**Capral Limited**
ABN 78 004 213 692

**Corporate Office**
Level 4, 60 Phillip Street, Parramatta NSW 2150
PO Box 209, Parramatta CBD BC NSW 2124
**T** 02 9682 0710 **F** 02 8222 0130
www.capral.com.au

22 July 2019

Mr Paul O'Connor
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 Mr O'Connor

**ADRP Review Inquiry – Review of measures investigation No. 482 - aluminium extrusions exported from P R China**

I. Background

By notice published on 24 June 2019, the Anti-Dumping Review Panel ("ADRP") has notified it is conducting a review of the decision by the Minister for Industry, Science and Technology to publish a notice under subsection 269ZDB(1)(a)(iii) of the Customs Act 1901 in respect of certain aluminium extrusions exported from the People's Republic of China ("China") (the "Reviewable Decision").

Applications for review of the Reviewable Decision were received by the ADRP form:

- Darley Aluminium Trading Pty Ltd ("Darley");
- Fujian Minfa Aluminium Inc. ("Minfa");
- Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd ("Kam Kiu"); and
- PanAsia Aluminium (China) Limited ("PanAsia").

Capral Limited ("Capral") is a member of the Australian industry manufacturing aluminium extrusions. Capral has examined the applications for review of the Reviewable Decision and provides comments below on the identified grounds for review of each of the applicant companies.

II. Application by Darley Aluminium Trading Pty Ltd

Darley has identified two grounds of appeal in relation to the Reviewable Decision. These are:

*Ground 1:* It was incorrect for the Commissioner to be satisfied that revocation of the measures would likely lead to a recurrence or continuation of the subsidy that the measure was intended to prevent. The measure is not intended to prevent the continuation or recurrence of a negligible subsidy.

*Capral's Comments*:

Darley Aluminium is the Australian importer of goods manufactured by the Chinese exporter Guangdong Zhongya Aluminium Company Ltd ("Zhongya"). Darley contends that the Anti-Dumping Commission ("the Commission") verified information provided by Zhongya that the countervailable benefit that Zhongya "*has been receiving and is likely to continue to receive, is negligible*".

Capral does not dispute that the Commission established the countervailable subsidy received by Zhongya during the investigation period was negligible (i.e. it was determined at 0.2 per cent). Capral does, however, consider that the Reviewable Decision in respect of the likelihood concerning the benefit likelihood that Zhongya will continue to receive, is the correct and preferable decision.

Darley relies upon information contained in past duty assessment reviews where the Commission confirmed the existence of zero or negligible subsidy margins for Zhongya. These duty assessment reviews do not involve the investigation as to the future likelihood of the operation of the relevant subsidy as afforded by the Government of China ("GOC"). Rather, the duty assessment process involves an administrative analysis as to whether the importer paid the correct interim countervailing duty ("ICD") (and interim dumping duty) liable at the time of importation. The applicable variable factors that applied at the time of importation were determined by an earlier review of variable factors inquiry (based upon a relevant investigation period).

It is therefore incorrect to assert that on the basis of past duty assessment outcomes for the Australian importer that grounds exist for the revocation of the countervailable subsidy in relation to exports by Zhongya.

In relation to the Commission's findings in earlier review investigations (Reviews 248 and Review 392 as referenced by Darley) the Commission had identified that Zhongya had received benefits historically under the following subsidy programs:

- Program 10 – Preferential tax policies for foreign invested enterprises; and
- Program 13 – Exemption of tariff and import VAT for imported technologies and equipment.

During exporter verification with Zhongya in Investigation 148, the then Australian Customs and Border Protection Service established that Zhongya "*had received a benefit through its purchase of ingot from SOEs* [State Owned Enterprises], *and had therefore received a benefit under a third countervailable program, aluminium provided at less than adequate remuneration*" (i.e. under Program 15). The subsidy margin determined for Zhongya was 7.6 per cent.

The Commission confirms in Report 482[1] that in duty assessments subsequent to March 2012, Darley (the sole importer of aluminium extrusions from Zhongya) has received partial refunds of ICD as:

> "*The partial repayment of duties was attributed to a finding that Zhongya had stopped purchasing aluminium raw material from SOEs. This has resulted in a reduction in the subsidy margin attributable to program 15. Specifically, subsidy programs relating to program 15 were determined to be 0.3 per cent and 1.y per cent in the initial applications for final assessment of duty and then shifted to the Commission not finding Zhongya received any benefit under this program in recent years."*

The Commission's assessment was that according to Darley's applications for duty assessment, Zhongya had "largely" ceased purchasing aluminium from SOEs.

The Commission relevantly considered that in the absence of countervailing measures "*Zhongya will likely return to its former purchasing behaviour by purchasing aluminium raw materials from SOEs*". This assessment by the Commission is reasonable as Zhongya has previously purchased aluminium ingot from SOEs and it therefore has established links to SOE suppliers. The Chinese aluminium industry is dominated by SOEs and there exists a price-advantage for exporters to purchase aluminium ingot from SOEs. If the countervailable measures are revoked on Zhongya there remains a likelihood that the exporter would revert to purchasing aluminium ingot from its previous SOE suppliers to secure a competitive advantage with Chinese exporters that are not the subject of the measures. The Commission's inquiries confirmed the continued applicability of program 15 and the program continues to afford countervailable benefits to Chinese exporters of aluminium extrusions.

The Commission's finding and the Minister's decision in relation to the likelihood that the countervailable benefit under program 15 continues to apply to Zhongya is therefore the correct and preferable decision.

---

[1] Report No. 482, Section 8.1, P.70.

*Ground 2*: There was insufficient evidence to support the finding that revocation would lead or be likely to lead to a continuation or recurrence of material injury the measures were intended to prevent.

*Capral's Comments*:

The Commission correctly rejected Darley's reliance on findings in Investigation 442 that the two Chinese exporters the subject of investigation of exports from China were not at dumped prices. Investigation 442 did not examine whether the exports from China involved countervailable subsidies. Further, the Commission did confirm that the Australian industry had suffered injury in the forms of suppressed profit and profitability during the investigation period, although the injury could not be attributed to dumping by the two Chinese exporters.

In Report 482 the Commission examined two scenarios on pricing and what the consequential impact of profit would be in the future. The two scenarios were:

(a) Where measures are removed from Zhongya's importation of goods; and
(b) What could happen if Zhongya returned to its pre-measures behavior of sourcing raw materials from SOEs.

The Commission established that Zhongya's exports to Australia undercut the Australian industry during the investigation period (1 July 2017 to 30 June 2018) "by approximately 7 per cent or higher". The Commission was satisfied that *"…in the absence of measures, there is incentive for Zhongya to recommence purchasing inputs from lower priced SOE suppliers.*" Capral agrees with the Commission's assessment that it is reasonable to find that Zhongya would be incentivised and would likely – in the absence of measures – resume sourcing aluminium raw material inputs from SOEs.

The Commission also established the increase in Zhongya's exports to Australia from financial year 2017 to 2018 had increased by 57 per cent. This confirms that Zhongya was a substantial exporter of the goods to Australia and that Zhongya's volume – at subsidised prices – would continue to cause price-effect injury to the Australian industry.

Capral notes Darley's contention that there is no incentive for Zhongya to shift to sourcing aluminium from an SOE should the measure be revoked. Capral rejects this claim as ill-informed as the Commission must consider what injury is likely to occur if the measures is revoked. It cannot be ignored that Zhongya has previously purchased from SOEs and that if the measures were revoked, it is likely that Zhongya would seek to improve its competitiveness with exports to Australia.

The Commission's finding and the Minister's decision that the Australian industry would suffer injury that is material if the countervailing measure is revoked – as confirmed by the price undercutting by Zhongya's export prices and increasing export volumes to Australia – is the correct and preferred decision concerning the countervailable subsidy applicable to exports to Australia by Zhongya.

## III. Appeal by Fujian Minfa Aluminium Inc.

Minfa has requested a review of the Minister's decision to not afford Minfa with an individual rate for applicable variable factors. The Commission decided to include Minfa in the residual rate applicable to cooperative exporters that were not selected exporters for verification purposes.

The Commission stated at Section 4.2.2 of Report 482 that it "*did not extend the review to other exporters who submitted REQ's for this review as to do so would have prevented the timely completion of the review. For the purposes of this review, the Commission considers these exporters, namely Yongya and Minfa, to be residual exporters.*"

The Commission further explained the basis for the determination of export prices and normal values for residual exporters being based upon the weighted average export price for cooperating exporters and the weighted average normal value for cooperating exporters.

The export price and normal value for residual exporters could potentially be favourable to Minfa if its actual export prices and normal values were higher than the weighted-average calculations. This information is not stated in the Minfa application for review.

On the basis that there were a large number of cooperative exporters in Review 482, it was not possible for the Commission to verify all cooperative exporters' data. The Commission has correctly determined export prices and normal values in accordance with subsections 269TACAB(2)(c) and (d). The reviewable decision as it applies to export price and normal value determined for Minfa is therefore the correct and preferred decision.

IV. Appeal by Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd

Kam Kiu nominated two grounds for review of the Minister's decision.

*Ground 1*: The Minister erred in constructing normal value by failing to exclude from the calculation the profit margin derived from the domestic sales of "high-end" like goods which had not been exported to Australia.

*Capral's comments*:

The Kam Kiu application for review addresses the Commission's determination of normal value that includes a profit component for goods during the investigation period:

(i) That were not exported to Australia; and
(ii) Included a much higher profit margin than the products which were both sold domestically and exported to Australia.

The inclusion of the level of profit for these two categories of goods, it is argued on behalf of Kam Kiu, has contributed to a higher dumping margin that would otherwise apply. This matter was raised on behalf of Kam Kiu with the Commission during the investigation.

The Commission determined normal values for Chinese exporters under subsection 269TAC(2)(c) of the *Customs Act* on a constructed cost methodology. As a particular market situation applies for aluminium extrusions sold in China the normal value cannot be determine don the basis of domestic sales in China. The constructed cost methodology includes the sum of the following:

- The cost of production or manufacture of the exported goods;
- The selling, general and administrative costs that would be incurred on the assumption that the exported good is sold on the domestic market; and
- An amount of profit.

In respect of the amount of profit to be included in the constructed normal value for Kam Kiu, Regulation 45(2) requires that where reasonably practicable profit for constructed normal value under subsection 269TAC(2)(c)(ii) must be worked out using data relating to the sale of like goods by the exporter or producer of the goods sold in the ordinary course of trade ("OCOT").

The Regulation 45(2) requires the Commissioner to include the profit of all like goods sold in the OCOT on the domestic market. This requirement does not allow for the selective exclusion of so-called "high-end" models or goods that are not exported, from the profit calculation. The calculation of the level of profit must include **all** like goods sold in the OCOT of trade that are profitable. There is no discretion to exclude any category of like goods that are profitable in its calculation.

The Minister has made the correct and preferred decision in respect of including the level of profit for all like goods sold on the domestic market in China for Kam Kiu's normal value calculation.

*Ground 2*: In the alternative, if the profit derived from domestic sales of "high-end" like goods were included as part of the profit, the Minister failed to make an adjustment for that profit so as to ensure a fair comparison between the goods sold domestically and those exported to Australia.

*Capral Comment*:

This matter was also considered by the Commission in Report No. 482 (refer Section 4.7.3.1). The Commission correctly confirmed that Kam Kiu in its exporter questionnaire response relating to its domestic cost-to-make-and-sell like goods "*does not separate costs to a level where the costs of all high-end models, and therefore profit, can be differentiated from other models*." It is therefore not possible for the Commission to arrive at an adjustment to differentiate the profit on like goods for "high-end" models not exported to Australia (although Capral is not conceding that such an adjustment to Kam Kiu's normal value should be made).

Capral concurs with the Commission's comments at Section 4.7.3.1 of Report 482 that where normal value is determined pursuant to subsection 269TAC(2)(c), subsection 269TAC(9) operates to enable the Minister to make adjustments as required to ensure the normal value as ascertained is properly comparable with the export price for goods sold to Australia.

Capral considers that the decision of the Minister is the correct and preferred decision for the level of profit determined in Kam Kiu's normal value.

V. Review by PanAsia Aluminium (China) Limited

The PanAsia application for review asserts that in determining the cost to make and sell (CTMS) for PanAsia, the Minister erred in uplifting all production costs incurred by PanAsia and not just its aluminium raw material costs.

Capral notes that PanAsia has contended that in respect of the exporter's costs the Commission uplifted PanAsia's aluminium ingot costs "*not only by the Commission's calculated percentage uplift for aluminium ingot, but it also applies the higher percentage uplift calculated for aluminium billet*." The Commission's reasoning for this approach is explained:

> *"….data provided by PanAsia in support of this claim contains new unverified information than that provided prior to, and during the onsite verification visit. This new information has not been verified, to do so would prevent the timely completion of this report, and therefore the Commission is unable to separately identify the purchased aluminium ingot from the purchased aluminium billet*."

PanAsia claims that the data was verified by the Commission during the onsite verification visit. The Commission clearly disagrees with PanAsia's interpretation and is satisfied that the information relating to the purchase of aluminium ingot was provided following the verification visit. Capral is not privy to the actual information provided by the Commission, however, it would seem logical that the Commission would have full knowledge as to whether the new information was verified or otherwise during the conduct of the verification visit at PanAsia.

A further ground of appeal raised by PanAsia relates to the claim that the Commission erred in deducting interim dumping duties paid by the importer in calculating the deductive export price. The Commission calculated deductive export prices for PanAsia as it determined that its sales to Australia were not at arms-length.

PanAsia outlines the basis upon which the interim duty amount is not deducted from the importer's final selling price to arrive at a deductive export price. However, the requirement of subsection 269(X)(5B)(b) includes a provision where the Commissioner is satisfied as to "conclusive evidence" of the three preceding requirements of subsection 269(X)(5B)(a)(i) to (iii) being change in normal value, change in costs incurred between importation and resale, and any movements in resale price which is reflected in subsequent selling prices.

Capral does not have information available as to the satisfaction of the Commissioner as to whether he was not satisfied as to the "conclusive evidence" before him when determining deductive export prices for PanAsia. Capral considers however that the Commissioner must be satisfied that the information available from PanAsia is reliable.

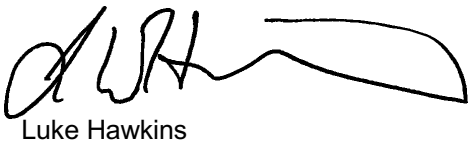
Capral does not consider that PanAsia has demonstrated that the reviewable decision of the Minister in relation to the determination of normal value and export price for PanAsia is not the correct or preferred decision.

## VI. Recommendation

Capral has analysed the applications for review by the aggrieved parties Darley, Minfua, Kam Kiu and PanAsia and does not consider that the Minister has erred in the decision to apply new variable factors to the subject goods exported from China. As the review applicants have not demonstrated that the Minister's decision is in error, the decision of the Minister as detailed in Report 482 is the correct and preferred decision.

If you have any questions concerning Capral's 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