

21 February 2018

Anti-Dumping Review Panel
c/o Legal, Audit and Assurance Branch
Department of Industry, Innovation and Science
10 Binara Street
CANBERRA ACT 2601

Email: ADRP@industry.gov.au

Public File

Dear Sir/Madam

Certain aluminium extrusions exported to Australia from the People's Republic of China

I. Summary

The decision of the former Assistant Minister for Industry, Innovation and Science ("Minister") to publish a notice (ADN 2017/138) that altered the variable factors relevant to the determination of dumping duty and countervailing duties, such that the fixed rate of combined interim dumping duty and countervailing duty applicable to Press Metal International Ltd ("PMI") was 27.4 per cent ("the Reviewable decision") was the correct and preferred decision.

PMI did not alert the Commissioner to its dissatisfaction of it being identified as a 'residual exporter' until 20 days following the Statement of Essential Facts No. 392 ("SEF 392"). This notification was toward the end of the investigation process and certainly did not allow for the Commissioner to re-consider his categorisation of PMI in order for the final report and recommendations to be made in a timely manner.

The Minister's decision, therefore, was the correct and preferred decision to categorise PMI as a residual exporter in light of its minor export volumes to Australia during the review investigation period and must stand.

II. Discussion of grounds

PMI is aggrieved by the Minister's decision to not categorise the Chinese exporter as a 'selected exporter'. Due to PMI's categorisation as a 'residual exporter' PMI's exports to Australia post the review outcomes attract a 27.4 per cent combined dumping and countervailing duty.

The Minister's decision to sample exporters in Review Investigation No. 392 was a direct consequence of the high volume of exporters that responded with completed exporter questionnaires at the commencement of the inquiry. By File Note published on 10 May 2017 (EPR Document No. 31) the Anti-Dumping Commission notified that the Commissioner,

"intends to limit the review of anti-dumping measures applying to aluminium extrusions from the People's Republic of China (China), to a selected number of exporters responsible for the largest volume of exports to Australia that can reasonably be examined. This is because the number of exporters of aluminium extrusions to Australia from China during the review period 1 January 2016 to 31 December 2016 is so large that it would not be practicable to examine the exports of all those exporters."

The Commissioner's decision to categorise 'selected exporters' was therefore based upon the trade volumes of the exporters during the investigation period and to permit a timely outcome for the review. AS PMI exported only two shipments¹ during the period of investigation, PMI's export volume to Australia was not of a volume to justify its inclusion in the higher volume 'selected exporter' category.

Further, although PMI provided the Commissioner with additional information, it is not a requirement that the Commissioner must include the exporter as a 'selected exporter' if to do so would hinder or prevent the timely completion of the investigation (subsection 269TACAA(2)). It should be noted that PMI did not make representations concerning its categorisation as a 'residual exporter' until 14 September 2017, some 20 days following the publication of SEF 392 (dated 25 August 2017).

It would be expected that if an exporter was aggrieved by its omission as a 'selected exporter' by the Commissioner in the early stages of the investigation, the affected exporter would notify the Commissioner of its dissatisfaction at the earliest opportunity and indicate that it had provided a fully-compliant exporter questionnaire response in respect of exports during the investigation period. PMI did not notify the Commission following the publication of the File Note on 10 May 2017 that it should be treated as a selected exporter; rather, PMI waited a further four months before it highlighted its concern following the publication of SEF 392 confirming the provisional dumping and countervailing duty rates for selected and residual exporters.

It was only following the publication of SEF 392 that PMI learnt that its future exports would attract a rate of dumping and countervailing duty that would adversely impact its competitive position relative to other Chinese exporters of aluminium extrusions to Australia.

Capral does not consider that it is reasonable for PMI to be challenging at a late stage in an investigation that it should have received individual treatment as an individual (or selected exporter) when to do so would unnecessarily delay the timely completion of the review investigation. PMI had sufficient opportunity following the publication by the Anti-Dumping Commission of its file note on 10 May 2017 that it would be sampling exporters due to the high participation rate of exporters reflected in exporter questionnaire responses. The Commissioner acted in accordance with the legislation and notified interested parties of its intention to sample exporters. PMI would have understood soon after 10 May 2017 that it had not been identified as a selected exporter and should have notified the Commissioner at this time (and not delayed its objection until 14 September 2017).

III. Conclusion

The Minister's decision to identify PMI as a 'residual exporter' was the correct and preferred decision. PMI's volumes of exports during the review investigation period was relatively small (i.e. two shipments). Due to the large number of Chinese exporters that indicated a willingness to cooperate in the review, the Commissioner correctly sampled exporters for the examination of shipments during the review. PMI's export volumes did not warrant its inclusion as a selected exporter.

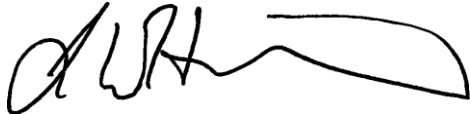
PMI did not raise its objection to the Commissioner's categorisation until following the publication of SEF 392. The proposed recommendations in SEF 392 were not favourable to PMI and it was only then that PMI raised its concerns about its treatment as a residual exporter. The time at which PMI raised its concerns with the Commissioner were toward the completion of the investigation. To accommodate PMI's request for individual treatment would have hindered the Commissioner's ability to report to the Minister in a timely fashion.

PMI's request for review of the Minister's decision, therefore, must be dismissed.

¹ Refer EPR Document No. 59.

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

A handwritten signature in black ink, appearing to read 'LHAWKINS', with a long horizontal flourish extending to the right.

Luke Hawkins
General Manager – Supply and Industrial Solutions