

Anti-Dumping Commission response

**Applications for Review of Decision relating to Certain Aluminium Extrusions
exported from the People's Republic of China**

Abbreviations

ADA	WTO Anti-Dumping Agreement
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
Act	<i>Customs Act 1901</i>
REP 241	<i>Anti-Circumvention Inquiry Final Report No. 241</i>
Applicants	<ul style="list-style-type: none"> • PanAsia Aluminium (China) Limited and Opal Macao Commercial Offshore (collectively referred to in this response as “PanAsia”); and • Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd, Kam Kiu Aluminium Products SDN BHD and Kam Kiu (Australia) Pty Ltd (collectively referred to in this response as “Kam Kiu”).
AUD	Australian Dollars
Australian Industry	Capral Limited
Commission	the Anti-Dumping Commission
China	the People’s Republic of China
CNY	Chinese Yuan Renminbi
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping Act) 1975</i>
EQR	Exporter Questionnaire Response
Inquiry 241	<i>Anti-Circumvention Inquiry No. 241</i>
Parliamentary Secretary	Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 241	<i>Anti-Circumvention Inquiry Final Report No. 241</i>
REP 248	<i>Final Report No. 248</i>
Review 248	<i>Review of Measures No. 248</i>
SEF 248	<i>Statement of Essential Facts No. 248</i>

Key points of note in reading responses to Applicant claims

- (i) Whilst the Anti-Dumping legislation (Part XVB of the *Customs Act 1901*¹ ('the Act') and the *Customs Tariff (Anti-Dumping Act) 1975* (the 'Dumping Duty Act')) refers to the Minister, for the purposes of this response all references to the Minister or Parliamentary Secretary are used interchangeably. This approach reflects the Minister for Industry, Innovation and Science's delegation of responsibility for Ministerial decision-making on operational anti-dumping matters (under the Act and the Dumping Duty Act) to the Parliamentary Secretary to the Minister for Industry, Innovation and Science.
- (ii) On 19 August 2015, in response to *Review of Measures No. 248* (Review 248), the Parliamentary Secretary published a declaration altering the original dumping duty notice and countervailing duty notice as if different variable factors had been fixed in relation to all exporters of certain aluminium extrusions (aluminium extrusions) exported to Australia from the People's Republic of China (China).²
- (iii) Two interested parties (the Applicants), both exporters from China, sought review of this decision to the Anti-Dumping Review Panel (ADRP). The applicants are PanAsia Aluminium (China) Limited jointly with related entity Opal Macao Commercial Offshore (collectively referred to as "PanAsia" in this response), and Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd jointly with related entities Kam Kiu Aluminium Products SDN BHD and Kam Kiu (Australia) Pty Ltd (collectively referred to as "Kam Kiu" in this response).
- (iv) On 21 October 2015, the ADRP invited the Anti-Dumping Commission (the Commission) to address certain issues in respect of the review applications. This document details the Commission's responses to the relevant issues.
- (v) In drafting this response, the Commission has had regard to all information submitted to it in accordance with legislative timeframes during the review up until the day that *Final Report No. 248* (REP 248) was submitted to the Parliamentary Secretary. This information includes the *Statement of Essential Facts No. 248* (SEF 248), verification visit reports and submissions from interested parties. In drafting this response the Commission has also had regard to analysis it performed during the review. The Commission confirms that, in drafting this response, no new information (that was not considered during the review) has been considered.
- (vi) This response is presented in a confidential and non-confidential format.
- (vii) The Commission invites the ADRP to consider and read in full SEF 248 and REP 248 as well as information on the electronic public record to provide additional context to the information provided in this response.

¹ Unless otherwise stated, all legislative references in this response are to the *Customs Act 1901*

² Anti-Dumping Notice 2015/96 refers

CLAIMS MADE BY PANASIA:

PanAsia requested a review of the Parliamentary Secretary's decision, which in its view is not correct or preferable in respect to:

1. ascertained export prices being determined pursuant to subsection 269TAB(3), without proper consideration of all relevant available information, and in particular the mandatory requirement to undertake a comparative assessment in identifying the best available information;
2. the inclusion of charges for services in the determination of the benchmark price for the purposes of establishing the amount of countervailable subsidy received from the purchase of goods; and
3. ascertained normal values were overstated by the extent to which the benchmark price included additional charges for services not incurred by PanAsia in its purchases of primary aluminium.

Claim 1: Ascertained export prices being determined pursuant to subsection 269TAB(3), without proper consideration of all relevant available information, and in particular the mandatory requirement to undertake a comparative assessment in identifying the best available information

A. Information that is not relevant information as defined

Nil

B. Factual claims disputed, commentary and background

1. PanAsia submits in paragraph 6.1 on page 12 of its application that, in determining export prices under subsection 269TAB(3) "...the Commission and the Parliamentary Secretary have not fulfilled their mandatory obligations to undertake an objective investigation of all relevant information and basing their findings on the best available information. As such, PanAsia submits that the Commission has not complied with its own policy and its obligations under the WTO Anti-Dumping Agreement to evaluate and assess all relevant information in deciding which information is best for the particular circumstances."
2. In explaining its reasons for the above point, PanAsia discusses the following two key issues (which are addressed separately below):
 - **Claim 1.1:** Paragraph 6.1.1 Failure to evaluate all relevant information; and
 - **Claim 1.2:** Paragraph 6.1.2 Assessment of all relevant information.

Claim 1.1 Failure to evaluate all relevant information

3. In paragraph 6.1.1 of its application, PanAsia refers to Article 6.8 and Annex II of the WTO Anti-Dumping Agreement (ADA) in which it states that “...an investigating authority may rely on the facts available where a respondent has failed to provide some or all of the necessary information requested by the investigating authority.” PanAsia also conveys its understanding that Australia’s anti-dumping legislation incorporates and reflects Article 6.8 of the ADA through subsections 269TAB(3) and 269TAC(6) of the Act.
4. PanAsia cites WTO Appellate Body Dispute Panel Report, *US – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/R, para 7.55; Page 23 as an example which addresses the function of Article 6.8 and Annex II of the ADA.
5. PanAsia also cites WTO Appellate Body Dispute Panel Report, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice*, WT/DS295/R, para 7.166, page 144 as an example of the obligations of an investigating authority under Annex II, entitled “Best Information Available in Terms of Paragraph 8 of Article 6”.
6. PanAsia interprets *International Trade Remedies Branch Report No. 159C* and *International Trade Remedies Branch Report No. 203* to convey a stated policy requiring the Commission to undertake a comparative analysis consistent with the WTO cases mentioned in Point 4 and 5 above.
7. In PanAsia’s opinion REP 248 “...contains no such evaluative, comparative assessment or any such critical assessment of all relevant information available to the Commission” and does not comply with the ADA.
8. PanAsia also considers page 17 of the *International Trade Remedies Branch Report No. 159D*, where the Commission relied on the use of relevant information from other cooperating exporters in determining an export price for uncooperative exporters, to apply in its circumstances.
9. As a general comment to PanAsia’s application, the Commission notes that PanAsia appears to repeatedly draw attention to the Commission’s use of subsection 269TAB(3) in the context of determining export prices for uncooperative exporters.
10. The Commission highlights that the factual context in which the export price for PanAsia was established in REP 248 differs from the factual contexts applying to uncooperative exporters in the various reports referred to by PanAsia.

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11. The Commission considers that the application of subsection 269TAB(3) is not limited to situations involving uncooperative exporters. Nor does the use of subsection 269TAB(3) require the Commission to rely on other exporter's data.
12. Section 4.3.3 of REP 248 describes in detail the rationale of the Commission's approach in calculating PanAsia's export price under subsection 269TAB(3). This includes a review of the findings of *Anti-Circumvention Inquiry Final Report No. 241* (REP 241) which is considered relevant to Review 248 and cannot be ignored. It also outlines the methodology to account for differences in the review period for Review 248 and the inquiry period for Inquiry 241 which did not fully overlap, and the reasons why paragraphs 269TAB(1)(a), (b) or (c), which precede subsection 269TAB(3) were not considered appropriate.
13. The Commission also refers to section 4.4.3 of REP 248 under the heading titled '*Having regard to all relevant information under section 269TAB(3)*', where the Commission regarded the data it obtained from PanAsia's Australian customers as most relevant for the purposes of subsection 269TAB(3) ahead of the data obtained from other importer/exporters.
14. As stated on paragraph 3 on page 33 of REP 248, "*to rely on other importers who were not found to be engaging in circumvention activity is in effect implying that circumvention activity in relation to PanAsia's exports never occurred.*" The same principle would apply to using other exporters' arms-length transactions as a benchmark for conducting an evaluative, comparative assessment or any such critical assessment of all relevant information available to the Commission. The finding that exports from PanAsia were found to be subject to significant circumvention activity in Inquiry 241 has led the Commission to determine that PanAsia's export prices are not comparable to any other exporter.
15. By utilising the evidence gathered in Inquiry 241 and subsequently applying the findings of this evidence in REP 248, rather than rely on other exporters/importers data, contrary to PanAsia's preferred approach, the Commission is of the view that it has utilised the best available information. This information was not merely correct or useful but the most appropriate given the circumstances.³
16. The Commission therefore rejects PanAsia's view that REP 248 lacked evaluative, comparative assessment or any such critical assessment of all relevant information available to the Commission and considers that it has complied with the Australian legislation and ADA.

³ WTO Appellate Body Dispute Panel Report, Mexico – Definitive Anti-Dumping Measures on Beef and Rice, WT/DS295/R, para 7.166, page 144.

Claim 1.2 Assessment of all relevant information

17. In paragraph 6.1.2 of its application, PanAsia continues to express its views regarding the Commission's approach to the use of best information by stating that "*Other more accurate and verified information existed which was clearly better and a more appropriate estimate of arms-length export prices during the review investigation period*".
18. In this context, PanAsia refers to its export sales to Protector Aluminium and export prices of other cooperating exporters as more appropriate sources of information. PanAsia also criticises the data sample size that the Commission relied upon in establishing export prices under subsection 269TAB(3).

Claim 1.2.1 - Export prices to Protector Aluminium

19. Paragraph 6.1.2(a) of PanAsia's application discusses its export prices to Protector Aluminium. PanAsia notes the Commission's findings that the export price used for sales to Protector Aluminium relied on the FOB export prices provided by PanAsia in its exporter questionnaire response (EQR). The Commission refers to section 4.4.3 on page 32 of REP 248 under the heading titled 'Sales to Protector Aluminium' which describes the treatment of sales to Protector Aluminium.
20. PanAsia submits that the Commission should have found that 'arms-length' export prices for sales to Protector Aluminium was the best available information for determining all other export prices under subsection 269TAB(3). PanAsia's statement that the Commission found sales to Protector Aluminium to be arms-length is its own opinion, there is no such finding in REP 248 or SEF 248. In fact, there is no reference to Protector Aluminium in SEF 248. PanAsia's reference to a finding that '*exports to Protector Aluminium were arms-length as there was no evidence that the importer had engaged in anti-circumvention activity*' is incorrect. There is no such finding in REP 248 or SEF 248.
21. In Inquiry 241 the Commission did not request Protector Aluminium to complete an importer questionnaire. As a result, sales to Protector Aluminium have not been verified so it was not possible for the Commission to determine whether sales to Protector Aluminium were arms-length for the purpose of applying paragraph 269TAB(1)(a). However, under subsection 269TAB(3), due to the extremely small volume of sales to Protector Aluminium, the FOB export prices reported by PanAsia for sales to Protector were considered relevant. This finding does not imply that sales to Protector Aluminium are arms-length or did not involve circumvention activity.

22. Further to the previous point, PanAsia is also of the view that the Commission should have relied on a comparative analysis of PanAsia's sales to Protector Aluminium with sales by other exporters' in arm-length transactions similar to the approach used for testing the reliability of exports by Guang Ya. The approach adopted by the Commission for Guang Ya was on account of its main Australian customer declining to participate in the review. Notwithstanding this issue, the Commission considered benchmarking of Guang Ya's export sales to other exporters to be a reasonable alternative given the circumstances. A point of difference in this approach was that the Commission did not have grounds to believe that Guang Ya's exports were subject to circumvention activity. In contrast, Inquiry 241 found that almost all of PanAsia's exports to Australia in the inquiry period were the subject of circumvention activity.

Claim 1.2.2 - Export prices by cooperating exporters

23. In paragraph 6.1.2(b) of its application, PanAsia states that "*arms-length export prices from cooperating exporters are the next most reliable and accurate measure of arms-length export prices during the review period, and considerably more reasonable than the Commission's recommended deductive method*".

24. PanAsia further justifies the use of data from the other cooperating exporters for its own export price, by attempting to draw a comparison to the calculation of export prices for residual exporters, which was based on data from the selected cooperating exporters identified as part of the sampling exercise undertaken for Review 248.

25. The Commission notes that paragraph 269TACAB(2)(c) requires the export prices for residual exporters to be not less than the weighted average of export prices for like goods of cooperative exporters of the same country of export. Whilst there is reference to 'cooperative exporters' there is no requirement to rely on arms-length transactions only. Since PanAsia was considered a cooperative exporter the Commission does not understand the relevance of the points raised by PanAsia in its application. In any case the residual exporters export prices were calculated using the method specified by the Act.

26. In response to the statements made in paragraph 6.1.2(b) of PanAsia's application, as previously outlined, the Commission did not consider reliance on other cooperating exporter's arms-length transactions appropriate on the basis of the evidence obtained during Inquiry 241.

27. PanAsia's' reference to previous investigations conducted by the Commission over the past decade bear no relevance as none of these investigations involved circumstances where an exporter's Australian sales were subject to circumvention behaviour. Despite PanAsia's opinion, the use of the evidence

obtained in REP241 illustrates an approach by the Commission which objectively examined the available evidence with special circumspection.

Claim 1.2.3 - Sampled sales by relevant importers

28. In PanAsia's view, "*the Commission's recommended methodology for determining arms-length export prices lacks reliability and accuracy*". Within Claim 1.2.3 PanAsia relies on two main issues to justify this position:

- i. Insignificant volume of sampled sales; and
- ii. Variance in selling prices.

Insignificant volume of sample sales

29. In paragraph 6.1.2(c)(i) of its application, PanAsia provides its view that the sample of sales used to calculate export prices represents approximately 0.52 per cent of its total exports of aluminium extrusions during the review period. PanAsia also states that '*it is inconceivable that such a small sample of sales could be considered representative of arms-length sales into the Australian market...*' and notes that the '*Commission has not responded to the issue raised by PanAsia in respect of the sample size relied upon to determine export prices in REP248.*'

30. PanAsia further outlines concerns regarding the alignment between the inquiry period for Inquiry 241 and the review period for Review 248. PanAsia's application reiterates the views contained in its submission in response to SEF 248 by restating the following:

- 'there is a 6 to 8 week lead time between date of export and date of delivery to the importer's distribution centre';
- 'the importers held an estimated 30 days of stock inventory'; and,
- 'PanAsia considers that an estimated average period of 3 months existed between the date of export of the goods and the corresponding date of sale of those same goods by the importers'.

31. PanAsia contends that that selling prices of goods sold by the importers in any given quarter were actually exported to Australia in the prior quarter. This, in its opinion, means that that Commission has calculated export prices (using importer's selling prices) using data covering only half of the review period.

32. PanAsia outlines on page 17 of its application that the Commission's statement that '*the sampled data is spread across all quarters in 2013 of the investigation period and for each finish type*' is factually incorrect. PanAsia also states that '*REP248 provides no response to PanAsia submission to SEF248.*'

33. PanAsia queries how it is possible to index selling prices in quarter 4 2013 for each finish type given there were no sampled sales for anodised or mill finish product in the quarter. On page 18 of its application PanAsia provides a table to illustrate its point that the sales upon which the Commission has relied on to calculate export prices do not provide sufficient coverage of exports that took place during the review period.
34. The Commission's detailed responses to the above issues are addressed in Section 4.4.3 of REP 248. PanAsia's statements which imply that the Commission did not respond in REP 248 to its submission to SEF 248 are incorrect. In response to PanAsia's submission to SEF 248, the adequacy of sales sample were discussed within section 4.4.3 REP 248 on page 33 under the heading 'Sampled sales by relevant importers and variance in selling prices'.
35. The Commission also disputes PanAsia's view that the Commission's statement regarding the spread of data was factually incorrect. PanAsia's conclusion is based on its calculation of the timing difference between date of sale by the importer and date of export by PanAsia. However, in contrast, the Commission did not find the timing difference to be of the same magnitude as PanAsia submitted.
36. On the basis of the timing difference the Commission has relied upon, the Commission was satisfied that the sales data used to determine an export price under subsection 269TAB(3) for all finish types does cover the period between 1 April 2013 and 31 December 2013. This allowed the Commission to index quarter 4 2013 prices to calculate quarter 1 2014 prices. The Commission's response to PanAsia's submission regarding timing difference is provided within section 4.4.3 of REP 248 on page 33 under the heading 'Sales not representative of the review period'. In summary, the Commission highlights the following;
- PanAsia's invoice dates closely corresponded to the date of arrival of the goods;
 - importer's inventory systems lacked the necessary sophistication to allow the Commission to determine stock turnover periods or trace the date of arrival of an import and subsequent sale to Australian customers;
 - the existence of direct shipments to customers does not require consideration of any stock turnover period; and
 - consistent with the Dumping and Subsidy Manual, date of sale reported by the exporter on its invoices was used as this best reflected the material terms of the sale.

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37. The Commission also notes that for reasons of confidentiality, PanAsia was not provided the specific Australian importer sales data that was used to calculate its export price. This information was available to the Commissioner and Parliamentary Secretary as part of Confidential Attachment 1 to REP 248 and is provided to the ADRP in Confidential Attachment 1 to this response.

Variance in selling prices

38. In paragraph 6.1.2(c)(ii) of its application PanAsia questions the appropriateness of the sample size used to calculate export prices under subsection 269TAB(3), particularly given the variance in selling prices for products falling within the goods description. PanAsia draws attention to the risk of sampling error being increased due to small sample size and the variance in prices for different finish types of aluminium extrusions. PanAsia considers that the Commission would have evidence of these risks when analysing the arms length sales to Protector Aluminium and those of other cooperating exporters.

39. The Commission accepts that prices vary generally across different finish types of aluminium extrusions however only partly agrees with PanAsia's observations. The variance observed between the export prices reported by PanAsia and export prices calculated by the Commission are likely a function of the circumvention behaviour that was identified rather than the sample size.

40. A contributing factor that resulted in the sample size used in REP 248 relates to the verification issues the Commission encountered in conducting Inquiry 241. The Commission's usual practice would have involved using the total of the importer's sales to calculate the export price. However, the Commission was precluded from doing so because the completeness of the importers sales data could not be verified. Therefore, the sample of sales used to calculate the export prices relied on a selection of 48 invoices which were verified to source documents in Inquiry 241. Further details are provided in section 4.3.3 of REP 248 on page 26 and also on page 28 in the paragraph titled '*Export price calculated under 269TAB(3)*'. The Commission considers this to be a sufficient sample size.

41. The Commission notes PanAsia's comments on page 19 of its application which attempt to illustrate that significant variation between selling prices within a model category and between models is sufficient to consider sales information to be unreliable. However, in the Commission's opinion, relying on sales to Protector Aluminium or other exporters fails to recognise the significant level of circumvention activity that was found to occur in relation to PanAsia's exports in Inquiry 241.

Claim 2: The inclusion of charges for services in the determination of the benchmark price for the purposes of establishing the amount of countervailable subsidy received from the purchase of goods

A. Information that is not relevant information as defined

Nil

B. Factual claims disputed, commentary and background

1. The Commission refers to PanAsia's application at paragraph 6.2.1 on page 20 which comments on the method used to determine the primary aluminium benchmark for Program 15. PanAsia contends this method has incorporated elements that relate to services which are not incurred by PanAsia and do not relate to the provision of a service by a public body in China. The data shown in the table titled '*Proposed benchmark for primary aluminium*' on page 21 of PanAsia's application describes four elements that includes the LME cash price, regional premium, import charges and inland transport. PanAsia further reiterates this view on page 24 of its application in the section titled '*1.1.1 Import Charges*'. The information provided in PanAsia's application is misleading as it does not reflect the Commission's final recommendation in REP 248.
2. Following further evaluation and consideration of the submissions received in response to SEF 248, the Commission modified its approach to the calculation of the primary aluminium benchmark for Program 15. The Commission refers to section 5.5.3 on page 56 of REP 248 which indicates that costs relating to inland transport have been excluded. As stated in section 4.9.10 on page 45 of REP 248, costs relating to import duty and importation charges have also been excluded for the calculation of normal value and Program 15 subsidy.
3. In addition to its views on the need to exclude costs relating to importation charges and inland transport, PanAsia holds the view that the Major Japanese Ports (MJP) premium used by the Commission is an additional service that should also be excluded. PanAsia is of the belief that the MJP premium is a charge for casting primary aluminium into ingots and delivery expenses. Therefore, the premium does not relate to the provision of service by a public body and should accordingly be excluded.
4. With respect to the use of billet premiums, in paragraph 1.1.2 on page 24 of its application, PanAsia cites Capral's submission to the original investigation in which PanAsia interprets as indicating that billet premiums already incorporate the ingot premium. The Commission notes that Capral's statement merely indicates that the billet premium '*will possibly include the ingot premium*'. However, the Commission obtained the records from one exporter who had purchased both ingots and billets on the LME market. This confirmed that ingot and billet premiums are payable in the manner that has been calculated by the Commission.

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5. In response to PanAsia's objection to the use of premiums for constructing a suitable primary aluminium benchmark, the Commission relied on several sources to confirm that the inclusion of a premium was appropriate. This included publicly available information, the approach taken by other jurisdictions, and supply agreements provided by an exporter and Australian industry. The Commission's findings in section 4.9 of REP 248 conclude that premiums are embedded in the purchase price, were not found to be indicative of delivery expenses and are not the result of additional services rendered such as casting into ingot and billets.
6. Additional commentary in response to PanAsia's submission to SEF 248 is provided in section 4.10.2 of REP 248.
7. PanAsia's position regarding ingot and billet premiums used in REP 248 appears to be based on the approach taken in the original investigation 148. The Commission notes that the information relied upon in the original investigation is now over five years old. The Commission is also mindful that PanAsia has not substantiated its views in response to SEF 248 or in its application to the ADRP that counters the evidence obtained by the Commission. PanAsia's reliance on the approach taken in REP 148 serves as a useful starting point, however the Commission is of the view that the information relied on for REP 248 is more contemporaneous and therefore the most relevant.

Claim 3: Ascertained normal values were overstated by the extent to which the benchmark price included additional charges for services not incurred by PanAsia in its purchases of primary aluminium

A. Information that is not relevant information as defined

Nil

B. Factual claims disputed, commentary and background

1. PanAsia's view regarding the ascertained normal value is based largely on the same issues that it raises in relation to the Commission's approach to constructing a benchmark primary aluminium price. The Commission's assessment that a market situation exists in relation to the sale of aluminium extrusions in China is summarised in section 4.5 of REP 248 with detailed analysis provided in Non-confidential Appendix 1 to REP 248.
2. After finding that the normal value for all exporters could not be calculated under subsection 269TAC(1) due to a market situation, the Commission determined normal values for all exporters in accordance with the method described under paragraph 269TAC(2)(c) and discussed in section 4.8 of REP 248.
3. Calculation of a normal value under paragraph 269TAC(2)(c) required determining a replacement cost that reasonably represented what was a competitive market cost

for primary aluminium available to producers in China, in the absence of distortions that existed during the review period. The Commission's assessment of the reasonableness of the costs used in constructing normal values is contained in section 4.9 of REP 248.

CLAIMS MADE BY KAM KIU

Kam Kiu has requested a review of the Parliamentary Secretary's decision, which in its view is not correct or preferable in respect to the revised ascertained export price (AEP) calculated in relation to its exports.

Claim 1: The revised AEP applicable to exports by Kam Kiu pursuant to the Reviewable Decision is incorrect, or does not represent the preferable AEP which the Commission should have recommended, and the Parliamentary Secretary in turn accepted

C. Information that is not relevant information as defined

Nil

D. Factual claims disputed, commentary and background

1. Kam Kiu submits that the revised AEP applicable to its exports is erroneous, as a result of the manner in which the Commission carried out currency conversions on which the AEP calculation depended.
2. Specifically, Kam Kiu submits that the Commission's calculation of an AEP (applicable in relation to the variable component of a combination duty) included an unnecessary double currency conversion from Australian Dollars (AUD) to Chinese Yuan Renminbi (CNY) and back to AUD. This double currency conversion, in Kam Kiu's opinion, resulted in an inflated AEP.
3. In paragraph 5.6 of its application, Kam Kiu referenced the WTO Panel's comments in *United States – Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea* which considered the appropriateness of certain currency conversions in the context of Article 2.4.1 of the ADA.⁴
4. In para 6.11 of the WTO Panel's report, the following comment is made; '*While Article 2.4.1 does not spell out the precise circumstances under which currency conversions are to be avoided, we consider that it does establish a general – and in our view, self-evident - principle that currency conversions are permitted only where they are required in order to effect a comparison between the export price and the normal value...*'

⁴ Panel Report, *United States – Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea*, WTO Doc WT/DS179/R (22 December 2000) [6.11]–[6.14].

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5. Paragraph 6.12 of the WTO Panel's report further states that '*[W]e consider it sufficient to conclude, for the purposes of this dispute, that currency conversion is not "required", and would thus not be permissible under Article 2.4.1, in instances where the prices being compared are already in the same currency.*'
6. Kam Kiu submits in paragraph 5.7 of its application that '*the principle outlined by the WTO Panel is also applicable to the current situation*', and that '*the Commission's calculations involved an unnecessary "double conversion" from AUD to RMB and then back to AUD.*'
7. The Commission agrees with Kam Kiu that the double currency conversion for the purposes of calculating an AEP was unnecessary, because Kam Kiu's sales to Australia were predominately already in the required currency, being AUD.
8. The AEP calculated as a result of the double currency conversion has resulted in an AEP that is inflated. Accordingly, the current AEP calculated by the Commission, and adopted by the Parliamentary Secretary is incorrect. The correct AEP should be lower.
9. The Commission notes that any downwards revision of Kam Kiu's AEP will have an upwards effect on its subsidy margin, which is a function of the weighted average export price over the review period. Supporting calculations for the dumping margin and subsidy margin are provided in Confidential Attachment 2 to this response.
10. The Commission also notes that, whilst it may have been unnecessary to carry out a double conversion to calculate Kam Kiu's AEP, in accordance with subsection 269TAF(1), the Commission did correctly convert Kam Kiu's export sales from AUD to CNY for the purpose of calculating a dumping margin. This is because Kam Kiu's export price was reported in AUD and normal value was in CNY.
11. Kam Kiu seemingly accepts this position in its application where it states, at paragraph 5.2(d), that one of the steps in arriving at a dumping margin required '*calculating the 'FOB export price in RMB' from the 'FOB export price in AUD' and 'exchange rate (RMB:AUD)', which involved a currency conversion from AUD to RMB.*'
12. The Commission also notes that if the exchange rates applied in the double currency conversion were similar, the effect of the double currency conversion should have been negligible.

13. Therefore, whilst the focus of Kam Kiu's application surrounds the calculation of the AEP, the Commission sought to understand why the double currency conversion resulted in an incorrect AEP.
14. In this regard, the Commission notes that the exchange rates used for the dumping margin calculation were based on the EQR supplied by Kam Kiu in 'Appendix 4 – Australian Sales' of its EQR. In contrast, in converting the export prices expressed in CNY back to AUD for determining the AEP, the Commission applied a rate from the Reserve Bank of Australia (RBA).
15. In comparing these two rates for the purposes of this response, the Commission has observed that the rates provided by Kam Kiu, the rates published by the RBA and the rates of exchange reported by the three other cooperating exporters who were subject to verification visits varied considerably.
16. Figure 1 below shows that, with the exception of Kam Kiu, every verified exporter applied an exchange rate that was consistent with the RBA exchange rates. Further comparison to a secondary source of exchange rate information, OANDA, has been included in the analysis to illustrate the consistency of RBA exchange rates.

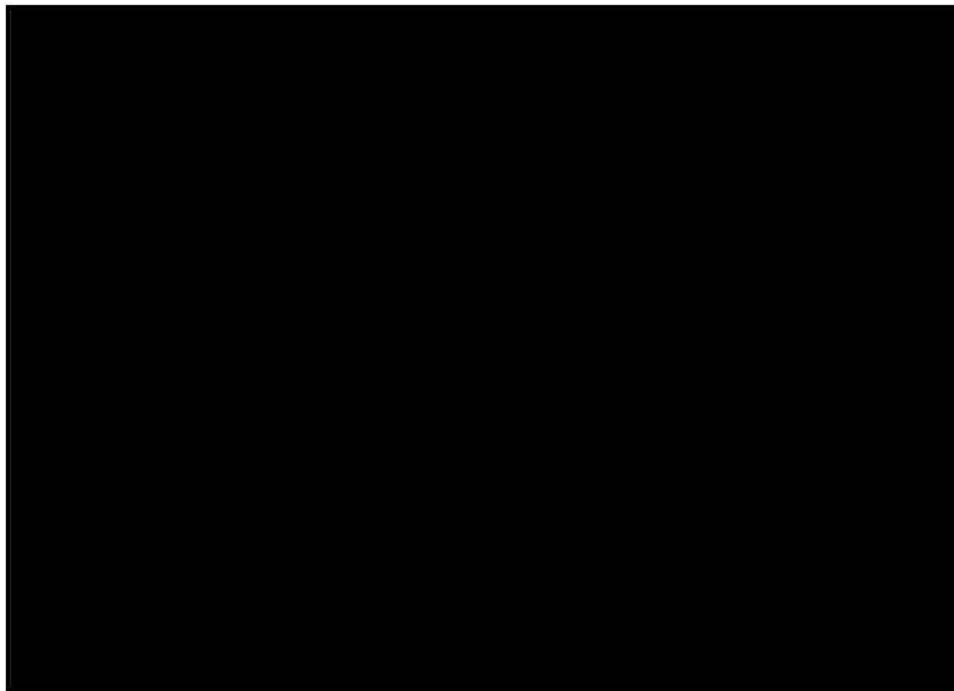


Figure 1 – Exchange Rate Comparison

17. Figure 1 shows that the exchange rates provided by Kam Kiu almost exhibit an [redacted] [variance] to the exchange rates reported by the other exporters and the RBA. This variation suggests that the exchange rates provided by Kam Kiu in its EQR were not reliable for the calculation of a dumping margin.

18. Kam Kiu's ADRP application does not extend to addressing the possible causes that could explain why the RBA exchange rates varied to the rates it provided in its EQR.
19. Regardless, by addressing Kam Kiu's application to remove the double currency conversion and calculate the correct AEP, further examination of Kam Kiu's final dumping margin appears to be warranted to take account of the exchange rates provided by Kam Kiu.
20. By way of background, when the Commission visited Kam Kiu for verification in early 2015, Kam Kiu advised that a related entity, Hong Yeung (Hong Kong) Limited (HYHK) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [intercompany role].⁶ At the time, the Commission had no cause to suspect that Kam Kiu's exchange rates were inconsistent with other exporters or the RBA rates.
21. Whilst the reliability of Kam Kiu's exchange rate data was not questioned during Review 248, the outcome of the Commission's response to Kam Kiu's ADRP application has yielded a better understanding of the data that was used to calculate Kam Kiu's dumping margin. Specifically, the result of using the [REDACTED] exchange rates provided by Kam Kiu has artificially inflated export prices when expressed in RMB which in turn has led to the calculation of an incorrect and lower dumping margin.
22. The Commission contends that the exchange rates provided by Kam Kiu have led to the incorrect decision regarding the calculation of Kam Kiu's dumping margin. To rectify this issue, the Commission considers that it is necessary to recalculate Kam Kiu's dumping margin by applying a more reliable exchange rate.
23. The Commission proposes that the exchange rates published by the RBA are a suitable alternative. This would ensure consistency with the exchange rates reported by the other exporters who were selected for verification visits.
24. By applying the RBA exchange rate, the calculations provided in Confidential Attachments 2, 3 and 4 to this response show that Kam Kiu's dumping and subsidy margin would be revised upwards.

⁵ Exporter Visit Report, Tai Shan City Kam Kiu Aluminium Extrusions Co., Ltd and Kam Kiu Aluminium Products Sdn. Bhd, p.9, Case 248 Public Record Item 51, February 2015.

⁶ *Ibid*, p.16

25. If found appropriate to recalculate Kam Kiu's dumping and subsidy margin, recalculation of the residual exporters' AEP and dumping and subsidy margins will also be required. This is necessary on the basis that the residual exporters' AEP, dumping and subsidy margin are a function, in part, of the weighted average export price of the selected cooperating exporters, in which Kam Kiu was one. The calculations provided in Confidential Attachments 2, 3 and 4 to this response show that the dumping and subsidy margin rates will increase as a result of the change to Kam Kiu's AEP.
26. The changes may also have flow on effects to the notice published by the Parliamentary Secretary pursuant to paragraph 269ZHG(1)(b) on 20 October 2015, regarding the recent *Continuation of Measures Inquiry No 287* which relied on the findings of Review 248.
27. The effect of amending Kam Kiu's and the residual exporters' AEP, dumping margin and subsidy margin will require a change to the variable factors that apply to dumping duty and countervailing duty notices currently in place for aluminium extrusions exported from China. The revised variable factors are provided in Confidential Attachment 5 to this response.

ATTACHMENTS	
Confidential Attachment 1	PanAsia AEP source data
Confidential Attachment 2	Amended dumping margins
Confidential Attachment 3	Amended subsidy margins
Confidential Attachment 4	Revised variable factors resulting from the amendment of Kam Kiu AEP
Confidential Attachment 5	Variable factors