



Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 19 February 2020 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application to the ADRP for review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

¹ By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

² As defined in section 269ZX *Customs Act 1901*.

Contact

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION**1. Applicants' details**

First Applicant's name: PanAsia Aluminium Pty Ltd (ABN: 30 164 977 557)
Address: PO Box 1838, Macquarie Centre, North Ryde NSW 2113, Australia
Type of entity (trade union, corporation, government etc.): Corporation

Second Applicant's name: PanAsia Aluminium (China) Ltd
Address: Tangerine Garden, Guangshan Road, Licheng Town, Zengcheng City, Guangdong Province, 511300, People's Republic of China
Type of entity (trade union, corporation, government etc.): Corporation

Third Applicant's name: Opal (Macao Commercial Offshore) Limited
Address: Base M, 13/F., The Macau Square, Avenida do Infante D. Henrique No. 43-53A, Macau
Type of entity (trade union, corporation, government etc.): Corporation

Fourth Applicant's name: Panasialum Holdings Company Limited
Address: Cricket Square, Hutchins Drive, P.O. Box 2681, Grand Cayman, KY1-1111, Cayman Islands
Type of entity (trade union, corporation, government etc.): Corporation

2. Contact person for applicants

Full name: Martin Chen
Position: General Manager, PanAsia Aluminium Pty Ltd
Email address: [REDACTED]
Telephone number: [REDACTED]

3. Set out the basis on which the applicant considers it is an interested party:

<p>Pursuant to Section 269ZZC of the Customs Act 1901 (the Act), an "interested party" in relation to a "reviewable decision" may apply for a review of that decision. For the reasons set out in Part B below, the decision under review is a "reviewable decision".</p> <p>Paragraph (c)(i) of the definition of "interested party" in s 269ZX defines a person who "is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the reviewable decision" to be an "interested party" in relation to that decision for the purposes of Part XVB, div 9 of the Act.</p> <p>Furthermore, paragraph (d)(i) of the definition of "interested party" in s 269ZX also defines a person "who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the reviewable decision" to be an "interested party" in relation to that decision for the purposes of Part XVB, div 9 of the Act.</p> <p>As set out at 2.4.3 of Report No. 543 (REP 543), the First Applicant:</p> <ul style="list-style-type: none"> was identified by the Anti-Dumping Commission (ADC) as an importer that had imported the goods the subject of the reviewable decision during the inquiry period;
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- was one of the 9 importers who were forwarded a copy of the importer questionnaire by the ADC; and
- was one of the two importers who provided a response to that questionnaire, which was later subject to verification.

Subject to economic conditions, the impact of the measures and any other unforeseen business risks, the Applicants intend to continue importing and exporting the goods the subject of the reviewable decision during the period in which the measures will continue in force.

Accordingly, the First Applicant is and is likely to be directly concerned with the importation into Australia of the goods the subject of the reviewable decision and is thus an 'interested party' for the purposes of this Application within paragraph (c)(i) of the definition of that term in s 269ZZC of the Act.

The Second Applicant is the "manufacturer" of the goods which have been the subject of the measures. As found by the ADC (see REP 543 at 6.9.2), the Second Applicant "knowingly placed the goods in the hands of a related trader...for delivery to Australia". The First Applicant is the Second Applicant's sole Australian customer for the goods the subject of the reviewable decision.

Accordingly, the Second Applicant is and is likely to be directly concerned both with the manufacture of and exportation into Australia of the goods the subject of the reviewable decision and is thus an 'interested party' for the purposes of this Application within paragraphs (c)(i) and (d)(i) of the definition of that term in s 269ZZC of the Act.

The Third Applicant is the 'related trader' referred to by the ADC in REP 543 at 6.9.2 who is named on the commercial invoices as the supplier of the goods, is the consignor on the bill of lading, and who arranges and pays for inland transport, port handling charges, ocean freight and marine freight in the course of the export of the goods into Australia.

Accordingly, the Third Applicant is and is likely to be directly concerned with the importation and exportation into Australia of the goods the subject of the reviewable decision and is thus an 'interested party' for the purposes of this Application within paragraphs (c)(i) of the definition of that term in s 269ZZC of the Act.

The Fourth Applicant is the ultimate holding company and administrator of the corporate group (the PanAsia Group) of which the First to Third Applicants form part (i.e. the First to Third Applicants are subsidiaries of the Fourth Applicant).

Accordingly, the Fourth Applicant is and is likely to be directly concerned with the manufacture of, importation and exportation into Australia of the goods the subject of the reviewable decision and is thus an 'interested party' for the purposes of this Application within paragraphs (c)(i) and (d)(i) of the definition of that term in s 269ZZC of the Act.

4. Is the applicant represented?

Yes ☒ No ☐

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES**5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:**

☐ Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐ Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐ Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐ Subsection 269TK(1) or (2) – decision of the Minister to publish a third country countervailing duty notice

☐ Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐ Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐ Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☒ Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed**.

6. Provide a full description of the goods which were the subject of the reviewable decision:

The goods the subject of the reviewable decision (the **Goods**) are described in the ADC's Report No. 543 as follows (see 3.3.1):

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

7. Provide the tariff classifications/statistical codes of the imported goods:

As set out at 3.3.2 of REP 543, the Goods are generally, but not exclusively, classified to the following tariff subheadings of Schedule 3 to the *Customs Tariff Act 1995* (Cth):

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

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: ADN 2020/103 (dated 12 October 2020)
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Date ADN was published: 15 October 2020

****Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application****

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☒

9. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

See attachment 2

10. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

See attachment 2

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

See attachment 2

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

Do not answer question 11 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

See attachment 2

13. Please list all attachments provided in support of this application:

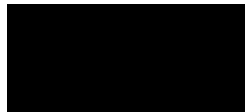
Attachment 1: Anti-Dumping Notice No. 2020/103: *Findings of the Continuation Inquiry No. 543 into Anti-Dumping Measures* (published 15 October 2020)
Attachment 2: PanAsia Australia ADRP Application - Grounds & Supporting Submission - **CONFIDENTIAL**
Attachment 3: PanAsia Australia ADRP Application - Grounds & Supporting Submission - **NON-CONFIDENTIAL**
Attachment 4: Anti-Dumping Commission, Final Report No. 543: *Inquiry Into the Continuation of Anti-Dumping and Countervailing Measures Applying to Aluminium Extrusions Exported to Australia from The People's Republic Of China* (published 15 October 2020)

PART D: DECLARATION

The applicant/the applicants' authorised representative ~~[delete-inapplicable]~~ declares that:

- The applicants understand that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicants understand that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicants (or the applicants' representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicants understand that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:



Name: Ziad (Zac) Chami

Position: Partner

Organisation: Clayton Utz Lawyers

Date: 12/11/2020

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

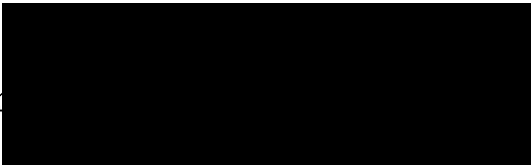
Provide details of the applicant's authorised representative:

Full name of representative: Ziad (Zac) Chami
Organisation: Clayton Utz Lawyers
Address: 1 Bligh Street, Sydney NSW 2000
Email address: <u>zchami@claytonutz.com</u>
Telephone number: (02) 9353 4744 / [REDACTED]

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature: 

(Applicant's authorised officer)

Name: **Martin Chen**

Position: **Director**

Organisation: **PanAsia Aluminium Pty Limited**

Date: **6 / 11 / 2020**

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative: Ziad (Zac) Chami
Organisation: Clayton Utz Lawyers
Address: 1 Bligh Street, Sydney NSW 2000
Email address: <u>zchami@claytonutz.com</u>
Telephone number: (02) 9353 4744 / [REDACTED]

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature: [REDACTED]

(Applicant's authorised officer)

Name: Xu Yingdi

Position: Director

Organisation: PanAsia Aluminium (China) Ltd.

Date: 9 / 11 / 2020

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative: Ziad (Zac) Chami
Organisation: Clayton Utz Lawyers
Address: 1 Bligh Street, Sydney NSW 2000
Email address: <u>zchami@claytonutz.com</u>
Telephone number: (02) 9353 4744 / [REDACTED]

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:



(Applicant's authorised officer)

Name: Li Jiewen

Position: Director

Organisation: Opal (Macao Commercial Offshore) Ltd.

Date: 9 / 11 / 2020

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative: Ziad (Zac) Chami
Organisation: Clayton Utz Lawyers
Address: 1 Bligh Street, Sydney NSW 2000
Email address: <u>zchami@claytonutz.com</u>
Telephone number: (02) 9353 4744 / [REDACTED]

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature: [REDACTED]

(Applicant's authorised officer)

Name: Li Jiewen

Position: CEO & Executive Director

Organisation: PanAsialum Holdings Company Limited

Date: 6 / 11 / 2020



ANTI-DUMPING NOTICE NO. 2020/103

Customs Act 1901 – Part XVB

Aluminium Extrusions

Exported to Australia from the People's Republic of China

Findings of the Continuation Inquiry No. 543 into Anti-Dumping Measures

Public Notice under section 269ZHG(1) of the Customs Act 1901 and sections 8(5), 8(5BA), 10(3B), and 10(3D) of the Customs Tariff (Anti-Dumping) Act 1975

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an inquiry, which commenced on 13 February 2020, into whether the continuation of the anti-dumping measures in the form of a dumping duty notice and countervailing duty notice applying to aluminium extrusions exported to Australia from the People's Republic of China (China) is justified. Exports of Guangdong Jiangsheng Aluminium Co Ltd and Guangdong Zhongya Aluminium Company Ltd are not covered by this inquiry, as the measures currently in place in relation to aluminium extrusions do not apply to exports of the goods by these companies.

Recommendations resulting from that inquiry, reasons for the recommendations, and material findings of fact and law in relation to the inquiry are contained in *Anti-Dumping Commission Report No. 543 (REP 543)*.

I, KAREN ANDREWS, the Minister for Industry, Science and Technology, have considered REP 543 and have decided to accept the recommendations and reasons for the recommendations including all the material findings of facts and law set out in REP 543.

Under section 269ZHG(1)(b) of the *Customs Act 1901* (the Act), I declare that I have decided to secure the continuation of the anti-dumping measures currently applying to aluminium extrusions exported to Australia from China.

I determine that pursuant to section 269ZHG(4)(a)(iii) of the Act, the dumping duty notice continues in force after 28 October 2020 (the specified expiry date), but that after this day, the notice has effect as if different specified variable factors had been fixed in relation to all exporters generally.

I determine that in accordance with section 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), and the *Customs Tariff (Anti-Dumping) Regulation 2013* (the Regulation), the amount of interim dumping duty payable on goods the subject of the dumping duty notice is an amount worked out in accordance with:

- (i) for Goomax Metal Co Ltd Fujian, Guangdong Jinxiecheng Al Manufacturing Co Ltd and Foshan City Sanshui Yongya Aluminium Co Ltd; the floor price duty method, as specified in section 5(4) of the Regulation; and
- (ii) for all other exporters; the combination of fixed and variable duty method pursuant to subsections 5(2) and (3) of the Regulation.

I determine that pursuant to section 269ZH(4)(a)(iii) of the Act, the countervailing duty notice continues in force after 28 October 2020 (the specified expiry date), but that after this day the notice has effect in relation to all exporters as if different specified variable factors had been fixed relevant to the determination of duty as specified in REP 543.

I direct that pursuant to section 10(3B)(a) of the Dumping Duty Act, the interim countervailing duty referred to in section 10(3A) of the Dumping Duty Act in respect of certain aluminium extrusions exported from the China by all exporters be ascertained as a proportion of the export price of those particular goods.

Particulars of the dumping and subsidy margins established for each of the exporters and the effective rates of duty are also set out in the following table.

Exporter	Dumping Margin	Subsidy Margin	Effective rate of interim countervailing duty and interim dumping duty*	Duty Method
Goomax Metal Co Ltd Fujian	-6.0%	1.0%	1.0%	Fixed rate of ICD. Variable component of IDD equal to the amount, if any, by which the actual export price is below the ascertained normal value.
Guangdong Jinxiecheng Al Manufacturing Co Ltd	-4.4%	0.0%	0.0%	
Foshan City Sanshui Yongya Aluminium Co Ltd	-13.8%	0.0%	0.0%	
Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd	22.3%	6.4%	25.6%	Combination of fixed and variable duty method, consisting of a fixed rate of IDD and ICD, plus a variable component of IDD equal to the amount, if any, by which the actual export price is below the ascertained export price.
PanAsia Aluminium (China) Limited	70.0%	0.4%	70.3%	
Residual exporters	11.1%	0.7%	11.5%	
Uncooperative, non-cooperative and all other exporters	71.9%	9.9%	77.4%	

* The calculation of combined dumping and countervailing duties is not simply a matter of adding the dumping and subsidy margins together for any given exporter, or group of exporters. Rather, the collective interim dumping duty and interim countervailing duty imposed in relation to the goods, is the sum of:

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

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au), in accordance with the

requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

REP 543 has been placed on the public record, which may be examined at the Anti-Dumping Commission Office by contacting the case manager on the details provided below. Alternatively, the public record is available at www.adcommission.gov.au

Enquiries about this notice may be directed to the Case Manager on telephone number +61 3 8539 2437, fax number +61 3 8539 2499 or email investigations4@adcommission.gov.au.

Dated this 12th day of October 2020.

A handwritten signature in black ink, appearing to read 'Karen Andrews', with a stylized, flowing script.

KAREN ANDREWS
Minister for Industry, Science and Technology

NON-CONFIDENTIAL

Email

12 November 2020

Anti-Dumping Review Panel
 GPO Box 2013
 Canberra ACT 2601
ADRP@industry.gov.au

Application for Review | Continuation of Anti-Dumping and Countervailing Measures Applying to Aluminium Extrusions Exported to Australia from the People's Republic of China

ATTACHMENT 3: Grounds of Application - NON-CONFIDENTIAL

We act for the First to Fourth Applicants identified in Part A of the Application for Review.

Background

PanAsia Group

1. PanAsia Aluminium Pty Ltd (ABN: 30 164 977 557) (**PanAsia Australia**) is an Australian private company involved in the importation and distribution of aluminium extrusions within Australia.
2. PanAsia Australia's ultimate holding company is PanAsialum Holdings Company Limited (**PanAsialum Holdings**). Together, PanAsialum Holdings and its other subsidiaries (the **PanAsia Group**) are principally engaged in the manufacturing and trading of aluminium products, with several production plants in the People's Republic of China (**China**).
3. PanAsia Aluminium (China) Limited (**PanAsia China**) is another wholly-owned subsidiary of PanAsialum Holdings, forming part of the PanAsia Group. PanAsia China manufactures aluminium products including aluminium extrusions, and sells those extrusions to the domestic Chinese market, including to other members of the PanAsia Group.
4. PanAsia's export sales, including sales of aluminium extrusions from China to Australia, imported by PanAsia Australia, are conducted through its related intermediary, Opal (Macao Commercial Offshore) Limited (**OPAL**), another member of the PanAsia Group. PanAsia China's sole Australian customer for exported aluminium extrusions is PanAsia Australia.
5. PanAsia Australia, PanAsia China, OPAL and PanAsialum Holdings are the First to Fourth Applicants in this review respectively.

The Measures

6. By way of notice published 13 February 2020,¹ the Anti-Dumping Commission (**ADC**) initiated an inquiry regarding the continuation of the anti-dumping measures applying to certain aluminium extrusions (the **Goods**) exported to Australia from the People's Republic of China (**China**) (**Inquiry 543**).
7. Anti-dumping measures had been originally imposed on the Goods in October 2010, and were continued for a further five years on 20 October 2015 (due to expire on 28 October 2020).²

¹ See Anti-Dumping Notice (**ADN**) 2020/017: *Initiation of a Continuation Inquiry No 543 into Anti-Dumping Measures*.

² See *Trade Remedies Branch Report No. 148; ADC, Report No. 287: Inquiry Into the Continuation of Anti-Dumping Measures - Certain Aluminium Extrusions Exported From China, 20 October 2015; ADN No. 2015/125*.

8. The variable factors relevant to the taking of anti-dumping measures as they affect all exporters of the Goods were varied on 10 November 2017,⁴ 9 May 2019,⁵ and 16 September 2019⁶ following two reviews of the Measures, and the Minister's acceptance of a recommendation made by the Anti-Dumping Review Panel (**ADRP**).
9. Inquiry 543 was initiated following an application lodged by Capral Limited (ABN: 78 004 213 692) (**Capral**) whom the ADC found to be the "largest domestic manufacturer of aluminium extrusions" and to make up a "major proportion of the total Australian market for aluminium extrusions".³
10. At the conclusion of Inquiry 543, the Minister for Industry, Science and Technology (**Minister**) issued ADN 2020/103, in which she declared that she had:
 - (a) decided to secure the continuation of the anti-dumping measures applying to the Goods exported to Australia from China, under Section 269ZHG(1)(b) of the *Customs Act 1901* (Cth) (the **Act**); and
 - (b) determined that the dumping duty notice applying to the Goods continues in force after 28 October 2020, but has effect as if different specified variable factors had been fixed in relation to all exporters generally, pursuant to s 269ZHG(4)(a)(iii) of the Act (the **Minister's Decision**).
11. The ADC assessed the dumping margin in respect of the Goods exported to Australia by PanAsia China at 70.0% - with a fixed effective rate of combined interim dumping and countervailing duties of 70.3% and an additional variable component of interim dumping duty equal to the amount, if any, where the actual export price is below the ascertained export price.⁴
12. The recommendations of the ADC to that effect are contained in Final Report No. 543: *Inquiry into the Continuation of Anti-Dumping and Countervailing Measures Applying to Aluminium Extrusions Exported to Australia from the People's Republic of China* (**REP 543**).
13. The Minister confirmed that in making her decision she had "considered REP 543" and "decided to accept the recommendations and reasons for the recommendations including all the material findings of facts and law set out in REP 543".⁵
14. The decision of the Minister was made on 12 October 2020 and subsequently published on the website of the Commission on 15 October 2020. Pursuant to s 269ZHG of the Act, these Measures will continue in force until 27 October 2025 unless revoked earlier.
15. As outlined in this application, the Applicants seek review by the ADRP of the Minister's Decision under sections 269ZZA(1)(d) and 269ZZC of the Act.
16. The remainder of this submission addresses the requirements of both the form of application that has been approved by the Senior Panel Member of the ADRP under Section 269ZY of the Act, and of Section 269ZZE(2) of the Act in relation to our client's grounds of review, being those requirements not already addressed within the text of the approved form itself, which we have completed and lodged with the ADRP alongside this submission.

³ ADC Final Report No. 543: *Inquiry into the Continuation of Anti-Dumping and Countervailing Measures Applying to Aluminium Extrusions Exported to Australia from the People's Republic of China* at 3.6 (p. 21).

⁴ REP 543, s 6.9.5, 10.5 (pp. 64, 98-99).

⁵ ADN 2020/103, 1.

Grounds on Which the Applicant Believes the Minister's Decision Was Not The Correct or Preferable Decision (cf s 269ZZE(2)(b), Q9)

17. The Applicants respectfully submit that the Minister's Decision is not the correct and preferable decision in the circumstances by reason of the ADC's errors in the calculation of the "export price" for the Goods in accordance with s 269TAB of the Act.
18. Specifically, the Applicants submit that in calculating the "deductive export price" of the Goods under s 269TAB(1)(b) of the Act, the ADC erred in ascertaining the "prescribed deductions" within the meaning of s 269TAB(2) - particularly with respect to its construction of sub-section 269TAB(2)(a) of the Act.

Relevant Provisions

19. Section 269TAB(1)(b) provides for the calculation of an export price in circumstances where the Goods have been exported otherwise than by the importer, and purchased by the importer from the exporter, in a transaction not at arms length, and are later "on-sold" by the importer in the condition in which they were imported, to a person who is not an associate of the importer.
20. In those circumstances, s 269TAB(1)(b) provides that the "export price" is taken to be "the price at which the goods were so sold [i.e. in the condition in which they were imported] by the importer to [a person who is not an associate of the importer], **less the prescribed deductions**".⁶

21. "Prescribed deductions" are defined in s 269TAB(2)(b), which provides:

*A reference in paragraph (1)(b) to **prescribed deductions** in relation to a sale of goods that have been exported to Australia **shall be read as a reference to:***

- (a) any duties of Customs or sales tax paid or payable on the goods; and*
- (b) any costs, charges or expenses arising in relation to the goods after exportation; and*
- (c) the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph (1)(b), is to be regarded as the rate of profit on the sale by the importer.⁷*

22. It is the Applicants' central contention that in making the prescribed deductions set out in s 269TAB(2), for the purpose of determining a deductive export price under s 269TAB(1)(b), it is not appropriate for the Commission to deduct the amount of *interim* dumping duty paid in relation to those goods, at least in circumstances where an application for *final* duty assessment in accordance with s 269V of the Act is, or may be, on foot.
23. To that extent, the Applicants submit that such interim dumping duties are not "duties of Customs or sales tax paid or payable on the goods" within the meaning of s 269TAB(2)(a) of the Act, and the ADC erred insofar as it concluded otherwise at 6.9.2 of REP 543 (pp 60-62).
24. Rather, the Applicants submit that s 269TAB(2)(a) should be construed to treat as a "prescribed deduction" *only* the amount of final dumping duty that is or will be payable; i.e.:
 - (a) if no application for an assessment has been made within the time allowed by s 269V(2) – the amount of interim duty paid; or
 - (b) if such an application has been made (or may yet be made) – the amount determined to be payable following a duty assessment completed in respect of the goods under

⁶ Emphasis added.

⁷ Emphasis added.

s 269Y of the Act (i.e. that amount determined after any full or partial refund of duties had been considered).

25. For the avoidance of doubt, the Applicants otherwise confirm that they do not challenge the Minister's central decision that it was appropriate for the anti-dumping measures to be continued. They expressly conceded as much in submissions made to the Commission.⁸

Background to Contention

26. On 2 October 2019 (well before the commencement of the continuation inquiry), PanAsia Australia lodged an application for duty assessment, seeking a refund of interim dumping and countervailing duties paid on its imports of the Goods subject to the anti-dumping measures in the period 28 October 2018 to 27 April 2019 (**DA0174**).
27. On 6 April 2020, PanAsia Australia lodged a further application for duty assessment, relating to imports of the Goods subject to the anti-dumping measures in the period 28 April 2019 to 27 October 2019 (**DA0186**) (together, the **Assessment Applications**).
28. Importantly, the importation periods covered by the Assessment Applications (October 2018 – October 2019) substantially overlapped with the "inquiry period" adopted for the purposes of Review 543 (1 January to 31 December 2019).⁹
29. On 15 January 2020, the ADC advised PanAsia Australia via email that it planned to "incorporate the duty assessment verification as part of the continuation period verification",¹⁰ and "[t]o this end, the Commissioner has approved a 120 day extension of time for the Commissioner's delegate to provide the preliminary decision for DA0174", extending the due date for the preliminary decision in that application to 3 July 2020.
30. On 18 August 2020, the Applicants made submissions to the ADC following the publication of its statement of essential facts. In that submission, the Applicants:
- (a) expressly referred to the Assessment Applications (both of which remained outstanding at that date);
 - (b) referred to the email identified at [29] above, indicating that the Applicants understood that email to mean that "submissions to Review 543 would be considered and treated as submissions to the duty assessments given the commonality between the inquiries" and "the expiry review and duty assessments would be run concurrently to ensure the findings were consistent"; and
 - (c) made submissions in support of the propositions set out at [22]-[23] above.
31. It was submitted that if the Commission were to adopt the approach advocated by the Applicants, this would lead to a "substantially lower amount of dumping ... duties payable" and a "significant likely refund of interim dumping ... duties paid" [REDACTED]

⁸ *PanAsia Group - Submission in Response to SEF 543*, prepared by J Bracic and Associates (18 August 2020) (**PanAsia's Post-SEF Submissions**).

⁹ See REP 543 at 2.4 (p 12).

¹⁰ Email from K Marnell to PanAsia Australia dated 15 January 2020 (12:53pm), reproduced as confidential attachment to PanAsia's Post-SEF Submissions.

32. In addition to PanAsia's submission, one of the exporters who were not selected for sampling and who were otherwise excluded from the review pursuant to s 269TACAA(2) of the Act, Fujian Minfa Aluminium Inc (**Minfa**) also made post-SEF submissions to the ADC in support of PanAsia's position.¹¹ Those submissions argued that PanAsia China's provisional dumping margin as set out in the Statement of Essential Facts was in error as:

The prescribed deductions in 269TAB(1)(b) are: duties of customs or sales tax; costs charges or expenses after expiration; profit if any. Import duty means 'duty imposed on goods imported into Australia'. Any interim duty payable is a different concept to the assessment of the duty payable. This is made clear in Division 4 of the Act. It follows that to the extent that export price worked out for PanAsia had included any amount for dumping duty then this amount must be worked out using the actual duty payable. The report does not make clear these circumstances, however, we set out this important principle for the record.

33. In responsive submissions, Capral affirmed that it was their understanding that

the 'duty payable' referred to by PanAsia can only be determined at the completion of the duty assessment process (and not beforehand). It is not evident to Capral whether the duty assessment review referenced by PanAsia has been completed and therefore the duty payable has not been finalised.¹²

34. The ADC's reasons with respect to this aspect of the Applicants' submissions is set out at 6.9.2 (pp 60-62) and proceeded as follows:

The Commission has considered PanAsia China's submission and is satisfied that the approach taken at the SEF is consistent with the requirements of determining a deductive export price under section 269TAB(1)(b).

The Commission acknowledges a different approach was taken in REP 504. However, the Commission draws attention to the fact that in that case the export price was determined under section 269TAB(1)(c). This subsection requires the Minister to determine a price having regard to all the circumstances of the exportation.

In contrast, section 269TAB(1)(b) is more prescriptive. Relevantly, in determining the export price the Minister must deduct "any duties of Customs or sale tax paid or payable on the goods". There is no express scope in section 269TAB(1)(b) for the Minister to take into account 'all the circumstances of the exportation'.

In this case, the Commission is of the view that "final dumping duty" only becomes payable once the Minister has ascertained the variable factors relevant to the determination of duty payable under the Dumping Duty Act, in accordance with Division 6 of Part XVB. The Minister has not yet ascertained the variable factors relevant to the determination of duty payable under the Dumping Duty Act with respect to the duty assessment applications made by PanAsia China. Therefore the Commission considers, at the time of this report, no final duty is payable by PanAsia China.

Accordingly, the Commission is satisfied that deducting the amount of interim duty paid by PanAsia China as prescribed by 269TAB(2)(a), is consistent with the requirements of determining an export price under section 269TAB(1)(b).

35. It is significant to note that both of the Assessment Applications remained outstanding at the time of both the ADC's Report and the Minister's Decision.

¹¹ *Fujian Minfa Aluminium - Submission in Response to SEF 543*, prepared by J MacDermott and Associates (18 August 2020).

¹² *Capral Limited - Response to Submissions on SEF 543* (27 August 2020).

36. We are further instructed that the Assessment Applications remain outstanding at the time of writing, and we understand that the due date for both preliminary decisions has been further extended to 14 December 2020.

PanAsia's Submissions

37. It is the Applicants' respectful submission that in circumstances where an application for duty assessment in accordance with s 269V of the Act is, or may be, on foot in respect of the same Goods and relating to the same period as the "inquiry period", the definition of "duties of Customs or sales tax paid or payable on the goods" within the meaning of s 269TAB(2)(a) of the Act should be construed only to permit the deduction of *final* dumping duties determined to be payable following the completion of a duty assessment (including by way of 'deemed' determination in the absence of duty assessment application).
38. The Applicants submit that this construction is the correct or preferable one as:
- (a) it best accords with the text of s 269TAB(2)(a), taking into account the distinct nature of 'interim' and 'final' duty assessments;
 - (b) it is the construction most consistent with the purpose of calculating a deductive export price, namely, to deliver a reliable export price that is representative of an arms-length sale;
 - (c) it is supported by the text of other provisions of the Act, including the definition of "dumping duty" in s 269T, and the duty assessment provisions in s 269X;
 - (d) it is consistent with existing practice adopted by the ADC and ADRP in the Fortune Electric, CITIC, and Dailan Steelforce inquiries, in circumstances which are not materially different. Given s 269TAB(1)(b) and (1)(c) function in the same way and achieve the same purpose, consistency, fairness and predictability favour interpreting the words of s 269(1)(b) and (2)(a) in accordance with this approach;
 - (e) this approach is also consistent with the terms of the *Agreement On Implementation Of Article VI of the General Agreement On Tariffs And Trade 1994* (the **Implementation Agreement**); and
 - (f) the approach adopted by the ADC will lead to perverse, capricious, and unreasonable consequences, including (but not limited to):
 - (i) failure to advance the protection of domestic industry;
 - (ii) unintended elevation of 'form over substance' which would prohibit the ADC from having regard to the most 'up to date' information; and
 - (iii) causing the dumping margins imposed on exporters to depend, to a significant extent, upon whether, when and in what order the Commission resolves extant final duty assessment applications and inquiries.

The Nature of 'Interim' Duty Assessments

39. The duty imposed by s 8(1) of the *Customs Tariff (Anti-Dumping) Act 1975* (Cth) (**Dumping Duty Act**) as a duty of Customs is referred to as "dumping duty". Section 8(3) then provides that an "interim dumping duty" is payable "pending final assessment of the dumping duty payable on goods". In other words, "dumping duty" is the (final) duty assessed in accordance

with s 8(6). The imposition of liability to pay the interim duty is, like the provisional tax arrangements upheld in *Commissioner of Taxation v Clyne* (1958) 100 CLR 246, not a distinct tax but a measure ancillary to the imposition of the principal tax (at 260 per Dixon CJ (McTiernan, Williams, Kitto and Taylor JJ agreeing)).

40. This structure is reflected in the Customs Act. At all times prior to either the expiry of the period set out in s 269V(1) of the Act, 'interim' duty paid on goods remains subject to the possibility of a final duty assessment application being made in relation to it. If such an application is made, it ends with an assessment of the final duty and either a refund of any overpayment or a waiver of any unpaid duty (s 269Y(1)).¹³ If no application for final assessment is made, the interim duty paid on the goods is expressly deemed to be the (final) "duty payable" (s 269Y(4)). That provision serves to confirm that the statutory scheme, as one for the imposition and collection of a tax, identifies the dumping duty calculated under s 8(6) of the *Dumping Duty Act* as the relevant duty of Customs. The payment of interim duty is *never* the end of the story in so far as imposition of dumping duty is concerned.
41. In these circumstances, the interim duty is not properly described as a duty of Customs. Nor is it "paid or payable" except in a provisional sense. Until one of the results provided for in s 269Y(1) or (4) occurs, the interim duty is subject to the possibility of being wholly or partially refunded; and, in circumstances where a person has paid interim dumping duties in excess of the total duty which is properly payable under the *Dumping Duty Act*, it can fairly be said that that person has an entitlement to recover the overpaid amount.
42. For the purposes of s 269TAB(2)(b), therefore, the only "duty of Customs ... paid or payable on the goods" pursuant to the *Dumping Duty Act* is the amount of final duty assessed, or deemed to be payable, under s 269Y.
43. The Applicants therefore respectfully submit that the reasoning of the ADC at 6.9.2 (p 62) to the effect that "'final dumping duty' only becomes *payable* once the Minister has ascertained the variable factors relevant to the determination of duty payable under the *Dumping Duty Act*" is somewhat confused. The statement may be correct in so far as it goes, but it fails to grasp the character of the interim duty as explained above. Two possible outcomes flow from that analysis, either:
 - (a) (the Applicants' preferred position) *no* dumping duty is permitted to be deducted under s 269TAB(2)(b) in arriving at a deductive export price, unless a liability to final duty has crystallised under s 269Y(1) or (4) – which would give the ADC an incentive to deal with assessment applications promptly; or
 - (b) (in the alternative) s 269TAB(2)(b), read in context, extends to duties of Customs (including dumping duty) that *will become* payable on the goods, and in such a case calls for a reasonable estimate to be made of those duties.

The Purpose of Calculating a Deductive Export Price

44. In the Applicants' submission, its preferred construction more accurately reflects the purpose of the assessment in s 269TAB(1)(b).

¹³ Noting that the Commissioner *must* make the relevant calculations and recommendations (s 269X(5)-(6)), and the Minister *must* then make a decision under s 269Y(1).

45. As set out in the ADC's *Dumping and Subsidy Manual*:

In determining an export price under subsection 269TAB(1)(b), the Commission endeavours to obtain a price that is representative of a reliable export price that is unaffected by any association or compensatory arrangement. An export price will be calculated by using a market price that is representative of an arms length sale, and deducting all associated expenses incurred between exportation and resale (including any profit).¹⁴

46. It is therefore clear that the purpose of ss 269TAB(1)(b) and 269TAB(2)(a) is to provide a mechanism for the construction of an export price that is "representative of an arms length sale" in circumstances where the price paid (or payable) to the exporter by the importer less any charges incurred after exportation is an inappropriate metric.
47. So much appeared to be (with respect) correctly acknowledged by the Commission in REP 543 when it stated that the determination under s 269TAB(1)(b) was designed to "work the invoiced amount back to a FOB price from China".¹⁵
48. Pursuant to the Department of Industry, Innovation and Science's own information sheet, the calculation of a deductive export price ought to proceed as follows:

Selling price, at first point of resale to an unrelated buyer in Australia, less amounts for:

- *net profit (if any)*
- *delivery to buyer*
- *warehousing*
- *general selling and administration*
- *freight from wharf to store*
- *customs duty*
- *GST*
- *import clearance and handling fees*
- *overseas freight and clearance*
- *overseas insurance*
- *other*

equals Deductive export price (FOB).¹⁶

49. What emerges clearly from the list of amounts identified in the previous paragraph is that the calculation of a 'deductive export price' is concerned with actual expenses incurred in the process of exportation/importation. So much is clear from the express reference to 'net' profit, as distinct from any gross profit 'margin' which might otherwise have been considered.
50. In those circumstances, the Applicants submit it is neither appropriate nor useful for the ADC to have regard only to 'interim' duties paid in circumstances where a duty assessment is on foot.
51. Deducting 'interim' duty and taking no account of the possibility that some portions of that duty are, or are likely to be, subject to a refund following assessment, fails to deliver a "*reliable*" export price "*that is representative of an arms length sale*" as it significantly over-estimates the impact of duties upon the selling price by having regard to funds which are, or will be, refunded. As the Applicants submitted to the ADC:

¹⁴ ADC, *Dumping and Subsidy Manual* (November 2018), at 31.

¹⁵ See REP 543 at 6.9.2 (p. 61).

¹⁶ International Trade Remedies Advisory Service, Fact Sheet: 'How to Calculate a Deductive Export Price?' (31 July 2019) <https://business.gov.au/-/media/Grants-and-programs/ITRA/International-Trade-Remedies-Advisory-Service-How-to-calculate-a-deductive-export-price-DOCX.ashx?sc_lang=en&hash=82CC934D5F8585FC2E942F17DB24361D>.

Put simply, if an importer incurs and pays \$20,000 in interim dumping duty, and the Commission establishes that the final amount payable was zero which results in a full refund of the interim dumping duty paid, the importer has in effect incurred no dumping duty expense. This is despite the fact that the importer may be refunded the duties some months after the importation.

Additional Textual Support for the Applicants' Approach

52. Support for the Applicants' construction may be drawn from the definition of "dumping duty" in s 269T of the Act which refers to "duty, **other than interim dumping duty**, that is payable on goods under section 8 or 9 of the Dumping Duty Act".¹⁷ This definition specifically *excludes* interim dumping duty from the general definition of the term.
53. Further, as the Applicants submitted to the ADC, the duty assessment provisions require that interim duty **not** be deducted for the purpose of provisionally ascertaining the export price of goods where the Commission has conclusive evidence of any change in normal value, any change in costs incurred between importation and resale, and/or any movement in resale price which is duly reflected in subsequent selling prices.¹⁸
54. In the Applicants' submission, this assumes special significance in circumstances where – as here – a duty assessment is to be determined concurrently with a continuation inquiry (see [29]-[30] above). Consistency in approach across these provisions would thus appear to weigh favourably in support of the construction of s 269TAB(2)(a) expounded by the Applicants.

PanAsia's Approach is Consistent with Existing Practice

55. As the Applicants submitted to the ADC, their proposed construction of s 269TAB(2)(a) is consistent with well-established ADC and ADRP practice in previous, similar circumstances.
56. In its submissions to the ADC, the Applicants noted that in the course of its inquiry into the continuation of measures applicable to certain power transformers exported to Australia from Indonesia, Taiwan and Thailand,¹⁹ the Commission made the following comments in respect of one of the affected exporters (Fortune):

*The Commission has calculated an export price at free on board (FOB) terms based on the invoice price of the goods minus all relevant deductions. These deductions include shipping costs, marine insurance, post CIF expenses, installation costs, Australian customs duties **and final anti-dumping duties preliminarily calculated based on information submitted by Fortune in support of the duty assessment application currently under consideration.***²⁰

57. As was set out in a footnote accompanying that statement:

Fortune lodged a duty assessment under section 269V, in regards to a number of exports the subject of this continuation inquiry. The deductions relevant to Fortune's export price were revised following the SEF, to take into account all relevant information available to the Commission. In this instance, the Commission considers that the likely final duties payable based on the preliminary calculations for the duty assessment should be taken into account in determining the export price for Fortune. This is considered necessary because the Minister

¹⁷ Emphasis added.

¹⁸ See s 269X(5B) of the Act.

¹⁹ See Report No. 504: Continuation Inquiry Into Anti-Dumping Measures Applying To Certain Power Transformers Exported To Australia From The Republic Of Indonesia, Taiwan And The Kingdom Of Thailand (4 October 2019).

²⁰ Emphasis added. See REP 504 at 6.5.1.1 (p 37).

is required to have regard to all the circumstances of the exportation (one of the circumstances being the duty assessment which is almost complete).²¹

58. As emerges clearly from the Fortune example, the Commission in that case considered that it was appropriate to deduct only the "likely final duties payable based on the preliminary calculations for the duty assessment" in circumstances where the duty assessment application was "almost complete".
59. As is recorded at [34] above, the ADC sought to distinguish this example in the present Inquiry on the basis that "in that case the export price was determined under section 269TAB(1)(c)" which "requires the Minister to determine a price having regard to all the circumstances of the exportation", whereas, "[i]n contrast, section 269TAB(1)(b) is more prescriptive".
60. The Applicants respectfully submit that the ADC's interpretation betrays a misunderstanding of the argument advanced by them.
61. It is not the Applicants' position that ss 269TAB(1)(b) and 269TAB(2)(a) should be interpreted as if the Minister could take into account "all relevant circumstances" as they might under s 269TAB(1)(c).
62. Rather, the Applicants submit that as the wording of ss 269TAB(1)(b) and 269TAB(2)(a) is ambiguous, fundamental values of consistency, fairness, predictability, equality of treatment and integrity in decision-making favour adopting a construction that is *consistent with* that adopted under s 269TAB(1)(c).
63. Both ss 269TAB(1)(b) and (1)(c) share the same underlying purpose and function: namely, both provisions provide methods of constructing a reliable export price that is indicative of an arms-length transaction in circumstances where the price paid is deemed to be unreliable (cf 269TAB(1)(a)).
64. Whilst they may differ in the precise circumstances in which recourse may be had to each, those differences in the scope of each of the two provisions (i.e. whether a good has been purchased by the importer from the exporter, and/or whether a sale was at 'arms-length') disclose – in the Applicants' submission – no rational basis to support the adoption of a different approach to calculation.
65. This is particularly so where the approach adopted by the ADC in respect of the Fortune example was not a single instance, but rather was reflective of a well-established pattern of conduct which appears to have been endorsed by the ADRP previously. As was outlined in the Applicants' submission to the ADC in this inquiry:
 - (a) in *Report No. 58* (relating to the export of certain galvanised and aluminium zinc coated steel products from China, Taiwan and South Korea), the ADRP emphasised that in applying the provisions of 269TAA(1)(c) and 269TAA, the ADC "ought to have given greater weight to the likely impact of the outcome of the duty assessment application...notwithstanding that the refunds may not be paid within a 12 month period" in circumstances where "the Commission was aware that it was probable that CITIC would receive a refund of interim dumping duty".²²

²¹ Emphasis added. See REP 504 at fn 33 (p 37).

²² ADRP, *Report No. 58: Certain Aluminium Zinc Coated Steel Exported from the People's Republic of China and the Republic of Korea and Certain Zinc Coated (Galvanised) Steel Exported from the People's Republic of China, Taiwan and the Republic of Korea* (2 November 2017), [35]-[67] (pp 10-17) (**ADRP Report No. 58**).

Specifically, ADRP Report No. 58 contained the following finding with respect to the Commission's conduct, which the Applicants respectfully submit has occurred again in the present case:

At the time the Commission submitted its report and recommendations to the Minister the Commission knew that CITIC had exercised its right to apply for a dumping duty assessment and that it would likely receive a refund of interim dumping duty paid, but that such refund would not occur within the generally applicable 12 month period. The Commission's rigid adherence to the 12 month timeframe, given the statutory constraints which attach to an interim dumping duty assessment application was in my view unreasonable.²³

- (b) in *Reports 379 and 419* (both relating to the export of certain hollow structural sections from China, Korea, Malaysia and Taiwan), the Commission's calculation for the deductive export price with respect to exports by Dalian Steelforce Hi-Tech Co. Ltd under s 269TAB(1)(b) made adjustments to account for the recovery of interim dumping duty paid following duty assessment, deducting only those "costs of importation incurred" by the relevant entities.²⁴
66. In those circumstances, the Applicants refer to the Fortune, CITIC and Steelforce examples not as a binding example of the approach which must be adopted under s 269TAB(1)(b) and (2)(a), but rather as an aid to the proper interpretation of the scope of "duty paid or payable" within s 269TAB(2)(a).
67. Respectfully, the Applicants submit it would be illogical and highly unusual to expect that export prices would be determined differently under different subsections of 269TAB, where the information relates to the same period, same consignments, same data and same circumstances, and the purpose of the provisions are the same.
68. Support for that proposition may be drawn from the Capral and Minfa submissions, which both appeared to support the approach advanced by the Applicants (see [32]-[33] above).
69. To that end, it ought to be noted that aside from the limited attempts to distinguish the Fortune example referred to at [59] above, the ADC did not expressly engage with the Steelforce and CITIC examples cited to it, nor the additional submissions made by Capral and Minfa.

PanAsia's Approach is Consistent With GATT 1994

70. The Applicants also submit that their preferred approach is more consistent with the terms of the Implementation Agreement than that adopted by the ADC.
71. In cases of ambiguity, it is well-established that Part XVB of the Act ought to be "interpreted and applied, as far as its language permits, so that it is in conformity, and not in conflict, with Australia's international obligations" by "giving primacy to the text of the international instrument, but also by considering the context, objects and purposes of the instrument".²⁵

²³ ADRP REP 58, [67] (pp 16-17).

²⁴ See ADC, *Report No. 379: Inquiry Concerning the Continuation Of Anti-Dumping And Countervailing Measures Applying To Hollow Structural Sections Exported From The People's Republic Of China, Republic Of Korea, Malaysia And Taiwan* (26 June 2017), 7.4.2.1 (pp 20-21); ADC, *Report No. 419: Review of Anti-Dumping Measures Hollow Structural Sections Exported to Australia From The People's Republic Of China, The Republic Of Korea, Malaysia And Taiwan* (3 May 2018), 4.3.4 (pp 21-24).

²⁵ *Pilkington (Aust) Ltd v Minister of State for Justice & Customs* (2002) 127 FCR 92, [25]-[27]; *Minister of State for Home Affairs v Siam Polyethylene Co Ltd* (2010) 187 FCR 229, [34]-[35].

72. Article 2.3 of the Implementation Agreement forms the basis for s 269TAB and provides that "the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer" in circumstances where "the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party".
73. In those cases, article 2.4 of the Implementation Agreement provides that "allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made". In doing so, article 2.4 provides that "[t]he authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties".
74. Notably, article 2.4 does not employ the language of "duties paid or payable". Rather, duties and taxes are included within the concept of "costs...incurred between importation and resale". This reinforces the Applicants' submission that what ss 269TAB(1)(b) and (2)(a) are actually concerned with is the net duty actually incurred as a final expense, after any refunds have been processed following duty assessment.
75. It is submitted that this construction is further reinforced by reference to article 9.3.3 of the Implementation Agreement – one of the provisions which form the basis of the domestic duty assessment process – which provides:

*In determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with paragraph 3 of Article 2, **authorities should take account of any change in normal value, any change in costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence of the above is provided.***²⁶

76. Plainly, this provision forms the basis of s 269X(5B) of the Act, to which reference has been made at [53]-[54] above.

The Practical Consequences of the ADC's Interpretation are Perverse and Capricious

77. Finally, the Applicants submit that a selection of some of the practical consequences of the ADC's interpretation are perverse and capricious. Each of these provides further support for the view that the interpretation cannot be the correct and preferable decision.
78. *Firstly*, the approach adopted by the ADC would appear to be inconsistent with the general purpose of imposing interim dumping duties. As articulated in ADRP Report No. 58 at [64]:

In general terms, the intent of the imposition of interim dumping duty, in a prospective duty collection regime, is to deliver protection to the domestic industry in circumstances in which export prices continue to be less than normal values. If however, the exporter alters its pricing structure such that export price exceeds that of the normal value the legislation confers upon the importer the right to apply for a dumping duty assessment.

79. With respect, the approach adopted by the ADC is discordant with that objective. As a practical consequence of the approach adopted by the ADC, there is no scope for Panasia China to meaningfully reduce its dumping margin. As the Applicants submitted to the ADC, the only element of the deductive export price that is within its control is PanAsia Australia's selling prices

²⁶ Emphasis added.

to its customers. If the 'export price' calculation simply ignores the likely refund of interim duties in calculating the deductive export price, to reduce its dumping margin to zero (so as to prevent the continuation of measures), PanAsia Australia would have to adjust its selling prices by an amount equal to *double* the interim dumping duties which it had paid. Such an alteration is far beyond that which is required for the protection of domestic industry and this highlights the absurdity of the ADC's approach.

80. More generally, assume that by 2019 that the PanAsia Group had reformed its operations so that the goods it exported to Australia were no longer dumped. Interim dumping duty would still have been payable based on the variable factors as last determined by the Minister, but the Group would have been confident of obtaining a full refund. On the ADC's approach to the continuation inquiry, the full amount of the interim duty would be deducted from PanAsia Australia's selling prices in calculating the export price of the goods; and the goods would be, quite wrongly, taken to have been dumped (leading, again wrongly, to the continuation of the measures). The imposition of measures would be self-perpetuating.
81. *Secondly*, the ADC's reasoning to the effect that "'final dumping duty' only becomes *payable* once the Minister has ascertained the variable factors relevant to the determination of duty payable under the Dumping Duty Act, in accordance with Division 6 of Part XVB" elevates form over substance and, in doing so, produces capricious effects.
82. What the Applicants understand to emerge from this aspect of the ADC's reasoning is that the ADC will take final duties into account under s 269TAB(1)(b), but *only* after final duty has been signed into effect by the Minister *and* this has occurred before the completion of its report.
83. It appears from this reasoning that, in calculating an export price under s 269TAB(1)(b), the ADC *would* consider the effect of a decision by the Minister under s 269Y(1), but *would not* consider a final duty assessed and recommended to the Minister by the Commission under s 269X(1) and (6), but not yet formally determined by the Minister (notwithstanding that the Minister does not appear to have any significant scope to depart from that recommendation). This would, in effect, compel the ADC to have regard to out-of-date information or information that it knew to be no longer reliable or representative.
84. *Thirdly*, by making the application of s 269TAB(2)(b) depend on an accident of timing, the ADC's construction of s 269TAB(2)(b) makes the 'export price' (and thus the dumping margins calculated and imposed on exporters) dependent on the alacrity or otherwise with which it, and the Minister, perform their duties under Division 4 of Part XVB. That is a perverse result and therefore unlikely to have been intended by the legislature.
85. The present case is a telling example. PanAsia Australia's Assessment Applications relate to a period substantially overlapping with the inquiry period. The first was made before the inquiry had even been initiated and the second was made soon after. The Commission proposed to deal with the Assessment Applications and the continuation inquiry in parallel, and extended the deadlines for the former so that this could occur. The Commission then said in its Report that, because the Assessment Applications had not produced an outcome, the whole of the interim duty paid was to be deducted (to the considerable disadvantage of the Applicants) in determining an export price. Had the completion of the Assessment Applications not been delayed, the outcome would have been different. This cannot be what Parliament intended.

Statement Setting out the Proposed Decision (cf s 269ZZE(2)(c), Q10)

86. The Applicants respectfully submit the correct or preferable decision (the **Proposed Decision**) is for the Minister to:

- (a) revoke the ascertained export price and dumping margin as set out in Minister's Decision, insofar as it relates to the determination of the variable facts applicable to the goods exported to Australia by PanAsia China in the review period; and
 - (b) substitute a new decision declaring, under section 269ZHG(4)(a)(iii) of the Act, that the notice has effect, in relation to PanAsia China, as if the Minister had fixed different specified variable factors in relation to it.
- 87. In doing so, the Applicants submit that the correct or preferable decision is that in calculating the deductive export price for goods in accordance with ss 269TAB(1)(b) and (2)(a), the Commission ought not deduct (as a 'prescribed deduction') the amount of interim dumping duty paid in relation to those goods in circumstances where an application for duty assessment in accordance with s 269V of the Act is, or may be, on foot in relation to those goods in the inquiry period (as it was in this case).
- 88. This would have the consequence that, in the specific context of dumping duties, the terms "duty paid or payable" in s 269TAB(2)(a) and thus deducted as "prescribed deductions", ought to be confined in factual circumstances like the present, to those 'final duties':
 - (a) the subject (or anticipated to be the subject) of a notice of the Minister pursuant to s 269Y(1) of the Act; and
 - (b) those duties which are 'taken' to have been declared by the Minister pursuant to s 269Y(4) of the Act in the absence of an application for duty assessment in accordance with s 269V of the Act.
- 89. As PanAsia Australia has made duty assessment applications in accordance with s 269V of the Act, the Applicants submit that the deductive export price for those goods ought to be assessed:
 - (a) (the Applicants' preferred position) by making *no* deduction for dumping duty under s 269TAB(2)(b) absent a final duty assessment in accordance with s 269Y(1) or (4). In the circumstances, the ADRP ought therefore make *no* deduction under s 269TAB(2)(b) in respect of dumping duty prior to resolution of the Assessment Applications; or
 - (b) (in the alternative) by deducting under s 269TAB(2)(b) only those duties of Customs (including dumping duty) that the ADRP reasonably estimates *will ultimately become* payable on the goods. This will require the ADRP to estimate the likely 'net' position following the finalisation of the Assessment Applications, deducting only that amount of dumping duty likely to be determined to be payable following the completion of the duty assessment (i.e. that amount of 'final' dumping duty expected to be owing after any full or partial refund of duties had been considered).
- 90. The Applicant notes that, at the time of writing, the Assessment Applications remain outstanding. In the event that the Assessment Applications are finalised before the completion of the ADRP's review of the Minister's Decision, the Applicants submit that in making the new decision referred to at [86(b)] above, the Minister ought to have regard to the results of that assessment. Depending upon when the Assessment Applications are finalised, the Applicants submit that the ADRP may legitimately have regard to such information either:
 - (a) as information contained in submissions received under s 269ZZJ; or, otherwise;
 - (b) through reinvestigation by the Commission in accordance with s 269ZZL.

Statement Setting out How the Grounds Mentioned Above Support the Making of the Proposed Decision (cf s 269ZZE(2)(d), Q11)

91. The grounds set out at [17]-[84] above support the making of the proposed decision by demonstrating the errors of fact and reasoning in the recommendations and reasons for the recommendations in Report 543, which were adopted in making the Minister's Decision.
92. If ss 269TAB(1)(b) and (2)(a) are construed in accordance with [17]-[84] above, the "export price" assessment will be conducted as recommended by the Proposed Decision.

Statement Setting out How the Proposed Decision is Materially Different from the Minister's Decision (cf s 269ZZE(2)(e), Q12)

93. The proposed decision is materially different to the reviewable decision, as the proposed decision will result in calculation of a different (likely higher) "export price" for PanAsia China's goods. Consequently, this will result in calculation of a (likely lower) dumping margin in respect of the goods exported to Australia by PanAsia China, thus leading to the levying of a different (likely lower) rate of duty on those goods.
94. As explained in the Applicants' submission to the ADC, were the proposed approach to ss 269TAB(1)(b) and (2)(a) to be adopted:


Applying this to Panasia China's situation, it is noted that the largest item included in the deductive export price relates to interim dumping and countervailing duties, [REDACTED]. As required by subsection 269X(5B) of the Act, those interim duties must not be deducted in provisionally ascertaining export prices determined pursuant to subsection 269TAB(1)(b) of the Act.

Applying the revised deductive export prices (excluding the deduction for interim duties) and the ascertained normal values from Review 543 to PA Australia's submitted duty assessment calculations, shows a substantially lower amount of dumping and countervailing duties payable. This leads to a significant likely refund of interim dumping and countervailing duties paid by PA Australia.

95. Specifically, based on preliminary calculations conducted on the Applicants' behalf, we are instructed that:
- (a) Of the [REDACTED] in interim dumping duties paid, only [REDACTED] was payable (once the approach required by s 269X(5B) has been followed), leading to an anticipated refund following the duty assessments of [REDACTED]; and
- (b) When this amount is inserted into the amount payable into the deductive export price as ascertained by the ADC, it results in a deduction for interim duties of [REDACTED] compared to the ADC's [REDACTED] deduction which was based on the total amount paid ([REDACTED]). Accordingly, the dumping margin is reduced to [REDACTED]
- (c) Importantly, the net effect on the duty inclusive ascertained export price is unchanged, as the original AEP was calculated at [REDACTED] but increases to [REDACTED] using the corrected approach. So the comparison of the original and proposed decision is as follows:

Original	=	[REDACTED]
Proposed	=	[REDACTED]

Conclusion

96. For the reasons set out above, the Applicants respectfully request the ADRP recommend the Minister make the Proposed Decision.
97. We submit that this Application is a sufficient statement setting out the Applicants' reasons for believing that the Minister's Decision is not the correct or preferable decision, and that there are reasonable grounds for that belief for the purposes of acceptance of its application for review. The correct and preferable decisions that should result from the grounds that are raised in the application are dealt with and detailed above.
98. Notwithstanding this, the Applicants expressly reserve the right to make such further submissions to the ADRP as required, including pursuant to s 269ZZJ of the Act. The Applicants will also endeavour to keep the ADRP apprised of any developments in relation to the Assessment Applications
99. The Applicants also expressly request the opportunity to participate in one or more conferences with the Review Panel pursuant to s 269ZZHA of the Act.
100. Otherwise, insofar as this submission refers to other documents, for the purposes of s 269ZZK(4)(b) of the Act, the Applicants incorporate and rely upon those materials as if they were reproduced in their entirety within these submissions.
- 

102. Please do not hesitate to contact us if we can be of any further assistance.

Yours sincerely

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CUSTOMS ACT 1901 - PART XVB

REPORT NO. 543

**INQUIRY INTO THE CONTINUATION
OF ANTI-DUMPING AND COUNTERVAILING MEASURES
APPLYING TO ALUMINIUM EXTRUSIONS EXPORTED TO
AUSTRALIA FROM THE PEOPLE'S REPUBLIC OF CHINA**

14 September 2020

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ABBREVIATIONS

ABF	Australian Border Force
the Act	<i>Customs Act 1901</i> (Cth)
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
Capral or the applicant	Capral Limited
CHALCO	Aluminium Corporation of China Limited
China	the People's Republic of China
CIF	Cost, Insurance and Freight
combination duty method	the combination of fixed and variable duty method
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
the Direction	<i>Customs (Extensions of Time and Non-Cooperation) Direction 2015</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i> (Cth)
EC 2017 Report	<i>Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations</i> (European Commission)
EPR	electronic public record
FIS	Free into Store
FOB	Free on Board
G James	G. James Extrusion Co Pty Ltd
GAAP	generally accepted accounting principles
GOC	Government of the People's Republic of China
the goods	aluminium extrusions
Goomax	Goomax Metal Co Ltd Fujian
GUC	goods under consideration
the GOC Guidelines	<i>Notice of the State Council on Further Strengthening the Elimination of Backward Production Capabilities and Guidelines</i>
the Guidelines	<i>Guidelines on the Application of Forms of Dumping Duty November 2013</i>
ICD	interim countervailing duty
IDD	interim dumping duty

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inquiry period	1 January 2019 to 31 December 2019
Jiawei	Foshan Shunde Beijiao Jiawei Aluminium Factory
Jinxiecheng	Guangdong Jinxiecheng Al Manufacturing Co Ltd
Kam Kiu China	Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd
Kam Kiu Australia	Kam Kiu (Australia) Pty Ltd
LME	London Metal Exchange
the Manual	<i>Dumping and Subsidy Manual</i>
MCC	model control code
the measures	the anti-dumping and countervailing measures currently applicable to exports of aluminium extrusions to Australia from the People's Republic of China that are due to expire on 28 October 2020
Minfa	Fujian Minfa Aluminium Inc
the Minister	the Minister for Industry, Science and Technology
MJP	Main Japanese Ports
NDRC	National Development and Reform Commission (China)
NIP	non-injurious price
the Notices	the dumping duty and countervailing notices published on 3 June 2015
OCOT	ordinary course of trade
OEM	original equipment manufacturer
OPAL	OPAL (Macao Commercial Offshore) Ltd
Pan Asia Australia	Pan Asia Aluminium Pty Ltd
PanAsia China	PanAsia Aluminium (China) Limited
PMI	Press Metal International Ltd
the Regulation	<i>Customs (International Obligations) Regulation 2015 (Cth)</i>
REP 148	<i>Trade Remedies Branch Report No. 148</i>
REP 175	<i>International Trade Remedies Report No. 175</i>
REP 241	<i>Anti-Dumping Commission Report No. 241</i>
REP 248	<i>Anti-Dumping Commission Report No. 248</i>
REP 287	<i>Anti-Dumping Commission Report No. 287</i>
REP 304	<i>Anti-Dumping Commission Report No. 304</i>
REP 392	<i>Anti-Dumping Commission Report No. 392</i>
REP 442	<i>Anti-Dumping Commission Report No. 442</i>
REP 447	<i>Anti-Dumping Commission Report No. 447</i>

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REP 504	<i>Anti-Dumping Commission Report No. 504</i>
REQ	response to the exporter questionnaire
SBMR	State Bureau of Material Reserve (China)
SEF	statement of essential facts
SG&A	selling, general and administrative expenses
SIE	state-invested enterprise
SOE	state-owned enterprise
VAT	value-added tax
Yongya	Foshan City Sanshui Yongya Aluminium Co Ltd

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This report concerns an inquiry into whether the continuation of the anti-dumping and countervailing measures, in the form of a dumping duty and countervailing duty notice (the notices), applying to aluminium extrusions (the goods) exported to Australia from the People's Republic of China (China)¹ is justified.

An application was made under section 269ZHC of the *Customs Act 1901* (Cth) (the Act)² by Capral Limited (Capral) for measures to continue.

The anti-dumping measures currently applicable to exports of the goods to Australia are due to expire on 28 October 2020.

This report sets out the findings and conclusions on which the Commissioner of the Anti-Dumping Commission (the Commissioner) has based his recommendations to the Minister for Industry, Science and Technology (the Minister).

1.2 Legislative framework

Division 6A of Part XVB of the Act sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the continuation of anti-dumping measures.

Section 269ZHE(1) requires that the Commissioner publish a statement of essential facts (SEF) on which he proposes to base his recommendations to the Minister concerning the continuation of the measures. Section 269ZHE(2) requires that, in doing so, the Commissioner must have regard to the application and any submissions received within 37 days of the initiation of the inquiry, and may have regard to any other matters that he considers relevant.

Section 269ZHF(1) provides that the Commissioner must, after conducting his inquiry, give the Minister a report recommending that the relevant notice:

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

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

¹ The anti-dumping measures currently apply to all exporters from China, with the exception of Guangdong Jiangsheng Aluminium Co., Ltd. (formerly known as Tai Ao Aluminium Tai Shan Co., Ltd.) and Guangdong Zhongya Aluminium Company Limited.

² All legislative references in this report are to the *Customs Act 1901* (Cth), unless otherwise stated.

1.3 Findings

Based on the evidence available, the Commissioner is satisfied that the expiration of the measures on aluminium extrusions exported from China would be likely to lead to a continuation and recurrence of the dumping and subsidisation and the material injury that the anti-dumping measures are intended to prevent.

In order to assess whether dumping and subsidisation may continue or recur, the Anti-Dumping Commission (Commission) has obtained information relevant to the assessment of dumping and subsidisation. The Commission has therefore ascertained the variable factors relevant to the anti-dumping measures during the inquiry period and has found that there has been a change in the variable factors.³

1.4 Recommendations

Based on the above findings, the Commissioner recommends to the Minister that:

- the Minister take steps to secure the continuation of the anti-dumping measures, being the dumping and countervailing duty notices; and
- the dumping and countervailing duty notices have effect in relation to all exporters from China generally, as if different variable factors had been ascertained.

³ The variable factors relevant to the dumping duty notice are the normal value, the export price and the non-injurious price (NIP) (section 269T(4D)(a) refers). The variable factors in relation to the countervailing duty notice are the export price, amount of countervailable subsidy received and the NIP (section 269T(4D)(b) refers).

2 BACKGROUND

2.1 Initiation

On 24 January 2020, Capral lodged an application under section 269ZHC seeking the continuation of the anti-dumping measures in respect of aluminium extrusions exported to Australia from China.⁴

As set out in Anti-Dumping Notice (ADN) 2020/017,⁵ the Commissioner was satisfied that the application complied with section 269ZHC and, in accordance with section 269ZHD(2)(b), there appeared to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

The Commissioner therefore decided not to reject the application and initiated the present inquiry on 13 February 2020.

2.2 History of anti-dumping measures

The full history in relation to anti-dumping measures relating to certain aluminium extrusions can be found on the Commission's website at www.industry.gov.au. A summary of the main cases relevant to certain aluminium extrusions exported from China is outlined in Table 1 below.

Report No.	Date notice published	Case description
REP 148	28/10/2010	The then Australian Customs and Border Protection Service initiated an investigation into the alleged dumping and subsidisation of aluminium extrusions exported to Australia from China following an application by Capral. Following the investigation, the then Attorney-General published a dumping duty notice and countervailing duty notice applying to aluminium extrusions exported from China. <i>Trade Remedies Branch Report No. 148 (REP 148) refers.</i>
REP 175	27/08/2011	The then Attorney-General published new notices as a result of a reinvestigation of certain findings made in REP 148 following a review by the former Trade Measures Review Officer. <i>International Trade Remedies Report No. 175 (REP 175) refers.</i>
REP 241	18/02/2015	Measures were amended on conclusion of an anti-circumvention inquiry into the avoidance of the intended effect of duty concerning certain aluminium extrusions exported to Australia by PanAsia Aluminium (China) Co., Ltd. (PanAsia China). <i>Anti-Dumping Commission Report No. 241 (REP 241) and ADN 2015/17 refer.</i>
REP 248	19/08/2015	Publication of the outcome of a review of measures into aluminium extrusions exported from China. Anti-dumping measures were altered as if different variable factors had been ascertained. A correction to this notice was published on 10 September 2015 with respect to six entities incorrectly identified as residual exporters.
⁴ EPR 543 document no. 1.		
⁵ EPR 543 document no. 2.		<i>Anti-Dumping Commission Report No. 248 (REP 248) and ADN 2015/96</i>

PUBLIC RECORD

		refer.
REP 287	20/10/2015	Publication of the outcome of a continuation inquiry into aluminium extrusions exported from China. This inquiry followed an application by Capral. The then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science continued the measures for a further five years, until 28 October 2020. <i>Anti-Dumping Commission Report No. 287 (REP 287) and ADN 2015/125 refer.</i>
REP 304	09/02/2016	Publication of the outcome of a review of anti-dumping measures as they applied to Press Metal International Ltd (PMI). The review resulted in a fixed interim dumping duty (IDD) and interim countervailing duty (ICD) of zero (0) per cent and a variable amount of duty where the actual export price are below the ascertained export prices for the aluminium extrusions exported from China by PMI. <i>Anti-Dumping Commission Report No. 304 (REP 304) and ADN 2016/04 refer.</i>
REP 392	10/11/2017	Publication of the outcome of a review of anti-dumping measures with the former Parliamentary Secretary accepting the recommendations and varying the variable factors relevant to the taking of anti-dumping measures as they affect all exporters of certain aluminium extrusions from China. <i>Anti-Dumping Commission Report No. 392 (REP 392) and ADN 2017/138 refer.</i>
REP 442	24/07/2018	An investigation into alleged dumping by two Chinese exporters, Guangdong Zhongya Aluminium Company Limited and Guangdong Jiangsheng Aluminium Co., Ltd, and exporters in general from the Kingdom of Thailand (Thailand), was initiated following an application lodged by Capral. The Commission found: <ul style="list-style-type: none"> • with respect to the Chinese exporters, that the goods were not dumped; • with respect to the goods exported from Thailand by United Aluminium Industry Co., Ltd, that these goods were dumped at a negligible level; and that the injury, if any, caused by goods exported by all other exporters from Thailand was negligible. The investigation was consequently terminated. <i>Anti-Dumping Commission Report No. 442 (REP 442) and ADN 2018/120 refer.</i>
REP 447	29/10/2018	The Commission published findings of an anti-circumvention investigation, examining claims made in an application by Capral that certain aluminium extrusions were being exported to Australia from China through one or more third countries. <i>Anti-Dumping Commission Report No. 447 (REP 447) and ADN 2018/155 refer.</i>
REP 482	9/05/2019	Publication of the outcome of a review of anti-dumping measures with the Minister accepting the recommendations and varying the variable factors relevant to the taking of anti-dumping measures as they affect all subject exporters of certain aluminium extrusions from China. <i>Report No. 482 (REP 482) and ADN 2019/44 refer.</i> Multiple applications for review of the Minister's decision were received by the Anti-Dumping Review Panel (ADRP). On 16 September 2019 the Minister accepted the recommendations made by the ADRP in ADRP

PUBLIC RECORD

		Report No. 104 to revoke and substitute new decisions which took effect from 9 May 2019. ⁶
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Table 1: History of anti-dumping measures in relation to aluminium extrusions exported from China

2.3 Current anti-dumping measures

Table 2 below summarises the anti-dumping measures currently applying to aluminium extrusions exported to Australia from China.

Exporter	Duty Applicable	Effective rate of duty
Guangdong Jiangsheng Aluminium Co Ltd	Exempt	
Guangdong Zhongya Aluminium Company Ltd	Exempt	
PanAsia Aluminium (China) Limited	IDD & ICD	50.7%
Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd	IDD & ICD	16.5%
Foshan Shunde Beijiao Jiawei Aluminium Factory	IDD & ICD	20.1%
Goomax Metal Co Ltd Fujian	IDD & ICD	43.5%
Guangdong Jinxiecheng Al Manufacturing Co Ltd	IDD & ICD	15.8%
Foshan Minghua Doors and Windows Aluminium Co Ltd	IDD & ICD	21.0%
Foshan Lvqiang Metal Product Co Ltd	IDD (floor price) and ICD	12.4%
Residual exporters	IDD & ICD	29.8%
All other exporters	IDD & ICD	101.9%

Table 2: Current measures applying to exports of the goods

Further details on the existing measures are available on the Dumping Commodity Register (DCR) at www.industry.gov.au.

2.4 Conduct of inquiry

The Commissioner established an inquiry period of 1 January 2019 to 31 December 2019 (the inquiry period) for the purposes of making recommendations concerning the dumping duty notice and the countervailing duty notice for this inquiry.

The Commission has also examined the data from the Australian Border Force (ABF) import database and from the Australian industry for the period 1 January 2016 to 31 December 2019 for the purposes of analysing trends in the market for the goods and assessing potential injury factors.

⁶ ADRP Report No. 104, available in the ADRP section of the Department of Industry, Science, Energy and Resources website: see <https://www.industry.gov.au/data-and-publications/anti-dumping-review-panel-past-reviews/certain-aluminium-extrusions-exported-from-the-peoples-republic-of-china-1>. The new decisions altered the variable factors as they related to Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd (Kam Kiu) and PanAsia Aluminium (China) Limited (PanAsia China), and revoked the countervailing duty notice applying to Guangdong Zhongya Aluminium Company Ltd.

2.4.1 Statement of essential facts

The initiation notice advised that the SEF would be placed on the public record by 2 June 2020. However, as advised in:

- ADN 2020/056,⁷ the Commissioner approved an extension of time for the publication of the SEF until 17 July 2020; and
- ADN 2020/076,⁸ the Commissioner approved a further extension of time for the publication of the SEF until 31 July 2020.

SEF 543 was placed on the public record on 29 July 2020.⁹

2.4.2 Australian industry

The Commissioner is satisfied that the applicant for the continuation of the measures, Capral, is the person specified under section 269ZHB(1)(b)(i), being that it lodged the application under section 269TB that resulted in the current measures.

The Commission conducted a verification visit to Capral's premises in March 2020. The report made in relation to the visit is available on the Commission's Electronic Public Record (EPR).¹⁰

2.4.3 Importers

The Commission identified numerous importers in the ABF import database that imported the goods from China during the inquiry period. The Commission forwarded importer questionnaires to nine importers and placed a copy of the importer questionnaire on the Commission's website for completion by other importers who were not contacted directly. The Commission received questionnaire responses from the following importers:

- Kam Kiu (Australia) Pty Ltd (Kam Kiu Australia); and
- PanAsia Aluminium Pty Ltd (Pan Asia Australia).

Both importers were subject to verification. The reports made in relation to the importer visits are available on the EPR.¹¹

2.4.4 Sampling of exporters from China

Section 269TACAA(1) applies where the number of exporters from a particular country of export in relation to the investigation, review or continuation inquiry is so large that it is not practicable to examine the exports of all of those exporters. In that situation, the investigation, review or inquiry may be carried out, and findings may be made, on the basis of information obtained from an examination of a selected number of those exporters:

- who constitute a statistically valid sample of those exporters; or
- are responsible for the largest volume of exports to Australia that can reasonably be examined.

⁷ EPR 543 document no. 27.

⁸ EPR 543 document no. 48.

⁹ EPR 543 document no. 52.

¹⁰ EPR 543 document no. 24.

¹¹ EPR 543 document nos. 39 and 51.

In considering whether this inquiry should be carried out on the basis of information obtained from an examination of a selected number of exporters for the current inquiry, the Commissioner took into account:

- the large number of suppliers/exporters from China;
- the large number of exporters likely to submit completed questionnaires; and
- the current and foreseeable investigation workload of the Commission in other investigations and the resources available to examine exporters of aluminium extrusions from China.

In these circumstances, the Commissioner considered the number of exporters from China was so large that it was not practicable for the Commission to examine all those exporters. As a result, the Commission has carried out the inquiry and made findings on the basis of information obtained from an examination of a selected number of exporters who were responsible for the largest volume of exports to Australia that the Commission could reasonably examine.

ADN 2020/017 detailed three categories of exporters and how the dumping and subsidy margins were calculated for each category. Specifically, exporters not selected to be examined fall within the definitions of either 'residual exporters', 'uncooperative and all other' exporters or 'non-cooperative entities'. The three categories are described below:

1. A residual exporter is an exporter whose exportations were not examined and who was not an uncooperative exporter or a non-cooperative entity.
2. An uncooperative exporter is defined as an exporter that did not provide information considered to be relevant to the dumping inquiry within the specified timeframe, or an exporter that significantly impeded the inquiry.
3. A non-cooperative entity is defined as an entity that did not provide information considered to be relevant to a countervailing inquiry within the specified timeframe, or an entity that significantly impeded the inquiry.

2.4.5 Selected exporters

Consistent with the sampling approach outlined in ADN 2020/017, the Commission sent exporter questionnaires to the six suppliers selected for examination under section 269TACAA(1), being:

- Goomax Metal Co Ltd Fujian (Goomax);
- Foshan Shunde Beijiao Jiawei Aluminium Factory (Jiawei);
- Guangdong Jinxiecheng Al Manufacturing Co Ltd (Jinxiecheng);
- Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd (Kam Kiu China);
- PanAsia China; and
- Foshan City Sanshui Yongya Aluminium Co Ltd (Yongya).

Each identified supplier with the exception of Jiawei lodged exporter questionnaire responses (REQ) by the requested due date.

As Jiawei elected not to complete an exporter questionnaire as requested, the Commissioner notified Jiawei on 27 March 2020 that it had not given him information he considered relevant to the dumping and countervailing inquiry within a period of time he considered reasonable, and that he therefore intended to treat Jiawei as an uncooperative exporter pursuant to section 269T(1) and a non-cooperative entity pursuant to section 269TAACA.

2.4.6 Entities not selected under subsection 269TACAA(1)

The following exporters, not initially selected for sampling, submitted completed REQs relating to the inquiry period:

- Fujian Minfa Aluminium Inc (Minfa); and
- PMI.

Prior to the publication of the SEF, PMI made a submission¹² requesting that the Commission treat it as a selected exporter for the purposes of the inquiry.

Following the publication of the SEF, Minfa made a submission¹³ contending that the Commission had not given sufficient justification for not extending the number of exporters beyond the five that were examined, and that Minfa should be considered a selected exporter for the purposes of the inquiry.

The Commission indicated in ADN 2020/017 that, as required by section 269TACAA(2), if information is submitted by an exporter not initially selected under section 269TACAA(1) for the purposes of an inquiry, the inquiry must extend to that exporter unless this prevents its timely completion. The Commission's ability to examine the REQs lodged by residual exporters was contingent on a number of factors, including:

- the level of cooperation from the selected exporters;
- the number of other exporters seeking an individual examination; and
- the available resources within the Commission to undertake individual examination which, in relation to this inquiry, involved remote verification.

The Commission did not extend the inquiry to Minfa and PMI. The Commission assessed that, based on the resources available within the Commission to undertake individual examination, to do so would have prevented the inquiry's timely completion. The Commission published a file note on the EPR on 27 May 2020 detailing this decision.¹⁴

The Commission considers Minfa and PMI to be residual exporters.

2.4.7 Residual exporters

Following initiation of the inquiry, suppliers of the goods, other than the selected cooperative exporters named above, were requested to provide information via an information request. The information request and associated spreadsheets were made available on the Commission's website. Through this process the Commission identified the following suppliers who have, in addition to Minfa and PMI, been classified as 'residual exporters'¹⁵ for the purposes of this inquiry:

- Foshan City Nanhai Yongfeng Aluminium Co., Ltd;
- Foshan JMA Aluminium Co., Ltd;
- Foshan Lvqiang Metal Product Co., Ltd;
- Foshan Yatai PVC and Alu Co. Ltd;
- Fujian Fenan Aluminium Co., Ltd;

¹² EPR 543 document no. 23.

¹³ EPR 543 document no. 55.

¹⁴ EPR 543 document no. 26.

¹⁵ A residual exporter is defined in subsection 269T(1).

- Guangdong Huachang Aluminum Factory Co., Ltd;
- Guang Ya Aluminium Industries Co., Ltd;
- Guangdong Golden Aluminum Co., Ltd;
- Guangdong JMA Aluminium Profile Factory (Group) Co., Ltd;
- Guangdong Xingqiu Aluminium Co., Ltd;
- Guangdong Weiye Aluminium Factory Group Ltd; and
- Guangdong Xingfa Aluminium Co., Ltd.

2.4.8 Uncooperative, non-cooperative and all other exporters

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

Section 269TAACA(1) provides that an exporter is a non-cooperative entity where the Commissioner is satisfied that an exporter did not provide information that the Commissioner considered to be relevant to the inquiry within the specified timeframe, or an entity that significantly impeded the inquiry.

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

After having regard to the Direction, the Commissioner determined that all exporters that did not provide a response to the exporter questionnaire or a completed preliminary information request, or which did not request a longer period to provide a response within the legislated period (being 37 days, concluding on 23 March 2020), are uncooperative exporters and non-cooperative entities for the purposes of this inquiry.

2.4.9 Government of the People’s Republic of China (GOC)

On the day the inquiry was initiated, the Commission contacted the GOC advising it of the conduct of the inquiry and inviting it to complete a government questionnaire and forward copies of the exporter questionnaires and information requests to Chinese producers of the goods as it considered necessary.

The government questionnaire sought information regarding the subsidy programs that were countervailed in the original investigation, additional new programs that may be in operation in relation to exporters of the goods and information about the Chinese aluminium industry.

The due date for the GOC’s response was 23 March 2020. The Commission also advised the GOC to contact the Commission if the GOC considered further time was necessary to complete the questionnaire. The GOC did not lodge a government questionnaire response.

3 THE GOODS AND LIKE GOODS AND THE AUSTRALIAN INDUSTRY

3.1 Findings

The Commissioner considers that the locally manufactured aluminium extrusions are like goods to the goods to which measures apply. The Commissioner considers that there is an Australian industry, which comprises predominantly Capral, producing like goods, and that the like goods are wholly or partly manufactured in Australia.

3.2 Legislative framework

In order to be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or recurrence of, dumping or subsidisation, the Commissioner firstly determines whether the goods produced by the Australian industry are “like” to the imported goods. Section 269T(1) defines like goods as:

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

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

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

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

3.3 The goods

3.3.1 The goods description

The goods the subject of the anti-dumping measures in relation to China (the goods) are:

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

The goods include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. Aluminium extrusion products that have been painted, anodised, or otherwise coated, or worked (e.g., precision cut, machined, punched or drilled) fall within the scope of the goods.

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

The table below provides guidance to assist the categorisation of aluminium extrusions into the types covered by interim duties (goods under consideration or GUC) and those that are not covered (non-GUC).

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

Table 3 GUC and non-GUC classification based on degree of work done on product

3.3.2 Tariff classification of the goods

The goods are generally, but not exclusively, classified to the following tariff subheadings of Schedule 3 to the *Customs Tariff Act 1995* (Cth):¹⁶

Tariff Subheading	Statistical Code	Description
7604.10.00	06	non alloyed aluminium bars, rods and profiles
7604.21.00	07	aluminium alloy hollow angles and other shapes
7604.21.00	08	aluminium alloy hollow profiles
7604.29.00	09	aluminium alloy non hollow angles and other shapes
7604.29.00	10	aluminium alloy non hollow profiles
7608.10.00	09	non alloyed aluminium tubes and pipes
7608.20.00	10	aluminium alloy tubes and pipes
7610.10.00	12	doors, windows and their frames and thresholds for doors

¹⁶ These tariff classifications and statistical codes may include goods that are both subject and not subject to the anti-dumping measures. The listing of these tariff classifications and statistical codes is for convenience and reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to the anti-dumping measures.

Tariff Subheading	Statistical Code	Description
7610.90.00	13	other

Table 4 Tariff code and statistical class code listing

3.4 Model Control Codes

The Commission has used a model control code (MCC) structure in order to identify key characteristics for, among other things, model matching when comparing export prices and normal values (the basis for using a MCC structure and the Commission's practice is explained in ADN 2019/132).

All interested parties participating in this inquiry were requested to provide sales and cost data in accordance with the MCC structure detailed in Table 5 below:

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

Table 5 Model control code for aluminium extrusions

Each of the selected cooperating exporters proposed amendments to the MCC structure. These amendments related to the production of additional finish types and the use of additional alloys and tempers in the production process. Any changes to the proposed MCC structure, or alterations in terms of its application in respect of each interested party, have been addressed in the relevant verification reports which are attached as Non-Confidential Attachments to this report, and are also available on the EPR.

3.5 Like goods

The following sets out the Commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods under consideration and are therefore 'like goods'. For the purposes of the findings below, the Commission has relied on information

obtained from the verification of Capral's manufacturing facilities, information provided by exporters of the goods and prior findings of the Commission.

3.5.1 Physical likeness

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

3.5.2 Commercial likeness

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

3.5.3 Functional likeness

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

3.5.4 Production likeness

The aluminium extrusions produced by the Australian industry for sale in the Australian market are manufactured using processes that are identical to, or closely resemble, the processes used to produce the goods.¹⁷

3.6 Australian industry

In its application, Capral indicated that the Australian industry comprises of Capral itself and the following nine entities:

- Almax Aluminium Pty Ltd;
- Aluminium Profiles Australia Pty Ltd;
- Aluminium Shapemakers Pty Ltd;
- Australian Aluminium Finishing Pty Ltd;
- Extrusions Australia Pty Ltd;
- G. James Extrusion Co Pty Ltd (G James);
- Independent Extrusions Pty Ltd;
- Olympic Aluminium Co Pty Ltd; and
- Ullrich Aluminium Pty Ltd.

¹⁷ Please see section 3.6.1 for more information about the production process.

The Commission sent an information request to each of these Australian industry participants however only received a response from G James.

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

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

For the purposes of conducting this inquiry, the Commission visited Capral's Penrith facility where Commission staff observed the aluminium extrusions process in different stages of production. Capral uses its Penrith operation to produce and pack mill-finished extrusions so the manufacturing processes observed were limited to that category of goods. Although the scope of Capral's Penrith site is limited to mill finished like goods, the Commission has visited Capral's Bremer Park manufacturing operations at Ipswich in Queensland for prior investigations.¹⁸ Capral's Bremer Park site includes several major production stages that, in addition to the extrusion process itself, also includes paint and anodising facilities. The information available to the Commission through prior investigations has been utilised to augment the information available to the current inquiry.

Following the publication of the SEF, PanAsia China submitted¹⁹ that the lack of cooperation by other local producers should be of particular concern to the Commission as it may be indicative of an agreed strategy amongst industry members, to present information only from those producers that are able to demonstrate injury.

Capral responded²⁰ to this submission by stating that any such suggestion is conjecture, is unsupported and should be ignored.

The Commission was not provided with any evidence during the conduct of the inquiry to support the claim made by PanAsia China. As a result, the Commission is satisfied that the injury analysis undertaken by the Commission was based on all relevant information before it.

3.6.1 Production process

Unlike extrusion manufacturers in other countries, the Australian industry does not possess re-melt facilities and, therefore, cannot produce its own aluminium billet — the primary raw material used to produce the goods. As a result, the Australian industry purchases billet from the broader aluminium industry. The Australian industry purchases billet from a mix of suppliers in Australia and overseas.

The Commission observed the production process for aluminium extrusions as follows:

¹⁸ Specifically, investigation nos. 362 and 442.

¹⁹ EPR 543 document no. 57.

²⁰ EPR 543 document no. 59.

- aluminium billets, otherwise referred to as 'logs', are taken from a storage yard facility and pre-heated in a furnace to the necessary temperature required for the extrusion process;
- once pre-heated, the logs are cut into shorter lengths with a hydraulic shear and transferred into the extrusion press;
- the log is pushed through a die mounted to the extrusions press. This step produces the extrusion to meet the design specification inherent to the die used;
- once the extrusions exit the extrusion press, they undergo a stretching operation before entering a gas fired furnace to age the material and achieve the desired temper;
- at the conclusion of the stretching and tempering, the product is classified as a mill finished like good and either prepared for packing and dispatched or, depending upon the production order specifications, sent to the anodising or painting facilities to undergo further surface treatment; and
- this further treated product is packed for dispatch.

3.7 Submissions received in respect of the goods

Prior to the publication of the SEF, Kam Kiu China made a submission seeking the Commission's clarification on whether certain products produced by Kam Kiu China are within the scope of products subject to the inquiry.²¹

Kam Kiu China argued that the automotive parts it produces are subject to substantial further processing such that the nature of the products changes from an aluminium extrusion into a downstream product. Kam Kiu China provided a list of all automotive parts produced including photos or technical drawings in support of its claim. Kam Kiu China argued that automotive parts should no longer be regarded as GUC.

Kam Kiu China also argued that certain products which had been cut into very short pieces, such as those used in electronic applications, should be considered as non-GUC due to the level of further processing also required in relation to those products.

Following the publication of the SEF, Kam Kiu China made a further submission²² that models manufactured for use in medical equipment, the automotive industry and 3C products (high-end models) should be excluded from the scope of the goods. Kam Kiu China asserted that the characteristics of the high-end models are significantly different to the goods such that they cannot be seen to closely resemble the goods. In support of its claim, Kam Kiu China noted that high-end models are:

- materially different in that they are often made with different grade alloys compared to the alloys used to manufacture the non-high-end models;
- different in outward appearance by way of the smaller lengths to which they are cut, when compared to the multiple metre long lengths that non-high-end model aluminium extrusions are cut to;
- also different in outward appearance by way of the different, and sometimes detailed, finishes applied to them;

²¹ EPR 543 document no. 10.

²² EPR 543 document no. 56.

- also different in outward appearance by way of other additional production processes that are applied to them, such as drilling, CNC milling, and bending;
- characteristically different to the non-high-end models due to the tighter tolerances to which they are built and the additional quality control inspections that they are subjected to; and
- made especially for and used in specific commercial applications— namely, in the production of medical equipment, automobiles, and 3C electronics products— whereas non-high-end models are used in a broad range of applications, including window frames and door frames.

Kam Kiu China considers its high-end models to be distinct from its non-high-end models and essentially downstream to a standard aluminium extrusion product, by nature of the additional processing applied to the high-end models. Kam Kiu China considers the relationship between the high-end models and the goods to be akin to “sawlogs versus timber”, or “flour versus wheat”.

Kam Kiu China further notes that it does not export any of the high-end models to Australia, and that, if it did, the relevant dumping and countervailing duties should not be applied to the high-end models. In particular this is because, so far as Kam Kiu China is aware, there are no domestic manufacturers of products equivalent to the high-end models within the Australian market, nor are there many, if any, domestic manufacturers of downstream (to the high-end model) products within Australia.

Capral provided submissions in response to Kam Kiu China.²³ Capral argued that Kam Kiu China was seeking to distinguish products manufactured by end use application whereas the goods description does not relate to end use application. Capral asserted that where goods manufactured by Kam Kiu China fall within the goods description they should be included within Kam Kiu China’s questionnaire response.

PMI submitted that it is a manufacturer of bespoke and highly specialised aluminium extrusions known as “T-bars”.²⁴ PMI asserted that while the goods manufactured by Capral are more generic extrusions, and that while technically T-bars fall with the goods description, they should be excluded from the GUC for the purposes of the inquiry due to their nature as specialty products.

Capral provided a submission in response to PMI.²⁵ Capral provided a product catalogue dated October 2019 evidencing T-bars that it offers for manufacture to the Australian market.

The Commission’s assessment

The Commission accepts that Kam Kiu China produces a diverse range of products for a diverse range of end uses and that these products may differ by way of alloy composition, appearance as described by size or shape, additional production and quality control processes applied during their manufacture, or specificity of commercial application. The Commission notes that, for example, from the detailed information provided in respect of the automotive category identified by Kam Kiu China as a high-end model category, there are vast differences in the characteristics and complexity of the products manufactured.

²³ EPR 543 document nos. 11 and 59.

²⁴ EPR 543 document nos. 23, 47 and 58.

²⁵ EPR 543 document no. 37.

However, from the description and information provided by Kam Kiu China, the Commission is of the view that the high-end-models fall within the goods description. Kam Kiu China asserts, for example, that the high-end models use different alloys compared to the non-high-end models, as well as being cut into smaller lengths and having different finishes applied to them. Kam Kiu China's contention that the high-end models differ from the non-high-end models it manufactures does not evidence that the high-end models are no longer within the goods description. Similarly, the fact that the Australian industry does not manufacture the specific high end models manufactured by Kam Kiu China, does not evidence that these models do not fall within the goods description. The goods description contains guidance in respect of alloy, size and finish, and the high-end models satisfy those requirements.

The Commission notes that the goods do not extend to intermediate or finished products that are processed or fabricated to such an extent that they no longer possess the nature and physical characteristics of an aluminium extrusion, but have become a different product. The Commission accepts that some of the high-end models referenced by Kam Kiu China have been subject to further processing such as drilling and bending, however, does not take the view that the extent of further processing is such that they no longer possess the nature and physical characteristics of an aluminium extrusion. As indicated in the SEF, the Commission considers that these products fall within column three of the goods under consideration table contained in section 3.3.1 above, being "aluminium extrusions that are parts intended for use in intermediate or finished products". As a result, the Commission has considered high-end models the goods for the purposes of this inquiry.

The Commission notes that stakeholders were invited to propose amendments to the MCC structure outlined at section 3.4 above, and that Kam Kiu China suggested numerous changes to the MCC structure to reflect the greater diversity of its product range. These proposed amendments related to the production of additional finish types as well as additional alloys and temper codes reflective of the broader range of technical specifications to which Kam Kiu China manufactures. As detailed in the verification report prepared in respect of Kam Kiu China, the Commission accepted those proposed amendments in respect of Kam Kiu China's sales. Kam Kiu China was, however, unable to present cost data that accorded with its proposed change to the MCC structure. Had Kam Kiu China provided cost data in accordance with the MCC structure proposed, the additional costs it maintains are incurred in the production of high-end models, which are not exported to Australia, may have been excluded from the determination of normal values where normal values are determined under section 269TAC(2).

In respect to PMI's submission, the Commission notes that manufacturers of aluminium extrusions may produce both generic profiles as well as extrusions that meet customers' specific design requirements, which by definition will be specialty products. The Commission understands that while the Australian industry may not manufacture the specific product to which PMI's submission refers, it has the capability to do so, and as such products manufactured by PMI, which meet the goods description, should not be excluded from the inquiry.

The Commission notes that the Minister may grant an exemption if like or directly competitive goods are not offered for sale in Australia. PMI may wish to seek an exemption in relation to the products referenced in its submission.

3.8 Conclusion

The Commission has found that the locally produced goods closely resemble the goods subject to measures and are like goods, given that:

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

Based on the information obtained from the verification visit to Capral, and information obtained from other Australian industry participants in support of Capral's application, the Commissioner is satisfied that:

- the like goods were partly or wholly manufactured in Australia;²⁶ and
- there is an Australian industry which produces like goods in Australia.²⁷

²⁶ Section 269T(2) of the Act refers.

²⁷ Section 269T(4) of the Act refers.

4 THE AUSTRALIAN MARKET

4.1 Finding

The Commission has found that, during the inquiry period, the Australian market for the goods was supplied by the Australian industry, imports from China and imports from other countries.

The Commission estimates that the Australian market for aluminium extrusions has increased in size during each year since the continuation of anti-dumping measures in October 2015.

4.2 Approach to analysis

As discussed in chapter 3, the Australian industry for aluminium extrusions is comprised of several entities, with Capral being the predominant participant. The analysis detailed in this chapter is based on verified financial information submitted by Capral, import data from the ABF import database, verified importer and exporter information and information obtained during past investigations, reviews and inquiries conducted by the Commission into aluminium extrusions.

The period from 1 January 2009 to 31 December 2019 has been examined for the purposes of analysing trends in the size of the Australian market for aluminium extrusions.

The Commission's analysis is contained in **Confidential Attachment 1**.

4.3 The goods in the Australian market

Aluminium extrusions are used in a wide variety of applications including:

- commercial and residential buildings for window and door frame systems;
- prefabricated houses/building structures;
- roofing and exterior cladding;
- curtain walls;
- shop fronts;
- fencing;
- road, rail and marine vehicles;
- solar panel framing systems;
- electrical applications; and
- general manufacturing.

4.3.1 Market structure

The market structure for aluminium extrusions consists of:

- large original equipment manufacturers (OEMs), such as aluminium window manufacturers;
- distributors of aluminium extrusions;
- further finishers (e.g., anodisers, powder coat/painters); and

- fabricators.²⁸

The groups listed above include a wide range of small to medium retail and trade end-users (including smaller fabricators, manufacturers and other users) who order aluminium extrusions from distributors, metal service centres or retailers, with the choice of intermediary mainly reflecting size and complexity of orders, as well as the type of trading relationships developed over time.

Based on information obtained, the Commission has identified three major market segments for aluminium extrusions. These are:

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

4.3.2 Supply

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

The Australian market for aluminium extrusions is supplied by domestic producers such as Capral, and the other entities referenced at section 3.6 above, who together represent the Australian industry, as well as aluminium extrusions producers from other countries who supply Australian customers directly or via Australian based intermediaries and distributors.

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

4.3.3 Demand

Out of the three market sectors detailed above, the Commission understands that the key sectors driving demand are the residential and commercial building sectors.

Data provided by Capral in relation to sales volumes of like goods over the last six years illustrated a mild seasonal trend whereby sales in the second half of each calendar year were usually higher. The Commission considers this marginal change is likely attributed to the slow-down in economic activity experienced during the Australian Christmas and New Year holiday period and was not provided with any information that indicated other causative factors.

Capral provided the Commission with data it had obtained under subscription for annual dwelling commencements in the period 2012 through 2019. After peaking in 2016 the data indicated that the trend in annual dwelling commencements between 2016 and 2019

²⁸ Fabricators buy directly from the producers, normally in circumstances where the size and simplicity of order is such as not to adversely affect relationships between the producer and major distributors.

declined year on year, with 2019 being the lowest. The 2019 decline in dwelling commencements was most significant in the multi-residential high rise segment and to a lesser extent the detached housing segment.

However, in other industry sectors which utilise like goods, data indicated an increase in the transport sector in relation to the volume of truck and van builds which exhibited an upward trend in the period 2016 to 2019. The volume of truck and van builds peaked in 2018 however in 2019 regressed back to 2017 levels.

The Commission understands that there is an expectation within the market that there will be increasing demand in relation to the defence, marine and renewable energy sectors, particularly in relation to solar panel framing systems.

4.3.4 Marketing and distribution

Aluminium extrusions are produced for various markets within Australia. Manufacturers produce and sell a generic range of extrusion profiles which are commonly referred to as geometrics which are not specific to any particular application or customer. In respect of Capral, it will usually stock its regional distribution centres with an adequate supply of these types of extrusions and where requested will supply to order.

In addition to geometric profiles, manufacturers will produce extrusions to customer" specific design requirements which will typically be sold directly to the customer.

Within the Australian industry, the Commission understands that there are differing levels of geographic presence around Australia. Larger companies have production and distribution assets Australia-wide, while smaller companies service particular geographic areas.

4.3.5 Pricing

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

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

The difference between the combined sum of the LME metal price and premiums, and the selling price, is referred to in the industry as the 'spread'.

In addition, product profiles made to customer specifications require special dies to be cut, which will either involve a charge to the customer to cover the upfront cost of producing the die, or will alternatively be paid for by the manufacturer with the cost amortised over the expected life of the die or the contract and built into the price of the extrusions.

The Australian industry has regard to import price offers when setting prices, however, Capral noted that estimating the prices of aluminium extrusions sold by its competitors has become increasingly difficult due to the relatively low level of transparency amongst market participants. As a result its awareness of price in the market is generally via interactions with existing customers or other market intelligence that is available publically.

Capral also mentioned that price information contained in unsolicited offers from traders or aluminium extrusions mills located outside of Australia are increasingly being received via email and through social media platforms.

4.4 Market size

The Australian market for aluminium extrusions is supplied by the Australian industry and imported goods, primarily from China. The Commission has estimated the size of the Australian market using Capral's verified sales volumes, estimates of the sales of other Australian industry participants based on letters of support provided for Capral's application or Capral's broader market intelligence, and import data from the ABF import database.

Figure 1 and Figure 2 below show the composition of the Australian market since 2009:

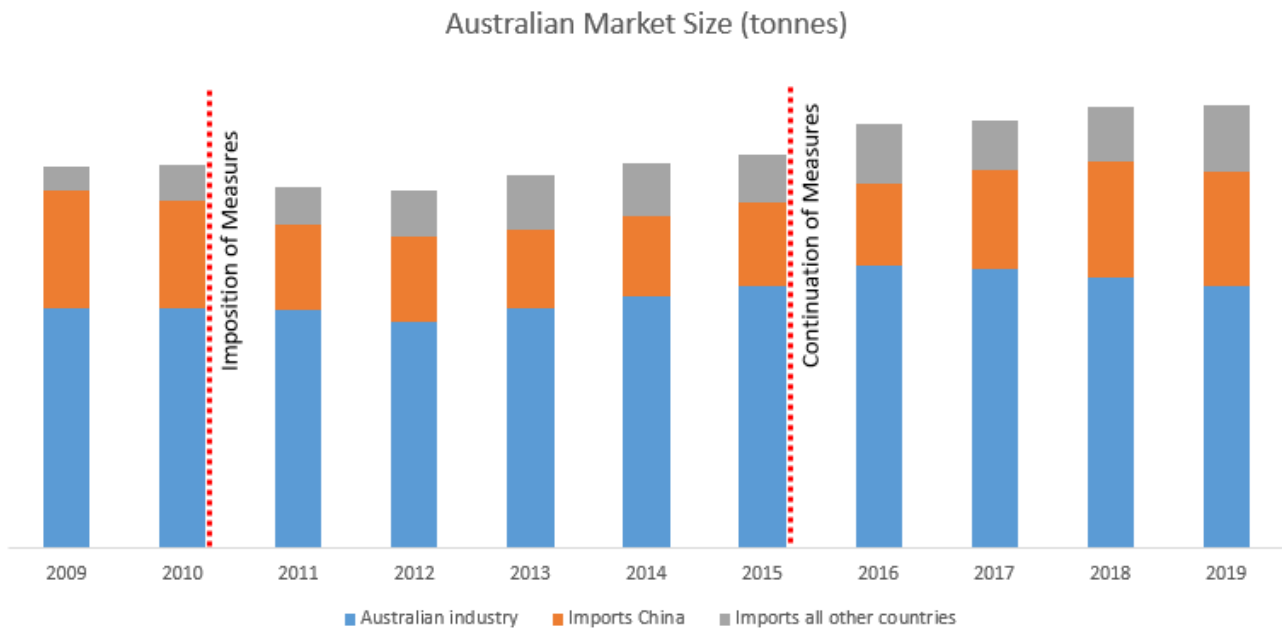


Figure 1 Australian market size for aluminium extrusions since 2009

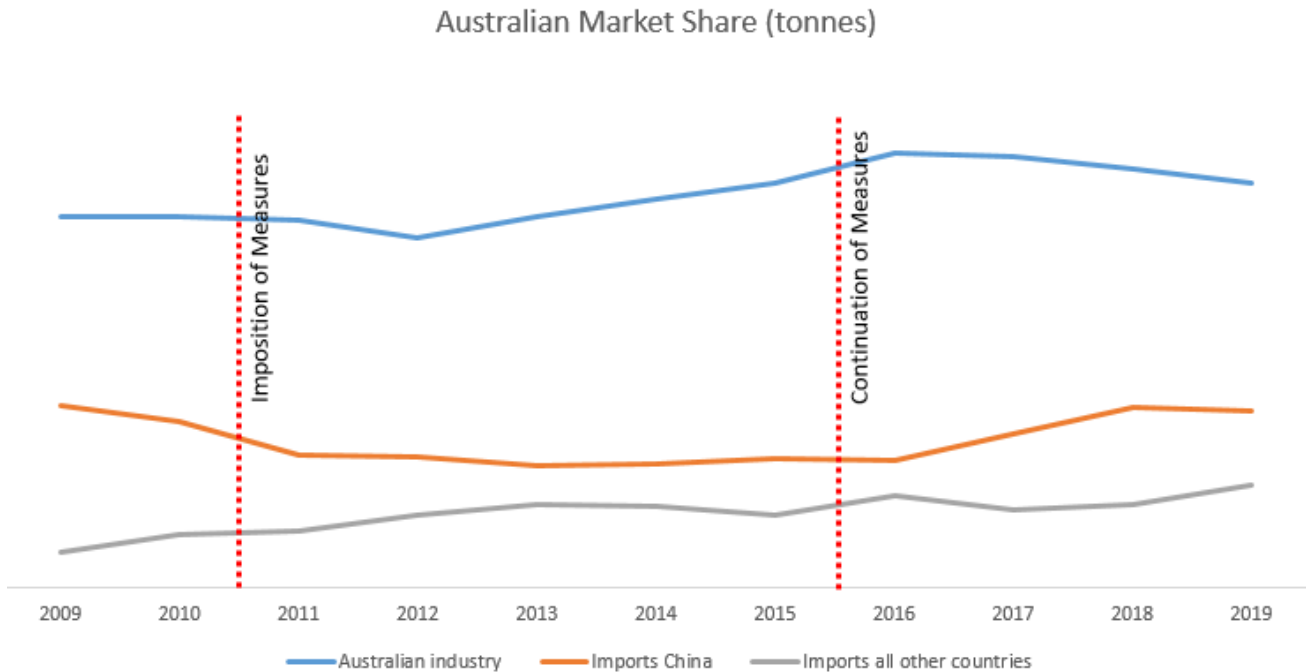


Figure 2 Australian market share for aluminium extrusions since 2009

It can be observed from Figure 1 and Figure 2 that:

- following the imposition of anti-dumping measures in 2010 the Australian market reduced in size, with the quantum of the reduction corresponding to the decline in volume of Chinese imports;
- in 2012 the Australian market began to increase in size and has grown in size in each year during the period 2012 to 2019;
- the volume of imports from China declined each year following the imposition of measures in 2010 until 2015 when import volumes began to increase;
- following the continuation of anti-dumping measures in October 2015 Chinese imports initially reduced before growing strongly in 2017 and 2018;
- Chinese imports reduced in 2019;
- Australian industry volumes grew in line with growth in the market during the period 2012 to 2016, after which its volumes began to fall despite the market continuing to expand; and
- imports from countries other than China have trended upward since 2009.

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

5 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

5.1 Finding

The Commission has found that the economic performance of the Australian industry generally declined in the period 2016 to 2019. The Australian industry suffered a deterioration in its economic performance in the form of:

- reduced sales volume;
- reduced market share;
- price depression;
- price suppression;
- reduced profit and profitability;
- reduced production volume;
- reduced revenue;
- reduced return on investment;
- reduced capacity utilisation;
- reduced employment; and
- reduced wages.

5.2 Approach to injury analysis

To assist with the consideration of whether the expiration of the measures would lead, or would be likely to lead, to the continuation or recurrence of material injury (section 8 refers), the Commission has considered the economic performance of the Australian industry since 1 January 2016 (period of analysis), noting that the anti-dumping measures were continued in October 2015. The existence of injury during this period may be an indicator of whether injury could continue in the future.

The observations in this chapter are based on verified financial information submitted by Capral, import data from the ABF as well as verified importer information submitted.

As detailed in chapter 3 above, Capral is the major producer of aluminium extrusions in Australia. For this reason, the Commission considers that data provided by Capral is a suitable indicator of the performance of the entire Australian industry.²⁹ This approach is consistent with the original investigation and previous continuation inquiry.

The data and analysis on which the Commission has assessed the economic condition of the Australian industry is at **Confidential Attachment 2**.

5.3 Previous findings

In REP 148, Customs and Border Protection found that, during the investigation period, the Australian industry had experienced injury in the form of:

- price undercutting;
- price suppression;

²⁹ Capral's data was verified during an in site visit during March 2020. A verification report detailing the Commission's findings is on the EPR: Case 543 EPR document no. 24.

- lost sales;
- reduced utilisation of capacity;
- lost profit and profitability;
- employment losses; and
- damaged customer relationships.

In REP 287, the Commissioner found that the Australian industry had continued to experience pressure in terms of price depression, price suppression, profit and profitability. REP 287 further noted that the sales volumes, profit and profitability of the Australian industry had shown improvement, however, the improvement was considered to be marginal. As a result, the Commissioner considered that, at that time, the Australian industry remained susceptible to material injury caused by dumping and subsidisation.

5.4 Volume effects

5.4.1 Sales volume

Figure 3 below illustrates the Australian industry's total Australian sales volume for aluminium extrusions from 2016:

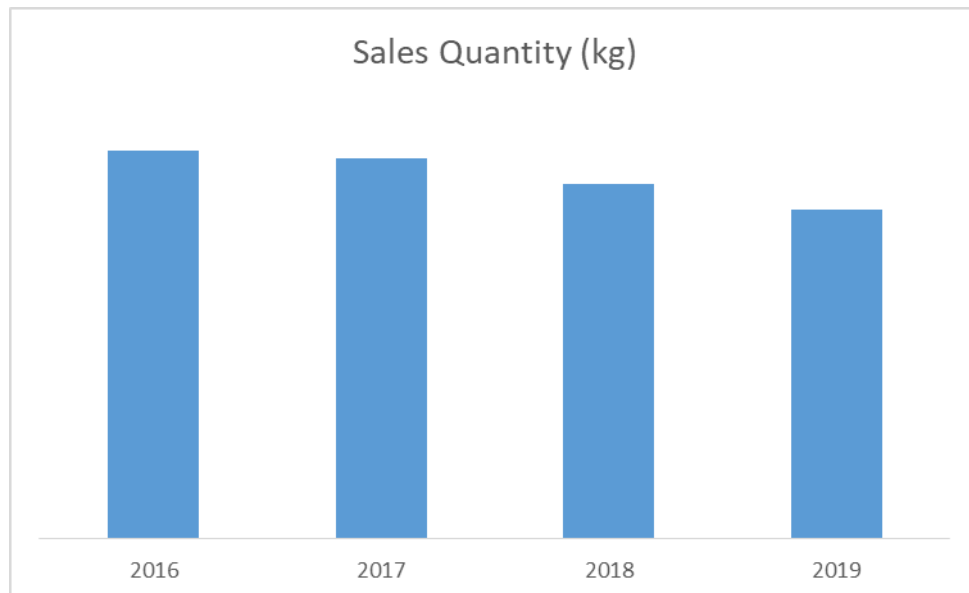


Figure 3 Australian industry's domestic sales volume since 2016

Despite the continuation of measures in October 2015, Australian industry's sales of aluminium extrusions have decreased year on year since 2016.

5.4.2 Market share

Figure 4 below shows the estimated changes in the Australian market share between Australian industry and imported goods based on data from the ABF import database.

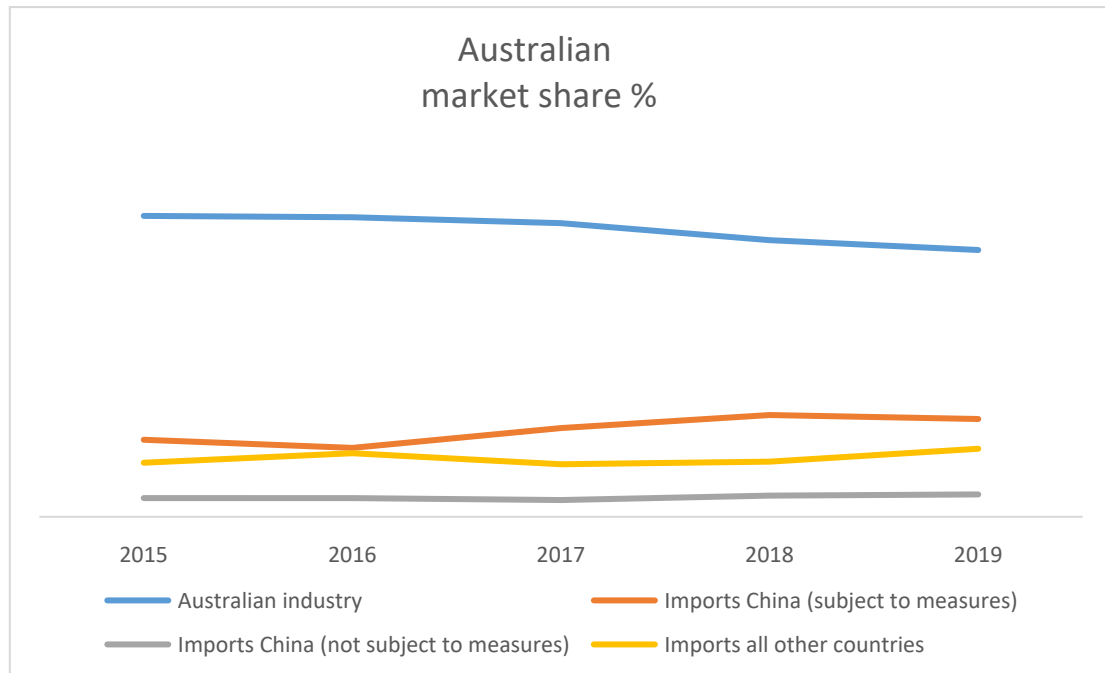


Figure 4 Australian market share since 2015

It can be observed that since the continuation of anti-dumping measures:

- Australian industry's share of the market has declined each year;
- imports of goods not subject to measures from China have remained constant;
- imports of goods subject to measures from China increased from 2016 through to 2018 before reducing marginally in 2019; and
- imports from other countries fell during 2016 and were constant through 2017 and 2018, before rising in 2019.

5.4.3 Conclusion — volume effects

Based on the above analysis, the Commission is satisfied that the Australian industry has experienced injury in the form of reduced sales volume and market share during the period of analysis.

5.5 Price effects

5.5.1 Price depression

Price depression occurs when a company, for some reason, lowers its prices.

Figure 5 below shows the trends in Australian industry's unit price:

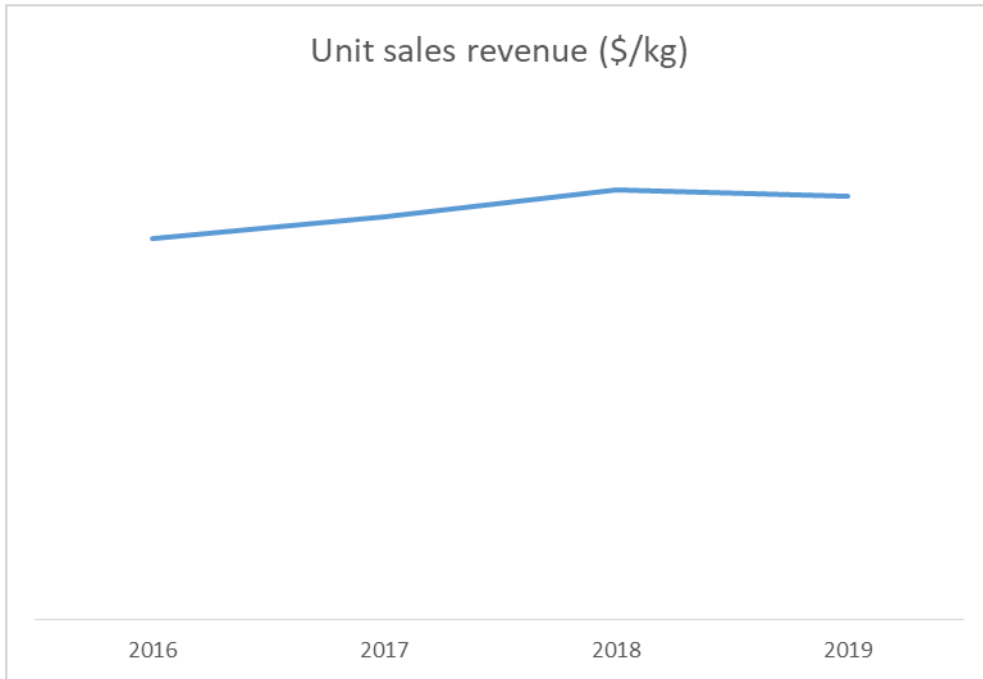


Figure 5 Australian industry's unit sales revenue since 2016

The Australian industry's unit sales revenue increased over the period from 2016 to 2018, however declined in 2019.

5.5.2 Price Suppression

Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

In determining whether price suppression has occurred, the Commission may assess:

- whether prices have increased at the same rate as costs over time (e.g., the injury analysis period) or within a specified period (e.g., the inquiry period); and/or
- whether prices for the Australian industry's product are lower than prices that may have been achieved absent dumping.

Figure 6 below shows the trends in the Australian industry's unit price and cost to make and sell (CTMS)³⁰:

³⁰ The Commission notes that Figures 6 and 7 vary from the comparable charts in the Capral verification report following a review of the underlying data which showed a minor calculation error.

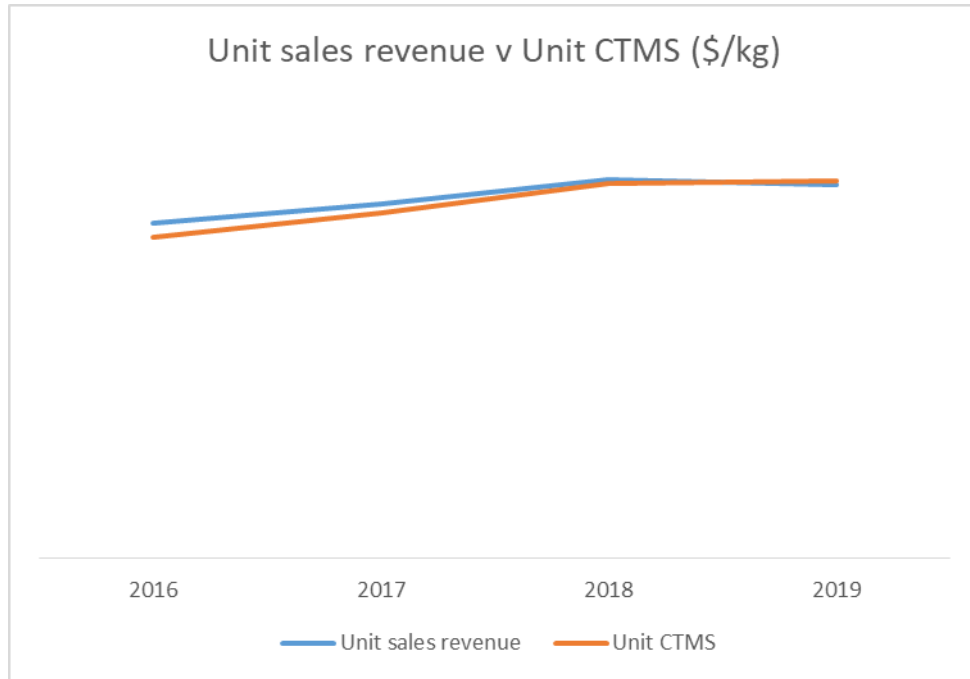


Figure 6 Australian industry's unit sales revenue and CTMS since 2016

Over the period of analysis, the rate of increase in the prices for like goods was less than the rate of increase in CTMS, and in 2019 the price of like goods generally decreased whilst CTMS continued to increase.

5.5.3 Conclusion – price effects

Based on the above analysis, the Commission is satisfied that the Australian industry has experienced injury in the form of price suppression throughout the period of analysis. While the Australian industry experienced increasing unit prices for the period 2016 to 2018, the Commission is satisfied that price depression has been experienced during 2019.

5.6 Profits and profitability

Figure 7 below shows the trends in the Australian industry's profit and profitability:

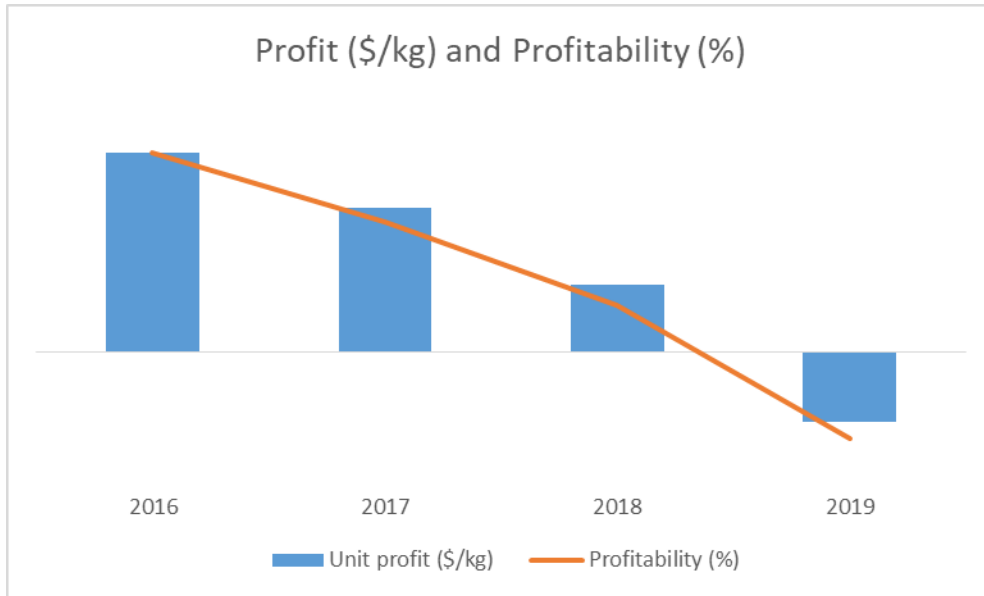


Figure 7 Australian industry's profit and profitability since 2016

The Australian industry experienced a decline in unit profit margin and profitability in each year throughout the period of analysis, with the most pronounced decline in 2019.

Based on the above analysis, the Commission is satisfied that the Australian industry has experienced injury in the form of reduced profit and profitability during the period of analysis.

5.7 Other economic factors

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

- production volume;
- revenue;
- return on investment;
- capacity utilisation;
- employment; and
- wages.

The Commission observed the following trends in relation to this data over the period of analysis:

- production volume, capacity utilisation and return on investment all declined on a year on year basis, with the most pronounced decline in 2019;
- revenue increased over the period 2016 to 2018, however reduced in 2019 to a level below that achieved in 2016; and
- employment and wages both increased in 2017, however reduced in each of the following years, with the most pronounced decline in 2019.

Based on the above analysis, the Commission is satisfied that during the period of analysis the Australian industry has experienced injury in the form of reduced:

- production volume;
- revenue;

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

5.8 Submissions received in respect of the economic condition of the Australian industry

Classic Blinds and Shutters made a submission questioning the consistency of the profit and profitability analysis undertaken by the Commission in this inquiry in comparison to that contained in REP 482.³¹

As detailed the Commission undertook verification of the financial information submitted by Capral for the purposes of considering the economic condition of the Australian industry. The full details of that verification are contained in the verification report which is available on the EPR. The key findings from that report are presented in sections 5.4 to 5.7 above.

The Commission accepts that the graphs presented in this report and those presented in REP 482 show some variance, however it should be noted that the graphs presented in REP 482 relate to the financial years 2015 to 2018, while the analysis for this inquiry has been conducted for the calendar years 2016 to 2019. For the purposes of this inquiry, the Commission is satisfied that the profit and profitability analysis undertaken is based on complete and accurate financial data in respect of Capral's sale of the goods during the period 2016 to 2019.

5.9 Conclusion

Based on an analysis of the information provided in the application and verified during and after the verification visit, the Commission is satisfied that the Australian industry continues to experience injury in the form of:

- reduced sales volume;
- reduced market share;
- price depression;
- price suppression;
- reduced profit and profitability;
- reduced production volume;
- reduced revenue;
- reduced return on investment;
- reduced capacity utilisation;
- reduced employment; and
- reduced wages.

³¹ EPR 543 document no. 53.

6 REVIEW OF VARIABLE FACTORS (DUMPING)

6.1 Finding

For the purpose of assessing whether the expiration of the measures would lead, or would be likely to lead, to the continuation or recurrence of dumping, the Commission has ascertained all variable factors relevant to the taking of the measures during the inquiry period.

The Commissioner has found that the variable factors in relation to all exporters have changed. The Commissioner has ascertained dumping margins as summarised in Table 6 below:

Exporter	Dumping Margin (%)
Goomax	-6.0
Jinxiecheng	-4.4
Kam Kiu	22.3
PanAsia	70.0
Yongya	-13.8
Residual exporters	11.1
Uncooperative and all other exporters	71.9

Table 6: Summary of dumping margins

6.2 Legislative framework

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

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of the goods are determined under sections 269TAB and 269TAC respectively. Section 269TACB is used to work out whether dumping has occurred, and the levels of dumping, by comparing the export price and normal value of the goods.

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

6.3 Cooperative exporters

6.3.1 Selected exporters

Consistent with the sampling approach outlined in ADN 2020/017, the Commission sent exporter questionnaires to the six suppliers selected for examination under section 269TACAA(1), being:

- Goomax;
- Jiawei;

- Jinxiecheng;
- Kam Kiu China;
- PanAsia China; and
- Yongya.

All selected suppliers, with the exception of Jiawei, lodged REQs by the requested due date.

The Commission undertook remote verification of the data contained in the REQs for each of the five selected suppliers other than Jiawei.

Capral provided the Commission with a briefing in relation to each supplier selected for verification,³² as well as submissions highlighting issues Capral requested to be considered by the Commission in undertaking verification activities.³³ The Commission has given consideration to these submissions during the conduct of each verification undertaken.

Exporter-specific variable factors have been calculated for these entities as detailed below.

As Jiawei elected not to complete an exporter questionnaire, as requested, the Commissioner notified Jiawei on 27 March 2020 that it had not given him information he considered relevant to the dumping and countervailing inquiry within a period of time he considered reasonable, and that he is therefore satisfied that Jiawei was an uncooperative exporter pursuant to section 269T(1) and a non-cooperative entity pursuant to section 269TAACA.

6.3.2 Residual exporters

As part of the sampling approach outlined in ADN 2020/017, the Commission requested any exporters, other than the six selected suppliers, to complete a residual exporter questionnaire and, in doing so, make themselves known to the Commission. The Commission received responses to the residual exporter questionnaire from the entities listed in section 2.4.7 above.

The Commission also received exporter questionnaire responses from Minfa and PMI. As detailed in section 2.4.6 above, the Commission did not extend the inquiry to Minfa and PMI as to do so would have prevented the inquiry's timely completion.

Minfa and PMI are also considered to be residual exporters.

The approach to calculating the export price and normal value for residual exporters is outlined at section 6.11 below.

6.3.3 Uncooperative exporters, non-cooperative entities and all other exporters

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

³² EPR 543 document no. 18.

³³ EPR 543 document nos. 20, 36 and 41. Minfa made submissions in response to Capral, however as Minfa was not subject to verification the issues raised do not have bearing on the findings in this report. Minfa's submissions are at EPR 543 document nos. 38 and 45.

The Direction states at section 8 that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response or fails to request a longer period to do so within the legislated period.

After having regard to the Direction, the Commissioner determined that all exporters that did not provide a response to the exporter questionnaire or a completed preliminary information request, or which did not request a longer period to provide a response within the legislated period (being 37 days, concluding on 23 March 2020), are uncooperative exporters for the purposes of this inquiry.

As provided for in section 269TACAB(1) of the Act, for uncooperative exporters, export price and normal value are worked out in accordance with section 269TAB(3) and section 269TAC(6) respectively by having regard to all relevant information. This is further discussed in section 6.12 below.

6.4 Normal value

6.4.1 Applicable legislation

Under section 269TAC(1), the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade (OCOT) for home consumption in the country of export in sales that are arms length transactions or, if like goods are not so sold by the exporter, by other sellers of like goods.

However, section 269TAC(2) sets out how normal value is to be ascertained if it cannot be ascertained under section 269TAC(1). In particular, if, in accordance with section 269TAC(2)(a)(ii), the Minister is satisfied that the normal value of the goods exported to Australia cannot be ascertained under section 269TAC(1) because ‘the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under [section 269TAC(1)]’, the normal value is such amount as the Minister determines in accordance with sections 269TAC(2)(c) or 269TAC(2)(d).

6.4.2 Particular market situation – the Commission’s assessment

Upon initiation, the Commission sent a questionnaire to the GOC requesting the following information in relation to the aluminium extrusions market in China:

- identification of the names of the government departments, bureaus or agencies that are responsible for the administration of any GOC measures concerning the aluminium industry;
- details of all manufactures/traders of aluminium extrusions in China including location, whether they are a State Invested Enterprise (SIE) or State Owned Enterprise (SOE), production quantity and whether there is GOC representation in the business;
- a detailed description of the domestic Chinese aluminium extrusions industry and the relevant upstream industries;
- quarterly import and export data (volume and value);
- details about the operation of the *Price Law of the People’s Republic of China*;³⁴ and

³⁴ 《中华人民共和国价格法》 [Price Law of the People’s Republic of China] National People’s Congress, Order no. 92, 1 May 1998.

- identification of any GOC initiatives and/or policies that affect the aluminium extrusions industry, including raw materials used in its manufacture.

The GOC did not provide a response to any of the questions related to an assessment of market situation.

In assessing whether a market situation exists in relation to the Chinese aluminium extrusions market during the inquiry period, the Commission has relied on all the evidence available to it, as well as submissions made to the inquiry and the findings of previous cases conducted by the Commission.

In light of all the information before the Commission, it is the Commission's view that a particular market situation existed in respect of the domestic market for aluminium extrusions in China for the inquiry period. The evidence for this finding is set out in **Non-Confidential Appendix 1**.

6.4.3 Suitability of domestic sales for use in determining a normal value under section 269TAC(1)

Where a particular market situation is found, pursuant to section 269TAC(2)(a)(ii), the Commission must also consider whether, because of the situation in the Chinese market, sales of aluminium extrusions in China are not suitable for determining a price under section 269TAC(1).

In undertaking its assessment of whether sales are "suitable" for the purposes of section 269TAC(1), the Commission has considered the relative effect of the market situation on both the domestic sales and export sales. If domestic sales and export sales are not equally impacted by the market situation, such a finding may render domestic sales not "suitable" for the purposes of section 269TAC(1). The Commission considers this approach is consistent with Australia's obligations under the World Trading Organisation's (WTO) *Anti-Dumping Agreement*³⁵ and the WTO Panel's interpretation of the obligations set out in this Agreement in *Australia – Anti-Dumping Measures on A4 Copy Paper*.³⁶

In assessing the relative effect of the particular market situation on domestic and export prices the Commission has compared the existing relationship between price and cost in each market. Those relationships both define and are defined by the prevailing conditions of competition in each market. It is important that the relevant factual circumstances of each price, including its relationship with cost, is considered within the proper context of the relevant market: for the domestic sales price, the relevant market is the domestic market of the exporting country (i.e., China); for the export price, the relevant market is that in the country into which the goods are being sold (i.e., Australia).

In undertaking this assessment of the impact of the situation in the market, the Commission has considered the prevailing conditions of competition in the domestic and export market for aluminium extrusions and the existing relationship between price and cost in order to determine whether domestic and export prices can be properly compared.

³⁵ *Agreement for the Implementation of Article VI of GATT 1994* 1868 U.N.T.S. 186.

³⁶ *Australia – Anti-Dumping Measures on A4 Copy Paper*, WTO Doc. WT/DS529/4 (4 December 2019). The Commission notes the provisions in Part XVB of the Act are to be construed, as far as its language permits, consistent with Australia's obligations with Australia's international agreements, adopting a broad approach to construction: *Schaefer Waste Technology Sdn Bhd v CEO Australian Customs Service* [2006] FCA 1644, [46]–[48] (Jacobson J), cited with approval in *Minister for State for Home Affairs v Siam Polyethylene Co Ltd* (2010) 270 ALR 440, [35] (Graham and Flick JJ).

To obtain further information about the markets in China and Australia, the Commission sent supplementary questionnaires to those exporters and importers that had submitted, or indicated a preparedness to submit, the standard questionnaires distributed at initiation, as well as Capral. Public versions of the supplementary questionnaire responses can be found on the EPR.

Prevailing conditions of competition in China and Australia

In assessing the prevailing conditions of competition in China and Australia, the Commission considered a variety of sources of information provided by exporters, importers and Australian industry as well as research undertaken by the Commission. The Commission considered the structure of each market, market conditions in respect of primary aluminium, the level of import penetration in each market and the nature of any competitive advantage arising from the market situation.

Market structure

Australia

The Australian market for aluminium extrusions is supplied by domestic aluminium producers including Capral and the other entities identified at section 3.6 above, as well as aluminium extrusions producers from other countries who supply Australian customers directly or via Australian based intermediaries and distributors.

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

The three major market segments for aluminium extrusions in Australia are:

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

Of these sectors, the residential and commercial building sectors are the largest and are the most important drivers of demand within the Australian market. The Commission understands that there is an expectation within the market that there will be increasing demand in relation to the defence, marine and the renewable energy sectors, particularly in relation to solar panel framing systems.

A comparison of Australian industry sales data and the ABF import data indicates that the imported goods and domestically produced goods are used by the same or similar customers. Furthermore, domestically produced and imported aluminium extrusions are easily substitutable.³⁷

China

Considering the supplementary questionnaires, the Commission understands that the Chinese market is similarly segmented, with the residential, commercial and industrial

³⁷ As detailed in chapter 3, the goods produced by all exporters and the Australian industry are alike, have similar specifications and common end-uses.

sectors representing the key areas of consumption of aluminium extrusions in China. Demand for aluminium extrusions in China has been increasing since 2015. Overall, the increase in living standards within China has led to a concurrent increase in demand for aluminium extrusions in home appliances, transport products and renewable energy products. Demand for extrusions has also been particularly affected by increased production in the Chinese construction and industrial sectors.

In addition to these market segments, a significant volume of aluminium extrusions are sold within China's electronics sector (specifically, the sector referred to as '3C electronics', standing for computer, communication and consumer electronics) and the automotive sector. Supplementary responses to the questionnaires also made reference to goods being sold in niche sectors like medical goods supply. The Australian market does not have the same diversity of market segments.

Market conditions – primary aluminium

The Commission considers that while both the Chinese and Australian markets for primary aluminium are competitive markets³⁸, the dynamic nature of that competition in each market is different.

Australia

The major raw material used in the production of aluminium extrusions in Australia is aluminium billet. The Australian industry purchases the aluminium billet from a combination of Australian and international suppliers. The aluminium billet pricing offered to Australian industry is based on a combination of variables including the Monthly London Metal Exchange (LME) Aluminium Official Cash Price, the Main Japanese Ports regional ingot premium (MJP), as well as alloy and billet premiums. Given the uniform basis for pricing, a further important consideration in the choice of supplier is the cost of delivery, such that international suppliers may be more competitive for supply to certain locations, while domestic suppliers will be more competitive for other locations.

The Australian industry stated it does not source aluminium billet from China. As detailed in **Non-Confidential Appendix 1** below, the Commission understands that the GOC's VAT rebate and export tariff arrangements for primary aluminium, alloy aluminium and aluminium extrusions during the inquiry period continued to have the effect of discouraging exports of primary and alloyed aluminium, such that Australian industry, and other global participants in the manufacture of aluminium extrusions do not have access to the same aluminium raw materials available to Chinese manufacturers at the discounted cost evident within the Chinese market.

China

The major raw materials used in the production of aluminium extrusions in China are aluminium ingot and aluminium billet.

The selected cooperative exporters' REQs collectively reported approximately 140,000 tonnes of primary aluminium purchases. The exporter's purchasing data revealed that 98 per cent of the primary aluminium inputs were sourced locally and two per cent imported.³⁹

³⁸ While the Commission has found a particular market situation in respect of the Chinese market as detailed in section 6.4.2, the Commission considers that the Chinese market is a competitive market as it is characterised by a large volume of participants who engage in commercial negotiations in respect of the supply of both primary aluminium and aluminium extrusions.

³⁹ Confidential Attachment 5 – Aluminium Benchmark.

The Commission conducted an examination of the five selected cooperative exporter's monthly primary aluminium purchases during the inquiry period and compared these monthly costs with the competitive LME based benchmarks constructed for ingot and billet. When comparing the selected cooperative exporters' aluminium purchases from domestic suppliers to the constructed LME benchmarks the Commission noted that all exporters paid less than the appropriate benchmark in every month of the inquiry period.⁴⁰

The Commission considers, based on the information provided, that Chinese domestic market for primary aluminium is competitive, however Chinese manufacturers have access to cheaper aluminium inputs than the Australian industry due to the distortions in the Chinese primary aluminium market.

Further, as stated above, the GOC tariff and tax rates applicable to the Chinese aluminium industry value chain serve to discourage the exportation of primary and alloyed aluminium while encouraging the exportation of downstream aluminium products such as aluminium extrusions.

Accordingly, the Australian industry does not have access to the same aluminium raw materials available to Chinese manufacturers at the discounted cost evident within the Chinese market.

Import penetration

Australia

The Commission examined the ABF import database to identify exporters and importers of aluminium extrusions during the inquiry period⁴¹. The Commission observed that during the inquiry period:

- aluminium extrusions were exported into Australia from 41 countries by 502 unique exporters, over 400 from China;
- 512 unique importers were identified as having imported aluminium extrusions;
- imports accounted for 41 per cent of sales in the Australian market;⁴² and
- of this 41 per cent, China accounted for 63 per cent.⁴³

Based on this analysis, the Commission considers that the Australian market is composed of a small number of Australian industry participants competing against a significantly higher number of exporters, and substantial import volumes, and that the Australian aluminium extrusions market can therefore be characterised as having a high level of import penetration.

China

The supplementary questionnaire responses did not provide information about the overall degree of import penetration into the Chinese market, such as the number of exporters or importers active in the Chinese domestic market. The Commission did not have access to this information from other sources, and as such is limited in reaching an understanding of import penetration in the Chinese market.

The supplementary questionnaire responses suggested that goods imported into China were generally more likely to be marketed on the basis of being technologically

⁴⁰ Confidential Attachment 5 – Aluminium Benchmark.

⁴¹ Confidential Attachment 3 – Proper Comparison Analysis – All country import analysis.

⁴² Confidential Attachment 1 – Australian Market – Market Size 2009–2019.

⁴³ Ibid.

sophisticated and, perhaps consequently, imported goods tend to be more competitive when sold as specialty goods — as opposed to generic products that could be easily substitutable with another manufacturer's product.

The responses did not identify barriers to entry for importers of goods into China, aside from the general requirement to comply with Chinese laws and environmental regulations.

The Commission notes that for 2019 Australia's consumption of aluminium as a percentage of global aluminium production is less than one per cent while the Chinese economy produces and consumes over 50 per cent of global aluminium production.⁴⁴ The Commission further notes that over 400 Chinese manufacturers exported to Australia during the inquiry period. Given the relative size of Australia's aluminium consumption to China's, the Commission considers the number of Chinese manufacturers supplying the Australian market would represent only a small portion of all Chinese manufacturers. The Commission also noted from the information provided by the selected cooperating exporters that they each maintain significant excess productive capacity.

The Commission considers that due to the number of Chinese producers supplying the Chinese market, and based on the low cost of the primary aluminium inputs available to those producers, which is materially lower than the international LME benchmark and not available to foreign producers, there would appear to be a competitive disadvantage in respect of the importation of aluminium extrusions into China (excluding the electronic sector).

Accordingly, based on the information before the Commission, albeit limited, on balance it appears that import penetration in the Chinese aluminium extrusion market was low in the inquiry period, relative to the Australian aluminium extrusion market (excluding China's electronic sector).

Relationship between price and cost

During verification activities the Commission found that Chinese exporters use the same aluminium inputs (ingot and billet) to manufacture the aluminium extrusions sold into the Chinese domestic market and those exported to Australia, and that these inputs account for the vast majority of the total cost to make (CTM).⁴⁵ The Commission compared the CTM of the aluminium extrusions (by finish type) produced for sale on the domestic market for each cooperative exporter against the CTM of those produced for export to the Australian market.

The Commission observed that, for Goomax, Jinxi Cheng and Yongya, across all finish types, there was negligible difference in the CTM between goods produced for domestic consumption and those produced for export to Australia.⁴⁶ For Kam Kiu and PanAsia a material difference was evident in respect of certain finish types. The difference in cost relates to these manufacturers' participation, to varying degrees, in the high-tech segment of the Chinese market.⁴⁷ This segment of the market requires higher specification products with more stringent quality control, increasing the cost of production. These types of

⁴⁴ Percentages extrapolated from data contained in Office of the Chief Economist, Department of Industry, Innovation and Science, *Resources and Energy Quarterly March 2020*, pp.94, 96,100.

⁴⁵ Confidential Attachment 3 – Proper Comparison Analysis – Aluminium cost % of CTM.

⁴⁶ Confidential Attachment 3 – Proper Comparison Analysis – Dom v Export CTM.

⁴⁷ For Kam Kiu see EPR 543 document no. 34 and for PanAsia see PanAsialum Holdings Company Limited Annual Report 2019 at page 5.

products are not produced by these manufacturers for export to Australia, hence the difference in cost profile between the domestic and export market for these manufacturers.

In terms of pricing in the domestic Chinese market, the Commission undertook an analysis with reference to three MCCs that aligned with the predominant MCCs sold into the Australian market.⁴⁸

The Commission observed that during the inquiry period, the quarterly weighted average prices achieved in the domestic market:

- for two of the three MCCs were closely aligned, with little overall price variance, in respect of four of the five manufacturers;⁴⁹ and
- for the third MCC, which was sold domestically by only four of the five manufacturers, were closely aligned, with little overall price variance, for three of the four manufacturers.

The Commission notes that where pricing variances were evident, the manufacturers achieved significantly higher domestic pricing. This observation is consistent with the fact, discussed above, that these manufacturers participate in the high-tech segment of the Chinese market, such that, on the goods produced for that market segment, each experiences both a higher cost profile for production, as well as a higher pricing profile in respect of domestic sales.

The Commission undertook the same analysis in terms of pricing in the Australian market for the same MCCs.

The Commission observed that the quarterly weighted average prices achieved in the Australian export market showed significant price variance across each of the MCCs.⁵⁰

The Commission considers, given the coincidence of cost profiles for four of the five manufacturers between domestic and export production, that were conditions of competition comparable between the domestic and export markets, a coincidence of pricing between the domestic and export markets would also be observed. That this is not evidenced by the analysis described above indicates a difference in the relationship between price and cost between the Chinese and Australian markets.

To enhance this evaluation, the Commission undertook an additional analysis of the margins on cost achieved by each exporter for each finish type in the Chinese domestic market and the Australian export market. This analysis was undertaken by calculating ex-works selling prices for both domestic and Australian export sales, and comparing these selling prices to the CTM relevant to each market.

The Commission determined that Goomax, Jinxicheng and Yongya made significantly greater margins on cost in the Australian market for each finish type, while for Kam Kiu and PanAsia the margins on cost were significantly greater in the domestic market.⁵¹ The Commission considers the greater margin on cost achieved in the domestic market for these exporters is due to their participation in the higher cost, higher margin high-tech sector of the domestic Chinese market.

⁴⁸ In total there were 29 unique MCCs exported to Australia by the selected cooperating exporters. The MCCs evaluated were A-6A-T1, M-6A-T1 and PC-6A-T1 which make up 48 per cent by volume of the MCCs exported to Australia by the selected cooperating exporters during the inquiry period.

⁴⁹ Confidential Attachment 3 – Proper Comparison Analysis – Dom sales by MCC.

⁵⁰ Confidential Attachment 3 – Proper Comparison Analysis – Export sales by MCC.

⁵¹ Confidential Attachment 3 – Proper Comparison Analysis – CTM margin comparison.

The Commission has also considered exporters' margins on cost within the context of the price undercutting, by finish type, by each exporter relative to the prices achieved by Australian industry in the Australian market. In terms of price undercutting, the Commission observed that:

- for anodised and powder coated products, all exporters had undercut Australian industry prices in all quarters of the inquiry period, with annual levels of undercutting ranging from 26 to 41 per cent over the entire inquiry period;⁵² and
- for mill finished products, price undercutting was not evident for all exporters in all quarters of the inquiry period, however all exporters had engaged in price undercutting during at least one quarter of the inquiry period, with an annual level of undercutting of up to 17 per cent over the entire inquiry period.⁵³

Finally, the Commission compared the Free on Board (FOB) export pricing of the selected cooperating exporters against the weighted average FOB export pricing of exports from Indonesia, Malaysia and Vietnam⁵⁴ as recorded in the ABF database. The Commission observed that the weighted average FOB export prices of the selected cooperating exporters were lower than those of Indonesia, Malaysia and Vietnam in each quarter of the inquiry period.⁵⁵ The Commission considers that this finding evidences that, in addition to undercutting Australian industry, Chinese manufacturers are able to undercut other export participants in the Australian market due to the distortions in the Chinese primary aluminium market.

Based on the above analysis, the Commission considers that:

- there is a consistency and stability in the domestic pricing by Chinese manufactures which evidences a competitive market where no competitive advantage is derived by any individual manufacturer as the reduced production costs resulting from the situation in the market appears to equally benefit the majority of producers; and
- the Australian market is a competitive market. However the Commission considers variability of pricing by Chinese manufacturers in the Australian domestic market evidences a competitive advantage enjoyed by Chinese exporters due to the market situation, which allows them to engage in pricing strategies in the Australian market that allow them to achieve either:
 - higher margins than the margins attainable on the sale of the same goods on the domestic market; or
 - increased sales volumes by significantly undercutting other participants in the Australian market; or
 - a combination of higher margins and increased sales volumes resulting from undercutting.

Conclusion on the effects of the situation in the market

The Commission's analysis indicates that the relationship between price and cost and the prevailing conditions of competition in China is different in comparison to the relationship

⁵² Confidential Attachment 4 – Undercutting Analysis – Undercutting by finish.

⁵³ Confidential Attachment 4 – Undercutting Analysis – Undercutting by finish.

⁵⁴ Indonesia, Malaysia and Vietnam are the three largest exporters of aluminium extrusions to Australia after China, and in total make up 25 per cent of exports compared to China at 63 per cent.

⁵⁵ Confidential Attachment 3 – Proper Comparison Analysis – FOB China v other countries

between price and cost and the prevailing conditions of competition in Australia. Specifically, the effect of the market situation in China is a decrease in input costs across all production that results in a lower level of competitive pricing throughout the market. This relationship defines the conditions of competition in China. Based on the information before the Commission, on balance, the effect of the market situation on the domestic sales prices in China does not result in any competitive advantages or disadvantages between the major market players, being Chinese producers. In other words, the particular market situation modifies the conditions of competition in a consistent manner for the major market participants.

In Australia, where no market situation or input cost decrease exists, competitive pricing prevails at a higher level. Higher production costs for those participants producing without the benefit of a market situation establishes a higher minimum threshold for competitive prices. Under these circumstances, the effect of the market situation in China on the price of aluminium extrusions sold into the Australian market results in competitive advantages and disadvantages between market players.

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

Thus, the relative effect of the market situation on domestic and export prices is different in the relevant markets.

Accordingly, the Commission finds that sales in the domestic Chinese market for each of the selected cooperating exporters are not suitable for determining a normal value, pursuant to section 269TAC(1) because they do not permit a proper comparison with the export price of the goods exported to Australia.

6.5 Constructed normal values — outline

6.5.1 Applicable legislation, policy and practice

Where the Minister is satisfied that normal value cannot be determined under section 269TAC(1), section 269TAC(2)(c) provides that the normal value is:

(c) ... the sum of:

- (i) *such amount as the [Minister] determines to be the cost of production or manufacture of the goods in the country of export; and*
- (ii) *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*

As required by sections 269TAC(5A) and 269TAC(5B), the construction of normal values under section 269TAC(2)(c) is required to be undertaken in accordance with the Regulations.

To determine costs of manufacture or production in relation to constructing normal values, section 43(2) of the Regulations requires that if:

- an exporter or producer of the goods keeps records relating to the goods that are in accordance with generally accepted accounting principles (GAAP) in the country of export; and
- those records reasonably reflect competitive market costs associated with the production or manufacture of the goods;

the Minister must work out the cost of production or manufacture using the information set out in the exporter or producer's records.

It is the Commission's view that, where an exporter's records are otherwise in accordance with GAAP, and are reliable, but the records do not reasonably reflect competitive market costs associated with the production or manufacture of the goods, it is open for the Minister, if practicable, to adjust the records so they reasonably reflect competitive market costs associated with the production or manufacture of the goods in the country of export.⁵⁶ In making such adjustments, the Commission considers that the Minister may have regard to all relevant information.

6.5.2 Reasonableness of exporters' costs of production

The Commission established during verification activities that the records of Chinese exporters relating to the goods have been kept in accordance with GAAP in the country of export.⁵⁷

However, the Commission's view is that, due to the influence of the GOC in the domestic market for primary aluminium, the exporters' records do not reasonably reflect competitive market costs for the production or manufacture of the goods. Specifically, the Commission considers that aluminium costs in China, which make up a major proportion of the total costs of production of aluminium extrusions, are distorted by GOC influence and do not reasonably reflect competitive market costs associated with the production or manufacture of the goods in terms of section 43(2)(b)(ii) of the Regulations. Accordingly, the Commissioner considers it appropriate that aluminium costs relating to the costs of production in the exporters' records be adjusted to reflect competitive market costs and that the methodology outlined below be applied in making such adjustments.

6.5.3 Establishing normal values for selected exporters

The Commission notes that, in accordance with section 269TAC(3A), the Minister is not required to consider working out the normal value of goods under section 269TAC(2)(d) before working out the normal value of goods under section 269TAC(2)(c). Where section 269TAC(1) is not available, the Commission's policy preference, as outlined at chapter 10

⁵⁶ See *Steelforce Trading Pty Ltd Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20 [108]–[109] (Perram J).

⁵⁷ The basis for this assessment in respect of individual exporters is contained in the verification reports at EPR 543 document nos. 40, 43, 44, 46 and 49 and attached to this report as Non-Confidential Attachment nos. 1 through 5.

of the Dumping and Subsidy Manual (Manual), is to construct normal values under section 269TAC(2)(c), in the first instance, when cost data of exporters is available.

When considering whether it is preferable to use the price paid or payable for like goods sold by the exporters to a third country, pursuant to section 269TAC(2)(d), the Commission must be satisfied that it is an 'appropriate third country'. The Commission has regard to the following factors, to determine whether any such third country is 'appropriate':⁵⁸

- whether the volume of trade from that the exporter to the selected third country is similar to the volume of trade from that exporter to Australia, and
- the nature of the trade in like goods between the country of export and the selected third country is similar to the nature of trade between the country of export and Australia (in considering 'nature of trade', the Commission considers the level of trade in the selected third country).

In this case, the Commission considers that the information provided by the exporters in their exporter questionnaires does not provide a precise or granular level of detail to determine whether a third country would be appropriate and to undertake the calculations required to determine a normal value.

Consequently, the Commission has constructed normal values under section 269TAC(2)(c), and has done so in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (Cth)⁵⁹ (the Regulations), relevant aspects of which are outlined below.

6.5.4 Aluminium cost adjustment

The Commission has determined that the constructed normal values should not consist solely of the actual aluminium costs incurred by exporters in the relevant costs of production. The Commission has considered all relevant information and considers it appropriate to use the exporters' records, but only after an adjustment is made to the records relating to the costs of aluminium, as submitted by each selected exporter in its exporter questionnaire. Such adjustment ensures that each exporter's records reflect competitive market costs. In doing so, the Commission has considered the individual circumstances of each exporter's purchases of aluminium and to the greatest extent possible has ensured that the exporter's adjusted records reflect costs that would be incurred in China without the distortion resulting from the influence of the GOC.

The Commission has established in previous cases that aluminium costs in competitive markets in Asian regions are often priced according to:

- a published price for primary aluminium;
- a regional premium;
- inland transport costs;
- a billet premium reflecting an additional cost to convert an ingot to a billet for use in the production of the goods.

The Commission has included each of the above components in establishing a competitive benchmark cost for aluminium, as outlined below:

⁵⁸ The Manual, page 51.

⁵⁹ As required by sections 269TAC(5A) and 269TAC(5B).

Primary aluminium — LME cash price

The Commission has relied on the average monthly LME official cash price data sourced from Argus Metals under subscription.

Regional premium

The Commission has relied on the published MJP regional premium sourced from Argus Metals under subscription. Shipments under the MJP premium are made on a Cost, Insurance and Freight (CIF) basis. This means that the premium is inclusive of all costs associated with transporting the goods from the country of export to the destination port except for those cost relating to port of arrival charges and inland transport from the port of arrival to the final destination.

Inland transport costs

No exporter provided details regarding inland transport costs for primary aluminium purchases. In the absence of actual costs relevant to the inquiry period, the Commission relied on the inland transport costs determined in Review 482.

Billet premiums

The Commission has determined a billet premium using the Australian industry's billet price schedules relevant to the inquiry period.

Kam Kiu China submitted⁶⁰ that the Commission should not have included the MJP premium in calculating a competitive benchmark cost for aluminium. Kam Kiu China asserted that while the Commission may consider it necessary to construct an aluminium benchmark based on a hypothetical scenario, that scenario should reflect reality, based on actual costs where those are available. As all of the purchases of aluminium to which the Commission applied the aluminium benchmark were domestic purchases from suppliers within China, Kam Kiu China submitted that the inclusion of the MJP premium does not reflect reality for Kam Kiu China.

As detailed above, in constructing the competitive cost benchmark for primary aluminium purchases the Commission has endeavoured to reflect costs that would be incurred in China in the absence of the distortion resulting from the influence of the GOC. To that end the Commission obtained primary aluminium supply contracts from both Australian industry and from Chinese manufacturers subject to the inquiry where those manufacturers had purchased primary aluminium from sources outside of China. In total the Commission examined supply contracts involving six unique, unrelated suppliers. The Commission notes that each supply contract examined relied on the LME and MJP as the key determinants of price, as well as other factors such as alloy and billet premiums. The Commission further notes that in the context of the supply contracts examined, the MJP is a pricing variable that is included independently of the actual shipping channels between buyer and seller. For example, Australian industry purchases primary aluminium from Australian suppliers based on a pricing formula that includes the MJP even though those goods are not shipped from another country of export.

For these reasons the Commission is satisfied that competitive pricing of primary aluminium in both the Australian market, and for primary aluminium supplied to China from non-Chinese sources, is undertaken by reference to a range of variables including the MJP. Accordingly, the Commission considers the MJP an integral component of the competitive

⁶⁰ EPR 543 document no. 56.

benchmark for primary aluminium constructed and therefore should be included as part of the benchmark by the Commission in this inquiry.

The Commission's competitive benchmark cost for aluminium is contained at **Confidential Attachment 5**.

Comparative advantage and disadvantage

The Commission considered whether it is appropriate to make an adjustment to the competitive benchmark to reflect any comparative advantages and disadvantages experienced by the domestic Chinese producers.⁶¹

The Commission considers that for any adjustment to the benchmark to reasonably reflect any comparative advantages and disadvantages, the Commission would need to:

- identify and quantify what the true, uninfluenced comparative advantage of the domestic Chinese market is, distinct from any advantages which are a result of the GOC influence,
- identify and quantify the comparative disadvantages of the Chinese domestic market, and
- only adjust for those 'true' comparative advantages and disadvantages.

This would necessarily result in a determination of a 'net' figure in the form of an adjustment.

Noting the complexity and extent of the GOC influence in the primary aluminium market, the Commission presently considers it is not possible to accurately isolate and quantify what amount of any comparative advantage or disadvantage is enjoyed by the Chinese domestic producers from the information before it.

Thus, in this case, the Commission considers an adjustment for comparative advantage or disadvantage is not practicable or reasonable.

6.5.5 Calculation of the aluminium cost adjustment

The aluminium costs have been determined by comparing the competitive benchmark cost to the exporter's actual costs, and applying the resulting variation as an adjustment to the exporter's records.

In cases where an exporter has purchased ingot or billet, the adjustment to the aluminium costs will be proportionate to the amount of billet and ingot purchased in the relevant period. Aluminium ingot and billet imported for use in production by an exporter has not been subject to adjustment.

6.6 Goomax

6.6.1 Verification

The Commission conducted a desktop verification of Goomax's REQ.

⁶¹ *Steelforce Trading Pty Ltd Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20 [118], [125] (Perram J).

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

A report covering the verification findings is provided at **Non-Confidential Attachment 1** and is available on the public record.⁶²

6.6.2 Export price

The Commission considers Goomax to be the exporter of the goods as Goomax is:

- the manufacturer of the goods;
- named on the commercial invoice as the supplier;
- named as consignor on the bill of lading;
- arranges and pays for the inland transport to the port of export;
- arranges and pays for the port handling charges at the port of export; and
- arranges and pays for the ocean freight and marine insurance regarding CIF sales.

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

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

The Commission therefore considers that all export sales made by Goomax to its Australian customers during the period were arms length transactions.

The Commission is satisfied that:

- Goomax is the exporter of the goods;
- the goods were exported to Australia otherwise than by the importer; and
- the goods were purchased in arms length transactions by the importer from the exporter.

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

6.6.3 Normal value

The Commission is satisfied that, due to a situation in the domestic aluminium extrusions market in China, domestic selling prices are not suitable for use in determining a normal value under section 269TAC(1).

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

⁶² EPR 543 document no. 43.

- the CTM to make that reasonably reflects competitive market costs in accordance with section 43(2) of the Regulation; plus
- domestic selling, general and administrative expenses (SG&A) on the assumption that the goods, instead of being exported, were sold domestically based on the company's records in accordance with section 44(2) of the Regulation; plus
- an amount for profit based on data relating to the production and sale of like goods on the domestic market in the OCOT⁶³ in accordance with section 45(2) of the Regulation.

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

In determining Goomax's CTM under section 43(2) of the Regulation, the Commission applied a competitive aluminium benchmark as detailed in 6.5.4 above.

6.6.4 Adjustments

To ensure that the normal value so ascertained is properly comparable with the export price of the those goods, the Commission made adjustments pursuant to section 269TAC(9) as follows:

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

Table 7 Adjustments to Goomax's normal values

6.6.5 Dumping margin

The dumping margin in respect of the goods exported to Australia by Goomax for the inquiry period is **negative 6.0 per cent**.

The Commission's calculations are included at **Confidential Attachment 6**.

6.7 Jinxiecheng

6.7.1 Verification

The Commission conducted a desktop verification of Jinxiecheng's REQ.

The Commission is satisfied that Jinxiecheng is the producer of the goods and like goods. The Commission is satisfied that the information provided by Jinxiecheng is accurate and

⁶³ Section 269TAAD states that domestic sales of like goods are not in the OCOT if arms length transactions are unprofitable in substantial quantities over an extended period and unlikely to be recoverable within a reasonable period. For the purposes of this inquiry the "extended period" and "reasonable period" are considered to be the inquiry period.

reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

A report covering the verification findings is provided at **Non-Confidential Attachment 2** and is available on the public record.⁶⁴

6.7.2 Export price

The Commission considers Jinxiecheng to be the exporter of the goods as Jinxiecheng:

- is the manufacturer of the goods;
- sold to traders that subsequently managed the export of the goods to Australia;
- was aware that the goods would be exported to Australia prior to giving up responsibility of the goods to the traders; and
- the traders acted as intermediaries, rather than distributors, as they did not have their own inventories for export sales.

In respect of Jinxiecheng's sales of the goods to its unrelated trading company purchasers that were subsequently sold to Australian customers during the period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price; or
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.⁶⁵

The Commission therefore considers that all export sales made by Jinxiecheng to its unrelated trading company purchasers that were subsequently sold to Australian customers during the period were arms length transactions.

The Commission is satisfied that:

- Jinxiecheng is the exporter of the goods;
- the goods were exported to Australia otherwise than by the importer; and
- the goods were not purchased by the importer from the exporter.

Accordingly, in respect of Australian sales of the goods by Jinxiecheng, the Commission has determined the export price under section 269TAB(1)(c) having regard to all the circumstances of the exportation. Specifically, the export price has been calculated as the price paid or payable for the goods by the traders to Jinxiecheng in arms length transactions less relevant deductions.

6.7.3 Normal value

The Commission is satisfied that, due to a situation in the domestic aluminium extrusions market in China, domestic selling prices are not suitable for use in determining a normal value under section 269TAC(1).

⁶⁴ EPR 543 document no. 40.

⁶⁵ Section 269TAA refers.

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

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

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

In determining Jinxiecheng's CTM under section 43(2) of the Regulation, the Commission has applied a competitive aluminium benchmark as detailed in 6.5.4 above.

6.7.4 Adjustments

To ensure that the normal value so ascertained is properly comparable with the export price of the those goods, the Commission made adjustments pursuant to section 269TAC(9) as follows:

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Export inland transport, handling and port charges	Add an amount for export inland transport, handling and port charges

Table 8 Adjustments to Jinxiecheng's normal values

6.7.5 Dumping margin

The dumping margin in respect of the goods exported to Australia by Jinxiecheng for the inquiry period is **negative 4.4 per cent**.

The Commission's calculations are included at **Confidential Attachment 7**.

6.8 Kam Kiu China

6.8.1 Verification

The Commission conducted a desktop verification of Kam Kiu China's REQ.

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

A report covering the verification findings is provided at **Non-Confidential Attachment 3** and is available on the public record.⁶⁶

⁶⁶ EPR 543 document no. 44.

6.8.2 Export price

The Commission considers Kam Kiu China to be the exporter of the goods, as Kam Kiu China is:

- the manufacturer of the goods;
- named on the commercial invoice and packing lists; and
- named as consignor on the bill of lading.

In respect of exports of aluminium extrusions to Australia during the inquiry period, the Commission found that the price was artificially influenced due to the relationship between the parties involved in the importation of the goods to Australia, being Kam Kiu China as the manufacturer, Kam Kiu (Hong Kong) Limited as the international sales office for the Kam Kiu group of companies, and Kam Kiu Australia as the sales agent in Australia.

The Commission was therefore not satisfied that the export sales were conducted at arms length.

Based on its verification findings, the Commission is satisfied that:

- Kam Kiu China is the exporter of the goods;
- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporter;
- the purchases of the goods by the importer were not arms length transactions; and
- the goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer.

Accordingly, in respect of Australian sales of the goods by Kam Kiu China, the Commission has determined the export price under section 269TAB(1)(b). Specifically, the export price has been calculated by reference to the invoice price from Kam Kiu Australia to its Australian customers, less prescribed deductions outlined under section 269TAB(2) to work the invoiced amount back to a FOB price from China.

6.8.3 Normal value

The Commission is satisfied that, due to a situation in the domestic aluminium extrusions market in China, domestic selling prices are not suitable for use in determining a normal value under section 269TAC(1).

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

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

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

In determining Kam Kiu China's CTM under section 43(2) of the Regulation, the Commission has applied a competitive aluminium benchmark as detailed in 6.5.4 above.

In respect of profit for Kam Kiu China, the Commission has excluded profits on identified high end products, in keeping with the methodology employed in REP 392, and upheld in the recent ADRP decision 2019/104.⁶⁷ In that matter the ADRP determined that high end products produced by Kam Kiu China should be excluded from the profit calculation as these models are not exported to Australia and therefore their inclusion in profit would not result in a fair comparison between export prices and domestic prices.

6.8.4 Adjustments

To ensure that the normal value so ascertained is properly comparable with the export price of the those goods, the Commission made adjustments pursuant to section 269TAC(9) as follows:

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic inland transport	Deduct an amount for inland transport
Domestic quality issues discount	Deduct an amount for quality issues discounts
Export inland transport, handling and port charges	Add an amount for export inland transport and associated FOB charges
Export credit terms	Add an amount for export credit terms
Export packing trolley cost	Add an amount for trolley cost
Non-refundable value-added tax (VAT)	Add an amount for non-refundable VAT

Table 9 Adjustments to Kam Kiu China's normal values

Following publication of the SEF, Kam Kiu China made a submission⁶⁸ in respect of adjustments made to the normal value. Kam Kiu China's submissions, and the Commission's responses are as follows:

Non-refundable VAT

Kam Kiu China submitted that the Commission should not have made an adjustment for non-refundable VAT. While noting that the Commission is not bound by decisions of the United States Court of International Trade (U.S. CIT), Kam Kiu China referenced a recent decision, *Jiangsu Senmao Bamboo and Wood Industry Co., Ltd., et al. v. United States*, in support of its claim. In that matter the U.S. CIT stated that the

*[...] decision to make the deductions from Senmao's EP starting prices for 'irrecoverable' input VAT was erroneous because it was based on a critical finding of fact, i.e., that irrecoverable input VAT did not occur on domestic sales, that was unsupported by record evidence and illogical.*⁶⁹

The Commission notes that Kam Kiu China did not provide reasons as to why this finding may be applicable to the Commission's consideration in respect of Kam Kiu China.

⁶⁷ ADRP Report 2019/104 at page 40.

⁶⁸ EPR 543 document no. 56.

⁶⁹ *Jiangsu Senmao Bamboo and Wood Industry Co., Ltd., et al. v. United States*, Court No. 15-00225. Slip Op.20-31 (March 11, 2020) (Senmao II).

As detailed in the Manual, the Commission treats a VAT liability on export sales as having influenced the export price. Accordingly, where the normal value is calculated from VAT exclusive domestic sales prices, as is the case for China, an upward adjustment is made in order to compare those domestic sales prices to the VAT inclusive export sales prices.

Kam Kiu China further submitted that if the Commission did find an adjustment for non-refundable VAT was warranted, the calculation undertaken by the Commission is incorrect as it does not reflect the actual tax burden relating to the transaction. Kam Kiu China provided an example of how, in its view, this actual tax burden should be calculated:

If a company purchased input materials at a cost of 100 RMB (net of VAT), then it would be liable for VAT of 16 RMB on those materials. Assume that those input materials (in their entirety) were then used to produce a finished good which was then exported at a FOB price of 120 RMB. If the company received a VAT refund calculated on that amount, then it would receive 15.6 RMB—i.e. 120×0.13 . In that case, the difference between the VAT paid (16 RMB) and the VAT refund (15.6 RMB)—i.e. the value of the non-refundable VAT—would be only 0.4 RMB. That amount is equal to 0.33% of the FOB price—i.e. $0.4/120$ —which is far less than 3% of the export FOB price, being 3.6 RMB—i.e. 120×0.03 .

The Commission notes that the Manual does provide for a lesser adjustment where the maximum amount (in this instance three per cent) does not properly reflect the different VAT liability between domestic and export sales. This may occur, for example, when materials used in the manufacture of the goods are exempt from VAT. The Manual notes that a lesser adjustment is made only where the exporter provides evidence concerning such VAT concessions on materials. Other than providing the theoretical example above, Kam Kiu China has not provided the Commission with evidence in relation to the VAT treatment of materials. As a result, based on the information the Commission does have, the Commission is satisfied that the non-refundable VAT adjustment outlined in the SEF remains preferable.

Export packing trolley cost

Kam Kiu China submitted that the Commission ought to have relied on the export packing trolley cost data provided for the current inquiry period, rather than data provided in relation to a previous verification for the purposes of determining the adjustment.

The Commission has reviewed the information provided by Kam Kiu China in relation to export packing trolley costs for the inquiry period and, following the receipt of further information from Kam Kiu China, is satisfied that it is complete and accurate. Accordingly, the Commission has amended the adjustment to normal value in respect of export packing trolley costs.

Credit cost

Kam Kiu China submitted that in making adjustments for domestic and export credit costs the Commission has relied on different methodologies to derive the applicable amounts. Kam Kiu China asserted that the difference in methodology is prone to cause uneven adjustments to be made, and instead the Commission should take the same approach for credit days in respect of both domestic and export sales.

The Commission has reviewed the information provided by Kam Kiu China in relation to both domestic and export credit days and is satisfied that it is complete and accurate, and allows for the same method to be applied to both domestic and export credit days. The Commission agrees that this is the preferable approach where sufficient appropriate

information is available in respect of both domestic and export sales, and has aligned its methodology accordingly in respect of Kam Kiu China.

Kam Kiu China further submitted that in undertaking the credit cost calculation, the Commission used the interest rate applicable to RMB denominated loans for both domestic and export credit, rather than the interest rate applicable to RMB denominated loans for domestic credit and the interest rate applicable to foreign currency denominated loans for export credit. Kam Kiu China proposed an interest rate based on a short term deposit held in USD by its related party trading company based in Hong Kong.

The Commission understands from the verification of the information contained in Kam Kiu China's REQ that pricing is negotiated between Kam Kiu China and its Australian customers, and that the related party trading company facilitates the exportation, including re-invoicing of the goods and receiving and transferring payments. While the Australian customers may pay the trading company in AUD or USD, Kam Kiu China itself does not maintain foreign currency accounts for the receipt of these funds, rather the funds are converted by, and received from, the trading company. For these reasons the Commission is satisfied it is preferable that the relevant interest rate for the credit adjustment as it relates to export sales remains as the rate applicable to RMB denominated loans.

6.8.5 Dumping margin

The dumping margin in respect of the goods exported to Australia by Kam Kiu China for the inquiry period is **22.3 per cent**.

The Commission's calculations are included at **Confidential Attachment 8**.

6.9 PanAsia China

6.9.1 Verification

The Commission conducted a desktop verification of PanAsia China's REQ.

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

A report covering the verification findings is provided at **Non-Confidential Attachment 4** and is available on the public record.⁷⁰

6.9.2 Export price

The Commission considers PanAsia China to be the manufacturer of the goods who knowingly placed the goods in the hands of a related trader, OPAL (Macao Commercial Offshore) Ltd (OPAL), for delivery to Australia. Specifically, the Commission found that:

- OPAL is named on the commercial invoice as the supplier;
- OPAL is named as consignor on the bill of lading;
- OPAL arranges and pays for the inland transport to the port of export;
- OPAL arranges and pays for the port handling charges at the port of export;
- OPAL arranges and pays for the ocean freight and marine insurance;

⁷⁰ EPR 543 document no. 49.

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

In respect of exports of aluminium extrusions to Australia during the inquiry period, the Commission found evidence that the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller as:

- PanAsia China, OPAL and PanAsia Australia Pty Ltd (PanAsia Australia) are all ultimately wholly owned by PanAsialum Holdings;
- PanAsia Australia was the sole Australian purchaser of the goods; and
- the prices between PanAsia China and OPAL, and between Opal and PanAsia Australia, are artificially set.⁷¹

The Commission was therefore not satisfied that the export sales were conducted at arms length.

Based on its verification findings, the Commission is satisfied that:

- PanAsia China is the exporter of the goods;
- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporter;
- the purchases of the goods by the importer were not arms length transactions; and
- the goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer.

Accordingly, in respect of Australian sales of the goods by PanAsia China, the Commission has determined the export price under section 269TAB(1)(b). Specifically, the export price has been calculated by reference to the invoice price from PanAsia Australia to its Australian customers, less prescribed deductions outlined under section 269TAB(2) to work the invoiced amount back to a FOB price from China.

Following the publication of the SEF, PanAsia China made a submission in respect of the Commission's determination of export price.⁷²

In its submission PanAsia China noted it lodged two duty applications for which the importation periods overlap with the inquiry period.⁷³ PanAsia China continued that in circumstances where an importer is likely to receive a partial or full refund of interim duties paid, this is relevant information which the Commission must have regard to when determining the deductive export price.⁷⁴

PanAsia China also referred to the Commission's *Report No. 504 – Continuation Inquiry into Anti-Dumping Measures applying to Certain Power Transformers*⁷⁵ (REP 504) in which a similar approach was taken.

⁷¹ As detailed in the PanAsia Australia verification report the absence of negotiation on price and conditions in relation to the purchases of the goods, specifics relating to the price setting mechanisms between OPAL and PanAsia Australia, and the common ownership of PanAsia Australia, OPAL and PanAsia China indicated that the price is influenced by a commercial or other relationship.

⁷² EPR 543 document no. 57.

⁷³ Ibid p2.

⁷⁴ Ibid p2-3.

⁷⁵ EPR 504 document no. 25

The Commission has considered PanAsia China's submission and is satisfied that the approach taken at the SEF is consistent with the requirements of determining a deductive export price under section 269TAB(1)(b).

The Commission acknowledges a different approach was taken in REP 504. However, the Commission draws attention to the fact that in that case the export price was determined under section 269TAB(1)(c). This subsection requires the Minister to determine a price having regard to all the circumstances of the exportation.

In contrast, section 269TAB(1)(b) is more prescriptive. Relevantly, in determining the export price the Minister must deduct "any duties of Customs or sale tax paid or payable on the goods".⁷⁶ There is no express scope in section 269TAB(1)(b) for the Minister to take into account 'all the circumstances of the exportation'.

In this case, the Commission is of the view that "final dumping duty" only becomes *payable* once the Minister has ascertained the variable factors relevant to the determination of duty payable under the Dumping Duty Act,⁷⁷ in accordance with Division 6 of Part XVB.⁷⁸

The Minister has not yet ascertained the variable factors relevant to the determination of duty payable under the Dumping Duty Act with respect to the duty assessment applications made by PanAsia China. Therefore the Commission considers, at the time of this report, no final duty is payable by PanAsia China.

Accordingly, the Commission is satisfied that deducting the amount of interim duty paid by PanAsia China as prescribed by 269TAB(2)(a), is consistent with the requirements of determining an export price under section 269TAB(1)(b).

6.9.3 Normal value

The Commission is satisfied that, due to a situation in the domestic aluminium extrusions market in China, domestic selling prices are not suitable for use in determining a normal value under section 269TAC(1).

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

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

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

⁷⁶ Section 269TAB(2)(a).

⁷⁷ See Dumping Duty Act, sections 8(3) and 10(3).

⁷⁸ See sections 269Y(1) and (4).

In determining PanAsia China's CTM under section 43(2) of the Regulation, the Commission has applied a competitive aluminium benchmark as detailed in 6.5.4 above.

6.9.4 Adjustments

To ensure that the normal value so ascertained is properly comparable with the export price of the those goods, the Commission made adjustments pursuant to section 269TAC(9) as follows:

Adjustment Type	Deduction/addition
Domestic credit	Deduct an amount for domestic credit cost
Export credit for PanAsia China	Add an amount for the credit cost of PanAsia China's sales to OPAL
Export inland transport	Add an amount for export inland transport
Export port charges	Add an amount for port charges
OPAL SG&A	Add an amount for OPAL's SG&A expenses
OPAL profit	Add an amount for OPAL's profit
Export credit for OPAL	Add an amount for the credit cost of OPAL sales to Australia
Non-refundable VAT	Add an amount for non-refundable VAT

Table 10 Adjustments to PanAsia China's normal values

Following publication of the SEF, PanAsia China made a submission⁷⁹ in respect of adjustments made to the normal value for export credit and non-refundable VAT.

PanAsia China submitted that the Commission has incorrectly made an upward adjustment for credit terms on sales made between PanAsia China and OPAL. PanAsia China argued that the credit terms offered by OPAL to PanAsia Australia encompass the credit terms offered by PanAsia China to OPAL, which allows for OPAL to make payment to PanAsia China upon receiving payment from PanAsia Australia.

The Commission understands from the verification of the information contained in PanAsia China's REQ that the title of the goods passed from PanAsia China to OPAL and from OPAL to PanAsia Australia in two transactions, and that credit terms were extended for both of these, separate, transactions. It was further established that OPAL does not have to settle its accounts with PanAsia China in order to on-sell to PanAsia Australia, and that OPAL at no point physically holds possession of the goods. For these reasons the Commission is satisfied that an adjustment is required in respect of the sales between PanAsia China and OPAL and OPAL and PanAsia Australia, respectively.

PanAsia China further submitted that the Commission has erred by applying the export VAT adjustment after all OPAL related adjustments have been made. PanAsia China argued that the export VAT is applied on the FOB price of the exported goods, ex-China, and in this instance, export VAT is incurred and paid by PanAsia China, and calculated on its FOB sales price to OPAL. Therefore, in calculating the constructed normal value, the Commission is required to apply the export VAT adjustment after the direct selling expense adjustment, as this accurately reflects the FOB price that the export VAT is based upon.

The Commission has reviewed the application of the VAT adjustment as it relates to PanAsia China and agrees that the adjustment ought to have been applied as described in

⁷⁹ EPR 543 document no. 57.

PanAsia China's submission. The Commission has amended PanAsia China's normal value accordingly.

6.9.5 Dumping margin

The dumping margin in respect of the goods exported to Australia by PanAsia China for the inquiry period is **70.0 per cent**.

The Commission's calculations are included at **Confidential Attachment 9**.

6.10 Yongya

6.10.1 Verification

The Commission conducted a desktop verification of Yongya's REQ.

The Commission is satisfied that Yongya is the producer of the goods and like goods. The Commission is satisfied that, except for the issue detailed in section 6.10.2 below relating to one Chinese trading company customer of Yongya, the information provided by Yongya is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

A report covering the verification findings is provided at **Non-Confidential Attachment 5** and is available on the public record.⁸⁰

6.10.2 Export price

The Commission considers Yongya to be the exporter of the goods as Yongya:

- is the manufacturer of the goods; and
- sells the goods to its customers with the knowledge that these customers will supply the goods to Australia.

In respect of Yongya's Australian sales of the goods made through two unrelated trading companies during the period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.⁸¹

The Commission therefore considers that these export sales made by Yongya during the inquiry period were arms length transactions.

In respect of Yongya's remaining Australian sales of the goods during the inquiry period conducted through a third unrelated trading company, the Commission found that there were discrepancies between the trader's price to the importer (as declared in the ABF import declaration) and the price paid by the trader for the goods sold by Yongya.

⁸⁰ EPR 543 document no. 46.

⁸¹ Section 269TAA of the Act refers.

Because the relevant trader and importer entities did not cooperate with the inquiry, the Commission was unable to obtain further information regarding the discrepancies.

Considering the discrepancies and the absence of further information, the Commission is not satisfied that these sales were arms length transactions pursuant to section 269TAA(1).

The Commission is satisfied that:

- Yongya is the exporter of the goods;
- the goods were exported to Australia otherwise than by the importer; and
- the goods were not purchased by the importer from the exporter.

In respect of export sales by Yongya to one Chinese based trading company, the Commission was not satisfied that sufficient information had been furnished, or was available to determine an export price for sales to that entity under section 269TAB(1).

As a result, the Commission has determined Yongya's export price under section 269TAB(3), having regard to all relevant information.

Specifically, with respect to the export sales of Yongya to the Chinese based trading company for which sufficient information had not been furnished, the export price has been determined for these sales by reference to export price data obtained from the ABF import database.

In respect of all other Australian sales of the goods by Yongya, the Commission has determined the export price by calculating the price paid or payable for the goods by the traders to Yongya in arms length transactions less relevant deductions.

Although the Commission has now determined Yongya's export price under section 269TAB(3) for all sales, the Commission is satisfied the calculations outlined in the SEF remain appropriate under section 269TAB(3). Accordingly, Yongya's export price has not changed since the SEF.

6.10.3 Normal value

The Commission is satisfied that, due to a situation in the domestic aluminium extrusions market in China, domestic selling prices are not suitable for use in determining a normal value under section 269TAC(1).

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

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

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

In determining Yongya's CTM under section 43(2) of the Regulation, the Commission has applied a competitive aluminium benchmark as detailed in 6.5.4 above.

6.10.4 Adjustments

As the price of aluminium extrusions exported to Australia by Yongya, and those sold domestically, are at ex-works and cash terms, the Commission considers that no adjustments in accordance with section 269TAC(9) are required.

Capral submitted⁸² that as Yongya's normal value is at the ex-works point an upward adjustment is required in respect of trolley and packing costs related to export sales that are not relevant to domestic sales.

The Commission has reviewed the calculation of Yongya's normal value and is satisfied that all costs incurred by Yongya in respect of the manufacture and sale of goods for export to Australia, including costs associated with packaging and preparation for export to an ex-works point, have been captured in the construction of the normal value prior to the consideration of adjustments. As such no adjustment is required for packing and trolley costs.

6.10.5 Dumping margin

The dumping margin in respect of the goods exported to Australia by Yongya for the inquiry period is **negative 13.8 per cent**.

The Commission's calculations are included at **Confidential Attachment 10**.

6.11 Residual exporters

The dumping margins for the residual exporters as listed in section 2.4.7 above have been determined in accordance with section 269TACB(2) as detailed below.

Section 269TACAB(2)(c) requires that the export price for residual exporters must not be less than the weighted average export price for like goods of selected cooperative exporters.

Section 269TACAB(2)(d) requires that the normal value for residual exporters must not exceed the weighted average of normal values for like goods of selected cooperative exporters.

Section 269TACAB(3) does not apply to a continuation inquiry.

6.11.1 Export prices

The export price in relation to residual exporters of aluminium extrusions has been determined pursuant to section 269TACAB(2), specifically as the weighted average of export prices for like goods of the selected exporters from China.

⁸² EPR 543 document no. 54.

6.11.2 Normal values

The normal value in relation to residual exporters of aluminium extrusions has been determined pursuant to section 269TACAB(2) specifically as the weighted average of normal values for like goods of the selected exporters from China.

6.11.3 Dumping margin

The dumping margin for residual exporters of aluminium extrusions from China is **11.1 per cent**.

The Commission's calculations are included at **Confidential Attachment 11**.

6.12 Uncooperative and all other exporters

As detailed in section 2.4.8, the Commission considers all exporters of aluminium extrusions from China that did not provide a response to the exporter questionnaire, or which did not request a longer period to provide a response within the legislated period, are uncooperative exporters for the purposes of this inquiry.

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

6.12.1 Export prices

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

The Commission has chosen the lowest export price on the basis that:

- the Commission does not have specific information in relation to the uncooperative exporters, relevant to the calculation of the export price; and
- the lowest verified weighted average export price demonstrates a price at which an uncooperative exporter may export like goods to Australia, based on the information before the Commission.

6.12.2 Normal values

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

The Commission has chosen the highest normal value on the basis that:

- the Commission does not have specific information relating to the uncooperative exporters, relevant to the calculation of the normal value; and
- the highest verified weighted normal value, less favourable adjustments, demonstrates a price at which an uncooperative exporter may sell the goods in the domestic Chinese market, based on the information before the Commission.

6.12.3 Dumping margin

The dumping margin for uncooperative and all other exporters of aluminium extrusions from China is **71.9 per cent**.

The Commission's calculations are included at **Confidential Attachment 11**.

6.13 Submissions received in respect of dumping margins

Classic Blinds and Shutters made a submission seeking the Commission's clarification on how a dumping margin of 71.2 per cent could be applied to PanAsia China when the highest rate of undercutting the Commission established during the inquiry period was 41 per cent.⁸³

The Commission notes that dumping margins and levels of undercutting are determined at different points in the sales cycle. The dumping margin for PanAsia China has been determined at an FOB point (as detailed in section 6.9.2), while the levels of undercutting assessed by the Commission have been established at a duty inclusive Free into Store (FIS) point (as detailed in section 8.5.1). This means that undercutting levels of up to 41 per cent have been found despite the Commission accounting for the duties paid in relation to the importation of the goods.

Minfa submitted⁸⁴ that the residual rate applicable to it is largely driven by the dumping margin of 71.2 per cent worked out for PanAsia China. Minfa contended that, to the extent that the export price determined for PanAsia included an amount for dumping duty, then this amount must be worked out using the actual duty payable. Minfa submitted that the SEF did not make clear the circumstances of the Commission's calculation.

Section 6.9 above details the Commission's assessment of PanAsia China's export price.

6.14 Summary of dumping margins

Table 11 below shows the dumping margins calculated by the Commission:

Exporter	Dumping Margin (%)
Goomax	-6.0
Jinxiecheng	-4.4
Kam Kiu China	22.3
PanAsia China	70.0
Yongya	-13.8
Residual exporters	11.1
Uncooperative and all other exporters	71.9

Table 11 Dumping margin summary

⁸³ EPR 543 document no. 53.

⁸⁴ EPR 543 document no. 55.

7 REVIEW OF VARIABLE FACTORS (COUNTERVAILING)

7.1 Findings

The Commission has found that countervailable subsidies have been received in respect of the goods exported to Australia from China during the inquiry period.

For the purpose of assessing whether the expiration of the measures would lead, or would be likely to lead, to the continuation or recurrence of subsidisation, the Commission has ascertained the amount of countervailable subsidy relevant to the taking of the measures during the inquiry period.

The Commissioner has found that the subsidy margins in relation to all exporters have changed. The Commissioner has ascertained subsidy margins as summarised in Table 12.

Exporter	Subsidy Margin (%)
Goomax	1.0
Jinxiecheng ⁸⁵	0.0
Kam Kiu China	6.4
PanAsia China	0.4
Yongya	0.0
Residual exporters	0.7
Non-cooperative entities	9.9

Table 12 Summary of subsidy margins

7.2 Legislative framework

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

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

(a) a financial contribution:

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

that involves:

- (iv) a direct transfer of funds from that government or body; or

⁸⁵ The table in SEF 543 identified Jinxiecheng as exempt from ICD. The Commission clarifies that Jinxiecheng is subject to ICD however prior to the inquiry period had not been in receipt of countervailable subsidies and as such had previously been subject to a zero per cent rate of ICD, which continues in this inquiry.

- (v) the acceptance of liabilities, whether actual or potential, by that government or body; or
- (vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or
- (vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or
- (viii) the purchase by that government or body of goods or services; or
- (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.⁸⁶

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

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

⁸⁶ Section 269TACC of the Act sets out the steps for working out whether a financial contribution or income or price support confers a benefit.

- (b) the fact that the subsidy program predominantly benefits particular enterprises; or
- (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
- (d) the manner in which a discretion to grant access to the subsidy has been exercised;

determine that the subsidy is specific.

(5) In making a determination under section (4), the Minister must take account of:

- (a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and
- (b) the length of time during which the subsidy program has been in operation.

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

7.3 Investigated Programs

The Commission examined 77 subsidy programs as part of this inquiry. This includes the 65 programs deemed to be countervailable subsidies received by exporters in respect of aluminium extrusions in Review 482, as well as 12 additional subsidy programs identified during this inquiry.

The Commission has relied upon information provided by cooperating exporters in assessing the alleged subsidy programs, and also considered as part of this assessment other relevant information obtained by the Commission during independent research into matters relevant to determining subsidisation in China. This information has been referenced where relevant.

As noted in section 2.4.9, the Commission forwarded a questionnaire inviting the GOC to provide information regarding the status of the countervailable subsidies that the Commission has previously found applicable to the goods exported to Australia from China. The questionnaire also sought further information regarding any new programs which may be relevant to the goods. The GOC did not respond to the Commission's request to complete a questionnaire, nor has the GOC made any submissions to the Commission in relation to this inquiry.

7.4 Summary of countervailable programs

After assessing all relevant information available, the Commission has found that the following programs are countervailable⁸⁷ in respect of aluminium extrusions exported to Australia from China.

The findings in relation to each program are outlined in the table below.

⁸⁷ Under section 269TAAC of the Act.

PUBLIC RECORD

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
2	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant	Yes
3	Provincial Scientific Development Plan Fund	Grant	Yes
4	Export Brand Development Fund	Grant	Yes
5	Matching Funds for International Market Development for Small and Medium Enterprises (SME)	Grant	Yes
6	Superstar Enterprise Grant	Grant	Yes
7	Research & Development (R&D) Assistance Grant	Grant	Yes
8	Patent Award of Guangdong Province	Grant	Yes
9	Training Program for Rural Surplus Labour Force Transfer Employment	Grant	Yes
15	Aluminium provided at less than adequate remuneration	Less than adequate remuneration	Yes
18	Preferential tax policies in the Western Regions	Tax	Yes
21	Tariff and VAT Exemptions on Imported Materials and Equipment	Tariff and VAT Exemptions	Yes
26	Innovative Experimental Enterprise Grant	Grant	Yes
29	Special Support Fund for Non-State-Owned Enterprises	Grant	Yes
32	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
35	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
47	Preferential tax policies for high and new technology enterprises	Tax	Yes
48	Provincial Government of Guangdong (PGOG) tax offset for R&D	Tax	Yes
56	PGOG special fund for energy saving technology reform	Grant	Yes
58	Development assistance grants from the Zhaoqing New and High Tech Industrial Development Zone (ZHTDZ)	Grant	Yes
59	Processing trade special fund	Grant	Yes
60	Trade insurance support fund	Grant	Yes
61	Enterprise employment fixed point monitoring work subsidy	Grant	Yes
62	Special funds for provincial enterprises to transfer and upgrade equipment	Grant	Yes
63	Reserve funds for enterprise development	Grant	Yes

PUBLIC RECORD

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
64	High integrity enterprise award 2014	Grant	Yes
65	Jiangmen engineering technology research centre award	Grant	Yes
66	2016 Shanghai Automotive Commodities Exhibition special fee subsidy	Grant	Yes
67	Corporate remuneration survey subsidy	Grant	Yes
68	Energy saving project subsidy	Grant	Yes
69	Science and technology project subsidy	Grant	Yes
70	Provincial engineering and technology research centre 2016	Grant	Yes
71	Foreign trade development fund subsidy of Jiangmen City	Grant	Yes
72	2015 Special Funds of Technology Renovation technical renovation project with environmental protection	Grant	Yes
73	Provincial Market Development Grant for foreign trade exhibitions and SMEs International market development	Grant	Yes
75	Subsidy for Supporting Foreign Trade Enterprises of Nan'an city in 2017	Grant	Yes
76	Fund for Supporting Foreign Trade Export in 2017 of Nan'an Municipal Bureau of Financial	Grant	Yes
77	Power consumption award for production and efficiency increase in December 2016	Grant	Yes
78	Integration of informationization and industrialization management system (Note changed from market development due to info provided from Goomax)	Grant	Yes
79	Subsidy for invention patents	Grant	Yes
80	No. 269: Special project for technology reform- subsidy for technology reform	Grant	Yes
81	Madrid Trademark grant by Fujian Provincial Administration for Industry and Commerce	Grant	Yes
82	2016 Award for brand value from Finance Bureau	Grant	Yes
83	Social security fund Guangzhou Social Insurance Fund	Grant	Yes
84	Patent supporting fund	Grant	Yes
85	Unemployment fund Guangzhou Social Insurance Fund	Grant	Yes
86	Technology supporting fund	Grant	Yes
87	Special fund Industry technology development and research	Grant	Yes
88	Industry technology R&D fund	Grant	Yes

PUBLIC RECORD

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
89	Technology innovation fund	Grant	Yes
90	Social security fund Zencheng City	Grant	Yes
91	2016 Jiangmen support fund for technology development	Grant	Yes
92	Funds for EFT16 technical reform	Grant	Yes
93	Funds for 2016 technical renovation	Grant	Yes
94	EFT provincial Industry and informatization special research expenses supplement fund	Grant	Yes
95	2017 Enterprise Compensation Survey Fund	Grant	Yes
96	VOCs treatment fund for the process of injection workshop	Grant	Yes
97	Economic investigation fund	Grant	Yes
98	2017 Provincial Motor Energy Efficiency Promotion Special Fund	Grant	Yes
99	2017 Jiangmen Enterprise Major technology platform construction Fund	Grant	Yes
100	Receiving the payment from Taishan Finance Bureau	Grant	Yes
101	2017 Jiangmen Enterprise Research and Development Financial Aid Fund	Grant	Yes
102	Taishan High-integrity enterprise project fund	Grant	Yes
103	2017 Provincial Enterprise Research and Development Fund	Grant	Yes
104	Special funds for enterprises in large equipment manufacturing industry	Grant	Yes
105	2017 Provincial New enterprise Technology Reform Fund	Grant	Yes
106	Jiangmen supported science and technology development projects 2018	Grant	Yes
107	2018 special fund support project fund	Grant	Yes
108	Jiangmen municipal support science and technology development funds in 2019	Grant	Yes
109	Subsidy for employment of the disabled	Grant	Yes
110	Environmental Protection Subsidy from Nan'an City Dongtian Government	Grant	Yes
111	Electricity Incentive Reward for Promoting Industrial Enterprise to Increase Production and Increase Efficiency of April to June of 2018	Grant	Yes

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
112	Subsidy for Foreign Economic and Trade Enterprise of 2018	Grant	Yes
113	Fund for Natural Disaster Relief	Grant	Yes
114	Subsidy for Chief Technology Officer	Grant	Yes
115	Electricity Incentive Reward of Production Increase and Efficiency Increase for Eligible Enterprise of the First Quarter of 2019	Grant	Yes
116	Trade Promotion Fund of 2019	Grant	Yes
117	Subsidy from Guangzhou Industry and Information Technology Bureau	Grant	Yes

Table 13 Countervailable subsidy summary

The Commission's findings in relation to each program investigated are outlined in **Non-Confidential Appendix 2**.

7.5 Calculation of subsidies margins

7.5.1 Cooperative exporters

The Commission has reviewed all available information, including data provided by the cooperative exporters, and determined that the selected exporters listed in Table 14 below have received a financial contribution conferring a benefit⁸⁸ in respect to the goods, in the form of subsidies listed in Table 13 above.

The amount of benefit received for each exporter has been attributed to each unit of aluminium extrusions (per tonne) using volume of sales of the goods by each selected exporter.

Exporter specific subsidy margins have been calculated using the amount of the unit benefit expressed as a percentage of the ascertained export price for each selected exporter.

7.5.2 Residual exporters

The Commission has determined the amount of subsidy received for the residual exporters based on the weighted average countervailable subsidisation received by selected exporters.

In calculating a subsidy margin for residual exporters, the Commission also used a unit of measure (sales volume) and an export price calculated based on the weighted average of selected exporters.

⁸⁸ Sections 269TACC(2)(a)-(b) of the Act.

The subsidy margins of the five selected exporters were individually calculated as per **section 7.5.1** of this report.

The Commission has calculated a subsidy margin for residual exporters of **0.7 per cent**. The subsidy calculations for residual exporters are provided at **Confidential Attachment 11**.

7.5.3 Non-cooperative entities

The Commission considers that the volumes exported by the exporters who have cooperated with the inquiry do not represent the total volume of exports that are relevant to the inquiry period. Having regard to section 269TAACA with respect to relevant non-cooperating entities, the Commission calculated a subsidy margin for these entities.

The subsidy margin for non-cooperative entities has been determined on the basis of all facts available and having regard to reasonable assumptions pursuant to section 269TAACA. In determining the countervailable subsidies for those entities, the Commission considers it reasonable to base the subsidy margins on the assumption that those entities may have received the highest level of subsidisation received by the cooperating exporters under each of the countervailable programs.

Based on the information available to the Commission, the Commission has calculated a subsidy margin for non-cooperating entities of **9.9 per cent**.

The Commission's countervailable subsidy calculations for non-cooperating entities are contained in **Confidential Attachment 11**.

7.6 Summary of subsidy margins

Table 14 below shows the subsidy margins calculated by the Commission:

Exporter	Subsidy Margin (%)
Goomax	1.0
Jinxiecheng	0.0
Kam Kiu China	6.4
PanAsia China	0.4
Yongya	0.0
Residual exporters	0.7
Non-cooperative entities	9.9

Table 14 - Subsidy margin summary

The Commission's subsidy calculations are at **Confidential Attachment 11**.

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

8.1 Finding

On the basis of the evidence available, the Commissioner is satisfied that the expiration of the current measures would be likely to lead to a continuation of, or a recurrence of, the dumping and subsidisation and the material injury that the current measures are intended to prevent.

8.2 Legislative framework

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

The Commission notes that its assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. This view has been supported by the ADRP, which noted that the Commission must consider what will happen in the future should a certain event, being the expiry of the measures, occur. However, the Commissioner's conclusions and recommendation must nevertheless be based on facts.⁸⁹

8.3 Australian industry claims

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

- Chinese exporters have retained distribution links to Australia and imports of aluminium extrusions from China have increased by 45 per cent since the Minister continued anti-dumping measures in 2015;
- there was a high level of participation from Chinese exporters in the most recent review of measures (Review 482), and numerous Chinese exporters that do not have individual variable factors have sought accelerated reviews, indicating an intention to export the goods to Australia;
- measures applied in other jurisdictions against Chinese exporters are intended to curb Chinese exports and as such it is reasonable to conclude that Chinese producers have excess capacity to supply the Australian market;
- a particular market situation continues to apply in the Chinese market in respect of aluminium extrusions, such that normal values should be constructed according to the methodology applied in Review 482;
- the GOC continues to provide significant subsidies to the Chinese aluminium extrusions industry that influences selling prices such that they are lower than they would otherwise be;

⁸⁹ ADRP Report No. 44 (relating to Clear Float Glass exported from the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand) refers.

- Review 482 confirmed substantial margins of dumping between 15 and 95 per cent; and
- Capral has experienced material injury in the 2019 financial year from the significant dumping of Chinese exports to Australia and this is likely to continue should the measures be allowed to expire.

8.4 Will dumping and subsidisation continue or recur?

In assessing the likelihood of whether dumping and subsidisation will continue or recur, a number of factors are relevant as outlined in the Manual.

The Manual provides that the inquiry may gather facts relevant to whether dumping will resume, such as exporters' margins, the volume of exports before and after the measures were imposed, the effect of the measures, the level of dumping compared with the level of measures, and any change in those measures (e.g., as a result of a review).⁹⁰

The Commission's view is that the relevance of each factor will vary depending on the nature of the goods being examined and the market into which the goods are being sold.⁹¹ No one factor can necessarily provide decisive guidance. The following analysis therefore examines a range of factors that the Commission considers are relevant to this inquiry.

8.4.1 Analysis of dumping within inquiry period

Kam Kiu China, PanAsia China and the categories of residual and uncooperative exporters

The Commission's review of the variable factors in section 6 above found that the goods exported to Australia by Kam Kiu China, PanAsia China and the categories of residual and uncooperative exporters were dumped in the inquiry period.

The Commission has examined the facts relevant to assessing the likelihood that these exporters will continue to export the goods at dumped prices. The Commission found that these exporters were first found to be dumping during the original investigation, and in subsequent matters where variable factors have been reviewed.

On the basis of these exporters' prior and consistent behaviour in exporting goods at dumped prices, and in the absence of evidence suggesting a change in the behaviour, the Commission considers that dumping by these exporters would be likely to continue if the anti-dumping measures expired.

Goomax, Jinxiecheng and Yongya

In the case of Goomax, Jinxiecheng and Yongya, whose exports were found not to have been dumped during the inquiry period, the Commission has examined the facts relevant to assessing the likelihood that these exporters will likely resume exporting the goods at dumped prices in the future.

In the index of export price movements in Table 15 below, the Commission found that, relative to their prices in the inquiry period, the prices for the goods exported by Goomax, Jinxiecheng and Yongya had been generally lower in prior periods:⁹²

⁹⁰ *Dumping and Subsidy Manual* (the Manual), p.176 refers.

⁹¹ Ibid.

⁹² Confidential Attachment 4 – Undercutting Analysis – ABF EP and Volume analysis.

Export Price	2019	2018	2017	2016
Goomax	100	89	102	NA
Jinxiecheng	100	95	90	89
Yongya	100	99	NA	NA

Table 15 Index of changes in export prices

The Commission further notes that in all previous matters where variable factors have been assessed in relation to these entities, each was found to have been dumping, and these entities have not subsequently lodged any duty assessment applications.

As a result, on balance, the Commission considers that the previous exports of the goods at dumped prices in all matters where variable factors have been ascertained since measures were last continued⁹³ provides a stronger indicator of the exporters' pricing behaviour than the absence of dumping in this inquiry period.

The Commission also found that the prices of goods exported by these entities were not the lowest in the period since measures were continued nor during the inquiry period. The Commission's analysis of ABF import data showed that during the inquiry period there were over 400 unique exporters of aluminium extrusions from China. Of these, 98 had weighted average FOB export prices lower than the lowest of the weighted average FOB export prices applicable among these three entities.

The Commission considers that in a competitive market the prices of the goods sold by these entities may reduce in line with other sellers and historical pricing behaviour.

8.4.2 Analysis of subsidisation within inquiry period

Capral submitted that the GOC remains actively involved in influencing the pricing of aluminium in China with the result that Chinese prices for primary aluminium are lower than they otherwise would be.⁹⁴ Capral referenced research undertaken by Harbour Aluminium, an aluminium industry specialist, on the reporting of aluminium price movements and trends in support of its submission.

In relation to subsidisation, the Commission has found that of the 77 identified programs, 28 were found to be operable for the selected exporters, 12 of which were newly identified programs since the period considered for the purposes of Review 482. It has also been observed that exporters have continued to receive countervailable subsidies since the continuation of measures in 2016.

Jinxiecheng, Kam Kiu China, Goomax, PanAsia China and the categories of residual exporters and non-cooperative entities

The Commission's review of the variable factors in section 7 above found that the goods exported to Australia by Jinxiecheng, Kam Kiu China, Goomax, PanAsia China and the

⁹³ Refer REP 392 and REP 482.

⁹⁴ EPR 543 document no. 21.

categories of residual and non-uncooperative entities were subsidised in the inquiry period⁹⁵.

In assessing the likelihood of these exporters continuing to export the goods at subsidised prices, the Commission had regard to the fact that each of these exporters, other than Jinxicheng have been found to be in receipt of countervailable subsidies in all matters where variable factors have been ascertained since measures were last continued⁹⁶.

Prior to the inquiry period the Commission had not previously found Jinxicheng to have received countervailable subsidies, however Jinxicheng was found to have been in receipt of a countervailable subsidy during the inquiry period.

On the basis of these exporters' prior behaviour in exporting goods at subsidised prices and/or these exporters exporting goods at subsidised prices in the inquiry period, and in the absence of evidence suggesting a change in this behaviour, the Commission considers these exporters would be likely to continue exporting goods at subsidised prices if the anti-dumping measures expired.

Yongya

In REP 482, as a residual exporter, Yongya was assessed to have been in receipt of countervailable subsidies. While Yongya was not found to be in receipt of countervailable subsidies during the inquiry period, the Commission considers that aluminium extrusions manufacturers in China continue to receive subsidies from the GOC, and no information has been provided to the Commission to indicate Yongya would not recommence exporting goods at subsidised prices if the measures expired.

Accordingly, on balance, the Commission is satisfied that Yongya would be likely to recur exporting goods at subsidised prices if the anti-dumping measures expired.

8.4.3 Import volumes

The Manual provides that in assessing the likelihood of continuing or recurring dumping and subsidisation, the inquiry may gather facts relevant to whether exports are likely to continue or resume, such as the volume of exports before and after measures were imposed or exporters' supply chains.⁹⁷

Figure 8 below illustrates the total import volumes⁹⁸ of aluminium extrusions into Australia since 2015, noting that anti-dumping measures were continued on 28 October 2015.

Imports are categorised into goods subject to measures from China, goods not subject to measures from China, and imports from all other countries:

⁹⁵ It is noted that while Jinxicheng has a subsidy margin of zero per cent, a countervailable subsidy was nonetheless received in the inquiry period.

⁹⁶ Refer REP 392 and REP 482.

⁹⁷ The Manual, page 176 refers.

⁹⁸ As identified through the ABF import database.

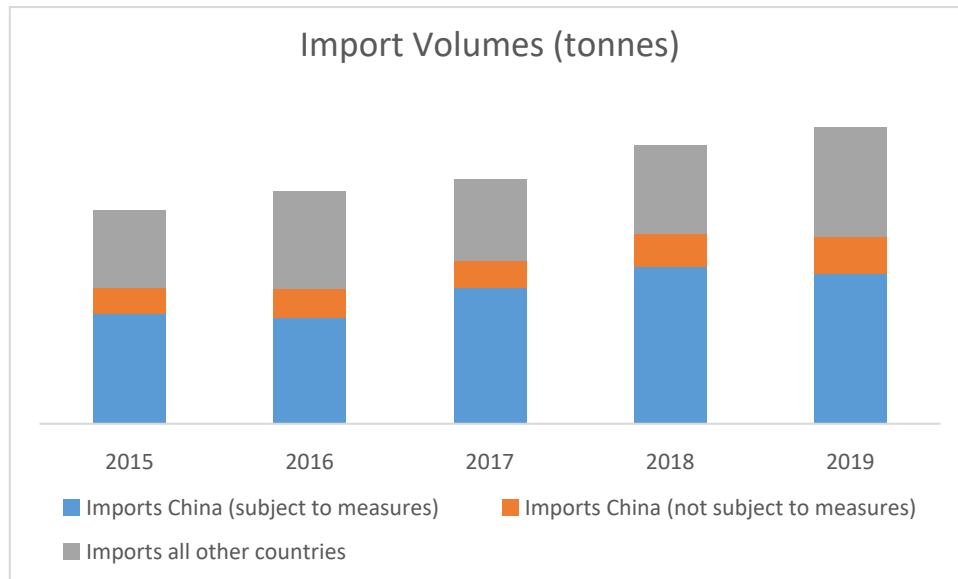


Figure 8 Import volumes in tonnes since 2015

Figure 9 below illustrates the total share of import volumes of aluminium extrusions into Australia since 2015, categorised as in the previous figure:

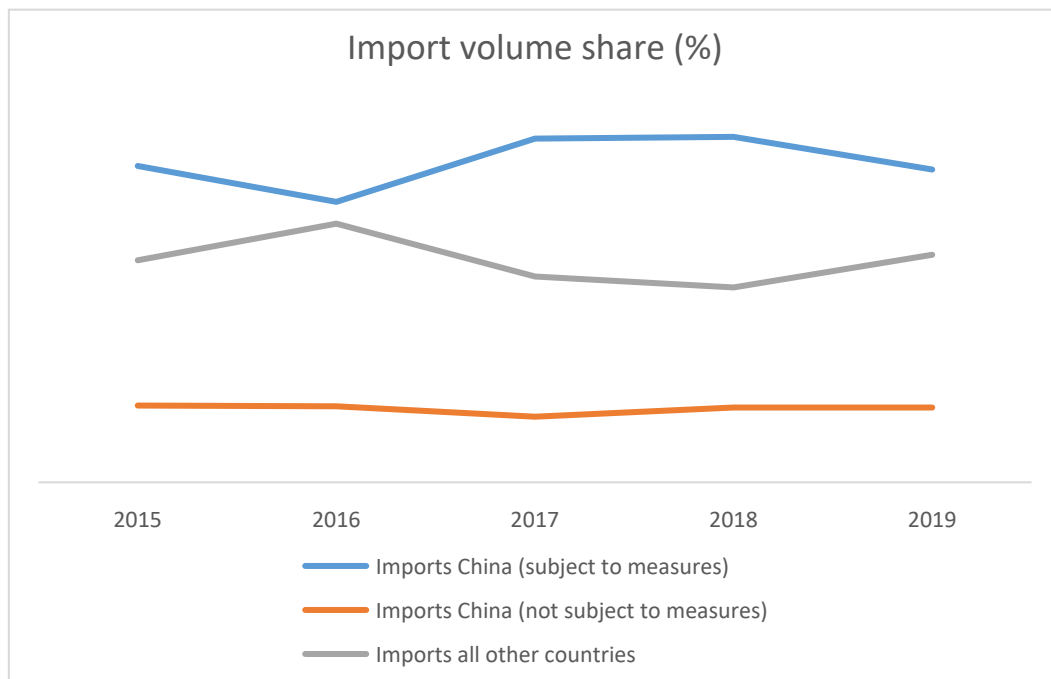


Figure 9 Share of import volumes since 2015

From Figure 8 and Figure 9, it can be observed that:

- after initially declining following the continuation of anti-dumping measures in 2015, the import volume of goods subject to measures from China - and the share of the import market held by goods subject to measures from China - increased between 2016 and 2018 before declining in 2019;
- the volume of goods subject to measures from China peaked in 2018 and despite a decline in 2019 the volume remains considerably higher than the volume prior to the continuation of anti-dumping measures in 2015; and

- at the conclusion of the period assessed imports of goods subject to measures from China represent over 50 per cent of the total volume of imported goods, on parity with the share held prior to the continuation of measures in 2015.

In addition to these findings, the Commission established from the ABF import data base that the number of exporters exporting the goods from China in the inquiry period was substantial, being over 400 entities. The Commission further notes that since the continuation of anti-dumping measures were secured in 2015 eleven Chinese manufacturers have sought accelerated reviews, suggesting an increased focus on the Australian market, with consequential impacts on import volumes.

In terms of the total Australian market for aluminium extrusions, imports of goods from China subject to measures accounted for 17 per cent of sales in the Australian market in 2015,⁹⁹ however had grown to account for 22 per cent of sales during the inquiry period. At this level, goods subject to measures from China accounted for more sales in the Australian market than imports from all other countries during the inquiry period.

Based on these observations, and in the absence of any contrary information, the Commission considers that import volumes and historical trends indicate that exporters would likely continue exporting goods to Australia if the measures expired.

PMI submitted prior to the SEF, and in a further submission following the SEF, that, while import volumes from China have increased, this is likely a result of the free trade agreement that came into effect between China and Australia in December 2016, and not of itself a result of dumping.¹⁰⁰ The Commission considers that while the free trade agreement may have been a factor increasing exports of aluminium extrusions from China, the data at Figure 9 shows that any increase that may have resulted from the free trade agreement was in aluminium extrusions subject to measures. The volume of exports of aluminium extrusions not subject to measures appears to have been unaffected by the free trade agreement.

8.4.4 Excess productive capacity in the Chinese market

The Manual provides that in assessing the likelihood of dumping continuing or recurring, the inquiry may gather facts relevant to whether exports are likely to continue or resume, such as exporters' production capacity.¹⁰¹

Information provided in the cooperating exporters' REQ shows surplus capacity ranging from 32 to 69 per cent during the inquiry period. The Commission has analysed the spare capacity available for each of the cooperating exporters in China and found that the total available capacity in the inquiry period of these exporters was approximately 75 per cent of the volume of sales in the Australian market.

Given that all cooperating exporters have excess capacity, on the available information the Commission considers it is reasonable to infer that this surplus capacity extends to other exporters in China. The Commission notes its earlier findings with regard to the particular market situation for aluminium extrusions in China, and the economic benefit to manufacturers of maintaining consistent production volumes in section 6.4.2.

⁹⁹ Confidential Attachment 1 – Australian market – Market size 2009–2019.

¹⁰⁰ EPR 543 document nos. 23 and 58.

¹⁰¹ The Manual, p. 176 refers.

On this basis, the Commission considers it is likely that exporters would continue to seek opportunities to obtain greater efficiencies of scale, and would therefore increase export volumes should the measures be removed.

8.4.5 Export focus of Chinese producers and maintenance of distribution links

The Commission found during verification of importers and exporters that Chinese suppliers of the goods subject to measures continue to produce aluminium extrusions which conform to Australian customers' specifications.

Comparing the supplier and importer relationships that existed in the prior continuation of measures in 2015 to those in the current inquiry period, the Commission has found that many of the same parties continue to trade the goods in substantial quantities. The Commission did note however that new exporters, including Goomax, Jinxiecheng and Yongya, have quickly consolidated distribution links with customers and expanded the volume of exports to Australia notwithstanding the existence of measures.

Table 16 below shows an index table of export volumes for these entities:¹⁰²

Export Volume	2019	2018	2017	2016
Goomax	100	158	1	NA
Jinxiecheng	100	73	4	3
Yongya	100	60	NA	NA

Table 16 Index of changes in export prices

It can be observed that each entity has moved from having zero, or negligible, presence in the Australian market following the continuation of measures in 2015. Each entity was selected for examination in this inquiry due to the volume of its exports being among the six largest exporters during the inquiry period, which indicates a significant acceleration in penetration into the Australian market notwithstanding that each entity has been subject to measures since entering the Australian market. The Commission also notes from data provided by each entity in respect of export sales to all countries that Australia is the largest source of export sales for two of these entities and the second largest source of export sales for the third. The Commission considers that the Australian market is an attractive market for each of these entities and is an integral part of its sales strategy.

The Commission notes that Goomax's volume declined in 2019 after a dramatic increase in 2018. The Commission considers that Goomax had, on entering the Australian market, quickly established distribution links in keeping with its export focus.

In terms of the broader presence of Chinese imports in the Australian market, Figure 10 below charts the number of unique suppliers of aluminium extrusions identified within the ABF import database by year since 2015:¹⁰³

¹⁰² Confidential Attachment 4 – Undercutting Analysis – ABF EP and Volume analysis.

¹⁰³ Confidential Attachment 1 – Australian market – ABF exporter analysis.

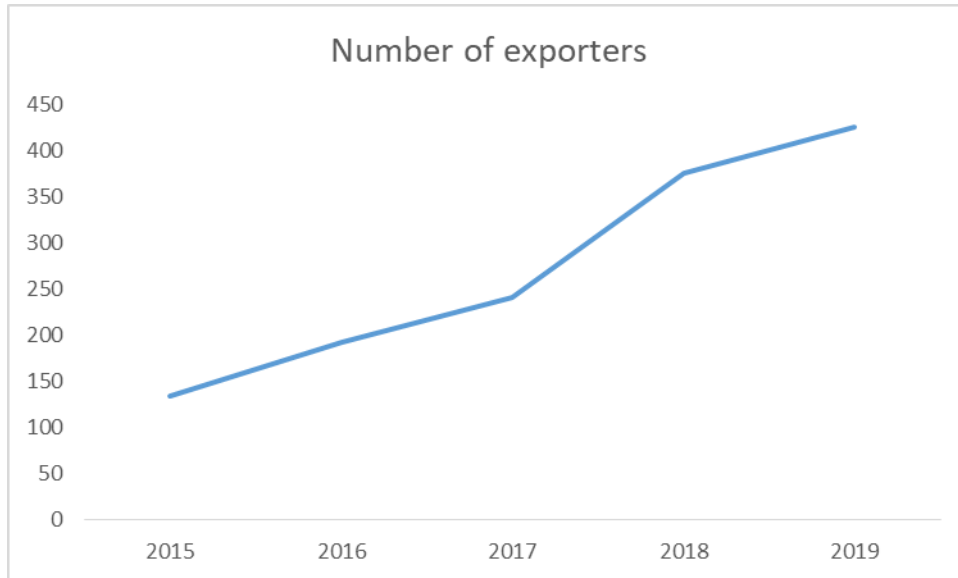


Figure 10 Number of unique suppliers from China

It can be observed that the number of Chinese exporters of aluminium extrusions in the Australian market has grown consistently since the continuation of measures in 2015, such that during the inquiry period there were approximately three times the number of exporters as were present prior to the continuation of measures.

Based on these observations, and in the absence of any contrary information, the Commission considers the maintenance of the distribution links would likely enable exporters to continue exporting goods to Australia if the measures expired.

8.4.6 Circumvention activities of Chinese exporters

As detailed in section 2.2 above, the Commission has undertaken two investigations into anti-circumvention activities by Chinese exporters.

REP 241 found that the importer of aluminium extrusions exported to Australia by PanAsia China sold the goods in Australia without increasing the price commensurate with the total amount of duty payable under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), by selling the goods at a loss.¹⁰⁴ A new ascertained export price was determined resulting in the alteration of the original notices, and a significant increase in the effective rate of duty.

REP 447 found that aluminium extrusions manufactured by numerous Chinese exporters were exported through third countries including Malaysia, Taiwan and Thailand to avoid anti-dumping measures.¹⁰⁵ The original notices were altered to include anti-dumping measures on exports of goods from the identified countries by the relevant Chinese manufacturers.

In a submission dated 18 March 2020, Capral identified three media releases published by the ABF detailing compliance breaches involving Chinese exporters of aluminium extrusions during the inquiry period where duties had been evaded.¹⁰⁶ Capral contended

¹⁰⁴ EPR 241 document no. 39.

¹⁰⁵ EPR 447 document no. 61.

¹⁰⁶ EPR 543 document no. 5.

that this behaviour evidenced Chinese manufacturers' intention to continue supplying the Australian market.

8.4.7 Availability of other markets - impact of trade remedies and trade related tariffs in other jurisdictions

Capral noted in its application that Chinese exporters of aluminium extrusions are subject to anti-dumping and tariff related measures on their exports into Canada, the United States of America (USA) and Vietnam. Capral noted in a further submission, received by the Commission on 9 March 2020, that a European Union Regulation dated 14 February 2020¹⁰⁷ had notified the commencement of anti-dumping proceedings concerning imports of aluminium extrusions originating in China.¹⁰⁸

The Commission notes that, in addition to the measures and proceedings detailed by Capral, in 2018 the USA imposed a 25 per cent tariff on steel imports and 10 per cent tariff on aluminium imports from certain countries, including China, under section 232 of the *Trade Expansion Act of 1962*.¹⁰⁹

PMI submitted prior to the SEF, and again following the publication of the SEF, that measures in other jurisdictions do not automatically suggest that Chinese exporters have excess capacity and would increase supply to Australia.¹¹⁰ PMI suggest that supply and demand factors in the Australian market will determine the level of exports to Australia.

As detailed in sections 8.4.3 and 8.4.4 above, Chinese exporters maintain significant excess productive capacity and have been entering the Australia market in increasing numbers over the period since anti-dumping measures were continued in 2015. The Commission considers that anti-dumping measures applying in other jurisdictions, operating in conjunction with the USA's Section 232 trade remedies, may result in Chinese exporters seeking alternative exports markets, such that aluminium extrusions normally exported to the other markets may be diverted to Australia.

8.4.8 Summary

In view of the above analysis, the Commission considers there is sufficient evidence to conclude that:

- a significant volume of aluminium extrusions exported to Australia from China since measures were continued, and during the inquiry period was dumped and subsidised;
- Chinese producers of the goods maintain an export market focus and have maintained distribution links into the Australian market enabling the continuation of the goods being exported into Australia; and
- excess productive capacity exists in the Chinese aluminium extrusions manufacturing sector enabling the continuation of the goods being exported into Australia.

¹⁰⁷ Notice of Initiation of an Anti-Dumping Proceeding Concerning Imports of Aluminium Extrusions Originating in the People's Republic of China [2020] OJ C 51/12.

¹⁰⁸ EPR 543 document no. 4.

¹⁰⁹ 19 USC § 1862 (2012).

¹¹⁰ EPR 543 document nos. 23 and 56.

As a result, the Commission is satisfied that the expiration of the anti-dumping measures would be likely to lead to the continuation or recurrence of dumping, and the continuation of subsidisation, that the anti-dumping measures are intended to prevent.

8.5 Will material injury continue or recur?

In its application, Capral stated that should the measures be allowed to expire it is likely that imports of aluminium extrusions from China would increase at dumped and subsidised prices that would continue to undercut the Australian industry's selling prices, culminating in a continuation of material injury that the measures are intended to prevent.¹¹¹ Capral asserted that the Australian industry is susceptible to further material injury from dumping due to the deterioration in:

- domestic production and sales volumes;
- depressed and suppressed selling prices;
- reduced profit and profitability;
- reduced attractiveness to reinvest; and
- closure of manufacturing assets across select sites.¹¹²

Capral also noted that it has lost sales of value added powder-coated and anodised extrusions as a percentage of total sales over the since measures were continued, resulting in an increased proportion of sales of the lower-value added mill finish goods.¹¹³

8.5.1 Likely effect on prices

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

FOB Price Analysis

Figure 11 below illustrates the weighted average FOB export prices of aluminium extrusions exported to Australia by the five selected exporters cooperating with the inquiry, as well as weighted average FOB prices of all exporters:

¹¹¹ EPR 543 document no. 1, p. 9.

¹¹² Ibid p. 8.

¹¹³ Ibid p. 7.

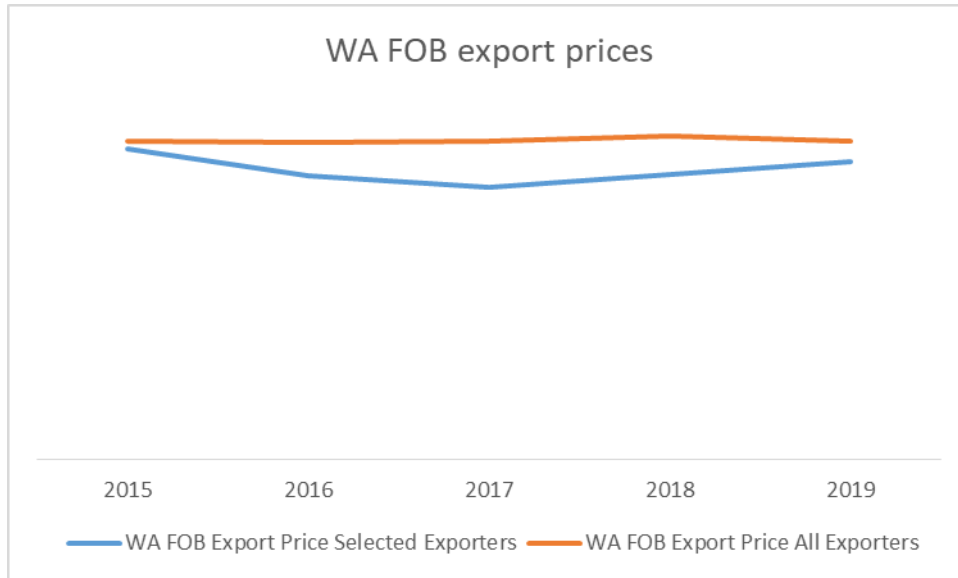


Figure 11 WA Fob export prices since 2015

It can be observed that the weighted average FOB export price of all exporters has been relatively stable throughout the period examined, while the weighted average prices of the selected exporters shows that there was a decline in prices following the continuation of measures in 2015, with a slight increase in the most recent years. The FOB export prices in both instances are lower in the inquiry period than in the period before measures were continued.

Given that export prices have declined since the continuation of measures in 2015, and in the context of the Australian industry's claims of price pressure brought about by cheaper Chinese exports of aluminium extrusions, the Commission considers that the low prices of exports from China is currently a relevant factor to the economic condition of the Australian industry in terms of its ability to increase prices or compete on price in a price sensitive market. If the measures were to be removed, the impact on the Australian industry would be exacerbated.

Price undercutting

The Commission has compared the weighted average (AUD per kg) FIS prices of the Australian industry's sales of aluminium extrusions against the duty inclusive FIS weighted average prices of the goods sourced from the selected exporters.

The Commission has undertaken this analysis across all aluminium extrusions (without categorising by finish type) as well as by finish type (mill, anodised and powder coated).

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

- verified FOB export prices;
- post FOB costs including handling and delivery;¹¹⁴
- importer SG&A;¹¹⁵ and

¹¹⁴ Calculated as the weighted average costs incurred by verified importers.

¹¹⁵ Ibid.

- importer profit.¹¹⁶

Kam Kiu China and PanAsia China

The Commission established that the level of price undercutting for the inquiry period across all aluminium extrusions (without categorising by finish type) ranged between ten and 21 per cent.¹¹⁷

The Commission established that FIS weighted average prices of value added aluminium extrusions, such as powder coated and anodised, undercut the Australian industry during the inquiry period by between 27 and 36 per cent, while undercutting on the lower value added mill finish extrusions ranged between five and 17 per cent.

Goomax, Jinxi Cheng and Yongya

The Commission established that the level of price undercutting for the inquiry period across all aluminium extrusions (without categorising by finish type) ranged between eight and 26 per cent.¹¹⁸

The Commission established that FIS weighted average prices of value added aluminium extrusions, such as powder coated and anodised, undercut the Australian industry during the inquiry period by between 26 and 41 per cent, while undercutting on the lower value added mill finish extrusions peaked at 17 per cent.

The Commission's assessment

For all selected exporters, the level of price undercutting is most pronounced in respect of the value added aluminium extrusions. This finding is supportive of Capral's assertion that while Australian industry is experiencing pricing pressure across the entire range of aluminium extrusions produced, the greatest pricing pressures are coming to bear in the value-added product segment.

In the price injury analysis at section 5.5, the Commission found that Australian industry had experienced price depression and suppression in the period since the measures were last continued.

Given that the prices of the goods exported from China have produced the price undercutting found during the inquiry period, the Commission considers it reasonable to conclude that imports of the goods from China have affected prices in the Australian market, and will likely continue to have an effect on the prices of aluminium extrusions sold into the Australian market. The Commission considers that the imports will affect the prices that Australian industry would be able to achieve, particularly in the value-added segment. The Commission also considers it reasonable to attribute this effect to imports of the goods from China on the basis that imports subject to measures represented 22 per cent¹¹⁹ of the total Australian aluminium extrusion market during the inquiry period.

Accordingly, the Commission considers that, if the measures expired, injury suffered by the Australian industry, in the form of price suppression and depression, would be likely to continue.

¹¹⁶ Calculated with reference to the profit achieved by the verified importer recording a profit on sale of the imported goods.

¹¹⁷ It is acknowledged that variations in product mix may contribute to price differences in this instance.

¹¹⁸ *ibid*

¹¹⁹ Confidential Attachment 1 – Australian Market – Market size 2009–2019.

In addition, having regard to the Commission's finding that Goomax, Jinxiecheng and Yongya would be likely to recommence exporting goods to Australia at dumped prices if the anti-dumping measures expired, the Commission considers the injury, in the form of price depression and suppression, suffered by the Australia industry would be exacerbated. Alternatively, if the Australian industry does not further depress or suppress its selling prices in response to dumped prices, the Commission considers that it would be likely that Australian industry would suffer further injury in the form of loss of sales volume. This finding is further explained in the following section.

8.5.2 Likely effect on volumes

Lower-priced aluminium extrusions subject to measures imported from China hold a significant share of the Australian market, accounting for 22 per cent of the total Australian market and approximately 50 per cent of total imports of aluminium extrusions.¹²⁰

In addition, the number of new exporters entering the Australian market from China in the inquiry period grew by 13 per cent.¹²¹ Given the growing market penetration of Chinese exporters, as evidenced by the year-on-year growth of new entrants into the Australian market, the Commission further considers that if the measures are not continued, it is likely that additional Chinese suppliers will seek to enter the Australian market. This would likely lead to a further reduction in Australian industry sales volumes and market share.

In the absence of measures, the Commission considers that the potential exists for exporters to price goods at dumped levels in order to secure an increased share of the Australian market. The Commission is therefore satisfied that these outcomes would likely lead to a continuation of injury, in the form of reduced market share and reduced sales volume, caused by dumping and subsidisation.

As detailed above, the Commission considers that Goomax, Jinxiecheng and Yongya would be likely to recommence exporting goods to Australia at dumped prices if the anti-dumping measures expired. In this event, if the Australian industry does not further depress or suppress its selling prices, the Commission considers that it would be likely that Australian industry would suffer a recurrence of injury in respect of these exporters in the form of loss of sales volume and market share.

8.6 Is injury from dumping and subsidisation likely to be material?

The *Ministerial Direction on Material Injury* (ADN 2012/24), dated 27 April 2012, provides that injury from dumping or subsidisation need not be the sole cause of injury to the industry, where injury caused by dumping or subsidisation is material in degree.

ADN 2012/24 further provides that the materiality of injury caused by a given degree of dumping or subsidisation can be judged differently, depending on the economic condition of the Australian industry suffering the injury. In considering the circumstances of each case, the Commission must consider whether an industry that at one point in time is healthy and could shrug off the effects of the presence of dumped or subsidised products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping or subsidisation.

¹²⁰ Ibid.

¹²¹ Confidential Attachment 1 – Australian market – ABF exporter analysis.

The Commission's analysis of the economic condition of the Australian industry in the period since measures were continued in 2015, found that the Australian industry's:

- volume of sales of aluminium extrusions and market share have decreased year on year;
- per unit selling prices increased after the continuation through the period 2016 to 2018 before declining in 2019;
- CTMS has increased year on year such that the margin between per unit sales revenue and per unit CTMS has narrowed year on year;
- per unit profit and profitability have declined year on year; and
- prices during the inquiry period were undercut by the prices of aluminium extrusions imported from China.

The Commission considers that if measures were to expire the continuation of dumped and subsidised exports from China would put downward pressure on prices in the Australian market such that the Australian industry would experience continued price depression and suppression and the prospect of further deterioration in sales volumes and market share, as evidenced in section 5 above.

Based on this analysis, the Commission considers that if measures were to expire the economic condition of the Australian industry is such that the presence of dumped or subsidised products in the market would result in injury to the Australian industry which is material.

In addition, the Commission has considered the effect of the recommencement of exporting goods at dumped prices by Goomax, Jinxiecheng and Yongya. The Commission's analysis of these entities highlighted the following:

- the price of Australian industry's sales of like goods at the aggregated level of all finish types were undercut by the prices of the goods imported;¹²²
- the price of Australian industry's sales of like goods when considered by finish type established that the level of price undercutting varied by exporter and finish, however in general terms the price of Australian industry's sales of like goods at the finish level were either undercut by the prices of the goods imported or were sold at similar price levels;¹²³
- the FOB prices for goods exported by these entities are not the lowest when compared to either the other selected exporters or other exporters identified within the ABF import database;¹²⁴
- the FOB prices for goods exported by the entities prior to the inquiry period were lower than the prices upon which the dumping margins in chapter 6 are based, evidencing a historical practice of selling goods at dumped prices; and
- in the period since measures were continued each of these exporters have moved from no, or negligible, presence in the Australia market, to being among the largest six exporters by volume during the inquiry period.

Based on the information outlined above, the Commission considers that the volumes of goods that Goomax, Jinxiecheng and Yongya have exported to Australia, and the pricing of

¹²² Confidential Attachment 4 – Undercutting Analysis – Undercutting by finish.

¹²³ Confidential Attachment 4 – Undercutting Analysis – Undercutting by finish.

¹²⁴ Confidential Attachment 4 – Undercutting Analysis – ABF EP and Volume analysis

those goods, would likely be significant enough to worsen the injury suffered by Australian industry so that injury is material.

Accordingly, the Commission considers that the expiration of the anti-dumping measures would be likely to lead to a continuation of, or a recurrence of, the material injury that the current measures are intended to prevent.

8.7 Submissions received in respect of material injury

Prior to the SEF, Classic Blinds and Shutters made two submissions in which the following arguments were raised:

- Capral is using a dumping strategy to increase profits and harm competition even when making, as evidenced by the findings in REP 482, year on year increases in profits and sales;
- the data relied upon by Capral to support its argument that dumping and subsidisation is occurring is not credible, and further, while company data can be reviewed, it is prone to external and internal forces which can be corrupted; and
- the current anti-dumping system fails as there is no public interest test, there is no transparency in regard the calculation of measures generally nor for individual suppliers, and measures introduced with a 12 month period of effectiveness do not align with the strategic sourcing requirements of end users.

The Commission has considered the submissions made by Classic Blinds and Shutters and makes the following observations:

- the Commission undertook verification of the financial data submitted by Capral in support of its application. A report detailing the conduct of that verification has been published on the Commission's website. The Commission's findings in respect of injury experienced by the Australian industry for the period 2016 to 2019 are summarised in section 5 of this report;
- the Commission was satisfied for the purposes of initiating the inquiry that Capral had provided reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent. To fully investigate those claims, the Commission has, as part of the inquiry, verified the financial information of five of the largest six exporters¹²⁵ of aluminium extrusions to determine whether dumping and subsidisation has in fact occurred during the 2019 calendar year. The results of these verification processes are contained in verification reports for each entity on the Commission's website, and the key findings are detailed in section 6 of this report;
- the Commission notes Classic Blinds and Shutters' dissatisfaction about the absence of a public interest test within Australia's anti-dumping system; and
- the determination of measures, and the calculations underlying any measures imposed, are undertaken in accordance with relevant legislation. The various verification reports published by the Commission in respect of this inquiry, and this report, detail the legislative provisions under which export prices, normal values, and dumping and subsidy margins have been determined. Greater transparency is

¹²⁵ The sixth exporter selected did not provide the requested information to the Commission and was determined to be an uncooperative exporter and non-cooperative entity as detailed in section 2.4.5.

limited in respect of the calculations applying to individual suppliers due to the confidential nature of that information.¹²⁶ The Commission notes that all entities subject to verification are provided with the relevant calculations and offered the opportunity to challenge any findings through the submission process.

Prior to the SEF, PMI submitted that due to the specialised nature of its goods, and that those goods would make up a negligible proportion of total exports within the inquiry period, it is not reasonably likely that those exports will have caused or will continue to cause material injury to the Australian industry. PMI requested that the inquiry be terminated in relation to it.¹²⁷

As detailed in section 3 above, while PMI may be a manufacturer of specialised goods, those goods fall within the goods description, and the Australian industry is capable of manufacturing these products. The Commission further determined at sections 6 and 7 that the goods exported by PMI were dumped and subsidised.

Following publication of the SEF PMI submitted¹²⁸ that the participation of Chinese exporters in recent dumping matters as well as new applications for accelerated reviews does not mean that goods exported by those entities are or will be dumped, and further, that this does not mean that any material injury the Australian industry is allegedly suffering is caused by those exports. PMI asserted that Chinese exporters are well within their rights to continue to export to Australia and there is clearly a demand for their goods.

The Commission agrees with PMI that Chinese exporters are within their rights to export to Australia. The Commission considers the participation of Chinese exporters in anti-dumping matters and the number of accelerated review applications lodged in recent times as an indicator that Chinese exporters see the Australian market as an attractive market into which to sell aluminium extrusions. As detailed in the preceding sections, the Commission has established that imports of goods from China subject to measures had grown to account for 22 per cent of sales in the Australian market during the inquiry period.

PMI further submitted that imports to Australia of the goods from countries other than China has continued to increase since 2009, and that the Commission should have taken exports from these countries into consideration when considering injury to the Australian industry.

In conducting its analysis of the Australian market for aluminium extrusions and whether material injury is likely to continue or recur if the measures expired, the Commission has given consideration to the presence in the Australian market of goods from countries other than China. The Commission notes that the market share of aluminium extrusions imported to Australia from countries other than China has increased from approximately 12 per cent to 15 per cent since the measures were continued in 2015.¹²⁹ The Commission has established that imports of the goods from China subject to measures remained the largest source of imports during the inquiry period, and, as detailed in section 8.5 above, those imports have undercut Australian industry prices. As such, the Commission considers that, independently of the presence in the Australian market of goods from countries other than China, the expiration of the anti-dumping measures would be likely to lead to a continuation of, or a recurrence of, the material injury that the current measures are intended to prevent.

¹²⁶ See section 269ZJ of the Act.

¹²⁷ EPR 543 document nos 23 and 42.

¹²⁸ EPR 543 document no. 58.

¹²⁹ Confidential Attachment 1 – Australian Market – Market size 2009–2019.

Finally, PMI submitted that the Commission has not considered the efficient operation of the Australian industry and its own business models when determining the cause of any injury suffered by the Australian industry.

In considering whether material injury to Australia industry was likely to continue or recur if the measures expired, pursuant to section 269ZHF(2), the Commission confined its analysis to injury factors relevant to the goods exported to Australia and the expiration of the measures. The Commission notes that no evidence was provided to support the contention that Capral's injury may be the result of its own operational efficiencies or business models. Accordingly, any injury resulting from Australian industry's business models has not been attributed to the Commission's analysis of injury caused to Australian industry by the export of future goods at dumped or subsidised prices.

8.8 Conclusion

Based on the information before it outlined above, the Commissioner is satisfied, in relation to those goods which were dumped and subsidised during the inquiry period that if the measures expired:

- those exporters would be likely to continue exporting goods to Australia at dumped and subsidised prices;
- material injury would continue to be suffered by Australian industry; and
- the material injury suffered by the Australian industry would be attributable to dumping and subsidisation.

In relation to goods exported by Goomax, Jinxicheng and Yongya, whose goods were not dumped during the inquiry period, the Commission is further satisfied that if the measures expired:

- these exporters would be likely to recommence exporting goods to Australia at dumped prices and continue exporting at subsidised prices;
- Australian industry would experience a worsening of injury; and
- the injury caused by the recurrence of dumping and continuation of subsidisation by these entities would be material on the basis that:
 - the volume of goods exported by these entities represents a significant proportion of the Australian market; and
 - the price of the goods exported by these entities were observed to undercut the Australian industry's prices in the inquiry period.

As a result the Commission is satisfied that the expiration of the measures would be likely to lead to a continuation and recurrence of the dumping and subsidisation, and the material injury that the anti-dumping measures are intended to prevent.

9 NON-INJURIOUS PRICE AND LESSER DUTY RULE

9.1 Legislative framework

Where a dumping duty notice and countervailing duty notice apply to the same goods, and the notices were published at the same time, the Minister must have regard to the desirability of specifying a method such that the sum of the ascertained export price, the interim dumping duty payable and the interim countervailing duty payable do not exceed the NIP.¹³⁰

However, the Minister is not required to, but may still have regard to the desirability of fixing a lesser amount of duty, where circumstances exist such that:¹³¹

- there is a situation in the market that makes domestic selling prices unsuitable for the purpose of determining normal value under section 269TAC(1);
- there is an Australian industry in respect of the goods consisting of at least two small to medium sized enterprises (as defined in the *Customs (Definition of “small-medium enterprise”) Determination 2013*); or
- the country in relation to which the subsidy has been provided, has not complied with Article 25 of the *Agreement on Subsidies and Countervailing Measures*¹³² for the compliance period.

9.2 The Commission’s assessment

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

Accordingly, for this inquiry, the Commissioner considers that sections 8(5BAAA)(a) and 10(3DA)(c) of the Dumping Duty Act apply, and as a result, the Minister is not required to consider the lesser duty rule for the purposes of sections 8(5BA) and 10(3D) of the Dumping Duty Act.

The Commissioner recommends that the full dumping and subsidy margins be applied to any IDD and ICD taken in relation to aluminium extrusions exported to Australia from China from all exporters. The Commissioner notes that, notwithstanding his recommendation, the Minister is not obliged to, but still may, consider applying a less amount of duty.

The Commission’s calculation of the NIP is at **Confidential Attachment 12**.

¹³⁰ Section 10(3D) of the Dumping Duty Act.

¹³¹ Section 10(3DA) of the Dumping Duty Act.

¹³² *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A (*Agreement on Subsidies and Countervailing Measures*).

10 FORMS OF DUTY

10.1 Findings

Having established that dumping, subsidisation and material injury is likely to continue or recur if the anti-dumping measures are not continued, the Commissioner recommends that the Minister secure the continuation of the measures applying to the goods exported to Australia from China.

The Commissioner recommends that, in continuing the anti-dumping measures and countervailing measures in relation to Goomax, Jinxiacheng and Yongya, IDD be calculated based on floor price duty method and ICD be calculated based on the *ad valorem* duty method.

In relation to all other exporters, the Commissioner recommends that in continuing the anti-dumping measures and countervailing measures, that duties be calculated:

- in respect of any ICD that may become payable, as a proportion of the export price of the goods (*ad valorem* duty rate);¹³³ and
- in respect of any IDD that may become payable, using the combination of fixed and variable duty method.¹³⁴

For each exporter, the combined fixed rate of ICD and IDD will be the sum of:

- the subsidy rate calculated for all countervailable programs; and
- the dumping rate calculated, less an amount for the subsidy rate applying to Program 15 (where this has been received by the exporter or group of exporters).

This approach avoids any overlap or double-counting that may arise from the circumstances of a situation where there are domestic subsidies and a constructed normal value both relating to a major cost component based on surrogate data, in this case, primary aluminium.

10.2 Existing measures

The ICD is currently calculated based on an *ad valorem* duty rate.

The IDD is currently calculated using the combination of fixed and variable duty method.

10.3 Policy and Legislative framework

Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013* (Cth), in accordance with section 8(5BB) of the Dumping Duty Act, prescribes the methods for working out the amount of interim dumping duty payable on goods the subject of a notice under section 269TG.

The forms of duty available to the Minister when imposing anti-dumping measures are:¹³⁵

- fixed duty method (e.g., \$X per tonne);
- floor price duty method;

¹³³ In accordance with subsection 10(3B)(a) of the Dumping Duty Act.

¹³⁴ Pursuant to subsection 5(2) of the Regulation.

¹³⁵ Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013* (Cth).

- combination of fixed and variable duty method (combination duty method); or
- ad valorem duty method (i.e., a percentage of the export price).

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances more so than others. In considering which form of duty to recommend to the Minister, the Commissioner will have regard to the published *Guidelines on the Application of Forms of Dumping Duty November 2013* (the Guidelines) and relevant factors in the market for the goods.¹³⁶ The Guidelines list the key advantages and disadvantages of each form of duty.

10.3.1 Fixed duty method

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

10.3.2 Floor price duty method

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

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

10.3.3 Ad valorem duty method

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

10.3.4 Combination duty method

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

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

¹³⁶ Available on the Commission’s website at www.industry.gov.au.

10.4 The Commission's assessment

Being satisfied that measures should continue in relation Goomax, Jinxiecheng and Yongya, the Commission considers it appropriate that, in respect of IDD, the floor price form of measures be applied to exports by these exporters. The floor price for each exporter shall be set equal to its weighted average normal value in relation to its exports of the goods to Australia during the inquiry period. In respect of any ICD that may become payable, duties will be calculated as a proportion of the export price of the goods (ad valorem method).

For all other exporters the Commission has found dumping and subsidy margins.

The combination duty method is considered appropriate where circumvention behaviour is likely (particularly because of related party dealings), where complex company structures exist between related parties, and where there has been a proven case of price manipulation in the market. Due to the existence of a number of related party arrangements in respect of aluminium extrusions exported to Australia from China, as well as previously established circumvention activities, the Commission considers that the combination duty method remains the most appropriate form of duty.

Capral submitted¹³⁷ that the combination duty method remains the most appropriate form of duty for all exporters, including Goomax, Jinxiecheng and Yongya.

The Commission notes that should a combination duty method be applied to Goomax, Jinxiecheng and Yongya that duties would be collected where the actual export price is below the ascertained export price. In this event duties may be collected when the goods are not dumped, as the actual export price may still be above the ascertained normal value despite being below the ascertained export price. For this reason the Commission has recommended that a floor price be set for each of these exporters equal to its weighted average normal value.

Kam Kiu China submitted¹³⁸ that when calculating ad valorem dumping duties, relevant authorities in other jurisdictions use export price at the CIF level, rather than at the FOB level, as the denominator. Kam Kiu China sought to draw the Commission's attention and consideration to this point of difference in approach, and requested the Commission to make suitable revisions if necessary.

Section 5(7) of the *Customs Tariff (Anti-Dumping) Regulations 2013* outlines the Commission's legislative requirements when calculating interim dumping duty under the ad valorem method. This section requires that the Commission calculates the dumping margin as a proportion of the export price of the goods, being the difference between the normal value and export price divided by the export price. This section does not, however, provide guidance as to the point at which the export price must be determined.

As detailed in the Manual, the Commission generally assesses export price as the FOB price received by the exporter at the seaport in the country of export or, in the case of air transport, at the airport in the country of export. The Manual does provide that in some circumstances export price may be assessed at another level. An ex-factory price received

¹³⁷ EPR 543 document no. 54.

¹³⁸ EPR 543 document no. 56.

by the exporter may be used when calculating a dumping or subsidy margin, for example, in the situation where charges are all inclusive of local and international charges and it is impractical to segregate them.

Importantly though, Australia's anti-dumping legislation requires that prices of goods exported to Australia are compared with corresponding normal values¹³⁹, and that any necessary adjustments are made to those domestic prices so that they can be fairly compared to export prices¹⁴⁰. In this regard, whether export prices are determined at an ex-factory point, FOB point or CIF point, normal values need to be appropriately adjusted to ensure comparability to export prices at the same terms of trade. For the purposes of this inquiry appropriate adjustments as detailed in section 6 have been made for each exporter to ensure that the export price and normal values determined are at comparable terms of trade.

10.5 Conclusion

The Commissioner recommends that, in continuing the anti-dumping measures and countervailing measures in relation to Goomax, Jinxiacheng and Yongya, IDD be calculated based on floor price duty method and ICD be calculated as a proportion of the export price of the goods (ad valorem method).

The Commissioner recommends that, in continuing the anti-dumping measures and countervailing measures in relation to all other exporters, that duties be calculated:

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

For each exporter, the combined fixed rate of ICD and IDD will be the sum of:

- the subsidy rate calculated for all countervailable programs; and
- the dumping rate calculated, less an amount for the subsidy rate applying to Program 15 (where this has been received by the exporter or group of exporters).

This approach avoids any overlap or double-counting that may arise from the circumstances of a situation where there are domestic subsidies and a constructed normal value both relating to a major cost component based on surrogate data, in this case, primary aluminium.

Table 17 below sets out the anti-dumping measures that will apply:

¹³⁹ Section 269TACB.

¹⁴⁰ Section 269TAC(8) and 269TAC(9).

PUBLIC RECORD

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

Table 17 Summary of effective interim dumping and countervailing duty

11 RECOMMENDATIONS

On the basis of the reasons contained in this report, and in accordance with section 269ZHF(2), the Commissioner is satisfied that the expiration of the anti-dumping measures applicable to aluminium extrusions exported to Australia from China would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and material injury that the anti-dumping measures are intended to prevent.

The Commissioner recommends the Minister declare:

- in accordance with section 269ZHG(1)(b), that she has decided to secure the continuation of the anti-dumping measures relating to aluminium extrusions exported to Australia from China by all exporters.

The Commissioner recommends the Minister determine:

- in accordance with section 269ZHG(4)(a)(iii), that:
 - the dumping duty notice continues in force after 28 October 2020 (the specified expiry day), but that, after that day the notice has effect, in relation to all exporters from **China**, as if the Minister had fixed different specified variable factors relevant to the determination of duty, as specified in **Confidential Attachments 6 to 11**, and **Chapter 6** of this report;
 - the countervailing duty notice continues in force after 28 October 2020 (the specified expiry day), but that, after that day, the notice has effect, in relation to all exporters from **China**, as if the Minister had fixed different specified variable factors, relevant to the determination of duty, as specified in **Confidential Attachments 6 to 11**, and **Chapter 7** of this report;
- in accordance with section 269TAAD(4), and for the purpose of working out the cost of goods and determining whether the price paid for like goods sold in the country of export in sales that are arms length transactions are taken to have been in the ordinary course of trade, the amounts for the cost of production or manufacture of the goods produced by **Goomax, Jinxi Cheng, Kam Kiu China, PanAsia China and Yongya** in **China** and the administrative, selling and general costs associated with the sale of those goods are as set out in **Confidential Attachments 6 to 10**;
- being satisfied that section 269TAB(1)(a) applies, the **export price** for the goods exported to Australia from **China** by **Goomax** as the price paid or payable for the goods by the importer, less transport and other costs arising after exportation, as set out in **Confidential Attachment 6** and **Chapter 6** of this report;
- being satisfied that subsection 269TAB(1)(b) applies, that the **export price** for goods exported to Australia from **China** by **Kam Kiu China** and **PanAsia China** is the price at which the goods were sold by **Kam Kiu Australia** and **PanAsia Australia** respectively to a person who is not an associate of the importer less the prescribed deductions, as set out in **Confidential Attachments 8 and 9** and **Chapter 6** of this report;
- being satisfied that section 269TAB(1)(c) applies, the **export price** for the goods exported to Australia from **China** by **Jinxi Cheng** having regard to all the circumstances of the exportation, as set out in **Confidential Attachment 7** and **Chapter 6** of this report;

- in accordance with section 269TAB(3), **export prices** in relation to sales by **Yongya**, as identified in **Confidential Attachment 10**, and for the category of '**uncooperative and all other exporters**' from **China** having regard to all relevant information, as set out in **Confidential Attachment 10** and **Chapter 6** of this report;
- in accordance with subsection 269TAC(2)(c), the normal value of aluminium extrusions exported to Australia from **China** by **Goomax, Jinxiecheng, Kam Kiu China, PanAsia China** and **Yongya** has been calculated as the cost of production or manufacture of the goods in China, plus the SG&A costs and the profit associated with such sales, as adjusted to ensure that the normal value of the goods so ascertained is properly comparable with the export price of the goods in accordance with subsection 269TAC(9), as set out in **Confidential Attachments 6 to 10** and **Chapter 6** of this report;
- in accordance with section 269TAC(6), **normal values** for the category of '**uncooperative and all other exporters**' from China having regard to all relevant information, as set out in **Confidential Attachment 11** and **Chapter 6** of this report;
- having applied subsection 269TACB(2)(a) and in accordance with subsection 269TACB(1), the dumping margins for all exporters from China in respect of aluminium extrusions exported to Australia is the difference between the weighted average export prices of aluminium extrusions over the whole of the inquiry period and the weighted average of corresponding normal values over that period, as set out in **Confidential Attachments 6 to 11** and **Chapter 6** of this report;
- in accordance with section 269TACC(1), that, having regard to all relevant information and sections 269TACC(2) and (3), the financial contributions as set out in **Confidential Attachments 6 to 11** confer a benefit;
- having had regard to subsections 269TAAC(2) and (3), and in accordance with subsections 269TAAC(4) and (5), that all relevant subsidies listed in **Section 7.3** of this report are specific having regard to the matters set out in **Non-Confidential Appendix 2** of this report; and
- in accordance with section 269TACD(1) and (2), the amount of **countervailable subsidy** received in respect of the goods by:
 - **Goomax**, as the amount set out in **Confidential Attachment 6**, which when expressed as a percentage of the export price as specified in **Confidential Attachment 6**, is 1.0 per cent;
 - **Jinxiecheng**, as the amount set out in **Confidential Attachment 7**, which when expressed as a percentage of the export price as specified in **Confidential Attachment 7**, is 0.0 per cent;
 - **Kam Kiu China**, as the amount set out in **Confidential Attachment 8**, which when expressed as a percentage of the export price as specified in **Confidential Attachment 8**, is 6.4 per cent; and
 - **PanAsia China**, as the amount set out in **Confidential Attachment 9**, which when expressed as a percentage of the export price as specified in **Confidential Attachment 9**, is 0.4 per cent;
 - **residual exporters** as the amount set out in **Confidential Attachment 11**, which when expressed as a percentage of the weighted average of selected exporters, is 0.7 per cent;

- **non-cooperative exporters** as the amount set out in **Confidential Attachment 11**, which when expressed as a percentage of the lowest export price of selected exporters, is 9.6 per cent by assuming, in accordance with 269TAACA(1), that the non-cooperative exporters received the highest level of subsidisation as set out in **Chapter 7** of this report.

The Commissioner recommends the Minister be satisfied:

- in accordance with subsection 269TAB(3), sufficient information has not been furnished and is not available, to enable the export price of aluminium extrusions exported to Australia from **China** by **Yongya**, as identified in **Confidential Attachment 10**, and by **uncooperative exporters**, to be determined under subsection 269TAB(1);
- in accordance with subsection 269TAC(6), sufficient information has not been furnished and is not available to enable the normal value of aluminium extrusions exported to Australia from **China** by **uncooperative exporters** to be ascertained under the preceding provisions of subsection 269TAC (other than subsection 269TAC(5D));
- in accordance with subsection 269TAC(2)(a)(ii), the normal value of aluminium extrusions exported to Australia from **China** cannot be ascertained under subsection 269TAC(1) because the situation in the market of **China** is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1);
- in accordance with section 269TACD(1), countervailable subsidies have been received in respect of aluminium extrusions by **Goomax, Jinxiecheng, Kam Kiu China, PanAsia China, residual exporters** and **non-cooperative entities**, as set out in **Confidential Attachments 6, 7, 8, 9 and 11** and **Chapter 7** of this report.

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NON-CONFIDENTIAL APPENDIX 1 — ASSESSMENT OF MARKET SITUATION

A1 Introduction

Having regard to all available information, it is the Commission's view that a market situation exists in respect of the domestic market for aluminium extrusions in China.

A2 Australian legislation, policy and practice

Australia treats China as a market economy for anti-dumping purposes, and the Commission conducts its investigation in the same manner for China as it does for other market economy members of the World Trade Organization (WTO).

Irrespective of the country the subject of investigation, the Australian anti-dumping framework allows for rejection of domestic selling prices as the basis for normal values where there is a 'market situation' such that sales in that market are not suitable for use in determining a price.

A2.1 Legislation

Section 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the OCOT for home consumption in the country of export in arms length transactions by the exporter or, if like goods are not sold by the exporter, by other sellers of like goods.

However, section 269TAC(2)(a)(ii) provides that the normal value of the goods exported to Australia cannot be determined under section 269TAC(1) where the Minister is satisfied that '*...because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1)*'.

Where such a market situation exists, normal value cannot be established on the basis of domestic sales. Instead, the normal value may be determined using another method in section 269TAC. Therefore, a determination as to whether there is a market situation has potential consequences for the assessment of normal value.

A2.2 Policy and practice

In relation to market situation assessments, in considering whether sales are not suitable for use in determining a normal value under section 269TAC(1) because of the situation in the market of the country of export the Commission may have regard to factors such as whether the prices are artificially low.

Government influence on prices or input costs could be one cause of artificially low pricing. Such government influence could come from any level of government.

In assessing whether a market situation exists due to government influence, the Commission will assess whether government involvement in the domestic market has materially distorted market conditions. If market conditions have been materially distorted then domestic prices may be artificially low or not substantially the same as they would be in a competitive market.

Prices may also be artificially low or lower than they would otherwise be due to government influence on the costs of inputs. The Commission looks at the effect of any such influence domestic prices.

For section 269TAC(2)(a)(ii) to apply, the Commission is required to identify where a 'market situation' exists, and if found to exist, be satisfied that the 'market situation' renders sales in that market not suitable for normal value purposes before rejecting actual selling prices.

Although it is for the Commission to establish the nature and consequence of the 'market situation', including an evaluation of whether there is an impact on domestic prices, the Commission considers that the pricing effect does not necessarily have to be quantified.

A3 Assessing market situation in this inquiry

As part of its market situation assessment for this inquiry, the Commission has considered:

- stated policies and plans of the GOC;
- REQs by cooperative exporters and residual exporters;
- information obtained from Department of Industry, Innovation and Science resources;
- information from third party information providers;
- the Commission's 2016 report, *Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission*;¹⁴¹
- the European Commission's *Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations* (the EC 2017 Report);¹⁴²
- The US International Trade Administration's memorandum on *China's Status as a Non-Market Economy*; ¹⁴³
- other desktop research; and
- market situation assessments in relation to relevant cases between 2010 and 2018, such as:
 - Investigation No. 181 in relation to aluminium road wheels;
 - Reinvestigation No. 204 in relation to aluminium road wheels
 - Review No. 263 in relation to aluminium road wheels;
 - Inquiry No. 378 in relation to aluminium road wheels;
 - Investigation No. 442 in relation to aluminium extrusions
 - Investigation No. 148 in relation to aluminium extrusions;
 - Review No. 482 in relation to aluminium extrusions;
 - Review No. 392 in relation to aluminium extrusions;
 - Review No. 248 in relation to aluminium extrusions; and
 - Inquiry No. 287 in relation to aluminium extrusions.

¹⁴¹ Anti-Dumping Commission, Department of Industry, Innovation and Science, *Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission* (August 2016).

¹⁴² European Commission, *Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations* (20 December 2017) SWD(2017) 483/F2 (EC 2017 Report).

¹⁴³ International Trade Administration, United States Department of Commerce, *China's Status as a Non-Market Economy* (26 October 2017) E&C VI: MJH/TB.

The Commission did not receive a response to the government questionnaire from the GOC for this inquiry. This has impeded the ability of the Commission to undertake its assessment. Notwithstanding, the Commission analysed all available information.

When assessing the conditions within the Chinese primary aluminium market, the Commission has focused on the period 2012 to 2019, paying particular attention to the impact of conditions for exporters of aluminium extrusions in the inquiry period.

It is the Commission's view that the GOC distorted conditions in the Chinese primary aluminium market over the entire inquiry period, and that these distortions created a market situation in respect of the domestic market for aluminium extrusions in China for the inquiry period.

Typically, the cost of primary aluminium accounts for over 80 per cent of the total CTM aluminium extrusions for exporters in China.¹⁴⁴ Therefore, in considering whether a market situation exists in respect of the domestic market for aluminium extrusions, it is reasonable for the Commission to assess conditions in the primary aluminium market, as a significant raw material.

A4 Conditions in the Chinese primary aluminium market

Factors considered by the Commission when assessing conditions within the Chinese market during the inquiry period include the level of, and trends in, aluminium production and production capacity, aluminium consumption, pricing and the influence of the GOC over these variables.

In terms of supply, Chinese aluminium production has increased by approximately 14 per cent since the continuation of measures in 2015. China is currently responsible for producing approximately 36 million tonnes of the total global aluminium production of 64 million tonnes, representing 56 per cent of global supply.¹⁴⁵

Over the inquiry period Chinese aluminium production fell by approximately two per cent, the first fall in production in over a decade. Trade tensions with the USA, slowing Chinese gross domestic product and the Chinese government's stricter environmental regulations slowed production growth in China.

The Commission expects that Chinese production will, however, increase in the short to medium term. The increase will be driven by additional capacity from more greenfield aluminium smelters coming on line in regions, such as Yunnan province, where power is cheap and abundant. Additionally China's winter curtailment production policy, implemented over the previous two winters to improve air quality, was expected to have been softened during the 2019–20 winter, leading to increased production.¹⁴⁶

Since the continuation of measures, the aluminium price rose significantly from the lows experienced in November 2015 to reach a seven year high in 2018.¹⁴⁷ During the inquiry

¹⁴⁴ Based on cost data provided by selected exporters.

¹⁴⁵ Production data sourced from World Aluminium at <http://www.world-aluminium.org/statistics/>.

¹⁴⁶ Office of the Chief Economist, Department of Industry, Innovation and Science, *Resources and Energy Quarterly March 2020*, p. 96; Office of the Chief Economist, Department of Industry, Innovation and Science, *Resources and Energy Quarterly December 2019*, p. 89.

¹⁴⁷ Office of the Chief Economist, Department of Industry, Innovation and Science, *Resources and Energy Quarterly September 2018*, p. 76.

period, the LME spot price for aluminium fell by 17 per cent in 2019. Prices were affected by USA–China trade tensions, USA aluminium import tariffs, and slowing world economic growth.¹⁴⁸

In terms of demand, global aluminium consumption fell by three per cent in 2019, to be just under 64 million tonnes. USA–China trade tensions and a related slowing in global economic growth resulted in softer demand for aluminium. China, the world's largest aluminium consumer, consumed 36 million tonnes of aluminium in 2019, a fall of approximately four per cent. Sales in the Chinese automotive sector, one of the country's largest sectors for aluminium consumption, fell by eight per cent in 2019 to nearly 26 million units. The fall in car sales in China was due to the withdrawal of government subsidies for low priced hybrid and electric cars.¹⁴⁹

Exports of aluminium have historically been discouraged by significant differentials in the VAT rebate and export tariff rates applicable to primary aluminium as opposed to value added aluminium products, such as aluminium extrusions. During the inquiry period the VAT rate for semi-fabricated aluminium exports was reduced and came into alignment with the VAT rebate rate, such that there is now no non-refundable VAT on exports. This may serve to increase the attractiveness of exporting extrusions.

During the period after the continuation of measures, official aluminium stockpiles were in decline. However this has changed in more recent times. It is also suggested that, while reported global inventories total approximately 2.78 million tonnes, there may be up to 9 million tonnes of unreported stock.¹⁵⁰

Further the Commission understands that the GOC State Bureau of Material Reserve (SBMR), operates a significant stockpile of primary aluminium, which is likely to have distorted domestic official consumption statistics. The failure of the GOC to respond to the Commission's government questionnaire has restricted the Commission's ability to assess the significance of these stockpiles, and their impact on the true balance between domestic production and consumption. The Commission also notes that the EC 2017 report identifies that the GOC's *Chinese Non-Ferrous Metal Industry Development Plan (2016–2020)*¹⁵¹ provides for stockpiling. The EC 2017 Report further identifies specific occasions where the GOC has purchased primary aluminium via the SBMR and references other information sources suggesting the SBMR's involvement in these stockpiling activities has occurred as recently as 2016.¹⁵²

In addition to the identified distortive impacts of the stockpiling activities, the Commission's research indicates that there is a significant amount of idle production capacity in the Chinese market resulting in low capacity utilisation. This potential excess capacity has been estimated from various sources to be in the vicinity of 14 per cent to 20 per cent of annual global aluminium supply.¹⁵³ The Commission's assessment of there being significant excess

¹⁴⁸ Office of the Chief Economist, Department of Industry, Innovation and Science, *Resources and Energy Quarterly* March 2020, p. 93.

¹⁴⁹ Ibid p. 94.

¹⁵⁰ Tim Treadgold, 'Aluminium Surplus Worsens, Signaling a Price Fall and Plant Closures in the New Year (3 December 2019)', *Forbes* <https://www.forbes.com/sites/timtreadgold/2019/12/03/aluminum-surplus-worsens-signalling-a-price-fall-and-plant-closures-in-the-new-year/>.

¹⁵¹ 《有色金属工业发展规划(2016-2020 年)》 [*Chinese Non-Ferrous Metal Industry Development Plan (2016–2020)*] Ministry of Industry and Information Technology (China), 28 September 2016.

¹⁵² EC 2017 Report, pp. 381–92.

¹⁵³ *AME Group, Aluminium Strategic Market Study 2018 Q2*; Office of the Chief Economist, Department of Industry, Innovation and Science, *Resources and Energy Quarterly Report* March 2018.

capacity is broadly in line with the major themes of the GOC's planning documents and directives before and after 2010.

The above analysis suggests that there has been a somewhat improving alignment between Chinese production and consumption of aluminium. There is evidence that supply side reform has been introduced to address oversupply of aluminium, and that environmental reform has also helped constrain supply growth. However Chinese supply is expected to return to growth and reach higher efficiency, while idle capacity still leaves a capacity overhang in the market.¹⁵⁴

In assessing all of the factors impacting upon the Chinese aluminium market during the inquiry period, the Commission recognises that the GOC continues to take significant steps to restructure and reorganise the domestic aluminium industry to better manage the level of excess production capacity, oversupply and environmental concerns. The GOC introduced and implemented a 'supply-side reform' policy aiming at cutting domestic production and removing excess capacity. The Government also introduced a 'new for old' policy in 2016, to replace old and inefficient capacity with new and cost-effective capacity. Policies also include crackdowns on illegal capacity, stricter approval of new capacity and the 'blue sky' environmental production cuts. These efforts are reflected in the GOC's plans and directives, which further support the Commission's view that there are significant distortions within the domestic Chinese market. The Commission considers, based on the information available to it, that these directives and associated programs have had a limited impact in terms of addressing the underlying causes of market distortions, principally excess production capacity.

The Commission considers that key constraints on the effectiveness of these directives includes the divergence in economic and social objectives between the different levels of the GOC, and the availability of financing to support the restructuring and reorganisation. With regard to the objectives of provincial and local governments, aluminium smelters are typically major employers, sources of significant tax revenue and providers of health care and education services within their respective regions. It is also the Commission's understanding that aluminium smelters are often used by local governments to support the establishment of electrical generation facilities, particularly in the developing regions of western China. As such, there are significant incentives for provincial and local governments to resist directives from the central government to remove excess capacity and to provide ongoing support to local producers.¹⁵⁵

A5 GOC influence in the Chinese aluminium market

The Commission considers that the GOC materially contributed to the excess supply of aluminium in the domestic Chinese market and hence has significantly influenced the domestic price for Chinese primary aluminium during the inquiry period. This influence occurred through the following mechanisms:

- industry planning directives and associated programs;

¹⁵⁴ AME Group, *Aluminium Strategic Market Study 2018 Q2*.

¹⁵⁵ AME Group, *Aluminium Strategic Market Study 2016 Q1*, pp. 9, 94. Page 9 notes that, in spite of the recently implemented 'supply side reform' policy, local governments within Gansu, Shanxi and Xinjiang provinces have reportedly been offering incentives for extra production. Page 94 notes that, while the official position has been that overcapacity in China's aluminium sector is to be addressed, in practice, there has been little in the way of practical effects in limiting discretionary production start-ups or restarts. Difficulties include local governments being directly involved in state smelting projects and subsidies being provided to maintain unviable operations. Indirect official intervention, such as requiring smelters to achieve emissions targets and efficiency levels, does not seem to have had the dramatic impact expected.

- taxation and tariff policies;
- distortion of electricity production costs and pricing;
- aluminium stockpiling programs; and
- provision of financial support to loss making aluminium smelters.

The extent of the GOC's direct involvement within the Chinese aluminium industry is also reflected in the extent of production capacity accounted for by Chinese SOEs and SIEs. The Commission estimates that between 2010 and 2015, SOEs and SIEs accounted for between 32 and 47 per cent of production capacity.¹⁵⁶ A 2017 report published by Think!Desk and commissioned by WirtschaftsVereinigung Metalle e.V. (a German metals industry body) referenced the actions of six Chinese SOEs which together accounted for about 42 per cent of Chinese aluminium output.¹⁵⁷

The Commission does not consider that the presence of these entities alone automatically means that a market is distorted. However, the presence of these entities, and their share of the market, does mean that there is a higher likelihood that the GOC plans and directives will be adhered to.¹⁵⁸ Based on past cases, the Commission also considers that this status enables these entities to obtain preferential treatment by Chinese financial institutions, both in terms of their access to, and the cost of, financing.

The significance of SOEs and SIEs to the broader Chinese economy, including the primary aluminium and related industries, is also reflected in the 2016 State Council of China *General Office of the State Council on Promoting Central Enterprises: Guidance on Structural Adjustment and Restructuring*.¹⁵⁹

In introducing this guidance, the State Council notes the important role of 'central enterprises' in actively promoting structural adjustment, optimisation of structural layout and quality improvement within the Chinese economy. The commentary also notes that many structural problems are still prominent, that efficiency of resource allocation needs to be improved and that innovation capacity needs to be enhanced. In response to these issues, the guidance indicates that the Party Central Committee and State Council will deepen reform of SOE policies and arrangements to optimise state owned capacity allocation, promote transformation and upgrading. Details concerning the promotion of central enterprises restructuring and reorganisation are subsequently detailed. These include, under the 'safeguard measures' theme, the strengthening of the organisation and leadership of SOEs, strengthening of industry guidance, increased policy support and improved support measures.

¹⁵⁶ Estimates are based on information previously provided by the GOC. Current information regarding this issue was requested by the Commission in its government questionnaire, to which the GOC did not provide a response.

¹⁵⁷ Peter in der Heiden and Markus Taube, *Analysis of Market-Distortions in the Chinese Non-Ferrous Metals Industry* (Think!Desk, 24 April 2017).

¹⁵⁸ Terence Bell, *The Biggest Aluminum Producers of 2018* (1 April 2020) ThoughtCo <https://www.thoughtco.com/the-10-biggest-aluminum-producers-2339724>.

¹⁵⁹ 《国务院办公厅关于推动中央企业结构调整与重组的指导意见》[General Office of the State Council on Promoting Central Enterprises: Guidance on Structural Adjustment and Restructuring] State Council on Promoting Central Enterprises (China), Notice no. 56, 26 July 2016 http://www.gov.cn/zhengce/content/2016-07/26/content_5095050.htm. For an English-language summary, see also 'State Council Issues Guideline on Reorganization of SOEs' (State Council (China), 26 July 2016) http://english.gov.cn/policies/latest_releases/2016/07/26/content_281475402145108.htm.

A5.1 GOC directives — relevance and enforceability

The Commission considers that the extent of the GOC's influence within the Chinese primary aluminium industry is reflected in the major themes and objectives of its plans and directives. In assessing the relevance of these plans and directives, it is the Commission's view that the national five-year plans provide the overarching framework for the industry and province specific plans and other directives, such as those noted above. In regards these plans and directives, the Commission acknowledges that the GOC considers these to be for guidance, rather than enforceable directives. However, the Commission is of the view that the five-year plans also have a significant impact on how identified industries are supported and regulated by government planning bodies and other institutions. Examples of the channels through which identified industries are influenced includes:

- the presence of SOEs and SIEs;
- the wording of plans and directives;
- the consistency of the themes and objectives throughout different plans and directives;
- the central role of the National Development and Reform Commission (NDRC) in the development of directives, and the provision of project approvals; and
- enforcement mechanisms.

While the Commission notes that GOC ownership, through SOEs and SIEs, does not automatically translate into GOC control of these entities, it is the Commission's view that these entities are more likely to be responsive to the directives of the broader GOC. The level of influence and broader role of SOEs and SIEs within the Chinese primary aluminium industry is relevant to this assessment, as it is estimated these entities accounted for around 42 per cent of total primary aluminium capacity between 2010 and 2015. In regards the wording and consistency of themes and objectives between different plans, the Commission notes that these documents, and particularly the Guidelines, are written in such a way that it emphasises their importance and binding nature. Examples of these consistent themes include:

- the elimination of backwards capacity;
- control of production levels;
- encouraging mergers, restructuring and relocation;
- promoting technological and product quality improvement; and
- implementing and encouraging environmental measures.¹⁶⁰

In regards the role of the NDRC, the Commission notes that it is the key body responsible for both developing these directives, and providing overarching approval of large scale investment projects within China. It is the Commission's view that directives from the NDRC, as the GOC's central planning authority, would thus be central to both industry specific 'five-year plans' and the planning decisions of all levels of government more generally. More explicit enforcement mechanisms are reflected in the *Notice of the State Council on Further Strengthening the Elimination of Backward Production Capabilities and Guidelines* (the GOC Guidelines).¹⁶¹ Mechanisms to address non-compliance include:

¹⁶⁰ See EPR 263 document no. 51, p. 85.

¹⁶¹ 《国务院关于加强淘汰落后产能工作的通知》 [*Notice of the State Council on Further Strengthening the Elimination of Backward Production Capacities*] State Council (China), Notice no. 7, 6 April 2010 ('GOC Guidelines').

- revoking of pollutant discharge permits;
- restrictions on financial institutions providing new credit support;
- restrictions on examination and approval of new investment projects;
- restrictions on approval of new land for use by the enterprise; and
- restrictions on issuing of new, and cancelling of existing, production licenses.

The GOC Guidelines state that enterprises that do not conform to the industrial policy shall not be provided financial support by financial departments.¹⁶² More implicit enforcement mechanisms are reflected by the regulatory powers of bodies, such as the Ministry of Industry and Information Technology. It is the Commission's understanding that such bodies maintain lists of companies that are deemed to be either compliant or non compliant with national standards on production, environmental protection, energy efficiency and safety. Those deemed non-compliant are to be closed.¹⁶³

It is the Commission's view that the effectiveness of the above mentioned mechanisms are reflected in the responsiveness of industry groups and major companies to the GOC's various directives. For example, over the last few years in response to the GOC's 'supply side reform' directives, the Chinese Nonferrous Metals Association indicated that it would continue to limit production over a number of periods.¹⁶⁴

A5.2 GOC directives – summary of themes, objectives and implementation

Below are a list of the major GOC plans and directives concerning the Chinese primary aluminium industry, and some of the key themes emphasised throughout them:

1. 13th Five-Year Plan of China (2016–2020):¹⁶⁵
 - promoting innovation in science and technology;¹⁶⁶
 - support regional development and the development of special regions;¹⁶⁷ and
 - promoting economical and intensive resource use.¹⁶⁸
2. 12th Five-Year Plan of China (2011–2015):¹⁶⁹
 - promoting the restructuring of key industries;¹⁷⁰

¹⁶² See EPR 263 document no. 51, p. 85.

¹⁶³ Office of the Chief Economist, Department of Industry, Innovation and Science, *Resources and Energy Quarterly* (December 2015), p. 47.

¹⁶⁴ Office of the Chief Economist, Department of Industry, Innovation and Science, *Resources and Energy Quarterly* (June 2016), p. 63; *Chinese Aluminium Smelters Announce Additional 800 Thousand TPA in Production Cuts* (Aluminium Insider, 23 December 2018) <https://aluminiuminsider.com/chinese-aluminium-smelters-announce-additional-800-thousand-tpa-in-production-cuts/>; AME Group, *Aluminium Strategic Market Study 2016 Q1*, p. 94.

¹⁶⁵ 《中华人民共和国国民经济和社会发展第十三个五年规划纲要》 [National Economic and Social Development of the People's Republic of China: Outline of the 13th Five-Year Plan] State Council (China), as reported by Xinhua News Agency (17 March 2016) http://www.gov.cn/xinwen/2016-03/17/content_5054992.htm.

¹⁶⁶ 《中华人民共和国国民经济和社会发展第十三个五年规划纲要》 [National Economic and Social Development of the People's Republic of China: Outline of the 13th Five-Year Plan] State Council (China), as reported by Xinhua News Agency (17 March 2016) http://www.gov.cn/xinwen/2016-03/17/content_5054992.htm ch. 6.

¹⁶⁷ Ibid chs. 37, 40.

¹⁶⁸ Ibid ch. 43.

¹⁶⁹ 《中华人民共和国国民经济和社会发展第十二个五年规划纲要》 [National Economic and Social Development of the People's Republic of China: Outline of the 12th Five-Year Plan] State Council, as reported by Xinhua News Agency (16 March 2011) http://www.gov.cn/2011lh/content_1825838.htm.

¹⁷⁰ Ibid ch. 9.

- promoting the orderly relocation of urban enterprises for non-ferrous metals;¹⁷¹
- planning of mergers and reorganisation of enterprises;¹⁷² and
- promoting the development of small and medium enterprises.¹⁷³

3. The GOC Guidelines:

- objectives for structural adjustment within the Chinese primary aluminium industry;¹⁷⁴ and
- measures to accelerate structural adjustment of the primary aluminium industry.¹⁷⁵

4. *Non-Ferrous Metal Industry Adjustment and Revitalisation Plan*:¹⁷⁶

- stabilisation and expansion of the domestic market;
- control of volume and eliminate backward production capacity;
- strengthening of technological innovation;
- promoting of industry and enterprise restructuring; and
- promotion of non-ferrous metals industrial restructuring and upgrading.

5. *Chinese Non-Ferrous Metal Industry Development Plan (2016–2020)*:¹⁷⁷

- growth targets;
- coordinating fiscal, taxation, financial, and trade policies;
- promoting bank-enterprise cooperation;
- increasing financing support to backbone enterprises and major international cooperation projects;
- adequately utilising existing government funds;
- encouraging local governments and social funds to increase input;
- implementing preferential tax policies for mines, M&A, and restructurings; and
- establishing insurance compensation system for new materials development.

6. *Normalisation Criteria on the Aluminium Industry*:¹⁷⁸

- speed up the structural reform of primary aluminium industry;
- regulate behaviour;
- requirements targeting the layout, location, and production scale of new bauxite, alumina, electrolytic and secondary aluminium enterprises;
- requirements that new electrolytic aluminium projects have surety over their alumina and electricity supply, transport and other external requirements;

¹⁷¹ Ibid ch. 9.

¹⁷² Ibid ch. 9.

¹⁷³ Ibid ch. 9.

¹⁷⁴ GOC Guidelines ch. 2.

¹⁷⁵ Ibid ch. 3.

¹⁷⁶ 《有色金属产业调整和振兴规划》[*Non-Ferrous Metal Industry Adjustment and Revitalisation Plan*] State Council (China), 11 May 2009 http://www.gov.cn/jzwgk/2009-05/11/content_1310436.htm.

¹⁷⁷ 《有色金属工业发展规划(2016-2020年)》[*Chinese Non-Ferrous Metal Industry Development Plan (2016–2020)*] Ministry of Industry and Information Technology (China), 28 September 2016.

¹⁷⁸ 《铝行业规范条件》[*Normalisation Criteria on the Aluminium Industry*] Ministry of Industry and Information Technology (China), Notice no. 36, 18 July 2013.

- requirements that new aluminium enterprises meet the relevant national standards concerning quality, capacity, energy efficiency and national environmental standards; and
- requirements for monitoring and administration by the Ministry of Industry and Information Technology (China).

7. *General Office of the State Council on Promoting Central Enterprises: Guidance on Structural Adjustment and Restructuring*.¹⁷⁹

- SOEs restructuring and reorganisation should serve national strategies, respect market rules, combine with reforms, follow laws and regulations, and stick to a coordinated approach;
- state-owned capital should support SOEs, whose core businesses are involved in national and economic security and major national programs, to strengthen their operations, and allow non state-owned capital to play a role, while ensuring the state-owned capital's leading position; and
- related departments and industries requested to steadily promote restructuring of enterprises in fields such as equipment manufacturing, construction engineering, electric power, steel and iron, nonferrous metal, shipping, construction materials, tourism and aviation services, to efficiently cut excessive overcapacity and encourage restructuring of SOEs.

A5.3 GOC involvement in energy sector

As a significant component of aluminium production costs, electricity pricing has a major impact on the price of primary aluminium, and the profitability of aluminium producers.¹⁸⁰ The SOEs have strong involvement in the electricity market in various stages of the supply chain, around 50 per cent of the generation capacity is state owned. The entire transmission grid is owned and maintained by two SOEs: State Grid Corporation of China and China Southern Power Grid.¹⁸¹ Furthermore, the Commission notes that the 2017 European Commission report highlights the central government's and local authorities' involvement in the energy sector, with some local governments in China giving additional energy subsidies to aluminium smelters to help them stay in production and remain competitive against new capacity in northwest regions.¹⁸²

Based on information provided in the course of past investigations and the Commission's research, it is the Commission's view that the GOC continues to provide support to Chinese aluminium producers through discounted electricity. Examples of support provided by the GOC through electricity pricing include:

- the report by AME that 'government-provided power subsidies are being seen in China to halt individual smelter curtailment plans, or to enable restarts and that this would appear unsustainable in the current market situation';¹⁸³

¹⁷⁹ 《国务院办公厅关于推动中央企业结构调整与重组的指导意见》[*General Office of the State Council on Promoting Central Enterprises: Guidance on Structural Adjustment and Restructuring*] State Council on Promoting Central Enterprises (China), Notice no. 56, 26 July 2016 http://www.gov.cn/zhengce/content/2016-07/26/content_5095050.htm.

¹⁸⁰ Electricity accounts for around 40 per cent of primary aluminium production costs: see EPR 263 document no. 51, p. 100.

¹⁸¹ EC 2017 Report p. 218.

¹⁸² EC 2017 Report p. 390.

¹⁸³ AME Group, *Aluminium Strategic Market Study 2015 Q4*, p. 9.

- the report in May 2016 that the state-owned entity, Aluminium Corporation of China Limited, had indicated it would shut down one of its 500 kilotonne (kt) smelters in the Gansu region, due to profitability issues. In response to this announcement, Gansu officials reduced the plant's electricity bill by 30 per cent, with the facility subsequently returning capacity to full production;¹⁸⁴
- the report by AME that the Jinneng Taiyuan Oriental aluminium smelter in the Shanxi province intended to restart production, after being fully curtailed since early 2015, subsequent to receiving a significant power discount from the local government;¹⁸⁵
- the report by AME that the 450 kt expansion project for Jiarun aluminium smelter in the Xinjiang province had been supported by the receipt of electricity at favourable rates from the local grid, significantly below the price from its own captive power source;¹⁸⁶
- the report by AME that the 130 kt Zengshi Anshun Huangguoshu aluminium smelter in Guizhou province had returned to full capacity following the restarting of idle capacity, with the support of local government subsidies enabling the company to achieve favourable electricity prices;¹⁸⁷
- the report by AME that the Baise Yinhai aluminium smelter in Guangxi province had delayed the planned restart of its full 200 kt smelting capacity, due to its inability to come to terms with the local government for favourable power subsidies to enable a profitable restart;¹⁸⁸
- the report by AME that the government of Yunnan province had announced that it was providing assistance to Yunnan Aluminum Holdings for it to lower its total smelting power costs. The report noted that the government may continue to assist Yunnan Aluminum Holdings until further reductions in its power cost has been achieved;¹⁸⁹
- the report by AME that the aluminium smelting industry in China is currently benefiting from the GOC's initiatives and new policies to lower energy consumption rates. The significant drive in China for efficient use of electricity has seen a push to reduce unit energy consumption through the development of integrated power and aluminium projects coupled with bringing online more energy-efficient, high amperage (kA) smelters, especially in the Eastern regions;¹⁹⁰ and
- the 2019 OECD paper notes that the GOC provided energy and other non-financial subsidies over 2013–17 to two main aluminium producers (57 per cent of total Chinese electricity subsidies): China Hongqiao and Qinghai Provincial Investment Group.¹⁹¹

The 2017 Think!Desk report also identified a series of factors within the Chinese power sector which have substantially affected the discounted price of electricity. These include an

¹⁸⁴ Brian Spegele and John W Miller, 'China Continues to Prop Up Its Ailing Factories, Adding to Global Glut (*Wall Street Journal*, 9 May 2016) <https://www.wsj.com/articles/chinese-exports-surge-amid-overcapacity-at-home-1462746980>.

¹⁸⁵ AME Group, *Aluminium: Tactical Outlook*, July 2016, p. 13.

¹⁸⁶ Ibid p. 13.

¹⁸⁷ Ibid p. 15.

¹⁸⁸ Ibid p. 16.

¹⁸⁹ Ibid p. 16.

¹⁹⁰ AME Group, *Aluminium Strategic Market Study 2018 Q2*, ch. 3.

¹⁹¹ OECD, *Measuring Distortions in International Markets: The Aluminium Value Chain* (OECD Trade Policy Paper 218, published 2019).

oversupply of electricity in certain regions, the introduction of electricity subsidies and differential electricity pricing policies.¹⁹²

A5.4 GOC taxation and tariff policies

During the course of previous cases the Commission has established that the GOC tariff and tax rates applicable to the Chinese aluminium industry value chain serve to discourage the exportation of primary and alloyed aluminium while encouraging the exportation of downstream aluminium products such as aluminium extrusions and aluminium road wheels.

The Commission understands that during the inquiry period the export VAT rate for aluminium extrusions dropped to 13 per cent, aligning it with the VAT rebate. As such there is now no non-refundable VAT in respect of exported aluminium extrusions. This represents a further incentive to encourage the export of downstream products.

The Commission notes that the 2017 Think!Desk report identified that:

“China is the world’s largest exporter of aluminium products. The country exports almost no aluminium in raw form but supplies the world with semifinished and finished products. Trade policy strongly discourages the exportation of raw materials and primary aluminium but encourages sales of higher value added products. In recent years, Chinese companies have increased exports of semi-processed goods. Arguably, this has been done to circumvent Chinese export restrictions and re-melt the materials into raw aluminium inside target markets. Exporting semis instead of raw aluminium mean exporters can avoid paying a 30% export tax and claim a 15% VAT refund. The phenomenon of “fake semis” has received particular attention through the case of China Zhongwang’s substantial stockpiling activities in Mexico and Vietnam (see section 5.3 for details).

As is the case with other metals reviewed for this study, the GOC has geared its trade policy instruments to shift the composition of exports towards higher value added and more technology intensive products.”¹⁹³

As such, it is the Commission’s view that the GOC’s VAT rebate and export tariff arrangements for primary aluminium, alloy aluminium and aluminium extrusions during the inquiry period continued to have the effect of discouraging exports of primary and alloyed aluminium. It is the Commission’s view that these arrangements contributed to increasing the supply available to the domestic market for the production of goods such as aluminium extrusions.

It is the Commission’s view that these arrangements are part of the broader GOC strategy to control the domestic market for primary and alloyed aluminium within China. The aims of which are to ensure there is adequate supply for downstream industries such as aluminium extrusions and sponsor value added production rather than primary exports.

This conclusion is not only based on differences in the VAT rebates available to exports of aluminium extrusions and primary or alloyed aluminium, but also on the GOC’s active

¹⁹² Peter in der Heiden and Markus Taube, *Analysis of Market-Distortions in the Chinese Non-Ferrous Metals Industry* (Think!Desk, 24 April 2017), pp. 110–115.

¹⁹³ Ibid p. 115.

involvement in the domestic market through stockpiling policies as discussed in the following section.

A5.5 GOC stockpiling policies

Prior cases undertaken by the Commission into aluminium related products exported to Australia from China identified the role of the China State Reserve Bureau, now known as the SBMR, in using aluminium stockpiles to manage price fluctuations in the domestic Chinese market.¹⁹⁴ An example of the SBMR's market interventions includes the purchase and sale of aluminium from its stockpile to support the domestic market.

The Commission considers that the SBMR's stockpiles continue to exist and are operated with the intention of managing aluminium price volatility within the domestic Chinese market. It is the Commission's view that the ongoing operation of the SBMR's stockpiling not only reflects the desire of the GOC to influence and control conditions within the domestic primary aluminium market, but also the distortion of market forces and hence the degree to which conditions within these markets reflect competitive market conditions.

A6 The Chinese aluminium extrusion market

A6.1 Conditions in the Chinese aluminium extrusion market

The ability of the Commission to undertake a detailed assessment of conditions within the Chinese aluminium extrusion market was constrained due to the lack of response to the government questionnaire from the GOC.

While the Commission was unable to undertake a detailed assessment of the aluminium extrusion market, it considers it highly likely that the impact of distorted aluminium pricing, along with the receipt of numerous subsidies both within and prior to the inquiry period, is likely to have distorted conditions within this market. It is also the Commission's view that the GOC has actively sought to encourage the export of valued added aluminium products, such as aluminium extrusions, over primary aluminium, through differences in VAT rebates and export tariffs applied to these goods (Section A5.4).

A6.2 GOC subsidy programmes to Chinese aluminium extrusion producers

In addition to the support mechanisms listed above, the Commission notes that previous cases into aluminium extrusions exported to Australia from China have identified a number of subsidy programmes that individual producers have received. In noting that these programs have been reviewed as part of the countervailing section of this inquiry, and hence separately to the assessment of market situation, the Commission refers to **Non-Confidential Appendix 2** to demonstrate the nature of support being provided to China's aluminium related industries.

The extent of this support has also been identified by differing investigating bodies which have confirmed that aluminium related industries have consistently benefitted from a variety of subsidy programs. These most recently include the US Department of Commerce investigation into aluminium foil imported from China.¹⁹⁵

¹⁹⁴ The SBMR is situated in the NDRC.

¹⁹⁵ See United States Department of Commerce, 7 August 2017, Decision Memorandum for the Preliminary Affirmative Determination: *Countervailing Duty Investigation of Certain Aluminum Foil from the Peoples Republic of China*, C-570-

A6.3 GOC directives

It is the Commission's view that the GOC has maintained a central role in the development of the Chinese aluminium industry, and by virtue of this has materially contributed to its rapid expansion and oversupply during the inquiry period. The central role of the GOC in the Chinese aluminium industry is also reflected through the numerous planning documents and directives regarding the structure and composition of the Chinese aluminium industry. Examples of these plans and directives include the:

- 13th Five-Year Plan of China (2016–2020, made effective 2016);¹⁹⁶
- 12th Five-year Plan of China (2011–2015, made effective 2011);¹⁹⁷
- *Guidelines for Accelerating the Restructuring of the Aluminium Industry* (2006);¹⁹⁸
- *Non-Ferrous Metal Industry Adjustment and Revitalisation Plan* (2009);¹⁹⁹
- *Chinese Non-Ferrous Metal Industry Development Plan (2016–2020)*;²⁰⁰
- *Industrial Structure Adjustment Guidance Catalogue* (2011, amended 2013).²⁰¹ The Commission notes this catalogue has been replaced by a new version effective 1 January 2020.²⁰²;
- the GOC Guidelines (2010);
- *Normalisation Criteria on the Aluminium Industry* (2013).²⁰³ The Commission notes these criteria have been replaced by a new version effective 28 February 2020.²⁰⁴;
- *General Office of the State Council on Promoting Central Enterprises: Guidance on Structural Adjustment and Restructuring* (2016).²⁰⁵

How these plans and directives relate to conditions within the Chinese primary aluminium industry, as well as the major themes, are discussed in subsequent sections of this attachment.

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¹⁹⁶ 《中华人民共和国国民经济和社会发展第十三个五年规划纲要》 [*National Economic and Social Development of the People's Republic of China: Outline of the 13th Five-Year Plan*] State Council (China), as reported by Xinhua News Agency (17 March 2016) http://www.gov.cn/xinwen/2016-03/17/content_5054992.htm.

¹⁹⁷ 《中华人民共和国国民经济和社会发展第十二个五年规划纲要》 [*National Economic and Social Development of the People's Republic of China: Outline of the 12th Five-Year Plan*] State Council, as reported by Xinhua News Agency (16 March 2011) http://www.gov.cn/2011lh/content_1825838.htm.

¹⁹⁸ 《关于加快铝工业结构调整指导意见的通知》 [*Guidelines for Accelerating the Restructuring of the Aluminium Industry*] Development and Reform Commission, Notice no. 589, 11 April 2006 http://www.gov.cn/zwgg/2006-04/28/content_268675.htm.

¹⁹⁹ 《有色金属产业调整和振兴规划》 [*Non-Ferrous Metal Industry Adjustment and Revitalisation Plan*] State Council (China), 11 May 2009 http://www.gov.cn/zwgg/2009-05/11/content_1310436.htm.

²⁰⁰ 《有色金属工业发展规划(2016-2020年)》 [*Chinese Non-Ferrous Metal Industry Development Plan (2016–2020)*] Ministry of Industry and Information Technology (China), 28 September 2016.

²⁰¹ 《产业结构调整指导目录（2011年本）》 [*Industrial Structure Adjustment Guidance Catalogue (2011 Edition)*] National Development and Reform Commission, Order no. 9, 27 March 2011 http://www.gov.cn/jfjg/2011-04/26/content_1852729.htm; 《产业结构调整指导目录（2011年本）（2013修正）》 [*Industrial Structure Adjustment Guidance Catalogue (2011 Edition) (2013 Amendments)*] National Development and Reform Commission (China), Order no. 21, 16 February 2013 http://www.zhenxing.gov.cn/zxqzf/zf_ztzt/qyfw/qyzcfb/864520173205128.html.

²⁰² 《产业结构调整指导目录（2019年本）》 [*Industrial Structure Adjustment Guidance Catalogue (2019 Edition)*] National Development and Reform Commission (China), Order no. 29, 30 October 2019 http://www.gov.cn/xinwen/2019-11/06/content_5449193.htm.

²⁰³ 《铝行业规范条件》 [*Normalisation Criteria on the Aluminium Industry*] Ministry of Industry and Information Technology (China), Notice no. 36, 18 July 2013.

²⁰⁴ 《铝行业规范条件》 [*Normalisation Criteria on the Aluminium Industry*] Ministry of Industry and Information Technology (China), Notice no. 6, 28 February 2020.

²⁰⁵ 《国务院办公厅关于推动中央企业结构调整与重组的指导意见》 [*General Office of the State Council on Promoting Central Enterprises: Guidance on Structural Adjustment and Restructuring*] State Council on Promoting Central Enterprises (China), Notice no. 56, 26 July 2016 http://www.gov.cn/zhengce/content/2016-07/26/content_5095050.htm.

Other GOC directives, which are likely to have impacted conditions within the Chinese aluminium industry and markets include:²⁰⁶

- *Notice on Several Opinions to Guide the Healthy Development of Industry: Curbing Overcapacity and Redundant Construction in Certain Industries* (2009);²⁰⁷
- *Guiding Opinions on Accelerating the Merger and Acquisition and Reorganisation in Key Industries* (2013);²⁰⁸ and
- *Three-Year Action Plan to Win the Blue Sky War* (2018–2020, published 2018).²⁰⁹

A7 Assessment of market situation in the Chinese aluminium extrusions market

A7.1 Assessment of conditions in the Chinese aluminium market

As outlined in the preceding sections, the Commission considers that there continued to be significant GOC induced distortions within the Chinese primary aluminium market during the inquiry period, which rendered pricing outcomes in that market uncompetitive. More specifically, the GOC induced distortion of that market is considered by the Commission to be structural, and will therefore take a significant time to dissipate.

A7.2 Flow through to aluminium extrusions sector

It is the Commission's view that, during the inquiry period, primary aluminium prices in China were lower than they otherwise would have been if the markets operated in a competitive environment without GOC intervention. As primary aluminium is a major cost component in aluminium extrusions the Commission considers that this understated aluminium cost would likely have an impact on the end cost and prices of aluminium extrusions.

The Commission further views that the subsidies provided to the aluminium and aluminium extrusions sectors would likely impact the costs of production associated with aluminium extrusions through:

- improving the technology used by aluminium extrusion manufacturers, decreasing the cost of production, as well as affecting the supply and hence price of aluminium producing enterprises (and upstream industries that are also likely to have received subsidies);
- decreasing the cost of inputs of aluminium and aluminium extrusions through the encouraged structural adjustment of aluminium and upstream industry entities; and
- directly reducing input prices of products at each stage of production if the subsidies are passed on by the recipient enterprises.

²⁰⁶ Some directives sourced from market situation assessments in *Anti-Dumping Commission Report No. 300* (relating to steel reinforcing bar) and *Anti-Dumping Commission Report No. 301* (relating to rod in coil).

²⁰⁷ 《关于抑制部分行业产能过剩和重复建设引导产业健康发展若干意见的通知》[*Notice on Several Opinions to Guide the Healthy Development of Industry: Curbing Overcapacity and Redundant Construction in Certain Industries*] Development and Reform Commission and Other Departments Approved by the State Council (China), Notice no. 38, 29 September 2009 http://www.gov.cn/zwqk/2009-09/29/content_1430087.htm.

²⁰⁸ 《关于加快推进重点行业企业兼并重组的指导意见》[*Guiding Opinions on Accelerating the Merger and Acquisition and Reorganisation in Key Industries*] Ministry of Industry and Information Technology (China), Notice no. 16, 22 January 2013 http://www.gov.cn/zwqk/2013-01/22/content_2317600.htm.

²⁰⁹ 《打赢蓝天保卫战三年行动计划》[*Three-Year Action Plan to Win the Blue Sky War*] State Council (China), Notice no. 22, 27 June 2018 http://www.gov.cn/zhengce/content/2018-07/03/content_5303158.htm.

A7.3 Conclusion

The Commission therefore finds that GOC influence in the primary aluminium and aluminium extrusion sectors has resulted in significantly different aluminium extrusion prices, compared to what would have been the case if the relevant markets operated without significant GOC intervention.

The Commission recognises that the impact of these GOC influences on supply are extensive, complex and manifold, and their resulting impact on the price of aluminium extrusions is not able to be easily quantified. However, available information and the Commission's analysis indicates that these influences are likely to have had a material impact on the domestic price of aluminium extrusions in the inquiry period.

The Commission therefore considers that GOC influences in the Chinese aluminium industry have created a 'market situation' in the domestic aluminium extrusions market.

NON-CONFIDENTIAL APPENDIX 2 — ASSESSMENT OF COUNTERVAILABILITY OF SUBSIDIES

B1 Introduction and summary of findings

This attachment details the Commission's assessment of the 65 subsidy programs that currently apply to aluminium extrusions exported from China. An additional 12 subsidy programs were also investigated in the inquiry.

The findings in relation to all investigated programs, and the Commission's assessment of the countervailability of each in relation to aluminium extrusions from China, is outlined in the table below.

Program Number	Program Name	Program Type	Countervailable in relation to the goods
2	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant	Yes
3	Provincial Scientific Development Plan Fund	Grant	Yes
4	Export Brand Development Fund	Grant	Yes
5	Matching Funds for International Market Development for Small and Medium Enterprises (SME)	Grant	Yes
6	Superstar Enterprise Grant	Grant	Yes
7	Research & Development (R&D) Assistance Grant	Grant	Yes
8	Patent Award of Guangdong Province	Grant	Yes
9	Training Program for Rural Surplus Labour Force Transfer Employment	Grant	Yes
15	Aluminium provided at less than adequate remuneration	Less than adequate remuneration	Yes
18	Preferential tax policies in the Western Regions	Tax	Yes
21	Tariff and VAT Exemptions on Imported Materials and Equipment	Tariff and VAT Exemptions	Yes
26	Innovative Experimental Enterprise Grant	Grant	Yes
29	Special Support Fund for Non-State-Owned Enterprises	Grant	Yes
32	Venture Investment Fund of Hi-Tech Industry	Grant	Yes

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Program Number	Program Name	Program Type	Countervailable in relation to the goods
35	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
47	Preferential tax policies for high and new technology enterprises	Tax	Yes
48	Provincial Government of Guangdong (PGOG) tax offset for R&D	Tax	Yes
56	PGOG special fund for energy saving technology reform	Grant	Yes
58	Development assistance grants from the Zhaoqing New and High Tech Industrial Development Zone (ZHTDZ)	Grant	Yes
59	Processing trade special fund	Grant	Yes
60	Trade insurance support fund	Grant	Yes
61	Enterprise employment fixed point monitoring work subsidy	Grant	Yes
62	Special funds for provincial enterprises to transfer and upgrade equipment	Grant	Yes
63	Reserve funds for enterprise development	Grant	Yes
64	High integrity enterprise award 2014	Grant	Yes
65	Jiangmen engineering technology research centre award	Grant	Yes
66	2016 Shanghai Automotive Commodities Exhibition special fee subsidy	Grant	Yes
67	Corporate remuneration survey subsidy	Grant	Yes
68	Energy saving project subsidy	Grant	Yes
69	Science and technology project subsidy	Grant	Yes
70	Provincial engineering and technology research centre 2016	Grant	Yes
71	Foreign trade development fund subsidy of Jiangmen City	Grant	Yes
72	2015 Special Funds of Technology Renovation technical renovation project with environmental protection	Grant	Yes

PUBLIC RECORD

Program Number	Program Name	Program Type	Countervailable in relation to the goods
73	Provincial Market Development Grant for foreign trade exhibitions and SMEs International market development	Grant	Yes
75	Subsidy for Supporting Foreign Trade Enterprises of Nan'an city in 2017	Grant	Yes
76	Fund for Supporting Foreign Trade Export in 2017 of Nan'an Municipal Bureau of Financial	Grant	Yes
77	Power consumption award for production and efficiency increase in December 2016	Grant	Yes
78	Integration of informationization and industrialization management system	Grant	Yes
79	Subsidy for invention patents	Grant	Yes
80	No. 269: Special project for technology reform- subsidy for technology reform	Grant	Yes
81	Madrid Trademark grant by Fujian Provincial Administration for Industry and Commerce	Grant	Yes
82	2016 Award for brand value from Finance Bureau	Grant	Yes
83	Social security fund Guangzhou Social Insurance Fund	Grant	Yes
84	Patent supporting fund	Grant	Yes
85	Unemployment fund Guangzhou Social Insurance Fund	Grant	Yes
86	Technology supporting fund	Grant	Yes
87	Special fund Industry technology development and research	Grant	Yes
88	Industry technology R&D fund	Grant	Yes
89	Technology innovation fund	Grant	Yes
90	Social security fund Zencheng City	Grant	Yes
91	2016 Jiangmen support fund for technology development	Grant	Yes
92	Funds for EFT16 technical reform	Grant	Yes
93	Funds for 2016 technical renovation	Grant	Yes
94	EFT provincial Industry and informatization Special research expenses supplement fund	Grant	Yes

PUBLIC RECORD

Program Number	Program Name	Program Type	Countervailable in relation to the goods
95	2017 Enterprise Compensation Survey Fund	Grant	Yes
96	VOCs treatment fund for the process of injection workshop	Grant	Yes
97	Economic investigation fund	Grant	Yes
98	2017 Provincial Motor Energy Efficiency Promotion Special Fund	Grant	Yes
99	2017 Jiangmen Enterprise Major technology platform construction Fund	Grant	Yes
100	Receiving the payment from Taishan Finance Bureau	Grant	Yes
101	2017 Jiangmen Enterprise Research and Development Financial Aid Fund	Grant	Yes
102	Taishan High-integrity enterprise project fund	Grant	Yes
103	2017 Provincial Enterprise Research and Development Fund	Grant	Yes
104	Special funds for enterprises in large equipment manufacturing industry	Grant	Yes
105	2017 Provincial New enterprise Technology Reform Fund	Grant	Yes
#106	Jiangmen supported science and technology development projects 2018	Grant	Yes
#107	2018 special fund support project fund	Grant	Yes
#108	Jiangmen municipal support science and technology development funds in 2019	Grant	Yes
#109	Subsidy for employment of the disabled	Grant	Yes
#110	Environmental Protection Subsidy from Nan'an City Dongtian Government	Grant	Yes
#111	Electricity Incentive Reward for Promoting Industrial Enterprise to Increase Production and Increase Efficiency of April to June of 2018	Grant	Yes
#112	Subsidy for Foreign Economic and Trade Enterprise of 2018	Grant	Yes
#113	Fund for Natural Disaster Relief	Grant	Yes
#114	Subsidy for Chief Technology Officer	Grant	Yes

Program Number	Program Name	Program Type	Countervailable in relation to the goods
#115	Electricity Incentive Reward of Production Increase and Efficiency Increase for Eligible Enterprise of the First Quarter of 2019	Grant	Yes
#116	Trade Promotion Fund of 2019	Grant	Yes
#117	Subsidy from Guangzhou Industry and Information Technology Bureau	Grant	Yes

Table 18 Countervailable Subsidy Assessment

Denotes programs not previously countervailed in relation to aluminium extrusions.

B2 Relevant legislation

Section 269T defines a 'subsidy' as follows:

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

(a) a financial contribution:

(i) by a government of the country of export or country of origin of the goods; or

(ii) by a public body of that country or a public body of which that government is a member; or

(iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

(iv) a direct transfer of funds from that government or body; or

(v) the acceptance of liabilities, whether actual or potential, by that government or body; or

(vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or

(vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or

(viii) the purchase by that government or body of goods or services; or

(b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.

(Emphasis added)

PUBLIC RECORD

This reflects Article 1.1 of the WTO *Agreement on Subsidies and Countervailing Measures*.

Section 269TAAC defines a countervailable subsidy as follows:

(1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.

(2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:

(a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or

(b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or

(c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or

(d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.

(3) Subject to subsection (4), a subsidy is not specific if access to the subsidy:

(a) is established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and

(b) those criteria or conditions do not favour particular enterprises over others and are economic in nature; and

(c) those criteria or conditions are strictly adhered to in the administration of the subsidy.

(4) Despite the fact that access to a subsidy is established by objective criteria, the Minister may, having regard to:

(a) the fact that the subsidy program benefits a limited number of particular enterprises; or

(b) the fact that the subsidy program predominantly benefits particular enterprises; or

(c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or

(d) the manner in which a discretion to grant access to the subsidy has been exercised;

determine that the subsidy is specific.

Section 269TACC(3) specifies the guidelines that the Minister is to have regard to in determining whether a financial contribution confers a benefit.

B3 Information considered by the Commission

B3.1 Information provided by exporters

The Commission has relied upon information provided by exporters in assessing the alleged subsidy programs. This includes information provided by the selected cooperative exporters in the respective REQs, as well as information provided during verification.

B3.2 Information provided by the GOC

The Commission included questions relating to each program in a Government Questionnaire that was sent to the GOC on 13 February 2020. The deadline for receipt of the questionnaire was 23 March 2020.

The Commission did not receive a response from the GOC to the Government Questionnaire.

B3.3 Other information considered

The Commission also considered as part of this assessment findings from other subsidy investigations conducted by the Commission and other jurisdictions.

B4 Category One: Program 15 — Aluminium provided at less than adequate remuneration

B4.1 Background

In the original investigation it was alleged that Chinese exporters of aluminium extrusions have benefited from the provision of goods by the GOC at less than adequate remuneration. In particular it was claimed that primary aluminium, the main input used in the manufacture of aluminium extrusions, was being produced and supplied by government owned enterprises at less than adequate remuneration.

Under this program, a benefit to the exporter of aluminium extrusions is conferred by primary aluminium being provided by the GOC at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

Consistent with the original investigation and subsequent cases, the Commission sought information from exporters to establish the quantity and cost of primary aluminium purchases, the form (ingot or billet), origin of product, identify of the supplier (trader or original manufacture) and if the supplier was an SOE.

In determining whether the provision of goods conferred a benefit, the Commission has had regard to the guidelines set out in section 269TACC(3).

In keeping with the position outlined in REV482, the Commission considers that the constructed LME based prices for imported primary aluminium are the most suitable benchmark for determining whether primary aluminium was provided at less than adequate remuneration and conferred a benefit in relation to the primary aluminium used in the goods exported.

The selected cooperative exporters REQs collectively reported nearly 140,000 tonnes of aluminium purchases.

The exporter's purchasing data also revealed whether that aluminium was imported or purchased from domestic suppliers, and where it was purchased from domestic suppliers whether the supplier, or the supplier's manufacturer, purchased from a SOE or SIE.

The Commission conducted an examination of the five selected cooperative exporter's monthly primary aluminium purchases during the inquiry period and compared these monthly costs with the constructed LME based benchmarks.

When comparing the selected cooperative exporters' aluminium purchases to the constructed LME benchmarks the Commission noted that all exporters paid less than the appropriate benchmark in every month of the inquiry period.

The definition of a subsidy under section 269T (1) includes reference to 'a financial contribution by a government...or any public body...'.

The Commission's assessment of whether SOE and SIE smelters providing primary aluminium constitute public bodies as that term is used in the definition of 'subsidy' in section 269T(1) is discussed at **Non-Confidential Appendix 3**.

Under this program, a benefit to exported aluminium extrusions is conferred by being provided by the GOC (through SOE or SIE) at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

B4.2 Legal Basis

The Commission has not identified any specific legal basis for this program (i.e., no specific law, regulation, or other GOC document has been identified that provides for its establishment).

B4.3 WTO Notification

The Commission is not aware of any WTO notification of this program.

B4.4 Eligibility Criteria

There are no articulated eligibility criteria for enterprises receiving aluminium at less than adequate remuneration.

B4.5 Is there a subsidy?

Financial contribution

Based on the information above, the Commission considers that this program involves a financial contribution that involves the provision of goods, at less than adequate remuneration.

By a government or public body?

In the absence of information from the GOC in relation to its role in the operation of SIEs, and in light of the reasons detailed in **Non-Confidential Appendix 3**, the Commission considers that it is reasonable to conclude for the purpose of the current inquiry that SIEs

that produce and supply raw materials to manufacturers of aluminium extrusions should be considered public bodies within the meaning of section 269T(1).

Conferral of benefit on the goods

As Chinese exporters use primary aluminium in their production of aluminium extrusions, it is considered this financial contribution is made in respect of the production, manufacture or export of the goods.

Where the financial contribution involves a direct transaction between the public bodies and the exporters of the goods, the Commission considers that this financial contribution confers a direct benefit in relation to the goods exported to Australia, because the goods were provided at less than adequate remuneration, as determined by the Commission.

These benefit amounts are equal to the amount of the difference between the purchase price and the adequate remuneration, i.e., a constructed price based on LME.

Where exporters of the goods during the inquiry period received a financial contribution under the program of primary aluminium at less than adequate remuneration, it would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under section 269T.

B4.6 Is the subsidy a countervailable subsidy?

As provided for in section 269TAAC(4)(a), the Minister may determine that a subsidy is specific, having regard to the fact that the subsidy program benefits a limited number of particular enterprises.

As the criteria or conditions providing access to this subsidy favour Chinese manufacturers that purchase primary aluminium, the program is considered to be specific under section 269TAAC(2)(a), and the specificity of the subsidy is not excepted by reference to section 269TAAC(3).

For this reason the subsidy is determined to be specific.

B4.7 Amount of subsidy in respect of the goods

The Commission found that the following exporters received a financial contribution that conferred a benefit under Program 15 during the inquiry period, in accordance with section 269TACC(3)(d):

- PanAsia China;
- Kam Kiu China;
- residual exporters; and
- all other exporters.

In accordance with section 269TACC(4), the adequacy of remuneration was determined by reference to a 'benchmark' for adequate remuneration, established having regard to the prevailing market conditions for like goods in China.

In accordance with section 269TACD(1), the amount of the subsidy has been determined as the difference between adequate remuneration (as established) and the actual purchase price paid for primary aluminium incurred by the selected exporters in purchasing these goods from SOEs or SIEs.

In accordance with section 269TACD(2), the subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for each selected cooperative exporter. The subsidy amount attributed to the goods has been calculated based on the total benefit received by each selected cooperative exporter as a proportion of the relevant company turnover value or volume.

Non-cooperative and All Other Entities

For the non-cooperative and all other entities, no information was provided by either the GOC or the individual exporters themselves to identify whether a financial contribution has been received under this program. The Commission considers that these entities have not given the Commissioner information considered to be relevant to the investigation within a reasonable period.

Pursuant to sections 269TAACA(1)(c) and 269TAACA(1)(d), the Commissioner has acted on the basis of all the facts available and made reasonable assumptions in order to determine whether a countervailable subsidy has been received in respect of the goods.

Based on the Commission's assessment of the costs and sources of primary aluminium purchases made by selected cooperative exporters it is considered likely that non-cooperative and all other entities purchased primary aluminium from SOEs and SIEs at subsidised prices and therefore received a financial contribution under this program.

In the absence of information that demonstrates the quantum of primary aluminium purchased from SOEs and SIEs by non-cooperative and all other entities, in accordance with section 269TACD(1), the Commission determines that non-cooperative and all other entities would have had benefits conferred to them under this program by this financial contribution, and has calculated the subsidy margin by reference to the highest unit subsidy amount received by one of the selected cooperative exporters under this program as a proportion of the lowest weighted average export price amongst the selected cooperative exporters.

B5 Category Two: Preferential Tax Policies

B5.1 Program 18 — Preferential tax policies in the Western Regions

Program 18 was found to be countervailable in the original investigation and again in subsequent reviews. Recent investigations into aluminium road wheels,²¹⁰ silicon metal²¹¹ and grinding balls²¹² have determined this program to be countervailable.

²¹⁰ REP 181.

²¹¹ REP 237.

²¹² REP 316.

The Commission is not aware of the current status of this program given the GOC has declined to participate in the inquiry. Furthermore, the REQs submitted by exporters did not provide any new information in regard to this program.

The Commission considers that no new information has been provided that would warrant a reconsideration of the determination made in relation to this program in this inquiry and has therefore maintained its position that this program is countervailable in relation to exports of aluminium extrusions from China for the inquiry period.

However no amount of countervailable subsidy was determined in relation to this program for the selected cooperative exporters during the inquiry period.

B5.2 Program 47 — Preferential Tax Policies for High and New Technology Enterprises (HNTE).

Program 47 was first found to be countervailable in relation to aluminium extrusions in REP 248 and again in subsequent reviews. Program 47 has been found to be countervailable in recent investigations into deep drawn stainless steel sinks,²¹³ silicon metal and grinding balls.

In its REQ, one exporter indicated it has received a reduced income tax rate of 15 per cent during the inquiry period and prior consecutive years on account of qualifying as a HNTE under article 28 of the *Enterprise Income Tax Law of the People's Republic of China*.²¹⁴

On the basis of the Commission's previous findings in relation to Program 47 and the exporters' disclosure during this inquiry, the Commission finds that Program 47 is countervailable in relation to exports of aluminium extrusions from China.

In accordance with section 269TACD(1), the amount of the subsidy has been determined as the difference between tax paid at the reduced rate and the tax that would have been paid at the standard tax rate.

In accordance with section 269TACD(2), the subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for the selected cooperative exporter. The subsidy amount attributed to the goods has been calculated based on the total benefit received by the selected cooperative exporter as a proportion of the company turnover value.

B5.3 Program 48 — Provincial Government of Guangdong tax offset for R&D

Program 48 was first found to be countervailable in relation to aluminium extrusions in REP 248 and again in subsequent reviews.

In its REQ one exporter indicated that it is eligible to receive a tax offset for research and development expenditures under Program 48.

²¹³ REP 238.

²¹⁴ 《中华人民共和国企业所得税法（2018 修正）》 [*Enterprise Income Tax Law of the People's Republic of China (2018 Amendments)*] National People's Congress, Order no. 23, 29 December 2018, art. 28. This rate was unchanged in the version of the Law before the 2018 amendments: see 《中华人民共和国企业所得税法》 [*Enterprise Income Tax Law of the People's Republic of China*] National People's Congress, Order no. 63, 16 March 2007, art. 28.

On the basis of the Commission's previous finding in relation to Program 48 and the exporters' disclosure during the inquiry, the Commission finds that Program 48 is countervailable in relation to exports of aluminium extrusions from China.

In accordance with section 269TACD(1), the amount of the subsidy has been determined as the amount of additional tax that would have been paid without the offset.

In accordance with section 269TACD(2), the subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for the selected cooperative exporter. The subsidy amount attributed to the goods has been calculated based on the total benefit received by the selected cooperative exporter as a proportion of the company turnover value.

B6 Category Three: Tariff and VAT Exemptions - Program 21 Tariff and VAT Exemptions on Imported Materials and Equipment

This program was found to be countervailable in the original investigation and again in subsequent reviews, as well as recent investigations into silicon metal and grinding balls.

In REP 248, Zhongya contended that Program 21 ceased to operate on 30 April 2009. The Commission was not able to obtain substantive evidence that this was the case. The Commission sought to verify this claim by reviewing the asset registers of the verified exporters to identify imported purchases of material and equipment that would be eligible under Program 21 since 30 April 2009. The Commission found that the exporters had not purchased imported materials and equipment during that review period and also confirmed that the most recent imported purchases that predated the alleged end of the program was in March 2009. For those imports pre-dating 30 April 2009 that received an exemption under Program 21, the asset registers indicated a depreciation period up to 10 years. The Commission concluded that the benefit received through Program 21 had been amortised over a 10 year period and therefore that the benefit conferred would not expire until at least 30 April 2019.

In Review 392, Kam Kiu China provided clarification about the operation of program 21. Kam Kiu China advised that, with effect from 1 January 2009, the VAT exemption on importation of self-use equipment was terminated, however there was a "buffer period" for the VAT exemption component of this program until 30 April 2009. This is consistent with the Commission's finding in REP 248. Kam Kiu China advised however that the change implemented on 1 January 2009 only related to the VAT exemption, and the import tariff on self-use equipment continues to be exempted under this program.

To verify the ongoing existence of Program 21 in the current inquiry the Commission sought information from exporters about the operation of this program as well as the exporters' asset registers for imports subject to Program 21 purchased up until 31 December 2019.

Relying on the information and data provided by one of the selected cooperative exporters, the Commission considers that the Program 21 continues to remain countervailable on exports of aluminium extrusions from China during the inquiry period. The Commission considers that the VAT exemption component of Program 21 remained countervailable until 30 April 2019, while the import tariff exemption component continues to be countervailable beyond this date.

In accordance with section 269TACD(1) of the Act, the amount of the subsidy has been determined as the amount of Tariff and VAT exemption appropriately amortised over the inquiry period.

In accordance with section 269TACD(2), the subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for each selected cooperative exporter who received a benefit. The subsidy amount attributed to the goods has been calculated based on the total benefit received by each selected cooperative exporter as a proportion of company turnover value.

B7 Category Four: Grants

B7.1 Programs 2, 3, 4, 5, 6, 7, 8, 9, 26, 29, 32, 35, and 58

Programs 2, 3, 4, 5, 6, 7, 8, 9, 26, 29, 32, and 35 were found to be countervailable in the original investigation and again in subsequent reviews. Program 58 was first found to be countervailable in REP 248 and again in subsequent reviews. Prior investigations into aluminium road wheels, deep drawn stainless steel sinks, silicon metal and grinding balls also determined one or more of these programs to be countervailable.

The Commission is not aware of the status of these programs given the GOC has declined to participate in the inquiry. Furthermore, the REQs submitted by exporters did not provide any new information in regard to these programs operating during the inquiry period, only that grants in these programs had been received in the years prior to the inquiry period.

The Commission considers it likely that these same or very similar programs are still operating in China and are either no longer being received by the selected cooperating exporters or were declared under new program titles.

The Commission considers that no new information has been provided that would warrant a reconsideration of the determinations made in the REV 482, and has therefore maintained its position that these programs are countervailable.

However no amount of countervailable subsidy was determined in relation to these programs for the selected cooperative exporters during the inquiry period.

B7.2 Programs 56, 59 and 60

Program 56 was first found to be countervailable in REP 248 and again in subsequent reviews. Programs 59 and 60 were first found to be countervailable in REV 392.

The Commission's verification of selected cooperative exporters subject to the inquiry period established that subsidies had been received under Programs 56 during the inquiry period.

This finding provides evidence that this particular program is still operable and potentially available to other members of the aluminium extrusion industry. The data collected in the inquiry also supports the findings from recent investigations into aluminium road wheels, deep drawn stainless steel sinks, silicon metal and grinding balls which also determined one or more of these programs to be countervailable.

In accordance with section 269TACD(1), the amount of the subsidy has been determined as the amount of the grant received by the selected cooperative exporter.

In accordance with section 269TACD(2), the subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for each selected cooperative exporter who received a benefit. The

subsidy amount attributed to the goods has been calculated based on the total benefit received by each selected cooperative exporter as a proportion of company turnover value.

B7.3 Programs 61 to 71

Programs 61 to 71 were first found to be countervailable in REV 392 and in the subsequent review.

The Commission's verification of selected cooperative exporters subject to the inquiry period established that subsidies had been received under Programs 62 and 68 during the inquiry period.

This finding provides evidence that these particular programs are still operable and are potentially available to other members of the aluminium extrusion industry. The data collected in the inquiry also supports the findings from recent investigations into aluminium road wheels, deep drawn stainless steel sinks, silicon metal and grinding balls which also determined one or more of these programs to be countervailable.

One REQ provided to the Commission asserted that Programs 64 and 68 lacked the specificity necessary to be classified as a countervailable subsidy. The Commission considers that no new information has been provided that would warrant a reconsideration of the determinations made in REV 392 and the subsequent review, and has therefore maintained its position that these programs are countervailable.

In accordance with section 269TACD(1), the amount of the subsidy has been determined as the amount of the grant received by the selected cooperative exporter.

In accordance with section 269TACD(2), the subsidy margin for these programs has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for each selected cooperative exporter who received a benefit. The subsidy amount attributed to the goods has been calculated based on the total benefit received by each selected cooperative exporter as a proportion of company turnover value.

B7.4 Programs 72, 73, and 75 to 105

Programs 72, 73 and 75 to 105 were first found to be countervailable in REV 482.

The Commission's verification of selected cooperative exporters subject to the inquiry period established that subsidies had been received under Programs 73, 83, 84, 88, 89, 90, 97, 100 and 102 during the inquiry period.

This finding provides evidence that these particular programs are still operable and are potentially available to other members of the aluminium extrusion industry. The data collected in the inquiry also supports the findings from recent investigations into aluminium road wheels, deep drawn stainless steel sinks, silicon metal and grinding balls which also determined one or more of these programs to be countervailable.

In accordance with section 269TACD(1), the amount of the subsidy has been determined as the amount of the grant received by the selected cooperative exporter.

In accordance with section 269TACD(2), the subsidy margin for these programs has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for each selected cooperative exporter who received a benefit.

For Program 73, the subsidy amount attributed to the goods has been calculated based on the total benefit received by the selected cooperative exporter as a proportion of the total company export revenue.

For the other Programs, the subsidy amount attributed to the goods has been calculated based on the total benefit received by each selected cooperative exporter as a proportion of company turnover value.

B7.5 Additional grant programs

In addition to the existing grant programs that were considered as part of this inquiry, the Commission has also had regard to 12 additional grant programs in response to information obtained during exporter verifications. The Commission's assessment of the following additional programs is contained in the Table 19 below.

B8 Residual Exporter Subsidy Rate

The subsidy margin for residual exporters has been calculated based on a weighted average subsidy margin, weighted by export volumes of the goods, of the selected cooperative exporters' determined to have received a subsidy benefit during the inquiry period.

The subsidy margins for the selected cooperating exporters were individually calculated as per the specific methodologies described under each subsidy category above.

B9 Non-cooperative and All Other Entity's Subsidy Rate

The non-cooperative and all other entity's subsidy rate was calculated on a subsidy program category basis which included:

- Category 1: Less-than-adequate remuneration
- Category 2: Preferential tax policies
- Category 3: Tariff and VAT exemptions
- Category 4(a): General grants
- Category 4(b): Export grants

The non-cooperative and all other entity's subsidy rate is the total of the highest per unit subsidisation amount received by one of the selected cooperative exporters under each subsidy program category over the lowest weighted average export price amongst the selected cooperative exporters.



ADDITIONAL GRANT PROGRAMS

Program number	Program description	Background	WTO notification	Legal basis	Eligibility criteria	Is there a subsidy?	Is the subsidy countervailable?	Method used to calculate subsidy margin
106	2018 Jiangmen supported science and technology development projects	One cooperative exporter reported receiving a benefit under this program in its verification.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	Evidence supplied by the exporter indicates grant eligibility and grant amount were determined by the regional local government.	Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise. This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC. Where exporters of aluminium extrusions during the inquiry period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T	Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable. In accordance with section 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region. The specificity of the subsidy is not excepted by reference to section 269TAAC(3). Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.	<u>Selected Cooperative Exporter</u> The subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for the selected cooperative exporter who received a benefit from this program. The subsidy amount attributed to the goods has been calculated based on the total benefit received by the selected cooperative exporter as a proportion of the total company turnover.
107	2018 Special fund support project fund	One cooperative exporter reported receiving a benefit under	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	Evidence supplied by the exporter indicates grant eligibility and	Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under	Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such	<u>Selected Cooperative Exporter</u> The subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a

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		this program in its REQ.			grant amount were determined by the regional local government.	this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise. This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC. Where exporters of aluminium extrusions during the inquiry period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T	assumptions as considered reasonable. In accordance with section 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region. The specificity of the subsidy is not excepted by reference to section 269TAAC(3). Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.	percentage of the ascertained export price for the selected cooperative exporter who received a benefit from this program. The subsidy amount attributed to the goods has been calculated based on the total benefit received by the selected cooperative exporter as a proportion of the total company turnover.
108	2018 Jiangmen municipal support science and technology development funds	One cooperative exporter reported receiving a benefit under this program in its REQ.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	Evidence supplied by the exporter indicates grant eligibility and grant amount were determined by the regional local government.	Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise. This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC. Where exporters of aluminium extrusions during the inquiry period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T	Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable. In accordance with section 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region. The specificity of the subsidy is not excepted by reference to section 269TAAC(3). Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.	<u>Selected Cooperative Exporter</u> The subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for the selected cooperative exporter who received a benefit from this program. The subsidy amount attributed to the goods has been calculated based on the total benefit received by the selected cooperative exporter as a proportion of the total company turnover.
109	Subsidy for employment of	One cooperative exporter	The Commission is not aware of any	The Commission is not aware of any	Evidence supplied by the	Due to the nature of this grant, and in light of the	Due to the lack of relevant information provided by the	<u>Selected Cooperative Exporter</u>

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	the disabled	reported receiving a benefit under this program in its REQ.	WTO notification of this program.	legal basis for this program.	exporter indicates grant eligibility and grant amount were determined by the regional local government.	<p>limited information available, it is considered that a financial contribution under this program would be made in connection to the export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the inquiry period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T</p>	<p>GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with section 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to section 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.</p>	<p>The subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for the selected cooperative exporter who received a benefit from this program.</p> <p>The subsidy amount attributed to the goods has been calculated based on the total benefit received by the selected cooperative exporter as a proportion of the total company turnover.</p>
110	Environmental Protection Subsidy from Nan'an City Dongtian Government	One cooperative exporter reported receiving a benefit under this program in its REQ.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	Evidence supplied by the exporter indicates grant eligibility and grant amount were determined by the regional local government.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the inquiry period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with section 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to section 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.</p>	<p><u>Selected Cooperative Exporter</u></p> <p>The subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for the selected cooperative exporter who received a benefit from this program.</p> <p>The subsidy amount attributed to the goods has been calculated based on the total benefit received by the selected cooperative exporter as a proportion of the total company turnover.</p>

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111	Electricity Incentive Reward for Promoting Industrial Enterprise to Increase Production and Increase Efficiency of April to June of 2018	One cooperative exporter reported receiving a benefit under this program in its REQ.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	Evidence supplied by the exporter indicates grant eligibility and grant amount were determined by the regional local government.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the inquiry period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with section 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to section 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.</p>	<p><u>Selected Cooperative Exporter</u></p> <p>The subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for the selected cooperative exporter who received a benefit from this program.</p> <p>The subsidy amount attributed to the goods has been calculated based on the total benefit received by the selected cooperative exporter as a proportion of the total company turnover.</p>
112	Subsidy for Foreign Economic and Trade Enterprise of 2018	One cooperative exporter reported receiving a benefit under this program in its REQ.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	Evidence supplied by the exporter indicates grant eligibility and grant amount were determined by the regional local government.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the inquiry period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with section 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to section 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and</p>	<p><u>Selected Cooperative Exporter</u></p> <p>The subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for the selected cooperative exporter who received a benefit from this program.</p> <p>The subsidy amount attributed to the goods has been calculated based on the total benefit received by the selected cooperative exporter as a proportion of the total company export revenue.</p>

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						definition of a subsidy under section 269T	therefore countervailable.	
113	Fund for Natural Disaster Relief	One cooperative exporter reported receiving a benefit under this program in its REQ.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	Evidence supplied by the exporter indicates grant eligibility and grant amount were determined by the regional local government.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the inquiry period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with section 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to section 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.</p>	<p><u>Selected Cooperative Exporter</u></p> <p>The subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for the selected cooperative exporter who received a benefit from this program.</p> <p>The subsidy amount attributed to the goods has been calculated based on the total benefit received by the selected cooperative exporter as a proportion of the total company turnover.</p>
114	Subsidy for Chief Technology Officer	One cooperative exporter reported receiving a benefit under this program in its REQ.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	Evidence supplied by the exporter indicates grant eligibility and grant amount were determined by the regional local government.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the inquiry period received a grant under this program, this would therefore confer a benefit in relation to the</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with section 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to section 269TAAC(3).</p>	<p><u>Selected Cooperative Exporter</u></p> <p>The subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for the selected cooperative exporter who received a benefit from this program.</p> <p>The subsidy amount attributed to the goods has been calculated based on the total benefit received by the selected cooperative exporter as a proportion of the total company turnover.</p>

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						goods, and this financial contribution meets the definition of a subsidy under section 269T	Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.	
115	Electricity Incentive Reward of Production and Efficiency Increase for Eligible Enterprise of the First Quarter of 2019	One cooperative exporter reported receiving a benefit under this program in its REQ.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	Evidence supplied by the exporter indicates grant eligibility and grant amount were determined by the regional local government.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the inquiry period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with section 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to section 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.</p>	<p><u>Selected Cooperative Exporter</u></p> <p>The subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for the selected cooperative exporter who received a benefit from this program.</p> <p>The subsidy amount attributed to the goods has been calculated based on the total benefit received by the selected cooperative exporter as a proportion of the total company turnover.</p>
116	Trade Promotion Fund of 2019	One cooperative exporter reported receiving a benefit under this program in its REQ.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	Evidence supplied by the exporter indicates grant eligibility and grant amount were determined by the regional local government.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the inquiry period received a grant under this program, this</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with section 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference</p>	<p><u>Selected Cooperative Exporter</u></p> <p>The subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for the selected cooperative exporter who received a benefit from this program.</p> <p>The subsidy amount attributed to the goods has been calculated based on the total benefit received by the selected cooperative exporter as a proportion of the total company export revenue.</p>

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						would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T	to section 269TAAC(3). Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.	
117	Subsidy from Guangzhou Industry and Information Technology Bureau	One cooperative exporter reported receiving a benefit under this program in its REQ.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of any legal basis for this program.	Evidence supplied by the exporter indicates grant eligibility and grant amount were determined by the regional local government.	<p>Due to the nature of this grant, and in light of the limited information available, it is considered that a financial contribution under this program would be made in connection to the export of all goods of the recipient enterprise.</p> <p>This financial contribution is considered to confer a benefit to recipient manufacturers of aluminium extrusions due to receipt of funds from the GOC.</p> <p>Where exporters of aluminium extrusions during the inquiry period received a grant under this program, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under section 269T</p>	<p>Due to the lack of relevant information provided by the GOC and the exporter, the Commission has based its finding on all the facts available and made such assumptions as considered reasonable.</p> <p>In accordance with section 269TAAC(2)(b), the Commission considers that this subsidy is limited to and predominantly benefits particular enterprises carrying out business within a designated geographical region.</p> <p>The specificity of the subsidy is not excepted by reference to section 269TAAC(3).</p> <p>Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.</p>	<p><u>Selected Cooperative Exporter</u></p> <p>The subsidy margin for this program has been calculated based on the unit subsidy amount attributed to the goods as a percentage of the ascertained export price for the selected cooperative exporter who received a benefit from this program.</p> <p>The subsidy amount attributed to the goods has been calculated based on the total benefit received by the selected cooperative exporter as a proportion of the total company turnover.</p>

Table 19 - Subsidy Assessment of Additional Grants

NON-CONFIDENTIAL APPENDIX 3 — ASSESSMENT OF WHETHER STATE INVESTED ENTERPRISES ARE PUBLIC BODIES

C1 Background and Legislative Framework

The definition of a subsidy under section 269T(1) of the Act requires the financial contribution to be provided by a government, public body or a private body entrusted by that government or public body to carry out a government function.

The SIEs involved in the primary aluminium sector in China are not considered by the Commission to be part of the GOC, nor are they private bodies entrusted or directed by the GOC in order to carry out governmental functions. The Commission's focus on considering whether aluminium has been sold at less than fair market value will thereby focus on considering whether these SIEs are acting as a 'public body'.

The term 'public bodies' is not expressly defined under the Act, or the *Agreement on Subsidies and Countervailing Measures*.

The previous investigation's findings were made in view of the determinations made in relation to public bodies through the WTO Appellate Body in *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, also known as dispute DS379.²¹⁵

Further guidance on the meaning of public bodies was provided by the WTO Dispute Settlement Body in *United States — Countervailing Duty Measures on Certain Products from China* (dispute DS437)²¹⁶ and *United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (dispute DS436).²¹⁷

DS379 and DS436 findings

In its findings report to DS379, the Appellate Body stated:

*... the determination of whether a particular conduct is that of a public body must be made by evaluating the core features of the entity and its relationship to government in the narrow sense. That assessment must focus on evidence relevant to the question of whether the entity is vested with or exercises governmental authority.*²¹⁸

(Emphasis added)

The Appellate Body provided further guidance on this point as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the

²¹⁵ Appellate Body Report, *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (11 March 2011, adopted 25 March 2011).

²¹⁶ See, e.g., Appellate Body Report, *United States — Countervailing Duty Measures on Certain Products from China*, WT/DS437/AB/R (18 December 2014, adopted 16 January 2015).

²¹⁷ See, e.g., Appellate Body Report, *United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R (8 December 2014, adopted 19 December 2014).

²¹⁸ Appellate Body Report, *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (11 March 2011, adopted 25 March 2011).

following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):²¹⁹

Indicium 1 - where a *statute or other legal instrument* expressly vests government authority in the entity concerned;

Indicium 2 - where there is evidence that an entity is, *in fact, exercising governmental functions* may serve as evidence that it possesses or has been vested with governmental authority; and

Indicium 3 - where there is evidence that a government exercises *meaningful control* over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

The Appellate Body considered that the existence of *mere formal links* (i.e., majority government ownership) between an entity and government was not sufficient to establish the necessary possession of governmental authority.²²⁰

The Appellate Body further advised that, in all cases, an investigating authority must give due consideration to all relevant characteristics of the entity and avoid focussing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant.²²¹

The Appellate Body went on to acknowledge (in the context of examining SIEs in China) that:²²²

“...determining whether an entity is a public or private body may be a complex exercise, particularly where the same entity exhibits some characteristics that suggest it is a public body, and other characteristics that suggest that it is a private body.”

In the findings report for DS436, the Appellate Body reiterated its findings in DS379 and provided additional direction about determining whether an entity is a public body, emphasising the various elements that a decision-maker must consider:

*“Whether the conduct of an entity is that of a public body must in each case be determined on its own merits, with due regard being had to the core characteristics and functions of the relevant entity, its relationship with the government, and the legal and economic environment prevailing in the country in which the investigated entity operates.”*²²³

²¹⁹ Appellate Body Report, *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (11 March 2011, adopted 25 March 2011).

²²⁰ Ibid.

²²¹ Ibid.

²²² Ibid.

²²³ Appellate Body Report, *United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R (8 December 2014, adopted 19 December 2014) [4.32].

C2 Findings in previous investigation

In the previous investigation, the Commission has examined the three indicia outlined in DS379 (described above) and made the following findings:²²⁴

- Indicium 1 – the Commission found that a particular enterprise - Aluminium Corporation of China Limited (CHALCO) was vested with some government authority in relation to imposing state mandated pricing policies on its subsidiaries, but did not identify any legal instruments which expressly vested government authority in any aluminium-producing SIEs.
- Indicium 2 - the Commission found that CHALCO was exercising governmental functions, and that Chinese aluminium industry SIEs, including those that produce aluminium and/or alloy, played a leading and active role in implementing GOC policies and plans and these SIEs were therefore exercising governmental functions.
- Indicium 3 - the Commission found that the GOC employed policies and implementing measures which enabled the GOC to exercise meaningful control over Chinese SIEs that produce aluminium and/or aluminium alloy.

The Commission concluded that at least Indicia 2 and 3 were met and hence aluminium SIEs should be considered ‘public bodies’.

Similar to the previous investigations, in the current inquiry, the Commission is not aware of any statute or other legal instrument which expressly vests government authority in any SOEs or SIE producing aluminium and/or alloy.

C3 The Commissioner’s assessment

The Commission considers that evidence exists to show that at least both Indicium 2 (evidence that an entity is, in fact, exercising governmental functions) and Indicium 3 (evidence that a government exercises meaningful control over an entity and its conduct) are satisfied in relation to Chinese aluminium and/or alloy manufacturers.

The Commissioner had regard to the findings in the EC 2017 Report.

The EC 2017 Report was prepared for the purposes of Article 2(6a)(c) of *Regulation (EU) 2016/1036*. Article 2(6a)(c) provides that where the EC has well-founded indications of the possible existence of significant distortions in a certain country or a certain sector in that country, the EC must publish a report describing the market circumstances in that country or sector.²²⁵

The EC 2017 Report found that the GOC no longer directs SIEs to “adapt to the new market-oriented ... background” and “promote market-oriented allocation of public resources”.²²⁶ Rather the GOC’s current primary goal with respect to SIEs is make the

²²⁴ *Report to the Minister No. 181*, Australian Customs and Border Protection Service, Appendix B, pp. 9–31. At this time, the Australian Customs and Border Protection Service was the administrative authority responsible for anti-dumping matters.

²²⁵ EC 2017 Report, p. 2.

²²⁶ EC 2017 Report, p. 106, citing 《中华人民共和国国民经济和社会发展第十三个五年规划纲要》 [*National Economic and Social Development of the People’s Republic of China: Outline of the 13th Five-Year Plan*] State Council (China), as reported by Xinhua News Agency (17 March 2016) http://www.gov.cn/xinwen/2016-03/17/content_5054992.htm.

sector larger and stronger; this includes strengthening the sector's control and influence "in order to better serve the strategic goals of the country".²²⁷ The GOC has decided to maintain SIEs as a means for pursuing policy objectives and not primarily commercial considerations²²⁸ and to selectively create large SIEs to serve the GOC's strategic industrial policies rather than focussing on their own economic performance. The GOC has continued controlling SIEs and planned reforms focus on better controlling state-owned assets.²²⁹

The GOC is retreating from the market reforms for SIEs that it previously promoted, even as recently as 2013.²³⁰ On that basis, the Commissioner considers that previous findings that SIEs are public bodies are pertinent to this inquiry and are likely to understate the GOC's involvement with SIEs.

In the absence of information from the GOC in relation to its role in the operation of SIEs in the inquiry period, and in light of the reasons considered above, the Commission considers that it is reasonable to conclude for the purpose of the current inquiry that SIEs that produce and supply raw materials to manufacturers of aluminium extrusions should be considered public bodies.

²²⁷ Ibid.

²²⁸ EC 2017 Report, pp. 107–108; the EC Report at page 362 stated that some forms of GOC support in the steel sector were "permanent" and "structural".

²²⁹ EC 2017 Report, pp. 108–109.

²³⁰ EC 2017 Report, p. 106, citing the GOC's 2013 3rd Plenum Decision: see 《中共中央关于全面深化改革若干重大问题的决定》 [*Decision of the Central Committee of the Communist Part of China on Several Major Issues in Comprehensively Deepening Reform*] Central People's Government (China), as reported by Xinhua News Agency, 15 November 2013.