



Australian Government  
Department of Industry,  
Innovation and Science

Anti-Dumping  
Commission

Anti-Dumping Commission  
Level 35, 55 Collins Street  
Melbourne VIC 3000

Ms Leora Blumberg  
Panel Member, Anti-Dumping Review Panel  
c/- ADRP Secretariat  
Legal, Audit and Assurance Branch  
Department of Industry, Innovation and Science  
10 Binara Street  
Canberra ACT 2600

By e-mail: [ADRP@industry.gov.au](mailto:ADRP@industry.gov.au)

Dear Ms Blumberg

**Certain Aluminium Extrusions Exported to Australia from Malaysia and the Socialist Republic of Vietnam**

I write with regard to the notice under section 269ZZI of the *Customs Act 1901*<sup>1</sup> published on 18 September 2017 advising of your intention to review the decision of the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary) to publish notices under subsections 269TG(1) and (2), and 269TJ(1) and (2) (the reviewable decisions). The reviewable decisions were published on the Anti-Dumping Commission's (the Commission's) website on 27 June 2017, as referred to in Anti-Dumping Notice (ADN) Nos. 2017/72 and 73.

I understand that by 25 September 2017, the Commission had provided you with documents requested of me in your correspondence dated 18 September 2017.

I have considered the applications for review of the reviewable decisions and have decided to make some comments on the various grounds raised by the applicants. Please find my comments at **Attachment A**, which I submit for your consideration.

The Commission remains at your disposal to assist you in this matter, and would be happy to participate in a conference if you consider it appropriate to do so.

Yours sincerely

Dale Seymour  
Commissioner  
Anti-Dumping Commission

18 October 2017

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<sup>1</sup> All references are to the *Customs Act 1901*, unless otherwise stated.

Attachment A

I make the following submissions in response to the grounds set out in the notice published on 18 September 2017. These grounds are with respect to the consideration by the Anti-Dumping Review Panel (ADRP) of the reviewable decisions of the Parliamentary Secretary and detailed in *Report No. 362* (REP 362).

**1 Global Vietnam Aluminium Company Limited (“GVA”)**

*1.1 The ADC erred in determining normal value pursuant to subsection 269TAC(1) of the Customs Act, on the basis of domestic sales by other sellers of like goods*

GVA’s view is that it has not been provided sufficient information regarding relevant factors affecting price comparability between its export price and the normal value calculated by the Commission under subsection 269TAC(1) based on other sellers’ data.

The Commission addressed a submission from GVA on this issue at section 5.13.4 of REP 362. Further comments are made below.

*Due allowance factors*

- GVA make a specific claim that selling prices of powder coated products vary according to colour groupings (page 11 of the application). This was not raised by GVA during the investigation, which explains why it is not addressed in REP 362.

I note that [redacted] per cent of GVA’s export sales to Australia are mill finish. The remaining [redacted] per cent of GVA’s export sales to Australia are powder coated (as summarised in Table 1 below). As outlined at section 5.6 of REP 362, the Commission’s model matching criteria for each exporter (including GVA) took into account finish type. On this basis, even if GVA’s claims regarding colour groupings for powder coated models were accepted, it would be of little consequence to GVA given that it predominately exported mill finish models to Australia. GVA’s normal value properly reflects the models it exported to Australia.

Finish Type	Quantity (MT)	Percentage
Mill Finish	[redacted]	[redacted]
Powder Coated	[redacted]	[redacted]
<b>Grand Total</b>	[redacted]	100.0%

**Table 1: GVA export sales to Australia by finish type<sup>2</sup>**

- GVA further claims that aluminium extrusion producers add additional premiums to their selling prices where customers request ‘non-base grade’ alloys (page 11 of the application). Again, this is a new claim by GVA. GVA did not articulate what it considers are ‘base grade’ alloys in its application. Despite this, GVA claims that all of its mill finish extrusions exported to Australia comprise ‘base grade’ alloys. Conversely, it is unsure what alloys are sold domestically by the other sellers.

Table 2 below summarises the volumes and weighted average export prices of the alloys exported to Australia by GVA. The Commission understands from price lists provided by Capral Limited (Capral), G. James Extrusion Co Pty Ltd and East Asia Aluminium Company (**Confidential Attachment 1** refers), that alloys [redacted] and [redacted] do not attract price premiums on the Australian market, whereas other alloys such as [redacted] and [redacted], which GVA export, may. Therefore, GVA’s claims that it only

<sup>2</sup> Source: REP 362: Confidential Attachment 7 – GVA Dumping Margin Calculation (“Australian Exports”).

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exported one 'base grade' alloy appears inconsistent with its sales data and other information available to the Commission.

It is also noted that the other sellers' data used to calculate GVA's normal value predominately reflects domestic sales of [REDACTED] alloy, which is comparable to the vast majority of GVA's export sales to Australia as demonstrated in Tables 2 and 3. As a result, GVA's export price and normal value are comparable as they both reflect a similar mix of alloys.

Alloy	Quantity (MT)	Percentage	Weighted average export price (\$USD)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Total</b>	[REDACTED]	100.0%	[REDACTED]

**Table 2: GVA's export sales summary<sup>3</sup>**

Alloy	East Asia Aluminium Quantity (MT) <sup>4</sup>	Mien Hua Quantity (MT) <sup>5</sup>	Total	%
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Total</b>	[REDACTED]	[REDACTED]	[REDACTED]	100.0%

**Table 3: GVA's normal value – summary of domestic sales of other sellers**

- GVA states on page 12 of the application that:

*“...[i]n the absence of any understanding of the types of products sold on the domestic market by EAA and Mien Hua, or the nature of those domestic sales in terms of the level of trade, delivery terms, credit terms, complexity of profiles, volumes, etc, GVA was unable to meaningfully identify and quantify due allowance claims. In these circumstances, it was inappropriate for the Commission to determine GVA's normal value on the basis of other seller's domestic sales (emphasis added).”*

GVA's claims should be rejected, noting that, the Commission took into consideration all of the above underlined factors by:

- using finish type in its model matching criteria;
- addressing GVA's concerns relating to level of trade, credit terms, profile complexity<sup>6</sup> and volume based discounts at section 5.13.4 of REP 362. In particular, in that section of REP 362 the Commission outlined that adjustments for level of trade, volume based discount and profile complexity were not warranted in the circumstances. The Commission also highlighted

<sup>3</sup> *Ibid.*

<sup>4</sup> Source: REP 362: Confidential Attachment 5 – EEA Dumping Margin Calculation (“Australian Sales”).

<sup>5</sup> Source: REP 362: Confidential Attachment 6 – Mien Hua Dumping Margin Calculation (“Australian Sales”).

<sup>6</sup> Refer also to section 5.11.5 of REP 362.

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that GVA's normal value and export price were both at the same delivery terms and on a cash basis (requiring no delivery or credit term adjustment).

### *Volume differences*

GVA raise that there is a difference between the relatively low volume of GVA's export sales to Australia compared to the relatively high volume of domestic sales of the other sellers (page 14 of the application). I do not dispute this.

GVA cite *Thai Pineapple Canning Industry Corp Ltd v Minister for Justice & Customs [2008] FCA 443* (Thai Pineapple) to support a view that the Commission "...was obliged to consider and assess such differences in deciding whether the other sellers' sales were appropriate for determining GVA's normal value."

It is relevant to add that the Thai Pineapple case dealt with the opposite circumstances described by GVA. There the exporter concerned exported a large volume of goods to Australia. At issue was whether it was suitable to compare the export price from those export sales to a normal value from a relatively low volume of domestic sales made by other sellers.

The Thai Pineapple case examined, among other things, subsection 269TAC(2)(a) which is aimed at ensuring that sufficient domestic sales are available for use under subsection 269TAC(1). Subsection 269TAC(2)(a) provides that, where there is an absence, or low volume, of sales of like goods in the domestic market, the normal value cannot be established using subsection 269TAC(1). Low volume, in the context of subsection 269TAC(2)(a) is referred to in subsection 269TAC(14).

In my view, GVA's reference to the Thai Pineapple case, if anything, strengthens the justification for using other sellers' data, because the requirements of subsection 269TAC(14) have been met, and subsection 269TAC(2)(a) is not enlivened.<sup>7</sup> Put differently, in relation to GVA, it cannot be said that there is a low volume of sales of like goods on the domestic market by other sellers, such that normal values cannot be established using subsection 269TAC(1). The high volume of domestic sales by other sellers ensure a relevant and reliable basis for ascertaining the normal value under subsection 269TAC(1). Those domestic sales represent the actual prices paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions.

### *Other observations*

GVA's application also states that: "...where the Commission experiences difficulties in making adjustments for fair comparison, it is compelled to reject those other seller's domestic sales..." and that: "...[t]he Commission erred in relying on domestic sales by other sellers as it did not undertake a proper examination and assessment as to whether such sales by EAA and Mien Hua were both suitable and relevant, as per its own stated policy."

I submit that REP 362 contains extensive consideration by the Commission regarding the suitability of other sellers' data in relation to GVA.

Notwithstanding that GVA would rather a different outcome, calculating GVA's normal value under subsection 269TAC(1), using domestic sales of like goods by other sellers, was correct and preferable.

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<sup>7</sup> It is also noted that there is no equivalent sufficiency of volume requirement in relation to the export price provisions of subsection 269TAB.

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- 1.2 *The ADC erred by not considering and making appropriate adjustments for factors known to affect price comparability between export price and corresponding normal values*

GVA points out that it raised a number of “likely factors” that may affect price comparability between normal values and export prices.

GVA contends that the Commission “...erred and did not make the correct or preferable decision, as it did not consider and make appropriate adjustment for factors known to affect price comparability between export price and corresponding normal values.”

The Commission considered the claims raised by GVA, as discussed at section 5.13.4 of REP 362. The Commission also made sufficient information available to GVA during the investigation, as described at page 51 of REP 362. The fact that the “likely factors” raised by GVA did not result in adjustments does not mean that the correct or preferable decision was not made.

The application provides no evidence to further support adjustment claims and accordingly this ground should be rejected.

## 2 Capral Limited (“Capral”)

- 2.1 *The Assistant Minister, based on the recommendations of the ADC, failed to take account of relevant information pertinent to the determination of normal values, export prices and non-injurious prices in the period immediately following the investigation period, and erred by not adjusting the variable factors*

The Commission considered Capral’s concerns and addressed them at section 11.5 of REP 362. In ascertaining the variable factors, the Commission took into consideration relevant information relating to the investigation period as defined in subsection 269T(1).

## 3 Everpress Aluminium Industries Sdn Bhd (“Everpress”)

- 3.1 *The Minister erred in not considering that the volume of dumped /subsidised goods was negligible, and therefore erred in finding that the necessary state of satisfaction was reached that the balance of ‘dumped’ and subsidised exports from Malaysia could result in the required injury to the Australian industry*

Everpress claim that there is no indication in REP 362 as to whether the volume of dumped and subsidised goods exported to Australia from Malaysia was above de minimis levels (page 5 of the application).

The Commission addressed the volume of dumped goods at section 5.16 of REP 362 and the volume of subsidised goods at section 6.16 of REP 362. The supporting calculations are contained in **Confidential Attachment 14** to REP 362 – Variable Factors Summary Table, provided to you previously. As shown at tab ‘Export Price and DM Summary’ cell reference U34, the volume of dumped and subsidised goods from Malaysia are above de minimis levels, representing approximately 7.5 per cent of total import volumes.<sup>8</sup>

In terms of Everpress’ claims regarding injury, I considered that it was appropriate to cumulate the effects of dumped and subsidised goods from Malaysia and Vietnam, as

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<sup>8</sup> The volume of dumped goods exported by the category of “un-cooperative and all other exporters” and the volume of subsidised goods exported by “non-cooperative and all other entities”, are to the same amounts for the purpose of sections 5.16 and 6.16 of REP 362.

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outlined at section 8.2 of REP 362. As such, no separate examination of whether the Malaysian goods, or goods specifically exported to Australia by Everpress, was required in determining whether material injury was experienced by the Australian industry.

### 3.2 *The ADC erred in its finding that Everpress was an uncooperative exporter and non-cooperating entity and its resulting determination of Everpress' dumping and subsidy margins*

Everpress claim that any deficiencies with its submitted exporter questionnaire response (EQR) are largely immaterial and easily rectifiable. Everpress claims to have been denied an opportunity and natural justice by me not providing it with an opportunity to rectify the deficiencies (page 6 of the application).

I note that Everpress had available 37 days from initiation to complete the EQR. Upon receiving Everpress' EQR, Commission staff assessed the completeness of the EQR and completed a checklist, attached for your consideration at **Confidential Attachment 2**.

The assessment of Everpress' EQR should be read in the context of the direction given to me by the Minister in *Customs (Extensions of Time and Non-cooperation) Direction 2015*<sup>9</sup>. As outlined in my letter to Everpress (**Confidential Attachment 3**), the deficiencies with Everpress' EQR were extensive. Having been provided 37 days to submit the EQR, and by providing an extensively deficient response, Everpress would have required a substantial amount of time to rectify identified deficiencies in another response.

Everpress further claim that the EQR "*more than adequately met the required information level that ADC normally expects for residual rate application*".

In support of this claim, Everpress provided a questionnaire taken from another matter, relating to aluminium extrusions from China (Review No. 392). This questionnaire was specific to Review No. 392 and was not used for Investigation No. 362.<sup>10</sup> As such, the questionnaire from Review No. 392 is not "relevant information" as defined in subsection 269ZZK.

I also note that the circumstances of Review No. 392 and Investigation No. 362 were different. Upon initiating Review No. 392 it was identified that the number of exporters from China was considerable. As documented at Attachment A of ADN No. 2017/38, the Commission identified over 300 suppliers of the goods to Australia from China for the relevant period of review. Accordingly, I signalled my intention to apply the sampling provisions of subsection 269TACAA as part of ADN No. 2017/38, in order to make Review No. 392 manageable.

In contrast to Review No. 392, the number of exporters of the goods from Malaysia for Investigation No. 362 was significantly less at 27 in relation to the investigation period. As part of Investigation No. 362, I did not elect to apply the sampling provisions at the stage of initiation. My decision to apply the sampling provisions followed the number of responses I received to the exporter questionnaire. I did not elect to apply the sampling provision until day 60 of Investigation No. 362, as outlined in ADN No. 2016/108. Therefore, in order to be a residual exporter for Investigation No. 362, the information I required was a completed EQR, which I do not consider that Everpress provided.

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<sup>9</sup> <https://www.legislation.gov.au/Details/F2015L01736>

<sup>10</sup> It is noted that Review No. 392 was not initiated until after Everpress submitted its EQR and, at the time of this submission, the findings of Review No. 392 have not been considered by the Parliamentary Secretary.

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**ATTACHMENTS**

<b>Attachment</b>	<b>Confidentiality</b>	<b>Title</b>
Attachment 1	Confidential	Price list data
Attachment 2	Confidential	Everpress EQR checklist
Attachment 3	Confidential	Confidential letter to Everpress