



J.BRACIC & ASSOCIATES
TRADE REMEDY ADVISORS

PO Box 3026
Manuka, ACT 2603
Mobile: +61 499 056 729
Email: john@jbracic.com.au
Web: www.jbracic.com.au

27 March 2019

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 made collectively on behalf of PanAsia Aluminium (China) Limited (PanAsia China), OPAL (Macao Commercial Offshore) Limited (OPAL) and PanAsia Aluminium Pty Ltd (PA Australia), in response to the Anti-Dumping Commission's (the Commission) preliminary findings set out in Statement of Essential Facts 482 (SEF 482). Unless otherwise stated, these companies are collectively referred to as PanAsia throughout this submission.

Application of the lesser duty rule

The Commission's Dumping and Subsidy Manual (the Manual) outlines the policy and practice with respect to the Minister's discretion to apply a lesser duty, where the lesser duty is adequate for preventing the recurrence of injury caused by dumping. The Manual notes:

The Dumping Duty Act requires the Minister to have regard to the desirability of specifying a lesser amount of duty than the full dumping or subsidy margin where the imposition of that lesser amount is adequate to remove injury. This is commonly known as the 'lesser duty rule'.

...

A lesser dumping duty may be imposed where the NIP of the goods is less than the normal value of the goods as ascertained by the Minister.

...

Section 269TACA concerns the NIP of the goods exported to Australia and states inter alia that it is "...the minimum price necessary...to prevent the injury, or a recurrence of the injury..." which arises from dumping or subsidisation. These provisions incorporate the principle in Article 9.1 of the ADA and Article 19.2 of the SCM Agreement, which concern the desirability of imposing a lesser duty where it is adequate to remove the injury.

...

The Minister is not required to give consideration to the lesser duty rule where (as relevant to the type of notice) the Minister is satisfied that one or more of the following circumstances exist:

PUBLIC VERSION

- *in the case of a dumping duty notice, normal value was not able to be ascertained under s.269TAC(1) because of the operation of s.269TAC(2)(a)(ii)*
- *the Australian industry consists of at least 2 small-medium enterprises (SMEs)*
- *in the case of a countervailing duty notice, the country concerned had not complied with Article 25 of the SCM Agreement for the compliance period.*

*Where any of the three circumstances above are present, the Minister is not required to, **but may still, consider the application of the lesser duty rule**. The discretion of the Minister to consider a lesser duty in these circumstances also applies to the Minister's consideration of undertakings. [emphasis added]*

This confirms that the Minister has the discretion to consider and decide to apply the lesser duty rule, notwithstanding that one of the circumstances outlined above exists in the context of a review.

Minister's discretion to not impose measures

In June 2011¹, the Australian Government announced reforms to the anti-dumping system aimed at improving the way in which the system was administered. Those reforms were a response to the Productivity Commission Inquiry Report No. 48², Australia's Anti-dumping and Countervailing System.

In response to the Productivity Commission's proposed public interest test (Recommendation 5.1), the then Government announced that the Minister's current unfettered discretion not to impose measures was adequate '*to take account of the public interest when circumstances warrant broader matters be considered*'. The then Government's report explains that the Commission '*already examines the effect on the market in determining the causes of injury to the industry and in determining the non-injurious price, and it is now proposed the Branch will provide the Minister with information specifically on these matters.*'

PanAsia submits that the circumstances in the review of the measures applicable to aluminium extrusion imports from China, warrant a recommendation to the Minister that the lesser duty rule be considered and applied. This would ensure that duties are imposed on the basis of the non-injurious price, which would prevent the recurrence of injury to the Australian industry. At the same time, the lesser duty would ensure that downstream businesses that rely on imports, aren't further weakened by having to bear increased input costs which render them uncompetitive against imports of fully fabricated products that they compete against.

In PanAsia's situation, its downstream Australian customers remain loyal and continue to source their extrusion requirements, despite the imposition of a 41% interim dumping duty. As explained to the Commission during its importer verification visit, this is due largely to PanAsia's high service standards and its capacity to work closely with the customer to design, manufacture and supply highly complex profiles in a broader range of alloys and finishes.

By contrast, the Australian industry producing aluminium extrusions faces obvious manufacturing constraints, including those self-imposed. This includes:

- limited number and size of extrusion presses;
- business models that prioritise manufacturing throughput and as such, favour simpler profiles in a limited alloy and finish subset.

¹ Streamlining Australia's Anti-dumping System – June 2011

² Productivity Commission Inquiry Report No. 48 – 18 December 2009;

Given that the vast majority of extrusions sold by PA Australia to its downstream customers are complex custom profiles that are unable or unwilling to be supplied by local producers, the downstream customers are being unfairly disadvantaged and penalised by ultimately incurring a 41% dumping duty. PA Australia's net duty inclusive prices are understood to be above equivalent prices by local manufacturers, and therefore it is reasonable to consider those prices to be non-injurious.

To ensure that local downstream customers aren't unfairly penalised by a duty level that more than offsets the injury caused or likely to recur, PanAsia contends that its circumstances warrant the Minister considering the application of the lesser duty rule. Therefore, PanAsia requests the Commission to provide the Minister with a comparative price analysis and recommend that a lesser duty rule based on a NIP would provide no risk of injury recurring to the Australian industry.

In doing so, PanAsia submits that the NIP should be calculated using the industry's weighted average cost to make and sell for the review period plus a reasonable industry profit. In assessing the profit level, it is not appropriate for the Commission to rely on its view outlined in Report 362³, that the industry could achieve a price equal to undumped imports. As explained earlier, the vast majority of the extrusions supplied by PA Australia were to customers complex custom profiles which aren't readily available in Australia.

A more appropriate profit would be the profit rate achieved by Australia's manufacturing industry in the six months ending 31 December 2018. Based on the ABS data⁴, corporate profits before income tax for the manufacturing sector was reported as A\$12,971 million. Sales of goods and services for the manufacturing sector over the same period was A\$184,071 million. This represents a profit rate of 7.0%.

This compares to Capral's reported rate of profit before income tax of 0.9% for the second half of 2018, or 1.4% for the whole of 2018. As such, the 7.0% profit rate reported by the ABS for the whole manufacturing sector provides a reasonable and fair profit level that the Australian manufacturing industry could be expected to achieve.

Finally, PanAsia urges the Commission to seek further information from downstream business that are interested parties to the review of measures, to assist its assessment of the wider downstream negative impacts of not imposing a lesser duty

Yours sincerely

John Bracic

³ Report 362, pages 104-105.

⁴ ABS 6576.0 – Business Indicators, December quarter 2018.