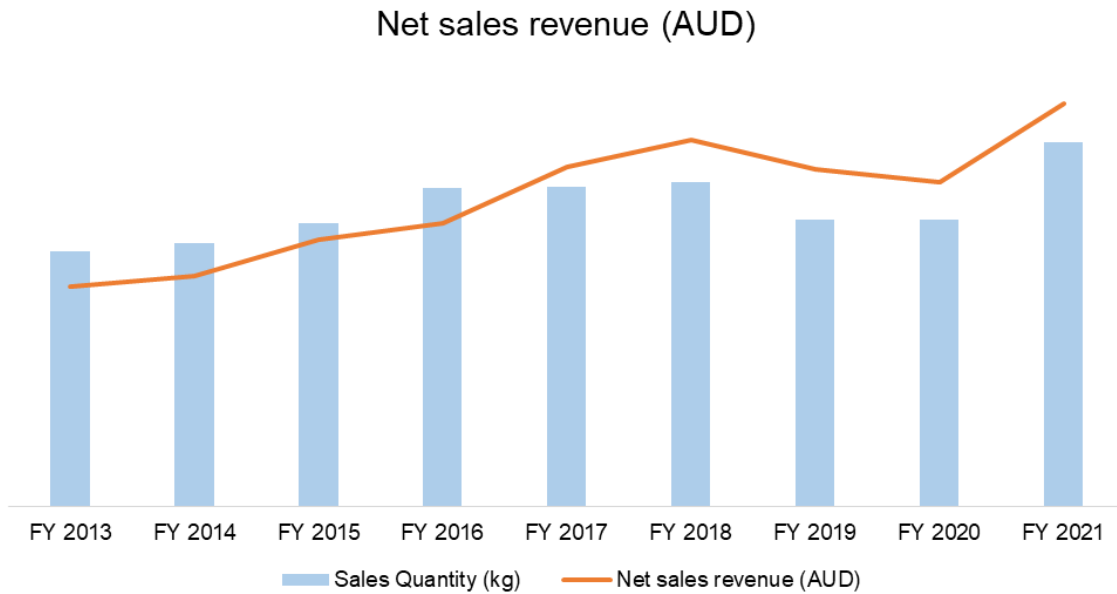


Figure 7: Like goods net sales revenue - Capral

The revenue outcome has been influenced by changes in both price and volume.

5.7.2 Return on investment

Return on investment (ROI) provided in Capral’s data was based on profit earned on like goods sales and the value of assets deployed in the production of like goods. Figure 8 shows that Capral experienced a decline in ROI in the 2019 FY after a slight increase in 2018. However, ROI made a marked improvement in the 2020 and 2021 FYs.

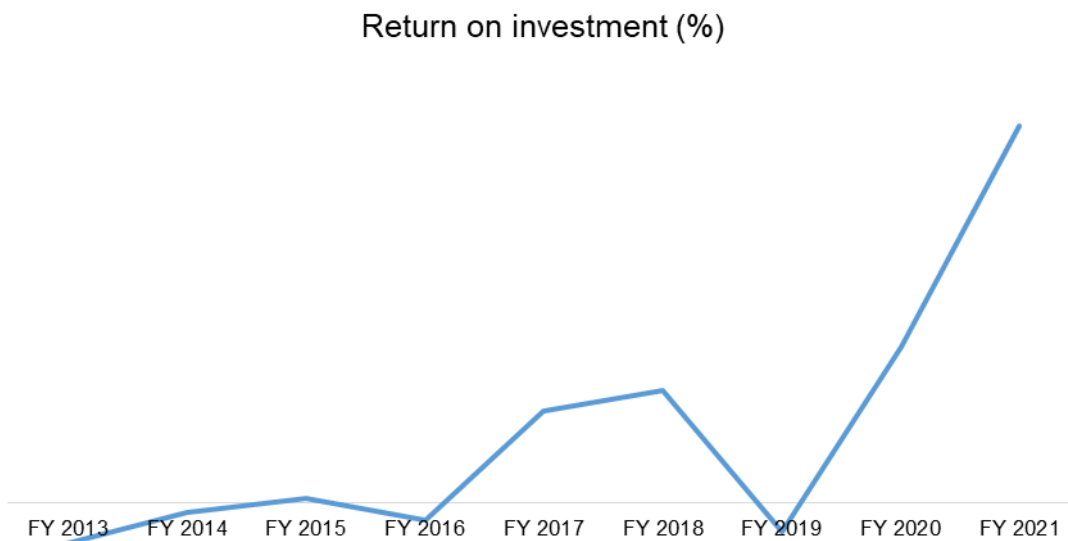
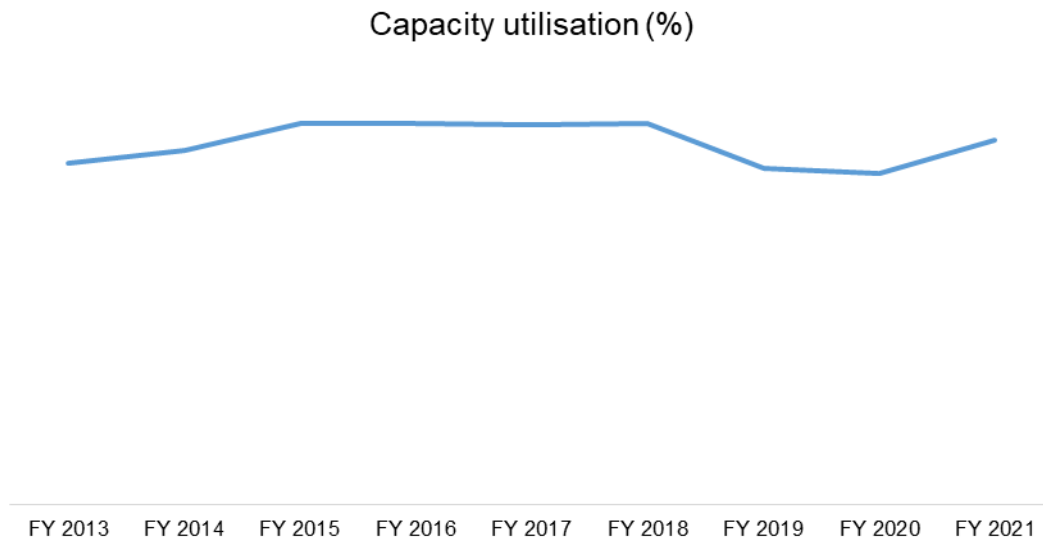


Figure 8: Like goods return on investment

### 5.7.3 Capacity utilisation

Figure 9 charts Capral’s capacity utilisation across the period of analysis:

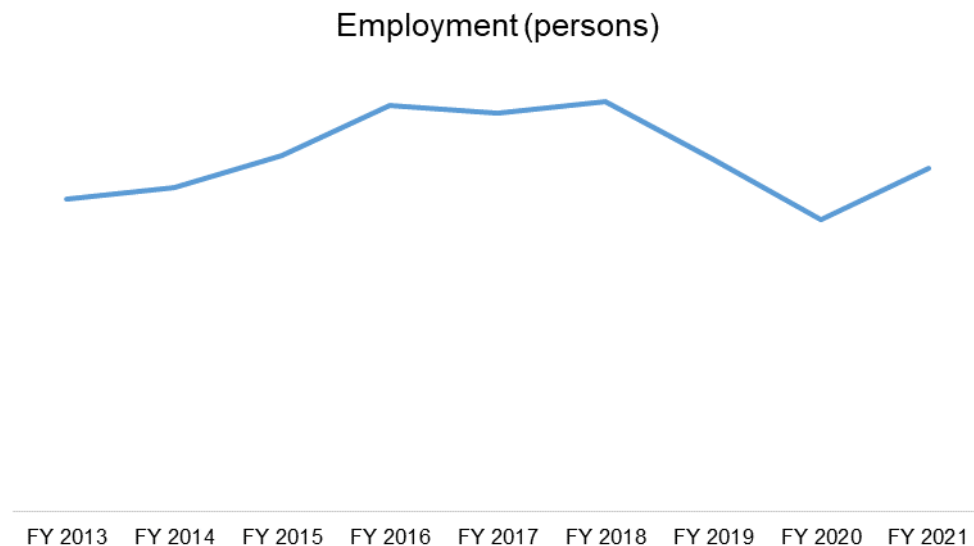


**Figure 9: Capacity utilisation**

Capral experienced a decline in capacity utilisation for production of mill finished goods from the 2018 FY.<sup>52</sup> However, Capral increased its production capacity in FY 2021, which coincided with increased production volume. Therefore, while Capral’s capacity utilisation is lower in FY 2021 than in FY 2018, the actual volume of goods produced increased over this period.

### 5.7.4 Employment numbers

Figure 10 charts Capral’s employment numbers across the period of analysis:



**Figure 10: Employment**

<sup>52</sup> The production of all aluminium extrusions start as mill finish. Capacity utilisation is therefore recorded at this level.

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The chart shows that after a slight increase in employment numbers in the 2018 FY, the workforce employed in the production of aluminium extrusions has declined in both the 2019 and 2020 FYs, respectively. There was an increase in employment numbers again in the 2021 FY.

The commission has previously established that Capral de-commissioned its entire anodising facility and one paint line in 2019. These facilities were used to produce surface finished aluminium extrusions. It also shut down one extrusion press and related support functions used to produce mill finish aluminium extrusions. It has also been noted that the paint line that was closed followed the installation of a 'new cutting edge, vertical cube powder coat line' in the 18 month period preceding Capral's application for REP 541 (July 2018 to December 2019).<sup>53</sup>

Because of the changes to its manufacturing operations, particularly in relation to mill finish and anodised extrusions, Capral was required to undertake a restructuring program that led to the permanent loss of staff.

### 5.7.5 Wages

Figure 11 charts Capral's wages across the period of analysis.



**Figure 11: Net wages for like goods**

The chart indicates that Capral's wage expense in relation to like goods production has declined from the 2018 FY until the 2020 FY. This outcome is consistent with the actions taken by Capral during 2019 when it reduced its workforce in response to what it stated were more challenging market conditions. Capral's wages increased again in the 2021 FY.

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<sup>53</sup> Capral Application Investigation 541, p.33, Case 541 Public Record Item No.001.

## **6 VARIABLE FACTORS – DUMPING DUTY NOTICE**

### **6.1 Preliminary finding**

The Commissioner has preliminarily found that the variable factors in relation to all exporters have changed. The resulting preliminary dumping margins are summarised in Table 5.

Country	Exporter	Preliminary dumping margin
Malaysia	PMBA	6.7%
	Alumac	-2.3%
	Uncooperative and all other exporters	27.0%
Vietnam	EAA	5.2%
	Uncooperative and all other exporters	9.0%

**Table 5: Summary of preliminary dumping margins**

### **6.2 Legislative framework**

In accordance with section 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of dumping. The existence of dumping during the inquiry period may be an indicator of whether dumping may occur in the future.

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

The commission applied the methodology in section 269TACB(2)(a) to determine whether dumping has occurred and the levels of dumping by comparing the weighted average export price over the whole of the inquiry period with the weighted average of corresponding normal value over the whole of the inquiry period.

Further details of the export price and normal value calculations for each exporter are set out below.

#### **6.2.1 Cooperative exporters**

As discussed in chapter 2, the following exporters provided a detailed REQ:

- PMBA
- Alumac
- EAA

Each REQ included Australian sales, domestic sales and the CTMS for like goods.

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>54</sup> The commission performed verification of the REQs provided by PMBA and EAA. The commission also conducted a desktop review of the data provided by Alumac.

### **6.2.2 Uncooperative and all other exporters**

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

Section 8 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction) provides for the Commissioner to determine that an exporter is an ‘uncooperative exporter’. This may be determined on the basis that no relevant information was provided by the exporter within a reasonable period, if the exporter failed to provide a response (or failed to request a longer period to do so within the legislated period).

After having regard to the Direction, the Commissioner determined that all exporters that did not provide a response to the exporter questionnaire, or did not request a longer period to provide a response within the legislated period (being 37 days, concluding on 22 October 2021) were uncooperative exporters for the purposes of this inquiry.

Uncooperative exporters - As provided for in section 269TACAB(1), export price and normal value are worked out for this category of exporters in accordance with section 269TAB(3) and section 269TAC(6), respectively, by having regard to all relevant information (chapter 6.6).

## **6.3 PMBA**

### **6.3.1 Verification**

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

A report covering the verification is available on the public record.<sup>55</sup>

Capral’s submission on 15 December 2021 raised concerns that the commission had not been provided with the complete financial information relating to exports of aluminium extrusions to Australia by PMBA.<sup>56</sup> Capral provided the commission with copies of PMAA’s 2020 financial statements as submitted with the Australian Securities and Investment Corporation (ASIC).

The commission has reviewed these financial statements and was able to reconcile that data to the sales and costs data that was provided by PMBA and PMAA in their respective REQ and RIQ.<sup>57</sup>

### **6.3.2 Amendments to the MCCs**

PMBA proposed changes to the MCC structure. The commission analysed the sales data and supporting evidence provided with PMBA’s REQ.

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<sup>54</sup> ADN No. 2020/029.

<sup>55</sup> EPR 591, document no. 23.

<sup>56</sup> EPR 591, document no. 17.

<sup>57</sup> PMAA Importer Verification Work Program – Confidential Attachment 1.

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Based on analysis of the price comparability of the goods, the commission considers it necessary to make amendments to the MCC structure.

No.	Exception	Resolution
1	There is an evident difference in the selling price between natural anodised and coloured anodised finished goods. There was also a material price difference for polished bright silver (PBS) finished products, in comparison to other product finishes.	The MCC sub-categories for finish be altered as follows: <ul style="list-style-type: none"> <li>replacing the A (anodised) sub-category with 2 new sub-categories, NA (natural anodised) and CA (colour anodised)</li> <li>adding subcategory PBS for polish bright silver finished goods.</li> </ul>
2	Price lists provided by PMBA demonstrate that the proposed alloy sub-categories were not an appropriate reflection of the pricing of the goods sold by PMBA.	The MCC sub-categories for alloy be altered as follows: <ul style="list-style-type: none"> <li>sub-category 6A to cover alloy 6060, 6063 and 6005</li> <li>sub-category 6B re-designated to cover alloy 6061 only</li> <li>sub-category 6C re-designated to cover alloy 6082 only</li> <li>sub-category 6D re-designated to cover alloy 6463 only.</li> </ul>
3	Price lists indicate that PMBA does not consider anodising microns in its pricing of the goods.	An additional category for anodising microns is redundant. The category for anodising microns has been removed.

**Table 6: Amendments to MCCs**

Category	Sub-category		Sales data	Cost data
Finish	NA	Natural anodise	Y	Y
	CA	Colour anodise		
	PBS	Polish bright silver		
	M	Mill		
	PC	Powder coating		
	MC	Mechanical		
	W	Wood grain		
Alloy code	6A	6005, 6060, 6063	Y	Y
	6B	6061		
	6C	6082		
	6D	6463		
	O	Other		
Temper code	T1	T1, T4, T5, T6	Y	Y
	T50	T591, T595, T52		
	O	Other		

**Table 7: Revised MCC structure for PMBA**

### 6.3.3 The importer

The commission found that PMBA exported the goods to PMAA through an intermediary, Press Metal Berhad (PMB), for all sales of the like goods to Australia during the inquiry period.

The commission considers PMAA to be the beneficial owner of the goods at the time of importation as PMAA:

- is named on the commercial invoice issued by its supplier, PMB
- is named as the consignee on the bill of lading

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- was identified as the owner on Australian import declarations lodged by PMAA
- arranges delivery from the Australian port of arrival.

The commission is satisfied that for all Australian export sales during the inquiry period that PMAA was the importer of the goods.

### 6.3.4 The exporter

In REP 544, the commission found that PMBA was the exporter of the goods, and considered that PMBA satisfied the definition of a 'new exporter' pursuant to section 269T. As a result, exports by PMBA are subject to the notices the subject of this inquiry.<sup>58</sup>

Following an accelerated review of the anti-dumping measures applying to exports from Malaysia by PMBA (REP 577), the Minister altered the notices, as they apply to PMBA, as if different variable factors had been fixed.<sup>59</sup>

The commission considers PMBA to be the exporter of the goods, as PMBA:

- has been identified as the manufacturer of the goods
- was named on the commercial invoice as the supplier of the goods to PMB, whereby PMB then supplies the goods to PMAA
- arranges and pays for the inland transport to the port of export
- arranges and pays for the port handling charges at the port of export and
- covers the cost of ocean freight and marine insurance from the port of export to the Australian port of arrival (for Cost, Insurance and Freight (CIF) terms for sales made during the inquiry period).<sup>60</sup>

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

The commission further considers PMB to be an intermediary in the export of the goods on the basis that:

- PMB purchased the goods from PMBA prior to their exportation
- PMB is named as consignor and/or exporter on the certificate of origin and logistics company invoices
- PMB receives PMAA's purchase orders
- PMB is named on the commercial invoice to PMAA
- PMB receives payment from PMAA and
- PMB specified PMAA's purchase order details, name and place of delivery on PMB's invoices.

The commission is satisfied that for all Australian export sales during the period that PMB was the intermediary of the goods with regard to the sales between PMBA and PMAA.

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<sup>58</sup> REP 544, EPR 544 document no. 32.

<sup>59</sup> REP 577, EPR 577 document no. 3.

<sup>60</sup> The commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia; or a principal in the transaction, located in the country of export, that owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

### **6.3.5 Arms length assessment**

#### Export sales to related party customer

PMBA made all of its Australian sales to PMAA through an intermediary, PMB. All 3 parties are related.

The commission found that PMBA sells to PMAA through PMB with reference to monthly price lists, and the price is set in consideration of LME and MJP market price data in relation to aluminium billet and aluminium ingot.

During the inquiry period, PMBA exported the goods at CIF and Free on Board (FOB) terms. In relation to export sales, PMBA sold the goods to PMB at CIF and FOB prices in Malaysian Ringgit. PMB then on-sold the same goods to PMAA in Australian dollars, with reference to the same CIF and FOB prices, however using an exchange rate conversion.

Since PMB acts as a sales facilitating intermediary only, PMB never physically possessed the goods. Rather, the goods were physically moved from PMBA's mill straight to the port of export and then into PMAA's possession.

With regard to the sales at CIF terms, the commission notes that PMB invoiced PMAA at CIF terms, and that certain importation costs incurred by PMAA were reimbursed by PMB. This effectively meant that this reimbursement formed part of PMBA/PMB's CIF export sales prices.

#### Change in INCOTERMS – CIF to FOB

PMBA advised that certain sales of the goods at CIF terms retrospectively changed to FOB terms. This related to sales from the period 1 December 2019 to 30 November 2020. PMBA explained that the transition was made effective by the issuance of a credit note from PMB to PMAA, representing a downwards price adjustment. PMB issued the credit note on 30 November 2020, and therefore the credit note represents a post-sale price alteration from the original CIF price to an FOB price.

PMBA explained that PMB also issued a debit note to PMAA, representing the actual post FOB costs originally paid by PMB, for sales made during the period 1 December 2019 to 30 November 2020.

The commission observed the credit and debit notes from PMB to PMAA, as well as the corresponding payments with respect to the credit and debit notes. The commission also identified the relevant adjustments in PMBA and PMB's accounting systems, which corresponds to the credit and debit notes.

#### Nature of post 30 November 2020 export sales

PMBA explained that from 30 November 2020 onwards, the sales arrangements from PMBA to PMB/PMAA were to be on an FOB basis. However, PMBA explained that for some sales with an invoice date post 30 November 2020, PMBA inadvertently invoiced at CIF terms<sup>61</sup>, instead of FOB terms. PMBA stated that the sales inadvertently invoiced at CIF terms relate to invoice dates after 30 November 2020 to the end of the inquiry period, which represent products ordered before 4 December 2020. PMBA included the order date for each invoice in the export sales listing.

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<sup>61</sup> The invoicing at CIF terms relates to the same pricing arrangement as the CIF prices that were invoiced from 1 December 2019 to 30 November 2020.

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PMBA explained that in order to correct the post November 2020 invoices inadvertently invoiced at CIF terms, PMB issued multiple credit notes to PMAA. PMB issued these notes to adjust the sales such that the sales would reflect FOB sales prices. Based on the credit notes, PMAA manually edited its invoices to reflect the FOB pricing.

The commission found that the credit note adjustments and manual changes to the invoices reflected artificial, retrospective cost adjustments.

PMBA explained that all post November 2020 invoices that represent products ordered from 4 December 2020 onwards, were originally invoiced at FOB terms.

### Summary of export sales terms for the inquiry period

The commission has summarised the export sales terms for the inquiry period. These are set out in the table below.

Invoice period	INCOTERMS reflecting original invoice price	Sales order date period relating to the invoice	Post invoice adjustments
1 July to 30 November 2020	CIF	Pre 4 December 2020	Retrospectively changed to FOB terms via a credit note issued on 30 November 2020
1 December 2020 to 30 June 2021	CIF	Pre 4 December 2020	Retrospectively changed to FOB terms via multiple credit notes and manual adjustments made on the original invoices
	FOB	4 December 2020 onwards	N/A

**Table 8: Summary of export sales terms**

### Treatment of CIF sales

Representatives of the commission conducted a verification of PMBA's data for REP 577.<sup>62</sup> In relation to that verification process, the commission calculated PMBA's export price for the period 1 January 2020 to 31 December 2020. The commission notes that this period includes the first 6 months of the inquiry period.

As detailed in REP 577, the commission found that the CIF sales from 1 July 2020 to 31 December 2020 included a reimbursement for certain importation costs (which was also identified by the commission in the present inquiry). Notwithstanding this, the commission found that these CIF sales were a reflection of commercial arrangements in place at the time of sale, and that PMBA and PMB made these sales in a manner consistent with established trading practices.

The commission notes that the findings from REP 577, in relation to CIF sales, are also relevant to the findings in this verification. Accordingly, for all CIF sales made during the inquiry period, the commission considers the invoice price of the goods at CIF terms with the inclusion of the importation cost reimbursement in that price, is an established trading practice in relation to the seller, being PMB, and the buyer, being PMAA.

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<sup>62</sup> EPR 577, document no. 4.

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### Treatment of the downward price adjustments

The commission found that the credit note downwards price adjustment to retrospectively change CIF sales to FOB terms between 1 December 2019 to 30 November 2020 was based on non-actual costs. The commission also notes that there were credit note downwards price adjustments and manual changes to the original sales invoices to change the 1 December 2020 to 30 June 2021 CIF invoiced sales from CIF terms to FOB terms, retrospectively. The commission notes that PMB made these adjustments based on non-actual costs.

Notwithstanding the non-actual cost adjustment basis, the commission notes that the CIF to FOB downwards price adjustments for all sales originally invoiced at CIF terms during the inquiry period are reimbursements or forms of compensation from PMB to PMAA. In consideration of the matters outlined in section 269TAA(1A), the commission does not find that the CIF to FOB downwards price reimbursements are established trading practices, and notes that the reimbursements were not quantifiable at the time of the sale.

The commission finds that the downwards price reduction is a reimbursement or form of compensation from PMB to PMAA. Accordingly, the commission is of the opinion that the buyer (PMAA) is, subsequent to the purchase of goods from PMB, directly or indirectly, reimbursed, or has otherwise received a benefit, in respect of, the whole or part of the price pursuant to section 269TAA(1)(c).

The commission also considers that the post-sale alteration of the export price by PMBA and its related parties points to a situation where the price of the goods would not be reliable given the appearance that that price is affected by a relationship between PMAA, and the seller, PMBA, and an associate of the seller, PMB.

Accordingly, the commission is satisfied that pursuant to section 269TAA(1)(b), PMBA's CIF to FOB adjusted sales of the goods sold from 1 July 2020 to 30 June 2021 should not be treated as arms length transactions.

### Treatment of FOB invoiced export sales

Given the relationship between PMBA, PMB and PMAA, the commission wanted to be satisfied that the export sales claimed by PMBA that were originally invoiced at FOB terms actually reflected sales prices at FOB terms. Accordingly, the commission compared the claimed FOB sales prices to the claimed CIF sales prices during the inquiry period. The commission also assessed source documentation and pricing arrangements in relation to the relevant sales.

The commission completed the CIF/FOB price comparison on a monthly basis, and by MCC. From this price comparison, and with reference to source documentation and pricing arrangements, the commission was satisfied that the sales originally invoiced at FOB terms as claimed by PMBA, represented actual FOB pricing.

### Importer profitability assessment

The commission's arms length assessment also had regard to the profitability of sales by the Australian importer of the goods, PMAA, into the Australian market. PMAA's customers for the goods in the sample shipments examined in Part B to its RIQ could not be readily identified using the available financial information provided by PMAA. In the alternative, the commission assessed PMAA's profitability based on its verified Australian sales listing provided for Part C of its RIQ.

Pursuant to section 269TAA(3), the assessment of the profitability of PMAA's Australian sales listing was undertaken having regard to the following;

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- the monthly weighted average purchase price for each finish MCC sub-category paid by PMAA to the intermediary in the sale of the goods (PMB)
- the selling prices reported by PMAA at the transactional level, for each finish MCC sub-category and
- selling, general and administration (SG&A) costs, inclusive of relevant direct selling expenses, (as identified in its 2020 FY audited accounts and Profit & Loss statement at 30 June 2021), expressed as a proportion of selling price.

Applying the approach outlined above, the commission found that PMAA's sales of the goods sourced from PMBA were profitable. In reaching this finding, the commission notes that PMAA did not sell to related parties and its Australian sales listing was verified by tracing a sample of sales to source documentation and the overall values to financial records, which included audited accounts.<sup>63</sup> The finding that PMAA's sales of the goods into the Australian market were profitable does not alter the above findings that the export transactions were not at 'arms length'.

### 6.3.6 Information considered for this inquiry

#### Information considered unreliable

In line with the above, the commission finds that the following information may be disregarded as unreliable in accordance with section 269TAB(4):

- The November 2020 credit note issued to PMAA by PMB relating to the downwards price adjustment (adjusting the price to FOB terms) for CIF sales made from 1 December 2019 to 30 November 2020.
- PMB's November 2020 debit note issued to PMAA, making PMAA liable for the payment of exportation costs and importation expenses for CIF sales made from 1 December 2019 to 30 November 2020 (for the adjusting of the CIF price to FOB terms).
- The multiple invoice based credit notes representing downwards price adjustments (adjusting price to FOB terms) for sales originally invoiced at CIF terms, invoiced post November 2020.
- PMBA and PMB's accounting system adjustments detailing the recognition of the credit and debit notes issued to change any CIF sales to FOB sales.

#### Relevant circumstances of exportation

The commission finds that the commercial arrangements in place at the time of the sale of the goods reflected prices that were unaffected by the association between PMBA, PMB and PMAA, and were sold in a manner consistent with established trading practices.

The commission notes that all originally invoiced export sales made during the inquiry period reflect these commercial arrangements. These originally invoiced sales represent all sales whereby the commission disregards all post invoice adjustments retrospectively changing CIF sales to FOB sales. The commission further notes that PMBA sets its export prices based on monthly price lists, which consider LME and MJP market price data.

The commission is satisfied that the available information regarding PMBA's CIF exports at the time of their exportation to Australia indicates that:

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<sup>63</sup> EPR 591, document no. 20.

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- CIF terms were indicated on shipping company documents and Australian import declarations
- PMBA covered the cost of exportation to the port of arrival in Australia
- PMBA arranged for the goods to be shipped out of the country of origin and is therefore the entity who caused the removal of the goods from Malaysia
- PMB purchased the goods from PMBA before PMB on-sold those goods to the Australian importer, PMAA
- PMB (as the intermediary) paid PMBA (the exporter) an amount for the goods that reflected the value stated on PMBA's commercial invoices
- the importer (PMAA) paid the intermediary (PMB) for the goods, being an amount that reflected the value of the goods on PMB's commercial invoice and
- PMB's established practice of crediting PMAA for importation expenses was validly operating during the inquiry period.

In relation to PMBA's FOB exports, the commission notes that:

- FOB terms were indicated on shipping company documents and Australian import declarations
- PMBA covered the costs of exportation to the FOB point at the Malaysian port
- PMAA was responsible for all importation expenses from the FOB point to the Australian inland destination
- PMB purchased the goods from PMBA before PMB on-sold those goods to the Australian importer, PMAA
- PMB (as the intermediary) paid PMBA (the exporter) an amount for the goods that reflected the value stated on PMBA's commercial invoices and
- the importer (PMAA) paid the intermediary (PMB) for the goods, being an amount that reflected the value of the goods on PMB's commercial invoices.

### 6.3.7 Export price

In relation to the Australian sales of the goods by PMBA, the commission found that the importer (PMAA) has not purchased the goods from the exporter (PMBA). Therefore, the commission cannot determine export prices under sections 269TAB(1)(a) or 269TAB(1)(b). Furthermore, the commission considers that the export sales are not 'arms length' sales for the reasons outlined at chapter 6.3.5.

The commission notes that sufficient and reliable information exists to determine the export price under section 269TAB(1)(c), having regard to all the circumstances of the exportation. The commission has described the relevant circumstances of exportation above, at chapter 6.3.6. The commission finds that it should calculate export price as the price paid by PMAA to PMB, as stated on PMB's commercial invoices, less the part of that price that represents all actual post FOB costs. This price disregards information considered unreliable as outlined above.

In respect of the originally invoiced FOB sales, the commission finds that it should calculate export price as the invoiced price paid by PMAA to PMB, as stated on PMB's commercial invoices.

### 6.3.8 Normal value

For the purpose of the ordinary course of trade (OCOT) test (section 269TAAD), the commission has had regard to the assessment of an exporter's cost of production in accordance with section 43 of the *Customs (International Obligations) Regulation 2015* (the Regulation). The commission is satisfied that PMBA's production records are kept in

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accordance with generally accepted accounting practices in the country of export and reasonably reflect its costs of production associated with the production or manufacture of like goods.

As outlined in PMBA's verification report, the commission was satisfied that during the inquiry period there were sufficient volumes of sales of like goods sold for home consumption in the country of export that were arms length transactions and at prices that were within the OCOT. The commission is therefore not satisfied that there is an absence, or low volume, of sales relevant for the purpose of determining a price under section 269TAC(1).

The commission has determined a preliminary normal value under section 269TAC(1).

Table 9 outlines the goods, sorted by MCC, sold domestically and exported to Australia by PMBA.

MCC's sold domestically		MCC's exported to Australia	
CA-6A-T1	M-O-O	CA-6A-T1	NA-6A-T1
CA-6B-T1	M-O-T1	CA-6B-T1	PBS-6D-T1
M-6A-T1	NA-6A-T1	M-6A-T1	PC-6A-T1
M-6B-T1	NA-6B-T1	M-6B-T1	PC-6B-T1
M-6C-T1	PC-6A-T1	M-6D-T1	

**Table 9: Models sold domestically and exported to Australia by PMBA**

When calculating a normal value under section 269TAC(1), in order to ensure a proper comparison between the goods exported to Australia and the goods sold on the domestic market, the commission considers the volume of sales of each exported MCC on the domestic market. Where the volume of domestic sales of an exported model is less than 5% of the volume exported, the commission will consider whether a proper comparison can be made at the MCC level. In these situations, the commission may consider whether a surrogate domestic model should be used to calculate normal value for the exported model.

Having regard to sufficiency on a model by model basis, the commission is satisfied that for 6 MCCs of aluminium extrusions exported to Australia by PMBA, there were sufficient sales of like goods in the OCOT.

For 3 MCC's exported to Australia, the commission is not satisfied that there were sufficient domestic sales of like goods sold in the 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 has been determined under section 269TAC(1) with an appropriate specification adjustment applied, being based on the difference in the CTM between the export and domestic surrogate models, with an amount for profit applied.

The treatment of each exported MCC is detailed in the following table.

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Export MCC	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
CA-6A-T1	Yes	Suitable for use in normal value.
CA-6B-T1	Yes	Suitable for use in normal value.
M-6A-T1	Yes	Suitable for use in normal value.
M-6B-T1	Yes	Suitable for use in normal value.
M-6D-T1	No	Surrogate MCC M-6C-T1 with specification adjustment under section 269TAC(8) used in normal value.
NA-6A-T1	Yes	Suitable for use in normal value.
PBS-6D-T1	No	Surrogate MCC PC-6A-T1 with specification adjustment under section 269TAC(8) used in normal value.
PC-6A-T1	Yes	Suitable for use in normal value.
PC-6B-T1	No	Surrogate MCC PC-6A-T1 with specification adjustment under section 269TAC(8) used in normal value.

**Table 10: PMBA treatment of MCC for Normal Value**

### 6.3.9 Adjustments

In using domestic sales as a basis for normal value, the commission considers that the following adjustments, in accordance with section 269TAC(8), are necessary to ensure that differences between the normal value of goods exported to Australia and the export price of the exported goods would not affect comparison of domestic prices with export prices.

Adjustment Type	Deduction/addition
Domestic credit terms	<b>Deduct</b> an amount for domestic credit
Domestic inland transport	<b>Deduct</b> an amount for domestic inland transport
Domestic packaging	<b>Deduct</b> an amount for domestic packaging
Export packaging	<b>Add</b> an amount for export packaging
Export inland transport	<b>Add</b> an amount for export inland transport
Export handling and other charges	<b>Add</b> an amount for export port charges
Export credit terms	<b>Add</b> an amount for export credit terms
Specification	<b>Add</b> or <b>deduct</b> an amount for specification adjustment as described in Table 10

**Table 11: Summary of adjustments**

### 6.3.10 Dumping margin

The dumping margin for the goods exported to Australia by PMBA for the period is **6.7%**. The commission's calculations are included at **Confidential Attachments 3 to 6**.

## **6.4 Alumac**

### **6.4.1 Verification**

Following an examination of the ABF import database, the commission found that Alumac exported aluminium extrusions to Australia during the inquiry period. Information provided in Alumac’s REQ supports this.

As outlined at chapter 6.2, the commission conducted a desktop review of the information and data provided in Alumac’s REQ, benchmarked with the verified sales and cost data provided by other exporters relevant to the inquiry and comparison with Alumac’s verified data from REP 544.

The commission identified the issues outlined below during this process:

<b>No.</b>	<b>Exception</b>	<b>Resolution</b>
1	The submitted domestic and Australian sales listing did not contain the temper code classifications.	Alumac supplied an updated domestic and Australian sales listing with the appropriate temper code classifications.
2	The submitted Australian sales listing did not contain ‘bank charges’.	Alumac supplied an updated Australian sales listing with values for ‘bank charges’.

**Table 12: Exceptions during verification of Alumac’s data**

The commission is satisfied that the information and data provided by Alumac, including any required amendments as outlined in Table 12, are accurate and reliable for the purposes of ascertaining variable factors for determining the level of dumping relating to its exports of the goods to Australia during the inquiry period.

Relying on the information available, the commission is further satisfied that Alumac is the producer of the like goods.

### **6.4.2 Amendments to the MCCs**

Having regard to the MCC structure outlined in chapter 3.3.2, a comparison of export models against normal values based on finish, alloy, and temper was undertaken. An additional MCC category for minor works of the goods was added. This minor works code refers to the additional works: thermal break, and machining/precision cutting of the goods. For these sales it was observed that there were material differences in costs and selling prices, such that they were not comparable to sales without these forms of additional working, even once differences in costs had been adjusted for.

Based on analysis of the price comparability of the goods, the commission considers it necessary to make amendments to the MCC structure. To ensure a proper comparison, models that involve minor work are compared to the same model, or an adjustment made to account for the difference in models. The MCC structure applied to Alumac is as follows:

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Category	Sub-category		Sales data	Cost data
Finish	<b>A</b>	Anodised	Y	Y
	<b>M</b>	Mill		
	<b>PC</b>	Powder coated		
	<b>MC</b>	Mechanical		
Alloy Code	<b>6A</b>	6060, 6063	Y	N
	<b>6C</b>	6101, 1350, 6082, 6351, 6061		
	<b>6B</b>	6106		
	<b>O</b>	Other		
Temper Code	<b>T1</b>	T1, T4, T5, T6	Y	N
	<b>O</b>	Other		
Minor works	<b>A</b>	Additional working - machining/precision cutting	Y	Y
	<b>TB</b>	Additional working - thermal break		
	<b>N</b>	No additional work		

**Table 13: MCC structure for Alumac**

Table 14 outlines the goods, sorted by MCC, sold domestically and exported to Australia by Alumac.

MCCs sold domestically		MCCs exported to Australia
A-6A-T1-A	M-6C-T1-A	A-6A-T1-N
A-6A-T1-N	M-6C-T1-N	M-6A-T1-A
A-6C-T1-A	MC-6A-T1-A	M-6A-T1-N
A-6C-T1-N	MC-6A-T1-N	PC-6A-T1-N
M-6A-T1-A	MC-6C-T1-N	
M-6A-T1-N	M-O-O-N	
M-6A-T1-TB	M-O-T1-N	
M-6C-O-A	PC-6A-T1-A	
M-6C-O-N	PC-6A-T1-N	

**Table 14: Models sold domestically and exported to Australia by Alumac**

### 6.4.3 Export price

In respect of the like goods supplied by Alumac to customers in Australia during the inquiry period, the commission notes that Alumac:

- is the manufacturer of the like goods
- is named on the commercial invoice as the supplier
- is named as the consignor on the bill of lading
- arranges and pays for the inland transport to the port of export and
- arranges and pays for the port handling charges at the port of export.

The commission is therefore satisfied that Alumac is the exporter of the like goods.

The commission is satisfied that Alumac's exports to Australia are arms length transactions, as there is no evidence that:

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

Accordingly, the commission calculated the export price for Alumac under section 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation. Export prices are calculated at FOB terms.

### 6.4.4 Normal value

For the purpose of the OCOT test (section 269TAAD), the commission has had regard to the assessment of an exporter's cost of production in accordance with section 43 of the Regulation. The commission is satisfied that Alumac's production records are kept in accordance with generally accepted accounting practices in the country of export and reasonably reflect its costs of production associated with the production or manufacture of like goods.

The commission has found that there were sufficient volumes of sales of like goods sold in the OCOT for home consumption in the country of export that were arms length transactions during the inquiry period. As such, the commission is satisfied that there is not an absence or low volume of sales relevant for the purpose of determining a price under section 269TAC(1). The commission has therefore ascertained normal values for Alumac under 269TAC(1).

When calculating a normal value under section 269TAC(1), in order to ensure a proper comparison between the goods exported to Australia and the goods sold on the domestic market, the commission considers the volume of sales of each exported MCC on the domestic market. Where the volume of domestic sales of an exported model is less than 5% of the volume exported, the commission will consider whether a proper comparison can be made at the MCC level. In these situations, the commission may consider whether a surrogate domestic model should be used to calculate normal value for the exported model.

Considering sufficiency on a model by model basis, 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).

### 6.4.5 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.

Adjustment Type	Deduction/addition
Domestic credit terms	<b>Deduct</b> an amount for domestic credit
Domestic commission	<b>Deduct</b> an amount for domestic commission costs
Domestic packaging	<b>Deduct</b> an amount for domestic packaging costs
Domestic inland transport	<b>Deduct</b> an amount for domestic inland transport
Export packaging	<b>Add</b> an amount for export packaging
Export inland transport	<b>Add</b> an amount for export inland transport
Export port charges	<b>Add</b> an amount for port charges

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Adjustment Type	Deduction/addition
Export fumigation costs	<b>Add</b> an amount for fumigation costs
Export bank charges	<b>Add</b> an amount for bank charges
Export credit terms	<b>Add</b> an amount for export credit terms
Specification adjustment (extrusions with additional working for machining/precision cutting) for export only	<b>Add</b> an amount for machining/precision cutting costs specific for export sales

**Table 15: Alumac’s summary of adjustments**

### 6.4.6 Dumping margin

The dumping margin in respect of the goods exported to Australia by Alumac for the inquiry period is **negative 2.3%**.

The commission’s calculations are included at **Confidential Attachments 7 to 10**.

## 6.5 EAA

### 6.5.1 Verification

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

A report covering the verification is available on the public record.<sup>64</sup>

### 6.5.2 Amendments to the MCCs

EAA did not propose any amendment to the MCC structure. Based on analysis of the price comparability of the goods under consideration in EAA’s REQ, the commission considers it necessary to make amendments to the MCC structure.

No.	Exception	Resolution
1	There is no clear evidence from the pricing list that tempering had an effect on EAA’s pricing.	The MCC category for temper code has not been used.

**Table 16: Amendment to the MCCs**

Table 17 outlines the goods, sorted by MCC, sold domestically and exported to Australia by EAA.

MCCs sold domestically		MCCs exported to Australia	
A-6A	PC-6A	A-6A	M-6C
A-6D	PC-6D	A-6B	M-6D
M-6A		A-6C	PC-6A
M-6C		M-6A	PC-6B
M-6D		M-6B	PC-6D

**Table 17: Models sold domestically and exported to Australia by EAA**

<sup>64</sup> EPR 591, document no. 22.

### **6.5.3 Export price**

#### The importer

The commission considers EAA's Australian customers to be the beneficial owners of the goods at the time of importation and are therefore the importers as they:

- are named on the commercial invoice as the customer
- are named as the consignee on the bill of lading
- are named as the customer in the delivery note
- are named as the importer on the export declaration
- are named as importer/consignee in the certificate of origin
- declared as the importer on the importation declaration to the ABF
- paid for all the importation charges and
- arranged delivery from the port.

In relation to the goods exported by EAA to Australia, the commission considers that the customer listed for each shipment was the beneficial owner of the goods at the time of importation, and therefore was the importer of the goods.

#### The exporter

The commission considers EAA to be the exporter of the goods, as it is:

- the manufacturer of the goods
- named on the commercial invoice as the shipper/exporter
- named as consignor on the bill of lading
- named as shipper in the delivery note
- named as shipper/exporter in the packing list
- named as consignor in the certificate of origin
- arranges and pays for the inland transport to the port of export
- arranges and pays for the port handling charges at the port of export
- listed as supplier in the import declaration to the ABF.

The commission is satisfied that for all Australian export sales during the period that EAA was the exporter of the goods.

In respect of Australian sales of the goods by EAA, the commission found that the importer has purchased the goods from the exporter through a related party of EAA and not directly from EAA. Therefore, export prices cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b). The commission recommends that the export price be calculated under section 269TAB(1)(c), having regard to all the circumstances of the exportation.

Specifically, the commission recommends that the export price be determined as the FOB price paid by the importer to EAA's related party, Perfect Gateway Enterprises Ltd (PGE). The FOB price paid by the Australian importer to PGE is equal to the FOB price to EAA, since PGE has neither any intermediary profit margin nor any SG&A cost related to export transactions.

### **6.5.4 Normal value**

The commission found that there were sufficient volumes of sales of like goods sold for home consumption in the country of export that were arms length transactions and at prices that were within the OCOT. The commission is therefore not satisfied that there is an absence, or low volume, of sales relevant for the purpose of determining a price under

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section 269TAC(1). The commission has therefore determined a preliminary normal value under section 269TAC(1).

The commission has assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of domestic sales was 5% or greater and therefore was not a low volume.

When calculating a normal value under section 269TAC(1), in order to ensure a proper comparison between the goods exported to Australia and the goods sold on the domestic market, the commission considers the volume of sales of each exported MCC on the domestic market. Where the volume of domestic sales of an exported model is less than 5% of the volume exported, the Commission will consider whether a proper comparison can be made at the MCC level. In these situations, the Commission may consider whether to use a surrogate domestic model to calculate normal value for the exported model.

This analysis is detailed in the table below.

Export MCC	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
A-6A	Y	Suitable for use in normal value.
A-6B	N	Specification adjustment using the overall price difference observed for alloy 'A-6B' over that of 'A-6A' during the inquiry period.
A-6C	N	Specification adjustment using the overall price difference observed for alloy 'A-6C' over that of 'A-6A' during the inquiry period.
M-6A	Y	Suitable for use in normal value.
M-6B	N	Specification adjustment using the overall price difference observed for alloy 'M-6B' over that of 'M-6A' during the inquiry period.
M-6C	Y	Suitable for use in normal value. Timing adjustment to derive normal value for quarters missing domestic sales.
M-6D	Y	Suitable for use in normal value. Timing adjustment to derive normal value for quarters missing domestic sales.
PC-6A	Y	Suitable for use in normal value.
PC-6B	N	Specification adjustment using the overall price difference observed for alloy 'P-6B' over that of 'P-6A' during the inquiry period.
PC-6D	Y	Suitable for use in normal value.

**Table 18: EAA treatment of MCC for Normal Value**

### 6.5.5 Adjustments

In using domestic sales as a basis for normal value, the commission considers that the following adjustments, in accordance with section 269TAC(8), are necessary to ensure that differences between the normal value of goods exported to Australia and the export price of the exported goods would not affect comparison of domestic prices with export prices.

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

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Adjustment Type	Deduction/addition
Export packaging	<b>Add</b> an amount for export packaging
Export inland transport	<b>Add</b> an amount for export inland transport
Export credit terms	<b>Add</b> an amount for export credit terms
Specification and timing	<b>Add or deduct</b> an amount for specification and timing in accordance with the approach described in Table 18.

**Table 19: EAA's summary of adjustments**

### 6.5.6 Dumping margin

The dumping margin in respect of the goods exported to Australia by EAA for the inquiry period is **5.2%**.

The commission's calculations are included at **Confidential Attachments 11 to 14**.

## 6.6 Uncooperative and all other exporters

### 6.6.1 Malaysia – uncooperative and all other exporters dumping margin

The commission has determined an export price pursuant to section 269TAB(3), having regard to all relevant information. Specifically, the commission has had regard to the lowest weighted average export price in the inquiry period of cooperating exporters from Malaysia.

The commission has determined the normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information. Specifically, the commission has used the highest weighted average normal value from cooperating exporters from Malaysia in the inquiry period.

The dumping margin for uncooperative and all other exporters of aluminium extrusions from Malaysia is **27.0%**.

The Commission's calculations are included at **Confidential Attachment 15**.

### 6.6.2 Vietnam – uncooperative and all other exporters dumping margin

The commission has determined an export price pursuant to section 269TAB(3), having regard to all relevant information. Specifically, the commission has had regard to the weighted average export price for the inquiry period from the single cooperative exporter in Vietnam, EAA.

The commission has determined the normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information. Specifically, the commission has used EAA's normal value for the review period, without deductions for domestic adjustments under section 269TAC(8).

The dumping margin for uncooperative and all other exporters of aluminium extrusions from Vietnam is **9.0%**.

The commission's calculations are included at **Confidential Attachment 15**.

**6.7 Summary of dumping margins**

<b>Country</b>	<b>Exporter</b>	<b>Dumping Margin</b>
Malaysia	PMBA	6.7%
	Alumac	-2.3%
	Uncooperative and all other exporters	27.0%
Vietnam	EAA	5.2%
	Uncooperative and all other exporters	9.0%

**Table 20: Preliminary dumping margin summary**

## 7 VARIABLE FACTORS – COUNTERVAILING DUTY NOTICE

### 7.1 Preliminary finding

The Commissioner preliminarily finds that the one cooperative exporter subject to the countervailing duty notice, PMBA, has not received countervailable subsidies in respect of the goods exported to Australia from Malaysia during the inquiry period.

Exporter	Subsidy Margin
PMBA	0%
Non-cooperative and all other exporters	0%

Table 21: Preliminary subsidy margin summary

### 7.2 Background

As advised in chapter 2.2, PMBA is the only cooperative exporter that is subject to the countervailing duty notice and it provided relevant information to the commission.

The commission also received a complete government questionnaire response from the GOM. In considering all relevant information, the commission has relied on the subsidy programs identified in REP 362, *Anti-Dumping Commission Report No. 490* (REP 490),<sup>65</sup> *Anti-Dumping Commission Report No. 509* (REP 509), *Anti-Dumping Commission Report No. 534*, REP 544 and REP 577, PMBA's verified REQ, the GOM response to this inquiry and data in the ABF import database relevant to non-cooperating entities.

PMBA and the GOM did not advise the commission of the existence of any additional programs to those listed in Table 22.

### 7.3 Investigated programs

Subsidisation occurs when a financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to goods exported to Australia.<sup>66</sup> A subsidy is countervailable if it is specific.<sup>67</sup> The amount of a countervailable subsidy is determined in accordance with section 269TACD.

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

No	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

<sup>65</sup> REP 490 was a revocation review relating to the countervailing duty notice applying to Alumac, conducted in conjunction with *Anti-Dumping Commission Report No. 494* (REP 494), which was a review of the variable factors only in respect to exports from Alumac.

<sup>66</sup> Definition of subsidy in section 269T(1).

<sup>67</sup> Section 269TAAC.

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No	Program name	Program Type	Countervailable in relation to the goods (Yes/No)
5	Double Deductions for Insurance Premiums for Exporters and Importers	Income Tax	No
6	Reinvestment Allowance	Income Tax	Yes

**Table 22: Countervailable subsidy programs**

A detailed analysis in relation to these programs is provided in **Appendix A**.

Following the findings outlined in REP 362, the Minister published a countervailing duty notice for Malaysia having determined that Programs 4 and 6 were countervailable. The countervailing duty notice applied only to non-cooperative entities in REP 362.

At that time, Alumac and EverPress were subject to the countervailing duty notice as they were considered non-cooperative exporters. However, the countervailing duty notice was revoked for:

- Alumac - following REP 490<sup>68</sup> (which examined a review period of 1 July 2017 to 30 June 2018) with effect from 24 August 2018 and
- EverPress following REP 509<sup>69</sup> (which examined a review period of 1 April 2018 to 30 March 2019) with effect from 26 April 2019.

For the purpose of this inquiry, the only cooperating entity from Malaysia is PMBA. As outlined below, the commission found that PMBA was not in receipt of countervailable subsidies in the inquiry period.

## **7.4 Information considered by the commission**

### **7.4.1 Information provided by exporters**

The commission contacted the exporters subject to the countervailing duty notice and invited those exporters to submit a questionnaire response. The only response received was from PMBA. For the purpose of section 269TAACA all other exporters from Malaysia that are subject to the countervailing duty notice and did not provide an REQ are considered non-cooperative entities.

The commission has relied on information provided by PMBA in this inquiry for ascertaining the variable factors for PMBA and non-cooperative entities.

### **7.4.2 Information provided by the GOM**

As noted in chapter 2.3.6, the commission received a response to the government questionnaire from the GOM. A non-confidential version is on the EPR and is available at **Non-Confidential Attachment 1**.

### **7.4.3 Submissions in relation to subsidies**

A submission from the GOM was included in its response to the government questionnaire.<sup>70</sup> In summary, the GOM has stated that there is 'unsubstantiated adequate and accurate evidence'. The GOM refutes claims that it provided export subsidies to

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<sup>68</sup> EPR 490, document no. 21.

<sup>69</sup> EPR 509, document no. 24.

<sup>70</sup> EPR 591, document no. 05.

Malaysian producers of aluminium extrusions that have caused injury to the domestic industry in Australia. It further states that the causal link to injury suffered by the domestic industry in Australia cannot be attributed to the alleged export subsidisation by the GOM. The GOM has claimed that the trade remedy measures in relation to the countervailing duty notice are redundant.

The commission considered the GOM’s submission when forming its proposed recommendation to the Minister and whether it is likely that subsidisation will continue or recur. Further details are outlined in chapter 8.6.

## **7.5 Subsidy margins**

### **7.5.1 Cooperating exporters**

Following verification of PMBA’s REQ and all other relevant information described at chapter 7.2, the commission found that PMBA did not receive countervailable subsidies in the inquiry period.<sup>71</sup> Therefore, the subsidy margin applicable to PMBA is **0%**.

### **7.5.2 Non-cooperative and all other exporters**

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, the commission has had regard to relevant information described at chapter 7.2.

The GOM’s questionnaire response confirmed that the programs which formed the basis of the non-cooperative rate for the subsidy notice (Programs 4 and 6) continue to operate and could reasonably be available to certain exporters of the goods from Malaysia, provided they meet the relevant eligibility requirements.

An analysis of the ABF data indicates that, whilst not all of the producers listed in the GOM questionnaire exported the goods to Australia during the inquiry period, relatively few exporters and trading companies were involved in the exportation of the goods to Australia. The volume of exports from these companies was very small. The analysis is available at **Confidential Attachment 16**.

On the available information, the Commissioner considers it reasonable to find, in the absence of evidence to the contrary, that the goods exported to Australia in the inquiry period by non-cooperative and all other exporters did not benefit from countervailable subsidies. Accordingly, the subsidy margin for exports by non-cooperative and all other exporters is **0%**.

### **7.5.3 Summary of margins**

<b>Exporter</b>	<b>Program</b>	<b>Subsidy Margin</b>
PMBA	None	0%
All other exporters	Programs 4 and 6	0%

**Table 23: Summary of preliminary subsidy margins**

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<sup>71</sup> EPR 591, document no. 23.

## **8 LIKELIHOOD THAT DUMPING, SUBSIDISATION AND MATERIAL INJURY WILL CONTINUE OR RECUR**

### **8.1 Preliminary finding**

The Commissioner considers that there is sufficient evidence to support a finding that exports of aluminium extrusions from Malaysia and Vietnam are likely to continue in the absence of the anti-dumping measures, and that future exports (apart from exports by Alumac) are likely to be dumped. The Commissioner does not consider it likely that future exports from Malaysia are likely to benefit from countervailable subsidies.

Critically in relation to the question of whether measures should continue, the Commissioner does not consider that the evidence before him at this stage of the inquiry is sufficient to support a finding that material injury to the Australian industry is likely to be caused by future exports at dumped prices in the absence of the measures.

As a result of these findings and on the basis of the evidence currently available, the Commissioner is not satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent. The Commissioner therefore proposes to recommend that the notices be allowed to expire.

The presentation of additional evidence, for example, evidence demonstrating Australian industry price responses to the presence of dumped goods in the market, may provide a basis for reconsidering the proposed recommendation.

### **8.2 Legislative framework**

Section 269ZHF(2) provides that the Commissioner must not recommend that the Minister take steps to secure the continuation of measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

The commission notes that its assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. The commission must consider what will happen in the future should a certain event, being the expiry of the measures, occur. However, the Commissioner must nevertheless base his conclusions and recommendations on facts and not merely conjecture.<sup>72</sup>

### **8.3 The Commission's approach**

The commission considered a number of factors that are relevant for assessing the likelihood of whether dumping, subsidisation and material injury will continue or recur as outlined in the Manual.<sup>73</sup> The commission's view is that the relevance of each factor varies depending on the nature of the goods and the market into which the goods are sold. In this instance, no one factor provided decisive guidance. The following analysis therefore examines a range of factors that the commission considers relevant to this inquiry.

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<sup>72</sup> ADRP Report No. 44 (Clear Float Glass).

<sup>73</sup> The Manual, December 2021, pp 136-138.

## **8.4 Australian industry's claims**

In its application, Capral claims, among other things, that:

- the Australian industry is susceptible to further material injury from dumping and subsidisation and
- it has experienced (or is likely to experience in the absence of the measures):
  - depressed and suppressed selling prices, through having to match the 'injurious prices' in order to maintain production and sales volumes
  - reduced profit and profitability and
  - a recurrence of material injury that the measures were intended to prevent.

## **8.5 Are exports likely to continue or recur?**

The commission considers that, should the measures expire, exports from Vietnam and Malaysia are likely to continue. In particular, the commission notes that:

- exports of the goods subject to the notices have continued since the imposition of the measures, albeit in varying volumes
- PMBA has excess production capacity
- EAA has been, and remains, export focused, and
- Vietnamese and Malaysian exporters maintain distribution links to the Australian market.

In making this assessment, the commission has examined facts relevant to whether exports are likely to continue or resume, such as the volume of exports before and after measures were imposed or exporters' supply chains, as is set out in the Manual.<sup>74</sup>

### **8.5.1 Import volumes**

The commission considers that import volumes and historical trends indicate that exporters would likely continue exporting the goods to Australia from Malaysia and Vietnam should the measures expire.

Figure 12 illustrates the total import volumes of aluminium extrusions into Australia from Malaysia and Vietnam since 1 July 2016, noting that anti-dumping measures were imposed on 27 June 2017.<sup>75</sup> Imports of the goods from Malaysia have been categorised into those that are the focus of this inquiry and those that are not subject to the notice.

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<sup>74</sup> The Manual, p 137.

<sup>75</sup> As identified through the ABF import database.

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### Import Volumes (kg)

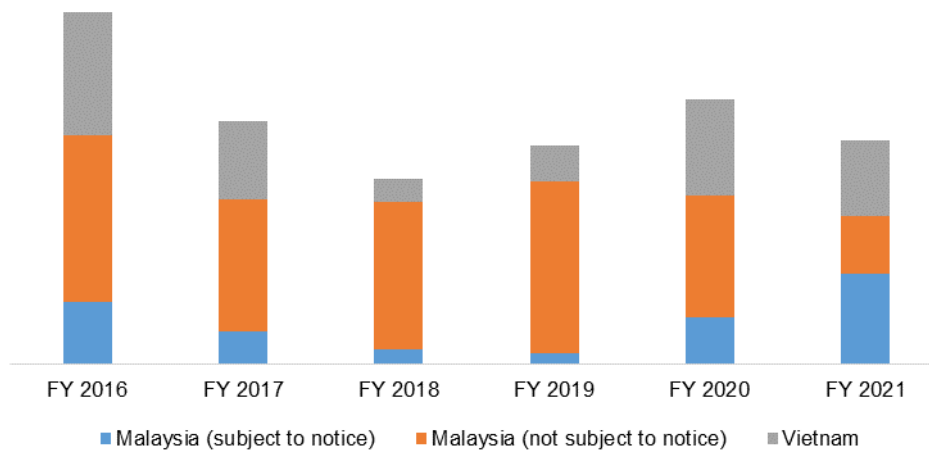


Figure 12: Import volumes in kilograms since FY 2016<sup>76</sup>

From Figure 12:

- Import volumes to Australia from Malaysia and Vietnam experienced a substantial reduction in FY 2017. This coincided with a PAD in October 2016 and the measures being implemented in 2017.
- REP 362 imposed measures on only the uncooperative and all other exporters. These accounted for approximately 27% of all imports from Malaysia in FY 2016 (the investigation period from REP 362).
- Following the imposition of measures, imports subject to the notice from Malaysia accounted for approximately 21% in FY 2017 to 6% in FY 2019.
- Imports from Vietnam saw increases in volume from when the measures were imposed (in FY 2017) until FY 2020, with the only decline in FY 2021.
- At the conclusion of FY 2021, imports from Malaysia that were subject to the continuation notice represented over 50% of all imports of the goods from Malaysia.

Based on these observations, the commission considers that import volumes and historical trends indicate that exporters would likely continue exporting goods to Australia from Malaysia and Vietnam should the measures expire.

#### 8.5.2 Production capacity and export focus

The commission has examined the production capacity and utilisation of the cooperating exporters and considers it likely that exporters from Malaysia and Vietnam would continue to export the goods to Australia.

The commission's analysis on excess capacity is at **Confidential Attachment 18**.

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<sup>76</sup> REP 362 imposed measures on all exporters from Malaysia (except from Press Metal Berhad (PMB), Superb Aluminium Industries Sdn Bhd, LB Aluminium Berhad, Milleon Extruder Sdn Bhd, Genesis Aluminium Industries Sdn Bhd and Kamco Aluminium Sdn Bhd). REP 544 outlined that as the result of an asset sale, PMB's status as a producer of aluminium extrusions changed in November 2019. The new entity, PMBA, subsequently became subject to the notice of this inquiry from November 2019.

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Based on this analysis, the commission notes that cooperative Malaysian exporters have a combined spare capacity of approximately 32% in the inquiry period. EAA, the sole cooperating exporter from Vietnam, did not have any meaningful spare capacity in the same period. EAA has also been able to increase its capacity utilisation and its overall production capacity in recent years.

The commission also analysed each cooperating exporter's proportion of sales of the goods sold on the domestic market relative to sales of the goods into export markets.

- EAA is predominantly export focused, with a high percentage of its sales being to the export market, both Australia and third countries.
- The majority of PMBA's sales are to its domestic market. However, PMBA still sells into export markets in significant volumes.
- A high percentage of Alumac's sales are to its domestic market. Alumac's export sales are in small volumes by comparison.

In the absence of the measures, the commission considers it likely that exporters from Malaysia and Vietnam would continue to export the goods to Australia.

### 8.5.3 Maintenance of distribution links to the Australian market

The commission considers that Malaysian and Vietnamese exporters have retained distribution links into the Australian market, indicating that exports are likely to continue.

The commission found that Malaysian and Vietnamese suppliers of the goods continue to produce aluminium extrusions that conform to Australian customers' specifications.

Comparing the supplier and importer relationships that existed in the original investigation period, subsequent reviews and the inquiry period, the commission has found that PMBA and EAA continue to trade the goods in not insignificant quantities.

Figure 13 provides an overview of the volume of exports to Australia from cooperative exporters from 1 July 2015. Since the imposition of measures, EAA has still been able to increase its export volumes and continue to supply Australian importers. This is despite its initial significant decline in volume when measures were imposed. PMBA also has a strong presence in the Australian market.<sup>77</sup>

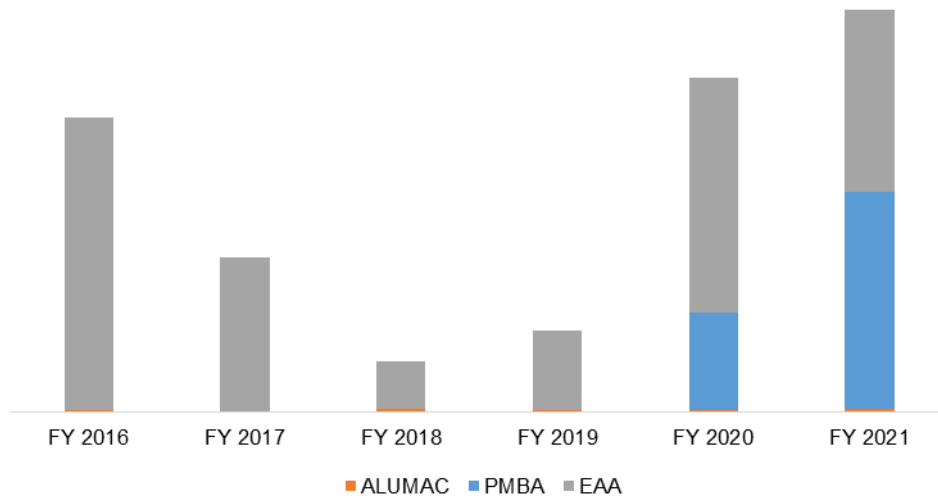
In contrast, Alumac's export volumes have been small in comparison to the other cooperating exporters, in consistent volumes to the same repeat customers from FY 2018 onwards.

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<sup>77</sup> PMBA data is counted from 1 December 2019. PMBA became subject to the notice on 22 November 2019 after their exporter status changed following a 2019 asset sale (REP 544).

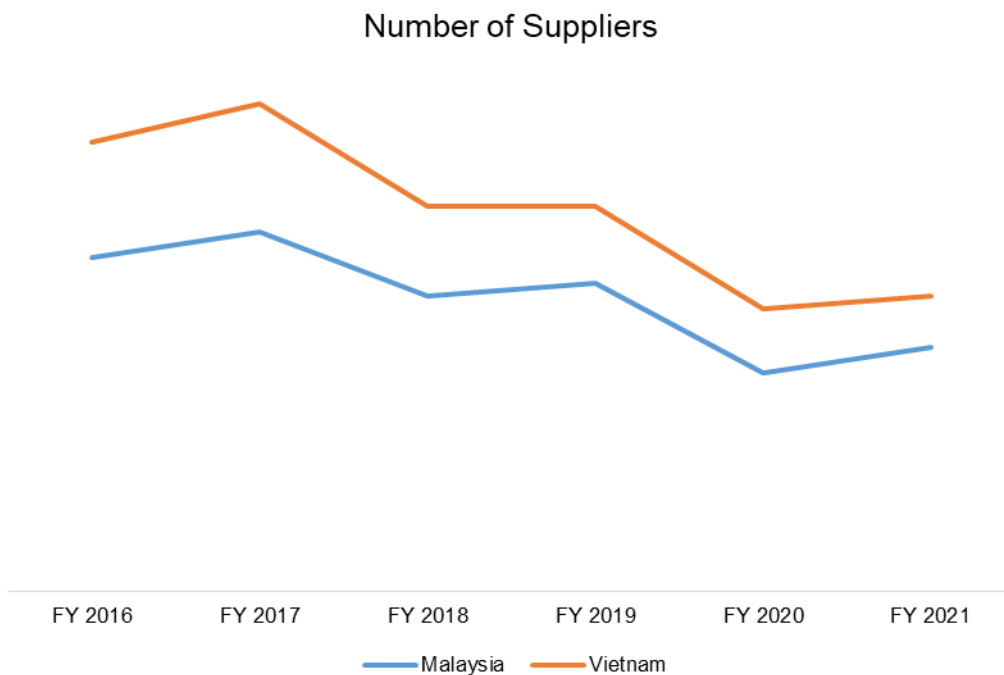
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### Export Volumes (kg) of cooperative exporters



**Figure 13: Export volumes of cooperative exporters**

Figure 14 provides a summary of the number of unique suppliers from Malaysia and Vietnam. While the number of suppliers from each market has declined since the imposition of measures, there are still a significant number exporting into the Australian market.



**Figure 14: Number of unique suppliers from Malaysia and Vietnam<sup>78</sup>**

The commission's analysis on maintenance of distribution links is at **Confidential Attachment 18**.

<sup>78</sup> Malaysia includes all suppliers of aluminium extrusions.

On this basis, the commission considers that Malaysian and Vietnamese exporters have retained distribution links into the Australian market indicating that exports are likely to continue.

## **8.6 Is dumping and subsidisation likely to continue or recur?**

In assessing the likelihood of whether dumping and subsidisation will continue or recur, a number of factors are relevant as outlined in the Manual. The Manual provides that the inquiry may gather facts relevant to whether dumping will resume, such as exporters' margins, the volume of exports before and after the measures were imposed, the effect of the measures, the level of dumping compared with the level of measures, and any change in those measures (e.g. as a result of a review).<sup>79</sup>

The commission's view is that the relevance of each factor will vary depending on the nature of the goods being examined and the market into which the goods are being sold.<sup>80</sup> No one factor can necessarily provide decisive guidance. The following analysis therefore examines a range of factors that the commission considers are relevant to this inquiry.

The commission considers there is sufficient evidence to conclude that:

- exporters from Malaysia (except Alumac) and Vietnam exported the goods to Australia at dumped prices during the inquiry period and
- exporters from Malaysia were not in receipt of countervailing subsidies during the inquiry period.

Having regard to the dumping margins of PMBA and EAA, patterns of trade and pricing behaviour, the commission considers that any future exports of the goods from Malaysia (except from Alumac) and Vietnam are likely to be dumped should the measures be allowed to expire. The commission does not consider there is sufficient evidence to conclude that exports of the goods to Australia from Alumac at dumped prices are likely to continue or recur, after also having regard to dumping margins found, patterns of trade and pricing behaviour.

There is insufficient evidence before the commission to conclude that any future exports from Malaysia are likely to benefit from countervailable subsidies should the countervailable subsidy measures be allowed to expire. The commission acknowledges that future exports of aluminium extrusions from Malaysia by non-cooperative exporters may be in receipt of subsidies, but is not satisfied that outcome is likely.

The commission's analysis is at **Confidential Attachment 19**.

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<sup>79</sup> The Manual, December 2021 pp 137-138.

<sup>80</sup> Ibid.

### 8.6.1 Analysis of dumping margins within the inquiry period

The dumping margins from chapter 6 of this report are reproduced below:

Country	Exporter	Preliminary Dumping Margin
Malaysia	PMBA	6.7%
	Alumac	-2.3%
	Uncooperative and all other exporters	27.0%
Vietnam	EAA	5.2%
	Uncooperative and all other exporters	9.0%

**Table 24: Dumping margins summary**

The commission has preliminarily determined that all exporters subject to the notice from Malaysia (except Alumac) and Vietnam exported the goods to Australia at dumped prices during the inquiry period.

The commission notes that the uncooperative and all others exporters rates apply to a number of small volume exporters, and is based on the highest weighted average normal value and lowest weighted average export price established to calculate a dumping margin. The scale of that margin does not necessarily indicate the actual degree of dumping that has occurred.

### 8.6.2 Analysis of subsidisation within the inquiry period

The subsidy margins from chapter 7 of this report are reproduced below.

Exporter	Subsidy Margin
PMBA	0%
All other exporters	0%

**Table 25: Subsidy margin summary**

As detailed in the above table, the commission found that no countervailable subsidies were received during the inquiry period.

### 8.6.3 Level of subsidisation

The commission has found that of the 6 identified programs, none were found to be operable for those cooperative exporters that are subject to the notice. This is consistent with the findings in REP 544:

The commission found the variable factors relevant to the subsidy notice for Malaysia, being the export price and the amount of countervailable subsidy received 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 Aluminium (M) Sdn Bhd	0%
PMB Aluminium (based on the non-cooperating entities assessment)	0%
Non-cooperative entities	0%

**Table 26: Subsidy margins from REP 544**

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In addition, REP 490 found that Alumac had not been in receipt of countervailable subsidies. As a result of that review, the countervailing measures were revoked in relation to Alumac. After REP 509, the commission also found that Everpress was not in receipt of countervailable subsidies.

In REP 362, all cooperating exporters had a calculated subsidy margin attributable to the goods exported from Malaysia considered negligible, as it is less than 2%.<sup>81</sup> This included residual exporters. Only the subsidy margin for non-cooperative entities from Malaysia was considered not negligible (3.2%), along with the volume of goods exported from Malaysia. As shown in Table 26, following REP 544, the non-cooperative subsidy rate has been set at 0%.

This indicates to the commission that, while some manufacturers in Malaysia may continue to receive countervailable subsidies in respect of the goods, the level of subsidisation for each individual exporter, if any, is likely to be negligible.

### 8.6.4 Other factors considered by the commission

The commission has undertaken an analysis of available information in respect of each cooperating exporter to inform its consideration as to whether future exports are likely to be at dumped prices:

#### PMBA

Table 27 shows the changes in dumping margins determined for PMBA since REP 544:

PMBA	REP 544	REP 577	SEF 591
Dumping margin	10.7% <sup>82</sup>	2.6%	6.7%

**Table 27: PMBA changes in dumping margins**

Table 28 shows index export volumes and FOB export pricing for PMBA for the FYs ending 30 June.

PMBA	FY 2019	FY 2020	FY 2021
Export volumes	100	74	83
FOB export pricing	100	98	99

**Table 28: PMBA export volumes and pricing<sup>83</sup>**

On the basis that PMBA has been found to be exporting goods at dumped prices during the inquiry period as well as in REP 577, in the absence of evidence suggesting a change in behaviour, the commission considers that dumping by this exporter would be likely to continue if the anti-dumping measures expire. While volumes have decreased in FY 2020 and FY 2021, this decrease also corresponds with global supply chain disruptions. PMBA's prices have remained steady despite the measures being in place. Analysing the inquiry period, the commission has observed that PMBA's export prices have increased,

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<sup>81</sup> Section 269TDA(16).

<sup>82</sup> PMBA's dumping margin in REP 544 was based on the rate determined of 'all other exporters' from Malaysia. REP 544, document no. 32.

<sup>83</sup> Export sales from FY 2019 have been used as the base year for the index. REP 540/541 found that PMB sold its extrusion business to PMB (Klang) Sdn Bhd on December 2019. PMB (Klang) Sdn Bhd then changed its name to PMB Aluminium Sdn Bhd (PMBA) on 25 August 2020.

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however this increase was while the LME increased. The profit achieved on export sales remained at a similar level throughout the inquiry period.

The commission notes that PMBA had excess capacity in the inquiry period. However, with PMBA’s export prices remaining consistent with movements in costs and profits being maintained, there does not appear to be any commercial incentive for PMBA to decrease prices to seek new customers. The commission also notes that sales by its related party importer, PMAA, were also profitable during the inquiry period.

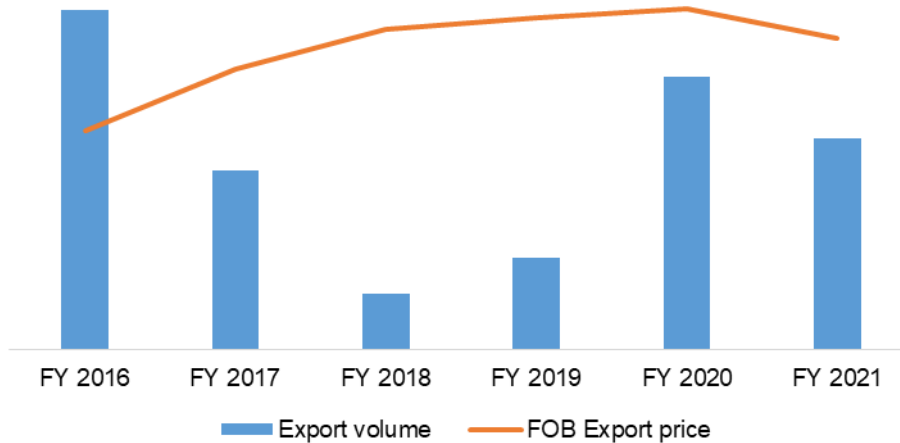
EAA

Table 29 shows the changes in dumping margins determined for EAA since REP 362:

EAA	REP 362	REP 544	SEF 591
Dumping margin	7.7%	1.9%	5.2%

**Table 29: EAA changes to dumping margins**

EAA - Export volume and FOB price



**Figure 15: EAA export volumes and pricing**

The above tables indicate that EAA:

- has continued to sell goods at dumped prices during the inquiry period
- has been able to increase export sales volume since measures were imposed
- has been able to maintain relatively stable pricing since the initial investigation and
- has decreased its export prices during the inquiry period from those achieved in FY 2021, despite rises in the LME since April 2020.

The commission first found EAA to be dumping in REP 362 and in subsequent matters where the variable factors have been reviewed (in REP 544, and this inquiry). On the basis of EAA’s prior and consistent behaviour in exporting goods at dumped prices, and in the absence of evidence suggesting a change in the behaviour, the commission considers that dumping by EAA would be likely to continue if the anti-dumping measures expire.

EAA is also heavily focused on the export market, with the majority of its sales being exported to Australia and other third countries. Therefore, it is likely that EAA will continue to seek sales of exports to Australia, and at prices that are dumped based on previous behaviour. During the inquiry period EAA was at full production capacity. Further analysis of EAA’s export prices against export CTMS shows that EAA has exported its goods to

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Australia at a loss for the second half of the inquiry period (January 2021 to June 2021). The sales at a loss were the result of an increase in costs in the second half of the inquiry period, at the same time as prices remained relatively stable. Over the inquiry period, however, EAA's exports were profitable overall.

### Alumac

Table 30 shows the changes in dumping margins determined for Alumac since REP 362:

Alumac	REP 362	REP 494	REP 544	SEF 591
Dumping margin	13% <sup>84</sup>	-9%	-1%	-2.3%

**Table 30: Alumac changes to dumping margins**

Table 31 shows index export volumes and FOB export pricing for Alumac:

Alumac	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Export volumes	100	393	268	280	390
FOB export pricing	100	110	125	122	122

**Table 31: Alumac export volumes and pricing**

The above tables indicate that Alumac:

- has had negative dumping margins in all subsequent reviews and this inquiry, following on from REP 362
- has maintained consistent volumes of exports since FY 2018, although these volumes are small in comparison to other exporters from Malaysia and
- has maintained consistent pricing into the Australian market when analysed on a yearly basis, and has increased prices in the inquiry period at a similar rate to the increase in the LME.

Alumac has had significant excess capacity, extending back to FY 2015. The commission also notes that Alumac's overall production capacity is minor compared to other cooperative exporters. With an excess capacity, Alumac may have had the opportunity to increase export volume into the Australian market. However, its consistent history of negative dumping margins, stable pricing and stable export volumes, suggests that it has focused on maintaining profits. Alumac exported the goods during the inquiry period at a consistent profit.

The commission has also reviewed Alumac's pricing on the domestic market by both finish and overall. Alumac has been selling the goods at a consistently higher price than PMBA domestically for all individual finishes and on a weighted average for all goods. This higher price point is also reflected in Alumac's export prices to Australia, examined in more detail in chapter 8.7.1.

The commission notes that Ezy Tools Pty Ltd (Ezy Tools) is still the major importer of aluminium extrusions from Alumac. In REP 494, Ezy Tools submitted that the cost of producing dies for a small business such as theirs is prohibitive to move to another supplier.<sup>85</sup> Ezy Tools has been able to develop a relationship with Alumac where Alumac is willing to sell in smaller volumes when developing new extrusions. This has enabled Ezy

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<sup>84</sup> Alumac's dumping margin in REP 362 was based on the rate determined of 'uncooperative and all other exporters' from Malaysia. EPR 362, document no. 89.

<sup>85</sup> EPR 494, document no. 15.

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Tools to trial the market before going into long term purchases. This customer (importer)/ supplier (exporter) relationship, supports the data provided by Alumac that it exports to small volume importers at a higher price than other exporters. However, it is able to charge a price premium for supporting its customers with short production runs of specific designed extrusions. Alumac only exported to 2 other Australian importers during the inquiry period. Both were importing in lower volumes and only one specific MCC each, outlined in Table 13.

In terms of price undercutting, the commission observed that for all finishes over the course of the inquiry period, Alumac was selling at prices above Australian industry in all quarters in the range of 16% to 30%. In addition, the commission was able to identify one common customer between Alumac and that of the Australian industry during the inquiry period. The commission compared quarterly pricing to this common customer by MCC. The commission observed that in respect of one customer, Alumac was only undercutting Australian industry for the specific MCC in one quarter, at a rate up to 6%.

The commission notes that while the total value of these sales represented less than half of one per cent of the Australian industry's total sales during the inquiry period, Alumac:

- has been a participant in the Australian aluminium extrusions market since before the measures were imposed and maintains distribution links to select smaller scale importers
- has exported small volumes of aluminium extrusions
- maintains a healthy level of profitability on those sales even with excess production capacity and
- was the highest priced participant in the Australian market for all product specifications exported.

The commission has also reviewed 3 duty assessments where Alumac was the exporter. These 3 duty assessments resulted in negative or negligible margins.

On the basis that Alumac has consistently exported goods to the Australian market at un-dumped prices, has maintained a healthy level of profitability on those sales even with excess capacity, and has maintained sales to select smaller scale importers. The commission therefore considers it unlikely that Alumac would export aluminium extrusions at dumped prices in the future.

## **8.7 Will material injury continue or recur?**

Based on the evidence before it at this stage of the investigation, the commission considers that in the event the measures expire, while exports at dumped prices are likely to continue, the injury that this may cause to the Australian industry is, on balance, not likely to be material.

The *Ministerial Direction on Material Injury 2012* (the Material Injury Direction) provides that injury from dumping and subsidisation need not be the sole cause of injury to the industry, where injury caused by dumping and subsidisation is material in degree.<sup>86</sup>

The Material Injury Direction further provides that the materiality of injury caused by a given degree of dumping or subsidisation can be judged differently, depending on the economic condition of the Australian industry suffering the injury. In considering the circumstances of each case, the commission must consider whether an industry that at one point in time is healthy and could shrug off the effects of the presence of dumped or subsidised products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping or subsidisation.

In its application, Capral submitted that the Australian industry is susceptible to further material injury from dumping and subsidisation. Capral submitted that it has experienced (or is likely to experience in the absence of the measures):

- depressed and suppressed selling prices through having to match the 'injurious prices' in order to maintain production and sales volumes
- reduced profit and profitability and
- a recurrence of material injury that the measures were intended to prevent.

The commission considered the claims made by Capral in respect of the likely effect on prices and volume should the measures be allowed to expire and has determined that there is no sufficient evidence to substantiate these claims at this stage of the investigation.

The following analysis examines the evidence before the commission in order to assess the likely effects of the expiry of the measures on prices, on volumes, and whether those effects would likely cause material injury to the Australian industry. As is set out below, the commission does not consider there is sufficient evidence to make a recommendation that material injury to Australian industry is likely.

### **8.7.1 Generally applicable factors affecting price**

The following outlines the commission's consideration of the effect on prices due to movements in the LME price for aluminium raw materials and the spread component in the price of the goods. The LME price and the spread operate independently of each other (see description of 'spread' and pricing in chapter 4.5). The analysis suggests that there is a correlation between the two in the Australian market. The absence of such a correlation may, in some circumstances, indicate that the spread is impacted by the presence of dumped goods in the market.

If the goods sold by cooperative exporters had been at un-dumped prices, the spread component in the price of the Australian industry's like goods may have been higher, or may have provided the Australian industry greater flexibility in price negotiations. However, the commission has no evidence at this stage of the investigation that indicates a link between the Australian industry's prices and the presence of the dumped goods during the

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<sup>86</sup> ADN No. 2012/24.

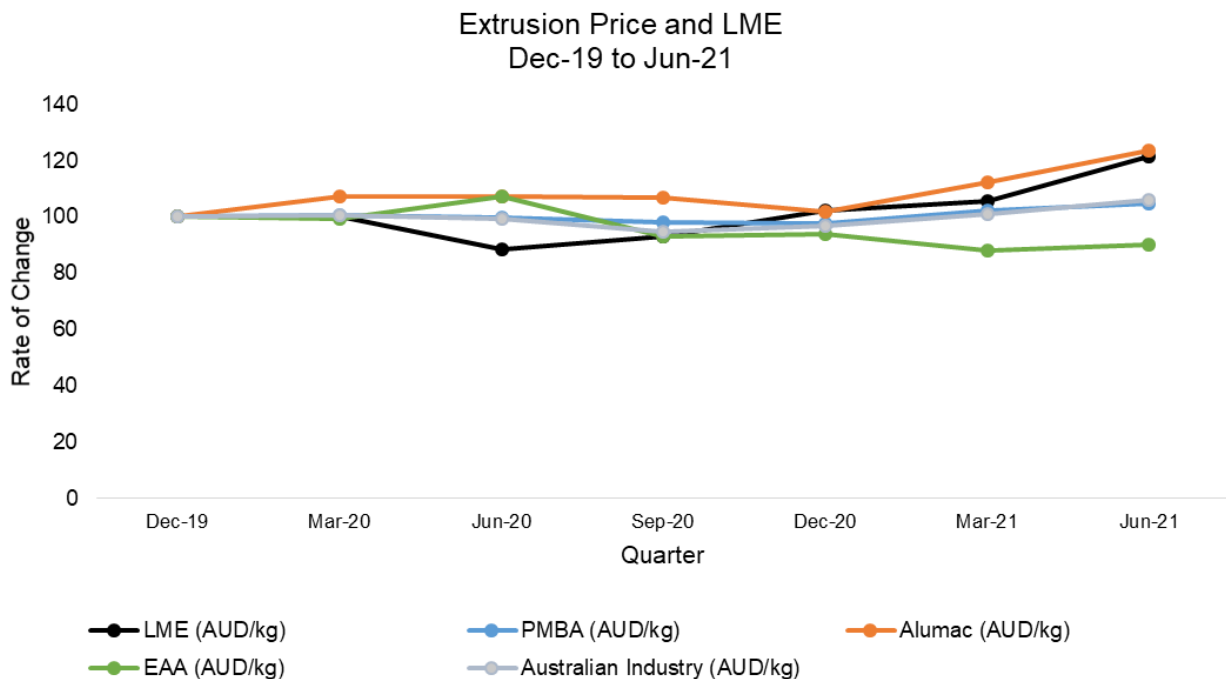
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inquiry period, and therefore is unable to determine how these prices would likely be impacted by the expiry of the measures. The commission therefore cannot be satisfied at this stage that there is likely to be material injury to the Australian industry.

### LME prices

Through an examination of price lists and aluminium billet purchases, the commission established that the Australian industry and the subject exporters similarly had regard to the prevailing LME based prices for aluminium billet and the prices of aluminium extrusions generally reflected the movement in the LME price. This consideration was outlined at chapter 4.5.

The price of the goods and like goods have not always moved in concert with the LME. To demonstrate this point, at Figure 16 the commission plotted the quarterly rate of change in the average FOB price of the goods exported by the subject exporters, Capral's like goods and the LME price for primary aluminium during the analysis period. Whilst extrusion prices and the LME generally trended up or down, the commission's analysis is presented by reference to the rate of change over time.



**Figure 16: Rate of change in Extrusion Price and LME Price Relationship**

In relation to price, the quarters relevant to the inquiry period are September 2020 through to June 2021. Figure 16 shows that in the inquiry period the rate of increase in the LME was greater than the rate of price increase from Capral and the 2 largest exporters, PMBA and EAA. Alumac's prices appeared to follow a similar trajectory to the LME for the last 3 quarters of the inquiry period. EAA showed the greatest divergence from the LME; its prices declined in the March 2021 quarter, while the LME, Capral, PMBA and Alumac were all increasing, albeit at differing rates.

The above indicates that a rise in the LME price is not necessarily reflected in the movement of extrusion prices. This is supported by the actual prices achieved by exporters shown in Figure 17. The commission found that all cooperative exporters involved in the inquiry had priced their extrusions such that they passed on the cost of LME based billet in full. The commission considers that the global effect on price brought

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about by the LME price movement rules it out as a factor that would contribute to price injury, because all participants in the market are affected and respond similarly.

Capral has claimed that its prices come under pressure from dumped imports. However, Capral was still increasing its prices during the inquiry period at a rate that largely reflected the increase in the LME. This is in contrast to EAA, since its prices remained somewhat stable during the inquiry period. This may have put pressure on Capral's pricing, or the pricing of other Australian industry members, but the commission is not in possession of any evidence that demonstrates this link. This analysis suggests that factors other than the movement in LME were impacting on Capral's selling prices during the inquiry period.

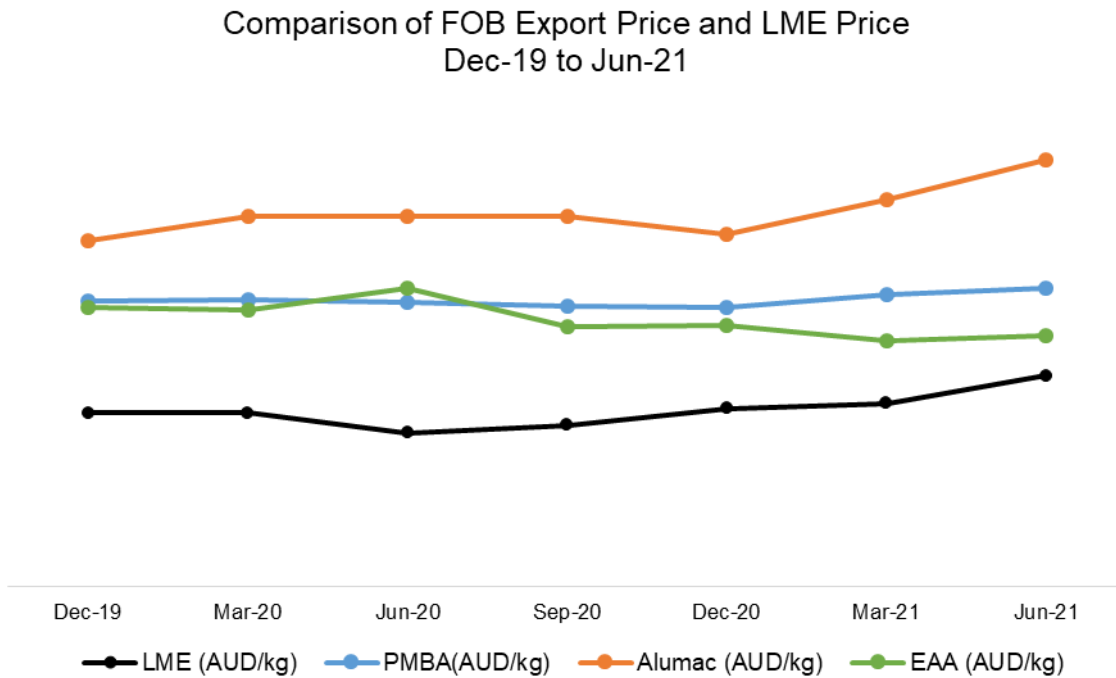


Figure 17: Comparison of export prices to the LME

The commission's analysis is at **Confidential Attachment 21**.

### The spread

At chapter 4.5, the commission established that aluminium extrusion prices are also negotiated with respect to the spread component of the price. The sum of the LME based price of metal and the spread make up the total price of the extrusion.

Verification of data obtained during the investigation confirmed that the LME based price of aluminium billet was passed on in full within the prices achieved by all cooperative exporters. This supports the assumption that the LME component of prices was consistent with the actual LME price. The commission also found that the value of the spread component varied between customers.

The spread is that part of the price that varies independently to the underlying variation in the LME based price of billet. The spread enables producers of aluminium extrusions to exercise discretion when negotiating price with their customers. The commission has ascertained that the LME component of the price reflects what is published in the market, on account that it relates to an openly traded commodity and information about the market is readily available; price lists typically quote the LME price of metal. As a result, this part of the price is generally not subject to negotiation. The value of the spread on the other

hand is confidentially determined for each customer and is therefore less accessible to other market participants.

All market participants have little or no control over the LME component in their price offers, and all participants would be quoting the same raw material costs. The commission considers that in relation to Australian industry's prices, a contraction in the spread component or factors inhibiting an increase in the spread manifests in the form of price depression and/or price suppression.

The commission observed that during the inquiry period, when expressed as a proportion of the FOB price, the spread component in the price of the dumped goods exported by PMBA and EAA was less than the spread in the price of like goods sold by the Australian industry. The spread observed in Alumac's sales was similar to the Australian industry. The commission notes that this observation is consistently reflected in the data provided by Capral, G.James and INEX.

### **8.7.2 Likely effect on prices**

While prices from Malaysia and Vietnam may have put downward pressure on the prices achieved by the Australian industry during the inquiry period, there is no evidence before the commission at this stage of the investigation that which shows a link between the two. The commission has found examples of undercutting by exporters from Malaysia and Vietnam, however there appears to be no consistent price undercutting behaviour occurring that would indicate a likely future scenario that could cause a material injury to Australian industry.

As detailed in the commission's assessment of the Australian market at chapter 4, aluminium extrusions are a commodity product and price is a key determinant in the decision making of purchasers. The commission has undertaken an analysis of FOB export prices over the period since measures were continued, as well as an undercutting analysis for the inquiry period, in order to evaluate the likely effect on price if the measures expired.

The commission does not have specific evidence to quantify examples of where the Australian industry has lost sales due to undercutting, or that the undercutting is having an effect on Australian industry prices. The presence of dumped goods in the market in the inquiry period appears to have had a minimal effect. On this basis, the price effects that would occur if the measures were to expire are uncertain.

The commission's analysis of the effects of the measures on export prices is at **Confidential Attachment 24**.

The commission's price undercutting analysis is at **Confidential Attachment 20**.

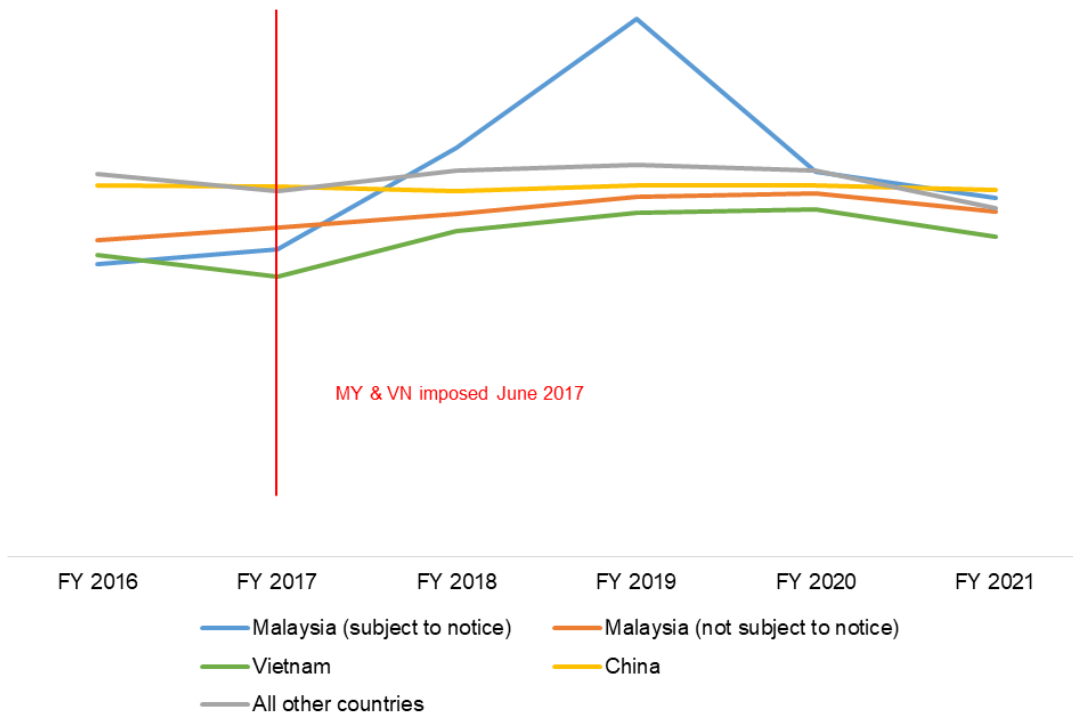
#### FOB Price Analysis

The commission has been unable to discern any impact from the presence of dumped goods on the prices achieved by the Australian industry during the inquiry period.

Figure 18 illustrates the weighted average FOB export prices of aluminium extrusions exported to Australia by Malaysia, Vietnam and exporters from other countries:

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WA FOB Price (AUD/kg)



**Figure 18: WA FOB prices since FY 2016<sup>87</sup>**

The weighted average FOB export price of all exporters has followed similar trend lines during the period examined, with only ‘all other countries’ prices remaining relatively stable. Since the measures were imposed, both Malaysian export prices and Vietnamese export prices have increased. However, this increase was at a similar rate to the increase in prices for exports from China, the largest source of exports of aluminium extrusions to Australia.

While prices increased in the first 3 years after the measures were imposed, the commission has found that export prices from Vietnam continually remained the lowest in the market. Malaysian export prices of those entities not subject to the notice were also lower than other exports, except those from Vietnam. This supports claims of price pressure brought about by cheaper Vietnamese exports of aluminium extrusions continue to have an impact on the market. However, pricing from Malaysian exporters subject to the notice for FYs 2018 and 2019 is based on small volumes, resulting in high weighted average prices. In FYs 2020 and 2021, which included sales by PMBA, prices from Malaysia subject to the notice were in line with export prices from exporting countries generally. This also reflects earlier analysis of the LME in comparison to prices, which showed that Malaysian and in particular Vietnamese exporters are using the ‘spread’ to be able to offer lower prices to their Australian customers.

As prices are based on ABF import data, Figure 18 is not broken down by finish as all aluminium extrusions are recorded under the same tariff classifications. The commission

<sup>87</sup> Confidential Attachment 19 – Recurrence of dumping analysis. FOB price is based on ABF import data. Volumes subject to the notice from Malaysia were low in FY 2018 and FY 2019 following the imposition of measures. As a result, weighted average prices in those years are based on a very small proportion of the entire market. PMBA was not subject to the notice until December 2019, therefore its data is only included from FY 2020 onwards.

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notes that during the inquiry period mill finish exports from EAA accounted for approximately 75% of its exports, while they accounted for approximately 60% of PMBA's exports. Therefore, based on mill finish being the lowest cost and lowest price type of aluminium extrusion, the actual mix of finish types from other countries may reduce the relevance of any comparison to the apparently lower export prices from Malaysia and Vietnam.

The commission considers that the lower prices of exports from Malaysia and Vietnam are a relevant factor influencing the economic condition of the Australian industry, in terms of its ability to increase prices or compete on price in a price sensitive market.

As outlined in chapter 5.5, Capral lowered its prices across all finishes in FYs 2020 and 2021. This is in line with the trend shown from Vietnam and Malaysia over the same period. During the same period, Capral's unit CTMS declined at a steeper rate than its prices. Capral's profit and profitability also improved significantly during this period, with its overall sales revenue and ROI also experiencing marked improvements.

The commission has also compared EAA's export prices against the floor price component of the duty method applied since the imposition of the measures. EAA's export prices were consistently above the floor price set, with pricing tracking closely with the movements in LME. This suggests that the measures have not been an influence on its price setting behaviour. There is no evidence before the commission to suggest that the removal of the measures would change this pricing behaviour in the future.

As PMBA has only had its own individual rate of measures in place since 10 June 2021 following REP 577, the commission did not have evidence to analyse the effects that the current measures have had on PMBA's prices.

### Price undercutting

The commission has found examples of undercutting by exporters from Malaysia and Vietnam, however there appears to be no consistent pattern to the price undercutting. In some instances, the Australian industry undercuts other market participants.

In the case of the Australian market for aluminium extrusions, the Australian industry is competing against suppliers of the goods at two different points in the supply chain, alternatively referred to as level of trade.

At the first level of trade, the Australian industry is in direct competition with overseas producers of the goods for the supply of extrusions to Australian importers who are either involved in the distribution of imported goods onto the Australian market or transform the imported goods into other products, e.g. windows, doors.

At the second level of trade, the Australian industry competes against importers of the goods from overseas who sell those imports onto the Australian market.

The price undercutting analysis was therefore undertaken having regard to the two levels of trade outlined above. The commission considered this approach necessary, because of the differences the commission found in prices at the levels of trade at which sales occur.

At the first level of trade, the commission has compared Australian industry prices to the prices paid by importers of the goods from the cooperative exporters. The analysis compared the weighted average (AUD per kg) Free Into Store (FIS) prices of the Australian industry's sales of aluminium extrusions with the duty inclusive FIS weighted average prices of the goods sourced from the cooperative exporters. The commission included pricing of Capral's direct factory sales to end users as these are the most comparable to this sales channel. The prices of INEX and G James were also compared to these prices.

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In terms of FIS prices, where the sales terms for a selected exporter were not FIS or equivalent, the commission determined the weighted average FIS price of goods for each exporter as the sum of:

- verified FOB export prices
- post FOB costs including handling and delivery<sup>88</sup> and
- importer SG&A.<sup>89</sup>

At the second level of trade, the Commission compared the Australian industry's prices to the selling price at which imported goods were sold by importers onto the Australian market. At this level of trade, the selling prices are inclusive of all costs borne to bring those goods into store from a supplier, the seller's relevant SG&A costs and profit. The commission has relied on verified importer data from PMAA as it was the only cooperative importer during the inquiry period. Capral's sales from its distribution network are included in this undercutting analysis.

The commission has undertaken this analysis across all aluminium extrusions (without categorising by finish type). It has also undertaken the analysis by finish type (mill, anodised and powder coated). The commission's price undercutting analysis found a varying degree of undercutting at either level of trade. However, the evidence suggests that there is no consistent level of undercutting by any one exporter, country or in relation to any specific finish.

When reviewing specifically to the first level of trade the commission has established that, inclusive of all finishes, Capral experienced undercutting by EAA across the inquiry period of between 2% to 12%. However, Capral did not experience undercutting from PMBA's prices inclusive of all finishes across the inquiry period. Alumac's products overall have been priced higher than Capral.

Prices are similar for lower value mill finish extrusions between Capral, EAA and PMBA throughout the inquiry period. As noted earlier, mill finish goods account for approximately 75% and 60% of EAA and PMBA's exports respectively. Capral's prices were set just below PMBA for the inquiry period, while EAA only undercut Capral during the second half of the inquiry period. EAA was able to drop its prices in Q1-2021, while both PMBA and Australian industry were increasing prices. Alumac was not found to be undercutting Capral's prices for mill finish products during the inquiry period.

The commission has observed varying levels of undercutting based on the different finishes. The most pronounced undercutting was observed amongst anodised finish sales, and the closest aligned prices was observed amongst mill finish sales.

The Australian industry has also experienced undercutting from EAA's powder coated products. This was consistent across the inquiry period at a range of 11 and 19%. However, PMBA's prices for powder coated products have been slightly higher than Capral's across the inquiry period, while Alumac's products have been priced predominantly higher.

The commission also received pricing information from 2 other Australian industry members, INEX and G James. While the data was not as comprehensive as that provided by Capral, the commission was still able to compare prices on a weighted average basis by finish and compare it to the first level of trade. For anodised finish extrusions, INEX and G James were priced at a similar rate to Capral, and therefore experienced undercutting

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<sup>88</sup> The commission had regard to the costs incurred by the verified importer.

<sup>89</sup> The commission had regard to the SG&A costs incurred by the verified importer.

by PMBA, EAA and Alumac at a very similar rate. G James also experienced undercutting by all 3 of these exporters on powder coated product, while INEX was undercut by EAA and PMBA. The commission's analysis of Capral, INEX and G James prices are at **Confidential Attachment 22**.

For mill finish extrusions, while PMBA and EAA both undercut G James' prices, there was no evidence of undercutting in respect of INEX's products. However, it is evident across the various models that there has been some undercutting experienced by both G James and INEX.

For the second level of trade, where the commission compared Australian industry prices to that sold by the verified importer, PMAA to end customers, the commission also found inconsistent examples and degrees of undercutting. While there were examples of undercutting across each finish, it is difficult to see a clear pattern of specific undercutting. The commission reviewed the prices by finish sold to common customers of both PMAA and Capral. When looking at mill finish, there are multiple examples where PMAA's prices were lower and where Capral was lower. While PMAA was consistently the lowest price for anodised and powder coated finish products, these only account for a small volume of the whole aluminium extrusion market. The commission's price comparison analysis for PMAA is at **Confidential Attachment 23**.

### **8.7.3 Likely effects on volumes**

The commission has considered current and historical import volumes, as well as the excess capacity of cooperating exporters the subject of this inquiry to examine the likely effect the expiry of measures would have on Australian industry volumes. The commission has found that exporters would likely continue exporting the goods to Australia, and that some have an excess production capacity. However, based on the information before it at this stage of the investigation, the commission is unable to determine whether removing the measures will likely cause material injury to the Australian industry in relation to future volumes and pricing.

As discussed in chapter 8.5.1, the commission considers that import volumes in the inquiry period and historical trends indicate that exporters would likely continue exporting goods to Australia from Malaysia and Vietnam should the measures expire. Imports from Malaysia that were subject to the notice represent over 50% of imports of all the goods from Malaysia. This is similar to the share held when measures were imposed. Import volumes and market share of the goods from Vietnam are markedly higher than the year immediately after measures were imposed.

With respect to aluminium extrusions subject to the measures imported from Vietnam and Malaysia, each country holds a market share of approximately 2% of the Australian market. An additional 4% of the import market of aluminium extrusions are exported from Malaysian exporters not subject to the notice. Exports from China still account for approximately 20% of the total Australian market and over 50% of all imports of aluminium extrusions. The existing price advantage arising from dumped goods during the inquiry period does not appear to have resulted in any significant shift in purchasing by Australian consumers towards those sources.

As discussed in chapter 8.5.2, Malaysian exporters had excess capacity during the inquiry period. PMBA's excess production capacity, if fully utilised in the production and export of the goods to Australia, would have accounted for approximately 6.7% of the Australian industry's sales volume during the inquiry period. While the additional volume that PMBA could produce appears significant on its face, the commission doubts that the entirety of this additional volume would be likely to enter the Australian market. Firstly, this assumes

that, in the absence of the measures, PMBA would pursue a commercial strategy to drive full utilisation of its spare capacity. The commission notes that PMBA's domestic market (which already accounts for the majority of its sales, and which is profitable) is already a potential source of increased sales volumes. The commission notes that PMBA also exports to third countries, as well as Australia. The circumstances that would support the implementation of a commercial strategy to increase capacity utilisation already exist, which tends to indicate that this is not PMBA's preferred approach, regardless of the measures. The commission notes that the Australian industry appears to have also had significant excess capacity during the inquiry period, and was profitable; the commission considers that achieving full capacity utilisation is also not the preferred commercial strategy of the Australian industry.

Secondly, an assumption must be made that Australian customers have demand for PMBA's entire additional production. The commission has found there is a wide variety of extrusions produced for, and a vast number of customers in, the downstream market. In this context, it appears implausible that such a significant increase in PMBA's sales volume could be achieved without a range of other market responses from Australian industry members and other exporters / importers.

The existing operation of the market also suggests that the expiry of the measures would make little difference to PMBA's export volumes to the Australian market. REP 544 outlined that, as the result of an asset sale, PMB's status as a producer of aluminium extrusions changed in November 2019. The new entity, PMBA, subsequently became subject to the notice of this inquiry from November 2019. The commission notes that prior November 2019, PMB's export volumes to Australia were at similar levels to what the commission has seen from PMBA. During this period where PMB was not subject to measures, it did not increase its volume of exports. There is also no indication that PMB decreased its prices during this period to try to gain additional export volume. Noting the close relationships between PMB, PMBA and the related party importer PMAA, the commission considers that prior apparent opportunities to increase export volumes have not been taken. This causes the commission to doubt that a further opportunity exists to increase export volumes in the absence of the measures.

Whilst other suppliers from Malaysia and Vietnam may seek to enter the Australian market in the absence of the measures, the commission does not consider this a likely outcome. The commission considers that there is potential for other exporters to price goods at dumped levels in order to secure a share of the Australian market, but there seems little prospect of materially displacing or overtaking the shares already held by existing exporters or the Australian industry. This is a result of the existing price advantage and customer relationships already in place, and which have been largely unchanged despite the application of the measures.

The commission's market share analysis is included in **Confidential Attachment 1**.

#### **8.7.4 Is injury from dumping and subsidisation likely to be material?**

The commission considers there is currently insufficient evidence at this stage of the investigation to find, on balance, that it is likely that injury to the Australian industry caused by dumping or subsidisation will be material in the absence of the measures. However, the presentation of additional evidence, for example, demonstrating Australian industry price responses to the presence of dumped goods in the market, may provide a basis for reconsidering these findings.

Notwithstanding the acknowledgement that other factors are likely to influence the economic condition of the Australian industry if measures are removed, the Material Injury

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Direction provides that injury from dumping or subsidisation need not be the sole cause of injury to the industry, where injury caused by dumping or subsidisation is material in degree.

The Material Injury Direction further provides that the materiality of injury caused by a given degree of dumping or subsidisation can be judged differently, depending on the economic condition of the Australian industry suffering the injury. In considering the circumstances of each case, the commission must consider whether an industry that at one point in time is healthy and could shrug off the effects of the presence of dumped or subsidised products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping or subsidisation.

The commission's analysis of the economic condition of the Australian industry in the inquiry period and in the period since measures were implemented, found that while the Australian industry experienced an increase in sales and production volumes, profit and return on investment, this was only since 1 July 2018. In particular, after measures were implemented, the Australian industry's:

- per unit CTMS increased
- per unit selling prices increased at a slower rate than CTMS (price suppression)
- market share decreased
- net sales revenue decreased and
- profit and profitability deteriorated (until 30 June 2019).

The commission's analysis of the economic condition of the Australian industry in the inquiry period and in the period since measures were implemented found that the Australian industry (based on Capral's data as a reasonable indicator of the performance of the whole) has generally experienced an improvement in its economic performance.

As detailed in chapter 4.3, the Australian market for aluminium extrusions expanded by more than 15% during the inquiry period. In addition to the opportunities afforded by a growing market, the Australian industry may have benefitted during the inquiry period due to disruptions to global supply chains. The commission understands that a contraction in shipping availability combined with the increasing costs of international shipping opened up opportunities for domestic suppliers to capture additional sales volumes and market share. However, based on the most recent import data, it appears that supply chains are getting back to pre-2020 levels.

Capral states in its submission on 15 December 2021 that it considers it unlikely that recent shipping constraints will prevail beyond early 2022.<sup>90</sup> As shipping availability improves, it claims that aluminium extrusion exporters in Malaysia and Vietnam will capitalise on opportunities to export into the Australian market should the measures not reflect prevailing prices or be allowed to expire. Capral submits that it is unsafe to rely upon export volumes in the last 12 months as indicative of an absence of injurious export volumes from Malaysia and Vietnam.

The Australian industry's improved economic condition over recent years does not necessarily point to its future performance. However, the commission considers there is insufficient evidence to find it likely that injury caused by dumping or subsidisation will be material in the absence of the measures. This is based on:

- that improved position occurring over a number of years despite the presence of the dumped goods

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<sup>90</sup> EPR 591, document no. 16

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- the absence of evidence linking the dumped goods to the economic condition of the Australian industry and
- the inconclusive findings in relation to price undercutting.

The small market share consistently held by Vietnamese and Malaysian exporters subject to the notice supports this conclusion. However, the presentation of additional evidence, demonstrating Australian industry price responses to the presence of dumped goods in the market, would provide a basis for reconsidering these findings.

### 8.7.5 Submissions received in relation to injury and materiality

In a 5 November 2021 submission from PMAA regarding whether material injury is likely to continue or recur, it argues that:

- Capral's sales volumes are up 33% in the first half of 2021 based on Capral's published half year results
- other members of Australian industry, whose principal business is stated to be aluminium extrusions, are and have been profitable based on financial statements lodged with the ASIC and
- Capral itself has acknowledged in publically available documents that the contraction in the Australian aluminium market since 2016 to 2020 were in the usual 'ebb and flow' of business.<sup>91</sup>

Capral responded to PMAA's submission on 2 December 2021.<sup>92</sup> Capral drew to the attention of the commission:

- the recent financial performance for Australian industry members to demonstrate the tenuous nature of the financial position of the industry members
- that returns for the 5 Australian aluminium extrusion manufacturers mentioned have been less than adequate in 2020 and 2021 to warrant reinvestment in aluminium extrusion manufacturing
- Malaysia and Vietnam have been exporting at prices they describe as being at the low-end of all import sources and
- if measures expire, it is likely that the Australian industry would experience a recurrence of the material injury the measures are intended to prevent.

In response to PMAA's submission, the commission notes that sales volume and profitability are only two of many material injury factors that the commission considers. The commission assesses a range of injury factors across an extended period of time, in this case right back to when the measures were implemented. These have been addressed throughout this report. As was noted previously, no one factor can necessarily provide decisive guidance.

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<sup>91</sup> EPR 591, document no. 8.

<sup>92</sup> EPR 591, document no. 12.

## **8.8 Conclusion**

With respect to the dumping duty notice, the Commissioner is satisfied that exports from Malaysia (except by Alumac) and Vietnam were dumped in the inquiry period and are likely to continue to be dumped in the absence of the anti-dumping measures. However, on the available evidence at this stage of the investigation, the Commissioner is not, on balance, satisfied that there is sufficient evidence to support a finding that material injury to the Australian industry is likely to be caused by those future exports.

The commission's analysis in the preceding sections sets out the current absences of sufficient information to substantiate a link between the presence of the dumped goods in the market in the inquiry period and any likely material impact on the Australian industry's prices, volumes or any other injury criterion. This in turn casts doubt on the likely effects of the expiry of the measures. On the basis of the evidence currently before the commission at this stage of the inquiry, it is difficult to determine that any particular possible scenario arising from the expiry of the measures is likely to cause material injury to the Australian industry.

With respect to the countervailing duty notice, the Commissioner is not, on balance satisfied that there is sufficient evidence at this stage of the investigation to support a finding that:

- exports of aluminium extrusions at subsidised prices from Malaysia are likely to recur and
- material injury to the Australian industry is likely to be caused by future exports at subsidised prices in the absence of the measures.

As a result of these findings, the Commissioner is not, on balance, satisfied at this stage of the investigation that the expiration of the measures would lead, or would be likely to lead, to a continuation of the material injury that the measures are intended to prevent. The Commissioner therefore proposes to recommend the measures be allowed to expire on the specified expiry day (27 June 2022), subject to submissions received in response to this SEF.

## 9 NON-INJURIOUS PRICE

### 9.1 Preliminary finding

The Commissioner proposes to recommend to the Minister that the notices in respect of aluminium extrusions exported to Australia from Malaysia and Vietnam be allowed to expire on 27 June 2022. However, in the event that a different recommendation is made and the anti-dumping measures are continued, the commission has considered the non-injurious price (NIP).

The commission has preliminarily found that the NIP relevant to the taking of anti-dumping and countervailing measures has changed. The Commissioner proposes to recommend that the NIP be equal to the normal value for both Malaysia and Vietnam.

The commission proposes to have regard to the desirability of applying the lesser duty rule (in accordance with section 8(5B) of the Dumping Duty Act). However, because the NIP is not less than the normal value, the lesser duty rule will not be operative at this time (i.e. it will have no practical effect).

### 9.2 Non-injurious price

Section 269TACA defines the NIP 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>93</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 CTMS 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.

The commission will generally derive the NIP from an unsuppressed selling price (USP).

### 9.3 Lesser duty rule

Where the Minister is required to determine the IDD, section 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) applies. Where the Minister is required to determine both interim countervailing duty (ICD) and IDD, sections 8(5BA) and 10(3D) of the Dumping Duty Act apply.

Sections 8(5B), 8(5BA) and 10(3D) require the Minister, in determining the ICD and IDD payable, to have regard to the ‘lesser duty rule’. In relation to a dumping duty notice, the

<sup>93</sup> The Manual Method for calculating non-injurious price, section 24.3, p. 106 (December 2021)

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lesser duty rule requires consideration of whether the NIP is less than the normal value of the goods. In the context of concurrent dumping and countervailing notices, the lesser duty rule requires consideration of the desirability of fixing a lesser amount of duty, such that the sum of the export price of the goods ascertained for the purposes of the notices, the ICD and IDD, do not exceed the NIP.

However, pursuant to sections 8(5BAA), 8(5BAAA) and 10(3DA) of the Dumping Duty Act, the Minister is not required to have regard to the lesser duty rule where one or more of the following circumstances apply:<sup>94</sup>

- a) the normal value of the goods was not ascertained under section 269TAC(1) because of the operation of section 269TAC(2)(a)(ii)
- b) there is an Australian industry in respect of like goods that consists of at least two small-medium enterprises, whether or not that industry consists of other enterprises and / or
- c) if a countervailing subsidy has been received in respect of the goods – the country in relation to which the subsidy has been provided, has not complied with Article 25 of the World Trade Organization (WTO) *Agreement on Subsidies and Countervailing* for the compliance period.

The commission has reviewed the circumstances for (a) and (c) above and have concluded that these circumstances still do not apply.

The commission has also reviewed the Australian industry's small-medium enterprise (SME) status. A SME for the purpose of the Act is defined under the *Customs (definition of "small-medium enterprise") Determination 2013* as:

a producer or manufacturer with 200 or less full-time staff, which is independently operated and which is not a related body corporate for the purposes of the *Corporations Act 2001*.

Based on the commission's enquiries in previous cases involving aluminium extrusions, and information provided by Capral for this inquiry, the commission has only identified one SME from the 8 Australian industry members.

As a result, none of the 3 circumstances apply in the case of this inquiry. The Minister must therefore consider the desirability of applying a lesser amount of duty.

### 9.4 Assessment of NIP

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>95</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>94</sup> Sections 8(5BAAA)(a) to (c) of the Dumping Duty Act concern the calculation of dumping duty and sections 10(3DA)(a) to (c) of the Dumping Duty Act concern the calculation of countervailing duty.

<sup>95</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. In relation to Vietnam, the NIP was also set to be equal to the normal value. This approach was also taken in REP 544.

The commission's practice in chapter 24.3 of the Manual, states that the commission usually uses the Australian industry's USP as the basis for the NIP.<sup>96</sup> It can base the USP on the Australian industry's weighted average selling price in a period unaffected by dumping. If the period unaffected by dumping can be identified, the Manual suggests that selling prices be limited to those which are no older than 5 years.

With respect to a period unaffected by dumping, the commission acknowledges that dumped goods have been present on the Australian market from China since at least 2009. This is the period examined in relation to dumped aluminium extrusions from China in *Trade Remedies Branch Report No. 148* (REP 148). Dumped goods from China have been identified in every subsequent review and continuation inquiry undertaken by the relevant authority on each occasion since REP 148 was published. The most recent matter involving China examined the 2019 calendar year and found dumping of the goods from China, although trade measures have been imposed since 2009.<sup>97</sup>

In REP 362, which examined the 12 month period ending 30 June 2016, the volume of dumped goods from Malaysia and Vietnam was not negligible and caused material injury to the Australian industry. That investigation also found that the volume of dumped goods is not negligible and also caused material injury to the Australian industry. REP 544, which reviewed the measures for the 12 month period ending 31 December 2019, also found dumping from Malaysia and Vietnam.

Based on the state of the market since 2009, the commission is satisfied that there has not been any period unaffected by dumping where the Australian industry's prices could be considered to be unsuppressed.

Where the USP is older than 5 years, the commission will also consider updating old prices by indexing. However, this is not suitable due to the volatility in aluminum prices in the period since 2009. Implementation of the index method over such a long time may produce an unreliable result, noting that prices are influenced by factors other than movements in LME aluminium prices (the likely basis of any index methodology).

The second option described in the hierarchy outlined in chapter 10.4 and the Manual is through a constructed USP which is the sum of Australian industry's CTMS and an amount for profit.

The commission considers that in a market unaffected by dumping, the profit margin achieved by Australian industry may be suitable for constructing an USP, if actual selling prices are not suitable. However, for the same reasons set out above as to why an USP based on selling prices is difficult to determine with any assurance, this renders any profit margins earned by the Australian industry as unsuitable for determining an USP based on CTMS. The reasons set out in this SEF indicate some doubt about the degree of influence of dumping on the Australian industry during the inquiry period, which means profit outcomes in the same period may not be 'unaffected by dumping'.

The commission is unable to determine a rate of profit based on the Australian industry's sales of a similar category of goods, unaffected by dumping, as such a category could not be identified. The commission also considers that deriving a profit rate with regard to

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<sup>96</sup> The Manual Method for calculating non-injurious price, section 24.3, p. 106 (December 2021).

<sup>97</sup> *Anti-Dumping Commission Report No. 543*.

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return on investment would not provide a reasonable rate for historic profit for the Australian industry.

The third option available to the commission is to use un-dumped selling prices as the basis for an assessment. The Manual states that in assessing whether the prices of un-dumped imports in Australia are suitable for using as an USP, the following factors will be considered:

- whether such imports were in sufficient volume to influence the market price and
- whether the prices have been affected by dumping and
- whether the commission can be confident these goods are un-dumped.

The commission cannot be confident that goods from other countries not subject to the measures would not be dumped, as these goods would be competing with the price of dumped goods.

In the absence of any other reasonable alternative, the commission has identified a NIP which represents the full margin of dumping of the goods by the subject exporters, i.e. their normal values. The commission, therefore, proposes to determine the NIP to be equivalent to the ascertained normal value for the exported goods subject to this investigation, found to be dumped.

The commission further notes that, although it recommends that the Minister have regard to the desirability of applying the lesser duty rule (in accordance with section 8(5B) of the Dumping Duty Act), because the NIP is not less than the normal value, the lesser duty rule will not be operative at this time (i.e. it will have no practical effect).

## 10 FORM OF MEASURES

### 10.1 Preliminary findings

The Commissioner proposes to recommend to the Minister that the notices in respect of aluminium extrusions exported to Australia from Malaysia and Vietnam be allowed to expire on 27 June 2022. However, in the event that a different recommendation is made and the anti-dumping measures are continued, the commission has considered the form of measures.

The Commissioner preliminarily finds that, in relation to aluminium extrusions exported to Australia from Malaysia and Vietnam during the inquiry period, for all exporters subject to the notice:

- the ascertained export price has changed
- the ascertained normal value has changed
- the NIP has changed and
- the level of countervailable subsidies received (Malaysia only) has not changed.

### 10.2 Forms of measures available - dumping

The forms of dumping 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>98</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 more so than others. In considering which form of duty to recommend to the Minister, the Commissioner will have regard to the published *Guidelines on the Application of Forms of Dumping Duty November 2013* (the Guidelines) and relevant factors in the market for the goods.<sup>99</sup>

#### 10.2.1 Fixed duty method

A fixed duty method operates to collect a fixed amount of duty – regardless of the actual export price of the goods. The fixed duty is determined when the Minister exercises her powers to ascertain an amount for the export price and the normal value.

#### 10.2.2 Floor price duty method

The floor price duty method sets a ‘floor’ - for example, a normal value of \$100 per tonne - and duty is collected when the actual export price is less than that normal value of \$100 per tonne. The floor price is either the normal value or the NIP, whichever becomes applicable under the duty collection system.

<sup>98</sup> Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

<sup>99</sup> [Available on the commission website.](#)

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This duty method does not use an ascertained export price as a form of 'floor price' as occurs with the combination and fixed duty methods.

### 10.2.3 *Ad valorem* duty method

The *ad valorem* duty method is applied as a proportion of the actual export price of the goods. An *ad valorem* dumping duty is determined for the product as a whole, meaning that a single ascertained export price is required when determining the dumping margin. The *ad valorem* duty method is the simplest and easiest form of duty to administer when delivering the intended protective effect.

### 10.2.4 Combination duty method

The combination duty comprises two elements: the 'fixed' element and the 'variable' duty element. The fixed element is determined when the Minister exercises powers to 'ascertain' an amount (i.e. set a value) for the export price and the normal value. This may take the form of either a fixed duty or an *ad valorem* on the ascertained export price.

The variable component stems from a feature of this form of duty whereby, having ascertained the export price for the purposes of imposing the dumping duty, if the actual export price of the shipment is lower than the ascertained export price, the variable component works to collect an additional duty amount (i.e. the difference between the ascertained export price and the actual export price). It is called a 'variable' element because the amount of duty collected varies according to the extent the actual export price is beneath the ascertained export price.

## 10.3 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*).

## 10.4 Conclusion

In REP 544, IDD and the dumping duty payable was determined as an amount worked out in accordance with combination of fixed and variable duty method or the floor price method. The ICD and countervailing duty payable was determined as an amount worked out in accordance with the *ad valorem* duty method.

Subject to submissions received in response to this SEF and if it is recommended that the measures be continued, the commission is of the view that the combination of fixed and variable duty method and floor price duty method (as relevant) should be used for IDD.

**11 APPENDICES AND ATTACHMENTS**

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<b>Confidential Attachment 1</b>	Australian market analysis
<b>Confidential Attachment 2</b>	Economic condition of Australian industry
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<b>Confidential Attachment 4</b>	PMBA CTMS
<b>Confidential Attachment 5</b>	PMBA Normal Value
<b>Confidential Attachment 6</b>	PMBA Dumping Margin
<b>Confidential Attachment 7</b>	Alumac Export Price
<b>Confidential Attachment 8</b>	Alumac CTMS
<b>Confidential Attachment 9</b>	Alumac Normal Value
<b>Confidential Attachment 10</b>	Alumac Dumping Margin
<b>Confidential Attachment 11</b>	EAA Export Price
<b>Confidential Attachment 12</b>	EAA CTMS
<b>Confidential Attachment 13</b>	EAA Normal Value
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<b>Confidential Attachment 15</b>	Uncooperative and all other exporters dumping margin rate
<b>Confidential Attachment 16</b>	Malaysian export volumes of uncooperative and all other exporters
<b>Confidential Attachment 17</b>	Uncooperative and all other exporters subsidy rate
<b>Confidential Attachment 18</b>	Recurrence of exports analysis
<b>Confidential Attachment 19</b>	Recurrence of dumping analysis
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## APPENDIX A – ASSESSMENT OF COUNTERAVAILABLE SUBSIDIES

### A1 Finding

After assessing all relevant information available, the commission has found that financial benefits<sup>100</sup> were conferred to aluminium extrusion producers in respect of the goods via countervailable subsidy programs.

### A2 Relevant legislation

Section 269T(1) defines a ‘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
  - (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.

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 section (3), access to the subsidy is explicitly limited to particular enterprises; or
  - (b) if, subject to section (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 section (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

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<sup>100</sup> Sections 269TACC(2)(a) and (b).

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- (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.
- (5) In making a determination under section (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 269TACC directs how the Minister determines whether a financial contribution, income, or price support confers a benefit, and is, therefore, a countervailable subsidy. Section 269TACD provides how the amount of this benefit is determined.

### **A3 Definition of Government, Public and Private Bodies**

In its assessment of each program, the commission has had regard to the entity responsible for providing the financial contribution (if any) under the relevant program, as part of the test under section 269T(1) for determining whether a financial contribution is a subsidy. Under section 269T(1), for a contribution to be a subsidy, the contribution must have been made by:

- a government of the country of export or country of origin of the goods; or
- a public body of that country, or a public body of which that government is a member; or
- a private body entrusted or directed by that government or public body to carry out a governmental function.

#### **A3.1 Government**

As described in section 16.2 of the Manual, the commission considers that the term 'government' is taken to include government at all different levels, including at a national and sub-national level.

#### **A3.2 Public Bodies**

The term 'public body' is not defined in the Act. Determining whether an entity is a 'public body' requires evaluation of all available evidence of the entity's features and its relationship with government, including the following:

- (1) The objectives and functions performed by the body and whether the entity in question is pursuing public policy objectives. In this regard relevant factors include:
- legislation and other legal instruments,
  - the degree of separation and independence of the entity from a government, including the appointment of directors, and
  - the contribution that an entity makes to the pursuit of government policies or interests, such as taking into account national or regional economic interests and the promotion of social objectives.

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- (2) The body's ownership and management structure, such as whether the body is wholly- or part-owned by the government or has a majority of shares in the body. A finding that a body is a public body may be supported through:
- the government's ability to make appointments,
  - the right of government to review results and determine the body's objectives, and
  - the government's involvement in investment or business decisions.

The commission considers this approach is consistent with the WTO Appellate Body decision of *United States – Countervailing Measures (China)*.<sup>101</sup> In that case, the Appellate body referred to the following indicia that may assist in assessing whether an entity is a public body vested with or exercising government authority:

- Where a statute or other legal instrument expressly vests government authority in the entity concerned;
- Where there is evidence that an entity is, in fact, exercising governmental functions; and
- Where there is evidence that a government exercises meaningful control over an entity and exercises governmental authority in the performance of government functions.

These principles have also previously been considered in the Federal Court of Australia.<sup>102</sup>

### A3.3 Private Bodies

Where an entity is neither a government nor public body, the commission will consider it a private body, in which case, a government direction to make a financial contribution in respect of the goods must be established in order for the contribution to be considered a subsidy, as defined by section 269T(1).

Pursuant to chapter 16.3 of the Manual, in determining the character of an entity, which may have provided a financial contribution, the commission will consider whether a private body has been:

- 'entrusted' to carry out a government function, which occurs when a government gives responsibility to a private body; or
- 'directed' to carry out a government function, which occurs in situations where the government exercises its authority over a private body.

Accordingly, not all government acts will be considered as entrusting or directing a private body. Encouragement or mere policy announcements by government in and of themselves are not sufficient to satisfy this test. However, threats and inducements may be evidence of government intervention. In situations where the private body is considered to be a proxy by government to give effect to particular financial contributions that this test will usually be satisfied.

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<sup>101</sup> DS379 United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.

<sup>102</sup> See; *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, [27]-[70]; *Dalian Steelforce Hi Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885, [50] to [73].

#### **A4 Information considered by the Commission**

In assessing the alleged subsidy programs, the commission has considered information provided in the REQs and verification activities. This includes information provided by exporters regarding whether these exporters were in receipt of any previously investigated or new countervailable subsidies and, if so, the value of any benefits received. The commission received a response to the government questionnaire from the GOM for this inquiry.

The commission has also considered information contained in other investigation cases and previous findings of the commission.



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## A5 Subsidy programs considered

The commission examined the 6 subsidy programs that were found to be countervailable in REP 362 and review of measures (REP 544).

### A5.1 Existing programs

The commission provided the GOM with a government questionnaire to gather evidence for the purposes of determining whether the existing programs are still countervailable in relation to aluminium extrusions exported to Australia from Malaysia. The GOM provided a response to the government questionnaire.

The commission’s consideration of the facts available in relation to the existing programs is set out in the following table.

No.	Program name	Type	Evidence that the program is still countervailable	Countervailable in relation to the goods?
1	Income Tax Reductions	Tax	GOM has confirmed in its response to the government questionnaire that this program still exists. The commission found this program was not countervailable in REP 362. The commission considers that no benefit was received under program 1 during the inquiry period for non-cooperating and all other exporters. It is noted that an enterprise cannot receive a benefit from this program for a year of assessment where a reinvestment allowance has been claimed (program 6).	No

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No.	Program name	Type	Evidence that the program is still countervailable	Countervailable in relation to the goods?
2	Investment Tax Allowance	Tax	GOM has confirmed in its response to the government questionnaire that this program still exists. The commission found this program was not countervailable in REP 362. The commission considers that no benefit was received under program 2 during the inquiry period for non-cooperating and all other exporters. It is noted that an enterprise cannot receive a benefit from this program for a year of assessment where a reinvestment allowance has been claimed (program 6).	No
3	Double Deduction for Export Credit Insurance	Tax	GOM has confirmed in its response to the government questionnaire that this program still exists. The commission found this program was not countervailable in REP 362. The commission considers that no benefit was received under program 3 during the inquiry period for non-cooperating and all other exporters.	No
4	Double deductions for freight charges relating to goods originating from Sabah and Sarawak	Tax	GOM has confirmed in its response to the government questionnaire that this program still exists. The commission found this program was countervailable in REP 362. The commission considers that no benefit was received under program 4 during the inquiry period for non-cooperating and all other exporters.	Yes
5	Double deductions for insurance premiums paid by exporters and importers	Tax	GOM has confirmed in its response to the government questionnaire that this program was revoked in 2012 for the year of assessment 2016 onwards. The commission found this program was not countervailable in REP 362.	No
6	Reinvestment Allowance	Tax	GOM has confirmed in its response to the government questionnaire that this program still exists. The commission found this program was countervailable in REP 362. The commission considers that no benefit was received under program 6 during the inquiry period for non-cooperating and all other exporters.	Yes