

17 July 2023

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Dear Mr Hawke

**Public File**

**Review of Measures Investigation No. 609 – Submission on behalf of Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd (“KAE”) and Kam Kiu (Hong Kong) Limited (“KHK”)**

**I. Introduction**

We refer to the submission of 28 June 2023 on behalf of Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd (“KAE”) and Kam Kiu (Hong Kong) Limited (“KHK”) (collectively Kam Kiu) commenting on the recently published Statement of Essential facts No. 609 in respect of the review of variable factors applicable to aluminium extrusions exported from the People’s Republic of China (China).

The Kam Kiu submission has raised a number of matters requiring address.

**II. Legislative provisions**

Division 5 of Part XVB of the *Customs Act* 1901 contains the relevant provisions for the review of anti-dumping measures. Subsection 26ZC (1) confirms that anti-dumping measures for the exported goods are in place and examines the circumstances in which a review of measures may take place.

Section 269ZB outlines the content and requirements of an application for the review of measures.

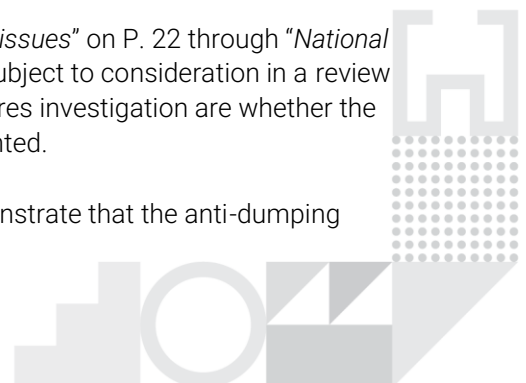
Subsection 269ZC(2) identifies what is required in an application from an interested party. Whilst it is recognised that the application must be in accordance the requirements (section 269ZB), subsection 269ZC(2)(c) states:

*“that there appear to be reasonable grounds for asserting either, or both, of the following:*

- (i) that the variable factors relevant to the taking of the anti-dumping measures have changed;*
- (ii) that the anti-dumping measures are no longer warranted.”*

The Kam Kiu submission includes commentary (commencing at “*Competition issues*” on P. 22 through “*National interest*” discussion ending on P.28 of the submission which are matters not subject to consideration in a review of variable factors investigation. The matters the subject of a review of measures investigation are whether the variable factors have changed and whether the measures are no longer warranted.

Subsection 269ZC(2)(c)(ii) indicates that an interested party can seek to demonstrate that the anti-dumping measures are no longer warranted. Kam Kiu has not made such assertions.



### III. Review of variable factors

#### **(a) Export price**

Kam Kiu contends that the grounds for calculating a deductive export price for Kam Kiu exports sales to Australia during the investigation period "did not exist".

Section 4.6.3 of Statement of Essential Facts No. 609 (SEF 609) confirmed the Commission's preliminary finding in respect of exports to Australia by Kam Kiu, namely:

*"Kam Kiu's sole Australian customer during the review period was KHK."*

Further:

*"The Commission found a commercial or other relationship between the KHK as buyer and Kam Kiu as the seller. This relationship appeared to influence the price because:*

- *Kam Kiu and KHK [are] related entities within the same corporate group;*
- *consistent with REP 543, goods were sold by KHK to its Australian customers at a loss, indicating that the importer will directly or indirectly be reimbursed, be compensated or otherwise receive a benefit for whole or any part of the price.*

*The Commission was therefore not satisfied that the export sales were at arms length."*

This finding in SEF 609 was consistent with the Commissioner's finding in Continuation of Measures Investigation No. 543 (i.e as published in REP 543). We question why Kam Kiu has sought to only challenge the determination of export price at this late stage of a second review of measures investigation.

The Commission's preliminary findings are consistent with the final findings in REP 543 and it is evident that the relationship between KAE (exporter) and KHK (importer) continues to influence the export price such that the export prices are at a loss.

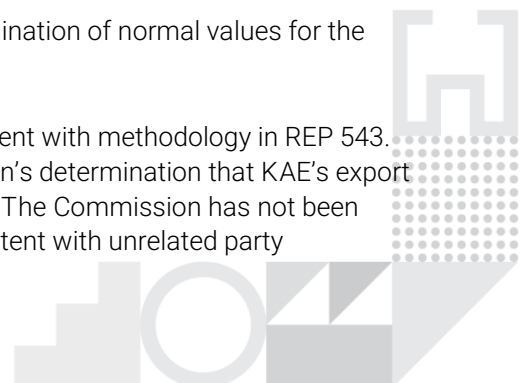
#### **(b) Normal value**

In the Kam Kiu discussions on normal values determined for Kam Kiu and the subsequent fair comparison commentary, the focus returns to the use of the deductive export price in the dumping margin assessment.

Kam Kiu's cost of production and S,G&A values as reflected in Kam Kiu's accounts were used by the Commission in constructing KAE's normal value. Due to the particular market situation finding for aluminium extrusions sold in China, the Commission utilised LME aluminium pricing (and MJP premiums, etc) in KAE's normal value.

Again, the normal value methodology for KAE in SEF 609 replicates the determination of normal values for the exporter as outlined in REP 543.

The subsequent determination of KAE's dumping margin in SEF 609 is consistent with methodology in REP 543. Kam Kiu's dissatisfaction with the findings in SEF 609 relate to the Commission's determination that KAE's export sales to its affiliate KHK were at a loss and a deductive export price was used. The Commission has not been satisfied that Kam Kiu has demonstrated that its related party sales are consistent with unrelated party transactions.



#### IV. Dumping duty methodology

Kam Kiu is further opposing the form of duty to be applied to its sales to Australia. The Commission, however, prefers the combination method form of duty to be applied where there are related parties involved in the transaction (between exporter and importer) and sales are not at arms length.

Capral supports the Commission's continued preference for a combination form of duty (i.e. variable plus fixed components) be applied to Kam Kiu's future exports to Australia. Again, this is consistent with the form of duty applied in REP 543 and is the most effective form of duty between related parties where the export transaction(s) are not arms length (or at a loss).

The Commission should not alter its stance on recommending the combination form of duty to be applied to Kam Kiu's exports to Australia (in the final report to the Minister).

#### V. Non-injurious price

The Commission has preliminarily recommended that the Minister not determine a non-injurious price in this review of measures investigation. The decision not to consider a non-injurious price is consistent with the approach of the Commission in investigations that involve a particular market situation finding.

The Commission recommended in REP 543 that the Minister not consider the non-injurious price. This recommendation was accepted by the then Minister. The Commission's preliminary finding to not recommend the consideration of the non-injurious price is consistent with previous investigations involving aluminium extrusions from China (most recently in RES 482 and 543).

#### VI. Recommendations

Kam Kiu's submission is critical of the Commission's determination of KAE's export prices and normal values as detailed in SEF 609. The determination of KAE's normal values and export prices in SEF 609 is consistent with the approach and findings in REP 543.

Capral is not aware of any change in circumstances (i.e. KAE exporting to an unrelated entity) that would justify a change in stance (as published in SEF 609) by the Commission. Similarly, Capral does not consider that the Commission should alter the form of duty to be applied to KAE in light of the finding that the export price from KAE to KHK is not arms length and the sales have been determined as being made at a loss.

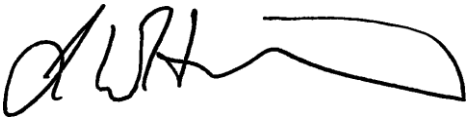
We also consider that the Commission's recommendation that the Minister not consider a non-injurious price for aluminium extrusions exported from China to Australia is consistent with the Commission's practice involving goods where a particular market situation finding has been made.

Capral therefore supports the Commission's preliminary findings as detailed in SEF 609 and urges the Commission to not alter its findings in relation to the determination of normal values and export price for KAE.



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



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