

Non-Confidential

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Dear Sir

Investigation 543-Statement of Essential Facts (SEF) Aluminium Extrusions

On behalf of Fujian Minfa Aluminium,(Minfa) please find the following response to the SEF

The Commission (ADC) selected to limit the inquiry to the following six exporters.

- Foshan City Sanshui Yongya Aluminium Co Ltd
- Foshan Shunde Beijiao Jiawei Aluminium Factory;
- Goomax Metal Co Ltd Jukian;
- Guangdong Jinxi Cheng Al Manufacturing Co Ltd;
- PanAsia Aluminium (China) Limited; and
- Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd.

All exporters, with the exception of Foshan Shunde Beijiao Jiawei Aluminium Factory, completed the questionnaire.

The ADC also granted the following non-selected parties extensions to submit a response to the exporter questionnaire:

Fujian Minfa Aluminium In (Minfa)

Press Metal International Ltd (PMI)

Minfa provided detailed and verifiable responses to the Exporter Questionnaire on which the ADC could rely to substantiate Minfa's claims of negative dumping margins

The ADC claimed that it would seek to verify the financial data provided by non-selected exporters after assessing whether extending the inquiry to these exporters was likely to prevent the timely completion of the inquiry. In assessing this, the ADC would consider the level of cooperation from the selected exporters, the number of exporters seeking individual examination and the available resources within the Commission to undertake on-site or remote verification.

It is clear that the ADC, at the commencement of the inquiry, had the resources to undertake six verifications. Based on the EPR it appears Minfa responded to the

inquiry with a completed questionnaire before the majority of the selected exporters. Accordingly, if the Commission had resources to undertake a verification on the six exporters with the absence of a response from one of the selected exporters, then Minfa should have been added as a selected exporter.

It also appears based on the documents published on the EPR that only Minfa and PMI provided completed exporter questionnaires in addition to the selected exporters.

At page 40 of the SEF the ADC stated:

"To obtain further information about the markets in China and Australia, the Commission sent supplementary questionnaires to those exporters and importers that had submitted, or indicated a preparedness to submit, the standard questionnaires distributed at initiation as well as Capral".

This questionnaire was sent to the five exporters shown in the list above as well as to Minfa and PMI. It was not sent to any of the exporters who responded to the three page questionnaire, response to which allowed the exporter to be classified as a residual exporter.

This extra questionnaire required more detailed information. A response was required by 11 May 2020 (subject to any extension). Failure to respond would mean that the exporter could be treated as non-cooperative viz:

"You do not have to complete the questionnaire. However, if you do not respond, do not provide all of the information sought, do not provide information within a reasonable time period, or do not allow the Commission to verify the information, we may deem your company to be an uncooperative exporter. In that case the Commission must determine a dumping margin and a subsidy margin having regard to all relevant information. (Emphasis added).

Therefore, it is in your interest to provide a complete and accurate response to this exporter questionnaire, capable of verification". Page 5 of this questionnaire stated:

"You must retain all worksheets used in answering the questionnaire. Be prepared to provide these worksheets during the Commission's verification of your data".

ADC continued to examine data from Minfa. It was made clear to Minfa that failure to respond to additional questionnaire demands would result in a finding of non-cooperation. This continued examination placed extra demands on the company over and above the work it had invested in completing the exporter questionnaire.

The point we make is that it becomes incumbent on the ADC, in these circumstances, to act reasonably and with good cause when deciding not to extend verification when one of the selected parties had dropped out at an earlier point in time. These good causes have not been shown in the SEF.

The decision not to extend the selection beyond 5 exporters is not reasonable in circumstances where Minfa was the subject to on-going examination and questionnaire demands.

(Despite the continued information demands Minfa was treated the same as 12 exporters who had merely completed the three page form in terms of duty outcomes).

Minfa does not consider it reasonable for the Commission to determine that the completion of the Inquiry would be delayed if 7 exporters underwent the verification process as opposed to the 6 originally contemplated by the Commission. This is particularly the case in circumstances where the Commission indicated initially that it would be open to expanding the scope of the Inquiry to include other exporters and where failure to do so would likely lead to cooperative exporters being subjected to a significantly higher dumping margin than selected exporters if the measures are continued.

In a notice dated 27 May 2020 the ADC stated:

'The reason being that the Commission has ceased international onsite verification procedures, due to the COVID-19 pandemic, as set out in ADN 2020/029.¹ The Commission is currently undertaking desktop verification for the five selected exporters participating in the Inquiry. This requires additional resources and the Commission does not have available resources to conduct any further verification activities beyond the five selected exporters.'

The argument is not backed up by information showing remote verification must always require more resources than on site verification. Prima facie the Commission states that remote verification reduces efficiency by at least one sixth.

When conducting verification at the exporter's premises the time taken includes:

- examining the questionnaire response to ensure it is complete and warrants investigation and correspondence with the exporter arranging visit times;
- travel to the country of origin followed by three to four days verification;
- return travel and report writing and dumping or subsidy calculations and international check procedures, preparation of public versions etc

This process usually involves two people for a large part of the time.

The EU, like Australia, conducts a verification process at the overseas premises that also involves two people and usually three days duration. In its most recent report to the European Parliament the Commission referred to its activities in the year 2019 and noted:

"In the course of its investigations the Commission carries out visits to examine the records of companies or associations with the aim to verify the information provided during the proceedings. During 2019, EU TDI services carried out 137 such visits, which amounted to 1948 man-days of verification work". (38th Annual Report from the Commission to the Council and the European Parliament on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities and the Use of trade defence instruments by Third Countries targeting the EU in 2019).

This means the average time taken by the EU per visit is just over 14 days. The ADC would presumably be no less thorough at verification than the EU who, as noted, has parallel processes with two person teams and for the much same period on site.

Also, given the processes described above in conducting an on- site visit, it's reasonable to conclude that the ADC would take at least a similar number of 'man days' as the EU for an on- site visit verification and report.

In conducting remote verification an exporter must provide all of the same information required for an on- site visit. It must provide all of the supporting information showing how the costs and prices are verified to the financial statements of the company. Indeed given the need for remote verification during the COVID impact processes ensure that verification to costs and sales prices etc. in higher level accounts is all fully supported, more so than before.

Remote verification may or may not involve two people. The overseas verification, on the other hand, will always involve at least two people.

Therefore, there is no adequate justification provided by the ADC showing that remote verification must take more time than the on-site verification.

(The receipt of certain documents from the exporter can occur over a longer term than 2 weeks in either on site or remote verification so this is not any different).

For these reasons, we contend that remote verification could be completed in a similar time to an on- site visit. There is no logical reason, or evidence, why remote verification must have reduced efficiency by one sixth. Further, when the ADC extended the inquiry by two weeks it did not adequately assess the desirability of including Minfa given that it had continued to respond to demands for cooperation.

The residual margin for Minfa as a residual exporters is largely driven by the dumping margin worked out for PanAsia of 71%. Kam Kui had a much lesser margin and the other selected exporters had negative margins.

The SEF states for PanAsia:

1. "Accordingly, in respect of Australian sales of the goods by PanAsia China, the Commission has determined the export price under section 269TAB(1)(b). Specifically, the export price has been calculated by reference to the invoice price from PanAsia Australia to its Australian customers, less prescribed deductions outlined under section 269TAB(2) to work the invoiced amount back to a FOB price from China"

The prescribed deductions in 269TAB(1)(b) are: duties of customs or sales tax; costs charges or expenses after expiration; profit if any. Import duty means 'duty imposed on goods imported into Australia'. Any interim duty payable is a different concept to the assessment of the duty payable. This is made clear in Division 4 of the Act. It follows that to the extent that export price worked out for PanAsia had included any amount for dumping duty then this amount must be worked out using the actual duty payable. The report does not make clear these circumstances, however, we set out this important principle for the record.

In conclusion, it is submitted that the Commission has not given sufficient justification for not extending the number of exporters beyond the five that were examined, and that Minfa should be considered a selected exporter for the purposes of this Inquiry.

Yours Sincerely

John McDermott

18/08/2020