



12 January 2015

The Director
Operations 4
Anti-Dumping Commission
5 Constitution Avenue
Canberra ACT 2601

Review 248: Kam Kiu REQs and importer visit report

This submission is made on behalf of Capral Ltd, a member of the Australian aluminium extrusions industry, in relation to Review 248 of certain aluminium extrusions exported to Australia from China. We specifically refer to the responses to the exporter questionnaire (REQs) provided by Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd. (KAE) and Kam Kiu Aluminium Products Sdn. Bhd. (KMY). In making the following comments in relation to the REQs we have also considered the Kam Kiu (Australia) Pty Ltd (KAU) importer visit report.

Public version of REQ

We accept that a comprehensive REQ will necessarily contain commercially sensitive information, however s.269ZJ(2) of the *Customs Act 1901* (the Act) mandates that a person providing confidential information must also provide a summary of that information “that contains sufficient detail to allow a reasonable understanding of the substance of the information.” Parts A to G of the public record version of KAE’s REQ are heavily redacted on the basis of claimed confidentiality and provide very little understanding of company operations beyond the fact that it manufactures and sells aluminium extrusions.

By contrast, the REQs of Guangdong Jinxi Cheng Al. Manufacturing Co., Ltd and the two JMA Aluminium companies¹ contain significantly more information to enable interested parties to understand their business and provide meaningful comment on their responses to the Commission’s questionnaire.

In relation to KAE and KMY, we urge the Commission to ensure that the verification visit report contains sufficient detail to support the verification team’s findings and provide the Australian industry with an opportunity to comment before the Statement of Essential Facts is published.

¹ Foshan JMA Aluminium Co., Ltd and Guangdong JMA Aluminium Profile Factory (Group) Co., Ltd

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Export price

We note the recommendations in the KAU visit report that the export sales from KAE to KMY are not arms length transactions (consistent with the findings of the original investigation) and that export price should be calculated under s.269TAB(1)(c) of the Act using the deductive export price method. We also note the difficulty that the visit team had in verifying significant import costs and selling, general and administrative (SG&A) costs during the visit to KAU.

It is therefore imperative that the following elements of export price are adequately verified during the visit to KAE/KMY:

- selling prices from KMY to its Australian customers
- ocean freight, insurance and Australian import and into-store costs, and
- all relevant SG&A costs, including costs incurred by KMY and KAU.²

Cost to make and sell

As stated earlier, there is very little detail in the REQ to allow interested parties to comment on the costing information provided by KAE. That said, we would like to ensure that the following elements of the cost to make and sell (CTMS) the goods are adequately covered during the verification visit to KAE:

- verification of production records and wastage factors to ensure the metal cost per unit of output is reliable³
- verification that the powder coating costs attributed to the goods exported to Australia are specific to those goods and not an average of all powder coating costs⁴
- verification that the packaging costs attributed to the goods exported to Australia are specific to those goods and not an average of all packaging costs,⁵ and
- investigation of the functions and accounts of the parent and holding companies of the Kam Kiu group to ensure all relevant costs are included in the CTMS.⁶

² KMY infers in its response to question E-1.5 that it pays a commission to KAU.

³ Capral submission on the primary aluminium benchmark dated 30 August 2015 refers.

⁴ We understand that the powder coating required for goods exported to Australia may be of a different standard (and higher cost) to the powder coating for the domestic market.

⁵ Despite KAE's claim in response to question E-2.7 that there is no difference in packing costs between domestic and export goods, the product brochure at Exhibit A-3.11 states that KAE employs a variety of packing methods for customers in different markets, and it is reasonable to assume that there are different costs associated with the different methods.

⁶ KAE claims that it has no management fees or corporate allocation from its parent/holding company, however costs incurred by such a company may be relevant to the CTMS the goods.

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Countervailable subsidies

In the original investigation Kam Kiu was found only to have received two countervailable subsidies as follows:

- Program 13: Tariff and VAT exemption for imported equipment, and
- Program 15: Primary aluminium for less than adequate remuneration.

In this review KAE has claimed that it is in receipt of additional subsidies. We welcome this disclosure and make the following comments on KAE's REQ.

Part I-1 Preferential income tax programs

A. Voluntarily reported program

KAE claims that it received a reduced income tax rate, but not under any of the listed programs. The program described by KAE appears to be very similar to Program 47 and the Commission should determine whether or not it is the same program. However, regardless of this determination, it is clear that the program described by KAE is a countervailable subsidy as all of the required elements are satisfied:

- *Financial contribution* – The foregoing, or non-collection, of revenue due to the government of China (GOC).
- *Benefit conferred* – Funds provided to the amount of the tax savings.
- *Specificity* – Limited by law to eligible high and new technology enterprises.

KAE has admitted to receiving a benefit under this program during the review period, in that it was subject to an income tax rate of 15% instead of 25%.

B. Program 48

KAE claims that this program is not specific, as it is not limited to Guangdong Province but is generally available to all enterprises throughout China. KAE cites the findings of the Canada Border Services Agency (CBSA) in support of its position. We continue to assert that Program 48 is a countervailable subsidy and note that the United States has countervailed this program in relation to aluminium extrusions⁷ and the GOC has failed to cooperate in this review.

Part I-2 Grants and preferential policies

KAE has voluntarily reported receipt of a number of grants during the review period and, although details of the particular grants are not provided, it is clear that these are countervailable subsidies as all of the required elements are satisfied:

- *Financial contribution* – Direct transfer of funds by the GOC.

⁷ Capral submission on countervailable subsidies dated 19 June 2014 at 3.2 refers.

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- *Benefit conferred* – Funds provided to the amount of the assistance.
- *Specificity* – Limited to particular entities.

It is surprising that KAE would not have any record or knowledge of the details of each grant received, however these grants are straightforward countervailable subsidy programs under which KAE has received a benefit.

Part I-3 Tariff and VAT exemptions on imported materials and equipment

KAE is already subject to countervailing duty under Program 13 in relation to its imported equipment⁸ and should continue to do so as long as imported equipment is continuing to be used to produce the goods exported to Australia.

From question I-3.14 onwards KAE appears to be describing a general duty drawback scheme for the use of imported materials in the production of goods for export. It is possible that such a scheme exists and is commonly available to any producer using imported materials in exported goods, however the Commission should ensure that:

- the scheme is indeed general in application and not limited to specific enterprises or specific imported materials or exported goods, and
- if claimed, KAE has in fact used the imported materials in the production of goods exported to Australia.

Part I-4 Aluminium provided by government at less than fair market value

KAE is already subject to countervailing duty under Program 15 in relation to primary aluminium purchased from SOEs during the original investigation period,⁹ however KAE now claims that it did not purchase any primary aluminium from SOEs during the review period. It is imperative that the Commission fully verify this claim.

Part I-6 Preferential loans

KAE appears to have provided limited information in response to the questions under this part on the basis that it claims that no loans were provided to KAE at less than market rate. However, it is up to the Commission to determine whether any loans provided to KAE meet the definition of a countervailable subsidy and whether any benefit was conferred to KAE, based on information gathered from multiple sources. It is therefore imperative that KAE provide detailed information on all of its loans since 1 January 2005 and that the Commission verifies this information.

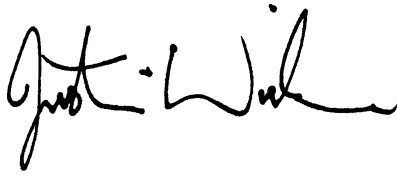
⁸ Customs and Border Protection 'Review of preliminary dumping and subsidy margins for exporters selected for further investigation' dated 21 January 2010 refers.

⁹ *ibid.*

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Part I-7 Provision of goods programs

KAE claims that it did not receive any benefit under any of these programs. However, it is up to the Commission to determine whether the provision of land use rights, electricity, water or natural gas to KAE meets the definition of a countervailable subsidy and whether any benefit was conferred to KAE, based on information gathered from multiple sources. It is therefore imperative that KAE provide detailed information on all of its supplies of these goods and other relevant information including the area of land occupied by KAE and utilities usage, and that the Commission verifies this information.

A handwritten signature in black ink, appearing to read "Justin Wickes". The signature is written in a cursive style with a prominent initial "J" and a long, sweeping underline.

Justin Wickes
Director