Australian Government
Anti-Dumping Review Panel

ADRP REPORT No. 69

Certain Aluminium Extrusions exported to Australia from the People's Republic of China

April 2018

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Abbreviations

Term	Meaning
ADN	Anti-Dumping Notice
Act	*Customs Act 1901*
China	The People's Republic of China
Commissioner	The Commissioner of the Anti-Dumping Commission
Dumping Duties Act	*Customs Tariff (Anti-Dumping) Act 1975*
Dumping Duty Regulation	*Customs Tariff (Anti-Dumping) Regulation 2013*
EPR	The electronic public record maintained by the ADC.
Goods	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 kilograms and a profile or cross-section which fits within a circle having a diameter of 421 mm.
Goomax	Goomax Metal Co. Ltd., Fujian
Guang Ya	Guang Ya Aluminium Industries Co., Ltd
ICD	Interim countervailing duty
IDD	Interim dumping duty
Initiating Notice	ADN 2017/38, the Notice by which REV 392 was initiated
Investigation period	1 January 2016 to 31 December 2016
Jaiwei	Forshan Shunde Beijiao Jaiwei Aluminium Factory

Jinxicheng	Guangdong Jinxiecheng AL Manufacturing Co., Ltd
Kam Kiu	Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd
Minister	Craig Laundy, the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
PanAsia	PanAsia Aluminium (China) Co., Limited
PMAA	Press Metal Aluminium Australia Pty Ltd
PMI	Press Metal International Ltd
REP 392	The report published by the ADC in relation to REV 392 and dated 6 July 2017
REV 392	The review by the Commissioner of anti-dumping measures applicable goods exported from China initiated by ADN 2017/38
Reviewable Decision	The decision made on 8 November 2017 by the Minister under s 269ZDB(1)(a)(iii) of the Act to determine the rate of interim dumping duty and interim countervailing duty on certain aluminium extrusions from the People's Republic of China as if different variable factors had been fixed in respect of all exporters of those goods from China. The decision was the subject of Anti-Dumping Notice No. 2017/138.
SEF 392	The Statement of Essential Facts No. 392 dated published on 25 August 2017
Zhongya	Guangdong Zhongya Aluminium Company Limited

Recommendation

This is a review of the decision made on 8 November 2017 by Craig Laundy, the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science under s 269ZDB(1)(a)(iii) of the *Customs Act 1901* to determine the rate of interim dumping duty and interim countervailing duty on certain aluminium extrusions from the People's Republic of China as if different variable factors had been fixed in respect of all exporters of those goods from China.

The decision was the subject of Anti-Dumping Notice No. 2017/138.

For the reasons given in this Report, I recommend that the decision be affirmed.

Scott Ellis
Panel Member
Anti-Dumping Review Panel
3 April 2018

Summary

1. On 8 November 2017, Craig Laundy, the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (Minister) made a decision (Reviewable Decision) [1] under s 269ZDB(1)(a)(iii) of the *Customs Act 1901* (Act) that the dumping duty notice and the countervailing duty notice applicable to certain aluminium extrusions (goods) [2] would have effect as if different variable factors had been fixed. The new variable factors fixed by the Reviewable Decision flowed through to a determination under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duties Act) of the amount of interim dumping duty (IDD) and interim countervailing duty (ICD) applicable to exporters of the goods from the People's Republic of China (China).

2. Press Metal International Ltd (PMI) was among the Chinese exporters affected. In making the Reviewable Decision, the Minister treated PMI as a "residual exporter" and fixed the variable factors applicable to it on that basis.

3. PMI contended that the Reviewable Decision was not the correct or preferable decision in relation to it. PMI contended that it ought to have been selected for examination as part of REV 392, which would have meant that it would not have been a "residual exporter" and would have had variable factors determined specifically for it.

4. I consider that the Commissioner of the Anti-Dumping Commission (Commissioner) was entitled not to select PMI for examination. Consequently, I am satisfied that the Reviewable Decision was the correct and preferable decision.

5. I recommend that the Minister affirm the Reviewable Decision.

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[1] The Reviewable Decision was the subject of ADN 2017/138.

[2] The goods are more fully described in the Glossary.

Background

6. On 23 March 2017 the Commissioner initiated a review (REV 392) of anti-dumping measures in respect of the goods exported to Australia from China by all exporters.[3]

7. The review period was 1 January 2016 to 31 December 2016.

8. The Anti-Dumping Notice initiating REV 392 (Initiating Notice) stated that the Commissioner proposed to rely on s 269TACAA(1).

9. Section 269TACAA(1) provides that a review in respect of dumping and countervailing duties "may be carried out, and findings made on the basis of information obtained from an examination of a selected number of exporters" where "the number of exporters from a particular country of export in relation to the … review … is so large that it is not practicable to examine the exports of all those exporters". In such circumstances, exporters may be selected for examination:

    (c) who constitute a statistically valid sample of those exporters; or

    (d) who are responsible for the largest volume of exports to Australia who can reasonably be examined.

10. Section 269TACAA(2) provides:

    (2) If information is submitted by an exporter not initially selected under subsection (1) for the purposes of an investigation, review or inquiry, the investigation, review or inquiry must extend to that exporter unless to so extend it would prevent its timely completion.

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[3] ADN 2017/38.

There are, therefore, two opportunities for an exporter to be examined – initially, by selection by the Commissioner under s 269TACAA(1) and later, after provision of information under s 269TACAA(2).

11. PMI was not included in the sample under s 269TACAA (1).

12. PMI provided a completed exporter questionnaire on or about 25 May 2017.[4]

13. A Statement of Essential Facts was issued on 25 August 2017 (SEF 392).[5] The Commissioner did not examine PMI before SEF 392 was issued. In SEF 392, the Commissioner indicated that he intended to treat PMI as a "residual exporter".[6]

14. Section 269T defines what is means by "residual exporter". Relevantly, the definition provides:

    residual exporter, in relation to:

    …

    (b) a review under Division 5 in relation to the publication of a dumping duty notice; or

    …

    means an exporter of goods that are the subject of the … review … where:

    (d) the exporter's exports were not examined as part of the investigation, review or inquiry; and

    (e) the exporter was not an uncooperative exporter in relation to the investigation, review or inquiry.

[4] EPR 392 document # 028.

[5] EPR 392 document # 056.

[6] At section 4.9.4, page 30.

15. Section 269TACAB(2) provides that the normal value and the export price for a residual exporter must be not less than the weighted average of the normal values and export prices for like goods of co-operative exporters from the same country of export.

16. By letter dated 14 September 2017,[7] PMI submitted that it should be examined and should not be treated as a "residual exporter".

17. In October 2017, the Commission published Report No. 392 (REP 392). PMI was treated as a "residual exporter"[8] and, in accordance with s 269TACAB(2), PMI's normal value and export price were determined by reference to the weighted average of the export price and normal value of the cooperative exporters, rather than the particular circumstances of PMI.[9] The same approach was adopted to determine the amount of subsidy received by PMI.[10]

18. As mentioned previously, the Reviewable Decision was made on 8 November 2017 and was the subject of ADN 2017/138. In making the Reviewable Decision, the Minister accepted the recommendations and reasons for the recommendations in REP 392.

19. ADN 2017/138 also gave notice of the Minister's determination under s 8(5) of the Dumping Duty Act that the rate of interim payable on the goods exported to Australia should be worked out in accordance with the combination of fixed and variable duty method pursuant to subsections 5(2) and (3) of *Customs Tariff (Anti-Dumping) Regulation 2013* (Dumping Duty Regulation).

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[7] EPR 392 document # 059.

[8] At section 4.3.4, page 20.

[9] REP 392 at section 4.3.1.

[10] REP 392 at section 5.5.2.

20. The application for review was made on 8 December 2017. It identifies s 269ZDB(1) as the section of the Act under which the Reviewable Decision was made.

21. The Senior Member directed in writing that the Panel for this review should be constituted by me.

22. Before I accepted the application for review, I held a conference. The conference was attended by Mr G Cantelo of Geoffrey Cantelo International Associates, PMI's representative, and Mr M Williams of the ADC. The purpose of the conference was to obtain information clarifying the grounds of review. There is a summary of the conference on the Panel website.

23. PMI provided submissions dated 5 February 2018. I also received timely submissions from the ADC and from Capral Limited.[11]

Grounds of review

24. PMI contended that the Reviewable Decision was not the correct and preferable decision in relation to it because:

    (a) it should have been selected for examination under s 269TACAA(1); or

    (b) it should have been selected for examination pursuant to s 269TACAA(2) after it submitted information to REV 392; and

    (c) the Minister should have determined the rate of IDD and ICD using a "floor price".

[11] The thrust of Capral Limited's submissions was that PMI complained about not being examined only September 2017, which was too late because REV 392 was nearly finished. This raises the question whether it was up to PMI to complain about not being selected. In light of my views about PMI's grounds, it is not necessary to reach a conclusion about this issue.

25. PMI's application was directed primarily at the decisions made by the Commissioner not to select PMI for examination. These decisions are not the Reviewable Decision. The decisions about examination are preliminary to the Reviewable Decision. The role of the Panel is to examine the Reviewable Decision. However, if PMI had not been treated as a "residual exporter" and if its dumping margin and subsidy level had been determined by reference to its circumstances, almost inevitably the variable factors, and hence the IDD and ICD applicable to PMI, would have been different to those actually applied. It is, therefore, appropriate for me to consider the decisions made by the Commissioner to not examine PMI as part of REV 392. I bear in mind that the administration and management of reviews are matters for the discretion and judgment of the Commissioner, subject, of course, to the Act and the requirement that the Reviewable Decision is the correct and preferable decision.

26. I will consider in turn the grounds of review identified at paragraph 24.

Section 269TACAA(1): Initial sample

27. REV 392 was initiated as a consequence of applications for review by 4 Chinese exporters. The Commissioner considered whether it was appropriate to extend the review to all Chinese exporters. He decided that it was and made a recommendation to that effect to the Minister, who adopted it.

28. In the Initiating Notice, the Commissioner indicated that he intended to conduct REV 392 by sampling the following exporters:

    (a) Guangdong Zhongya Aluminium Company Limited (Zhongya);

    (b) PanAsia Aluminium (China) Co., Limited (Pan Asia);

    (c) Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd (Kam Kiu);

    (d) Guang Ya Aluminium Industries Co., Ltd (Guang Ya); and

    (e) Guangdong Jinxiecheng AL. Manufacturing Co., Ltd (Jinxicheng).

29. PMI contended that it ought to have been included in the initial sample identified under s 269TACAA(1).

30. This contention must be rejected.

31. Section 269TACAA(1) gives two criteria for inclusion in the sample of exporters. It is apparent that the Commissioner selected exporters for examination based on volume of exports, which he was entitled to do. Once volume has been chosen as the criterion for selection for sampling, there is no basis for selecting PMI under s 269TACAA(1). Although PMI may be a substantial participant in the aluminium extrusion industry generally, it had not exported much of the goods from China to Australia during the investigation period. It was only the ██ largest exporter of the goods to Australia by volume under s 269TACAA(1)(d).[12] Its goods constituted a ██ proportion of the total quantity of the goods exported to Australia from China, because the selected exporters exported much more of the goods than the "tail" of Chinese exporters of the goods. PMI did not seek to argue that the sample under s 269TACAA(1) should have included it along with all the other exporters who exported more of the goods to Australia than it. Such a large sample would have substantially defeated the purpose of sampling.

32. PMI argued that its low ranking did not prevent the Commissioner selecting it for examination. This may be true, but it does not provide a reason why the Commissioner should have selected PMI, rather than other, larger, exporters. PMI contended that it had an exemplary record of cooperation with the ADC. That is not a sufficient reason for PMI to have been selected in this context.

33. Some exporters selected for examination did not cooperate. The Commissioner selected other exporters for examination, but not PMI. It did so based on volume of sales. That decision was correct, applying the principles relating to the initial selection of the sample.

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[12] Commissioner's submissions at p3.

34. PMI asserted that the selected exporters provided information that was not satisfactory, with the consequence that the Commissioner was obliged to ascertain the variable factors in respect of Kam Kiu, Pan Asia, Guang Ya, Jinxicheng and Zhongya by less than satisfactory methods, including recourse to "all available information". These assertions do not address the criteria the Commissioner is obliged to apply in selecting exporters for sampling under s 269TACAA(1).

Section 269TACAA(2): Submission of information

35. Although not initially selected under s 269TACAA(1), PMI provided information to the Commission in the form of a completed Exporter Questionnaire.[13] It argued that, as a consequence, it ought to have been selected for examination under s 269TACAA(2).

36. Section 269TACAA(2) uses the word "prevent" in connection with the circumstances in which the Commissioner need not examine an exporter who has submitted information to a review. I note that s 269TACAA(1) authorises sampling where examination of all exporters is not "practical", which is a lower standard than "prevent". "Prevent" is also a higher standard than "unduly burdensome", the expression used in Art 6.10.2 of the *Agreement on the Implementation of Article VI of General Agreement on Tariffs and Trade 1994,* the provision of the Agreement which s 269TACAA(2) largely reflects. This suggests that mere administrative inconvenience should not prevent the examination of an exporter which has provided information.

37. However, the word "prevent" must be applied bearing in mind that the Commissioner has other inquiries, investigations, and reviews on foot at any time and Commission has limited resources with which to carry them out. The legislation requires those inquiries, investigations, and reviews to be completed within the applicable statutory time limit. Section 269TACAA(2) does not require

[13] EPR 392 document # 028.

the Commissioner to sacrifice other inquiries, investigations, and reviews in order to examine an exporter which has provided information under s 269TACAA(2). Section 269TACAA(2) must be given a reasonable and practical application. In considering the application of s 269TACAA(2), operational constraints, such as workloads and resources, may be taken into account.

38. In his submissions, the Commissioner pointed out that the task of verifying the largest exporters on site in China was a considerable one and that significant resources had been devoted to the task. He also pointed out that the onsite verification of the selected exporters involved an extension of 45 days to the 155-day legislated period for investigations. It also appears that the anticipated workload of the Anti-Dumping Commission, in terms of hours required, was significantly above the person hours budgeted to perform that workload. In this context, it was reasonable for the Commissioner to conclude that taking on an additional verification would have prevented the timely completion of REV 392.

39. PMI argued:

    (a) two other exporters, Forshan Shunde Beijiao Jaiwei Aluminium Factory (Jiawei) and Goomax Metal Co. Ltd., Fujian (Goomax), were not included in the initial sample. However, neither Jaiwei or Goomax were treated as residual exporters;

    (b) the Commission has previously carried out an investigation in relation to exports from Malaysia by an associated company of PMI, Press Metal Berhad. The information provided by Press Metal Berhad was verified offsite, so that examination of PMI's information need not have involved the time and expense of an onsite verification; and

    (c) PMI's information was supplemented by information obtained from Press Metal Aluminium Australia Pty Ltd (PMAA) (an entity which was related to PMI and which imported PMI's goods into Australia).

40. I do not accept PMI's arguments.

41. First, there were special circumstances surrounding the decision to examine Jaiwei and Goomax. Both were already the subject of expedited reviews under Division 6 at the time REV 392 commenced. The Commissioner had completed these examinations at the time when REV 392 was extended to all Chinese exporters of the goods.[14] When the Review was extended to all exporters, the status of the reviews of Jaiwei and Goomax would have been factored into the Commissioner's work program for REV 392. PMI pointed out that Jaiwei and Goomax had not exported the goods to Australia during the Review Period. However, given the status of the examination of those entities, this was not a significant consideration.

42. Second, the examination of aluminium extrusions exported by Press Metal Berhad from Malaysia did not concern the export of the goods from China by PMI. Information about the export price, normal value and subsidy level for exports from Malaysia would not be relevant to exports from China. In particular, REP 392 calculated normal value based on the constructed cost of manufacture. Costs of manufacture of the goods in Malaysia and China would differ.

43. In its submissions, PMI argued that the Commissioner could have conducted an offsite verification. The Commissioner pointed out that:
    (a) he is responsible for the conduct of the investigation, and it is up to the Commissioner and the staff of the Anti-Dumping Commission, undertaking the review to determine whether an on-site investigation is warranted;
    (b) even offsite verification is rigorous and involves the allocation of significant resources.

44. Although PMI was not a significant exporter to Australia it does not follow that the task of verifying exports would not have been a considerable one. In his

[14] Commissioner Submissions at p4.

submission, the Commissioner stated that the accelerated reviews of Goomax and Jiawei took 100 days.

45. Third, the fact that PMAA had provided information and that PMAA's information was verified off site is not determinative. PMAA was involved only in limited sales of the goods. The information was straight forward and confined. It does not provide a reliable guide for the impact on REV 392 of verification of PMI.

46. I accept that an exporter's attitude and "track record" in relation to verification is relevant to the Commissioner's assessment of the likely impact of examining that exporter consequent upon the submission of information under s 269TACAA(2). In the present case, however, the materials relied on by PMI do not persuade me that the Commissioner's assessment of the impact of examining PMI should not be accepted.

47. I am satisfied that it was open to the Commissioner to conclude that examining PMI would have prevented the timely completion of REV 392.

Floor price

48. PMI contended that the Minister should have imposed interim duties based on an export floor price, rather than using a combination of fixed and variable duty methods.

49. This issue does not fall within the scope of review under the Act. The Minister's determination to use the combination of fixed and variable duty method, rather than a floor price, did not form part of the Reviewable Decision. It was a determination made under s 8(5) of the Dumping Duties Act and Regulation even though that determination was the subject of the same Anti-Dumping Notice as the Reviewable Decision.

50. The Panel is not empowered by s 269ZX or s 269ZZA (or any other provision of the Act) to review decisions made under the Dumping Duties Act and Regulation.

Conclusion

51. I am not persuaded that PMI should have been selected for examination and consequently I am persuaded that it was appropriate to treat PMI as a residual exporter.

52. I am satisfied the Reviewable Decision was the correct and preferable decision. I recommend that it be affirmed.

Scott Ellis
Panel Member
Anti-Dumping Review Panel
3 April 2018