By email

TO: Investigations Unit 4 | Investigations

Anti-Dumping Commission of Australia

Re: Guangdong Zhongya Shaped Aluminium – Submission on SEF 482

Dear Director:

This submission is filed on behalf of Guangdong Zhongya Shaped Aluminium ("Zhongya") in this investigation. The Antidumping Commision should accept the arguments below and issue a revised final determination.

We submit this comments on the Commissioner' Section 9. REVOCATION REVIEW OF MEASURES – ZHONGYA" and Section 10. LIKELIHOOD THAT SUBSIDISATION AND MATERIAL INJURY WILL CONTINUE OR RECUR.

Under section 269ZDA, the Commissioner must make a revocation recommendation to the Minister in relation to the measures, unless the Commissioner is satisfied as a result of the review that revoking the measures:

- would lead to, or be likely to lead to, the continuation or recurrence of the subsidisation that the measures are intended to prevent; and
- would lead to, or be likely to lead to, the continuation or recurrence of the material injury that the measures are intended to prevent.

A. LIKELIHOOD THAT SUBSIDISATION WILL CONTINUE OR RECUR

A.1 The Commission confirmed that Zhongya has ceased purchasing aluminium raw material from SOEs at less than adequate remuneration <u>since 2010</u>.

In Section 10.1 in the SEF 482, it states:

"As set out in section 7.7, the Commission has reviewed all available information, including data provided by Zhongya and determined that they have received a financial contribution conferring a benefit in respect to the goods, in the form of subsidies listed in table 11 during the review period. The amount of benefit received by Zhongya was attributed to each unit of aluminium extrusions (per tonne) using Zhongya's total volume of sales of the goods. The Commission finds that Zhongya's subsidy margin has increased to 0.2% over the review period."

Also the Commission considers, based on its examination of Darley's applications for assessment of final duty(Specifically, subsidy margins relating to program 15 were determined to be 0.3 per cent and 1.7 per cent in the initial applications for final assessment of duty and then shifted to the Commission not finding that Zhongya received any benefit under this program in recent years), that the implementation of measures in 2010 Zhongya, has ceased purchasing aluminium raw material from SOEs at less than adequate remuneration.

Therefore the Commissioner confirmed that

1) Zhongya purchases aluminium raw material from non SOE since 2010, and
2) Total countervailing duty is below the actionable subsidy margin for a new investigation (2 per cent in the case of China).

A.2 The Commission considers that, without the imposition of measures, Zhongya will likely return to its former purchasing behaviour by purchasing aluminium raw materials from SOEs similar to those seen in the original investigation (INV 148) .

On its page 62, The Commission considers that, without the imposition of measures, Zhongya will likely return to its former purchasing behaviour by purchasing aluminium raw materials from SOEs. In the Commission's view, there is an increased likelihood that the removal of measures would be likely to lead, to a recurrence of the subsidisation and material injury that measures imposed on Zhongya's exports are intended to prevent. Therefore, the Commission considers that it is more probable than not that Zhongya will export the goods at injurious subsidised prices, similar to those seen in the original investigation (INV 148).

"Zhongya will likely return to its former purchasing behaviour by purchasing aluminium raw materials from SOEs" is a kind of presumption of guilt.

The logic or only logic behind the so called "likely return to its former purchasing behaviour by purchasing aluminium raw materials from SOEs in the original investigation (INV 148)", is based on the statement how the 7.6% was determined in INV 148:

"In INV 148, the original investigation imposing anti-dumping measures on exporters of aluminium extrusions from China, Zhongya stated in its REQ that it had received benefits under two countervailable programs:

- Program 10 – Preferential tax policies for foreign invested enterprises; and
- Program 13 – exemption of tariff and import VAT for imported technologies and equipment.

However, during the on-site verification of Zhongya's information, the Commission found that Zhongya had purchased significant quantities of aluminium ingot from State owned enterprises (SOEs). On examination, the Commission found that Zhongya had received a benefit through its purchase of ingot from SOEs, and had therefore received a benefit under a third countervailable program, aluminium provided at less than adequate remuneration. On the basis of the findings made by the Commission in INV 148, the subsidy margin determined with respect to aluminium extrusions exported to Australia by Zhongya was 7.6 per cent."

Our arguments on the assertion of "likely return to its former purchasing behaviour by purchasing aluminium raw materials from SOEs" are follows:

1. There is no commercial benefits or incentives for Zhongya to change its existing supply arrangement –buying ingots from non SOE. Zhongya's domestic and international business are growing, relationship with raw material suppliers is strong. There is No logical reason to change existing arrangement.
2. There is no commercial benefits or incentives for its importer(s) if Zhongya to change its existing supply arrangement - buying ingots from non SOE. Darley has suffered a lot in past years when 7.6%, even less % measurement against Zhongya's export by missing duty assessment applications etc...
3. Even if Zhongya were to return to its former purchasing behaviour, it would **STILL** have purchased aluminium raw materials **from non SOEs.**

   The statement in the SEF that "during the on-site verification of Zhongya's information, the Commission found that Zhongya had purchased significant quantities of aluminium ingot from State owned enterprises (SOEs)" **was incorrect.**

   The fact is:

   1) Back to 2010, Zhongya's lawyer wrote an email "Application for delay of our reply of Chinese domestic suppliers of aluminum ingot" to [redacted] (name of the director) of The Custom on 11th of Feb, 2010. In the email, Zhongya stated it will provide mill certificates (about 163mb) and business license of all its ingot suppliers.

   2) [redacted] (Name of the director) Director Operations 3, replied on 16th of March, 2010 said " I, as delegate of the CEO of Customs and Border Protection for this matter, **am prepared to consider an additional submission in response to the SEF provided it is lodged by 29 March 2010**. I expect this affords New Zhongya sufficient time to examine the latest calculations and make submissions about those calculations."

   3) Zhongya submitted all the documents in CD before 29th of March, **in which [redacted] ingot suppliers were non SOEs and based on that the countervailing calculation became**

to [redacted] (countervailing duty %) using 3 month LME or [redacted] (countervailing duty %) using LME cash.

4) However in the final report of 148, the original investigation disregard the documents submitted before 29th of March and treated ALLZhongya's ingot suppliers were SOEs that led Zhongya being determined 7.6% countervailing duty measurement;

5) Even the Trade Measures Review Officer supported Zhongya's argument, the Reinvestigation officer still dismissed Geoff's approval of the extension and associated Zhongya documents.

All the email corresponds and submissions are attached.

Therefore in regard the "likelihood that subsidization will continue or recur", Zhongya and its Australian customer(s) have NO incentive to return to its former purchasing behavior. If Zhongya were to return to its former purchase behavior, it would still be purchasing its ingots from non SOEs.

B. LIKELIHOOD THAT MATERIAL INJURY WILL CONTINUE OR RECUR

While the SEF 482 states:

"At the consideration stage of investigation 442, the Commission noted that the injury analysis period has been affected in various ways by past cases examining dumping and subsidisation of the goods from China, Malaysia and Vietnam. This results in the consideration of material injury in respect of Zhongya's exports in isolation to other exports challenging."

The Commission still took its analysis on what pricing and the subsequent impact on profit would be in the future in two scenarios:

a. Where measures are removed from Zhongya's importation of goods; and

b. What could happen if Zhongya returned to its pre measures behaviour of sourcing raw materials from SOEs.

As discussed in Section A, both scenarios have Nil or very little impact on pricing and profit in the future:

Scenario (a) Current Zhongya's countervailing measurement is **0.2%** in 482, and Zhongya's dumping measurement in recently finished 442 is **-4.2%.** Overall where the 0.2% is removed from its importation good, Zhongya's price will still be much higher than all other Chinese exporters, **including** [redacted] (name of exporters) **who is not subject to any measurements**. See more details in below analysis.

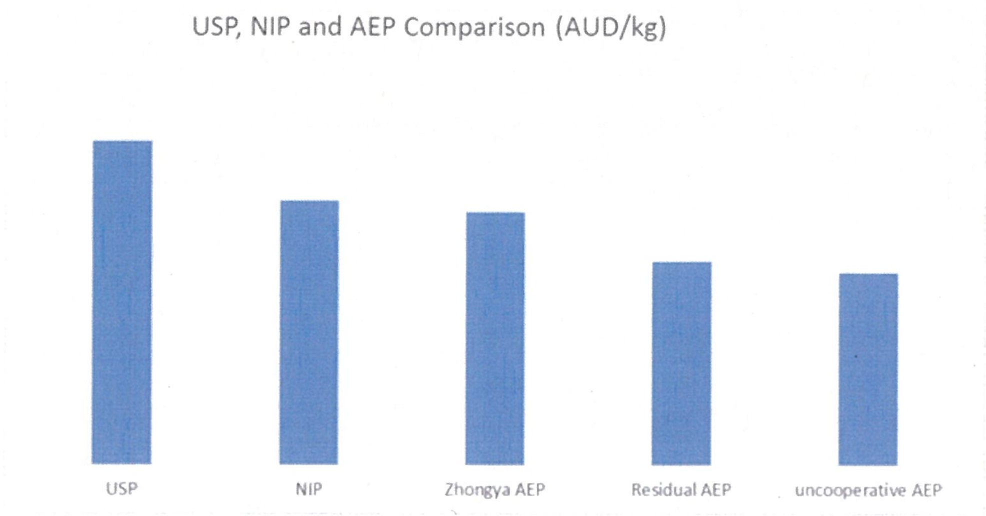
Scenario (b) Even though there is no incentive for Zhongya to back to its pre measures behavior of sourcing raw materials, if does, Zhongya will still source its raw materials from non SOEs. See details in section A and attachments.

In 442, Zhongya's importer Darley made 3 submissions on Zhongya and [redacted] (name of exporters). (Investigation 442 requests combining both companies in No material injury submissions) exports have not caused injury to the Australian industry on the basis that price, volume and associated profit and return on investment, plus other causations from China, Malaysia and Vietnam, circumvention etc..

To demonstrate that there is NO likelihood that material injury in respect of Zhongya's exports in isolation to other exports will continue or recur. We provide following evidences to support our claims on:

B.1 Price Analysis

In SEF 482, there a graph indicates that Zhongya's prices are lower than both the NIP and the USP

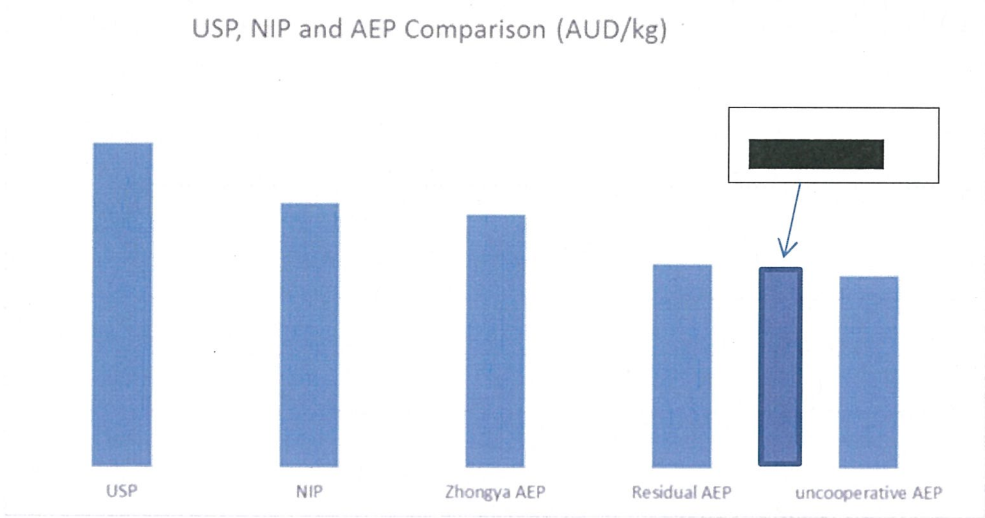


However it also confirms that <u>Zhongya's price is higher than other Chinese exporters</u>.

Most importantly, in recent investigation 442,

"The Commission conducted a comparative analysis of the export pricing for both Jiangsheng Aluminium and Zhongya Aluminium in relation to other Chinese exporters. This analysis compared Jiangsheng Aluminium and Zhongya Aluminium's export price at an FOB level, with the export prices for the other Chinese exporters including any interim dumping and countervailing duty payable. **The Commission's analysis indicates that the export price for one of Jiangsheng Aluminium and Zhongya Aluminium was below the other Chinese exporters' prices, whereas for the other it was above."**

If we combine the two analysis from the Commission together, we will have following graph:



The above graph can only confirm that NO Price Suppression attributed from Zhongya. Simply because other exporters including [redacted] (name of exporters) who is NOT subject to any measurements practise much lower prices than Zhongya. **It is not logical that the price suppression is attributed from a highest price exporter.**

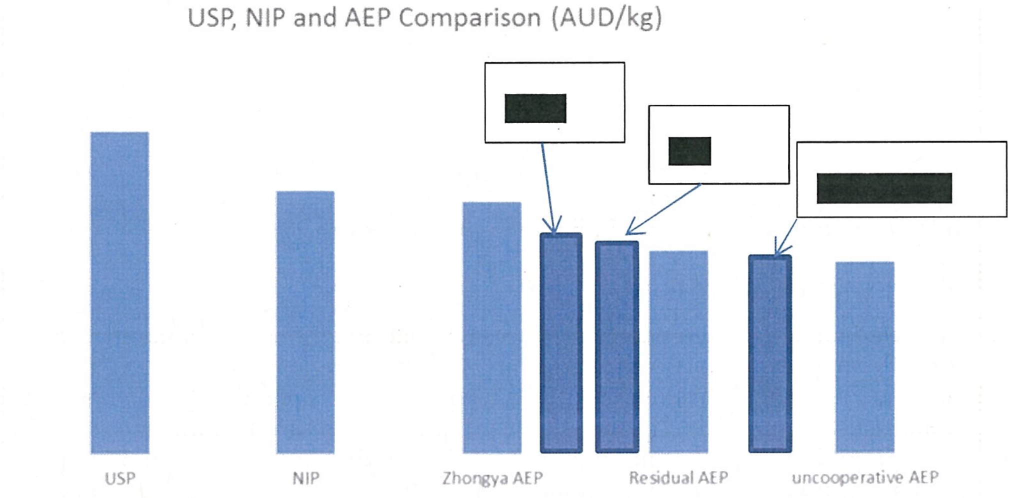
In [redacted] (name of an importer) previous submissions, it showed that

1) Zhongya and other major Australian Industry members are using a price formula (LME + Spread) to price the market. Zhongya uses 3 month LME for pricing, which normally is USD [redacted] (dollar amount) higher than [redacted] (name of Industry member) and other local extruders' Cash LME

2) [redacted] (name of Industry member) mill sales price and "spread" is much lower that Zhongya's (Evidence of [redacted] (name of Industry member) Jan 2017 price to a local customer provided by Darley's legal representative Moulis Legal)

3) One of Australian Industry players' price is lower than [redacted] (name of Industry member) based on its price to the same customer in the same month.

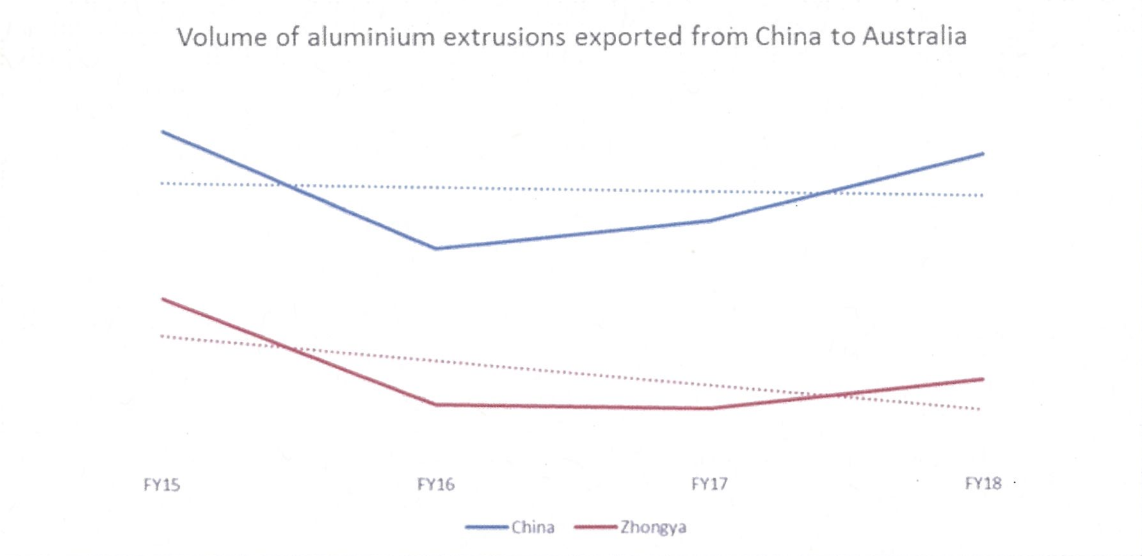
So the graph can be drawn as following:



In Zhongya's view, revoking the measures for Zhongya **would NOT lead**, or be likely to lead, to Zhongya's exports continuing to undercut the Australian industry's selling prices, and this undercutting is unlikely due to <u>prices of other players including local extruders and the Exporter who is not subject to any measurements are lower than Zhongya's</u>.

B.2 Volume analysis

Following graph – figure 8 in SEF 482 was used in the volume analysis by the Commission.



However all we can see are:

1) Comparing with itself, Zhongya's volume is decreased from FY15;
2) Comparing with other Chinese exporters, **Zhongya's average volume –dot line is sloping away far more than the dot line of other Chinese exporters**.

In the SEF 482 volume analysis, the Commission

" also undertook analysis of the correlation between Zhongya's prices and volume of exports. The analysis shows that approximately 6 per cent of Zhongya's volumes are dependent on price and the remaining 94 per cent related to other factors. This suggests that Zhongya is a price setter in the Australian market."

From the above statement, Zhongya's price increases (when LME increases) no matter its export volume might decrease or flat at that time. it confirms that in essence Zhongya's price and volume are independent. There is no linkage between volume increase and price adjustment.

C. Conclusion

Based on the above evidence, we demonstrate to the Commission that:

- Zhongya receives little subsidisation for their exports of the goods. The subsidization is always far less than 2% which is below actionable level.
- Current 0.2% countervailing rate (and -4.2% dumping rate) will keep Zhongya's overall margin well below 2% even adding not happening additional VAT rebate.
- Zhongya's purchase behaviour is consistent. Before or after 2010 Zhongya demonstrates it always purchasing raw materials from non SOEs.
- the evidences above demonstrate Zhongya's price was, is and going to be higher than other industry players including Australian local extruders, Chinese exporters and exporters who not subject to any measurements if Zhongya's countervailing measurement is removed.

Respectfully submitted,

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