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The Director - Investigations 4
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Review of aluminium extrusions exported from China – Review 482

Dear Director,

This submission is on behalf of PanAsia, in response to the Anti-Dumping Commission's (the Commission) preliminary findings set out in Statement of Essential Facts 482 (SEF 482). In reviewing the preliminary calculations, we have identified numerous calculations which have resulted in PanAsia's dumping margin being overstated.

We provided a summary of these calculation errors to the Commission on 13 March 2019. The Commission reviewed our summary and after reviewing the issues, notified that it accepted some of the errors and disagreed with others. The Commission's corrected calculations were provided to PanAsia on 15 March which showed a revised dumping margin of [redacted]%.

A review of these revised calculations confirms that errors which were intended to be corrected, continue to exist. This submission outlines and explains each of these errors in greater detail which clear reference to specific spreadsheets showing the exact nature of the error.

1. **Uplift of primary aluminium costs have been applied incorrectly.**

a) Mill finish material costs

The Commission concludes in SEF 482 that, '*due to the influence of the GOC in the domestic market for primary aluminium, the exporters' records do not reasonably reflect competitive market costs for the production or manufacture of the goods'*. Therefore, the replacement of costs is to be applied to domestically purchased primary aluminium, and not other cost of production such as electricity, manufacturing overheads, paint, labour, etc.

In applying the original uplift of PanAsia's costs, the Commission applied the percentage uplift to the summary costs shown below which relate to '*material costs*'. It appears that the Commission misunderstood these costs to relate to <u>raw</u> material costs only. This is not correct as supported by the detailed source costing worksheets used by the Commission to verify PanAsia's costs up through to its audited statements and down to invoices for its purchased primary aluminium.

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The material costs reported in the Commission's uplifted CTMS worksheet relate to the full cost of production of self-produced billet and purchased billet. That is, along with the primary aluminium ingot, it also includes cost for each of the following:

- energy (oil, diesel & gas);
- other raw materials (magnesium, silicon, copper);
- overheads (depreciation, other manufacturing);
- utilities (electricity and water);
- labour.

These production costs are clearly identified in the detailed costing worksheet verified by the Commission (refer to screenshot below and **Appendix A – Step 1 worksheet**). Aluminium ingot costs are separately reported in the melting department cost centre, along with all other relevant costs consumed in the production of billet. It is only the monthly aluminium ingot costs highlighted blue in the screenshot below that are required to be uplifted.

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All of the other production costs are incurred in the production and conversion of primary aluminium ingot into aluminium billet. Therefore, whilst primary aluminium ingot accounts for 92% of the total production cost of billet, the other production costs listed above, and which account for the remaining 8% of the total cost of billet, have been incorrectly uplifted.

b) Anodised and powder coated material costs

In addition to the Commission's uplift method incorrectly resulting in the total production costs of self-produced billet being uplifted, the Commission's uplift is also applied to the material costs of anodised and powder coated extrusions. It again appears as though the Commission considers these material costs to be discrete primary aluminium costs used in the production of anodised and powder coated products. This is not correct as evidenced by the consistent formula used in the submitted and verified cost worksheets.

The primary material used in the production of anodised and powder coated products is [redacted]. Therefore, the reported material costs for anodised and powder coated products is the [redacted].

This is confirmed by the formula shown in the screenshot below which is taken from the Commission's revised uplift calculations. It shows that the material cost for anodised extrusions in September 2017 is calculated by multiplying the [redacted] in September 2017 (cell D16 = [redacted]) by the production volume of anodised extrusions manufactured in that same month (cell D40 = [redacted]kgs).

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By uplifting the material costs reported for anodised and powder coated products, the Commission is uplifting the total cost of production of billet as outlined above in section 1a, and then again applying the uplift to the [redacted]. In doing so, the Commission is applying an uplift to the primary aluminium costs twice and in addition, applying an uplift to all production costs associated with the [redacted] cost centre and the [redacted] cost centre which are relevant to production of mill finish extrusions.

The extruding workshop includes cost for each of the following:

- [redacted];
- [redacted];
- [redacted];
- [redacted];
- [redacted];
- [redacted];

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The costs of manufacture transferred from the [redacted] cost centre includes the following cost items:

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Therefore, it is clear that the Commission's uplift method targets and is applied to, all of the production costs associated with self-produced billet and total manufacturing costs of the [redacted] and [redacted] cost centres. This goes well beyond the stated methodology of only uplifting the primary aluminium which was found to have not been a competitive market cost.

c) Method of correction

To correct the errors outlined above, the calculated percentage difference for ingot and billet must be applied directly to the actual costs of [redacted], [redacted] and [redacted] consumed in production. When applied correctly in this way, the resulting uplifted cost to make for mill finish extrusions automatically leads to an uplifted material cost for anodised and powder coated extrusions.

For ease of understanding and the ability to more accurately review the corrections, we submit '**Attachment A - Uplifted CTMS & NV.xls**' which applies the uplift methodology outlined above. In the worksheet titled '**Step 1. Monthly CTM**', the cells highlighted in green (Columns H, AV, BC, BE, BG, BI and BK) reflect new columns added to the original source costing worksheet and the uplifted values for PanAsia's aluminium costs. These uplifted aluminium costs lead to an uplifted material cost for mill finish extrusions and corresponding uplifted unit cost of mill finish extrusion, which is highlighted green in the worksheet titled '**Step 2. Unit CTM summary**' and the uplifted material costs in '**Step 3. COM by workshop**'.

The uplifted material costs in Step 3 flow through to an uplifted CTM for mill finish extrusions, which is then captured and reflected in the material costs of anodised and powder coated extrusions. The uplifted unit CTM for each workshop is then reported on a PCN basis in the worksheet titled '**Step 4. CTMS by PCN**'. At this point, domestic SG&A is added to calculate the uplifted unit CTMS for each model exported to Australia.

2. Calculated uplift ratios are incorrect.

PanAsia notified the Commission that its uplift ratios were incorrect as [redacted] was incorrectly recorded as [redacted]. On review, the Commission accepted the error and corrected the ratios accordingly.

However, as explained in section 1 above, the correct uplift must be applied separately to [redacted], [redacted] and [redacted] costs. For ingot costs, the ratios are required to be calculated and applied taking into account the quarterly ratios between [redacted] ingot purchase volumes. The table below outlines these correct ratios which the Commission is able to check and confirm against '**Attachment B – PA Aluminium Purchases.xls**'.

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For [redacted] costs, no ratio is needed as all [redacted]. Therefore, the uplift percentage ought to be applied directly to the monthly billet costs.

For [redacted] costs, as these costs relate to both [redacted], the revised ratios calculated by the Commission, which take account of the quarterly ratios between to [redacted], [redacted] and [redacted] volumes. These are outlined in the table below.

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The corrected ratios outlined above are included in the revised calculations at 'Step 1' worksheet within Attachment A.

3. **Incorrect upward adjustment for ocean freight and marine insurance**

PanAsia notified the Commission that incorrect upward adjustments had been made to the normal values which took account of ocean freight and marine insurance costs. In doing so, the normal values were effectively CIF prices which were then compared to FOB export prices which deducted ocean freight and marine insurance expenses.

The Commission reviewed and accepted these errors, which were subsequently corrected in the Commission's revised calculations.

4. **Incorrect upward adjustment for inland freight**

PanAsia notified the Commission that there appeared to be an incorrect upward adjustment for inland transport incurred by OPAL, as these selling expenses were already captured in the upward adjustment for OPAL's SG&A. The Commission reviewed and advised that a double count did not exist as the Commission had deducted inland transport expenses from the OPAL SG&A calculation.

PanAsia has reviewed and accepts that the adjustment is appropriate.

5. **Deductive export prices do not allow for proper comparison with normal value as they reflect different dates of sale.**

The Commission has preliminarily determined that export prices are not arms-length transaction and calculated export prices using the deductive method. In doing so, it has relied on the arms length sales by PanAsia Australia (PAA) and deducted post-exportation expenses to calculate a FOB export price to be compared with normal values.

Sales by PAA are made on [redacted] after the goods are exported from China. This period covers shipping of [redacted] weeks and [redacted] weeks of stock being held in inventory prior to sale. Therefore, a sale by PAA in [redacted] would have been exported from China in [redacted].

A timing adjustment to take account of the lag between date of export upon which the normal value is based, and the date of sale by PAA which is the basis of the deductive export price, was adjusted for by the Commission in the previous review. Likewise in this review, a clear difference exists in the date of sale of the normal value and deductive export price. Without a proper timing adjustment, the Commission is effectively comparing a normal value in one quarter with an export sale in the following quarter.

After notifying the Commission of this error, PanAsia was informed that an adjustment was not accepted as PanAsia did not raise the adjustment during verification. This is an unreasonable position for the Commission to hold for the following reasons.

First, the timing adjustment is only required in these circumstances given the Commission's decision to use the deductive export price method following a finding that export sales were not arms-length transactions. Had the Commission based export prices on OPAL's invoiced export sales, no such timing adjustment would be necessary as both export prices and normal values would be compared on the date of export.

Second, PanAsia was not informed of the Commission's deductive export price method until after its verification visit. At the time of the verification, PanAsia was contending that its exports were arms-length and as such, no timing adjustment was required. On that basis and as noted above, no such timing adjustment would be required if those export sales were found to be arms-length. It is unreasonable to expect that PanAsia would have been in a position to make a claim for an adjustment, when the Commission's determination and publication of the deductive method was made after the exporter verification had been completed.

Finally, whilst PanAsia was not in a position during verification to know of the Commission's deductive export price method and therefore unable to present a claim for adjustment, the primary consideration in determining whether an adjustment is required, is whether the claimed factor leads to differences which affect price comparability. This was confirmed by the WTO Panel's reading of Article 2.4 of the Anti-Dumping Agreement in *Egypt — Steel Rebar*[1]:

> [W]e read Article 2.4 as explicitly requiring a fact-based, case-by-case analysis of differences that affect price comparability. In this regard, we take note in particular of the requirement in Article 2.4 that '[d]ue allowance shall be made *in each case, on its merits*, for differences which affect price comparability' (emphasis added). We note as well that in addition to an illustrative list of possible such differences, Article 2.4 also requires allowances for 'any other differences which are also *demonstrated* to affect price comparability' (emphasis added). Finally, we note the affirmative information-gathering burden on the investigating authority in this context, that it 'shall indicate to the parties in question *what information is necessary* to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties' (emphasis added). In short, where it is demonstrated by one or another party in a particular case, or by the data itself that a given difference affects price comparability, an adjustment must be made. In identifying to the parties the data that it considers would be necessary to make such a demonstration, the investigating authority is not to impose an unreasonable burden of proof on the parties. Thus, the process of determining what kind or types of adjustments need to be made to one or both sides of the dumping margin equation to ensure a fair comparison, is something of a dialogue between interested parties and the investigating authority, and must be done on a case by- case basis, grounded in factual evidence.
>
> [original emphasis]

[1] Panel report; WT/DS211/R, Egypt – Steel rebar from Turkey, para 7.352, page 85.

Likewise, the Appellate Body ruled in *US — Hot-Rolled Steel*[2] that an investigating authority cannot exclude any differences affecting price comparability from being the object of an allowance:

> Article 2.4 of the Anti-Dumping Agreement provides that, where there are 'differences' between export price and normal value, which affect the 'comparability' of these prices, '[d]ue allowance shall be made' for those differences. The text of that provision gives certain examples of factors which may affect the comparability of prices: 'differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences'. However, Article 2.4 expressly requires that 'allowances' be made for '*any other differences* which are also demonstrated to affect price comparability.' (emphasis added) There are, therefore, no differences 'affect[ing] price comparability' which are precluded, as such, from being the object of an 'allowance'."

There is no doubt that different periods directly impact selling prices of aluminium extrusions, given that primary aluminium ingot is the key factor for determining prices, and it is referenced to monthly LME prices. That is, movements in the monthly average LME price for aluminium ingot leads to a corresponding movement in the price of aluminium extrusions.

Therefore, PanAsia contends that sufficient evidence exists to confirm that the deductive export prices are based on sales made up to [redacted] after the date of export. Given that normal values are based on the date of export, it is apparent that a lag of [redacted] exists between export price and normal value. With the observed fluctuations in the LME price for ingot over the review period, a [redacted] lag has a significant impact on the price comparability of the normal values and export prices. As such, a timing adjustment is warranted using the same method relied upon by the Commission in the previous review.

6. **PAA SG&A rate is overstated as it ignores the [redacted] sales made during the review period.**

During the Commission's importer verification to PAA, source documents were provided showing that for three of the sampled consignments, PAA [redacted]. These [redacted] sales amount to [redacted] tonnes during the review period, which represent [redacted]% of PAA's total sales volume over the same period. Refer to '**Attachment C – [redacted].xlsx**' for a full listing of [redacted] sales during the review period.

In deducting PAA's SG&A expenses to calculate a FOB export price, the Commission calculate a percentage rate based on total operating expenses apportioned across total sales revenue. This approach makes no allowance for the fact that [redacted]. Therefore, the calculated SG&A rate is overstated as it incorrectly attributes to these [redacted] sales, operating expenses which are not relevant.

To correct this overstatement, PanAsia proposes that the Commission calculate a weighted average SG&A rate using the following method of calculation (refer to **Attachment D – Revised SG&A.xlsx**':

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[2] Appellate Body report; WT/DS194/AB/R, US – Hot rolled steel from Japan, para 177, page 60-61.

This method correctly and more accurately accounts for [redacted] sales and the operating expenses relevant to those [redacted] sale. The difference between this method and the Commission's preliminary method is a reduction in the SG&A rate from [redacted]% to [redacted]%.

7. **PAA's selling prices are understated by the inclusion of [redacted].**

As confirmed during the importer verification, PAA [redacted]. These [redacted]. Given that [redacted].

As the Commission's deductive method relies on PAA's selling prices into the Australian market, it is imperative that sales of [redacted] are removed from the calculations to ensure that they do not distort the actual selling prices of Chinese imports. To allow for these [redacted] sales to be removed from the calculations, PAA submits its sales listing which includes a column identifying the [redacted]. Refer to '**Attachment E -** [redacted] **sales - Jan to Jun 18.xlsx**' and '**Attachment E -** [redacted] **sales - Jul to Dec 17.xlsx**'.

8. **Incorrect adjustment for non-refundable VAT.**

During the exporter verification, PanAsia confirmed that the non-refundable VAT rate changed in the June quarter 2018 as a result of the decision by the Government of China to reduce the VAT rate applicable to aluminium extrusions from 17% to 16%. This has the effect of reducing the non-refundable VAT rate from 4% to 3%. These reduced rates are applicable from 1 May 2018.

The Commission's calculations include an upward adjustment to normal values for non-refundable VAT based on the rate of 4%. The 4% rate is applied to all periods including June quarter 2018 when the reduced rate of 3% was applicable.

PanAsia requests the Commission to correct this error by applying a 3% upward adjustment for non-refundable VAT to June quarter 2018 normal values.

Yours sincerely

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