



21 March 2014

The Director
Operations 2
Anti-Dumping Commission
5 Constitution Avenue
Canberra ACT 2601

Review 229: Response to SEF

This submission is made on behalf of Capral Ltd, a member of the Australian aluminium extrusions industry, in relation to Review 229 of certain aluminium extrusions exported to Australia from China by Alnan Aluminium Co Ltd (Alnan). We specifically refer to the statement of essential fact (SEF) dated 3 March 2014.

We welcome the preliminary finding that Alnan is considered to be uncooperative in terms of the definition in s.269T of the *Customs Act 1901*. However, we do not support the proposed recommendation that the dumping and countervailing duty notices remain unaltered.

In the SEF the Commission claims that the only relevant information available is the export price, normal value and subsidy margin for residual exporters from the original investigation. However, the export price, normal value and subsidy margin for the non-cooperating exporters from the original investigation are also relevant, and we believe it is open to the Commission to recommend that these are more relevant in the circumstances of Alnan's non-cooperation.

Currently Alnan is subject to the dumping and countervailing duty rates applicable to residual exporters. The proposed recommendation that the notices remain unaltered implies that Alnan will continue to be regarded as a residual exporter. However, under the definition of 'residual exporter' in s.269T of the Act, an exporter can only be a residual exporter if "the exporter was not an uncooperative exporter in relation to the investigation, review or inquiry".¹ Having already been found to be an uncooperative exporter, Alnan cannot also be a residual exporter.

¹ Section 269T, paragraph (e) of the definition of *residual exporter*, emphasis added

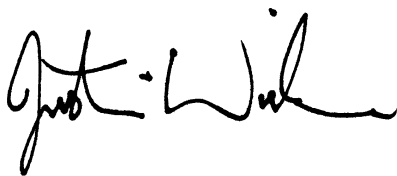
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While we understand that residual exporters should only exist in cases where sampling has occurred,² and no sampling exercise was undertaken in this particular review, it is clearly against the spirit of the legislation to allow an uncooperative exporter to continue to receive the benefit of dumping and countervailing duties that are based on the export prices, normal values and subsidy margins of cooperating exporters.³

We also note that

- when introducing these definitions of residual exporter and uncooperative exporter into Parliament, the Minister stated that the purpose of the amendments was to “ensure the that minister will have the power to impose tougher dumping margins for parties that refuse to provide necessary information within a reasonable period”,⁴ and
- one of the Government’s five anti-dumping policies announced in August 2013 is to “Crack down on those overseas producers who don’t cooperate with anti-dumping investigations”.⁵

Allowing an uncooperative exporter to continue to receive the benefit of dumping and countervailing duties derived from cooperative exporters appears to contradict the intention of both the legislation and Government policy. We therefore submit that notices be amended to add Alnan to the list of selected non-cooperating exporters.⁶



Justin Wickes
Director

² Explanatory Memorandum to the *Customs Amendment (Anti-dumping Improvements) Act (No. 3) 2012*, p.7 at para.18

³ We understand that the basis for the duty rates currently applicable to residual exporters are outlined in Trade Measures Report No. 148, p.51 at 6.10 and p.62 at 7.5

⁴ Minister for Home Affairs’ second reading speech on the Customs Amendment (Anti-dumping Improvements) Bill (No. 3) 2012

⁵ *The Coalition’s Policy to Boost the Competitiveness of Australian Manufacturing*, August 2013, p.13, <http://www.nationals.org.au/Portals/0/2013/policy/0821x33-Manufacturing.pdf>

⁶ We understand that the duty rates currently applicable to uncooperative exporters are outlined in Australian Customs Dumping Notice No. 2011/31