

1st April 2019

Ms Leisa Baynham
Assistant Director
Investigations 4
Anti-Dumping Commission
Level 35
55 Collins Street
Melbourne Victoria 3000

Email: leisa.baynham@adcommission.gov.au

Public File

Dear Ms Baynham

Investigation No. 482 – Aluminium extrusions exported from P R China – Submission by PanAsia Aluminium (China) Limited & related entities

I refer to the submission on behalf of Pan Asia Aluminium (China) Limited, OPAL (Macao Commercial Offshore) Limited (OPAL) and Pan Asia Aluminium Pty Ltd (PA Australia) (referred to as “PanAsia” in this submission) dated 27 March 2019 concerning the lesser duty rule.

The PanAsia submission details the requirements for the Minister for Industry, Science and innovation (“the Minister”) to consider the imposition of the lesser duty rule. The PanAsia submission conveniently omits the circumstances (as detailed in the Dumping and Subsidy Manual) where the Minister is not required to give consideration to the lesser duty rule where the Minister is satisfied one or more of the following circumstances exist:

- *In the case of a dumping duty notice, normal value was not able to be ascertained under subsection 269TAC(1) because of the operation of s.269TAC(2)(a)(ii) (see Chapter 7, ‘market situation’);*
- *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.

Section 8.1 of Statement of Essential Facts No. 482 (“SEF 482”) recalled that in the most recent review of measures investigation into aluminium extrusions exported from China, the Minister accepted the Commissioner’s recommendation to **not** have regard to the lesser duty rule because two of three of the above circumstances existed in respect of aluminium extrusions exported from China. Report No. 392 refers to Report No. 287 where it was determined that two of the above three circumstances applied¹.

¹ Report No. 287, Section 8.3.2, P. 36.

SEF 482 confirms that a market situation continues to apply for aluminium extrusions sold in China (as per subsection 269TAC(2)(a)(ii)) and normal values therefore have been determined on a constructed basis under subsection 269TAC(2)(c).

It is Capral's understanding that the Australian industry manufacturing aluminium extrusions comprises at least two SMEs and the Minister can be satisfied that this circumstance that does not require the consideration of the lesser duty rule. Additionally, Capral notes that there does not appear to have been any recent change concerning new and full notifications of subsidies to the WTO Committee on Subsidies and Countervailing Measures by China.

PanAsia contends that the reasons for the consideration of the lesser duty rule by the Minister should take account that PanAsia's "...downstream customers remain loyal and continue to source their extrusion requirements, despite the imposition of a 41% interim dumping duty.....this is due largely to PanAsia's high service standards and it's [sic] capacity to work closely with the customer to design, manufacture and supply highly complex profiles in a broader range of alloys and finishes."

Pan Asia further argues:

"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 prioritize manufacturing throughput and as such, favour simpler profiles in a limited alloy and finish subset.*

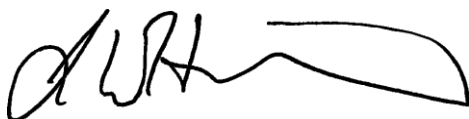
Given that the vast majority of extrusions sold by PA Australia to its downstream customers are complex custom profiles that are unable or unwilling to be supplied by local producers, the downstream customers are being unfairly disadvantaged and penalised by ultimately incurring a 41% dumping duty."

Capral does not consider that PanAsia's request for the Commissioner to recommend the inclusion of the lesser duty rule in the final report and recommendations to the Minister can be readily accepted by the Commission. PanAsia's apparent justification for consideration of the lesser duty rule is that its "loyal customers" will be "unfairly disadvantaged" is not a true representation of the facts. The determined margin of dumping (60.1 per cent in SEF 482) for the recent investigation period covered a period when PanAsia did not increase its export prices to reflect increases in raw material input costs. That is, PanAsia continued to export at dumped prices and cause injury to the Australian industry. This has prevented the Australian industry from positioning itself to supply so-referenced "highly complex profiles in a broader range of alloys and finishes" to the Australian market due to the injurious dumping.

Capral requests the Commissioner to not accept the request of PanAsia to recommend to the Minister that the lesser duty apply to PanAsia's exports (or any other Chinese exporter) of aluminium extrusions to Australia. Capral does not consider that the circumstances as evidenced in Investigation No. 287 (and re-affirmed in Report 392) have changed such that a market situation no longer applies in relation to the goods the subject of the notices.

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



Luke Hawkins
General Manager – Supply and Industrial Solutions

