

16 October 2017

Ms Leora Blumberg
Panel Member
Anti-Dumping Review Panel
c/o Anti-Dumping Review Panel Secretariat
GPO Box 2013
Canberra City ACT 2601

Email: adrp@industry.gov.au

Public File

Dear Ms Blumberg

ADRP Review – Certain Aluminium extrusions exported to Australia from Malaysia and the Socialist Republic of Vietnam

I. Introduction

Capral Limited (“Capral”) has reviewed applications for the review of a decision of the Parliamentary Secretary to the Minister for Industry, Innovation and Science to publish a dumping duty notice in respect of certain aluminium extrusions exported to Australia from Malaysia and the Socialist Republic of Vietnam (“Vietnam”) and to publish a countervailing duty notice in respect of certain aluminium extrusions exported to Australia from Malaysia (“the Reviewable Decisions”).

Capral takes this opportunity to comment on the applications for review of the reviewable decisions by:

- (a) Global Vietnam Aluminium Company Limited (“GVA”); and
- (b) Everpress Aluminium Industries Sdn Bhd (“Everpress”).

II. GVA Review

GVA has nominated two grounds for review as follows:

- The ADC has erred in determining normal values pursuant to subsection 269TAC(1) of *the Customs Act*, on the basis of domestic sales by other sellers of like goods; and
- The ADC erred by not considering and making appropriate adjustments for factors known to affect price comparability between export price and corresponding normal values.

Subsection 269TAC(1) of the Customs Act states:

“Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if the goods are not so sold by the exporter, by other sellers of like goods.” (emphasis added).

GVA's application for review contends that the Commission's use of selling prices for other sellers is flawed as it assumed "*that irrespective of GVA's actual costs relative to other domestic producers, GVA could and would automatically achieve a significantly higher domestic rate of profit than the other sellers*".

Capral submits that the Commission has not assumed as GVA contends. Rather, subsection 269TAC(1) make it clear that in the absence of domestic sales of *like goods* by the exporter, the Minister is required to take account of sales by other sellers on the domestic market. For differences in costs and/or selling prices that may arise between the sales by other sellers and GVA's costs for the like goods, adjustments under subsection 269TAC(8) can be made.

The Minister cannot ignore the subsection 269TAC(1) provision that requires the Minister, in the absence of domestic sales by the exporter, to determine normal values based upon sales by other sellers (in this instance, sales by East Asia Aluminium Company Ltd ("EAA") and Mien Hua Precision Mechanical Co., Ltd ("Mien Hua"). The Commission can adjust the domestic sales for EAA and Mien Hua for any substantiated differences that affect price comparability between the domestic selling prices and GVA's export prices to Australia.

The second ground relied upon by GVA relates to what GVA perceives is the failure of the Commission to adequately consider adjustments known to affect price comparability. GVA alleges that the Commission failed to consider factors "*likely that were considered to affect price comparability*". It is alleged by GVA that its 'simple profiles' have '*a greater wall thickness and wider tolerances*' however, GVA does not demonstrate how these alleged differences affect price outcomes.

The GVA application further suggests that an adjustment for duties (i.e. Customs) on machinery used in the production of the exported goods has not been considered. This, along with the remaining alleged differences for claimed differing delivery and payment terms, sales volumes, selling costs and differing levels of trade, have been asserted by GVA as having existed, however, there is no evidence in support of the actual differences that would have occurred (or likely to have occurred).

GVA has not adequately demonstrated that the factors to which it refers affect price comparability. There is an absence of quantification of the alleged differences by GVA, and it has not demonstrated that the Commission has failed, in its assessment of normal values for EAA and Mien Hua, to consider any differences that affect price comparability.

Based upon the foregoing the Parliamentary Secretary's decisions in relation to GVA's normal values and adjustments involved the correct and preferred decision.

III. Everpress Review

By letter dated 29 September 2016¹, the Commissioner notified Everpress that the information contained in its exporter questionnaire response of 22 September 2016 was deficient. The Commissioner's letter to Everpress detailed the deficiencies and determined that Everpress would be considered "uncooperative" pursuant to subsection 269T(1) and Section 269TAACA. Specifically, the Commissioner notified that:

- The deficiencies in Everpress' questionnaire response were 'extensive' such that the response was 'not complete, relevant and accurate';
- Allowing Everpress further time to complete a 'Supplementary Questionnaire' would unnecessarily impede/delay the investigation.

As a consequence, and due to Everpress' deficient exporter questionnaire response, the exporter was determined "uncooperative".

It would appear from Everpress' application for review that it has argued that exports by the uncooperative Malaysian exporters are *de minimus* and, that the exports by Everpress itself are "minute" and that the exports should not be the subject of measures. The volumes of the uncooperative exporters are readily identifiable by the Commission in the Australian Border Force's database. As such, the

¹ EPR Document No. 16.

Commission is well placed to establish whether exports by uncooperative Malaysian exporters at dumped prices exceed *de minimus* volumes.

Section 269TDA of the *Customs Act* prescribes grounds for termination when the volume of imports from a country does not exceed the required 3 per cent threshold. It is evident from the Commission's analysis across the investigation period that the volume of dumped exports from Malaysia during the investigation period exceeded 3 per cent. It is further notes at Section 8.6.2 of Report No. 362²:

"The volume of dumped and subsidised goods imported from Malaysia accounts for approximately 38 per cent of all aluminium extrusions imported from Malaysia and accounts for approximately 7.5 per cent of total imports to Australia and is therefore relevant to the causation analysis."

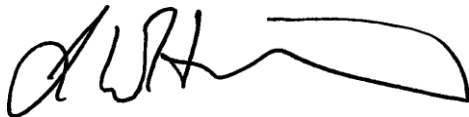
The volume of dumped imports from Malaysia (i.e. from uncooperative exporters) represents 38 per cent of total imports from that source during the investigation period. This volume, therefore, is well in excess of the 3 per cent *de minimus* threshold. As Everpress was considered 'uncooperative', its export volumes were included in the 38 per cent as subject to measures.

In respect of Everpress' second ground of review seeking it to be considered a 'cooperative' or 'residual' exporter, the Commissioner notified Everpress on 29 September 2016 that its exporter questionnaire response was deficient. It was therefore not possible for Everpress to be considered a 'cooperative' exporter.

On this basis, Everpress' grounds for review must be rejected and the decision of the Parliamentary Secretary as it relates to Everpress' treatment as an uncooperative exporter involved the correct and preferred decision in relation to that exporter.

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

² Refer Report No. 362, at P. 82.