

21 December 2020

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Public File

Dear Sir/Madam

ADRP Review Investigation 2020/129 – Aluminium extrusions exported from The People’s Republic of China – PanAsia Group

I. Introduction

I refer to the application for the review of the decision by the Minister for Industry, Science and Technology (“the Minister”) published on the Anti-Dumping Commission (“the Commission”) website on 15 October 2020 (“the reviewable decision”). The application for review has been made by:

- PanAsia Aluminium Pty Ltd (“PanAsia Australia”);
- PanAsia (China) Ltd (“PanAsia China”);
- Opal (Macao Commercial offshore) Limited (“OPAL”); and
- PanAsia Holdings Company Limited .

The applicants are hereafter referred to as “The PanAsia Group” of companies.

The grounds of appeal identified by the PanAsia Group include:

“There were errors in the calculation of the export price of the goods in that in calculating the deductive export price under s.269TAB(1)(b), the Anti-Dumping Commission erred in ascertaining the “prescribed deductions” within the meaning of s.269TAB(2), particularly with respect to its construction of s.269TAB(2)(a).”

In its appeal, the PanAsia Group is not disputing that the Minister has erred in continuing the anti-dumping measures applicable to aluminium extrusions exported from China. Similarly, the PanAsia Group is not challenging the Commissioner’s recommendation (and the Minister’s acceptance) that export prices for the PanAsia Group of companies be established in accordance with subsection 269TAB(1)(b).

The PanAsia Group is, however, querying whether the “prescribed deduction” as referenced in subsection 269TAB(1)(b) includes the amount for interim duties levied.

II. Export Price – Section 269TAB

Section 269TAB(1)(b) states:

Where:

- (i) *The goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and*
- (ii) *The purchase of the goods by the importer was not an arm- length transaction; and*
- (iii) *The goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer;*

*the price at which the goods were sold by the importer to that person less the **prescribed deductions**; (emphasis added).*

In Report 543 to Commission determined that sales between the PanAsia Group exporting and importing entities were not at arms-length. Specifically, the Commission concluded:

- export sales to Australia made by PanAsia China to its affiliated trading business OPAL (Macao Commercial Offshore) Ltd (“OPAL”) were not at arms-length; and
- domestic sales on the Chinese market to a related company, PanAsia Industrial (Nanyang) Co., Ltd were also found to have been at non-arms-length.

The export price findings of the Commission are consistent with the outcomes in the Commission’s earlier inquiries into exports of aluminium extrusions to Australia by PanAsia China.

The PanAsia Group review application contends that the interim dumping duty is not a ‘*prescribed deduction*’ and should not be included in the list of deductions to arrive at a deductive export price. Further, it is argued by the PanAsia Group that the interim duty is not the final duty assessed, as this had not been determined for its exports to Australia during the investigation period in Continuation Inquiry 543 (as two duty assessment investigations had not been completed).

III. Report 543

The Commission has addressed PanAsia China’s assertions about the inclusion of the amount of interim duty paid in the deductive export price calculations in Report 543¹. The Commission rejected PanAsia China’s contention that the circumstances of the importer receiving “a partial or full refund of interim duties paid” in Report No. 504 – Continuation Inquiry into Anti-Dumping Measures applying to Certain Power Transformers (Report 504). The Commission confirmed that the circumstances addressed in Report 504 related to the export price being determined in accordance with subsection 269TAB(1)(c) having regard to “all circumstances of the exportation”.

The requirements for determination of export price under subsection 269TAB(1)(b) are different to those under subsection 269TAB(1)(c). The Commission stated that the requirements under the former are more “prescriptive”. Subsection 269TAB(2)(a) details the prescribed deductions in relation to the determination of the export price under subsection 269TAB(1)(b) to include:

“(a) Any duties of Customs or sales tax paid or payable on the goods;....”

The interim duties are a Customs duty within the provisions of the *Customs Act 1901* (as amended). Subsection 269TAB(2)(a) references “...*paid or payable*....” Which is indicative that the duties may not be the final duties levied.

As the final duty payable had not been determined at the time of the Minister considering the recommendations contained in Report 543, the amount of the “...duties of Customs....” to be included as

¹ Section 6.9.2, Report 543.

a prescribed deduction must therefore be the amount of the interim dividend to be included in the calculation of PanAsia China's deductive export price.

The reference by the PanAsia Group that the definition of "dumping duty" at Section 269T "*means duty, other than interim dumping duty...*" is to establish that dumping duty has a different meaning to *interim dumping duty*. It is not intended as suggested by the PanAsia Group to exclude interim dumping duty from any prescribed deductions in arriving at a calculated deductive export price under subsection 269TAB(1)(b).

The Commission's response at Section 6.9.2 of Report 543 is therefore the correct and preferred decision involving the inclusion of the interim dumping duty as a prescribed deduction to arrive at a deductive export price for PanAsia China under subsection 269TAB(1)(b).

IV. Other references

We do not consider that the PanAsia Group's references at paragraphs 70 to 76 shed any further light on the interpretation of the Article 2.4 of the Anti-Dumping Agreement. Rather, the provision of subsection 269TAB(2)(a) are perhaps more prescriptive in terms of the duties being duties of Customs.

It would appear that the PanAsia Group's grievance is associated with its inability to "*meaningfully reduce its dumping margin*" (Paragraph 79, PanAsia application for review). The PanAsia Group has outlined scenarios involving claims that should it change its behaviour (e.g. '*reformed its operations so that the goods exported to Australia were no longer dumped*') then it would be penalised by the calculation of the deductive export price that includes an amount for interim dumping duty. These claims ignore the fact that the PanAsia Group has repeatedly been found to be dumping the goods exported to Australia since 2009.

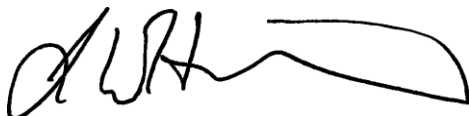
The exclusion of an amount for dumping duties (whether interim dumping duty or dumping duty) would lead to a an export price that is artificially higher than that with which the Australian industry has competed against (and sustained injury at the level determined by the Commission) and does not reflect the actual amounts required for inclusion as prescribed deductions.

V. Correct and preferred decision

Capral submits that the Minister's decision as reflected in Report 543 is the correct and preferable decision. That is, the correct and preferable decision of the Minister involves the Commission calculating a deductive export price in accordance with subsection 269TAB(1)(b) that involves prescribed deductions including an amount for interim dumping duties.

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



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