



9 October 2014

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

Inquiry 241: Response to importer visit reports

This submission is made on behalf of Capral Limited (Capral), the applicant, in relation to the anti-circumvention inquiry into aluminium extrusions from China. We specifically refer to the importer visit reports placed on the electronic public record by the Anti-Dumping Commission (the Commission) on 6 October 2014. The reports concern visits to verify information provided to the inquiry by Oceanic, P&O Perth and P&O Sydney, and our detailed comments follow.

P&O Brisbane and P&O Melbourne

We surmise from the visit reports that the two other importers named in our application, P&O Brisbane and P&O Melbourne, did not provide any information to the Commission and are not cooperating with the inquiry. We therefore assume that any findings made in relation to these importers will be based on the best available information, which we submit is the information contained in our application.

P&O group

We note that the four P&O companies form part of a 'sales group' known as P&O Aluminium, which offers a national branch and distribution network that allows customers to draw stock from any of the group's distribution centres. This supports our earlier submission that the Commission should treat the four P&O companies as a single entity for the purposes of this inquiry.¹ In these circumstances, the failure of two members of the P&O group to cooperate at all with the inquiry means that the P&O group as a whole has failed to fully cooperate. We submit that the Commission should therefore disregard all information provided by P&O Perth and P&O Sydney and rely on the best available information, which is the information contained in our application.

¹ Submission of 10 July 2014 from Wickes & Associates, Document no. 013 on EPR 241

Non-Confidential – For Public Record

Non-cooperation

Regardless of the behaviour of P&O Brisbane and Melbourne, it is clear from the visit reports that Oceanic, P&O Perth and P&O Sydney have failed in their own right to fully cooperate with the Commission's inquiry. The importers have treated the Commission and the inquiry process with contempt, as evidenced by the following examples highlighted in the visit reports.

Oceanic

- failure to provide documentation to support its claims that certain goods were exempt from measures
- no evidence of payment for imported goods
- failure to provide financial statements
- finding that its sales data is not relevant or complete, and
- finding that it did not provide sufficient information to satisfy s.269TAA(1A).

P&O Perth and Sydney

- failure to provide separate company financials
- inability to identify the type of goods sold
- failure to provide evidence to support stated quantities on the P&L, and
- finding that SG&A costs could not be verified.

In these circumstances it is reasonable to disregard all information provided by the importers. The recent issues paper states that in the current inquiry, for the purposes of amending the dumping duty notice, the Commission will calculate export price under s.269TAB(1)(b) using the deductive export price methodology.² However, we note that s.269TAB(4) permits the Minister (and the Commissioner in making his recommendations to the Minister) to disregard any information that he considers to be unreliable. The visit reports provide clear evidence that the Commission cannot be satisfied that the information provided is reliable, therefore we submit that export price should be determined having regard to all relevant information, in accordance with s.269TAB(3). We further submit that the best available information is that which is contained in our application.

We are also concerned at the redaction of the names of the people present at the verification meetings. This is unprecedented to our knowledge and is contrary to the principle of transparency that underpins the anti-dumping system. We cannot think of a valid commercial reason for not revealing this information; rather it indicates that the importers want to hide any information that might be used to link them to each other and to PanAsia.

² Issues Paper 2014/02, 18 September 2014, p.6

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New ownership

We note claims in both reports that all five importers subject to this inquiry were acquired by a new company (although not yet reflected in the ASIC register). This raises further concerns with the implementation of any amendments to the measures going forward. The Commission must not allow any purported change in ownership to dilute any remedies applied to address the clear circumvention behaviour of the importers.

Federal Court case and LME

Finally, we note the comments from importers on the effect of the Federal Court case and the LME on pricing in the Australian market. Firstly, regarding the Federal Court, we note that none of the importers were party to the proceedings and could not have known the outcome when making decisions on pricing in the market. Furthermore, the Commission has used the lower level of duties upheld by the Federal Court (as did we in our application) and still found the importers to have made sales at a loss and thus circumvented the duties.

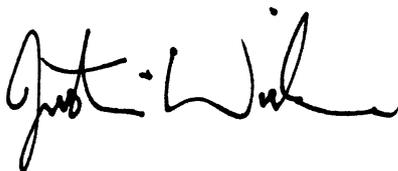
Secondly, regarding the LME price for primary aluminium, we note that none of the importers ever applied for a duty assessment or review of the level of measures in more than three years since the imposition of the measures until commencement of this inquiry. If the importers truly believed that changes in the LME lowered the level of the duties, and therefore the price they could sell at in the Australian market, then they would have applied for an assessment of their final duty liability. Thus the claims that movement of the LME somehow entitles them to circumvent the duties is nonsense.

Summary

In summary we submit that Oceanic and the four members of the P&O group have clearly failed to fully cooperate with this inquiry. As a result it is reasonable for the Commission to disregard all information provided by the importers and rely on the best available information, which is that provided in our application.

We also submit that any amendments to the duties as a result of this inquiry must equally apply to any new company structures for Oceanic and the P&O group.

Finally, the claims that the Federal Court case and movements in the LME price for primary aluminium somehow excuse the importers' circumvention behaviour are not supported by the facts.



Justin Wickes
Director