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The Director, Investigations Unit 4  
Anti-Dumping Commission  
GPO Box 2013  
CANBERRA ACT 2600

### **Reinvestigation into aluminium extrusion exported from Vietnam**

Dear Director,

This submission is made on behalf of East Asia Aluminium (EAA) in response to the Anti-Dumping Commission's (the Commission) preliminary reinvestigation report into certain findings in Report No. 591.

At the outset, EAA wishes to express its concern with the lack of proper analysis and reasoning contained in the reinvestigation report to support the Commission's preliminary findings. In particular, EAA is concerned with the Commission's causality analysis and reasoning linking subject imports from Vietnam to injury, given its exports accounted for a mere 2% share of the Australian market, and the obvious other factors in the Australian market.

For the purposes of assessing causality between subject imports and injury, the Commission seems to have relied heavily on its price undercutting analysis, which showed undercutting ranging from 1% to 50% across the various finishes and model control codes. As an exporter, EAA does not have visibility of selling prices by Australian importers or the Australian industry into the Australian market and therefore accepts the Commission's price undercutting analysis as being accurate. However, EAA submits that the Commission's analysis is inadequate for isolating the impact from Chinese and Malaysian sources exempt from measures, and non-dumped Chinese sources subject to measures.

Subsection 269TAE(2A) of the Act requires that the Minister must consider whether any injury *'is being caused or threatened by a factor other than the exportation of those goods such as:*

*(a) the volume and prices of imported like goods that are not dumped;'*

The obligation to ensure non-attribution is found in Article 3.5 of the ADA and has been interpreted by the Appellate Body in US – Hot rolled steel<sup>1</sup>, which ruled:

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<sup>1</sup> Appellate Body Report, US – Anti-Dumping Measures on certain Hot-Rolled Steel products from Japan, WT/DS184/AB/R, para 223; pages 74-75.

*The non-attribution language in Article 3.5 of the Anti-Dumping Agreement applies solely in situations where dumped imports and other known factors are causing injury to the domestic industry at the same time. In order that investigating authorities, applying Article 3.5, are able to ensure that the injurious effects of the other known factors are not 'attributed' to dumped imports, they must appropriately assess the injurious effects of those other factors. Logically, such an assessment must involve separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports. If the injurious effects of the dumped imports are not appropriately separated and distinguished from the injurious effects of the other factors, the authorities will be unable to conclude that the injury they ascribe to dumped imports is actually caused by those imports, rather than by the other factors. Thus, in the absence of such separation and distinction of the different injurious effects, the investigating authorities would have no rational basis to conclude that the dumped imports are indeed causing the injury which, under the Anti-Dumping Agreement, justifies the imposition of anti-dumping duties.*

*We emphasize that the particular methods and approaches by which WTO Members choose to carry out the process of separating and distinguishing the injurious effects of dumped imports from the injurious effects of the other known causal factors are not prescribed by the Anti-Dumping Agreement. What the Agreement requires is simply that the obligations in Article 3.5 be respected when a determination of injury is made.*

The Appellate Body added<sup>2</sup>:

*[A]lthough this process may not be easy, this is precisely what is envisaged by the non-attribution language. If the injurious effects of the dumped imports and the other known factors remain lumped together and indistinguishable, there is simply no means of knowing whether injury ascribed to dumped imports was, in reality, caused by other factors. Article 3.5, therefore, requires investigating authorities to undertake the process of assessing appropriately, and separating and distinguishing, the injurious effects of dumped imports from those of other known causal factors.*

Given that selling prices of imports from Chinese and other Malaysian sources were also found to be undercutting the Australian industry's prices in the market during the review period, it was incumbent on the Commission to isolate and distinguish the effects from those sources, with attribution to EAA's exports. This is particularly relevant given EAA's negligible market share, which would suggest that other suppliers of aluminium extrusions offered more favourable pricing and/or terms.

It is illogical to suggest that price is a primary and determinative factor in the purchasing decisions of customers, and then highlight that imports from EAA were near the lowest in the market, yet only accounted for a negligible 2% market share. This in fact would suggest that other factors are clearly at play in the market.

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<sup>2</sup> Ibid., para 228, page 76.

Also, the Commission's undercutting analysis does not seek to address or answer the discrepancy between the magnitude of the observed undercutting by EAA imports, and the comparative levels of dumping. In the case of mill finish extrusions, EAA imports were found to be undercutting by between 1%-23%, yet the dumping margin calculated by the Commission for EAA's comparable mill finish extrusions was a mere █%. Likewise, undercutting of EAA imports of powder coated extrusions ranged from 1%-40%, yet the dumping margin for EAA's equivalent exports was █%.

This would indicate that none of the undercutting found to exist across the powder coated products, was attributable to dumping by EAA, and only a small fraction of the undercutting margin of mill finish products can be attributable to dumping. The remaining undercutting margins beyond the margin of dumping found by the Commission, must be caused by other factors and cannot be attributed to EAA's dumping.

Again, this would strongly suggest that undercutting stemming from other exempt export sources, and Chinese exports subject to measures, are the primary cause of injury, which is reinforced by the degree of market share held by the various sources of supply.

EAA urges the Commission to reconsider its preliminary findings and conclude that the original findings in Report 591 were correct.

Yours sincerely

John Bracic