

14 September 2017

PUBLIC RECORD

BEFORE THE ANTI-DUMPING COMMISSION

In the matter of the Review of Anti-dumping Measures
Applying to Aluminium Extrusions Exported to Australia from
The People's Republic of China

NO. 392

Submission on the Statement of Essential Facts

GOOMAX METAL CO., LTD FUJIAN

I Introduction

- [1] Goomax Metal Co., Ltd Fujian (Hereinafter referred to as “Goomax”) is a Chinese exporting producer of aluminium extrusions. During the original anti-dumping investigation initiated on 24 June 2009 conducted by the Anti-dumping Commission (Hereinafter referred to as “the Commission”) concerning aluminium extrusions from China, Goomax was not a cooperating company, as it did not have exports to Australia during the investigation period of the original investigation. Thus, at that time the duty rate applied to the uncooperative companies was applied to Goomax.
- [2] On 23 March 2017, based on the applications submitted by four Chinese exporters, the Commission initiated a review of the anti-dumping measures applying to aluminium extrusions from China (Hereinafter referred to as “Review No. 392”). And the review was extended to all exporters generally. At that time Goomax has already been in the process of the accelerated review, and it did not participate in the Review No. 392.
- [3] On 27 March 2017, the Commission published the Notice of Initiation of the Accelerated Review No. 399 after consideration of Goomax’s application lodged on 6 March 2017. Goomax has fully cooperated in the accelerated review by submitting the response to the questionnaire as well as subsequent deficiency letters.
- [4] On 10 July 2017, the Commission published the final determination in relation to the Accelerated Review No. 399 and a new individual duty rate is applied to Goomax.
- [5] On 25 August 2017, the Commission published the Statement of Essential Facts of Review No. 392 (Hereinafter referred to as “the SEF”), determining a duty rate for Goomax different from that in the Accelerated Review No. 399.
- [6] Goomax is confused with the current situation, and cannot accept that its duty rate determined in the Accelerated Review No. 399 will be superseded by the

outcome of Review No. 392 in such a short time without legal basis. By making this submission, Goomax would like to state its comments on the SEF of Review No. 392.

II Accelerated Review and Interim Review are Different Proceedings

[7] Goomax would like to state that, the outcome of an anti-dumping measure would result in different types of reviews, such as interim review, sunset review, and accelerated review. Each review has its own specific legal requirements and conditions to be fulfilled before an investigating authority opens an investigation.

[8] The application lodged by Goomax to the Commission on 6 March 2017 was related to an accelerated review, which is stipulated in Division 6 of Part XVB of the Customs Act 1901 (the Act). An accelerated review is only open to new exporters. However, the Review No. 392 is an interim review stipulated in Division 5 of Part XVB of the Act, which is opened due to changed circumstances. The two kinds of review are different proceedings, which should not be mixed up.

[9] As a producer of aluminium extrusions which did not make exports during the original investigation period, Goomax sought an accelerated review and has already been granted an individual duty rate as a result of the accelerated review. And as Goomax was already in the process of an accelerated review when Review No. 392 was initiated, Goomax did not participate in Review No. 392. However, according to section 2.6.1 of the SEF, Goomax is regarded as an exporter who provided information relating to the review period which did not prevent timely completion of the review, so the Review No. 392 was extended to Goomax. Goomax would like to point out that, the information it submitted was related to the Accelerated Review No. 399 instead of Review No. 392.

[10] Moreover, Goomax did not have exports during the review period of Review No. 392, and an exporter that did not export during the review period should not be included in an interim review. For example, in interim reviews initiated by the European Commission concerning all exporters in the investigated country, an

exporter without exports in the review period will not be investigated. Goomax refers to the interim review initiated by the European Commission on an ex officio basis concerning imports of bicycles originating in China. In paragraph (107) of the final determination of this review, it states that¹,

“.....it is highlighted that the findings with regard to dumping and injury relate to the review investigation period (‘RIP’) fixed in accordance with the Article 6(1) of the basic Regulation. This means that data collected from the exporting producers in view of establishing normal value and the export price also strictly relate only to that period If a producer did not export the product concerned during the RIP, no export price can be established and no dumping margin can be calculated.”

[11] Regarding this issue, the European Commission also sent a letter to the Chinese exporter which did not export during the review period. Please refer to the Annex for the letter. The European Commission indicated in the letter that,

“After analysing the information supplied by your company, our understanding is that you did not export bicycles to the EU during the investigation period.

In line of the above, please note that this investigation concerns exporting producers of bicycles originating in the People's Republic of China. Consequently your company can not be investigated in the framework of this proceeding.”

[12] EU's practice in interim review is consistent with the WTO rules and the practice of various countries. Therefore, an exporter which has no export during the investigation period of an interim review is ineligible to be included in this review, as no export price can be established and no dumping margin can be calculated. While the accelerated review is established to deal with such circumstance.

[13] As regards Goomax, the outcome of an accelerated review has applied to it and it had no exports during the investigation period of the interim review No. 392, so there is no legal basis for extending Review No. 392 to Goomax.

¹ COUNCIL REGULATION (EU) No 502/2013 of 29 May 2013 amending Implementing Regulation (EU) No 990/2011 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China following an interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ L 153, 5.6.2013, p.27)

III Lack of Legal Basis for Revoking the Determination in Accelerated Review for Goomax

[14] According to the SEF, Review No. 392 has been extended to Goomax, and a new duty for Goomax has been proposed. Goomax understands that this means, after the publication of the final determination of Review No. 392, the final determination of the Accelerated Review No. 399 will be revoked.

[15] It should be pointed out that, the final determination of the Accelerated Review No. 399 has been published, and has the legal binding force. To revoke a legally binding determination, a legal procedure should have been gone through. According to current situation, it seems that the Commission will revoke the final determination of the Accelerated Review No. 399 through Review No. 392. However, Goomax does not agree that Review No. 392 can be an appropriate procedure for such a purpose. It needs to be highlighted that, the Notice of Initiation of the Accelerated Review No. 399 was published even later than that of Review No. 392. The review period of the two proceedings is the same. And the SEF of Review No. 392 was published only one and a half months after the final determination of the Accelerated Review No. 399. Actually, the two proceedings were in parallel. Goomax would like to know whether there is any precedent in Australia in which the outcome of a review was superseded by the outcome of another review initiated even earlier.

[16] Goomax understands that, if there is any legal basis for the outcome of an interim review concerning all exporters to supersede that of an accelerated review concerning one company, then the Commission should have terminated the accelerated review for Goomax and extended Review No. 392 to Goomax once Review No. 392 was initiated. However, the Commission did not do that, but conducted two reviews in parallel and made two different calculations of duty rate for Goomax in two proceedings, which is not only a waste of administrative resources of the Commission, but also raises the legal cost of Goomax.

[17] Under this circumstance, Goomax sees no legal basis for the revocation of the final determination of the Accelerated Review No. 399. Thus, Goomax hereby

requests the Commission to clarify the legal basis to revoke the final determination of the Accelerated Review No. 399, and whether any legal procedure has been gone through.

IV Inconsistency in Duty Methods

[18] Goomax notices that, the duty methods stated in the SEF of Review No. 392 are combination of fixed and variable duty method. In this case, the duty applied to goods of Goomax includes two parts: (1) 11.4% levied on the actual export price; (2) if the actual export price is below the ascertained export price () an additional amount equal to the difference between the actual export price and the ascertained export price. This means that, no matter how high the export price of Goomax is, the customs will always collect the antidumping and countervailing duty from Goomax's importers equal to at least 11.4% of the actual export price. However, according to the result of the Accelerated Review 399, the method for dumping duty is floor price method, which means that, as long as the actual export price of Goomax is above the ascertained export price (), no dumping duty will be collected. The duty methods in the two reviews are inconsistent.

[Confidential information regarding the ascertained export price determined for Goomax in Review No. 392 and the Accelerated Review No. 399]

[19] It should be noted that, Goomax had no export to Australia during the review period, so in Review No. 392, the Commission has determined the export price of Goomax based on the weighted average export price for the selected exporters. Obviously, the weighted average export price cannot reflect the actual level of Goomax's export price, hence the fixed duty rate cannot reflect the actual situation of Goomax. It is unfair for Goomax to have the duty rate determined in Review No. 392 applied to Goomax.

[20] Goomax understands that, since the accelerated review only concerns certain company, an appropriate and reasonable duty method will be determined for the company, as is the case in the Accelerated Review No. 399. While Review No.

392 concerns all Chinese exporters, and due to lack of exports Goomax should not be considered as an exporter during the review period for the purpose of Review No. 392. Under this circumstance, the outcome of the Accelerated Review No. 399, which only concerns one company, and is more appropriate, should prevail.

V Conclusion

[21]Based on the above-mentioned comments, Goomax indicates that, it is inappropriate and has no legal basis to extend Review No. 392 to Goomax. Therefore, Goomax hereby respectfully requests the Commission to continue applying the outcome of the Accelerated Review No. 399 to Goomax even after the publication of the final determination of Review No. 392.

Annex:

Letter from European Commission to a Chinese exporter in the interim review on imports of bicycles originating in China **【Confidential】**

[Confidential document in another case]

GOOMAX METAL CO., LTD FUJIAN



Mr. Chen Gesheng, Vice Chairman of the Board