

11 November 2015

Ms Jaclyn Fisher
Member
Anti-Dumping Review Panel
C/O Legal Services Branch
Department of Industry and Science
10 Binara Street
Canberra City ACT 2601

Email: adrp_support@industry.gov.au

Dear Ms Fisher

Anti-Dumping Review Panel Inquiry – Review of a decision of the Parliamentary Secretary to the former Minister for Industry and Science in relation to a review of anti-dumping measures in respect of certain aluminium extrusions exported from the People’s Republic of China (Report No. 248) – Submission by Capral Aluminium

Introduction

I refer to the notice dated 21 October 2015 informing interested parties of the Anti-Dumping Review Panel’s (“ADRP”) announced review of a decision of the Parliamentary Secretary to the former Minister for Industry and Science to publish findings in relation to a review of the anti-dumping measures in respect of certain aluminium extrusions exported from the People’s Republic of China (“China”).

The announcement of the review follows applications for reviews of the Parliamentary Secretary’s decision from Tai Shan City Kam Kui Aluminium Extrusion Co Ltd and its related bodies corporate, Kam Kui Australia Pty Ltd and Kam Kui Aluminium Products Sdn Bhd (jointly referred to as “Kam Kui”), and Panasia Aluminium (China) Limited and Opal (Macau Commercial Offshore) Limited (jointly referred to as “PanAsia”).

An application for review of the measures was made by PanAsia on 2 May 2014. On 12 June 2014 the Anti-Dumping Commission (“the Commission”) published a notice announcing a review of the measures applicable to all exporters of certain aluminium extrusions from China.

Kam Kui has advanced the following grounds as the subject of its review application:

- (i) the ascertained export price (“AEP”) calculated by the Commission was higher than the gross invoice price at DDP level; and
- (ii) the AEP calculation included a “double currency conversion” from AUD to RMB and then from RMB to AUD.

PanAsia has argued the following grounds for review:

- (i) In determining PanAsia’s AEP, the Commission did not take into account all of the relevant available information, and did not undertake a comparative assessment to identify the best available information;

- (ii) In determining the benchmark price for the purposes of establishing the amount of countervailable subsidy received from the purchase of goods, the Commission included charges for services when it ought not have done so; and
- (iii) Because of the error in calculation outlined in (ii), ascertained normal values were overstated.

Capral Aluminium (“Capral”) is a member of the Australian industry manufacturing certain aluminium extrusions the subject of the review applications. Capral takes this opportunity to comment on the applications by Kam Kui and PanAsia. Capral may also elect to comment on the Commission’s response to the ADRP’s invitation to comment letter (due 11 November 2015).

Kam Kui review application

Kam Kui asserts that the revised AEP determined by the Commission (and accepted by the Parliamentary Secretary) in Report No 248 is erroneous “as a result of the manner in which the Commission carried out currency conversions on which the calculated AEP depended¹”.

The Commission determined export prices for Kam Kui under s.269TAB(1)(a) of the Customs Act based upon the “price paid or payable by the importer less any part of the price that represents a charge in respect of transport of the goods or in respect of any other matter arising after exportation²”. Capral notes from the Kam Kui Verification Report that with the exception of two customers, all sales to Australia by the exporter (i.e. Kam Kui Aluminium Sdn Bhd) are in Australian dollars (the two exceptions are in US dollars). It is also noted that the exchange rate used in the exporter’s accounting system “is the closing spot rate of the last day of the previous month³”.

Kam Kui’s application for review states the methodology applied by the Commission in establishing the AEP using Kam Kui’s export price records for the period. This methodology involved the following:

- (a) calculating the ‘gross invoice value from [Kam Kui] to independent customers in Australia, AUD from the ‘gross invoice value’;
- (b) calculating the ‘net invoice value’ in AUD from the ‘gross invoice value’ from [Kam Kui] to independent customers in Australia, AUD, ‘rebates’ and ‘other charges’;
- (c) calculating the ‘FOB export price’ from the ‘net invoice value’ and ‘air freight’, ‘ocean freight’, ‘Australia inland transport’, ‘duty paid’, ‘duty refund which should be added to the invoice price’ and ‘marine insurance’ stated in AUD; and
- (d) calculating the ‘FOB export price RMB’ from the ‘FOB export price’ and ‘exchange rate (RMB:AUD)’, which involved a currency conversion from AUD to RMB.

The conversion to RMB enables fair comparison with normal value (also in RMB).

It is stated at Section 5.3 of Kam Kui’s application for review that the Commission determined a weighted average export price in RMB. This weighted average export price was converted to an AUD equivalent using the monthly average exchange rate (AUD:CNY), which it is stated was approximately 5.669 over the investigation period.

Capral submits that the Commission’s methodology in determining the weighted average export price, firstly in RMB, then converting to AUD is correct. The difference in the export prices by the single transaction methodology and the weighted-average calculation can be explained by the use of the weighted-average monthly exchange rate. As the AUD values are different via the single transaction method when contrasted with a weighted average monthly value does not of itself establish an error. In addition, the AUD devalued against the US dollar (to which the RMB is linked) by approximately 14 per cent over the investigation period – it would therefore be expected that weighted average export prices are higher than the export prices for individual transactions.

¹ Kam Kui Application for Review, P.13.

² Report No. 248, Section 4.3.1, P. 21.

³ Kam Kui Aluminium Sdn Bhd Verification Report, Section 5.1. P. 16.

The Commission has correctly calculated a weighted-average monthly export price for Kam Kui based upon verified information. The impact of rate conversions resulting in a higher AEP than the invoice price can be explained by the devaluation of the AUD and weighted-average pricing. The so-called 'double conversion' error is non-existent and merely a product of the outcome necessary to calculate a weighted average monthly export price.

PanAsia review application

(i) *relevant information*

PanAsia's first ground for review is that the Commission did not "evaluate all relevant information". This claim, however, is not supported by the evidence as detailed in Report No. 248.

At Section 4.3.3 of Report No. 248 the Commission outlined its reasons for relying upon verified informed obtained in Anti-Circumvention Inquiry No. 241. A key consideration of the Commission was the substantial overlap of investigation periods (9 months) in the two investigations. The investigation period for Inquiry No. 248 was the twelve months ending March 2014, whereas for Investigation No. 241, the investigation period was the twelve months ending December 2013.

In response to completed importer questionnaires from P&O Aluminium – Melbourne, Brisbane, Perth, Sydney, and Oceanic Aluminium Pty Ltd ("Oceanic"), the Commission conducted verification visits with P&O Sydney and Perth and Oceanic in June 2014. The Commission identified the following comments in relation to the verification of export price data for the PanAsia affiliated companies⁴:

- *The Commission could not verify the relevance and completeness of the importers sales data on account that the requested audited financial statements were not provided by any of the importers who were subject to verification; and*
- *The profitability analysis conducted by the Commission found the sales of the goods subject to measures purchased by P&O Melbourne, P&O Perth, P&O Sydney, P&O Brisbane and Oceanic from PanAsia were found to have been sold in Australia at a loss."*

The Commission also relied upon information obtained from Capral that provided an account of prices offered by P&O entities and Oceanic over the period November 2013 to March 2014. The Commission contrasted this information with PanAsia export prices over the first quarter of 2014 and found "*that the importers would also be selling at a loss*".

The Commission concluded that it could not be satisfied that the purchase of the goods by the importers were arms length transactions (and that the exporter would likely be reimbursed or compensated for the loss making sales).

The Commission could not determine export prices for under s.269TAB(1)(b) as the importer's information was insufficient. Due to the issues relating to the verification of the importers data, export prices could not be determined under s.269TAB(1)(c).

The only available alternative to the Commission was s.269TAB(3) of the Customs Act that allows the Minister to determine export prices having regard to all relevant information. Using the importers' weighted average selling prices, the Commission calculated FOB export prices using the deductive methodology. This approach is considered reliable as it utilizes information that is sourced from the importers⁵ relating to:

- importation costs;
- S,G&A costs;
- Reasonable profit; and
- Duty payable.

⁴ Refer Report No. 248, Section 4.3.3, P. 26.

⁵ Refer Report No. 241, Sections 5.3.1 to 5.3.5, P 40-41.

Ascertained export prices (“AEPs”) for PanAsia were determined under s.269TAB(3) using the best available information sourced from the P&O companies and Oceanic.

PanAsia’s claim that the Commission has not taken account of all relevant information is incorrect. The Commission has examined the export sales by PanAsia to the Australian importers and determined that the sales were at a loss. The Commission cannot ignore these facts. The Commission cannot rely upon PanAsia’s export sales to the importer Protector Aluminium Pty Ltd (“Protector Aluminium”) only as this would ignore the loss-making sales. Nor can the Commission determine export prices for PanAsia using the export price information for other cooperative exporters (costs relate to different distribution channels to that utilized for exports by PanAsia), as the Commission was in possession of import costs that related to sales of imports by the P&O companies and Oceanic that relate to actual costs incurred by the importers.

It is also contended by PanAsia that the volume of exports sampled by the Commission for the purposes of determining deductive export prices was “too small to be representative and reliable”. As indicated, the Commission could not verify the importers’ sales against audited financial statements (hence weighted-average selling price information could not be used). However, for the selected sales that could be verified against source documents obtained from the importers, the Commission found these sales to be “accurate”. These sales formed the basis of select sales upon which deductive export prices could be calculated as they were deemed ‘reliable’ by the Commission.

In light of the Commission’s inability to verify sales information with audited financial statements, the commission has relied upon the next best alternative that is selected sales for which source documents were obtained.

For the purposes of selecting reliable sales information to determine export prices for PanAsia under s.269TAB(3), the Commission has utilized the most relevant available information for which it had the correct and relevant source documents. PanAsia’s claims that the Commission has not utilized “all relevant information” is not borne by the facts as detailed in Report No. 241.

(ii) *Relevant benchmark – certain charges*

PanAsia’s second ground of appeal relates to the inclusion of a services charge in the benchmark price for primary aluminium. PanAsia has correctly identified the change in methodology from the original investigation (Report No. 148) to the review investigation (No. 248) where a market situation for the goods was determined.

For the purposes of assessing adequate remuneration for primary aluminium the Commission sought to recommend a benchmark price that reflects an unsubsidized price for the subsidized goods (i.e. primary aluminium) plus additional amounts for services. The “services” referred to by PanAsia relate to the Japanese port premium that it stated is “*an additional service charge for casting the primary aluminium into ingots and delivering the goods to a major international port*”⁶.

The important consideration is that the Commission is seeking an “unsubsidized price” for primary aluminium. All traded primary aluminium external to China attracts a price premium, irrespective of the international port where it is sold. The premium therefore is an element of the purchase price for primary aluminium on the international market, and is included in all traded selling prices for primary aluminium.

An unsubsidized primary aluminium selling price for sales external to China includes a service cost (i.e. the Japanese port premium) that is relevant to the determination of a suitable benchmark for Program 15. PanAsia’s suggestion that the service cost does not apply to primary aluminium trades (external to China) and should be excluded from the benchmark has not been sufficiently evidenced and must be disregarded.

(iii) *Overstated normal values*

⁶ Refer Panasia Application for Review, P.22.

The final ground of appeal identified by PanAsia relies upon the successful exclusion of the service charge/cost for the Japanese port premium from the benchmark selling price for primary aluminium.

As the charge/cost applies in all market trades for primary aluminium external to China, it is appropriate for the Commission to have included the charge/cost in PanAsia's normal values as representative of an unsubsidized selling price for primary aluminium (as Per Program 15).

PanAsia's normal values, therefore, have not been overstated in Report No. 248.

Conclusion

Capral requests the ADRP Member to affirm the Parliamentary Secretary's decision for Report No. 248 as the correct and preferred decisions. PanAsia's grounds for appeal cannot be assessed as being incorrect or flawed and do not alter the Parliamentary Secretary's decision to accept the Commission's recommendations as contained in Report No. 248.

If you have any questions concerning this submission, please do not hesitate to contact Luke Hawkins on (02) 8222 0113 or Capral's representative, John O'Connor on (07) 3342 1921.

Yours faithfully

Luke Hawkins
General Manager – Supply and Industrial Solutions