

**Wickes****dumping specialists**

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Response to Statement of Essential Facts 186

This submission is made on behalf of Capral Ltd, a member of the Australian aluminium extrusions industry, in response to the statement of essential facts (SEF 186) in the review of certain aluminium extrusions exported from China by Wuxi Xisha Photoelectric Aluminium Products Co. Ltd. (WXPAP), which was initiated at the request of B&D Aluminium (Aust) Pty Ltd (B&D).

Export price

We support the finding that data submitted by WXPAP was not verifiable and consequent determination of export price having regard to all relevant information under s.269TAB(3). However, the basis upon which export price has been calculated "by reference to verified import sales information provided by the importer, B&D"¹ is not entirely clear. It would be useful to have more information to at least address the following questions:

- Is export price the price paid by B&D?
- If so, how is Customs satisfied that this is reliable without having verified the price received in China?
- Were any adjustments made?

Normal value

Again we support the determination of normal value having regard to all relevant information under s.269TAC(6).

¹ SEF 186, p.9 at 4.3

We understand the approach of adjusting previously determined normal values to reflect subsequent movements in LME primary aluminium prices. We also understand that r.180(2) does not apply in this case because Customs has not had regard to WXPAP's records. However, as previously discussed with Customs at our meeting on 6 June 2012, we continue to contend that there are a number of costs of manufacturing aluminium extrusions in China, other than primary aluminium, that in our opinion do not reasonably reflect competitive market costs in terms of r.180(2).

We intend to raise these issues again in any future review where an exporter's costs are under investigation.

Countervailable subsidies

Non-cooperation and programs investigated

We note Customs considers that six of the existing programs should no longer apply to WXPAP, and understand that this is based on the following findings:

- Programs 1, 10, 16 & 17—WXPAP is not a foreign invested enterprise
- Program 8—WXPAP is not located in the Western Regions, and
- Program 18—WXPAP is not located in Guangdong Province.

We understand these findings are in turn based on information submitted to the investigation by WXPAP as part of its response to the exporter questionnaire,² despite Customs finding that WXPAP's exporter questionnaire response was not verifiable³ and disregarding information provided in the response as unreliable for the purposes of determining normal value.⁴

WXPAP has clearly not fully cooperated with this review, however Customs has relied upon unverified information provided by WXPAP to remove subsidy programs that are currently attributable to its exports and reduce the subsidy margin. We consider this sets a dangerous precedent that will encourage and reward selective cooperation in future subsidy investigations and reviews.

We urge Customs to reconsider its findings that some of the previously countervailed programs no longer apply to WXPAP.

Further, despite identifying 11 new/other potential programs from WXPAP's website in the consideration report at the commencement of this review,⁵ there is only one reference to these potential programs in the SEF—Customs notes that WXPAP's designation as a 'Chinese Famous Trademark' would duplicate Program 2, which has already been countervailed.⁶

² SEF 186, p.12 at 6.3.1 and p.13 at 6.3.3

³ SEF 186, p.8 at 4.2.1

⁴ SEF 186, p.10 at 5.1.1

⁵ CON 186, p.9

⁶ SEF 186, p.13 at 6.3.3

It appears that Customs has failed to fully investigate the 11 potential programs identified in its own consideration report. In light of this evidence and WXPAP's non-cooperation, it is reasonable to assume that WXPAP may be in receipt of benefits under additional programs not covered by the existing measures. However, based on the findings in the SEF, the result of this review will be a reduction in the number of programs applying to WXPAP. This seems illogical and we ask Customs to revisit its findings in relation to other potential programs and clearly articulate the reasons behind its final findings.

We also note that there are other potential programs in China that have been identified by US and other authorities that are of concern to us.⁷ These relate to, *inter alia*, policy loans and land-use fees and we will urge Customs to examine these further in any future reviews.

Program 15

In relation to Program 15 (primary aluminium at less than adequate remuneration), it is not clear from the SEF whether the benefit is calculated in a manner consistent with the original investigation—ie. the net benefit includes months where the LME was below the Shanghai Futures Exchange (SFE) price. We do not support this methodology because it is contradictory to countervail a 'negative benefit'.

In support of this view, we refer again to a previous advice from Stephen Lloyd, which Capral submitted in the resumed investigation 148A:

....Customs should not construct a normal value from a cost of aluminium that is less than what was actually paid. To do so would have the effect of reducing the dumping margin on an unreal and theoretical basis of taking a price that was less than that actually paid. In essence, my view is that the Customs Act authorises the Minister to not use prices that do not reflect a competitive price in that they are too low and do not therefore provide a fair basis for comparison. There is no reason for allowing the normal value to be reduced because government interventions have operated to increase the costs actually faced by an exporter.⁸

While referring to normal value construction, not subsidy calculation, the same principle applies to the extent that a subsidy can only exist where a government, *inter alia*, provides goods and a benefit is conferred. Over the course of an investigation or review period there may be times where a benefit is conferred and times when one is not. A subsidy only exists during the times when a benefit is conferred.

On the other hand, the SEF states that "where the LME was above the SFE it was considered a benefit" and "not all months incurred benefits".⁹ This language implies a different approach to the original investigation more in line with the

⁷ And raised by Capral during the original investigation (Investigation 148)

⁸ Stephen Lloyd advice, 19 April 2011, EPR 148A, doc. no. 35 at para. 26

⁹ SEF 186, p.13 at 6.3.4

principle above—ie. that only those months where LME was above SFE were included in calculating the amount of the subsidy. This approach is sound, because in months where LME was below SFE, WXPAP received no benefit and therefore no subsidy could have been provided. We support this methodology and assume Customs has used it in this case.

Unsuppressed selling price

We are pleased with the inclusion of profit in calculating the unsuppressed selling price (USP), however we are concerned that Customs has used Australian Bureau of Statistics (ABS) data to calculate the rate of profit instead of Capral's weighted average cost of capital (WACC). In our submission on this subject¹⁰ we noted that WACC as a measure is the minimum return that an industry or company needs to achieve to maintain ongoing operations. If such a return is not achieved in the long-term, providers of capital will invest elsewhere.

In justifying the use of ABS data, the SEF claims that industry rates of profits for the 'Primary metal and metal product manufacturing' sector for the two most recent financial years "is a reasonable measure of profits that could be achieved in a market unaffected by dumping",¹¹

We contend that this does not represent a measure that could be attributed to a market unaffected by dumping, for two reasons—the inclusion of primary metal manufacturing in the data and the high level of dumping in the metal manufacturing sector generally.

Primary metal manufacturing

We note that the ABS data includes primary metal manufacturing, which is a distinctly different industry sector from intermediate metal manufacturing such as the extrusion of aluminium. Primary aluminium manufacturing is highly capital intensive and is under financial pressure as evidenced by recent announcements by BlueScope Steel Ltd to shut-down a Port Kembla blast furnace¹² and Norsk Hydro ASA to close its Kurri Kurri aluminium plant.¹³

It is clear that the factors affecting primary metal manufacturing and the resulting poor performance of this sector would be reflected in the ABS data relied upon by Customs in the SEF.

Dumping in the metals sector

Aluminium and steel would comprise the vast majority of the 'primary metal and metal product manufacturing' sector covered by the ABS data, and over the last

¹⁰ Public file version dated 29 August 2012

¹¹ SEF 186, p.15 at 7.3

¹² <http://www.bluescopesteel.com/files/dmfile/MediaReleaseFullYearResultsFY20111.pdf>

¹³ <http://www.hydro.com/en/Press-room/News/Archive/Stock-exchange-announcements/2012/Hydro-will-close-the-Kurri-Kurri-aluminium-plant/>

two years we have seen aluminium and steel markets inundated with dumped goods:

- October 2010—dumping finding on aluminium extrusions from China and continued dumping as evidenced by this review
- July 2012—dumping finding on steel pipe and tube from four countries
- July 2012—dumping finding on aluminium road wheels from China
- Ongoing—dumping investigation on steel coil from four countries
- Ongoing—dumping investigation on coated steel from three countries.

It is clear that the ABS data relied upon in the SEF is a measure of industries that are currently struggling with unfair competition from dumped imports in a wide range of markets.

Conclusion on USP

We submit that the ABS data is not a reasonable measure of the profits that the aluminium extrusion industry could achieve in a market unaffected by dumping because it is tainted by:

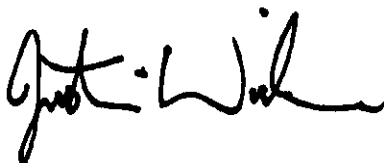
- negative factors affecting primary metal manufacturing, and
- numerous industries affected by dumping.

We therefore repeat our claim that Capral's WACC is a better measure of the level of profit for calculating the USP in this case.

Summary

In summary we are pleased with the determination of export price and normal value based on all relevant information and the inclusion of an amount for profit in the USP. However, we submit that Customs:

- provide more details of export price calculations
- reconsider its findings that certain countervailable subsidy programs do not apply to WXPAP
- ensure the calculations for Program 15 do not include 'negative benefits', and
- use WACC as a measure of profit in USP calculations instead of ABS data.



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