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PUBLIC RECORD

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Dear Director

ADC 543: Continuation of Measures–Aluminium Extrusions from the People's Republic of China

A Introduction

1 Zhong Lun Law Firm and Corrs Chambers Westgarth act for the following entities (together "**Kam Kiu**"): Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd (**KAE**), Kam Kiu (Hong Kong) Limited (**KHK**), and Kam Kiu (Australia) Pty Ltd (**KAU**).

2 We are writing to you in relation to the Anti-Dumping Commission's Continuation Inquiry 543 regarding dumping and subsidisation of aluminium extrusions from the People's Republic of China, commenced via notice ADN 2020/017 dated 13 February 2020. That notice followed an application by Capral Limited (**Capral**) received by the Commission on 24 January 2020.

3 We make the following submissions on behalf of Kam Kiu in response to the Commission's *Statement of Essential Facts* dated 29 July 2020 (**SEF 543**). We understand SEF 543 sets out the Commission's preliminary view in respect of, inter alia, the interim dumping duty (**IDD**) and the interim countervailing duty (**ICD**) to be applied to the goods under consideration (**GUC**) exported by KAE and imported into Australia by KHK.

4 Reference is also made to the following materials on the Commission's Electronic Public Record (**EPR 543**):

a. Submission by KAE dated 3 March 2020 regarding the Commission's proposed model control code;

b. Submission by KAE dated 14 April 2020 requesting clarification on "auto part products";

c. Submission by Capral dated 21 April 2020 in response to KAE's submission dated 14 April 2020;

d. Exporter Questionnaire Response (**EQR**) by KAE dated 30 April 2020; and

e. Exporter Verification Report dated 30 June 2020 in respect of KAE.

5 In these submissions, references to "the Act" are made in respect of the *Customs Act 1901* (Cth), references to "the Regulations" are made in respect of the *Customs (International Obligations) Regulation 2015* (Cth) and references to "the AD Agreement" are made in respect of the *Agreement on Implementation of Article IV of the General Agreement on Tariffs and Trade 1994*. Similarly, references to "sections", "regulations" and "articles" are references to the provisions of these instruments, respectively, unless otherwise indicated.

6 Confidential material appearing in these submissions is encapsulated within square brackets in the "For Official Use Only" version of the document—e.g. "[$1,000.00]"—and redacted in the "Public Record" version of the document—e.g. "[redacted] [monetary figure]".

B Summary of Submissions

7 Kam Kiu's submissions in response to SEF 543 focus on two main issues:

a. that "High-end Models" (defined below) should have been excluded from the GUC and "like goods"; and

b. that adjustments to the constructed normal value and export price in relation to the following factors should not be made as proposed, or should be approached differently:

(i) the regional premium (e.g. "MJP");

(ii) inland transport costs

(iii) non-refundable value-added tax;

(iv) export packing trolley costs; and

(v) credit costs.

C Background

The goods under consideration and "like goods"

8 The GUC are defined in the following terms:

> Aluminium extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by The Aluminium Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness or diameter greater than 0.5 mm, with a maximum weight per metre of 27 kilogram

9 The Commission has further elaborated on this definition of the GUC—e.g. in SEF 543—as follows:

> The goods include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. Aluminium extrusion products that have been painted, anodised, or otherwise coated, or worked (e.g., precision cut, machined, punched or drilled) fall within the scope of the goods.
>
> The goods do not extend to intermediate or finished products that are processed or fabricated to such an extent that they no longer possess the nature and physical characteristics of an aluminium extrusion, but have become a different product.

10 Pursuant to ADN 2018/128, the Commission has implemented a model control code (**MCC**) structure for Continuation Inquiry 543. In ADN 2020/017, the Commission proposed a MCC structure by which the GUC are further segregated by reference to: (i) finish; (ii) alloy code; (iii) temper code; and (iv) anodising microns.

11 In response to ADN 2020/017, KAE made a Submission dated 3 March 2020 in relation to the proposed MCC structure. In that Submission, KAE suggested that, among other things, the Commission add certain codes, in order to allow a fair comparison to be achieved.

12 On 15 April 2020 KAE sent a letter to the Commission requesting clarification in respect of whether certain "auto part products" and "very short / small pieces" were within the scope of the GUC. In that letter, KAE submitted that the Commission should not consider those products to be GUC for the purpose of Continuation Inquiry 543.

13 Capral responded to those submissions on 20 April 2020, to the effect that the Commission should consider those products to be within the scope of the GUC.

14 In its Exporter Verification Report in respect of KAE, the Commission recognised that:

> KAE is the producer of various kinds of aluminium extrusions (including goods under consideration (GUC) and non-GUC) and other products, including processed products of aluminium with the application in building and architecture, auto parts, power generation systems, project references and high-end precision electronics. KAE's markets include the domestic market, Australia and third countries.

Constructed normal value

15 The Commission's approach to determining a normal value in respect of KAE's relevant goods, pursuant to section 269TAC, is set out in SEF 543, sections 6.4 and 6.8.3.

16 Importantly, the Commission has expressed the view that the prices paid or payable for like goods sold by KAE in the ordinary course of trade in its domestic market were unsuitable for the purposes of identifying a normal value pursuant to

sub-section (1): see SEF 543, section 6.8.3. Therefore, instead of determining a normal value pursuant to sub-section (1), the verification team has constructed a normal value pursuant to section 269TAC(2)(c): see SEF 543, section 6.8.3.

17 The Commission's approach in this regard is consistent with its previous findings of a particular market situation with regard to the aluminium industry in the People's Republic of China (**China**): see SEF 543, Non-Confidential Appendix 1, section A3. For example, in Review 248 the Commission summarised its assessment of the market situation as follows:

> After having regard to all relevant information, the Commission has found that the Government of China (GOC) has influenced the Chinese aluminium industry, and this influence is likely to have materially distorted competitive market conditions and both directly affected the price of the primary input used in the manufacture of aluminium extrusions, as well as likely affecting supply within that industry. The Commission has formed the view that it is satisfied there was a situation in the Chinese aluminium extrusions market during the review period such that sales in that market are not suitable for use to determine normal value under section 269TAC(1) of the Act.

18 Under section 269TAC(2)(c), a constructed normal value for KAE's goods comprises:

(a) the cost to manufacture (**CTM**) of the goods exported to Australia; plus

(b) the selling, general & administrative (**SG&A**) expenses, and a rate of profit, that would have applied, had the goods been sold domestically.

19 The Commission's approach to determining a rate of profit for KAE for the purpose of constructing a normal value is set out in SEF 543, section 6.8.3. In accordance with regulation 45(2), the verification team has calculated a rate of profit to be included in its constructed normal value calculation.

20 In this regard, the Commission acknowledges and adopts the methodology employed in REP 392 and upheld by the Anti-Dumping Review Panel (**Review Panel**) in its Report 104 dated 24 September 2019—specifically, the exclusions of profits generated by KAE through domestic sales of the "High-end Models" (defined below).

Current dumping and countervailing duties applied to KAE

21 The current IDD and ICD for KAE are 13.0% and 3.6%, respectively.

22 Following Review 104 by the Review Panel, the Minister determined that the dumping margin in respect of KAE's GUC exported to Australia during the relevant inquiry period was 13.0% (reduced from 35.7% following Review 482).[1]

[1] See Notice under section 269ZZM(4) "Certain Aluminium Extrusions exported from the People's Republic of China" dated 16 September 2019.

23 The Minister had previously determined that the subsidy margin applicable to KAE during the relevant inquiry period was 3.6%.[2]

Dumping and subsidy margins determined for KAE by the Commission in SEF 543

24 The Commission has calculated that the dumping margin in respect of KAE's GUC exported to Australia during the inquiry period was 23.0%: see SEF 543, sections 6.8.5 and 6.13.

25 Similarly, the Commission has calculated a subsidy margin of 6.4% for KAE: see SEF 543, section 7.6.

26 In total, the Commission has proposed a fixed rate of combined IDD and ICD for KAE of 26.3%, using the combination method in respect of the IDD and the ad valorem method in respect of the ICD: see SEF 543, table 17. The Commission has additionally proposed a variable component for the IDD.

D Submissions of Kam Kiu

27 Kam Kiu's submissions in response to SEF 543 focus on two main issues:

a. that High-end Models should have been excluded from the GUC and "like goods"; and

b. that adjustments to the constructed normal value and export price in relation to the following factors should not be made as proposed, or should be approached differently:

(i) the regional premium (e.g. "MJP");

(ii) inland transport costs

(iii) non-refundable value-added tax;

(iv) export packing trolley costs; and

(v) credit costs.

D1 Treatment of the High-end Models as GUC or "like goods"

28 As noted above, KAE wrote to the Commission on 15 April 2020, requesting clarification in respect of certain "auto part products" and "very short / small pieces". In that letter KAE submitted that such products should not be considered to be GUC. In KAE's respectful view, the Commission should have accepted KAE's submission and treated these products as outside the scope of the GUC. KAE now presses that submission and expands on it.

29 The Commission recognises that "a significant volume of aluminium extrusions are sold within China's electronics sector (specifically, the sector referred to as '3C electronics' […]) and the automotive sector", with some "goods being sold in

[2] See ADN 2019/044; REP 482, section 5.6.4.

niche sectors like medical goods supply", and that "[t]he Australian market does not have the same diversity of market segments": see SEF 543, section 6.4.3.1.1.

30 Further, the Commission recognises that there are material differences evidenced in the CTM between KAE's "goods produced for domestic consumption and those produced for export to Australia" in respect of certain finish types: see SEF 543, section 6.4.3.2. That difference relates to "participation […] in the high-tech segment of the Chinese market" which "requires higher specification products made with more stringent quality control, increasing the cost of production."

31 The Commission acknowledges that "[t]hese types of products are not produced by these manufacturers for export to Australia, hence the difference in cost profile between the domestic and export market for these manufacturers": see SEF 543, section 6.4.3.2.

32 During previous verification visits, KAE has demonstrated to the Commission that KAE manufactures a range of models that are used in medical equipment, the automotive industry, and 3C products (i.e. "**High-end Models**"). These products are focussed on KAE's domestic market and, as the Commission knows, KAE does not export these High-end Models to Australia.

33 From a manufacturing perspective, KAE considers these High-end Models to differ from other models manufactured by KAE (**Normal Models**), including those that KAE *does* export to Australia, in that they involve different combinations of the following qualities:

a. tighter manufacturing tolerances;

b. higher grades of alloy;

c. additional processing—such as, precision bending, cutting, punching or drilling;

d. additional preparations prior to being coated; and/or

e. detailed finishes.

These qualities, in addition to other physical qualities such as the dimensions of various of the High-end Models, make them significantly different to the types of aluminium extrusion products that KAE understands are manufactured in Australia.

34 The consequence of these qualities is that KAE can achieve a higher profit margin on these High-end Models in its domestic market than it can achieve on domestic sales of products equivalent to those which it exports to the Australian market (being Normal Models).

35 This has been previously recognised by the Commission in Report 392, and the Review Panel in Report 104, and is similarly recognised by the Commission in SEF 543—see, e.g. SEF 543, section 6.8.3.

36 The Commission and the Review Panel have each also recognised that the exclusion of these relatively higher profit margins generated on sales of the High-end Products in calculation of a constructed normal value for KAE is necessary "to ensure a fair comparison was made between the export price of the goods under consideration and the normal value of like goods": see REP 392, section 4.10.5, sub-heading "Kam Kiu".

37 In its Report 104, the Review Panel accepted that KAE's profits derived from the domestic sales of the High-end Models should be excluded by the Commission when constructing normal values for KAE (**Ground 1**). In respect of KAE's alternate submission that if those profits were not excluded an adjustment should be made so as to ensure a fair comparison (**Ground 2**), the Review Panel held that:

> Accordingly, if the Minister were minded not to accept my recommendation with respect to Ground 1, I am of the view the Minister would nevertheless be obligated to ensure a fair comparison by making an adjustment, under section 269TAC(9), to remove the cost differences between the exported goods and like goods sold on the domestic market.

38 Consistent with the Review Panel's acceptance of Ground 1, the Commission notes in SEF 543 that it has:

> […] excluded profits on identified high end products, in keeping with the methodology employed in REP 392, and upheld in the recent ADRP decision 2019/104.

39 KAE agrees that it is, at least, correct for the Commission to exclude the High-end Models when calculating a constructed normal value for KAE. Nevertheless, in KAE's submission, a preferable approach would be for the Commission to exclude the High-end Models from the scope of the GUC and "like goods" entirely.

40 The term "like goods" is defined in section 269T as follows:

> …in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

41 This definition invites two alternative assessments. In respect of the second assessment, Justice Lockhart stated in *GM Holden Ltd v Commissioner of the Anti-Dumping Commission*,[3] that the use of the word "characteristics":

> …implies a comparison of the physical characteristics of the goods themselves, including but not limited to their appearance. Characteristics would include, for example, the composition of the goods, the materials used to manufacture them, their outward appearance and the uses for which they were suitable in a commercial and practical sense.

[3] *GM Holden Ltd v Commissioner of Anti-Dumping Commission* (2014) 225 FCR 222.

42 The definition in section 269T mirrors that in article 2.6, which stipulates:

> Throughout this Agreement the term “like product” (“produit similaire”) shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

43 In its report in *Korea – Certain paper from Indonesia*,[4] the Panel said of this article:

> We note that Article 2.6 takes "the product under consideration" as the starting point of the definition of "like product". It then stipulates that the like product is the product that is identical to the product under consideration, or one that has physical characteristics that closely resemble those of the product under consideration

44 Therefore, it is clear that, for a product to be appropriately deemed a “like product” with respect to the goods under consideration, it must be either: (a) “identical” or “alike” in all respects; or (b) have characteristics closely resembling those of the GUC.

45 As discussed in paragraph 33 above, KAE considers the characteristics of the High-end Models (i.e. their “qualities”) to be significantly different to the GUC, such that they cannot, and should not, be seen to “closely resemble” the GUC. In this regard, and recalling the types of characteristics referred to by Justice Lockhart in *GM Holden* (supra), KAE notes that the High-end Models are:

a. materially different in that they are often made with different grade alloys compared to the alloys used to manufacture Normal Models;

b. different in outward appearance by way of the smaller lengths to which they are cut, when compared to the multiple metre long lengths that Normal Model aluminium extrusions are cut to;

c. also different in outward appearance by way of the different, and sometimes detailed, finishes applied to them;

d. also different in outward appearance by way of other additional production processes that are applied to them, such as drilling, CNC milling, and bending;

e. characteristically different to the Normal Models due to the tighter tolerances to which they are built and the additional quality control inspections that they are subjected to—that is, the High-end Models that make it to sale are more consistent and accurate to specification than Normal Models; and

f. made especially for and used in specific commercial applications—namely, in the production of medical equipment, automobiles, and 3C

[4] Panel Report, *Korea — Anti-dumping duties on imports of certain paper from Indonesia*, WTO Doc WT/DS312/R (28 October 2005) [7.219].

electronics products—whereas Normal Models are used in a broad range of applications, including window frames, door frames, et cetera.

46 On one level, KAE considers its High-end Models to be distinct from its Normal Models and essentially downstream to a standard aluminium extrusion product by nature of the additional processing applied to the High-end Models—i.e. KAE considers the High-end Models to be "intermediate or finished products". The High-end Models are (i) made to higher specifications, (ii) with superior physical qualities, and (iii) with additional processing applied. In terms of (iii), KAE considers this to be akin to, for example, (a) sawlogs versus timber, (b) flour versus wheat, (c) fruit juice versus fruit concentrate versus fruit, et cetera.

47 While KAE does not export any of the High-end Models to Australia, KAE considers that, if it did, the relevant dumping and countervailing duties should not be applied to the High-end Models. In particular this is because, so far as KAE is aware: (i) there are no domestic manufacturers of products equivalent to the High-end Models within the Australian market; and (ii) nor are there many, if any, domestic manufacturers of downstream (to the High-end Model) products within Australia.

48 If (i) remained true but there *were* domestic manufacturers of downstream products (i.e. contra (ii)), then KAE's exports of the High-end Models to Australia could be subjected to duties as a result of the Commission's current investigation, notwithstanding that there was no domestic industry to benefit from those measures in Australia. In fact, those measures would be to the detriment of the Australian downstream manufacturers—and, ultimately, consumers—as this would unduly increase the input costs of the downstream product.

49 On the other hand, if (contra to (i)) there were domestic Australian manufacturers of the High-end Models, application of dumping and countervailing duties calculated by reference to constructed normal values either excluding or weighting the higher profit margins attributable to the High-end Models would result in relatively lower margins, and therefore duties, applied to High-end Models exported to Australia from China. This would be to the detriment of those domestic Australian manufacturers. In those circumstances, the fairer outcome for the Australian industry would be for the High-end Products to be treated as their own separate product, potentially with higher duties applied.

50 Therefore, KAE submits that the High-end Models should be excluded entirely from the scope of the GUC and "like goods" for the purpose of the Commission's investigations in relation to and the Commonwealth Government's measures in respect of aluminium extrusions from China.

51 In the alternative, KAE supports the position taken by the Commission in relation to the High-end Models in SEF 543.

(a) Illustrative examples

52 A number of illustrative examples can be given to show why the High-end Models should not be included in the constructed normal value calculations and, indeed, why KAE submits that the High-end Models should be considered outside the scope of the GUC and "like goods" altogether.

53 First, and perhaps most obviously, if KAE simply ceased manufacturing the High-end Models, then this would cause a significant reduction in the constructed normal value for KAE—assuming that the High-end Models had not been excluded from those calculations. This would be so notwithstanding that KAE does not export the High-end Models to the Australian market and, so far as KAE understands, there is no market for the High-end Models in Australia.

54 Second, a more likely example can be given via the following scenario. If (i) KAE's major competitor in China was, in all material ways, identical to KAE, but for the fact that it *did not* manufacture High-end Models (for any market), and (ii) the IDD applied to KAE was materially higher as a result of its manufacture of the High-end Models (for markets other than Australia), then (iii) the competitiveness of KAE's products in the Australian market would be unfairly disadvantaged vis-à-vis its major competitor (and all other competitors) by nature of the application of a materially higher IDD due to the inclusion of the High-end Models when calculating the normal value for KAE.

55 Third, if KAE manufactured some "Low-end Models" which were (i) not exported to the Australian market, (ii) inferior to KAE's Normal Models and the equivalent GUC manufactured in the Australian market, in all of their physical qualities, and (iii) caused the constructed normal value for KAE to be significantly *lower* than it otherwise would have been, then presumably (iv) Capral or other participants in the Australian industry would submit that the Commission should either exclude those Low-end Models from the constructed normal value for KAE or, indeed, consider those Low-end Models to be outside the scope of the GUC or "like goods".

(b) Capral's Submission

56 KAE notes Capral's Submission dated 21 April 2020 in respect of KAE's High-end Models. With respect, those submissions are misconceived.

57 Capral suggests that if KAE "considers that [those] goods […] are not covered by the measures, [then KAE] can seek an application for exemption from the anti-dumping measures." On the contrary, KAE's point is that it *does not* export those products to Australia and that the construction of a normal value for those products that it *does* export to Australia should not be unfairly impacted by the inclusion of those products.

58 KAE sees little utility for the Commission in including for consideration KAE's High-end Models, only to have them excluded during constructed normal value calculations, and in circumstances where if KAE *did*, in fact, export the High-end

Models to Australia Capral's view is that KAE may seek an exemption of those goods from any extant measures at that time.

59 Contrary to Capral's suggestion, KAE does not distinguish its High-end Models on the basis of their end-use application. Rather, while KAE may describe its High-end Models by reference to their end-use application, in KAE's view it is the additional qualities that its High-end Models have—such as their tighter manufacturing tolerances and higher grades of alloy—that allow KAE to generate a higher profit margin for those goods.

D2 Adjustments to the Constructed Normal Value

Inclusion of a regional premium (MJP) in the aluminium benchmark price when calculating constructed normal value

60 The Commission has determined that it is appropriate, when calculating a constructed normal value, to make adjustments to actual aluminium costs incurred by exporters, including the addition of a "regional premium": see SEF 543, section 6.5.4.

61 KAE understands that, in calculating an aluminium benchmark for KAE, the Commission has included such an adjustment, including (i) a regional premium, namely an amount for the MJP ("Main Japanese Ports") regional ingot premium, and (ii) inland transport costs: see SEF 543, section 6.8.3.

62 In KAE's submission, the Commission should not have included the MJP premium in this calculation. Whilst the Commission may consider it necessary to construct an aluminium benchmark based on a hypothetical scenario, that scenario should reflect reality, based on actual costs where those are available. For example, the transportation costs should reflect the actual costs incurred—this is a factual issue unrelated to the market situation.

63 In the case of KAE, all of its purchases of aluminium to which the Commission applied the aluminium benchmark were domestic purchases—i.e. the suppliers of the aluminium were all located within China. Therefore, the inclusion of the MJP premium does not reflect reality for KAE.

64 In KAE's submission, when calculating a benchmark price for KAE, the Commission need only consider the LME cash price for primary aluminium and actual domestic inland transport costs. Those transport costs should not be substituted or altered by a regional premium, which could have the result of unduly exaggerating the benchmark price.

Adjustment to constructed normal value for non-refundable VAT

65 For the purpose of comparing constructed normal values with export prices, the Commission has determined that it is appropriate to make an adjustment to the

constructed normal values for non-refundable value-added tax (**VAT**). In SEF 543 the Commission states:[5]

> To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to section 269TAC(9) as follows:
>
> | **Adjustment Type** | **Deduction/addition** |
> |---|---|
> | Non-refundable value-added tax (VAT) | Add an amount for non-refundable VAT |

66 In KAE's respectful submission, this adjustment should not have been made. Further, and in the alternative, if the Commission is minded to make such an adjustment, KAE considers that the manner in which the Commission has currently implemented this adjustment is incorrect.

67 Dealing first with KAE's alternate submission, KAE notes that while the 16% VAT in Q1 2019 is based on the purchase value of input materials, the 13% VAT refund rate is based on the export prices at the free on board (**FOB**) level. In other words, the 16% and 13% are expressed on two different tax bases. Therefore, KAE considers it incorrect to simply conclude that the non-refundable VAT is equal to 3% of the FOB price.

68 Consider the following example, which assumes a VAT rate of 16% and a VAT refund rate of 13%.

69 If a company purchased input materials at a cost of 100 RMB (net of VAT), then it would be liable for VAT of 16 RMB on those materials. Assume that those input materials (in their entirety) were then used to produce a finished good which was then exported at a FOB price of 120 RMB. If the company received a VAT refund calculated on that amount, then it would receive 15.6 RMB—i.e. 120*0.13. In that case, the difference between the VAT paid (16 RMB) and the VAT refund (15.6 RMB)—i.e. the value of the non-refundable VAT—would be only 0.4 RMB. That amount is equal to 0.33% of the FOB price—i.e. 0.4/120—which is far less than 3% of the export FOB price, being 3.6 RMB—i.e. 120*0.03.

70 In KAE's submission, if the Commission is minded to make an adjustment in respect of the non-refundable portion of the VAT from the export price, then the Commission should adjust for the *actual* tax burden.

71 Turning back to KAE's primary submission on this point, it is KAE's position that the Commission should not have made any adjustment to the constructed normal values for non-refundable VAT. Recent decisions of the United States Court of International Trade (**U.S. CIT**) on this point are insightful. Whilst KAE accepts that the decisions of U.S. CIT are by no means binding in Australian law and indeed upon the Commission, KAE considers that those decisions may provide helpful guidance to the Commission.

[5] SEF 543, section 6.8.4.

72 Earlier this year, in the case of *Senmao II*,[6] the U.S. CIT affirmed that the United States' Department of Commerce's (**U.S. DOC**):[7]

> […] decision to make the deductions from Senmao's EP starting prices for 'irrecoverable' input VAT was erroneous because it was based on a critical finding of fact, i.e., that irrecoverable input VAT did not occur on domestic sales, that was unsupported by record evidence and illogical.

And further, that:[8]

> On remand, [U.S. DOC] must reach a new determination that does not have these deficiencies.

73 The U.S. CIT held that the U.S. DOC's First Remand Redetermination was to be "set aside as unlawful with respect to the decision by Commerce to maintain deductions from the starting prices under 19 U.S.C. § 1677a(c)(2)(B) for value-added tax", and that U.S. DOC was to "submit a Second Remand Redetermination that corrects the error".[9]

Adjustment to constructed normal value for export packing trolley cost

74 For the purpose of comparing constructed normal values with export prices, the Commission has determined that it is appropriate to make an adjustment to the constructed normal values for export packing trolley cost. In SEF 543 the Commission states:[10]

> To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to section 269TAC(9) as follows:
>
> | **Adjustment Type** | **Deduction/addition** |
> |---|---|
> | Export packing trolley cost | Add an amount for trolley cost |

75 KAE submits that, when making this adjustment, the Commission should have used data submitted by KAE for the purpose of Continuation Inquiry 543, rather than relying on data submitted in previous cases—i.e. Review 392 and Review 482.

76 During the course of the verification process for Continuation Inquiry 543, KAE provided the Commission with export packing trolley cost during the inquiry period, which amounted to [redacted][monetary figure].[11] In other words, the rate during this inquiry period was materially lower than the rate applicable to the inquiry periods for previous cases, being [redacted][monetary figure].

[6] *Jiangsu Senmao Bamboo and Wood Industry Co., Ltd., et al. v. United States*, Court No. 15-00225. Slip Op.20-31 (March 11, 2020) (**Senmao II**).
[7] Senmao II, 12.
[8] Senmao II, 12, 38.
[9] Senmao II, 38.
[10] SEF 543, section 6.8.4.
[11] See [redacted] [reference].

Notwithstanding that material difference, the Commission appears to have used the previous rate.[12]

77 In KAE's submission, the adjustment made by the Commission should be based on the export packing trolley cost data provided by the interested party (i.e. KAE) for the current inquiry period, rather than data previously provided.

Adjustment to constructed normal value in relation to credit cost

78 For the purpose of comparing constructed normal values with export prices, the Commission has determined that it is appropriate to make an adjustment to the constructed normal values for domestic credit. In SEF 543 the Commission states:[13]

> To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to section 269TAC(9) as follows:
>
> | **Adjustment Type** | **Deduction/addition** |
> |---|---|
> | Domestic credit | Deduct an amount for domestic credit cost |

79 In relation to the credit cost adjustment, KAE makes the following submissions in relation to (a) credit days, and (b) interest rates.

(a) Credit days

80 In deriving the credit cost, the Commission appears have derived credit days for domestic sales on [redacted][variable], whereas credit days for export sales are derived from [redacted][variable].[14] In other words, the Commission appears to have relied on different methodologies to derive these amounts.

81 In KAE's submission, the difference in methodology is prone to cause uneven adjustments to be made. In making such an adjustment, the Commission should take the same approach for credit days—i.e. the Commission should use either [redacted][variable] or [redacted][variable] for both domestic and export sales.

82 Given that [redacted][variable] are already on the Record,[15] KAE suggests the Commission should use the [redacted][variables] in order to achieve an even adjustment and allow a fair comparison.

[12] See [redacted][reference] in *543 - SEF - Confidential Attachment 8 - Exporter calculations - Kam Kiu—— 543 - Kam Kiu - Appendix 4 - NV – Uplifted*.
[13] SEF 543, section 6.8.4.
[14] SEF 543, Confidential Attachment 8.
[15] See [redacted][reference] in *543 - SEF - Confidential Attachment 8 - Exporter calculations - Kam Kiu—— 543 - Kam Kiu - Appendix 1 - Export price*.

(b) Interest rates

83 In undertaking the credit cost calculation, the Commission appears to have used the interest rate of [redacted][percentage] for calculating both domestic credit and export credit: SEF 543, Confidential Attachment 8. In KAE's view, this is the interest rate applicable to RMB denominated loans, rather than a foreign currency denominated loan.

84 In its Exporter Questionnaire Response, KAE provided the Commission with the interest rate actually applicable to KAE in respect of foreign currency denominated loans during the inquiry period for Continuation Inquiry 543, being [redacted][percentage and variable].[16]

85 KAE submits that the Commission should have used this interest rate actually applicable to KAE for export credit and requests that the Commission does so in its final determination.

E Calculation of *ad valorem* dumping duties

86 Finally, KAE understands that, when calculating *ad valorem* dumping duties, relevant authorities in other jurisdictions use export price at the "Cost, Insurance, and Freight" (**CIF**) level, rather than at the FOB level, as the denominator. For example, this was the approach taken by the European Commission in its Investigation AD653 into *Certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt*,[17] and the Eurasian Economic Commission in its Investigation AD-24 into *Cast Aluminium Wheels originating from the People's from the People's Republic of China and imported into the customs territory of the Eurasian Economic Union*.[18] Nevertheless, it appears that the Commission does so using export prices at the FOB level: see SEF 543, sections 10.1 and 10.3.3–4.

87 KAE would like to draw the Commission's attention and consideration to this point of difference in approach. If the Commission considers this approach appropriate, KAE is interested to better understand the Commission's rationale behind this. Otherwise, to the extent the Commission deems it necessary, KAE respectfully requests that the Commission make any suitable revision in this regard.

[16] KAE Exporter Questionnaire Response (For Official Use Only) (13 April 2020), 30.
[17] See https://trade.ec.europa.eu/tdi/case_history.cfm?id=2398&init=2398.
[18] See http://www.eurasiancommission.org/ru/act/trade/podm/investigations/AD-24/default.aspx.

Should you have any queries in relation to these submissions, please do not hesitate to contact Andrew Korbel on (02) 9210 6537 or James Wood on (02) 9210 6221.

Yours faithfully

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