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To Ms Kerry Taylor, Director, Operations 4 - Australian Anti-Dumping Commission

From Andrew Percival

Date 19 August 2015

Subject **Review of anti-dumping measures - aluminium road wheels from the People's Republic of China**

Dear Ms Taylor,

We refer to the Statement of Essential Facts No. 263 (**SEF**) published by the Anti-Dumping Commission (**Commission**) on 30 July 2015 in relation to this review.

As you know, we act for CITIC Dicastal Wheel Manufacturing Co. Ltd (**CITIC Dicastal**) and make the submissions set out in the **attachment** to this memo in relation to the SEF and, in particular, we submit that:-

- throughout the review period the cost of aluminium used by CITIC Dicastal exceeded the London Metal Exchange (**LME**) price for aluminium, thereby indicating that the Government of China had not intervened to “artificially” lower the aluminium price in China below internationally competitive market prices, being the LME price for aluminium as has been acknowledged by the Commission as being an internationally competitive market price. Accordingly, there is no “particular market situation” in relation to aluminium prices and no basis to disregard CITIC Dicastal’s domestic selling price of aluminium road wheels in the determination of normal value;
- as disclosed to the Commission, the price at which CITIC Dicastal sells aluminium road wheels to OEM motor wheel manufacturers in Australia are adjusted to align such prices with aluminium prices published by the LME and, consequently, reflect internationally competitive market prices for aluminium; and
- the LME aluminium costs used by CITIC Dicastal in its pricing formulae to Australian OEM motor vehicle manufacturers, as disclosed to the Commission, are monthly Cash Mean/spot LME aluminium prices and not the three month contract LME aluminium prices. There is no legal basis for the Commission to disregard the use of such actual prices in the calculation of a dumping margin, nor has there been any legal reason given for disregarding such prices.

As has been submitted, CITIC Dicastal has not been exporting aluminium road wheels at dumped prices and the interim dumping measures must reflect this.

Please contact us if you have any questions.

19 August 2015

Australian Anti-Dumping Commission

**Review of anti-dumping measures - aluminium road wheels
from the People's Republic of China**

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ATTACHMENT**1. The Commission shall compare SHFE price to LME price to determine whether an uplifting aluminium price is warranted**

In the various inquiries into Certain Aluminium Extrusions exported to Australia from China and the various inquiries into Aluminium Road Wheels exported to Australia from China the investigating authorities have substituted aluminium and aluminium alloy costs with international benchmark aluminium prices, based on London Metal Exchange prices (**LME**) reasoning that the benchmark prices based on LME prices are more 'reflective of competitive market prices'

In the original investigation, the Commission compared the LME to the Shanghai Futures Exchange (**SHFE**) in assessing the impact of government influence on the price of aluminium.

However, in this review the Commission has incorrectly deviated from the original method. On Page 80 of SEF, the Commission gave its explanation for such a deviation.

"In the circumstances, the Commission considers that it would not be reasonable to compare the LME, an open global market, to the SHFE, a closed exchange that is restricted to Chinese nationals only, because the SHFE is affected by the distorted aluminium market in China."

The Commission also cited the decision of the United States Softwood Lumber Case. The relevance of this case is unclear as it relates to a government business selling product into the market in competition to private commercial business. This is far different to the case that is trying to be made in this review that the Government of China (**GOC**) has an influence on the upstream aluminium industry through its policies.

CITIC Dicastal cannot agree with the Commission's explanation. The decision to uplift the aluminium price is based on a two steps analysis: first, whether the GOC has an influence on the upstream aluminium industry; and, second, whether such influence has materially distorted competitive conditions and both directly affected the price and supply of aluminium used in the manufacture of ARWs.

CITIC Dicastal considers the comparison between LME and SHFE prices serves the second step test. Namely only if the SHFE price is lower than the LME price, as in the original investigation, can the Commission consider whether there is GOC influence on domestic prices and whether that influence is material and if Chinese ARW manufacturers have benefited from such influence. If the SHFE price is higher than the LME, which contrary to the circumstance of original investigation it is, the Commission cannot conclude that there is material influence by the GOC or that Chinese ARW manufacturers have benefited from such influence. Thus uplifting aluminium raw material costs is neither warranted nor sanctioned.

By reference to the Softwood Lumber Case the Commission attempts to sustain that the SHFE is not a fair market price. However, the Commission does not explain or provide any cogent reason why the SHFE is not a representative price of aluminium in China, that is not competitive market price, especially when compared with LME prices. On Page 83 and 87 of SEF, the Commission itself recognizes that SHFE prices are representative of the aluminium market price in China. In the original investigation, the choice to compare the SHFE to the LME is not based on whether or not it is a fair market price, but because it is a representative price.

- *adjusted production of aluminium to match buyers' demand and reduce costs from excess capacity.*

The Commission understands that buyers from aluminium demand industries – such as ARWs producers and producers of the aluminium alloys A356 and A356.2 – would be more likely to purchase aluminium via 3 month contracts (as opposed to spot prices) due to the above considerations”.

The above statement is totally contrary to CITIC Dicastal’s normal practice business.

First, on page 46 of Verification Report of original investigation, the Commission observed the following fact:

“CITIC Dicastal stated that its purchase price is set by the following formula:

【XX】

It is clear that in the normal business practice of CITIC Dicastal, the aluminium purchase price is set on the basis of [XXXXX] price, NOT on the basis of any future price. Refer to Confidential Attachment 2-Sample Aluminium Purchase Contract from Two Suppliers. The purchase contract is a standard contract drafted by CITIC Dicastal and applicable to all aluminium suppliers.

As a result, the purchase price reported in “Confidential Annex G-6 Aluminium Purchases” of the exporter questionnaire response are all [XXXX] prices. In order to effect a fair comparison, such purchase price must be compared to LME benchmark price at the same level, i.e. at the [XXXXX] price level.

Second, the reasonableness of the use of the cash mean price is further supported by the fact that all sales price to OEM customers (including the sales to Australia) are set on the reference to cash price, rather than any future price.

Please refer to Confidential Attachment 3-Price Adjustment Document of XXXXXX and Confidential Attachment 4-Price Adjustment Document of XXXXXX, which clearly show that the adjustment is made on the basis of the [XXXX] price.

For ARWs manufactured and exported to its Australian customers the aluminium price is set as follows for:

- *【XX
XX】*

For example, see page 1 of Confidential Attachment 3-Price Adjustment Document of XXXXXXXX, the price effective from July 1 2013 is *【XXXXXXXXXXXX-】*, XXXXXXXX uses LME cash sell price of *【XX】*.

- *【XX
XX】*

For example, see sheet “Aluminium Price Adjustment” of Confidential Attachment 4-Price Adjustment Document of XXXXXXXX the price *【XXXXXXXXXXXX】* applied over the July - Sep quarter of 2013 is obtained by *XXXXXXXXXXXXXXXXXXXX
XX】*

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During this review, CITIC Dicastal was not informed by the Commission of its intention to add a new premium to benchmark calculations. Furthermore, CITIC Dicastal was not given the opportunity to make any submission on the possible source of the premium. This is a denial of natural justice. The Commission cannot conclude “In the absence of specific data pertaining to the trading and delivery fees applicable to the purchase of primary aluminium or aluminium alloys A356 and A356.2 via Chinese domestic futures exchanges...”, because the Commission did not seek such information from CITIC Dicastal or other Chinese exporter. Such information could have been provided if it had been requested.

Although CITIC Dicastal did not import aluminium from foreign suppliers during the period of review, CITIC Dicastal did so in 2009. Please refer to Confidential Attachment 5-Aluminium Imports Contract and Invoice, which was submitted in EU Aluminium Wheel Antidumping Case. As the contract indicated, the formula of imports price was **[XX]**. The premium is only **[XXXXXXXXXX]** and represents **[XXXXXXX]** of the unit XXXX price **[XXXXXXX]**. If the Commission insists on adding a premium to the LME benchmark, which we maintain is not appropriate nor permissible, the above ratio **[XXXXXXX]** is a more appropriate starting point for a premium than MJP as far as CITIC Dicastal is concerned.

As indicated in Confidential Attachment 5, the imported goods are aluminium alloy A356.2, so the above XXXXXXXXX also covers alloy conversion cost and freight. The premium ratio relating to “physically obtaining aluminium purchased” shall be **[XXXXXXXXXXXXX]**.

6. Delivery fee of aluminium purchase

In sheet “Benchmark breakdowns” of “Confidential Attachment 4 - Aluminium benchmark ARWs for uploading to EPR” of SEF, the delivery fee is determined as “XXXXXX%” of the aluminium purchase price, as based on data submitted by a selected exporter”. CITIC Dicastal does not understand how this ratio of XXXXXXXX% has been calculated, however this ratio seems unreasonably high to CITIC Dicastal.

In Column S of Confidential Annex G-6 Aluminium Purchases, CITIC Dicastal has estimated the XXXXXX cost i.e. the delivery fee for each purchase. The total XXXXXX cost is **[XXXXXXX%]** of the purchase price, or RMB **[XXXXXXX]**. The Commission has not given any explanation as to why CITIC Dicastal’s own data was discarded and why such data could not be used for the delivery fee calculation.

Please note that CITIC Dicastal is located in Qinghuandao City which is a port also suitable for importing of raw material, so in reality the XXXXXXXX fee of imported aluminium to CITIC Dicastal will be very limited.

7. Inclusion of purchased wheels is contrary to the method of original investigation and not warranted on any legal basis

The inclusion of purchased goods is inconsistent with past and usual practice in determining normal values. At 5.3 of the original investigation SEF the then Customs and Border Protection stated:

5.3 Produced and manufactured goods – goods included and excluded in our assessment

In the questionnaire response, CITIC Dicastal identified that the aluminium road wheels it sold domestically and exported to Australia were a combination of wheels that were

purchased from other suppliers and manufactured by it. In order to determine dumping margins, Australia's anti-dumping legislation dictates that the manufacturing costs of the goods are required¹. As Customs and Border Protection only has the costs associated with the goods produced by CITIC Dicastal, only these goods can be included in the assessment.

As considered in the original investigation, only costs associated with goods produced by CITIC Dicastal should be used in the dumping margin assessment.

8. Uplift percentage of aluminium cost of purchased wheels shall be the same with own production

As previously advised, CITIC Dicastal does not agree with the Commission's inclusion of aluminium road wheels it sources from alternate suppliers, which it then on-sells on to the domestic market together with aluminium road wheels produced by CITIC Dicastal itself in normal value calculations.

In the SEF the Commission stated that:

ARWs sourced by CITIC Dicastal from alternative sources represents a significant proportion of CITIC Dicastal's Australian sales, and hence dumping margins will be much more accurate if they reflect sales of ARWs from all such sources (Underlining added)

By failing to amend the uplift to normal value for the alternatively sourced ARWs the dumping margins are not 'much more accurate'. In fact they are most inaccurate.

We note that the Commission has revised CITIC Dicastal's normal value for XXXXXXXXX goods to only uplift the CTM as applicable only to the proportion of the goods as represented by the cost of aluminium XXXXXXXXX but that it 'will not amend the uplift to normal values for purchased goods, as the Commission does not have any verified information to show what proportion of the purchase price is represented by raw materials costs, per manufacturer.'

In this investigation, the Commission did not ask for any information relating to purchase wheels. Only in the very late stage, it informed CITIC Dicastal of its intention to include the purchased wheels. If the Commission considers there is no verifiable proportion relating to the aluminium cost in XXXXXXXX wheels, the Commission then should not penalise CITIC Dicastal unfairly.

When lacking of cost of production of XXXXXXXXX wheels, the Commission proposed to use the cost of production of own wheels to make a substitution. If following this logic, the Commission shall logically accept the proportion [XXXX] for the aluminium cost uplift.

At the least, the Commission should have this proportion from other sampled companies and then can calculate an average proportion of all sampled companies for CITIC Dicastal's purchased wheels.

While we do not agree with the Commission's inclusion of purchased goods in the DM calculations, if the Commission maintains its view that XXXXXXXXX goods are to be included, it is a known fact that the cost of aluminium only makes up a proportion of the CTM. Accordingly, it is unreasonable to uplift the total CTM. The Commission has relevant

¹ s.269TAAD of the Act

information to uplift the CTM only to the proportion of the goods as represented by the cost of aluminium, the most relevant information being:

- [XX] [Confidential costing information]

10. Below cost test

For the below cost test, the CTMS with full inland freight and warehouse should be compared to original domestic sales price, not to the XXXX domestic sales price.

11. Comparison of exports price to normal value at EXW level

CITIC Dicastal also found that the Commission did not compare the normal value to the export price at the same level of trade. For example, the export price to XXXXXXXX is XXXX price, while the compared normal value includes the inland freight and warehousing. Refer to "Domestic SG&A" of Confidential Appendix 2, the domestic SG&A includes XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. As a result, the calculated CTMS is not at XXXXX level. For the comparison to be made at XXXX level, the average total adjustment of domestic sales (based on "OCOT test (for profit calc)" worksheet, Confidential Appendix 3, can be calculated, which is [XXXXXXXX]

The most convenient way to the Commission is to do the comparison at XXXX level, to deduct the total adjustment amount from both exports price and domestic sales price.

XXX[Confidential cost information]

In our submission of 29 July 2015 the Commission was provided with a re-calculated dumping margin based on the corrections as discussed above and amending the spreadsheets prepared by and forwarded to us by the Commission prior to the release of the SEF. We believe this to be the correct methodology which results in a factual assessment of a dumping margin that shall be the same or close to what CITIC Dicastal provided to the Commission on 29 July 2015.

We request that the Commission adjust the dumping margin calculation for CITIC Dicastal to fairly reflect the actual situation as it applies to CITIC Dicastal.