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## Submission in response to Statement of Essential Facts No. 248

This submission is made to the Anti-Dumping Commission (the **Commission**) on behalf of Guangdong Xingfa Aluminium Co Ltd (**Xingfa**) in response to the Statement of Essential Facts 248 (**SEF 248**) issued by the Commission on 29 May 2015 in the review of the anti-dumping measures as they apply to exports to Australia of certain aluminium extrusions from the People's Republic of China (China), which was initiated at the request of PanAsia Aluminium (China) Co (the **Review**).

### Classification of exporters

Xingfa notes the Commission's use of exporter sampling pursuant to section 269TACAA of the *Customs Act 1901* (Cth) (the Act).

Xingfa submits that pursuant to the operation of subsections 269TACAA and 269TACAB of the Act, where exporter sampling is applied, the exporters will be classified into three 'classes':

- selected exporters;
- residual exporters; and
- uncooperative exporters.

Xingfa understands that these classes are distinct and separate. Further, Xingfa recognises that, pursuant to Section 269TACAB of the Act, the Commission must apply different methodologies calculating normal values, export prices and resultant dumping margins for exporters in each class.

### Residual exporters

Xingfa agrees that, it is appropriate for it to be classified as a "residual exporter" for the purposes of the Review.

Xingfa does not comment on the cohort of other exporters included in the "residual exporter" class but notes the relatively high number of exporters who fall into this class and to whom the "residual exporter dumping margin" will apply.

## Selected exporters

In SEF 248 it is stated that “the Commission decided to investigate the exportations of five selected exporters” and “all of the exporters who are classified as 'selected exporters' have cooperated with the review”.<sup>1</sup>

Although PanAsia Aluminium (China) Co Ltd (**PanAsia**) was 'selected' for the purposes of the sampling exercise, Xingfa disagrees with the Commission's conclusion that PanAsia has cooperated with the review.

In SEF 248, the Commission has determined that the findings of the *Anti-Circumvention Inquiry 241 (Inquiry 241)*, which included verification of the importers of aluminium extrusions from PanAsia, are contrary to the results of verification of PanAsia's exporter questionnaire produced in respect of the Review.<sup>2</sup> On the basis that the Inquiry 241 investigation period significantly overlapped the Review investigation period, rather than undertake a further importer verification process, the Commission has decided to rely on the importer verifications already undertaken in Inquiry 241.<sup>3</sup>

In respect of the import verifications used in the Inquiry 241, the Commission was not able to verify the importers' data and therefore it was not able to rely on subsections 269(1)(a), (b) or (c) to determine the export price. In Inquiry 241, the Commission therefore determined the ascertained export price for PanAsia under subsection 269TAB(3).

Xingfa understands that subsection 269TAB(3) is enlivened where the Minister is satisfied that an entity has not, or cannot, cooperate with the verification of export prices to the extent necessary to establish export prices under subsections 269TAB(1) or 269TAB (2) of the Act.

In the Review, the Commission determined that PanAsia's export price should be determined by subsection 269TAB(3) of the Act and, in determining the export price, has referred to information relied upon in Inquiry 241.

On the basis that the Commission was unable to establish PanAsia's export price in accordance with subsection 269TAB(1)(a) of the Act and has relied upon subsection 269TAB(3) of the Act to establish PanAsia's export price, Xingfa would submit that PanAsia should be classified as an “uncooperative exporter” for the purposes of the Review.

The Commission states in SEF 248 that for uncooperative and all other exporters it will establish export prices under subsection 269TAB(3) of the Act.<sup>4</sup>

By establishing the export price for PanAsia under subsection s269TAB(3) of the Act, the Commission has applied the same methodology that is used for uncooperative exporters for the purposes of the review.

In contrast, the Commission relied upon the verified information for all other “selected exporters” (excluding PanAsia) and calculated export prices under subsection 269TAB(1)(a) of the Act as the price paid or payable for the goods by the importer.

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<sup>1</sup> SEF – page 13

<sup>2</sup> SEF – page 21

<sup>3</sup> SEF – page 22

<sup>4</sup> SEF - page15



## **“Residual exporters” preliminary dumping margin**

Xingfa does not agree with the Commission’s calculation of the preliminary dumping margin for “residual exporters”.

The methodology for calculating export prices and normal values for residual exporters is set out under subsection 269TACAB(2) of the Act. In respect of calculating export prices it relevantly provides:

### Residual exporters

- (2) If:...
- (a) ....
  - (ii) *there is a review under Division 5 in relation to the publication of a dumping duty notice;*
  - (b) *the investigation, review or inquiry is carried out on the basis of information obtained from an examination of a selected number of exporters as mentioned in subsection 269TACAA(1);*
- then:
  - (c) *if the export price of goods for a residual exporter is to be worked out in relation to the investigation, review or inquiry--that export price must not be less than the weighted average of export prices for like goods of **cooperative exporters** from the same country of export;...*
- (3) *To the extent that subsection (2) applies in relation to an investigation, the weighted average of export prices, and the weighted average of normal values, of the cooperative exporters must not include any export price or normal value if, in a comparison under section 269TACB involving that export price or normal value, the Minister has determined:*
  - (a) *that there is no dumping; or*
  - (b) *that the dumping margin, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%.*

(emphasis added)

As set out above, the Commission has calculated PanAsia’s export price in accordance with subsection 269TAB(3) (i.e. in the manner in which the export price is calculated for an “uncooperative exporter”).

Xingfa submits that as PanAsia’s export price has been calculated on the “uncooperative exporter” basis, it is not appropriate for PanAsia to be treated as a “cooperative exporter” for the purposes of calculating weighted average export prices for “residual exporters” under s269TACAB(2)(c)

## Conclusion

In summary, given that the Commission has determined PanAsia's export price by applying subsection 269TAB(3), Xingfa submits that the Commission should:

- reconsider its classification of PanAsia as a "selected exporter" and instead classify PanAsia as an "uncooperative exporter"; and
- not include PanAsia's export price in the class of "cooperative exporters" which it uses to determine a weighted average of export prices to calculate the export price which will apply to "residual exporters" (including Xingfa).



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