30 July 2014

The Director
Operations 3
Anti-Dumping Commission
1010 Latrobe Street
Melbourne Docklands VIC 3008

Inquiry 241: Response to importer submissions

This submission is made on behalf of Capral Limited, the applicant, in relation to the anti-circumvention inquiry into aluminium extrusions from China. We specifically refer to two submissions made by P&O Perth, P&O Sydney and Oceanic (the importers) placed on the public record on 23 and 24 July 2014.

Submission published 24 July 2014 (EPR ref 016)

The importers' submission is made primarily in response to our 10 July 2014 submission on the treatment of the importers. We believe that despite the existence of five legal entities comprising the P&O/Oceanic group, the Commission may ultimately find that a single entity is the beneficial owner of all goods at the time of importation. However, even if that is not the case, we have provided sufficient evidence to demonstrate that all of the P&O/Oceanic companies, regardless of which name is on the import documentation, have engaged in circumvention activity. Once satisfied that such activity has occurred, the Parliamentary Secretary has broad powers under s.ZDBH of the Customs Act to amend the dumping and countervailing duty notices as he sees fit.

Submission published 24 July 2014 (EPR ref 014)

The importers' submission mostly discusses the impact of last year's Federal Court decision on this inquiry. The importers refer to the 'unlawful', 'improper' and 'invalid' decisions of the Attorney-General. The Court only ruled that the Attorney-General had no power to alter the notices to impose measures by finish. The original decision to impose measures was upheld and the original duty notices remain valid and effective, including throughout the entire inquiry period. We make four points in response to the importers' claims as follows.

First, the importers claim to have based their commercial decisions on the expected outcome of the Federal Court case, however they were not a party to the proceedings, which were brought by their supplier, PanAsia, and another Chinese exporter. The importers claim to be completely independent of PanAsia, therefore it does not seem logical that they would have based major pricing

decisions on the outcome of a process over which they had no control or even any involvement.

Second, regardless of the importers' reasoning, we have made our entire claim of circumvention on the basis of the original measures that were upheld by the Federal Court. Our notional target price is calculated using the original, much lower, ascertained export price and the overall combined rate of dumping and countervailing duty. Our allegation of circumvention is based on the assumption that the lower measures were in place for the entire inquiry period, not just the period since the Federal Court decision, and the evidence still demonstrates that the importers have avoided the intended effect of the duties. Therefore any suggestion that the importers only inadvertently circumvented the duties pending vindication by the Federal Court is simply not true.

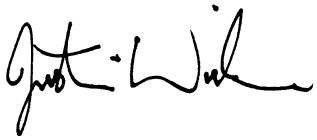
Third, the current variable factors review (Review 248) is not relevant to this anti-circumvention inquiry. Review 248 is concerned with reviewing the level of the duties for the future, whereas this inquiry is examining past behaviour concerning the duties as they currently stand. If importers believe that the amount of interim duty they have paid is incorrect, then they have the right to apply for an assessment of their final duty liability. At no time since measures were first imposed in 2010 have any of the importers applied for a duty assessment. The interim duty paid has therefore become the final duty payable, at least for 82% of the inquiry period (up to 27 October 2014), and the importers should have increased their prices commensurate with the duty paid. If the Commission finds that this has not occurred then it follows that circumvention activity has occurred.

Finally, the importers claim that imports from Indonesia, Malaysia, Thailand and Vietnam have been setting prices in the Australian market, and that the importers are merely trying to compete. This is simply not the case. Despite the measures China remains the largest source of exports to Australia and PanAsia is the largest individual exporter. It is circumvention of the measures, including by the importers, which has suppressed prices in the Australian market and rendered the measures largely ineffective.

Conclusion

In summary we submit that:

- our claim of circumvention is based on the original, lower, level of duty that was upheld by the Federal Court
- the interim duty paid has become the final duty in respect of 82% of the inquiry period
- the importers should have passed that duty on by raising their prices, and
- this has not occurred and as a result prices in the Australia market remain suppressed.



Justin Wickes
Director