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**Application for review of a decision of the Minister to alter a
dumping duty notice and a countervailing duty notice
following an anti-circumvention inquiry**

**Inquiry 241: Circumvention of certain aluminium extrusions
exported from the People's Republic of China**

23 March 2015

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Declaration

Under s 269ZZE of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Minister responsible for the Anti-Dumping Commission:

To alter a:

- dumping duty notice(s) following an anti-circumvention inquiry and/or
- countervailing duty notice(s) following an anti-circumvention inquiry.

OR

Not to alter a:

- dumping duty notice(s) following an anti-circumvention inquiry and/or
- countervailing duty notice(s) following an anti-circumvention inquiry.

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- provides reasonable grounds for a review to be undertaken
- provides reasonable grounds for the decision not being the correct or preferable decision, and
- is complete and correct to the best of my knowledge and belief.


I have included the following information in an attachment to this application:

- Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).
- Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.
- Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.
- Full description of the original dumping and/or countervailing notice and the imported goods to which the application relates.
- The tariff classification/statistical code of the imported goods.
- A copy of the reviewable decision.
- Date of notification of the reviewable decision and the method of the notification.
- A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.

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- A statement identifying what the applicant considers the correct or preferable decision should be, that may result from the grounds the applicant has raised in the application. There may be more than one such correct or preferable decision that should be identified, depending on the grounds that have been raised.

- [If the application contains material that is confidential or commercially sensitive] an additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Signature			
Name	Tony Dragicevich		
Position	CEO and Managing Director		
Company	Capral Limited		
ABN	78 004 213 692	Date	23 / 03 / 2015

Required information

1. Applicant

- Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).*

Name Capral Limited
Address Level 4, 60 Phillip Street
 Parramatta NSW 2150
Form of business Publicly owned company (ABN 78 004 213 692)

2. Contact persons

- Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.*

Capral contact

Name Andrew Barlow
Position Group Commercial Manager
Telephone (02) 9682 0967 m 0404 818 264
Facsimile (02) 9682 0777
E-mail Andrew.Barlow@capral.com.au

- Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.*

Capral's representative

Name Justin Wickes
Business Wickes & Associates Pty Ltd
Address PO Box 922
 Gungahlin ACT 2912
Telephone 0438 700 570
E-mail justin@wickes.com.au

A copy of the authorisation for Capral's representative is at Attachment A. All correspondence should be directed to our representative in the first instance.

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3. Description of the notices and the goods

- Full description of the original dumping and/or countervailing notice and the imported goods to which the application relates.*
- The tariff classification/statistical code of the imported goods.*

This application covers a dumping duty notice issued under s.269TG(2) and a countervailing duty notice issued under s.269TJ(2). Both notices were published on 28 October 2010 and cover all exporters of aluminium extrusions from China except Tai Ao Aluminium Tai Shan Co. Ltd.

The notices describe the goods as “certain aluminium extrusions (the goods), classified to tariff subheading 7604.00.00, 7608.00.00 and 7610.00.00 in Schedule 3 of the *Customs Tariff Act 1995* exported to Australia from the People’s Republic of China”.¹

The notices refer to Trade Measures Report No. 148 (REP 148), which further states that the goods are:

Aluminium extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by The Aluminum 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.²

The specific tariff classifications to which the notices apply are listed in REP 148:

Reference Number	Stat Code	Goods
7604.10.00	06	Non-alloyed aluminium bars, rods and profiles
7604.21.00	07	Alloyed aluminium hollow profiles—Angles, other shapes and sections
7604.21.00	08	Alloyed aluminium hollow profiles—Other
7604.29.00	09	Alloyed aluminium non-hollow profiles—Angles, other shapes and sections
7604.29.00	10	Alloyed aluminium non-hollow profiles—Other
7608.10.00	09	Non-alloyed aluminium tubes and pipes
7608.20.00	10	Alloyed aluminium tubes and pipes
7610.10.00	12	Aluminium doors, windows and their frames and thresholds for doors
7610.90.00	13	Aluminium plates, rods, profiles, tubes and the like prepared for use in structures; and other aluminium structures and parts of structures

¹ Notices made under s.269TG(1)/(2) and s.269TJ(1)/(2) of the *Customs Act 1901* and signed by the Attorney –General on 21 October 2010, published in Trade Measures Report No. 148, pp.2-5

² REP 148, p.18

4. Reviewable decision

- A copy of the reviewable decision.*
- Date of notification of the reviewable decision and the method of the notification.*

The Minister's decision was notified on 19 February 2015 in *The Australian* newspaper and in the *Commonwealth Gazette*. A copy of the decision, as published in the *Gazette*, is at Attachment B. A copy of *Anti-Dumping Commission Report No. 241 (REP 241)*, upon which the Minister based his decision, can be found on the Commission's website.³

5. Correct or preferable decision

- A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.*
- A statement identifying what the applicant considers the correct or preferable decision should be, that may result from the grounds the applicant has raised in the application. There may be more than one such correct or preferable decision that should be identified, depending on the grounds that have been raised.*

In our application for the anti-circumvention inquiry, we alleged that five importers supplied by PanAsia Aluminium (China) Limited (PanAsia), the largest exporter of aluminium extrusions to Australia, were circumventing the dumping and countervailing duties by avoiding the intended effect of the duties within the meaning of s.269ZDBB(5A). The Commission found that PanAsia's sales to these importers were not arms length transactions and the importers had in fact engaged in circumvention activity. As a result the Commission recommended that the notices be altered to address this by fixing a new ascertained export price, which resulted in a new effective rate of duty of 57.6% for those importers. The Commission recommended that this alteration take effect from the date that the inquiry was initiated. The Minister agreed with these recommendations and we fully support this aspect of the Minister's decision.

The Commission also found that shortly after it initiated the inquiry on 14 April 2014, the five importers nominated in our application ceased importing and a 'new importer' commenced importing from PanAsia. The Commission found that this new importer appeared to have supplanted the nominated importers in the Australian market and recommended that the Minister alter the dumping and countervailing duty notices with respect to all exports from PanAsia, regardless of who imports the goods, by fixing the same ascertained export price. However, the Commission recommended that this alteration only take effect from the date of the Minister's decision, which was 19 February 2015. While we fully support altering the notices to cover all exports from PanAsia, we believe that the decision to apply this alteration to the notices only from February 2015 and not from April 2014 was not the correct or preferable decision, for the reasons outlined below.

³ <http://www.adcommission.gov.au/cases/ADC241.asp> (Case page for Inquiry 241)

Phoenix companies

The Commission found that a new importer appears to have supplanted the nominated importers as a possible response to the initiation of the anti-circumvention inquiry. Although not named in REP 241, we understand this new importer to be LIG Australia Pty Ltd (LIG), which is a \$2 company that was incorporated on 24 April 2014, only 10 days after the inquiry was initiated.

In making its finding, the Commission highlighted the fact that LIG:

- paid the same price to PanAsia as the nominated importers
- adopted the same import pattern as the nominated importers, and
- imported comparable volumes of the goods.⁴

At the same time as LIG took over import operations from the nominated importers, another new company, Success Aluminium Pty Ltd (Success), assumed the sales business of the nominated importers. Success was incorporated on 1 May 2015 and all existing customers of the nominated importers were transitioned to Success from 1 June 2014. As customers were advised by Success at the time, “[t]he only noticeable change in the short term will be the name of the company”.⁵

LIG and Success were given the opportunity to provide information to the inquiry but failed to do so. The Commission visited the Australian import business to verify information submitted by three of the five nominated importers⁶ and were told that the ‘new owners’, ie LIG/Success, would not permit the Commission to view the audited accounts and other source documents for the nominated importers. If LIG and Success were truly independent of the nominated importers it is reasonable to conclude that they would have cooperated fully with the Commission’s inquiry to ensure that they avoided any adverse outcome as a result of the behaviour of their predecessors.

Furthermore, the Commission found that Success ‘does have a trading relationship with PanAsia (who has been found to have engaged in non-arms length transactions with Success Aluminium’s predecessors)’.⁷ We have continually submitted that the nominated importers and any successors have strong links to PanAsia despite their claimed independence.⁸ This view is supported by an announcement from PanAsia during the inquiry that its auditor had concerns with the company’s accounts for the financial year ended 30 September 2014 because of, *inter alia*, the relationship between PanAsia and its Australian customers.⁹ To our knowledge the only significant Australian customers of PanAsia are LIG and its predecessors.¹⁰ As a result of the

⁴ REP 241 at 6.4.2, p.46

⁵ REP 241 at 2.3.2, p.14

⁶ The remaining two nominated importers failed to cooperate with the inquiry at all.

⁷ REP 241 at 6.4.2, p.46

⁸ Capral submission to the inquiry dated 10 July 2014 refers.

⁹ PanAsialum Holdings Company Limited, ‘Delay in publication of the 2014 annual results announcement and suspension of trading’, 19 December 2014 (Attachment C)

¹⁰ Another importer, Protector Aluminium Pty Ltd, is named in REP 241, however the volume of imports would be extremely small.

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auditor's concerns, trading in PanAsia stocks has been suspended and the audited accounts have still not been finalised.¹¹

It is clear from the evidence that LIG and Success are merely phoenix companies that have been established to extend the operations of the nominated importers and avoid their liabilities, in this case dumping and countervailing duties. LIG and Success have different company names, ABNs and shareholders to their predecessors, but conduct the exact same business, as evidenced by the fact that LIG/Success:

- operate at the same locations
- operate the same warehouses
- employ the same staff
- purchase from the same suppliers
- purchase the same goods with the same specifications
- purchase the same volume of goods at the same prices
- sell to the same customers
- sell the same goods with the same specifications
- sell the same volume of goods at the same prices, and
- were established by former directors and shareholders of PanAsia and the nominated importers (Attachment D refers).

The Commission found that sales between PanAsia and the nominated importers were not arms length transactions, in accordance with ss.269TAA(1)(c) and (2), on the basis that sales at a loss by the nominated importers indicate that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price. We have continually maintained that PanAsia, the nominated importers and LIG/Success are all associated parties and the evidence above supports this conclusion. Under the terms of s.269TAA imports by LIG/Success, being associates of PanAsia and the nominated importers, should equally be treated as non-arms length transactions.

It is therefore a logical conclusion that any action taken against the nominated importers should flow through to LIG and Success.

Ministerial power to alter the notices

The Minister altered the notices with respect to imports by the nominated importers following the Commission's finding that those companies had circumvented duties. However, the Minister also altered the notices with respect to all exports by PanAsia to address ongoing concerns with the importation and sale of the goods by LIG and Success.

There is no requirement in the legislation that, as a result of an anti-circumvention inquiry, a dumping or countervailing duty notice can only be altered in relation to the importers nominated in the application for the inquiry. In fact, if the Minister had altered the notices with respect to only the nominated importers and not all importers,

¹¹ PanAsia is a wholly owned subsidiary of PanAsialum Holdings Company Limited, which is listed on the Hong Kong Stock Exchange.

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then anti-circumvention action could never be effective as long as phoenix companies are established on the commencement of each anti-circumvention inquiry.

The Minister was satisfied that an alteration to the notices was ‘necessary to prevent any ongoing or future circumvention activity that had been identified in this inquiry’.¹² This can only be a reference to the behaviour of LIG and Success. It is our understanding from the legislation that the Minister had the power under s.269ZDBH to alter the notices with respect to LIG/Success from an earlier date. It is not clear from REP 241 why the Minister did not capture the duties back to the date that LIG/Success commenced operations. In our opinion the Minister should have done so on the basis that they are simply phoenix companies that were established to continue the circumvention of the duties.

Inquiry timeframe

A regular anti-circumvention inquiry has a timeframe of 155 days, mirroring the timeframe for investigations and other types of reviews and inquiries. An inquiry into avoidance of the intended effect of the duties, however, is an expedited inquiry with a timeframe of 100 days. In imposing this shorter timeframe the Parliament recognised the need to address this type of circumvention behaviour faster.¹³ The current inquiry commenced on 14 April 2014 and should therefore have been completed by 23 July 2014, however the timeframe was extended multiple times due to the complexities of the case, which was the first of its kind under the legislation.¹⁴

The reason for backdating alterations to the notice is to ensure circumvention doesn’t continue while inquiry goes on. In this case the circumvention was continued by LIG and Success for a total of 311 days from the date of initiation of the investigation until publication of the Minister’s decision. The notices should therefore be altered with respect to LIG/Success from the date that they commenced operations, to address the circumvention, and resulting injury to the Australian industry, that occurred while the inquiry was being conducted.

Conclusion

It is our belief that the decision to make the alteration to the notices apply to LIG/Success from the date of the Minister’s declaration (19 February 2015) was not the correct or preferable decision. The correct and preferable decision would have been to apply the alterations to the notices to LIG/Success from the date of commencement of the inquiry (14 April 2014), for the following reasons:

- the nominated importers were found to have engaged in circumvention activity but ceased operation shortly after the anti-circumvention inquiry began
- phoenix companies (LIG and Success) were established in their place

¹² REP 241 at 6.4, p.45

¹³ Customs Amendment (Anti-dumping Measures) Bill 2013 – Minister’s second reading speech refers

¹⁴ Capral believes that circumvention was occurring since measures were imposed in 2010, however ‘avoidance of the intended effect of duty’ only became an actionable circumvention activity on 1 January 2014.

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- the phoenix companies failed to cooperate with the Commission's inquiry
- imports by the phoenix companies were not arms length transactions
- there was sufficient evidence of ongoing circumvention by the phoenix companies to justify prospectively altering the notices
- the Minister had the power to alter the notices in relation to the phoenix companies with effect from the time that those companies commenced operations, and
- to not exercise this power sends a signal to importers that phoenix companies can be used to continue the circumvention of measures while the Commission conducts a lengthy inquiry .

Authority to deal with Representative - Capral

I, Andrew Barlow, National Commercial Manager - Manufacturing, Capral Ltd, a member of the Australian industry manufacturing aluminium extrusions, and with respect to ongoing dumping/countervailing review matters have engaged a representative:

Justin Wickes, Anti-dumping Specialist, Wickes & Associates

I agree that Customs may deal directly with Capral's representative, including for the release of confidential information.

Signed:



Dated: 30 November, 2012



Customs Act 1901 – Part XV B

CERTAIN ALUMINIUM EXTRUSIONS

**Exported by PanAsia Aluminium (China) Limited from the
People's Republic of China**

**Findings in relation to an Anti-Circumvention Inquiry into the
avoidance of the intended effect of duty**

Public Notice under subsection 269ZDBH(1) of the Customs Act 1901

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the anti-circumvention inquiry into the avoidance of the intended effect of duty, which commenced on 14 April 2014, concerning the export of certain aluminium extrusions (the goods) to Australia by PanAsia Aluminium (China) Limited (PanAsia) from the People's Republic of China.

Recommendations resulting from that inquiry, reasons for the recommendations and material findings of fact and law in relation to the inquiry are contained in *Anti-Dumping Commission Report No. 241* (REP 241).

I, IAN MACFARLANE, the Minister for Industry and Science, have considered REP 241 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts or law set out in REP 241.

Under subsection 269ZDBH(1) of the *Customs Act 1901* (the Act), I declare, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, a different variable factor (a new ascertained export price) for the original notice published under subsection 269TG(2) and subsection 269TJ(2) of the Act in relation to certain aluminium extrusions exported from China from PanAsia which takes effect as follows:

- the alteration to the original notice relating to all exports of certain aluminium extrusions by PanAsia to the following importers is taken to have been made, with effect on and after 14 April 2014:
 - P&O Aluminium (Brisbane) Pty Ltd;
 - P&O Aluminium (Melbourne) Pty Ltd;
 - P&O Aluminium (Perth) Pty Ltd;

- P&O Aluminium (Sydney) Pty Ltd; and
- Oceanic Aluminium Pty Ltd, and
- the alteration to the original notice relating to all exports of certain aluminium extrusions by PanAsia is taken to have been made with effect on and after the day this declaration is published.

The duty that has been determined is an amount worked out in accordance with the fixed (*ad valorem*) and variable duty method in relation to dumping and the fixed (*ad valorem*) method in relation to countervailing.

To preserve confidentiality, the revised variable factor (as ascertained in the confidential tables attached to this notice) will not be published. Bona fide importers of the goods can obtain details of the new rates from the Regional Dumping Officer in their respective capital city.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au) in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

REP 241 has been placed on the public record, which is available at the Anti-Dumping Commission's (the Commission) website at www.adcommission.gov.au. Alternatively the public record may be examined at the Commission's office during business hours by contacting the case manager using the contact details provided below.

Enquiries about this notice may be directed to the case manager on telephone number 03 9244 8065 fax number 1300 882 506 or +61 3 9244 8902 (outside Australia) or acu@adcommission.gov.au

Dated this 21st day of January 2015

IAN MACFARLANE
Minister for Industry and Science

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PanAsialum Holdings Company Limited

榮陽實業集團有限公司

(incorporated in the Cayman Islands with limited liability)

(Stock Code: 2078)

DELAY IN PUBLICATION OF THE 2014 ANNUAL RESULTS ANNOUNCEMENT AND SUSPENSION OF TRADING

Delay in Publication of the 2014 Annual Results Announcement

The board (the “**Board**”) of directors (the “**Directors**”) of PanAsialum Holdings Company Limited (the “**Company**”, together with its subsidiaries, the “**Group**”) announces that as additional time is required by the Company to collate and gather further information in relation to certain matters raised by the auditor of the Company (the “**Auditor**”) so as to enable them to complete the audit (the “**Audit**”) of the consolidated results of the Group for the year ended 30 September 2014 (the “**2014 Audited Results**”), the Company expects that it will not be able to publish the 2014 Audited Results on or before 31 December 2014. As a result, the date of the meeting of the Board for the purposes of, among other things, considering and approving the 2014 Audited Results has not been fixed as at the date of this announcement.

Upon the recommendation of the Auditor, the Board has resolved to appoint an independent professional advisor to investigate into matters raised by the Auditor (the “**Investigations**”), including but are not limited to, (1) the transactions with a contractor for the construction of the Group’s new manufacturing facility in Nanyang, the People’s Republic of China; (2) the discrepancies found on certain of the Group’s inventory receipt records in relation to the Group’s raw materials procurement; (3) the relationship between the Group and certain Australian customers; and (4) details and supporting documents on certain expenses. The Board has established an independent committee, comprising two independent non-executive Directors, to supervise and oversee the Investigations.

Pursuant to Rule 13.49(1) of the Rules (the “**Listing Rules**”) Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “**Stock Exchange**”), the Company is required to publish the 2014 Audited Results on or before 31 December 2014. The Board acknowledges that the possible delay in the publication of the 2014 Audited Results will constitute a non-compliance of Rule 13.49(1) of the Listing Rules.

The Company will publish further announcement(s) to inform the shareholders of the Company of the date of the Board meeting to approve the 2014 Audited Results and the release of the 2014 Audited Results or any update information as and when appropriate.

Suspension of Trading

At the request of the Company, trading in the Company's shares on the Stock Exchange has been suspended with effect from 9:00 a.m. on 17 December 2014 pending the release by the Company of this announcement. Trading in the shares of the Company will remain suspended until the publication of the 2014 Audited Results.

By Order of the Board
PanAsialum Holdings Company Limited
Shao Liyu
Chairman

Hong Kong, 19 December 2014

As at the date of this announcement, our executive Directors are Ms. Shao Liyu (formerly known as Ms. Shao Lidan), Ms. Ng Bonnie Po Ling, Mr. Liu Hoi Keung and Mr. Xing Hui Min, our non-executive Director is Mr. Lee Hui Fu, and our independent non-executive Directors are Mr. Tsang Wah Kwong and Mr. Cheung Chun Sing Horatio.

Attachment D

Director/shareholder links between new importers, PanAsia (China) and the nominated importers

LIG Australia Pty Ltd

Name	Role in LIG	Related co.	Role in related co.
Lijun Gao	Director 24/4/14 to 11/6/14	P&O Sydney	Shareholder (15%) 4/12/03 to 3/1/07 Director 28/11/02 to 30/9/05
		Oceanic	Director 3/4/07 to 1/1/08

Success Aluminium Pty Ltd

Name	Role in Success	Related co.	Role in related co.
Ziming Liang	Shareholder (100%) 28/4/14 to 10/7/14	P&O Melbourne	Shareholder (15%) 19/12/03 to 1/7/04
	Shareholder (10%) 11/7/14 to 8/10/14 Director 28/4/14 to 14/11/14		Director 20/5/03 to 30/6/05
Manqing Pan	Shareholder (70%) 11/7/14 to 20/11/14 Director 16/7/14 to 29/10/14	PanAsia (China)	Shareholder (10%) 30/9/01 to 29/7/05 Also very likely to be a current beneficiary of the Pan Family Trust, which ultimately owns 75% of PanAsia (China)