



Global Vietnam Aluminium Company Limited
My Xuan B1-Conac Industrial Zone, My Xuan Town,
Tan Thanh District, BR-VT Province, Vietnam

30 April 2017

Director, Operations 3
Anti-Dumping Commission
GPO Box 1632
Melbourne, VIC 3001

Investigation into alleged dumping of aluminium extrusions exported from Vietnam

Dear Director,

This submission is made on behalf of Global Vietnam Aluminium (GVA) in response to the Anti-Dumping Commission's (the Commission) preliminary findings outlined in Statement of Essential Facts Report No. 362 (SEF 362). GVA continues to strongly disagree with the Commission's methodology of establishing GVA's normal value as it unfairly and unreasonably attributes domestic sales from other exporters without proper consideration of key differences warranting due allowance.

Lack of transparency to enable GVA to present due allowance claims and evidence

As noted in our submission of 7 November 2016, GVA identified a number of factors which would account for differences between the other seller's domestic sales and GVA's export sales, and which would require adjustment to ensure proper comparison. These factors include:

- i) order volumes and associated discounts;
- ii) complexity of profiles and associated higher production costs;
- iii) overall cost structures due to location of operations;
- iv) differences in payment terms;
- v) differences in selling costs in the domestic and export markets;
- vi) different VAT implications in the domestic and export markets; and
- vii) sales made at different levels of trade.

In order to ensure proper comparison, each of these factors requires careful consideration and adjustment to normal values accordingly. In that case, as the Commission's policy clearly states '*[w]here an other-seller's prices are being considered for normal values, the Commission will, subject to confidentiality, seek to provide the exporter with information about the other seller's sales so that the exporter in question might defend its interests. Generally, this will involve identifying that other seller, providing information on the type of products being sold on the domestic market, and the other seller's domestic distribution methods for level of trade comparisons.*'

GVA has previously requested for the Commission to provide sufficient information to allow GVA to properly understand the circumstances of the other domestic sales and enable specific adjustment claims to be made and further information presented. This requirement is further mandated by Article 2.4 of the Anti-Dumping Agreement which requires that '*[t]he authorities shall indicate to the*

parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those Parties.'

This is further supported by the findings of Anti-Dumping Review Panel (ADRP) which highlighted in its request for reinvestigation of hot rolled structural steel sections from Japan, Korea, Taiwan and Thailand¹, that:

In conducting the reinvestigation, I request that you take cognisance of Article 2.4 of the WTO Anti-Dumping Agreement (which is the provision that s269TAC(8) enacts into Australian legislation). In particular, the requirement in Article 2.4 that, "Due allowance shall be made in each case, on its merits, for differences which affect price comparability". In addition to an illustrative list of possible such differences, Article 2.4 also requires allowances for "any other differences which are also demonstrated to affect price comparability" (emphasis added).

While there is clearly a burden on the claimant to provide evidence of the claimed adjustment it should also be noted that there is an affirmative information-gathering burden on the investigating authority, that it "shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties".

At no time during the investigation and in making its preliminary findings has the Commission sought to provide GVA with information that would allow it to present further claims and evidence in support of adjustment for key differences between the other seller's domestic sales and GVA's export sales.

GVA submits that the use of other seller's domestic sales pursuant to subsection 269TAC(1) of the Act to be inappropriate. This is consistent with the Commission's policy interpretation:

Where sufficient information cannot be provided to the exporter without disclosing confidential information on such matters, the Commission may be constrained in pursuing an examination of adjustment claims and as a result may be hindered in establishing the necessary facts to ensure fair comparison. As fair comparison is a fundamental principle in the determination of whether goods are dumped, where the Commission considers that a fair comparison cannot be achieved, domestic sales of like goods by an other-seller may not be suitable for determining a normal value.

GVA therefore requests the Commission to disregard the other seller's domestic sales due to fair comparison not being achieved and instead construct normal value using GVA's export cost of production.

Factors affecting proper comparison

If the Commission continues to consider relying on other seller's domestic sales, GVA requests the Commission to have regard to all available and presented information and make adjustment to normal values to account of the seven key factors outlined above which GVA considers would directly affect proper comparison.

In particular, GVA requests the Commission to compare GVA's cost structure relative to that of other domestic sellers, to identify production and selling cost differences which would inherently impact

¹ [http://adreviewpanel.gov.au/HRSSS Reinvestigation.pdf](http://adreviewpanel.gov.au/HRSSS_Reinvestigation.pdf); page 2.

on prevailing domestic and export selling prices. Observed differences in production and selling costs are expected and due in large part to GVA's operations being located in a designated export-processing zone.

As explained in its questionnaire response and unlike other domestic sellers, GVA is [REDACTED] [REDACTED] [impact of operations on costs] as it is a dedicated export-oriented producer. In addition, GVA [REDACTED] [REDACTED] [REDACTED] [impact of operations on costs].

GVA considers this a critical flaw in the Commission's preliminary determined normal value as it simply assumes that irrespective of GVA's actual costs relative to other domestic producers, GVA could and would automatically achieve a significantly higher domestic rate of profit than the other sellers. In effect, it disregards any association and correlation between an exporter's cost to make and sell and its selling price. This is a plainly flawed assumption as demonstrated in the example below.

In the circumstance where GVA unit costs are lower than other domestic sellers, attributing the domestic selling prices from the other domestic sellers results in a normal value which incorporates a substantially higher rate of profit than that actual realised by the other domestic sellers. It is an accepted principle that an exporter's costs will affect corresponding selling prices and therefore in the example below, proper comparison can only be achieved by either:

- a) making a downward adjustment to the domestic selling price for the identified cost difference plus actual rate of profit by the other domestic seller; or
- b) constructing normal values using GVA's CTMS plus the actual amount of profit realised by the other domestic seller

	GLOBAL VIETNAM ALUMINIUM	OTHER DOMESTIC SELLER
CTMS	\$65	\$80
SELLING PRICE	\$100	\$100
PROFIT	35	\$20
PROFIT (%)	35%	20%

For the reasons outlined above, GVA considers constructed normal value to be the most appropriate method for establishing its normal value.

Other relevant considerations in assessing proper comparison include:

- GVA's credit terms of its export sales being [REDACTED];
- EAA's identification of different levels of volume based discounts offered to export and domestic customers;
- EAA's identification of end-user and distributor domestic customers confirming that sales at different levels of trade exist to GVA's export sales;

GVA again reiterates its view that where the Commission experiences difficulties in making adjustments for fair comparison, it is bound to reject those other seller's domestic sales. This is supported by the Commission's previous findings in its investigation into canned mushrooms exported from China²:

² [Review of decision to publish dumping duty notice in respect of preserved mushrooms from China](#), para 35.

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Customs examined the other sellers sales and sought at length to use those sales with appropriate adjustments under the provisions of subsection 269TAC(1) and subsection 269TAC(8). However, the results generated appeared to Customs to be significantly inaccurate or unreasonable because of the difficulties experienced in making the adjustments for fair comparison.

Among the differences that made these adjustments necessary were the following:

- the producer from whom the goods were sourced and its cost structure;
- the grade of mushrooms used by the producer;
- the type of container (glass jars and cans);
- the size of the container;
- the style (whole, sliced or pieces and stems) of the mushroom in the container;
- the manufacturing process;
- whether the container was purchased, or manufactured by the producer;
- whether the container was pre labelled or labelled just prior to sale;
- the delivery and payment terms relating to the purchase of the goods by the exporter;
- the delivery and payment terms relating to the sale of the goods by the exporter;
- the delivery and payment terms relating to domestic sales;
- the volume of preserved mushrooms purchased by: domestic customer from domestic seller; exporter from producer; and Australian customer from the exporter;
- loyalty relationships between the respective parties;
- packing costs (eg packs of 12 versus packs of 24);
- selling costs in the domestic and export markets;
- exhibition/promotional costs in the domestic and export markets;
- different VAT implications in the domestic and export markets; and
- level of trade. [Emphasis added]

Likewise the Commission's manual reinforces this key principle that sales by other seller's would not be suitable without fair comparison:

Sales of like goods by other sellers may not be relevant if a fair comparison cannot be achieved. The following examples illustrate situations where a fair comparison may not be possible because:

- there is a difference in the level of trade between the other seller's domestic sales and the exporter/producers' export sales, and there is no meaningful way of making the level of trade adjustment, or
- there are differences in characteristics (e.g. raw materials, specifications, production methods, performance and costs, etc.) between the other seller's domestic goods and the goods exported to Australia by the exporter, and it is not possible to reasonably work out the amount of any adjustment to account for those differences, or
- there is a difference in the time of sale between the other seller's domestic sales and the exporter/producer's export sales, and there is no meaningful way of working out the adjustment. [Emphasis added]

Conclusion

In conclusion, GVA contends that the Commission has ignored and overlooked its own stated policy and practice with respect to transparency, due process and due allowance in circumstances involving other domestic seller's selling prices. This is clearly not correct and not preferable based on the Commission's well-defined guidelines.

The flawed preliminary approach can only be rectified by either making necessary adjustments for factors affecting proper comparison, or disregarding other seller's domestic sales and constructing normal values in accordance with subsection 269TAC(2)(c) of the Act.

Yours Sincerely

General Director

Jacky Cheung