

**Non-Confidential**

28 June 2023

**By Email**

Mr Bradley Armstrong PMC  
Anti-Dumping Commissioner  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601

Dear Commissioner,

***RE: Review of Anti-dumping measures on exports of aluminium extrusion products from the People's Republic of China - – Review 609 – Submission on Statement of Essential Facts***

I refer to the review of the anti-dumping measures applying to exports of aluminium extrusions exported from the People's Republic of China (**China**), namely, Review 609, and to the recent publication of the Statement of Essential Facts (**SEF**) in relation to that review.

The preliminary findings and proposed recommendations set out in the SEF are of concern. They are of concern because object of varying the anti-dumping measures as proposed is not to prevent or remove or prevent the injurious effects being caused or threatened by dumping as there is no such injury. That is evident from the preliminary findings in the SEF and from the financial statements of the Australian industry filed with the Australian Securities and Investments Commission (**ASIC**) and the Australian Stock Exchange (**ASX**) in accordance with, respectively, the *Corporations Act 2000* and the ASX Listing Rules.

The object of varying the anti-dumping measures as proposed, however, appears to be to negate the comparative competitive advantage that China and, specifically, producers and exporters of aluminium extrusion products in China possess when compared with Australian producers of aluminium extrusion products.

That objective is being attained in the proposed variation to the anti-dumping measures by establishing, in effect, a 'floor price' for all exports from China regardless of dumping margin, that is, whether positive, negative or negligible, at the applicable 'constructed normal value'. Those 'constructed normal values' have, of course, been based on London Metal Exchange (**LME**) aluminium prices and Major Japanese Ports (**MJP**) premiums that applied during the review period, namely, 1 July 2021 to 30 June 2022. Those prices and premiums were at unprecedented historically high levels as the graph in Capral Limited's application for the review of the anti-dumping measures evidenced: see **Attachment A**. That is, at LME aluminium prices of US\$3,000 per tonne as opposed to the more usual US\$2,000 per tonne as reflected in **Attachment A**.

LME aluminium prices and MJP premiums are, as has been widely acknowledged including in dumping investigations, reviews and inquiries in Australia, the major cost determinants of prices of aluminium extrusions. Hence setting the level of anti-dumping measures at 'constructed normal values' based on the historically high LME aluminium prices and MJP

premiums means that if those prices and premiums fall, which has already occurred, then the price of exports of aluminium extrusions to Australia cannot be commensurately reduced without incurring liability for dumping duties. As exports from China are thereby precluded from reflecting the reduction in LME aluminium prices and MJP premiums in the Australian market without incurring dumping duties, the pricing of their products will become uncompetitive and, presumably, be excluded from the Australian market.

The object of anti-dumping measures is not to reduce competition from the domestic market of an importing country. That, however, is not seemingly the object here. It does not appear to be to prevent the injurious effects from dumping, especially given the domestic industry's economic performance and the Commission's preliminary findings in this review. That is, that the majority of exports from China are and have been at un-dumped export prices.

The sole selected cooperative exporter whose exports were found to have been exported at dumped prices in the SEF must be an aberration and due to the methodology in assessing its exports or due to other extraneous factors. It is simply not credible that its prices are +40% less than those of its competitors in domestic sales in China and/or in export sales to Australia. There is no evidence of any differences of that magnitude in actual such prices in either the domestic market in China or the export market to Australia. There is no explanation in the SEF for such discrepancy.

That anti-dumping measures are being sought to be used and are being used for uncompetitive purposes is of concern. That members of Australian industries are availing themselves of this opportunity is evident from the recent Federal Court decision in *Australian Competition and Consumer Commission v BlueScope Steel Limited (No 5) [2022] FCA 1475* in which BlueScope Steel was found to have been engaging in cartel price fixing behaviour contrary to a prohibition of such behaviour in the *Competition and Consumer Act 2010*. A copy of the judgement is **attached** and is available at: [Australian Competition and Consumer Commission v BlueScope Steel Limited \(No 5\) \[2022\] FCA 1475 \(fedcourt.gov.au\)](https://www.fedcourt.gov.au/judgments/2022/1475). Of interest is the following extract from the Court judgement:

*"The ACCC further alleged that, between 29 August 2013 and February 2014, Mr Ellis developed a strategy for addressing competition from overseas steel manufacturers whereby he and other BlueScope employees directed by him, on behalf of BlueScope, would seek to:*

- (a) restrict the volume of imported steel coming into Australia;*
- (b) persuade overseas steel manufacturers to increase the price at which they sold flat steel products to distributors in Australia; and/or*
- (c) threaten to make anti-dumping applications against jurisdictions in which overseas steel manufacturers were based unless the price at which they sold flat steel products to distributors in Australia was increased."* (at paragraph 35)

While the respondents denied such allegations, the Court found those claims to be made out – see the extract from the judgement at **Attachment B**.

Hence it is a matter of concern that members of the Australian aluminium extrusion industry, who possess substantial market power, either individually or collectively or both, appear to be seeking to use Australia's anti-dumping regime for objects ulterior to its purpose, that is, to reduce competition in the Australian aluminium extrusion products market contrary to competition law.

Have the views of the Australian Competition and Consumer Commission (**ACCC**) been sought and obtained and, if not, why not? This is not to suggest any cartel like behaviour such as that found in the above Federal Court case, but, rather, seeking to use anti-dumping for a purpose for which it was not intended. Presumably that would be to use anti-dumping for an 'improper purpose' under administrative law principles and conceivably constitute an abuse of power if given effect to.

To avoid any such suggestion and in any event it is respectfully requested that the Commission undertake to update the LME aluminium prices and MJP premiums used in the calculation of the constructed normal values so as to reflect current levels of such prices and premiums given that they have returned to their more typical levels. I would be grateful if you would confirm that this is being undertaken.

Failing such confirmation, it presumably will be necessary for application to be made for a review of the anti-dumping measures so as to ensure that current LME aluminium prices and MJP premiums are taken into account and the measures are not based on historic anomalies, such as overseas freight charges that prevailed during COVID and affected prices of imports as preliminary found by the Commission in the reinvestigation in Continuation Inquiry 591: [591 - 47 - report - adc - preliminary reinvestigation report 591.pdf \(industry.gov.au\)](#).

Also, is varying the anti-dumping measures as proposed in the national interest? If the effect of varying the anti-dumping measures is to maintain the existing high level of prices for aluminium extrusion products in Australia, which flows on into the high cost of, for example, construction of industrial, office and residential premises that are ultimately borne by Australian businesses and consumers, assuming they can afford those high construction costs, in the national interest? Has this been considered and, if not, why not? Whose interests are being taken into account if not the national interest?

It is respectfully submitted that the preliminary findings and proposed recommendations set out in the SEF require urgent reconsideration.

Finally, given the preliminary finding that exports from China are and have been at un-dumped export prices and that the Australian industry is not incurring any injury whether from import competition or otherwise, has the Minister been requested to make a direction that a review be conducted as to whether the anti-dumping measures against such exports remain warranted or should be revoked? It is submitted that such a request be made as a matter of urgency and appreciate your confirmation that such a request has been made.

Please let me know if you have any questions.

Yours sincerely,

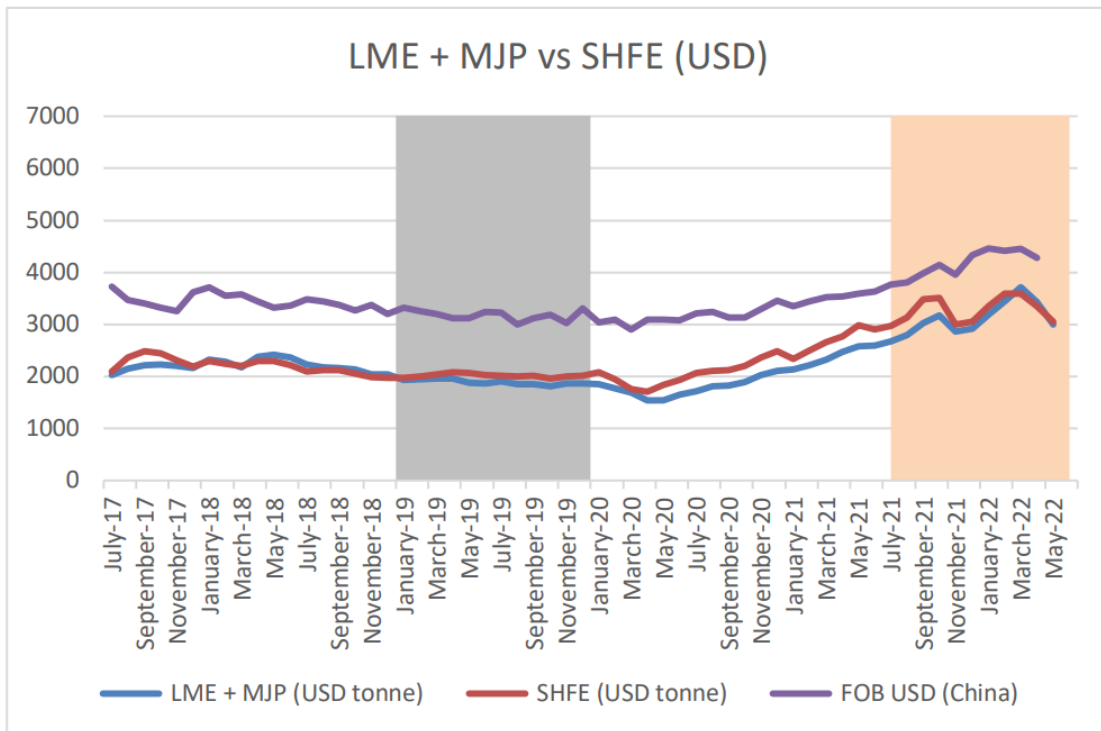


Paul Ingram

Attachment A

Extract from Capral Limited Application – LME Aluminium Prices and MJP Premiums

Figure 1 – LME aluminium + MJP vs SHFE (AUD)



**Attachment B**

**Extract from *Australian Competition and Consumer Commission v BlueScope Steel Limited*  
(No 5) [2022] FCA 1475**

- 1552 In conclusion, I find that the ACCC's allegations are established to the following extent. Each of BlueScope and Mr Ellis attempted to induce:
- (a) Selection Steel to contravene s 44ZZRJ by arriving at an understanding with BlueScope that contained cartel provisions, being provisions to the effect that:
    - (i) Selection Steel would use the list prices in CIPA's Distribution Market price lists as a base or floor price when selling flat steel products to steel users in Australia; and
    - (ii) BlueScope Distribution would sell flat steel products to steel users in Australia in accordance with CIPA's Distribution Market price lists, within the meaning of s 76(1)(d) of the Act;
  - (b) Apex Steel to contravene s 44ZZRJ by arriving at an understanding with BlueScope that contained cartel provisions, being provisions to the effect that:
    - (i) Apex Steel would use the list prices in CIPA's Distribution Market price lists as a base or floor price when selling flat steel products to steel users in Australia; and
    - (ii) BlueScope Distribution would sell flat steel products to steel users in Australia in accordance with CIPA's Distribution Market price lists, within the meaning of s 76(1)(d) of the Act;
  - (c) Southern Steel to contravene s 44ZZRJ by arriving at an understanding with BlueScope that contained cartel provisions, being provisions to the effect that:
    - (i) Southern Steel would use the list prices in CIPA's Distribution Market price lists as a base or floor price when selling flat steel products to steel users in Australia; and
    - (ii) BlueScope Distribution would sell flat steel products to steel users in Australia in accordance with CIPA's Distribution Market price lists, within the meaning of s 76(1)(d) of the Act;
  - (d) Vulcan Steel to contravene s 44ZZRJ by arriving at an understanding with BlueScope that contained cartel provisions, being provisions to the effect that:
    - (i) Vulcan Steel would use the list prices in CIPA's Distribution Market price lists as a base or floor price when selling flat steel products to steel users in Australia; and
    - (ii) BlueScope Distribution would sell flat steel products to steel users in Australia in accordance with CIPA's Distribution Market price lists, within the meaning of s 76(1)(d) of the Act;
  - (e) Selwood Steel to contravene s 44ZZRJ by arriving at an understanding with BlueScope that contained a cartel provision, being a provision to the effect that Selwood Steel would use the list prices in CIPA's Distribution Market price lists as a base or floor price when selling flat steel products to steel users in Australia, within the meaning of s 76(1)(d) of the Act;
  - (f) CMC Steel to contravene s 44ZZRJ by arriving at an understanding with BlueScope that contained cartel provisions, being provisions to the effect that:
    - (i) CMC Steel would use the list prices in CIPA's Distribution Market price lists as a base or floor price when selling flat steel products to steel users in Australia; and
    - (ii) BlueScope Distribution would sell flat steel products to steel users in Australia in accordance with CIPA's Distribution Market price lists,

- within the meaning of s 76(1)(d) of the Act;
- (g) OneSteel to contravene s 44ZZRJ by arriving at an understanding with BlueScope that contained a cartel provision, being a provision to the effect that OneSteel would use the list prices in CIPA's Distribution Market price lists as a base or floor price when selling flat steel products to steel users in Australia, within the meaning of s 76(1)(d) of the Act;
  - (h) one or both of Wright Steel and Citic to contravene s 44ZZRJ by arriving at an understanding with BlueScope that contained cartel provisions, being provisions to the effect that:
    - (i) one or both of Wright Steel and Citic would sell flat steel products to distributors in Australia at increased prices by reference to CIPA's Distribution Market price lists;
    - (ii) BlueScope and NZSA would sell flat steel products to distributors in Australia at increased prices by reference to CIPA's Distribution Market price lists,within the meaning of s 76(1)(d) of the Act; and
  - (i) Yieh Phui to contravene s 44ZZRJ by arriving at an understanding with BlueScope that contained a cartel provision, being a provision to the effect that Yieh Phui would sell flat steel products to import traders at a higher price than it was doing at the time of the Yieh Phui meeting by reference to CIPA's Distribution Market price lists, within the meaning of s 76(1)(d) of the Act.