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Non-Confidential
5 July 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 our previous submission in response to the recent publication of the Statement of Essential Facts (**SEF**) in relation to the review of the anti-dumping measures applying to exports of aluminium extrusions exported from the People's Republic of China (**China**), that is, Review 609.

As you would be aware, in my previous submission I drew attention to the proposed establishment of an effective floor price for all exports from China based 'constructed normal values' with those 'constructed normal values' being based, in turn, on historically high LME aluminium prices and MJP premiums. In other words, to exclude exports from China upon those historically high LME aluminium prices and MJP premiums falling, which they already have.

Capral Limited's submission in response to the SEF supports that contention, especially as it endorses the application of the combination fixed and variable duty method.

In endorsing that duty method, Capral Limited appears to be seeking to establish an artificially high floor price so as to not only exclude import competition from China but also to set artificially high prices for aluminium extrusions products in the Australian market. This is reminiscent of the price-fixing cartel conduct the subject of the Federal Court case referred to in the previous submission, namely, *Australian Competition and Consumer Commission v BlueScope Steel Limited* (No 5) [2022] FCA 1475. That is, to achieve a similar outcome as the price fixing conduct referred to and found to be occurring in that case, namely, to artificially increase prices in the Australian market except here the mechanism is not cartel arrangements but variation to anti-dumping measures. Such variation to the variable factors is being sought notwithstanding the absence of injury and dumping, let alone injurious dumping by exports from China, that warrant variation to the variable factors or the anti-dumping measures themselves.

Alternatively or in addition, is this resale price maintenance through anti-dumping measures but without the justification of preventing injurious dumping?

Either way, this, of course, would be an improper use of Australia's anti-dumping system as it would not be for the purpose of removing or preventing the injurious effects of dumping, especially when

there is no evidence of injury to the Australian industry or of dumping let alone injurious dumping caused by exports from China. It also would not be in the national interest with the increase in costs for the construction industry, particularly for residential dwellings, to be ultimately borne by Australian businesses and consumers.

Capral Limited also appears to have misconceived the preliminary findings in the SEF as the effective dumping and subsidy margin for residual exporters (i.e., the majority of exporters) was +0.9%, not +48.1%.

Given that the majority of exports from China were at effective margins of <1.0% (i.e., no dumping or subsidisation) altering the variable factors cannot be for the purposes of removing or preventing the injurious effects of dumping as (i) there is no dumping and (ii) no injury being incurred by the Australian industry and (iii) notwithstanding (ii), due to the absence of dumping by the majority of exports from China, the issue of injury does not arise. The relevant issue is not whether or to what extent the variable factors require alteration , if at all, but, rather, whether the anti-dumping measures applying to exports from China remain warranted or should be revoked. That is the issue and the only issue that needs to be addressed.

Finally, it also is of note that the cost of production in China in the 'constructed normal value' was calculated using a cost to make (**CTM**) based primary aluminium costs adjusted by reference to a benchmark.

The problem with that, as the Commission would be aware, is that, in adjusting the cost of primary aluminium with a benchmark, it obviously results in a cost of production that is not the '*cost of production in the country of origin*' as required by Article 2.2 of the WTO Anti-Dumping Agreement. Whatever it might be, it is not the cost of production in the country of origin, that is, China.

Presumably it is not the intent to recommend to the Minister 'constructed normal values' that do not reflect the 'cost of production' in China contrary to Article 2.2 of the WTO Anti-Dumping Agreement.

This is compounded by the amount of profit in the calculation of the 'constructed normal values'.

The amount of the profit in the 'constructed normal value' calculations apparently was based on '*data relating to the production and sale of like goods on the domestic marke*t'. That is surprising. It is surprising because a 'particular market situation' apparently exists in relation to that domestic market. Hence prices in domestic sales in that market presumably are unsuitable for use in determining normal values and that would include the profits comprised in those prices. Either domestic sales are unsuitable or suitable – there is no middle ground from which 'parts' comprised in the price can be 'cherry-picked'.

Having regard to these matters and those raised in my previous submission, together with the fact that it has been preliminary found that virtually all exports from China have not been at dumped prices and the Australian industry is not and has not been incurring injury, it is evident that varying the variable factors as proposed cannot be to prevent or remove the injurious effects of dumping – the sole objective of the anti-dumping measures.

That is, the object of anti-dumping measures is, as the Commission would be aware, not to eliminate import competition of exports from China from the Australian market, but to prevent or remove the injurious effects of dumping. In other words, to use the anti-dumping measures to impose a protective tariff at an unreasonably high level to "remedy" the comparative competitive

disadvantage of the Australian industry as a high cost/high priced globally uncompetitive industry is not a proper purpose for anti-dumping measures.

While such a strategy may be commercially sensible from a domestic industry perspective, although raising competition law issues, why and for what purpose would the Federal Government adopt such a strategy by recommending use of the anti-dumping regime for such an improper purpose, particularly when it would increase costs for the construction industry and further elevate the cost of residential dwellings and the cost of living, is unclear. It would not seem sensible industry policy. It would not seem to be in the national interest.

No doubt the Commission will be drawing the Minister's attention to such matters.

Please let me know if you have any questions.

Yours sincerely,

Paul Ingram

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