



Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601

Attn: Jaclyne Fisher OAM  
Panel Member  
c/o ADRP Secretariat

By email: [ADRP@industry.gov.au](mailto:ADRP@industry.gov.au)

Dear Member Fisher

**ADRP Review No. 175: Aluminium Extrusions exported to Australia from the People's Republic of China (China)**

I write regarding the notice under section 269ZZI of the *Customs Act 1901* (Cth) (the **Act**) published by the Anti-Dumping Review Panel (**ADRP** or **Review Panel**) on 21 November 2025.

The notice advised of your intention to review the decision of the Minister for Industry and Science, under section 269ZH(1) of the Act in respect of the inquiry by the Anti-Dumping Commission (**commission**) into whether the continuation of anti-dumping measures (the **measures**) applying to Aluminium Extrusions (the goods) exported from the People's Republic of China (the **Reviewable Decision**) is justified. The measures are in the form of a dumping duty notice and a countervailing duty notice.

I have considered the applications for review submitted by Goomax Metal Co., Ltd (**Goomax**), Guangdong Xingfa Aluminium Co Ltd (**Xingfa**) and Press Metal Aluminium (Australia) Pty Ltd (**PMAA**) and make the submissions, under section 269ZZJ(aa) of the Act, at **Attachment A** for your consideration.

Please let us know if we can assist you further in this matter.

Yours sincerely

**David Latina**  
Commissioner

19 December 2025

## COMMISSIONER, ANTI-DUMPING COMMISSION SUBMISSION

### ADRP Review 2025/175

1. The Commissioner of the Anti-Dumping Commission (the **Commissioner**), with the assistance of officers of the Anti-Dumping Commission (the **commission**), makes this submission under section 269ZZJ(aa) of the *Customs Act 1901* (Cth) (the **Act**).<sup>1</sup>
2. This submission is made in response to applications for review to the Anti-Dumping Review Panel (the **ADRP** or **Review Panel**) from Goomax Metal Co., Ltd (**Goomax**), Guangdong Xingfa Aluminium Co Ltd (**Xingfa**) and Press Metal Aluminium (Australia) Pty Ltd (**PMAA**) (the **Applicants**).
3. The applications seek review of the decision by the Minister for Industry and Science (the **Minister**) to continue the anti-dumping measures (the **measures**) under section 269ZH(1)(b) of the Act applying to aluminium extrusions (the **goods**) exported to Australia from China (the **Reviewable Decision**). The measures are in the form of a dumping duty notice and a countervailing duty notice. The Applicants' grounds of review are set out below.
4. The submission includes six parts: **Part A**, **Part B**, **Part C**, and **Part D**.
5. **Part A** sets out the commission's submission in respect of PMAA's grounds of review:
  - Section 1 sets out the Commissioner's submissions in respect of PMAA **ground 1** of the Application for Review
  - Section 2 sets out the Commissioner's submissions in respect of PMAA **ground 2** of the Application for Review.
  - Section 3 sets out the Commissioner's submissions in respect of PMAA **ground 3** of the Application for Review.
6. **Part B** sets out the Commissioner's submissions in respect of Goomax's application for review.
  - Section 1 sets out the Commissioner's consideration of Program 15.
  - Section 2 sets out the evidence available during continuation inquiry 657.
7. **Part C** sets out the Commissioner's submissions in respect of Xingfa's ground of review.
  - Section 1 sets out the legal framework and relationship of arms length assessment to construction of normal value.
  - Section 2 explains the Commissioner's benchmark and how it was applied to Xingfa.
8. **Part D** sets out the legal standard under section 269ZHF(2).
  - Section 1 sets out the legislative context and evidentiary threshold under section 269ZHF(2).

---

<sup>1</sup> All legislative references in this submission are to the *Customs Act 1901* (Cth) ('the Act'), unless otherwise specified.

- Section 2 outlines that the Reviewable Decision was the correct and preferable decision.

## Part A: Commissioner's submissions in respect of PMAA

### Section 1: Commissioner's submissions in respect of PMAA Ground 1

#### PMAA's submissions in respect of Ground 1

- **PMAA Ground 1** – There was no information, or insufficient information supported by evidence, that dumping by PMI had occurred or would be likely to continue or recur if the anti-dumping duties expired.

#### Dumping occurred during and after the inquiry period

9. The commission submits, in response to PMAA's Ground 1 that it made findings of fact that supported its recommendations.<sup>2</sup> The findings from this examination are set out in Chapter 6 and Appendix C of REP 657.
10. As set out in ADN 2024/085, the commission commenced the inquiry by examining whether dumping was likely to continue or recur with an examination of the dumping margins during the inquiry period.<sup>3</sup>
11. This included an examination of PMI's costs and price of the goods, as submitted by PMI. The commission determined a margin of dumping of 17.7%.<sup>4</sup> These findings provided the basis for the commission's analysis of whether dumping is likely to continue or recur.
12. In addition to arriving at the finding that dumping occurred during the inquiry period, including by PMI, the commission conducted additional analysis to determine whether dumping had occurred in the period immediately after the inquiry period.
13. In SEF 657, the commission compared the movements in the aluminium benchmark in the six months after the inquiry period against movements in free on board (**FOB**) export prices to assess the likelihood that dumping had continued in relation to those exporters found to be dumping during the inquiry period (Goomax, Xingfa and PMI) and recurred in relation to Jinxiecheng. This analysis was conducted on the basis that the aluminium benchmark represents a significant portion of the normal value for Chinese exporters, and relative movements between the aluminium benchmark and FOB export prices would be indicative of the likelihood of the continuation or recurrence of dumping.
14. In REP 657, the commission extended this analysis to a comparison of aluminium inputs and FOB export prices until July 2025. Consistent with the approach taken in the SEF, the commission compared the change in export prices in the months after the inquiry period for the 11 largest volume exporters in the Australian market<sup>5</sup> (including 6

<sup>2</sup> See PMAA Application for review, Attachment A, pp. 2-3.

<sup>3</sup> ADN 2024/085, p. 6: *For this inquiry, I will examine the period from 1 October 2023 to 30 September 2024 (the inquiry period) to determine whether dumping and subsidisation have occurred and whether the variable factors relevant to the determination of duty have changed.*

<sup>4</sup> REP 657, p. 13, "Table 2: Dumping and Subsidy Margins".

<sup>5</sup> This encompassed subject exporters from China, exporters from China not subject to measures, and exporters from Indonesia, Malaysia, Thailand and Vietnam.

exporters from China subject to measures) during the inquiry period. The commission observed that:<sup>6</sup>

- of the 11 exporters assessed, the four demonstrating the least increase in export pricing were the four Chinese exporters subject to measures
- exporters from China that are exempt from measures, as well as the exporters from each of the other countries examined all increased FOB export pricing by more than 10% in response to the increased aluminium input costs, whereas the subject exporters (exporters subject to measures) price increases were between 0.7% and 8.2%
- Chinese exporters subject to measures increased export prices by less than half the increase in the costs of aluminium inputs, and less than their competitors
- in relation to the subject exporters, the reduction in the aluminium benchmark over this period has been more significant than the reduction in export prices.

15. In sum, the commission's analysis of export pricing after the inquiry period indicated that export prices did not increase in line with the increase in aluminium input costs. The commission considered this analysis to be supportive of the fact that the subject exporters had not adjusted selling prices in response to upward movements in aluminium input costs, leading to a likelihood that dumping will continue or recur in the absence of measures.

16. The commission did not specifically examine PMI's exports in the period immediately after the inquiry period on the basis that the volume of PMI's exports was small<sup>7</sup> compared to the other Chinese exporters,<sup>8</sup> such that PMI was not in the top six exporters by volume. The commission did examine the four largest subject exporters from China as well as the two exempt exporters, which it took to be a reasonable and representative sample.

17. Additionally, PMI's dumping margins during the inquiry period, derived from PMI's own REQ and relative to the dumping margins of the cooperative exporters and the relatively low volume of exports, was considered by the commission to be a sufficient factual basis for determining whether dumping by PMI was likely to continue or recur such that further examination post the inquiry period was not required. The size of PMI's dumping margin in the inquiry period, along with the commission's market analysis of the pricing behaviour of larger Chinese exporters and estimate of the competitiveness of undumped prices in Australia,<sup>9</sup> was sufficient for to conclude that PMI would also continue dumping.

### **The evidence supported a recommendation to continue the measures**

18. Contrary to PMAA's application, the commission had sufficient information and evidence to demonstrate that dumping by PMI had occurred or that dumping by PMI would be likely to continue or recur if the anti-dumping duties expired.

<sup>6</sup> See REP 657, Section 8.7.1 Dumping Margin Analysis.

<sup>7</sup> [Confidential Information: ██████████ kgs.]

<sup>8</sup> For example, Jinxiecheng exported approximately [Confidential Information: ██████████ kgs], Goomax exported approximately [Confidential Information: ██████████ kgs], Foshan City Sanshui exported approximately [Confidential Information: ██████████ kgs]. See REP 657, Confidential attachment 27: Will dumping continue or recur?

<sup>9</sup> See REP 657, Section 8.7.2.

## PUBLIC RECORD

19. Neither the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO Anti-Dumping Agreement)* nor the Act prescribe any particular methodology to be used by investigating authorities in making a likelihood determination in a continuation inquiry. Nonetheless, any determination in relation to the measures must rest on a sufficient factual basis allowing the Commissioner to draw reasoned and adequate conclusions.
20. The commission had such a factual basis:
  - It had contemporary evidence of dumping for select cooperative, residual and uncooperative exporters during the inquiry period.
    - In particular, selected exporters (PMI and Xingfa) and uncooperative exporters were found to be dumping within a range of 4.0% - 28.4% and constituted approximately 32% volume of goods imported from China during the inquiry period.
  - It had evidence of export price movements and likely normal value movements in the period immediately following the inquiry period. This analysis indicated that dumping had likely continued in relation to those exporters found to have been dumping during the inquiry period and recurred in relation to Jinxiecheng.
21. In circumstances of minimal or no exporter cooperation and/or information limitations, the commission may consider other sources of evidence in which to assess whether dumping is likely to recur/continue, including a previous dumping duty notice, the dumping margins (and variable factors) established by the Minister in a prior review or inquiry<sup>10</sup> or duty assessments.<sup>11</sup>
22. However, in the circumstances of continuation inquiry 657, where there was direct, contemporary evidence from selected exporters and importers of the goods relating to dumping during the inquiry period as well as the period immediately following the inquiry period, the Commissioner had reliable and positive evidence of dumping in the inquiry period, obtained directly from exporters of the goods to determine whether dumping was likely to continue or recur.

### **Section 2: Commissioner's submissions in respect of PMAA Ground 2**

#### **PMAA's claims in respect of Ground 2**

- **PMAA Ground 2** - The Minister's determination of the normal value was incorrect, which impacted on the alteration of the variable factors and the assessment of the dumping margin.

---

<sup>10</sup> In ADRP Report No. 169, *Steel Pallet Racking exported from China* (26 August 2024), para. 99, the Panel Member noted in relation to variable factors as previously ascertained: *In the absence of any review of measures that has modified the variable factors it is the relevant information of the dumping margins applying to these goods.*

<sup>11</sup> In ADRP Report No. 169, *Steel Pallet Racking exported from China* (26 August 2024), p. 42, the Panel Member noted in relation to a lack of duty assessments in the context of the dumping duty notice as reliable evidence: *The fact that no interested party has sought to have the variable factors changed means that the Dumping Duty Notice remains the most current information available relevant to the goods the subject of the continuation inquiry.*

23. PMAA contends that the Minister's determination of the normal value was incorrect, which impacted on the alteration of the variable factors and the assessment of the dumping margin.<sup>12</sup>
24. PMAA contends that the commission's calculation of PMI's normal value is incorrect due to errors in determining adjustments related to sales made at different levels of trade and related further processing of products, adjustments in respect of rebates, and accounting for certain financial costs and expenses.<sup>13</sup>

### **The commission's assessment as to the reliability of PMI's evidence**

25. As set out in ADN 2025/085 published on 8 November 2025, the commission initially limited the inquiry to an examination of the exports of:<sup>14</sup>
  - Goomax
  - Xingfa, and
  - Guangdong Jinxiecheng AI Manufacturing Co., Ltd (Jinxiecheng).
26. Given the large number of exporters, the Commissioner considered it was not practicable to examine the exports of all of those exporters. Accordingly, the Commissioner advised that the inquiry would be conducted on the basis of information obtained from an examination of a selected number of exporters who are responsible for the largest volume of exports to Australia that can reasonably be examined. The commission received responses to the exporter questionnaire (REQ) from each of the selected exporters.
27. A response was also received from PMI as well as a submission requesting it be included in the sample of selected exporters.<sup>15</sup> In considering whether to extend the inquiry beyond the 3 selected exporters to include PMI, the Commissioner took into account:<sup>16</sup>
  - the timeframe in which the case must be completed
  - the resources needed to complete the case within the necessary timeframe
  - the suitable level of verification required for each case.
28. On 10 January 2025, the Commissioner decided that the inclusion of PMI would not prevent the timely completion of the inquiry. Accordingly, PMI was included as a selected exporter in the inquiry along with Goomax, Jinxiecheng and Xingfa. Interested parties were notified of this decision through the publication of ADN 2025/006.
29. The commission's approach to assessing PMI aligned with the approach taken to other selected exporters. The commission did not undertake onsite verification but conducted review of the information provided by REQ for deficiencies, inconsistencies, and whether

---

<sup>12</sup> PMAA Application for Review, Attachment A, p. 1.

<sup>13</sup> PMAA Application for Review, Attachment A, p. 2.

<sup>14</sup> According to the ABF import database, the selected exporters represent approximately 68% of the volume of the goods (measured by quantity reported in kilograms) exported to Australia from China from 1 July 2023 to 30 June 2024.

<sup>15</sup> See 657 - PMI - Request for inclusion in sample.

<sup>16</sup> REP 657, p. 22.

## PUBLIC RECORD

the information provided was reliable and relevant for the purposes of establishing variable factors.<sup>17</sup>

30. PMI was issued a deficiency letter outlining the aspects of its REQ where information was missing or lacking sufficient detail and afforded additional time to provide a revised REQ.<sup>18</sup> Following receipt of the revised REQ, the commission formed a conclusion on that data's reliability and calculated preliminary variable factors drawing on that data as set out in *Preliminary variable factors assessment - Press Metal International Ltd*.<sup>19</sup> Aspects of PMI's REQ were further cross checked against PMAA's RIQ.<sup>20</sup>
31. When determining quantitative assessments, such as dumping margins, the use of verified data from cooperating exporters is preferable. As noted in ADN 2016/030, the calculation of dumping margins rests on reliable data that may be subject to a verification (onsite or offsite) process to determine if that data is relevant, complete and accurate.<sup>21</sup>
32. The commission notes that in determining whether onsite verification should occur will depend on the facts and circumstances of the particular investigation/inquiry. As stated in REP 657, the commission determined that it would not conduct onsite verification on the basis that:
  - Three of the selected exporters had been previously verified in prior investigations or inquiries, some on multiple occasions. Xingfa was last verified onsite in April 2024 (as part of Review 633), while the commission held virtual verifications of Jinxiecheng and Goomax in January 2023 (as part of Review 609)
  - PMI, whilst having not been previously verified, reflected a small volume of exports into the Australian market during the inquiry period.<sup>22</sup>
33. It is not correct, as PMAA asserts, that no verification activity was undertaken. As set out in the File Notes, the commission took steps to assess the reliability of the information provided by each of the selected exporters, including PMI. In accordance with the commission's standard approach, the REQS were reviewed for deficiencies and issues identified by the commission were followed up with exporters via deficiency advice. The commission also undertook data analysis, comparative analysis and further reviews of the exporter's REQS which are detailed in the preliminary variable factors assessment file notes for each exporter published on the EPR.<sup>23</sup>
34. Additionally, the commission also assessed the information and evidence provided by the corresponding importers, as detailed in the Importer assessment files notes

---

<sup>17</sup> REP 657, p. 23.

<sup>18</sup> See 657 - PMI - REQ major deficiency advice, 657 - PMI - Extension Request to Deficiency Advice 1, 657 - PMI - Extension Request to Deficiency Advice 2, 657 - PMI - Further extension granted to 11 Mar 2025.

<sup>19</sup> EPR 657, Document no. 24.

<sup>20</sup> EPR 657, Document no. 25, p. 3, fn 5. See also, EPR Document No. 25, Section 1.1.3.

<sup>21</sup> ADN 2016/030, pp. 4-6.

<sup>22</sup> REP 657, p. 23.

<sup>23</sup> See EPR 657, Document no. 20, *Exporter – Goomax Metal Co. Ltd – Preliminary variable factors assessment*; Document no. 22, *Exporter – Guangdong Jinxiecheng AI Manufacturing Co. Ltd – Preliminary variable factors*; Document no. 25, *Exporter – Press Metal International Ltd – Preliminary variable factors assessment*; Document no. 28, *Exporter – Guangdong Xingfa Aluminium Co., Ltd – Preliminary variable factors assessment*.

## PUBLIC RECORD

published on the EPR.<sup>24</sup> As noted in each of the File Notes, while onsite verification was not undertaken, the commission reviewed the Response to the Importer Questionnaires (**RIQs**), including undertaking remote verification activities including downward sample verification, profitability, and arms length transaction assessments. Export price and arms length transaction assessments were conducted having regard to information provided in the REQs and corresponding RIQs.<sup>25</sup>

35. We note that the ADRP has previously considered that, as a general observation, there is nothing preventing the commission from relying on information obtained during the inquiry that may not be verified. The weight given to such unverified information must be balanced with whether it is relevant and suitable for a particular purpose.<sup>26</sup>
36. As demonstrated above, the commission welcomed exporter participation to the inquiry, and as with all selected exporters, afforded opportunities to PMI to provide the necessary information and documents. The commission seeks, where possible, to rely on the information provided by interested parties. The commission did this in accepting PMI's REQ and relying on this information in determining PMI's variable factors. As detailed in each of the File Notes, the commission considered the information in the REQs and RIQs to be reliable for the purposes of ascertaining variable factors for the purposes of the inquiry. It was reasonable to have arrived at that decision following assessment of PMI's information as presented by PMI and as set out in the commission's file notes.
37. The commission's approach properly took account of its resourcing within the context of an inquiry that had to be completed by a set legislated date. Accordingly, it was appropriate to proceed as the commission did, which was to ascertain variable factors according to the data submitted by each of the exporters, including PMI.

### **PMI did not provide sufficient information before the publication of SEF 657 in which to amend the MCC categories with respect to 'jobbing'**

38. PMAA's application states that PMI provided "reliable information and evidence equal to the unverified information and evidence in PMI's response to the exporter questionnaire that the Commission relied upon in determining PMI's constructed normal value"<sup>27</sup> in respect of the goods that underwent jobbing.
39. PMAA also submits that PMI's submission of 6 August 2025 was submitted within the 20-day statutory period for the submission of response to the Statement of Essential Facts and, as such, the submission and information and evidence it contained could not lawfully be disregarded purportedly on the basis that it would delay the Commissioner in making his report to the Minister.<sup>28</sup>

---

<sup>24</sup> See EPR 657, Document no. 26, *Importer – Press Metal Aluminium (Australia) Pty Ltd – Importer assessment*; Document no. 27, *Importer – Megastone Aluminium Pty Ltd – Importer assessment*; Document no. 29, *Importer – Lunar Metal Trading Pty Ltd – Importer assessment*.

<sup>25</sup> EPR 657, Document no. 25, p. 3, fn 5.

<sup>26</sup> ADRP Report No. 169, *Steel Pallet Racking exported from the People's Republic of China and Malaysia*,

<sup>27</sup> PMAA Application, Attachment B, p. 20.

<sup>28</sup> PMAA Application, Attachment B, p. 20.

## PUBLIC RECORD

40. The commission does not agree with PMAA's characterisation that PMI's 6 August 2025 submission was disregarded; the commission fully considered the submission within the timeframe available to it.
41. For context, in order to understand PMAA's claims within the context of the continuation inquiry, the commission undertakes model matching using a MCC structure to identify key physical characteristics that will be used to match models of the goods exported to Australia and like goods sold domestically in the country of export. In determining the MCC structure, the commission will have regard to differences in physical characteristics that give rise to distinguishable and material differences in price.<sup>5</sup>
42. Where constructed normal values are compared to export prices to determine the margin of dumping, the commission will also use the MCC structure to identify the relevant costs of production (for each model).
43. The MCC structure is fundamental to the commission's methodology for all exporters, and visibility of the MCC structure and proposed changes to it have the potential to affect the rights and interests of numerous exporters, importers and Australian industry partaking in the inquiry. Further, the MCC structure is used to assess the data of individual exporters and for comparative purposes. Accordingly, given the nature of the numerous interests, Interested parties are advised from the very outset as to the requirement to submit changes to the MCCs early in the inquiry, how changes can be proposed and the information required for such proposals. It also provides the commission with the necessary time and opportunity to investigate the proposed changes.
44. In the context of a continuation inquiry, which is subject to strict and immoveable statutory timeframes, the provision of this information as per the public and specific guidance is critical.
45. In continuation inquiry 657, this occurred through the publication in the very early stages of the inquiry of the following two documents:
  - [ADN 2024/085](#) regarding the initiation of continuation inquiry 657
  - the exporter questionnaire template available on the EPR, andand generally, through the *Dumping and Subsidy Manual 2021* which is accessible on the commission's website.
46. The MCCs relevant to the goods under consideration was published as an appendix to ADN 2024/085:

*On 9 August 2018, the commission advised in ADN2018/128 that a model control code (MCC) structure would be implemented in new investigations, reviews of exporters generally or continuations for cases initiated after this date. Attachment B to this notice outlines the commission's proposed MCC structure. **Proposals to modify the MCC structure should be raised as soon as is practicable, but no later than 15 December 2024, the day submissions concerning the continuation of the anti-dumping measures are due. Interested parties are encouraged to make a submission on whether any proposed modifications to the MCC structure should be accepted by the commission.** Any changes to the MCC structure will be considered by the commission and reported in verification reports or in the statement of essential facts (SEF).*

## PUBLIC RECORD

(emphasis added)

47. The 657 exporter questionnaire template, published on 8 November 2024, including the templated used by PMI, provides (p. 10):

*The MCCs will be used to match export models to the identical or comparable domestic models. In addition, the MCCs will be used to determine the profitability of domestic sales in the ordinary course of trade by comparing domestic selling prices to the corresponding cost to make and sell. The MCC may also be used to compare the export price to the cost to make the exported model as part of the constructed normal value. If there are models manufactured and sold by your company that do not align within the MCC structure above, this should be raised by lodging a submission with the commission as soon as is practicable, but no later than the time this questionnaire is due, otherwise the response may be considered deficient.*

48. The *Dumping and Subsidy Manual 2021* states (pp. 48-49):

*Sales and cost data submitted in the response to the exporter questionnaire are required to follow the MCC structure. At a minimum, the data must report sales and cost data separately for each of the mandatory MCC categories identified by the Commission. Modifications to the MCC structure may be considered based on the facts and evidence pertaining to a particular exporter.*

...

*Proposals to modify the MCC structure should be raised as soon as is practicable, but no later than the time the responses to the questionnaires are due and placed on the public record prior to any verification, otherwise the response may be deemed deficient. Interested parties are encouraged to make submissions on whether proposed modifications to the MCC structure should be accepted by the Commission. Any changes to the MCC structure will be considered by the Commission and reported in verification reports or in the statement of essential facts.*

...

*Where exporters do not provide cost and sales data for models that are consistent with the mandatory MCC categories, this may be regarded as a major deficiency in the response to the exporter questionnaire and therefore may result in the exporter being deemed uncooperative and/or the data being treated as unreliable.*

49. As noted in SEF 657, PMI's claim for MCC amendments prior to the publication of SEF 657 was not supported by sufficient evidence. Importantly, while the REQ appeared to suggest that PMI were seeking amendments to the MCCs, PMI did not provide the relevant sales and cost data at a sufficient level of detail to enable the commission to ascertain whether there were genuine differences in models produced by PMI. Specifically, insufficient information was submitted by PMI to allow the commission to assess if the finishing sub-categories of powder coating special, chromate, anodised clear, anodised sand blasted and anodised colour had material differences in price. PMI also did not include its proposed MCC sub-categories for each product sold in its export and domestic sales data, and export and domestic CTM. PMI also did not include its

## PUBLIC RECORD

proposed MCC sub-categories for each product sold in its export and domestic sales data, and export and domestic CTM.<sup>29</sup>

50. REP 657 outlines the consideration undertaken by the commission of PMI's 6 August 2025 submission:

*In its submission dated 6 August 2025, PMI proposed a new additional MCC category called 'Jobbing'. (footnote omitted) This proposal was not suggested by PMI prior to the SEF.*

*PMI submitted that 'jobbing' refers to 'further processing' undertaken to the product. PMI describes 'jobbing' as a process where aluminium extrusion products undergo further processing either internally by PMI or externally by third parties before being sold to the customer. This includes activities such as precision cutting to non-standard lengths, or the application of specialised coatings by external processors. PMI uses the term 'jobbing' to refer to these arrangements where the product is customised through additional processing to meet specific customer requirements.*

*At Confidential Attachment E to the submission, PMI provided updated cost and sales data indicating transactions that includes 'jobbing'. This information was not provided in PMI's original REQ and it is not clear how PMI differentiated transactions that included 'jobbing' and those that did not. While the commission has considered PMI's claim, it does not consider that sufficient reliable information and evidence has been furnished regarding the additional 'jobbing' category to establish that this change to the MCC structure is warranted. Additionally, noting the late stage (footnote omitted) of the inquiry that PMI proposed the additional 'jobbing' category restricts the ability of the commission to undertake the steps required to ascertain the sufficiency and reliability of such data.*

51. As this extract reveals, the commission clearly considered the submission put forward by PMI.
52. Where interested parties provided sufficient information to demonstrate that amendments to the MCC were warranted, the commission considered those amendments.<sup>30</sup> Despite PMI's proposal being made following the SEF, the commission gave active consideration as to whether changes to the MCCs were warranted, having regard to the information and evidence submitted in support. In particular, the commission accepted PMI's suggested changes to the MCCs in relation to additional finish subcategories of Special Powder Coating and Chromate following a reconciliation of the information provided in the 6 August 2025 submission to PMI's REQ.<sup>31</sup> The commission acted reasonably in considering PMI's 6 August 2025 submission, including assessing the new information provided by PMI, and declining to make amendments to the MCC structure, particularly when that new information had not been provided to a sufficient level of detail or within the required timeframe.
53. In the conference held by the Review Panel on 1 December 2025, PMAA acknowledged that PMI had not provided the costs information relevant to the cohort of goods that underwent further processing by a third party in respect of jobbing, therefore omitting these production costs from its REQ.<sup>32</sup> PMI did not refer to or explain that there were a

---

<sup>29</sup> See REP 657, p. 32.

<sup>30</sup> See REP 657, pp. 35-38Section 3.5 "Proposed amendments to MCC structure".

<sup>31</sup> REP 657, p. 38. See also EPR 657, Document no. 39.

<sup>32</sup> Conference Summary, (1 December 2025) - published 9 December 2025, p. 4

cohort of goods that underwent further processing. The commission could not have been reasonably expected to account for costs missing from an exporter's REQ or to have acted otherwise. While the commission undertook steps to verify and assess the information provided, as the commission did in relation to continuation inquiry 657, it is not able to supplement or remedy major omissions. This can only be attended to by the relevant exporter.

54. Rather, it was reasonable for the commission to have acted as it did, having:

- reviewed the REQ for reliability and relevancy
- provided PMI with a major deficiency advice
- determined PMI's variable factors in accordance with this information
- progressed the inquiry on the basis of this information in order to complete the inquiry by the legislated timeframe.

### **The commission correctly accounted for finance expenses in calculating an amount for SG&A**

55. PMAA allege that the commission incorrectly accounted for finance expenses in PMI's final domestic general selling and administration (**SG&A**) calculation. PMAA state that

*"finance charges" or "finance expenses" refer to costs incurred independently of general selling and administration (SG&A) costs, whereas finance charge or expenses related to external financing and fund management, including interest expenses, interest income, bank charges, etc. As such, they are different in nature from SG&A and are presented separately in a company's income statement."<sup>33</sup>*

56. The commission did not add in a separate finance charge into PMI's SG&A. Rather, the commission accepted PMI's SG&A data as submitted in its REQ and did not review the methodology by PMI used to calculate finance charges within this SG&A.

57. The commission notes that PMI declared in its REQ its Main operating costs in its audited profit and loss (P&L).<sup>34</sup> 'Main operating costs' were stated to be the sum of selling expenses + admin expenses + taxes & surcharges + finance expenses.

58. The P&L was audited according to Chinese generally accepted accounting principles<sup>35</sup> (**GAAP**) and there was no submission made to the commission that this amount should not be accepted.

59. It is the commission's usual approach that finance charges be included in an amount for SG&A, that is, the commission considers finance costs (e.g., bank charges, interest expenses) to be a normal part of doing business and therefore required to be included in SG&A.<sup>36</sup> In the absence of other evidence or submissions to the contrary, the

---

<sup>33</sup> PMAA Application for Review, Attachment B, p. 24.

<sup>34</sup> See 657 - PMI - REQ - A-5.4 - P&L monthly, [REDACTED], and [REDACTED].

<sup>35</sup> See [REDACTED].

<sup>36</sup> For example, the *Dumping and Subsidy Manual 2021*, p. 58 provides, "Where the exporter has no domestic sales of any goods and the normal values must be calculated using the costs of production for the goods and the SG&A expenses associated with a domestic sale, credit costs associated with the sales are normally part of the finance expenses that have been included i.e. no separate credit terms are usually warranted in these circumstances."

## PUBLIC RECORD

commission did not remove or otherwise consider amendments to the finance charges (per standard practice) in SG&A.

### The commission correctly accounted for rebates

60. PMAA allege that adjustments in respect of rebates were either not made or wrongly made. PMAA allege that the commission did not discharge its investigatory function to investigate whether or not PMI were in receipt of rebates.<sup>37</sup>
61. The commission's starting point for assessing variable factors commences with an exporter's REQ. The questionnaire issued to PMI and the other selected exporters contains a wide range of questions to enable the commission to accurately determine variable factors relevant to the goods under consideration. The questionnaire, amongst other things, seeks to be clear and direct such that interested parties clearly understand the nature of the inquiry and the detail of the information required.
62. In response to the question in the exporter questionnaire:

*Did you provide on-invoice discounts and/or off-invoice rebates to the customer or an associate of the customer in relation to the sale of the like goods during the period? If yes, provide a description; and explain the terms and conditions that must be met by the importer to obtain the discount.*

PMI responded "no material difference."<sup>38</sup>

63. In response to the question in the exporter questionnaire:

*Did you issue any credit or debit notes (directly or indirectly) to the customer or associate of the customer in relation to the sale of the like goods during the period? If yes, provide details of the credit/debit notes including the reasons the credit/debit notes were issued.*

PMI responded "no material difference."<sup>39</sup>

64. The commission accepted these responses, noting that no rebates were recorded in PMI's domestic sales listing.
65. Following PMI's submission of 11 August 2025 the commission was able to reconcile negative invoices in the normal value calculation for PMI (listed as 'other credits – price reductions' in the submission). The commission found that these were for sales delivered and realised near or at the end of the month, while invoiced at the start of the new month. The commission was able to reconcile the offsetting negative (credit) transactions to the 2 positive transactions.
66. The commission did not include any other adjustments for rebates. Not only did PMI specify in its REQ that it did not provide on invoice or off invoice rebates in its REQ but its domestic sales spreadsheet columns specific to discounts or rebates did not contain any such information. PMI listed a lump sum of rebates in response to SEF 657 but had

---

<sup>37</sup> PMAA Application for Review, Attachment B, p. 22.

<sup>38</sup> EPR 657, Document no. 6, *PMI REQ – Section D*, p. 5.

<sup>39</sup> EPR 657, Document no. 6, *PMI REQ – Section D*, p. 5.

not apportioned it to the actual domestic sales. Therefore, the commission did not include any further adjustments for rebates to PMI's normal value.

67. As stated above, Australia's anti-dumping framework operates on a model of cooperation: the commission seeks the cooperation of exporters to provide requested or other information to base its factual findings and calculation of variable factors. Neither the Minister nor the Commissioner have powers to compel an interested party to provide information. While direct information and evidence from interested parties is strongly preferred, the Act also provides pathways for completion of an investigation /inquiry where such information is not provided and the commission will have regard to other relevant information where required (i.e. information from other interested parties and other relevant information where available, including previous findings and publicly available information).<sup>40</sup>
68. Questionnaires are issued at the commencement of an inquiry such that interested parties are afforded a reasonable period of time to compile and collate relevant information and evidence. Extensions may be granted to interested parties where cogent reasons are provided. The granting of any extension is considered alongside the requirement to complete an inquiry<sup>41</sup> and arrive at a recommendation, having considered all the relevant information and evidence before it.

### **Section 3: Commissioner's submissions in respect of PMAA Ground 3**

#### **PMAA's submission in respect of Ground 3**

- **PMAA Ground 3** - There was no information, or insufficient information supported by evidence, that the expiry of anti-dumping measures would lead to, or be likely to lead to, the continuation or recurrence of the material injury that the measures are intended to prevent.

  69. PMAA contends in its application that there was no information or insufficient information supported by evidence that the expiry of the anti-dumping measures on their due expiry date of 28 October 2025 would lead to or be likely to lead to the continuation or recurrence of the material injury that the measures were intended to prevent, namely, material injury to the Australian industry producing like goods caused or threatened by exports of certain aluminium extrusions to Australia from China. Consequently, the Commissioner was prohibited by section 269ZHF(2) from recommending to the Minister that the measures be continued, and the Minister was thereby precluded from determining that the measures be continued.<sup>42</sup>

---

<sup>40</sup> See for example: section 269TAACA, section 269TAB(3), section 269TAC(6).

<sup>41</sup> Unlike an investigation pursuant to Division 2 of the *Customs Act 1901* (Cth) ('the Act'), Division 6A does not vest the Commissioner with powers to terminate a continuation inquiry. See section 269TDA of the Act. Additionally, the WTO Anti-Dumping Agreement expressly requires that investigators have to be able to investigate and to find ways to keep an investigation moving, even where it has not been furnished with sufficient evidence or submissions by a party: Article 6.14.

<sup>42</sup> PMAA Application, Attachment A, p. 3.

**Consideration of relevant factors to assess the likelihood that dumping and material injury will continue or recur**

70. In REP 657, the commission applied the correct legal standard and evidentiary burden with respect to section 269ZHF(2). In doing so, REP 657 arrived at reasoned conclusions based on positive evidence.
71. In arriving at the reasoning and recommendation in REP 657, the commission was focused on giving effect to the whole of the obligation of section 269ZHF(2) by examining the evidence before it in a holistic manner. As set out in Chapter 8 of REP 657, the commission identified, on the basis of positive evidence, that:
  - exports from China were likely to continue
  - those exports from China would likely be dumped, and
  - the dumping would likely lead to a continuation and/or a recurrence of the material injury that the measures are intended to prevent.
72. The commission's analysis of the likelihood of future material injury is detailed in section 8.7 of REP 657.
73. The commission examined a range of factors as set out Section 8.8 of REP 657.
74. As set out in REP 657, the commission properly examined the effect of removing the measures, finding that the removal of measures would likely lead to more intensive price competition among this sizable cohort of exporters currently subject to measures, which in turn would necessitate other participants in the market reducing prices to remain competitive. The commission found that if the Australian industry does not further depress or suppress its selling prices in response, the commission considers that it would be likely that Australian industry would suffer a recurrence of injury in the form of loss of sales volume and market share.<sup>43</sup>
75. The commission also considered other factors, such as the alleged monopolistic behaviour of Capral, relative efficiencies of Chinese production of the goods and exports from sources other than the subject exporters from China. These other factors were also assessed in aggregate (alongside the factors outlined in paragraph 51), and findings made on positive evidence in relation to those factors.<sup>44</sup>
76. In assessing the claims concerning monopolistic supply, the commission found that there is not monopolistic supply in the Australian market nor any single participant having dominant market control. The commission identified a large and broad range of suppliers supplying the Australian market with these suppliers either importing from a large range of countries or domestically producing the goods. Australia's largest producer reflects vastly less than a controlling proportion of the Australian market, with evidence of it having to respond to competitors, suppliers or customers actions in the market. On the basis of this positive evidence, the commission concluded that allegations relating to monopolistic supply were not founded.<sup>45</sup>

---

<sup>43</sup> REP 657, pp. 106-107.

<sup>44</sup> See REP 657, pp. 109-110.

<sup>45</sup> See REP 657, p. 108 and 110.

77. In assessing whether exporters from sources other than China were causing injury, the commission considered a range of factors, including the predominant suppliers of the goods to Australia (Indonesia, Malaysia, Vietnam and Thailand), the composition of the Australian market and levels of growth, the volume of imports from those other supplying countries, analysis of FOC export prices from subject and exempt exporters from China, as well as exports from Indonesia, Malaysia, Thailand and Vietnam.
78. These positive findings in relation to the other factors, as well as the factors considered at paragraph 52 ultimately led to the finding that in the absence of measures, exports from China would continue at dumped prices, and the pricing advantage resulting from dumping would likely lead to a continuation of material injury to Australian industry.

## Part B: The Commissioner's submissions in respect of Goomax's grounds of review

79. Goomax allege in its application for review that the commission made a factual error in determining that Goomax received countervailable subsidies in respect of Program 15, aluminium provided at less than adequate remuneration. Goomax claim that Jinxiecheng, another selected exporter of the goods, was found not to be in receipt of Program 15 as they purchased raw materials from privately held entities. Goomax allege that they are in the same situation as Jinxiecheng – where its aluminium ingots and billet suppliers are also privately held entities. According to Goomax, the two companies should be treated equally such that Goomax likewise did not receive an LTAR subsidy and Program 15 should be excluded from the LTAR subsidy when calculating Goomax's subsidy margin.<sup>46</sup>
80. The commission notes that Goomax's grounds for review are limited to whether the commission erred in determining that Goomax received a countervailable subsidy from a public body.<sup>47</sup> The commission has limited its submissions in response to this ground of review accordingly.

### **Section 1: The commission's consideration of Program 15**

81. In the original investigation (REP 148) and subsequent cases, including recent inquiries and reviews REP 543 and REP 609 the commission identified a countervailable subsidy program (Program 15) involving aluminium provided by government-owned (**SOE**) or partially government-owned enterprises (**SIE**) in China at less than adequate remuneration.<sup>48</sup> Under this program, a benefit to the exporter of aluminium extrusions may be conferred by a public body via the provision of aluminium at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.
82. On 21 July 2025, the commission published its preliminary findings in SEF 657. In SEF 657, the commission considered the suppliers of primary and secondary aluminium identified by the selected exporters in their REQ. The commission performed additional desktop research to identify the ownership of the raw material suppliers listed in the exporter's REQ to assess whether the suppliers were public or private bodies.<sup>49</sup> Based

<sup>46</sup> Goomax Application for Review, pp. 7-8.

<sup>47</sup> Goomax Application for Review, pp. 7-8.

<sup>48</sup> REP 543, pp. 98 and 128; REP 609, pp. 76 and 87.

<sup>49</sup> See 657 - Exporters - Raw Material Purchases.

## PUBLIC RECORD

on the desktop research for this inquiry, along with previous findings in REP 148, REP 482, REP 543, REP 609 and REP 633, the commission found that certain suppliers identified as an SIE or SOEs to be a public body.<sup>50</sup>

83. On 1 August 2025, Jinxiecheng provide a submission<sup>51</sup> to the commission claiming that three of its manufacturers are private companies and not state owned enterprises. Jinxiecheng submitted as attachments to its submission company record searches and shareholder information relating to the three companies in question to demonstrate ownership of its suppliers.<sup>52</sup> This submission was published on the EPR for continuation inquiry 657.
84. The commission assessed the evidence provided by Jinxiecheng, including additional research into the companies listed and included these findings in REP 657:<sup>53</sup>

*The commission undertook an independent search of the companies register for China, known as the National Enterprise Credit Information Publicity System, a governmental platform providing public access to company information managed by the State Administration for Market Regulation of China. The commission found that the results of the independent searches of the register are consistent with the evidence provided by Jinxiecheng to support its position that its raw materials suppliers are privately held entities and not SIE/SOEs. On this basis, the commission has determined that Jinxiecheng had not received a LTAR subsidy in the inquiry period. For this report, a correction to the subsidy margin specified in the SEF has been made by excluding Program 15 from the subsidies received by Jinxiecheng.*

85. The evidence before the Commissioner supported the recommendation that Goomax was in receipt of countervailable subsidies under Program 15. The extrinsic material provided by Goomax is not relevant for the purposes of the ADRPs consideration of the ground of review in Goomax's application.

### **Section 2: The additional information provided by Goomax was not submitted to continuation inquiry 657**

86. The Reviewable Decision was made because of an application under section 269ZHB of the Act.<sup>54</sup> Pursuant to s269ZZK(6), the scope of relevant information the ADRP can consider is the information the Commissioner had regard to when making the findings and recommendations set out in REP 657 to the Minister in relation to the making of the Reviewable Decision.
87. The commission notes that attached to its application for review, Goomax has submitted "Attachment 4" which contains company records and shareholder information for its raw material suppliers. The commission notes that this information was not submitted to the commission by Goomax during continuation inquiry 657. Additionally, in its REQ, while Goomax stated that none of its suppliers were SIEs/SOEs, it did not provide the requested supporting evidence. Accordingly, the commission submits that the

<sup>50</sup> REP 657, p. 201: *that Chinese aluminium industry SIEs, including those that produce aluminium and/or alloy, play a leading and active role in implementing GOC policies and plans and these SIEs were therefore exercising governmental functions.*

<sup>51</sup> EPR 657, Document no. 36.

<sup>52</sup> EPR 657, Document no. 36, p. 1.

<sup>53</sup> REP 657, p. 88.

<sup>54</sup> See EPR 657, Document no. 1. See also section 269ZZK(4) and (6).

information provided by Goomax to not be relevant information pursuant to section 269ZZK of the Act.

88. The commission nonetheless provides the following information in respect of Goomax's grounds of review to assist the Panel in forming its report and recommendations:
  - In continuation inquiry 657, Goomax purchased raw materials from unrelated parties in China
  - Of those raw material suppliers, Goomax and Jinxiecheng purchase ingot and billet from one common manufacturer, **[Confidential Information: [REDACTED]**
  - During the inquiry period<sup>55</sup>, Goomax purchased approximately **[Confidential information: [REDACTED]** In contrast, Jinxiecheng purchased approximately **[Confidential Information: [REDACTED]**
  - While the commission notes the overlap in the identity of the manufacturer, the commission notes that the volume of ingot/billet purchased differs considerably. Further, Goomax purchased approximately **[Confidential Information: [REDACTED]** The commission's research and analysis of this entity indicated SIE/SOE ownership. Accordingly, the commission determined that this entity was a public body.<sup>56</sup>
89. The commission acknowledges that Goomax and Jinxiecheng purchased from one common supplier which, subsequent to SEF 657, was found not to be a public body. The commission also acknowledges that in light of this information, it did not revisit or otherwise reconsider Goomax's receipt of Program 15.
90. The commission notes that Goomax was provided ample opportunity to submit information during the continuation inquiry and could have, in response to the preliminary variable factors assessment and/or SEF 657, provided such information as Jinxiecheng did.
91. Given the relatively low volume of raw material purchased by Goomax from this common supplier, the commission notes that even if it had removed this particular volume of raw materials purchased from Goomax's Program 15 countervailable subsidy calculation, it would not have altered the resultant amount. That is, removing the **[Confidential Information: [REDACTED]** from the attributable benefit would not affect the LTAR subsidy amount, nor would it affect the total subsidy margin for Goomax.
92. Accordingly, the commission submits that even if the ADRP were to accept Goomax's ground of review, the Reviewable Decision is not materially affected and remains correct and preferable.

## Part C: The Commissioner's submissions in respect of Xingfa's ground of review

### *Scope of Xingfa's ground of review*

<sup>55</sup> The period from 1 October 2023 to 30 September 2024.

<sup>56</sup> See 657 – Exporters – Raw Materials Purchases, worksheet “SIE Research”.

## PUBLIC RECORD

93. The Commissioner notes that Xingfa's ground of review is that "The Minister erred in constructing Xingfa's normal values by relying on non-arm's length transactions between related parties".<sup>57</sup>
94. The Commissioner understands that there are two aspects to this ground of review.
95. The first concerns the Commissioner's finding in REP 657 that transactions between PMI and its Malaysian aluminium suppliers were arms length transactions.<sup>58</sup> This is relevant to Xingfa because the "billet premium" component of the "LME + MJP import price to China" benchmark (referred to in this submission as the "Commissioner's benchmark"), which was used to construct Xingfa's normal value under section 269TAC(2)(c), was based on the contracted prices between PMI and its Malaysian aluminium suppliers. Xingfa's ground of review is that the Minister erred by "relying on non-arms length transactions" and hence the Commissioner understands that Xingfa is contending that, contrary to the Commissioner's finding in REP 657, the transactions between PMI and its Malaysian aluminium suppliers were not arms length transactions, or is contending that the Commissioner's further assessment of the arms length nature of those transactions in REP 657 was inadequate to "overturn" the preliminary finding in SEF 657 that the transactions were not arms length.<sup>59</sup>
96. The second is that the Minister erred in constructing Xingfa's normal value "by relying" on the billet premium component of the Commissioner's benchmark, because the billet premium component was based on allegedly non-arms length transactions between PMI and its Malaysian aluminium suppliers, or by relying on the billet premium component of the Commissioner's benchmark where the Commissioner's arms length assessment of those transactions was allegedly inadequate.
97. The Commissioner therefore understands that Xingfa's ground of review depends on the alleged incorrectness or inadequacies of the Commissioner's arms length assessment of the transactions between PMI and its Malaysian suppliers. Therefore, if the Review Panel finds that the Commissioner's finding that PMI's transactions with its Malaysian suppliers were arms length was not incorrect or inadequate, it should not find that the Minister erred in constructing Xingfa's normal values using the Commissioner's benchmark.
98. As detailed below at paragraphs 123–134, the Commissioner considers that Xingfa's application contains arguments against the use of the Commissioner's benchmark which go beyond the ground of review accepted under section 269ZZG(5)(c) by the Review Panel. These arguments go beyond the ground of review that the Commissioner's arms length assessment of PMI's transactions with its Malaysian aluminium suppliers was

---

<sup>57</sup> See also Xingfa Application for Review, p.9.

<sup>58</sup> See REP 657, pp. 73–4 [6.5.3] and Confidential Attachment 44 to REP 657, "PMI arms length assessment of raw material purchases from related suppliers".

<sup>59</sup> See Xingfa's Application for Review, p.10: "It appears that the Commission's preliminary and final assessments, were limited to merely checking whether the contracted prices between the related parties were accurately [sic] reflected in PMI's accounts. Despite the entities within the PMI group being under common control, and in a legal sense not at arms length, the Commission made no apparent attempt to assess and determine whether the parties dealt with each other as arms length parties would, and whether the agreed contracted prices and quotes, were the result of real bargaining. This reliance on PMI's internal pricing without any assessment as to whether real bargaining was taking place between the parties, is considered grounds for submitting that the billet premium benchmark included in Xingfa's constructed normal values was inadequate, and not correct or preferable."

incorrect or inadequate. To the extent that arguments go beyond the ground of review, the Commissioner submits that the Review Panel is prevented by section 269ZZG(5)(c) from conducting the review in relation to them. The Commissioner considers that the scope of review is confined to the grounds of review set out in the section 269ZZI notice and the Applicants' contentions which underpin those grounds.<sup>60</sup>

### **Section 1: Legal framework: Relationship of arms length assessment to construction of normal value**

#### Definition of “arms length transaction” under the Act

99. As observed by the Full Court of the Federal Court in *Wilson Transformer Co Pty Ltd v Anti-Dumping Review Panel* [2022] FCAFC 4 (**Wilson**), “*there is no statutory definition of that phrase [‘arms length transaction’] hence it is to be given its ordinary meaning. There is, however, a provision in the form of s 269TAA which provides that, for the purposes of Pt XVB, a purchase or sale of goods shall not be treated as an arms length transaction in three specified circumstances.*”<sup>61</sup>
100. Section 269TAA(1) of the Act details the three particular circumstances (paragraphs (a)–(c)). If one of these circumstances exists, then, “[*f*or the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction].” In SEF 657, the Commissioner made a preliminary finding that transactions between PMI and its Malaysian aluminium suppliers were not arms length because of the circumstance detailed in paragraph (b): “*the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller.*”<sup>62</sup>

#### Role of arms length assessment under the Act

101. Certain provisions of Part XVB of the Act use the phrase “arms length transaction”, and hence require an arms length assessment including consideration of section 269TAA. These sections include provisions on determination of the export price under section 269TAB(1)(a) and (b) and determination of normal value under section 269TAC(1).
102. Xingfa’s ground of review concerns the use of allegedly non-arms length transactions as a basis for a benchmark used in Xingfa’s constructed normal value. The commission notes that there is no explicit requirement under the Act that transactions which are used to inform a benchmark be arms length transactions.
103. In continuation inquiry 657, the Commissioner assessed whether PMI’s transactions with its Malaysian aluminium suppliers were arms length transactions. This was for the purpose of assessing whether PMI’s recorded costs reasonably reflected competitive market costs under regulation 43(2)(b)(ii) of the *Customs (International Obligations) Regulation 2015* (Cth) (the **Regulation**), such that the Minister might be required by

---

<sup>60</sup> Wigney J in *Yara AB v Minister for Industry, Science and Technology* [2022] FCA 847.

<sup>61</sup> *Wilson Transformer Co Pty Ltd v Anti-Dumping Review Panel* [2022] FCAFC 4, [10] (Griffiths and O’Callaghan JJ) (**Wilson**) (emphasis in original).

<sup>62</sup> SEF 657, pp. 63–4 [6.5.3].

regulation 43(2) to use the information set out in PMI's records to work out the cost of production or manufacture of like goods in the country of export.<sup>63</sup>

Use of the Commissioner's benchmark in Xingfa's constructed normal value

104. In REP 657, the Commissioner determined a normal value for Xingfa under section 269TAC(2)(c) (a “constructed normal value”), being the sum of “such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export” under section 269TAC(2)(c)(i) and “on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale” under section 269TAC(2)(c)(ii).
105. This method of determining a constructed normal value under section 269TAC(2)(c) gives effect to Australia's international obligations regarding the method prescribed by article 2.2 of the WTO Anti-Dumping Agreement.<sup>64</sup>
106. Amounts determined under section 269TAC(2)(c)(i) must be worked out in such a manner, and taking account of such factors, as the regulations provide for the purposes of section 269TAAD(4)(a).<sup>65</sup> Under section 43(2) of the Regulation if an exporter keeps records relating to the like goods which are in accordance with the GAAP in the country of export, and which reasonably reflect competitive market costs associated with the production or manufacture of the like goods, then the Minister must work out the amount of the cost of production or manufacture of like goods in the country of export using the information set out in the records.
107. In addition to the requirement under section 43(2) of the Regulation, the first sentence of article 2.2.1.1 of the WTO Anti-Dumping Agreement provides that: “*For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and*

---

<sup>63</sup> See REP 657, p.73 [6.5.3]: “*The commission preliminarily found in SEF 657 that PMI's records in relation to its purchase of Malaysian origin aluminium (ingot and billet) from related entities were not arms length transactions, and therefore did not reasonably reflect competitive market costs.*” For context, section 43(2)(b)(ii) of the Regulation does not specify that assessment of competitive market costs requires an assessment of whether costs were incurred in arms length transactions. However, the commission's *Dumping and Subsidy Manual* (December 2021) (the **Manual**) states that where an exporter purchases inputs from a related party, the commission will examine these inputs “*more carefully*” for the purposes of a competitive market costs assessment (pp. 36-7 [9.3]). The Commissioner considers that when inputs are purchased in circumstances such as those set out in section 269TAA(1)(b), this may be a reason to find that the recorded costs of such inputs do not reflect competitive market costs. The Commissioner notes that Xingfa does not challenge the Commissioner's competitive market costs assessment of PMI's costs in its grounds of review.

<sup>64</sup> WTO Anti-Dumping Agreement article 2.2: “*When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.*”

(citations omitted, emphasis added)

<sup>65</sup> By operation of section 269TAC(5A).

## PUBLIC RECORD

*reasonably reflect the cost associated with the production and sale of the product under consideration.”*

108. The WTO Appellate Body and dispute panels have confirmed that the word “*normally*” in article 2.2.1.1 permits there may be circumstances where investigating authorities are not required to base the calculation of costs on the records kept by the exporter and producer, even when the records are in accordance with the GAAP of the exporting country and reasonably reflect the cost associated with the production and sale of the product under consideration.<sup>66</sup>
109. Neither the Act, the Regulation, nor the WTO Anti-Dumping Agreement provide explicit rules as to the information which may be used in such circumstances where an exporters’ records are not used. The Commissioner considers that such information as is used must be apt to determine “*the cost of production or manufacture of the goods in the country of export*” as per section 269TAC(2)(c)(i).<sup>67</sup>
110. Therefore, there is no explicit requirement in the Act or the WTO Anti-Dumping Agreement that information which is used as the basis to determine a constructed normal value in lieu of information in the exporter’s records be information that is derived from arms length transactions. The Commissioner does not dispute, however, that whether or not the information is derived from arms length transactions may go towards the aptness of information to determine the cost of production or manufacture of the goods in the country of export.
111. The Commissioner does not understand Xingfa’s application for review to concern the decision to determine Xingfa’s normal value under section 269TAC(2)(c) of the Act or the findings that Xingfa’s recorded aluminium costs did not reasonably reflect competitive market costs under section 43(2)(b)(ii) of the Regulation or that there were circumstances which supported not using Xingfa’s recorded costs for aluminium despite the records being in accordance with the GAAP of China and reasonably reflecting the costs associated with production article 2.2.1.1 of the WTO Anti-Dumping Agreement.<sup>68</sup> The Commissioner understands Xingfa’s application to concern the information which should have been used to construct Xingfa’s normal value (those findings under section 43(2)(b)(ii) of the Regulation and article 2.2.1.1 of the WTO Anti-Dumping Agreement having been made).

---

<sup>66</sup> Appellate Body Report, *Ukraine — Ammonium Nitrate*, WT/DS493/AB/R (12 September 2019) [6.87]; Panel Report, *Australia — A4 Copy Paper*, WT/DS529/R (4 December 2019) [7.117]; Panel Report, *Australia — Certain Products from China*, WT/DS603/R (26 March 2024) [7.56].

<sup>67</sup> “[T]he cost of production in the country of origin” under article 2.2 of the WTO Anti-Dumping Agreement.

<sup>68</sup> REP 657, p. 192 [C4.5]: “*The Commissioner is therefore satisfied that the aluminium cost recorded in Xingfa Aluminium’s records do not reasonably reflect competitive market costs associated with the production or manufacture of the goods. Accordingly, the Commissioner finds that the criterion in section 43(2)(b)(ii) of the Regulation is **not** satisfied*” and p. 193 [C4.5]: “*The commission considers that Xingfa Aluminium’s records were kept in accordance with the GAAP of China. The commission is also satisfied that Xingfa Aluminium’s records reasonably reflect the costs associated with the production of the goods, because Xingfa Aluminium’s recorded costs reflect the costs actually incurred by Xingfa Aluminium. Accordingly, under the ADA [(WTO Anti-Dumping Agreement)], costs shall “normally” be calculated on the basis of Xingfa Aluminium’s records. However, in this instance the situation is not “normal” such that this presumption should apply. ...*”

## **Section 2: The Commissioner's benchmark and how it was applied to Xingfa**

112. Because of these findings, the Commissioner used the Commissioner's benchmark instead in Xingfa's constructed normal value, rather than Xingfa's recorded costs for purchasing aluminium ingot and billet. The Commissioner's benchmark is referred to in REP 657 as "the "LME + MJP import price to China". As described in the report, the components of this benchmark were: the London Metal Exchange (**LME**) price for ingot (monthly, cash terms); the regional premium for ingot, represented by the Major Japanese Ports (**MJP**) premium; inland transport costs relevant to each exporter; and a "billet premium". The billet premium is the additional cost of billet as opposed to ingot and was based on the premium quoted by PMI's related Malaysian supplier of billet into China (the Commissioner's benchmark also included a currency conversion of USD to RMB).<sup>69</sup>
113. Aluminium billet is an essential input material for aluminium extrusions. Aluminium billet is itself produced from aluminium ingot. Some manufacturers of aluminium extrusions, including Xingfa, have the capability to produce their own billet from purchased ingot. Such manufacturers therefore can either purchase billet to produce aluminium extrusions, or they can purchase ingot, convert the ingot to billet, and then produce aluminium extrusions from the billet. If producers purchase billet, then the cost of purchasing billet will be a cost of production of aluminium extrusions. The difference between the cost of billet on the market versus the cost of ingot on the market is referred to as the "billet premium". If producers purchase ingot and convert it themselves to billet, then the costs of the ingot and the costs of conversion will form part of the cost of production of aluminium extrusions.
114. In response to Xingfa's submission dated 11 August 2025,<sup>70</sup> which stated that the billet premium applied to Xingfa should not exceed Xingfa's own costs of self-producing billet, the Commissioner adjusted the benchmark as applied to Xingfa to reflect a weighted average of Xingfa's self-produced billet (monthly billet conversion costs incurred by Xingfa plus the ingot benchmark for the same month) and the monthly billet premium component of the LME + MJP import price to China benchmark used by the commission.<sup>71</sup>

### ***The Commissioner's assessment that PMI's transactions with its Malaysian aluminium suppliers were arms length was not incorrect or inadequate***

115. In its application for review, Xingfa alleges that the Commissioner's assessment that PMI's transactions with its Malaysian aluminium suppliers were arms length was inadequate and implicitly, therefore, resulted in an incorrect finding. In particular, it alleges that the commission's preliminary and final assessments "were limited to merely checking whether the contracted prices between the related parties were accurately [sic] reflected in PMI's accounts" and that the commission did not attempt to assess "whether the parties dealt with each other as arms length parties would" or whether the prices "were the result of real bargaining".<sup>72</sup>

---

<sup>69</sup> See REP 657, p. 176 "Table 31: Equivalent LME + MJP import price to China components".

<sup>70</sup> EPR 657, Document no. 44.

<sup>71</sup> See REP 657, p.179 [C4.1.2].

<sup>72</sup> Xingfa Application for Review, p. 10.

## PUBLIC RECORD

116. The Commissioner notes that Xingfa did not raise this objection during continuation inquiry 657 although it had the opportunity to do so. In SEF 657, as discussed below, the Commissioner made a preliminary finding that the transactions between PMI and its Malaysian suppliers were not arms length; and the Commissioner used the billet premium based on these transactions in the LME + MJP import price to China benchmark.<sup>73</sup> However, although Xingfa's submission dated 11 August 2025 raised several issues regarding the application of the benchmark, it did not object to the use of a billet premium based on PMI's transactions on the basis that those transactions were not arms length.

117. The commission's initial preliminary arms length assessment of PMI's aluminium purchases is recorded in a file note of the preliminary variable factors assessment for PMI, published on 16 July 2025 (the **PMI PVFA**). This stated:<sup>74</sup>

*The commission analysed the price paid by PMI to the contract price (ingot and billet) between PMI and its [sic] related-party supplier in Malaysia. The commission found that the price paid was materially different to the contract or agreed price that PMI submitted in its REQ and was observed on sample contracts.*

*The commission considers that the relationship between related parties PMI's related parties, selling and PMI [sic] may have influenced the price of raw material purchases.*

118. In SEF 657, the Commissioner made a preliminary finding that that PMI's recorded price of aluminium purchased from related entities “*appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller (section 269TAA(1)(b). In other words, PMI's purchase of aluminium from related parties in Malaysia [sic] is not arms length and the price paid is below the contract LME + MJP import price to China established between the parties.*”<sup>75</sup>

119. In PMI's submission dated 18 July 2025,<sup>76</sup> PMI referred to the commission's conclusion in the PMI PVFA. It submitted that there were no inconsistencies between contract prices and amounts actually paid for matters such as inland freight, and provided confidential documents in support of this submission, including sample purchases from its Malaysian suppliers and its ledgers metal purchases from Malaysian suppliers.

120. In REP 657, the Commissioner noted that the preliminary assessment in SEF 657 was “*based on an initial assessment of PMI's purchases of aluminium from related parties in Malaysia which indicated that the price paid was below the contracted LME + MJP import price to China established between the parties*”<sup>77</sup>

121. REP 657 explained that, in light of the further information provided in PMI's submission, the commission had re-examined the preliminary finding and was “*now satisfied that the prices paid are arms length prices and were consistent with the contracted prices*”.<sup>78</sup> The

---

<sup>73</sup> See SEF 657, p. 148 “Table 31: Contract LME + MJP import price to China components”.

<sup>74</sup> EPR 657, Document no. 25, p. 6 [1.2.4].

<sup>75</sup> SEF 657, pp. 63–4 [6.5.3].

<sup>76</sup> EPR 657, Document no. 34.

<sup>77</sup> REP 657, p. 73 [6.5.3].

<sup>78</sup> Ibid.

## PUBLIC RECORD

analysis of PMI's purchases of raw material from its related suppliers in Malaysia was contained in Confidential Attachment 44 to REP 657.

122. Confidential Attachment 44<sup>79</sup> details reviews conducted following SEF 657 and PMI's submission. These included: reconciliation of invoice price with raw material purchase ledger; comparison of LME, MJP and other premiums in contracts and invoices, with publicly published data from [www.Westmetall.com](http://www.Westmetall.com); adjustment to the calculated commission benchmark by deducting [Confidential information: ██████████]  
██████████] to enable direct comparison with invoice [Confidential information: ██████████], and; comparison of invoice price with ADC calculated benchmark (adjusted) for the same period. Confidential Attachment 44 details that the analysis indicated that: PMI purchased raw materials from its related suppliers at prices and premiums that reflected contract prices; contract prices are based on LME that reflected published prices; and large variances between weighted average raw material prices versus the commission benchmark was likely due to variances in date information in PMI's data; variances may have also resulted from the benchmark being based on [Confidential information: ██████████] whilst some contracts set out LME prices on a specific date or week in the month.
123. The Commissioner submits that Confidential Attachment 44 to REP 657 demonstrates that the commission's arms length assessment of PMI's Malaysian origin aluminium purchases from related entities was detailed and supported the different conclusion in REP 657 to the preliminary finding in SEF 657. The commission undertook comprehensive assessment of all information available following the SEF; the commission's assessment was not inadequate as alleged by Xingfa in its application for review. In particular, while Xingfa alleges that the Commissioner's assessment consisted only of checking whether PMI's contracted prices were accurately reflected in its accounts, Confidential Attachment 44 demonstrates that the arms length assessment involved comparing PMI's contracted prices with publicly available market prices.

### ***Using the billet premium component of the Commissioner's benchmark, based on PMI's transactions with its Malaysian aluminium suppliers, to construct Xingfa's normal value was not erroneous***

124. As noted above at paragraph 95, the Commissioner understands that Xingfa's grounds of review depend on its allegation that the Commissioner's arms length assessment of PMI's transactions with its Malaysian aluminium suppliers was inadequate and incorrect. The Commissioner submits that the Review Panel is prevented by section 269ZZG(5)(c) from considering whether the Commissioner's determination of Xingfa's normal value was erroneous for other reasons. Therefore, if the Review Panel finds that Commissioner's assessment that PMI's transactions with its Malaysian aluminium suppliers was correct and preferable, the Commissioner submits that the Review Panel must find that the Commissioner's determination of Xingfa's constructed normal value was the correct and preferable decision.

### **Other arguments in Xingfa's application for review**

125. The Commissioner notes that Xingfa's application contains arguments against the use of the billet premium in the Commissioner's benchmark which, in the Commissioner's

---

<sup>79</sup> REP 657 - Confidential attachment 44 - PMI - arms length assmt of raw mat purch.

view, do not directly relate to the arms length assessment of those aluminium purchases. These include:

- a. The use of a billet premium derived from PMI's aluminium purchases from related parties in Malaysia constitutes using an external benchmark to determine the cost of production in China, without proper justification or adjustment to Chinese-specific factors, in contravention of section 269TAC(2)(c) of the Act and article 2.2 of the WTO Anti-Dumping Agreement.<sup>80</sup>
- b. It was not appropriate to use a billet premium in the benchmark which is greater than Xingfa's own conversion costs of self-produced billet, because Xingfa would opt to self-produce billet if the prevailing billet premium (that is, the extra cost of purchasing billet compared to ingot) was higher than Xingfa's conversion costs.<sup>81</sup>

126. To the extent that these reasons are separate from the argument that the Commissioner erred in constructing Xingfa's constructed normal value by relying on non-arms length transactions between related parties, the Commissioner contends that they are not the ground of review that has been accepted by the Review Panel under section 269ZZG(5)(c) and therefore they are "other grounds" and the Review Panel must not conduct the review in relation to them.<sup>82</sup>

127. Nevertheless, in the event that the Review Panel does not accept the Commissioner's submissions regarding the application of section 269ZZG(5)(c) to Xingfa's ground for review, the Commissioner makes the following submissions regarding these other arguments.

The billet premium based on PMI's transactions with its Malaysian aluminium suppliers is a cost of production of aluminium extrusions in China

128. REP 657 explains that the billet premium based on PMI's transactions with its Malaysian aluminium suppliers was chosen as it is a cost of aluminium billet in China:

*"The commission has used the billet premium quoted by PMI's related Malaysian supplier of billet into China. The commission considers that Malaysian billet premium costs are relevant because they are an identified cost component,*

---

<sup>80</sup> See, e.g., Xingfa's Application for Review, p. 12: "*The Commission has erred by including internal transfer pricing quotes between PMI and its related Malaysian entities, without verification against independent market data, or adjustment to ensure they reflect Chinese-specific factors like labor, materials, and profit to ensure representation of costs in China. The Commission's decision to include costs from a company in a third country, again contravenes its obligations under subsection 269TAC(2)(b), and Article 2.2 of the ADA [(WTO Anti-Dumping Agreement)]. ...*" The Commissioner notes that section 269TAC(2)(b) was not applied to the determination of Xingfa's normal value in continuation inquiry 657; Xingfa's normal value was determined under section 269TAC(2)(c) because of the situation in the domestic markets for the goods in China, under section 269TAC(2)(a)(ii). The Commissioner therefore presumes that the reference to "section 269TAC(2)(b)" in the quoted passage of Xingfa's application should be read as "section 269TAC(2)(c)".

<sup>81</sup> See, e.g., Xingfa's Application for Review, p. 12: "...*Xingfa contends it is not appropriate to include a billet premium in the benchmark that is greater than Xingfa's actual incurred conversion cost of self-producing billet. Xingfa has the capability and capacity to self-produce billet using purchases of aluminium ingot. Whether it decides to self-produce billet or simply purchase billet is determined by the prevailing domestic billet premium relative to Xingfa's conversion cost of processing ingot into billet.*"

<sup>82</sup> See *Yara AB v Minister for Industry, Science and Technology* [2022] FCA 847, [27] (Wigney J).

## PUBLIC RECORD

*Malaysia was the largest importer of primary and secondary aluminium to China in 2024, and they are comparable in manufacturing.*<sup>83</sup>

129. Although the billet premium based on PMI's transactions with its Malaysian aluminium suppliers reflects a cost of producing aluminium billet in Malaysia, it also represents a cost of producing aluminium extrusions in China — a cost paid by PMI as a Chinese producer of aluminium extrusions.
130. The Commissioner considered that the Commissioner's benchmark was apt to yield a cost of production of aluminium extrusions in China, without the distortions in which led to the finding of a particular market situation and the decision to determine Xingfa's costs under section 269TAC(2)(c), in part because components of the benchmark, including the billet premium, were prices that are actually used by some Chinese aluminium extrusions producers. As stated in REP 657:<sup>84</sup>

*The commission considers that the equivalent LME + MJP import price to China is indicative of a market price of aluminium ingot and billet unaffected by the not normal and ordinary circumstances of the GOC's intervention in the domestic market in the aluminium market in China. ... The Commissioner considers that using the equivalent LME + MJP import price to China for primary and secondary aluminium results in a suitable proxy for primary aluminium given its close relationship to the prices of imports of aluminium in China, which indicates that it is in fact a price that is paid by Chinese manufacturers. The commission considers this to be apt to yielding the cost of producing primary aluminium in China.*

131. The Commissioner further notes that section [C5.3] of Appendix C of REP 657 detailed consideration of whether any adaptations or adjustments to the Commissioner's benchmark as a whole should be made and concluded that the available evidence did not support making any adjustments. It explained that different components of the Commissioner's benchmark were prices in China or were comparable to prices in China, including the billet premium: *"the billet premium amount was compared to the Chinese billet premium information made available to the commission from the exporters and found to be comparable".*<sup>85</sup>

### It would not be preferable to only use Xingfa's recorded costs of conversion

132. In its submission dated 11 August 2025, Xingfa submitted that it was not appropriate to include a billet premium benchmark that is greater than its actual incurred conversion costs, given it had the capacity to self-produce aluminium billet and would opt to self-produce billet rather than purchase billet when the prevailing billet premium exceeded the costs of self-production.<sup>86</sup> As noted above, Xingfa makes the same argument in its application for review.
133. The method proposed by Xingfa in Confidential Attachment D to its application for review is to use the components of the Commissioner's benchmark for the cost of ingot, however to only use a billet premium based on Xingfa's recorded conversion costs of self-producing aluminium billet from ingot, rather than the Commissioner's billet premium, which consisted of an average of the billet premium component of the

<sup>83</sup> REP 657, p. 176 "Table 31: Equivalent LME + MJP import price to China components".

<sup>84</sup> REP 657, p. 197 [C5.2].

<sup>85</sup> See REP 657, p. 198 [C5.4] and the analysis at Confidential Attachment 36 to REP 657, "Aluminium benchmark", worksheet "Billet processing premium".

<sup>86</sup> EPR 657, Document no. 44, pp. 6–7.

Commissioner's benchmark and Xingfa's recorded conversion costs, weighted according to how much aluminium billet Xingfa purchased versus self-produced each month.

134. Xingfa's submissions to this effect were considered by the Commissioner in REP 657.<sup>87</sup> To decide whether it was appropriate to only use Xingfa's recorded conversion costs, the Commissioner assessed whether Xingfa's records demonstrated that it would opt to self-produce aluminium when the prevailing billet premium price was higher than its costs of self-production. The Commissioner's analysis found that:<sup>88</sup>
  - *In no month did Xingfa Aluminium self-produce all its own billet requirements, with billet being purchased in each month of the POI [period of inquiry].*
  - *Examination of Xingfa Aluminium's purchasing prices and costs of producing the most common grade of aluminium billet, identified that where it was cheaper to self-produce this grade of billet, Xingfa did not consistently produce more billet than it purchased.*
135. The Commissioner's analysis demonstrated that Xingfa purchased billet whether the prevailing billet premium was higher or lower than Xingfa's billet conversion costs.
136. For this reason, the Commissioner considers that it would not be appropriate to only use Xingfa's recorded conversion costs as the billet premium. The Commissioner considers that the approach taken in REP 657, of using a weighted average of Xingfa's recorded conversion costs and the billet premium component of the Commissioner's benchmark, is preferable.

## Part D – The legal standard under section 269ZHF(2)

### Section 1: Legislative context and evidentiary threshold under section 269ZHF(2)

137. The commission makes the following submissions in light of the correct legal standard which is to be applied in a continuation inquiry with respect to section 269ZHF(2) of the Act.
138. Division 6A of the Act sets out the procedures the Commissioner must follow when considering an application for measures to continue. Consistent with Division 6A and as set out in REP 657, the Commissioner applied the legislative test in section 269ZHF(2) in making the recommendation to the Minister to continue measures:

*"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 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".<sup>89</sup>*

---

<sup>87</sup> See REP 657, p. 179 [C4.1.2].

<sup>88</sup> REP 657, p. 179 [C4.1.2] (citation omitted). For detail of the analysis, see Confidential Attachment 40 to REP 657, "Xingfa Aluminium – Cost records – Self production analysis" spreadsheet "Analysis - purchase or prod cost".

<sup>89</sup> REP 657, p. 8.

139. In accordance with the task required under section 269ZHF(2), the Commissioner must make findings of fact as to whether there is a relationship between the expiry of measures and the continuation or recurrence of dumping and injury, such that the former would be likely to lead to the latter. Intended, in part, to implement Article 11.3 of the WTO Anti-Dumping Agreement, section 269ZHF(2) does not provide for or mandate any particular methodology for undertaking the assessment as to whether measures should be continued. However, consistent with WTO decisions,<sup>90</sup> the Commissioner must arrive at a reasoned conclusion based on positive evidence.
140. Having regard to the evidentiary threshold as articulated in section 269ZHF(2) of the Act, the Commissioner ought not be reasonably satisfied that measures should be continued solely on the assumption that removal of the measures would be likely to result in a recurrence of dumping and injury.
141. The correct legal standard which must be applied in a continuation inquiry involves an assessment of 'likely' under section 269ZHF(2). This requires the Commissioner to consider whether the expiry of the measures would more probably than not lead to the continuation or recurrence of dumping and material injury.<sup>91</sup> Additionally, the likelihood assessment under section 269ZHF(2) requires a reasoned and adequate explanation with a positive factual basis.
142. The Review Panel has previously observed that any determination in relation to the measures must rest on a sufficient factual basis allowing the Commissioner to draw reasoned and adequate explanations and conclusions for the likelihood assessment under section 269ZHF(2).<sup>92</sup>

## **Section 2: Reviewable Decision was the correct and preferable decision**

143. Throughout continuation inquiry 657, the commission conducted its inquiry consistent with the statutory procedures and tests of the Act.
144. During the inquiry, the commission engaged with Australian industry, importers and exporters. The commission made relevant findings based on the information before it including information provided in the REQs and RIQs. Given the condensed timeframe in which to prepare a SEF, final report and recommendations, the commission undertook off site verification activities to assess the information put to it by importers and exporters. After conducting this assessment, the commission utilised the information it found to be reliable and sufficient. Following the publication of SEF 657,

---

<sup>90</sup> See, for example, Appellate Body Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*, WTO Doc WT/DS268/AB/R (17 December 2004) [180], [234] ('US - Oil Country Tubular Goods (Argentina)'). Also see Appellate Body Report, *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, WTO Doc WT/DS244/AB/R (9 January 2004) [111]-[115] ('US – Corrosion-Resistant Steel Sunset Review'), including the citation with approval of the panel report, para. 7.271.

<sup>91</sup> *Siam Polyethylene (No. 2)* [48]

<sup>92</sup> ADRP Report No. 114, *Quenched and Tempered Steel Plate exported from Finland, Japan and Sweden*, (14 February 2020), paras. 28, 45; ADRP Report No. 166, *Steel Reinforcing Bar exported from the Hellenic Republic, the Republic of Indonesia, the Kingdom of Spain (by Nervacero S.A.), Taiwan (by Power Steel Co. Ltd) and the Kingdom of Thailand* (8 March 2024) para. 152; See also, *Siam Polyethylene (No. 2)* (n 84) [60] citing *US - Oil Country Tubular Goods (Argentina)* (n 83) [284], [180].

## **PUBLIC RECORD**

the commission had active regard to additional and further information provided by interested parties.

145. The evidence before the commission resulted in the Commissioner making positive findings of fact in respect of the legislative obligation outlined in section 269ZHF(2) of the Act. In discharging this obligation, the Commissioner made an assessment as to the likelihood of future dumping and material injury should the measures expire. In making the recommendation to the Minister, the commission's assessment of the evidence and factual findings was fair and grounded in positive and contemporary evidence.
146. The Commissioner recommends the panel affirm the Reviewable Decision as the correct and preferable decision.