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Dear Mr Hawke

Public File

Review of Measures Investigation No. 609 – Statement of Essential Facts

I. Executive Summary

We refer to Statement of Essential Facts No. 609 (“SEF 609”) published on 8 June 2023 in respect of the review of measures on aluminium extrusions exported to Australia from the People’s Republic of China (“China”).

Capral Limited (“Capral”) is the largest Australian manufacturer of aluminium extrusions. Capral welcomes the preliminary findings contained in SEF 609 that confirm that the variable factors relevant to the anti-dumping measures have changed in respect of the goods exported from China. Specifically, the Commissioner has found for exporters generally:

- the ascertained export price has changes;
- the ascertained normal value has changed;
- the amount of the countervailable subsidy received in respect of the goods has changed.

The Commissioner is proposing to recommend that the anti-dumping measures to be applied by the Minister be on the basis of the ‘floor price’ methodology. This methodology reflects the methodology that currently applies (prior to outcomes of Invest 609).

Capral is aware that aluminium extrusions exported from China are the subject of avoidance of anti-dumping and countervailing duties. Capral further recognises that the combination form of measures is most appropriate where new measures to exporters not previously the subject of measures are applied. It is Capral’s view that the most appropriate form of measure to be applied to Chinese exporters is that based upon the combination method. The original measures applied in 2010 were based upon the combination method which is considered most effective in limiting avoidance practices. Capral supports the retained and recommended combination form of measures to be applied to exports to Australia by Tai Shan City Kam Kiu Aluminium Extrusions Co., Ltd (“Kam Kiu”) due to the determination of actual export prices for the exporter based upon the deductive method.

Capral further submits that the proposed recommended date of effect for measures to be applied to the Chinese exporters Qingyuan City Huanan Copper and Aluminium Co., Ltd (“Qingyuan”) and Foshan Lvqiang Metal product Co., Ltd (“Foshan Lvqiang”) be the date of commencement of this extended review of measures Invest 609 – that is, the date of initiation of 8 August 2022.

The Commissioner is proposing that following Invest 609, the following measures will apply to exporters of



aluminium extrusions from China:

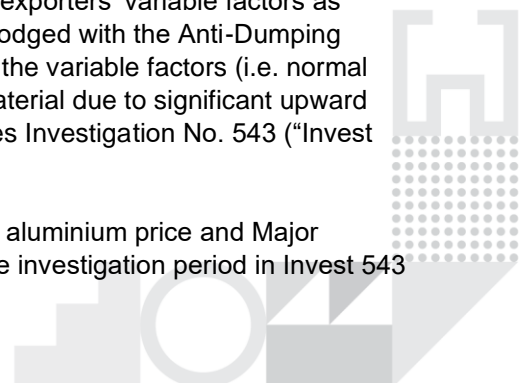
Extract of Table 19 from SEF 609

Exporter	IDD Method	ICD Method	Effective rate of combined ICD and IDD	Variable component of IDD	Date of effect
Gomax	Floor price	Ad valorem	0.7%	Applicable only where the actual export price is below the ascertained normal value	Date of publication of the notice
Jinxiecheng	Floor price	Ad valorem	0.0%		
Xingfa	Floor price	Ad valorem	0.3%		
Kam Kiu	Combination	Ad valorem	45.1%	Applicable only where the actual export price is below the ascertained normal value	Date of publication of SEF
Residual exporters	Combination	Ad valorem	48.1%		
Uncooperative, non-cooperative and all other exporters (except Qingyuan and Foshan Lvqiang)					
Qingyuan and Foshan Lvqiang	Combination	Ad valorem	48.1%		

II. Material changes in variable factors

SEF 609 does not detail the magnitude of the change in each of the Chinese exporters' variable factors as determined in the investigation. Capral's application for review of measures lodged with the Anti-Dumping Commission ("the Commission") on 29 June 2022 demonstrated that each of the variable factors (i.e. normal values and export prices) had increased by amounts that were considered material due to significant upward moves in raw material aluminium prices since the previous review of measures Investigation No. 543 ("Invest 543").

In its application Capral evidenced that the London Metals Exchange ("LME") aluminium price and Major Japanese Port ("MJP") costs had increased by more than 60 per cent over the investigation period in Invest 543



(i.e. between 2019 and the eleven months to May 2022). As aluminium accounts for a substantial proportion of the cost to produce aluminium extrusions, Capral had indicated that normal values and export prices for the subject goods would likely have increased by between “30 and 40 per cent”¹.

The Commission’s preliminary findings – while not quantifying the impact of rising aluminium prices between the earlier review of measures Invest 543 and the investigation period in Invest 609 – confirm that the variable factors have increased over the intervening period.

III. Date of effect of revised measures

Capral notes the Commission’s concerns about ensuring the effectiveness of the anti-dumping measures that applies to Chinese exporters of aluminium extrusions. In particular, the Commission has identified in the conduct of its investigation:

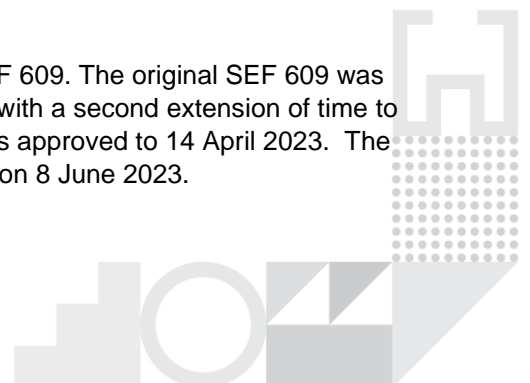
- Foshan Lvqiang’s export volumes increased significantly following the completion of Accelerated Review No. 530 (“AR530”) to a level higher than all selected exporters in Invest 609;
- the export volumes of Qingyuan and Foshan Lvqiang (supplied through Ansun Trading Pty Ltd and Foshan Xing Yi Import & Export Co., Ltd) increased in the third quarter of 2021 to be greater than the combined volumes of the selected exporters (coinciding with a decline in exports from Foshan Lvqiang);
- both Foshan Lvqiang and Qingyuan did not complete EQRs and hence were considered uncooperative;
- as both exporters were uncooperative, the Commission determined exports of goods to Australia by these exporters were dumped and subsidised with margins of 41.1% and 13% respectively;
- during the investigation period, Foshan Lvqiang and Qingyuan benefited from lower IDD and ICD rates following the earlier investigations and were benefiting from these lower rates as exports increased during the investigation period;
- the Commission concluded that the current ICD and IDD rates applicable to Foshan Lvqiang and Qingyuan’s exports to Australia “*combined with the significance of their export volumes, has led to a situation where the anti-dumping measures **may not be achieving** their intended outcome of preventing injury to the Australian industry from dumping and subsidisation.*”

Capral concurs with this conclusion of the Commission about the intended effect of the measures. It is evident that the two exporters Foshan Lvqiang and Qingyuan have benefited from the reduced IDD and ICD rates following AR530 enabling it to increase export volumes during a period of a sharp rise in raw material aluminium prices. The sales achieved for the Chinese exports by Foshan Lvqiang and Qingyuan could have been supplied from Australian production. Capral therefore concurs with the Commission’s assessment that the measures in respect of the two exporters have not had the desired effect during the investigation period.

The Commission’s preliminary recommendation to apply the revised measures from the current Invest 609 with effect from the date of SEF 609 (i.e. 8 June 2023) falls well short of a reasonable remedy to the injurious exports.

Invest 609 has been the subject of the three extensions of time to publish SEF 609. The original SEF 609 was due to be published on 28 November 2022. The Commission provided itself with a second extension of time to publication to 28 February 2023 (i.e. 92 days). A further 45-day extension was approved to 14 April 2023. The third timeframe extension provided an additional 55 days to publish SEF 609 on 8 June 2023.

¹ Capral application for measures, June 2022, P.8.



In aggregate, a total additional 182 days has been taken by the Commission to publish SEF 609.

Capral submits that it is unreasonable for the Commissioner to recommend that the effective date of the revised variable factors applicable to the two exporters Foshan Lvqiang and Qingyuan that benefited from lower IDD and ICD rates than were correctly due throughout the investigation period is from the date of the SEF (i.e. 8 June 2023). As referenced in SEF 609, “*Section 269ZDB(6) provides that, for the purposes of a declaration under subsection (1)(a)(ii) or (iii), the Minister must not fix a date earlier than the **date of publication** under section 269ZC of a notice indicating the proposal to undertake the review concerned*” (emphasis added).

The date of publication of the commencement of review of measures Invest 609 on aluminium extrusions exported from China to Australia was 8 August 2022.

Capral is alarmed that the Commissioner is proposing to provide a further benefit (and additional leniency by delaying the date of effect of the revised measures) to the uncooperative Chinese exporters Foshan Lvqiang and Qingyuan by proposing a date of effect of the measures as at the date of SEF 609. The Minister retains the power to impose the revised measures from the date of publication (i.e. commencement) of the review of measures investigation. The date of publication of the review of measures investigation was 8 August 2022.

Capral urges the Commissioner to re-consider the proposed date of effect of the revised measures applicable to exports to Australia by Foshan Lvqiang and Qingyuan from the date of SEF 609 (8 June 2023) to the more appropriate date of effect that is consistent with the legislative provisions of Section 269ZDB(6) to 8 August 2022.

IV. Form of measures

Capral has observed the Commission’s statement at Section 7.5 of SEF 609 that it has “*received no submissions in respect of what form the measures should take*”.

Capral has in previous investigations maintained its preference for measures to be determined on the combination method (i.e. a fixed and variable components) for dumping duties. This form of measure is the most effective in limiting the avoidance of IDD to be collected. The combination form of measure is appropriate from new measures that are applied. As indicated, aluminium extrusions is a good where the Department of Home Affairs has identified significant values associated with the avoidance of IDD and it is essential that the measures applied to aluminium extrusions do incorporate a floor price mechanism (i.e. either combination measures or floor-price measures).

Capral acknowledges that the Commissioner’s proposed form of measures for cooperative exporters is based on the floor-price methodology. This form of measure in a component of the combination method and does operate in respect of cooperative exporters that have a designated zero dumping margin in a review of measures investigation.

V. Recommendations

Capral welcomes the Commissioner’s preliminary findings in SEF 609. The Commission has confirmed Capral’s understanding that there had been material increases in the variable factors (normal values and export prices) for aluminium extrusions exported to Australia from China due primarily to sharp increases in raw material aluminium prices since review of measures Invest 543.



In its application for a review of the applicable measures, Capral estimated that normal values and export prices had increased by between 30 and 40 per cent in the period following Invest 543. The sharp increase in normal values and export prices resulted in the Australian industry having to compete with prices that were at injurious levels (most notably, exports by Foshan Lvqiang and Qingyuan).

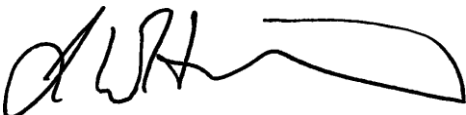
The recommended form of measures for selected exporters (based upon floor-price methodology) and for all other exporters (based upon combination method) is supported by Capral. Capral does, however, retain concerns about the combination form of measures not being applied to all exporters in China due to the high avoidance of measures identified recently by Border Force (Department of Home Affairs).

Capral is concerned with the Commissioner's recommended date of effect of the revised measures for the uncooperative exporters Foshan Lvqiang and Qingyuan. Review of Measures Invest 609 has been the subject of three extensions of time to publish SEF 609. The total timeframe extension is 182 days – greater than six months. The Commission has identified that Foshan Lvqiang and Qingyuan have benefited from reduced IDD and ICD during the investigation period and were able to sharply increase export volumes to Australia. Capral therefore considers that delaying the date of effect of measures to the date of publication of SEF 609 on 8 June 2023 further rewards the two uncooperative exporters.

Capral strongly urges the Commissioner to reconsider the date of effect of the revised measures for Foshan Lvqiang and Qingyuan to the date of publication of the commencement of the investigation – that is, 8 August 2022.

If you have any questions concerning this submission please do not hesitate to contact me on (02) 8222 0113 or Capral's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely



Luke Hawkins
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