



J.BRACIC & ASSOCIATES
TRADE REMEDY ADVISORS

PO Box 3026
Manuka, ACT 2603
Mobile: +61 499 056 729
Email: john@jbracic.com.au
Web: www.jbracic.com.au

Ms Candy Caballero
Director, Operations 3
Anti-Dumping Commission
1010 La Trobe Street
DOCKLANDS VIC 3008
acu@adcommission.gov.au

Anti-circumvention inquiry – Aluminium extrusions exported from China

Dear Ms Caballero,

This submission is made on behalf of Oceanic Aluminium Pty Ltd (Oceanic Aluminium), P&O Aluminium (Perth) Pty Ltd (P&O Perth) and P&O Aluminium (Sydney) Pty Ltd (P&O Sydney). Unless referred to individually, the three companies are collectively referred to as the 'subject importers' throughout this submission.

The submission is made in response to statements made by Capral Limited (Capral) to the anti-circumvention inquiry initiated by the Anti-Dumping Commission (Commission) into certain aluminium extrusions exported from the People's Republic of China (China).

1. Treatment of subject importers as a single entity

In its submissions of 27 June 2014 and 10 July 2014, Capral alleges that the P&O Aluminium entities, comprising P&O Aluminium (Perth), P&O Aluminium (Sydney), P&O Aluminium (Brisbane) Pty Ltd and P&O Aluminium (Melbourne) Pty Ltd, operate 'as a single business entity in the market, is actually comprised of four separate branches separated by region'.

In its submission of 10 July 2014, Capral alleges that evidence also shows that the "P&O Group and Oceanic were all owned by the same 'independent third party'."

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The subject importers wish to state on the public record that the allegations made by Capral are simply incorrect.

Each of the P&O entities and Oceanic Aluminium are separate legal entities. [REDACTED]

[REDACTED] [ownership details]. Each of the entities negotiate the purchasing of goods from their suppliers in isolation of each other. Likewise, sales negotiations with their respective customers are done in isolation of each other.

The only relationship between the P&O entities [REDACTED]

[REDACTED] [trading relationship] was provided to the Commission during the verification visit to P&O Perth and P&O Sydney.

In addition, it is important to note that this particular inquiry is covered by s.269ZDBB(5A) of the Customs Act (the Act). Specifically, subsection 269ZDBB(5A)(d) refers to the “importer” of the circumvention goods. Section 269T of the Act defines importer as “the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they have landed”. This is further supported by the Commission’s Dumping and Subsidy Manual.

Given that Capral’s submissions make no attempt to identify the importer or the beneficial owner of the goods at the time of importation, we can only assume that they are requesting the Commission to ignore the relevant provisions of the Act in making the relevant determination. However, based on the commercial documentation requested by the Commission in respect of a sample of 30 consignments during the inquiry period, the evidence clearly shows that customers place orders with the subject importers, who in turn place orders directly with their suppliers.

Upon arrival into the relevant port or airport in the case of air-freighted goods, each of the relevant entities clear the goods, takes ownership of the imported goods, then either arrange for the goods to be directly delivered to the customer or transported to their respective warehouses for stocking or de-stuffing into smaller lots for delivery. At no point during the purchasing or selling process undertaken by the relevant entities, are any of the other entities referred to in Capral’s submission the beneficial owners of the goods.

Finally, each of the subject importers maintain written financial records that provide an explanation of their financial positions and performance. [REDACTED]

[REDACTED]. This is important in terms of the Commission’s ability to determine

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whether the subject importers have sold the goods under inquiry commensurate with the total amount of duty payable.

2. Conclusion

In conclusion, the transactions between the subject importers and their Chinese suppliers are simple bipartite export sales involving only the subject importers and the relevant exporters. They are straight forward commercial transactions involving invoicing and shipment of the goods by the exporter to the importers.

Therefore, it is clear that for goods imported by the subject importers, beneficial ownership passed from the supplier to each of the subject importers when the goods were cleared for entry into home consumption.

[REDACTED]
[REDACTED] [ownership details], for the purposes of this anti-circumvention inquiry it is considered that the Commission should [REDACTED]
[REDACTED] [entity relationship].

Yours sincerely

John Bracic

23 July 2014