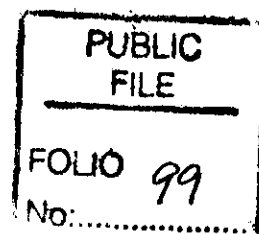




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dumping specialists

13 July 2012



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## Response to exporter questionnaire by Wuxi Aluminium

This submission is made on behalf of Capral Ltd, a member of the Australian aluminium extrusions industry, in relation to Review 186 of certain aluminium extrusions exported from China. We refer specifically to the response to the exporter questionnaire (REQ) by Wuxi Xisha Photoelectric Aluminium Products Co Ltd (Wuxi) placed on the electronic public record on 5 July 2012.

We submit that the apparent failure of Wuxi to provide copies of critical documents including income tax returns and board meeting minutes amounts to non-cooperation on Wuxi's part.

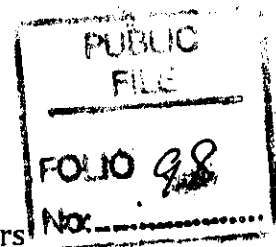
We also submit that the requirements of s.269ZJ(2) of the *Customs Act 1901* (the Act) have not been met, specifically that for many responses Wuxi has failed to provide a summary of the information submitted such as to allow a reasonable understanding of the substance of the information—in fact some responses are completely blacked out even when they appear to be so short they possibly only make reference to a confidential attachment.

We are concerned that Wuxi's responses to many of the questions do not contain the level of detail that Customs would expect to see in a REQ. Our comments on Wuxi's responses to particular questions follow.

## Section A – company structure and operations

### A-3 Company information

Under Australian law shareholder information for private companies is publicly available from the Australian Securities and Investments Commission, albeit for a nominal fee, therefore we do not accept that Wuxi is entitled to claim details of ownership or associated/affiliated companies is confidential (Q2 & 5 refer). This severely limits our ability to comment upon the potential commercial relationships between Wuxi and any of its customers, suppliers or other service providers, or connections with the Chinese Communist Party.



Wuxi's claim that it is not a subsidiary of another company (Q5 refers) appears inconsistent with its own website, which refers to an investment company called Jiangsu Xisha Aluminum Products Co., Ltd.<sup>1</sup> Wuxi should be asked to explain its relationship with this other company.

#### **A-4 General accounting/administration information**

The responses to a number of these points are vague and confusing, for example:

- Damaged or sub-standard goods are said to be valued at 85% of materials cost, but treatment of the remaining 15% is unexplained.
- Scrap, by-products and joint products are said to be valued in the same manner, which is unusual, and include an 'artificial salary' cost component.
- The '5% allowance for depreciation' does not accord with the useful life of asset figures given.
- The list of inclusions in the general expenses is particularly vague.

#### **Section B – Sales to Australia**

It is not clear whether Wuxi has a contract or agreement with B&D Aluminium (Aust) Pty Ltd (B&D), as the response is completely confidential (B-2(d) refers). Also the table at B-4 has been made confidential, yet it appears to be part of the question.

We also note from details registered with the Australian Securities and Investment Commission (ASIC) that a current director and the secretary of B&D is from the city of Wuxi, China (**Attachment A** refers). We urge Customs to closely examine the relationship between Wuxi and B&D to ensure sales meet the requirements of s.269TAB of the Act regarding their use for determining export price.

#### **Section C – Exported goods and like goods**

This section is completely devoid of any information whatsoever, and leaves us with no idea whether Wuxi manufactures any goods for the domestic market that are like goods to the extrusions exported to Australia. The only indication we have is that Wuxi attempted to complete the domestic sales and fair comparison sections of the questionnaire.

#### **Section E – Fair comparison**

##### **E-1 Costs associated with export sales**

The statement that 'Handling, loading & ancillary work of freight associated export sale is available to the company by the outside' is very confusing (Q2

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<sup>1</sup> <http://www.ixisha.com/en/profile.asp>

refers). It is unclear whether or not there are costs other than inland transport incurred on export sales, such as GOC export inspection fees.

Regarding packing costs, it is unclear whether Wuxi is able to identify the separate costs for export and domestic packaging (Q4 refers).

#### **E-2 Costs associated with domestic sales**

It is unclear whether Wuxi is claiming an adjustment for differences in physical characteristics between the exported goods and domestic like goods (Q1 refers) or claiming a level of trade adjustment (Q3(b) refers), and if so what evidence is available to support those claims.

Wuxi claims that it is subject to national standard interest rates; therefore it is unclear why the remainder of the response, which presumably includes the applicable interest rate, is confidential. We request Customs to make the interest rates publicly available, to enable proper scrutiny of Wuxi's claim.

Wuxi states in Section D that most customers take delivery at factory (D-3 refers) and on this basis we assume that most domestic sales are ex works. It is therefore unclear why the entire response on domestic transportation is confidential (Q5 refers).

Regarding packing costs, it is unclear why the response is confidential when it is compared to the response to a similar question in Section E.1 (Q7 refers). This response in E.2 is completely devoid of information.

It seems impossible that Wuxi would incur no cost in relation to returned or damaged goods on the domestic market (Q9 refers). Returns can be made for various reasons including defects not apparent at the time of production or packing for delivery, or data entry errors in recording an order for an incorrect part, volume or finish. The most efficient extrusion plants in the world can achieve returns of 0.3-0.5% of sales, and we estimate that for a Chinese plant returns would be closer to 1% of sales.

### **Section G – Costing information and constructed value**

#### **G-1 Production process and capacity**

We are very concerned that Wuxi has not provided any information on its production process. This gives us limited opportunity to focus our submission on the key issues concerning Wuxi's cost to manufacture extrusions, and we consider this unsatisfactory.

#### **G-2 Cost accounting practices**

Again we are concerned at the brevity of responses and lack of detail:

- Wuxi gives no indication of its depreciation costs, or allocating the costs of dies (Q5 refers)

- There is no logical explanation why some answers should be confidential (Q6 & 7 refer), and
- Wuxi contradicts itself by claiming that it has no start-up costs and then stating that it neglects what few costs it has incurred (Q8 & 9 refer).

## Section H – Particular market situation

We will be providing a separate submission on the situation in the Chinese domestic extrusions market, however we make the specific comments below in response to Wuxi's REQ.

### H-1 General information

Wuxi claims that it has not received any loans from the Government of China (GOC) (Q1(g) refers). However, we note that in the United States (US) countervailing duty investigation of aluminium extrusions from China, the US found that all loans made by state owned and controlled banks (SOCBs) and 'policy banks' in China were countervailable subsidies and determined that "the GOC has a policy in place to encourage the development of the production of aluminum extrusions through policy lending."<sup>2</sup> We will be making a further submission on the application of r.180(2) of the *Customs Regulations 1926* to Wuxi's financial costs, and we urge Customs to thoroughly investigate Wuxi's loans and financing arrangements.

Wuxi also claims that it did not receive any grants, awards or other funds from the GOC (Q1(h) refers), however we note that Customs identified 11 possible grants or awards in the initiation report (CON 186 refers). We urge Customs to thoroughly investigate these possible programs.

Again we submit that the failure of Wuxi to provide a summary of the responses to a number of these questions does not meet the requirements of s.269ZJ(2) of the Act, particularly in relation to:

- Board of directors and board of shareholders (Q2(b) & (f) refer)
- Pricing committee (Q2(n) refers)
- Licensing (Q3(a) & (c) refer), and
- Company meeting notes (Q4(h) refers).

It is also unclear from the vague responses whether Wuxi has a board of directors (Q4(a)(v) refers) or whether Jiangsu Province or Wuxi City have five-year plans (Q4(e) refers).

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<sup>2</sup> US International Trade Administration, 'Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Aluminum Extrusions from the People's Republic of China (PRC)', C-570-968, 28 March 2011, at 'G. Policy Loans to Chinese Aluminum Extrusion Producers' <http://ia.ita.doc.gov/frn/summary/prc/2011-7926-1.pdf>

Furthermore, we submit that the apparent failure of Wuxi to provide copies of board meeting minutes on the basis that there were no major decisions made during the review period amounts to non-cooperation (Q4(g) refers).

## H-2 GOC measures in the aluminium sector

Wuxi claims that there were no GOC opinions, directives, decrees, promulgations or measures that operated in the aluminium sector during the review period, however Customs has highlighted numerous such measures in the recent aluminium road wheels investigation, including in the statement of essential facts (SEF 181) that was published two months prior to Wuxi submitting its REQ.

Wuxi names the China Nonferrous Metals Industry Association (CNIA) as a GOC agency with which it has dealings, but provides no detail on the nature of those dealings (Q2 refers). We note that the GOC provided a copy of the articles of association of the CNIA to Customs during the original aluminium extrusions investigation.<sup>3</sup> We also note that Customs relied on the 2009 Nonferrous Metal Industry Adjustment and Revitalization Plan (Nonferrous Plan) in its market situation assessment in the aluminium road wheels investigation.<sup>4</sup>

Customs found that the Nonferrous Plan was one of a number of measures implementing the GOC's macroeconomic policies for the aluminium sector in China. According to Article 6 of its articles of association, which pre-date the Nonferrous Plan, the CNIA's responsibilities include:

- formulate industrial regulations, standardise industrial behaviours, resolve pricing disputes and facilitate just and fair competition (clause 1)
- provide proposals for development plans concerning the nonferrous metals industry (clause 2)
- stipulate, revise and supervise implementation of industrial standards (clause 3)
- undertake preliminary evaluations for infrastructure, technology and investment projects (clause 5), and
- undertake industrial evaluations and licence inspections (clause 6).

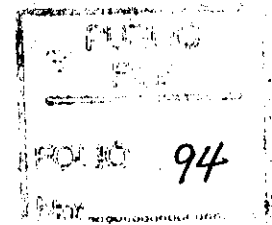
We urge Customs to further investigate the CNIA's role in implementing the Nonferrous Plan and any interactions the CNIA has had with Wuxi in relation to the abovementioned activities.

Wuxi appears to be stating that it leases its land from the GOC (Q2 refers). We note that in the US countervailing investigation referred to above, the US found that the provision of land-use rights to enterprises located in particular areas were countervailable subsidies on the basis that they were provided for less than

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<sup>3</sup> GOC response to the government questionnaire, Attachment 82  
<http://www.customs.gov.au/webdata/resources/files/190GovernmentofChina-responsetotheGovernmentQuestionnaire-Attachment82.pdf>

<sup>4</sup> REP 181, Appendix A, p.21 at 2.6



adequate remuneration.<sup>5</sup> While we accept that Wuxi may not manufacture extrusions in the specific locations identified by the US authorities relevant to those programs, we urge Customs to thoroughly investigate Wuxi's leasing and land-use arrangements.

We also note that Wuxi provides a confidential answer to the question about import licensing for aluminium and other raw materials (Q2 refers), which appears inconsistent with a later claim that it does not import any raw materials (Q1-4(e) refers).

### **H-3 The aluminium extrusions sector**

We cannot understand why Wuxi has claimed that details of export licence requirements for aluminium extrusions and VAT rebate arrangements are confidential (Q1(e) & 2(b) refer). Presumably they are the result of GOC laws and regulations and are not specific to Wuxi. We request Customs to make these details publicly available.

## **Section I – Countervailing**

### **I-1 Preferential income tax programs**

We note that Wuxi does not appear to have provided copies of income tax returns, claiming that 'we only have income tax payment voucher' (Q18 refers). This information is essential for verifying Wuxi's claim that it paid corporate income tax at the full rate of 25% and did not receive any income tax subsidies. We also note that the cooperating exporters in the original aluminium extrusions investigation were able to provide their income tax returns as requested. We submit that the apparent failure of Wuxi to provide copies of income tax returns amounts to non-cooperation.

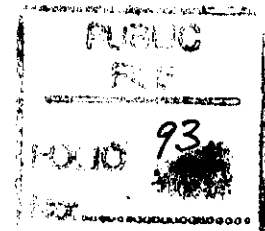
### **I-2 Grants and preferential policies**

Wuxi claims that it did not receive a benefit from any grants (including awards, prizes, funds) during the review period (Q2 refers), however we again note the 11 possible grants or awards identified by Customs in the initiation report and urge Customs to thoroughly investigate these possible programs.

Wuxi may have not understood the definition of benefit, and that grants or funds received prior to the review period could still confer a benefit during the review period. We urge Customs to seek relevant information from Wuxi for the previous ten years, consistent with the approach in other jurisdictions.

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<sup>5</sup> US International Trade Administration, op. cit., at 'T. Provision of Land-Use Rights and Fee Exemptions To Enterprises Located in the ZHITDZ for LTAR' and 'U. Provision of Land-Use Rights To Enterprises Located in the South Sanshui Science and Technology Industrial Park for LTAR'



### **I-3 Tariff and VAT exemptions on imported materials and equipment**

We note Wuxi's claim that it did not receive any benefit from tariff and VAT exemptions on imported materials and equipment during the review period. Such programs are common in China, and given the lack of detail on Wuxi's depreciation costs earlier in the REQ we urge Customs to thoroughly investigate Wuxi's purchases of equipment used in its manufacture of extrusions.

### **I-4 Aluminium provided by government at less than fair market value**

Wuxi states that it purchases water from state owned enterprises (SOEs), but it's unclear whether Wuxi purchases electricity (or the inputs to electricity production if relevant) from SOEs. We urge Customs to closely examine the nature of Wuxi's electricity and water supplies.

### **Conclusion**

Wuxi claimed in the application for this review that it was unable to cooperate in the original investigation due to special circumstances, however we submit that Wuxi's attempt this time around does not amount to cooperation either. This is primarily due to key omissions from Wuxi's REQ, and failure of the public record version of the REQ to meet the requirements for a non-confidential summary under s.269ZJ(2) of the Act.

We also note from Wuxi's website that it appears to have a close relationship with Suntech Power, a company that has recently been hit by US anti-dumping measures.<sup>6</sup>

We expect to see the deficiencies identified above addressed by Wuxi prior to any verification visit to China by Customs.

Justin Wickes  
Director

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<sup>6</sup> <http://finance.yahoo.com/news/u-introduces-anti-dumping-tariffs-122000736.html>