



**Australian Government**

**Anti-Dumping Review Panel**

# **ADRP REPORT No. 32**

CERTAIN ALUMINIUM EXTRUSIONS  
EXPORTED FROM THE PEOPLE'S  
REPUBLIC OF CHINA

18 March 2016

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 anti-dumping measures in respect of certain aluminium extrusions exported from the People’s Republic of China.

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## Abbreviations

|                             |   |
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| the Act                     | <i>Customs Act 1901</i>   |
| ADA                         | <i>World Trade Organisation Anti-Dumping Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade</i>                    |
| ADN                         | Anti-Dumping Notice   |
| ADRP                        | Anti-Dumping Review Panel   |
| AEP                         | Ascertained export price  |
| ANV                         | Ascertained normal value  |
| AUD                         | Australian dollar   |
| the ADC                     | the Anti-Dumping Commission   |
| the Commissioner            | the Commissioner of the Anti-Dumping Commission   |
| CAE                         | Certain Aluminium Extrusions  |
| China                       | the People's Republic of China  |
| FOB                         | Free On Board   |
| the goods                   | the goods the subject of the review application   |
| Kam Kiu                     | Tai Shan City Kam Kiu Aluminium Extrusions Co Ltd and its related bodies corporates, Kam Kiu (Australia) Pty Ltd and Kam Kiu Aluminium Products Sdn Bhd     |
| LME                         | London Metals Exchange  |
| MJP                         | Major Japanese Port   |
| the Minister                | the Minister for Industry, Innovation and Science   |
| the Parliamentary Secretary | Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science   |
| PanAsia                     | PanAsia Aluminium (China) Limited and Opal (Macao Commercial Offshore) Limited  |
| REP 241                     | Anti-Dumping Commission Report No 241 - Alleged Circumvention of Certain Aluminium Extrusions Exported from the People's Republic of China                  |
| REP 248                     | Anti-Dumping Commission Report No 248   |
| REP 287                     | Anti-Dumping Commission Report No 287 - Continuation of Anti-Dumping Measures for Certain Aluminium Extrusions exported from the People's Republic of China |
| REP 326                     | Reinvestigation Report 326 - Certain Findings of Certain Aluminium Extrusions from the People's Republic of China   |
| REP 21                      | Anti-Dumping Review Panel Report No 21 in relation to ADC Report No 241   |
| RBA                         | Reserve Bank of Australia   |
| RMB                         | Chinese Yuan Renminbi   |
| SEF 248                     | Statement of Essential Facts Report No 248  |
| WTO                         | World Trade Organisation  |

## Introduction

1. The following applicants have applied, pursuant to section 269ZZE of the *Customs Act 1901* (the Act), for a review of a decision of the Parliamentary Secretary to the former Minister for Industry and Science (the Parliamentary Secretary) to publish findings in relation to a review of anti-dumping measures in respect of certain aluminium extrusions (CAE) exported from the People's Republic of China (China):
  - Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd and its related bodies corporate, Kam Kiu (Australia) Pty Ltd and Kam Kiu Aluminium Products SDN BHD (jointly, Kam Kiu);
  - PanAsia Aluminium (China) Limited and Opal (Macao Commercial Offshore) Limited (jointly referred to as PanAsia).
2. The applications for review were accepted and notice of the proposed review as required by section 269ZZI was published on 21 October 2015. The acting Senior Member of the Review Panel has directed in writing pursuant to section 269ZYA that the Panel for the purpose of this review be constituted by me.

## Background

3. On 2 May 2014, PanAsia lodged an application requesting a review of the anti-dumping measures as they apply to its exports of aluminum extrusions exported from China to Australia. The application was made on the basis that certain variable factors relevant to the taking of anti-dumping measures had changed. The Commission decided not to reject the application. Section 269ZC(4) of the Act provides that if the Commissioner decides not to reject an application for review, the Commissioner may, if he or she considers that the review applied for should be extended to include any additional matter, recommend to the Parliamentary Secretary that the review be extended accordingly. As the change of circumstances that PanAsia's review application was based on was common to all Chinese aluminium manufacturers, the Commission considered that it would be appropriate to ensure that any changes to the measures are applied to all exporters of CAE from China. The Parliamentary Secretary decided to extend the review to all exporters.
4. On 12 June 2014, the Commissioner of the Anti-Dumping Commission (the Commissioner) initiated a review of the anti-dumping measures in respect of

CAE exported from China and advised that the review period covered 1 April 2013 to 31 March 2014.<sup>1</sup>

5. On 29 May 2015 the Commissioner published the Statement of Essential Facts Report No 248 (SEF 248) which outlined the facts which form the basis of his recommendation to the Parliamentary Secretary in relation to the review of measures.<sup>2</sup>
6. The final report to the Parliamentary Secretary was made by the Anti-Dumping Commission (ADC) on the 13 July 2015 (REP 248).<sup>3</sup> The Commissioner noted that the variable factors had changed and recommended to the Parliamentary Secretary that the dumping duty notice and countervailing duty notice for all exporters take effect with the different ascertained variable factors.
7. REP 248 includes a detailed summary which outlines the relevant history of the CAE case<sup>4</sup> briefly set out below:
  - Dumping and Countervailing Investigation 148 (2009);
  - Reinvestigation 175 (2011);
  - Federal Court Proceedings (September 2013);
  - Review of Anti-Dumping Measures Case 186 (2012);
  - Review of Anti-Dumping Measures Case 229 (2013);
  - Anti-Circumvention Inquiry Case 241 (2014); and
  - Anti-Dumping Review Panel (ADRP) Report 21 (2015) - in relation to case 241.
8. On 19 August 2015, the Parliamentary Secretary published a notice altering the original dumping duty notice and countervailing duty notice as if different variable factors had been fixed in relation to all exporters of CAE exported to Australia from China.<sup>5</sup>

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<sup>1</sup> Anti-Dumping Notice 2014/46

<sup>2</sup> Statement of Essential Facts Report Number 248 published 29 May 2015

<sup>3</sup> Report 248 Review of Anti-Dumping Measures Certain Aluminium Extrusions exported from the People's Republic of China

<sup>4</sup> REP 248 Paragraph 2.3

<sup>5</sup> Public Notice dated 12 August 2015, published 19 August 2015

## Conduct of the Review

9. In accordance with section 269ZZK(1) of the Act, the Panel must recommend that the Minister (in this case, the Parliamentary Secretary) either affirm the decision under review or revoke it and substitute a new specified decision. In undertaking the review, the Panel is required by Section 269ZZ(1) to determine a matter required to be determined by the Minister in like manner as if it was the Minister having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.
10. In carrying out its function the Panel is not to have regard to any information other than to “relevant information” as that expression is defined in section 269ZZK(6), i.e. information to which the ADC had, or was required to have, regard in reporting to the Minister.<sup>6</sup> In addition to relevant information, the Panel is only to have regard to conclusions based on relevant information that is contained in the application for review and any submissions received under section 269ZZJ.<sup>7</sup>
11. Unless otherwise indicated in conducting this review, I have had regard to the applications (including documents submitted with the applications) and to the submissions received pursuant to section 269ZZJ insofar as it contained conclusions based on relevant information. I have also had regard to the following:
  - REP 248 and information relevant to the review which was referenced therein and in particular, the attachments dealing with dumping margins and subsidy assessment and also Anti-Circumvention Inquiry Case 241 (2014) and ADRP Report 21 insofar as it relates to Case 241 (2015);
  - SEF 248 and documents referenced in the SEF;
  - The relevant references in the World Trade Organisation (WTO) panel reports cited by the applicants.
12. After the applications for review of the Parliamentary Secretary’s decision were accepted by the Panel, the ADC was asked to provide comments on the grounds raised in the applications for review.<sup>8</sup> The response from the ADC was received

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<sup>6</sup> Section 269ZZK(6) of the Act

<sup>7</sup> Section 269ZZK(4) of the Act. I note that section 269ZZK(4) was amended by Customs Amendment (Anti-Dumping Measures) Bill (No 1) 2015. These amendments came into force on 2 November 2015 and apply only to reviewable decisions made on or after that date. Accordingly, they do not apply to the present review and I have not applied them.

<sup>8</sup> Letter from the Anti-Dumping Review Panel to the Anti-Dumping Commission dated 21 October 2015

on 12 November 2015.<sup>9</sup> Both the request to the ADC and the response were made publicly available - though the ADC response included a confidential version. I have had regard to the response only to the extent that the ADC has identified information to which it had regard in making its recommendations to the Parliamentary Secretary and which it considered responsive to the claims made by the Applicants.

13. The following submissions were received pursuant to section 269ZZJ:
  - Submission from Kam Kiu dated 13 November 2015.<sup>10</sup>
  - Submission from PanAsia dated 20 November 2015.<sup>11</sup>
  - Submission from Capral Aluminium dated 11 November 2015.<sup>12</sup>
14. I clarified my understanding of the confidential spreadsheets by telephone with the ADC on 26 November 2015 and 7 December 2015.
15. I required the ADC to reinvestigate the finding relating to the Kam Kiu review of measures for CAE exported from China.<sup>13</sup> In particular I requested the ADC to consider:
  - (a) The Ascertained Export Price (AEP) of CAE for Kam Kiu without the double currency conversion from Australian Dollars (AUD) to Chinese Yuan Renminbi (RMB) and then to AUD; and
  - (b) Any consequential amendments to the dumping and/or subsidy margin for Kam Kiu as a result of the recalculated AEP.
16. A reinvestigation report (REP 326) was provided to me on 17 February 2016.<sup>14</sup> Pursuant to section 269ZZK(4A) of the Act, I have had regard to the reinvestigation report.

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<sup>9</sup> Letter and attachments from the Anti-Dumping Commissioner dated 11 November 2015 and received by email on 12 November 2015

<sup>10</sup> Letter from Kam Kiu dated 13 November 2015

<sup>11</sup> Letter from PanAsia dated and emailed 20 November 2015

<sup>12</sup> Letter from Capral Aluminium dated 11 November 2015 and emailed 17 November 2015

<sup>13</sup> Reinvestigation request from the Anti-Dumping Review Panel to the Commissioner dated 14 December 2015

<sup>14</sup> Reinvestigation report 326 dated 16 February 2016

## Grounds for Review

### Kam Kiu

17. The ground upon which Kam Kiu argued that the decision of the Minister was not the correct or preferable decision was that the ADC applied the incorrect methodology to calculate Kam Kiu's ascertained export price (AEP). Kam Kiu argued that this methodology was incorrect because:
  - (a) The AEP calculated by the ADC was higher than the gross invoice price at DDP level; and
  - (b) The AEP calculation included a 'double currency conversion' from AUD to RMB and then from RMB to AUD.

### PanAsia

18. The grounds upon which PanAsia argue that the decision of the Minister was not the correct or preferable decision are:
  - (a) 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;
  - (b) 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 to have done so; and
  - (c) Because of the error in (b) above, ascertained normal values (ANV) were overstated.

## Consideration of Grounds

### Kam Kiu

19. Kam Kiu considers that the revised rates of duty imposed by the Parliamentary Secretary as a result of the review of the anti-dumping measures are correct but that the AEP is incorrect due to the double conversion of the AEP from AUD to RMB and then from RMB to AUD. It asserts that as the sales to Australia are in AUD it was unnecessary to undertake calculations to convert to RMB. It proposes that the correct or preferable calculation of the AEP would be to use the AUD prices of Kam Kiu exports to Australia.
20. Kam Kiu cites the World Trade Organisation (WTO) Panel Report involving United States - Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip



from Korea<sup>15</sup> which considered currency conversions in the context of Article 2.4.1 of the WTO Anti-Dumping Agreement (ADA). The Panel concluded that it was inconsistent with Article 2.4.1 of the ADA to undertake currency conversions in instances where the prices being compared were in the same currency.

21. Section 269TAF of the Act provides that where comparison of the export prices of goods with the corresponding normal values of like goods requires a conversion of currencies, that conversion, unless a forward exchange rate is used, should be made using the rate of exchange on the date of the transaction or agreement that best establishes the material terms of the sale.
22. The Dumping Manual does not specifically deal with the issue of double currency conversion.<sup>16</sup> It outlines circumstances surrounding the treatment of conversion should there be sustained movement in exchange rates during the period of the investigation. It also outlines that the ADC will normally express the AEP in the currency in which the export sales are made.<sup>17</sup> As a general principle, it is unnecessary to undertake a conversion to AUD dollars when the export price is in AUD.
23. In REP 248, the ADC notes that the export price for Kam Kiu has been established under Section 269TAB(1)(a) of the Act and the normal value under Section 269TAC(2)(c) of the Act using Kam Kiu's cost to make and sell and an amount for profit and with appropriate due allowance adjustments under Section 269TAC(9).<sup>18</sup> No particular mention was made regarding currency conversions.
24. The ADC in its response to the invitation to comment on the review<sup>19</sup> agrees that the double conversion for the purposes of calculating the AEP was unnecessary and that as the export sales were predominantly in AUD no conversion was required. The ADC advised that the recalculation resulted in a lower AEP. In addition, it advised that as the subsidy margin is a function of the weighted average export price over the period, it would also need to be revised.
25. The ADC also, correctly in my view, asserts that given the exchange rates applied in the double currency conversion were the same and applied similarly to all the comparisons, these rates should not have impacted on the dumping margin. Following the correction of the AEP, the ADC undertook additional

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<sup>15</sup> Panel Report US - Stainless Steel Plate in Coils and Stainless Steel sheet and Strip from Korea, WTO Doc WT/DS179/R (2000) [6.11 - 6.14]

<sup>16</sup> Anti-Dumping Commission Dumping and Subsidy Manual - Section 20 Determination of Dumping Margins, Sub-section Currency Conversions pages 116 - 117

<sup>17</sup> Anti-Dumping Commission Dumping and Subsidy Manual - Section 27.3 page 145

<sup>18</sup> ADC Report No 248 section 4.3.1

<sup>19</sup> ADC letter dated 11 November 2015 Attachment B para 7

analysis of the dumping margin calculations to ascertain why this was not the case.

26. I requested a telephone conversation with the ADC, which was held on the 26 November 2015, to ensure I understood correctly the confidential spreadsheets containing the revised Kam Kiu AEP calculations and dumping and subsidy margins. Subsequently I requested the ADC to undertake a reinvestigation relating to the Kam Kiu review of measures for CAE exported from China.<sup>20</sup> In particular I requested the ADC to consider:
- (a) The AEP of CAE for Kam Kiu without the double currency conversion from AUD to RMB and then to AUD; and
  - (b) Any consequential amendments to the dumping and/or subsidy margin for Kam Kiu as a result of the recalculated AEP.
27. Kam Kiu provided a submission dated 13 November 2015<sup>21</sup> which dealt with the fact that, subsequent to the Kam Kiu application for a review of the Parliamentary Secretary's decision of the 19 August 2015 to vary the variable factors for CAE, the Parliamentary Secretary published a continuation decision relating to CAE.<sup>22</sup> This submission seeks to ensure that any decision of this Panel is not superseded by the continuation decision and that should this review recommend new variable factors these should be applied from the 28 October 2015 - the date of the Parliamentary Secretary's decision.
28. The ADC Report 287 "Inquiry into the Continuation of Anti-Dumping Measures for Certain Aluminium Extrusions exported from the People's Republic of China" recommended that, in continuing the anti-dumping measures, the variable factors of export price, normal value and amount of countervailable subsidy received remain unaltered.<sup>23</sup> Therefore, the interim dumping and interim countervailing duty rates remained as determined by the Review of Anti-Dumping Measures No. 248, which are the subject of this review.
29. Capral Aluminium also made a submission to the review in its letter dated 11 November 2015 indicating that it considers the ADC methodology in determining

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<sup>20</sup> Reinvestigation request from the Anti-Dumping Review Panel to the Commissioner dated 14 December 2015

<sup>21</sup> Letter from Kam Kiu dated 13 November 2015

<sup>22</sup> Anti-Dumping Commission Case No 287 Inquiry into Continuation of Anti-Dumping Measures for Certain Aluminium Extrusions from China

<sup>23</sup> Anti-Dumping Commission Report No 287 Inquiry into Continuation of Anti-Dumping Measures for Certain Aluminium Extrusions from China, page 37

the AEP is correct, that is, converting from AUD to RMB for comparison with the Normal Value in RMB.<sup>24</sup>

30. The ADC found in REP 326 that Kam Kiu's AEP was calculated incorrectly in the original review of measures report (REP 248) and that a double currency conversion was unnecessary. The report also found that as a result of amending the AEP there were changes necessary to the dumping and subsidy margins.<sup>25</sup> In reinvestigating this matter, the ADC noted that the exchange rates provided by Kam Kiu did not best establish the material terms of sale of the exported goods. Instead the ADC applied the Reserve Bank of Australia (RBA) rates to assess dumping and subsidy margins. This revealed a new AEP as well as weighted average export prices over the review period. Given that the dumping and subsidy margins are both a function of the weighted average export price, this also necessitated changes to these margins.

## PanAsia

31. PanAsia submits that the determined variable factors are incorrect and as a result the interim dumping duty and countervailing duty should be significantly less. The three grounds are summarised under the following headings:
- (a) Ascertained Export Price;
  - (b) Benchmark price used for primary aluminium - "services" inclusion in the subsidy; and
  - (c) Benchmark price used for primary aluminium - "services" inclusion in the determination of normal value.

### *Ascertained Export Price*

32. PanAsia contends that the ADC has not fulfilled its mandatory obligations to undertake an objective examination of all available information and to base its decision on the best available information. It says the ADC has not met its legislative requirements nor the WTO ADA obligations. In particular, it cites the obligations in Article 6.8 and Annex II and illustrates its points by two Panel cases. These are, US - Hot-Rolled Steel from Japan<sup>26</sup> and Mexico - Beef and Rice Panel Report,<sup>27</sup> both of which deal with the need for objective decision making based on facts and the best available facts and the most appropriate

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<sup>24</sup> Letter from Capral Aluminium dated 11 November 2015 and emailed 17 November 2015

<sup>25</sup> ADC Reinvestigation Report No 326, page 4

<sup>26</sup> WTO Panel Report US Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan WT/DS184/R, para 7.55 page 26

<sup>27</sup> Panel Report Mexico - Definitive Anti-Dumping Measures on Beer and Rice, WT/DS295/R, para 7.166, page 144

information. PanAsia submits that in determining the export price under Section 269TAB(3), the ADC has not fulfilled its obligations to undertake an objective investigation of all relevant information and base its finding on the best information available.

33. PanAsia proposes as its first position that sales to Protector Aluminium should have been used to establish the AEP. PanAsia claims there was no evidence that these were not arms-length or that they were circumventing the anti-dumping measures.
34. PanAsia further suggests that the sales to Protector Aluminium could have been compared to sales by other exporters, and if aligned (within an acceptable range) that these should have been used to establish the export price under Section 269TAB(3). Alternatively, the arms-length sales by other exporters should have been assessed as the best available information for determining export prices under Section 269TAB(3) of the Act.
35. Pan Asia's submission highlights that the ADC's estimate of PanAsia's arm-length sales is flawed and unreasonable when compared with available verified information found to be accurate and reliable. It emphasises that PanAsia was found to be a co-operating exporter and hence the ADC was under a greater obligation to ensure its findings were based on relevant information.
36. PanAsia emphasises the need to undertake an "evaluative, comparative assessment" and claims that the ADC has failed to properly investigate and evaluate information and has not used the best information in determining the export price under Section 269TAB(3) of the Act. It further claims that:
  - (a) sampled sales used to establish the deductive export price were approximately 0.52% of its total exports to Australia during the review period. It considers that such a small sample size should not be considered to be representative of arms-length sales;
  - (b) the sales information relied upon:
    - is not representative given its non-alignment between the anti-circumvention inquiry period and the review period; and
    - is not aligned given the lead time between the date of export and the date of delivery [REDACTED] [confidential period] given the stock holding periods and eventual sale by the distributors. It is also impacted by the fact that selling prices of goods sold in the June 2013 quarter would have been for exports made in the March 2013 quarter;
  - (c) [REDACTED] [confidential export sales information];

- (d) the approach taken by the ADC to index the prices for the March 2014 quarter from the December 2013 quarter [redacted] [redacted] [confidential export sales information]; and
  - (e) the risk of sampling errors is increased with a small sample size.
37. The ADC in REP 248 indicated that due to the significant overlap of the period of review of measures and the period of the anti-circumvention inquiry that the review of measures would rely on the importer verifications and general findings of the anti-circumvention inquiry.<sup>28</sup> Importers and interested parties were advised of this intent. The five importers the subject of the anti-circumvention inquiry comprised [redacted] [volume] of PanAsia's exported volumes to Australia during that period. The ADC calculated the FOB export price from the importers' weighted average selling prices less amounts for reasonable profit, selling, general and administrative costs, importation costs and duty payable.<sup>29</sup>
38. The ADC states that the export price determined in REP 248 is consistent with the approach taken in the anti-circumvention inquiry. The ADC adjusted its approach following the PanAsia submission to SEF 248 and included PanAsia's FOB export prices of sales to Protector Aluminium in the weighted average export price used to determine the export price in REP 248.
39. The ADC in REP 248 provided its reasoning as to why it could not rely on Sections 269TAB(1)(a) and (1)(b) to determine export price and its view that export price would be determined under Section 269TAB(3) having regard to all available information.<sup>30</sup> The ADC also outlined its rationale in using the anti-circumvention findings in its determination of the export price rather than information from other exporters or solely relying on sales to other importers who were not found to be engaging in circumvention activities. The ADC also commented that the five importer's own actions, who were subject to the anti-circumvention finding, denied the ADC the opportunity to verify sales data.
40. In relation to each of the points raised by PanAsia (referred to in Paragraph 36 above), the ADC in REP 248 has provided its rationale for dealing with these issues which are explained in Section 4.3.3 of REP 248.

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<sup>28</sup> REP 248 Section 4.3.3 page 25

<sup>29</sup> REP 248 page 28 referring to REP 241 section 5.3

<sup>30</sup> REP 248 page 27

41. The ADC in its letter of 11 November 2015 has provided comments on the PanAsia review application.<sup>31</sup> It states that:
- (a) REP 248 outlines in some detail the rationale of the use of Section 269TAB(3) in establishing the export price for PanAsia. In particular, it notes the use of the findings in relation to REP 241 concerning circumvention activities in relation to PanAsia export sales;
  - (b) the assessment of PanAsia sales to Protector Aluminium have been included in the assessment of the export price under Section 269TAB(3) in REP 248. The ADC noted that it did not make a finding that PanAsia sales to Protector Aluminium were arms-length (as stated in the PanAsia application);
  - (c) PanAsia's export prices are not comparable to other exporters given the circumstances found in relation to significant circumvention activity as determined in REP 241 and this in the ADC's view makes it inappropriate to use other exporters' information;
  - (d) the ADC considered that the information obtained from PanAsia's Australian customers as most relevant for the purposes of Section 269TAB(3) ahead of information obtained from other exporters;
  - (e) there was significant analysis and commentary in REP 248 of the volume, sample size and representative nature of the sales during the review period in REP 248; and
  - (f) Section 269TAB(3) is not limited to situations involving uncooperative exporters.
42. Capral in its submission dated 11 November 2015<sup>32</sup> indicates that it considers that the ADC had correctly applied the legislative provisions relating to Section 269TAB in relation to PanAsia and had appropriately analysed and evaluated the best available and relevant information. Capral highlights the findings of REP 241 and its view that the ADC cannot rely solely upon PanAsia sales to Protector Aluminium as this would ignore the loss making sales and anti-circumvention inquiry.
43. PanAsia in its letter of 20 November 2015<sup>33</sup> disagrees with the submission by Capral and reiterates its comments concerning the need to ensure that there is a

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<sup>31</sup> ADC letter dated 11 November 2015

<sup>32</sup> Submission from Capral dated 11 November 2015

<sup>33</sup> Submission from PanAsia dated 20 November 2015

meaningful comparative assessment of all relevant information in the determination of the export price.

*Benchmark price for primary aluminium - “services” inclusion in establishing the amount of countervailable subsidy*

44. The ADC determined, in REP 248, a benchmark price for the primary aluminium used in the cost to make and sell CAE. This was used to determine whether a subsidy had conferred a benefit for such goods. PanAsia submits that the ADC has erred in its assessment of the benchmark price as it has included other “services” in addition to the LME cash price. PanAsia noted that in the original investigation (Report 148) the benchmark price was determined on the LME price with no additional “services”. It submits that this is the correct approach.
45. The subsidy being assessed is known as Program 15, that is, less than adequate remuneration.
46. PanAsia proposes that these additional expenses included by the ADC in the benchmark price relate to “services” and do not relate to the purchase cost of the subsidised goods, being primary aluminium. PanAsia outlines an argument in relation to two of the component expenses. The “services” disputed are:
  - Regional Premium;
  - Import Costs; and
  - Inland Transport.
47. PanAsia does not provide any evidence that suggests that the benchmark price should not be treated as a subsidy but rather points to whether the additional services should be included in the benchmark price and whether such ‘services’ are countervailable. The application states that these ‘services’ are not provided by supplying entities in China and hence should not be countervailable.
48. I’ve outlined below the major points raised by PanAsia for each of the above-mentioned disputed services, except for Inland Transport:
  - **Regional premium:** PanAsia uses the terminology regional/ingot premium or Major Japanese Port (MJP) premium interchangeably to refer to regional premium in its application. PanAsia also states that the MJP premium is a charge for casting primary aluminium into ingots and delivery expenses and that the regional premium includes ocean freight and other delivery related expenses. It states that such expenses should not be included in the benchmark price as PanAsia’s domestic purchases were made on an ex-warehouse basis.

- **Import Charges:** PanAsia submits that as PanAsia's purchase of primary aluminium do not incur import charges then for the same reasons mentioned in relation to the Regional Premium, such charges should not be included in the benchmark price.
49. While the PanAsia submission suggests that there will be commentary on inland transport none is provided. A reference is made to transport costs in the Regional Premium commentary.
50. PanAsia contends that in countervailing the service cost of casting the primary aluminium into ingots, the ADC should have determined whether the provision of these services meets the definition of a subsidy (under Section 269T) and is countervailable pursuant to Section 269TAAC of the Act.
51. PanAsia cites the Appellate Body Report in US - Softwood Lumber<sup>34</sup> which considered the types of alternative benchmarks that can be relied upon in a manner consistent with Article 14(d) of the WTO Subsidies and Countervailing Agreement. I have chosen to include the full paragraph:

*106. We agree with the submissions of the participants and third participants that alternative methods for determining the adequacy of remuneration could include proxies that take into account prices for similar goods quoted on world markets, or proxies constructed on the basis of production costs. We emphasize, however, that where an investigating authority proceeds in this manner, it is under an obligation to ensure that the resulting benchmark relates or refers to, or is connected with, prevailing market conditions in the country of provision, and must reflect price, quality, availability, marketability, transportation and other conditions of purchase or sale, as required by Article 14(d). At any rate, we are not called upon, in this appeal, to suggest alternative methods that would be available to investigating authorities upon a determination that private prices in the country of provision are distorted due to the government's predominant role in the market as provider of the same or similar goods. Nor are we required to determine the consistency with Article 14(d) of all the alternative methods mentioned by the participants and third participants; such assessment will depend on how any such method is applied in a particular case. We, therefore, make no findings on the WTO-consistency of any of these methods in the abstract.<sup>35</sup>*

52. Section 269TACC(3) of the Act outlines what must be taken into account when determining whether a financial contribution confers a benefit and it is to be determined by the Minister having regard to all relevant information. Sub-section (3)(d) specifically deals with the benefit if goods or services are provided for less than adequate remuneration. In assessing this provision regard should also be had to the prevailing market conditions where those goods or services are

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<sup>34</sup> Appellate Body Report US - Softwood Lumber IV WT/DS257/AB/R

<sup>35</sup> Appellate body Report US - Soft Lumber IV WT/DS257/AB/R, para 106 page 43



provided or purchased. This provision reflects Article 14(d) of the WTO Subsidies and Countervailing Agreement.

53. Section 16 of the Dumping and Subsidy Manual<sup>36</sup> outlines the approach to be adopted in determining whether a benefit has been conferred. However it does not specifically deal with the circumstances of this case relating to the inclusion of 'services'.
54. The ADC in REP 248 provides significant detail regarding the development of the benchmark price for primary aluminium.<sup>37</sup> The ADC modified its approach on the benchmark price as outlined in SEF 248 in light of the PanAsia submission.
55. The ADC also highlights that in light of new and further information between the original investigation (REP 148) and the Review of Measures in REP 248, the inclusion of the LME regional premium is necessary to take into account the complete replacement cost of primary aluminium based on LME market prices.<sup>38</sup> It explores the approaches in similar cases taken by the Canadian Border Services Agency and the US Department of Commerce, International Trade Administration (ITA).<sup>39</sup>
56. Additionally REP 248 refers to a recent England and Wales High Court (Administrative Decisions) judgement explaining the price of physical aluminium as purchased from the LME.<sup>40</sup> It states that the

*'LME price, ..., is for metal traded "in-warehouse" and additional costs associated with making delivery of "free metal"...will be higher than the LME price. The physical market price of aluminium, known as the "all-in" price is therefore made up of the LME price plus a premium'.*

57. The ADC states that it disagrees with PanAsia's views on what the MJP premium represents. It outlines the inquiries that it has undertaken to establish what the premium is and the fact that individual elements in the premium cannot be separately identified.<sup>41</sup> It concludes that the benchmark should include the premium that would be paid if the primary aluminium had been purchased on the LME market. It did not include importation costs, trader's premiums and import duty and also excluded inland transport in light of the PanAsia submission.<sup>42</sup>

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<sup>36</sup> Dumping and Subsidy Manual November 2013, Section 16, pages 81-87

<sup>37</sup> REP 248 pages 38- 47 and 93 - 97

<sup>38</sup> REP 248 page 41

<sup>39</sup> REP 248 pages 43 - 44

<sup>40</sup> *United Company Rusal Plc v The London Metal Exchange* [2014] EWHC 890 (Admin) para 13

<sup>41</sup> REP 248 pages 47 - 48

<sup>42</sup> REP 248 Section 5.5.3 page 56

58. The ADC in its letter of 11 November 2015<sup>43</sup> reiterates the points outlined in REP 248 as follows:
- the PanAsia review application regarding the benchmark price for primary aluminium used in the assessment of the countervailable subsidy doesn't reflect the ADC final recommendation in REP 248, noting that the ADC modified its approach in light of the PanAsia submission in response to SEF 248. Inland freight,<sup>44</sup> and import duty and importation charges were excluded.<sup>45</sup>
  - REP 248 clearly outlines the rationale as to the inclusion of the MJP premium in the benchmark price<sup>46</sup> given it is embedded in the purchase price.<sup>47</sup> It asserts that this is consistent with the approach taken by other jurisdictions and supply agreements provided by an exporter and the Australian industry.
  - PanAsia's commentary of the aspects associated with Capral's submission regarding billet premiums refers to the original investigation rather than REP 248. The ADC indicated that it has confirmed through its own inquiries that the billet and ingot premiums on the LME market are payable in the manner calculated by the ADC.<sup>48</sup>
59. Capral in its submission to the review<sup>49</sup> asserts that 'all traded primary aluminium external to China attracts a price premium, irrespective of the international port where it is sold' and this 'is included in all traded selling prices for primary aluminium'. It further states that it is important to obtain an unsubsidised price in order to determine a suitable benchmark for Program 15 as well as for the construction of the normal value.
60. I held a telephone conversation with the ADC on 7 December 2015 in order to confirm the benchmark price assessment used to determine the amount of subsidy in the PanAsia confidential spreadsheets attached to REP 248 given the assertions made by PanAsia in its submission. I am satisfied that the ADC spreadsheets regarding PanAsia's benchmark price reflects the ADC commentary in REP 248.

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<sup>43</sup> Letter from the ADC dated 11 November 2015

<sup>44</sup> REP 248 Section 5.5.3 page 56

<sup>45</sup> REP 248 Section 4.9.10 page 45

<sup>46</sup> REP 248 Section 4.9

<sup>47</sup> ADC letter dated 11 November Attachment A para 5 page 13

<sup>48</sup> ADC letter dated 11 November 2015 Attachment A, para 4 page 12

<sup>49</sup> Letter from Capral Aluminium dated 11 November 2015 page 4

### *Benchmark price for primary aluminium - “services” inclusion in construction of normal value*

61. PanAsia submits that the same rationale used in its subsidy commentary on the inclusion of “services” in the benchmark price for primary aluminium applies for the consideration of the appropriate normal value. PanAsia contends that the normal value is overstated by the extent of the services inclusion in the benchmark price.
62. The ADC comments referred to in paragraphs 54 to 58 above, apply to its benchmark price assessment for primary aluminium used to construct the normal value under Section 269TAC(2)(c), that is, the benchmark price includes the LME cash price plus the MJP premium. This is outlined in some detail in sections 4.8 and 4.9 of REP 248.<sup>50</sup>
63. As indicated above, Capral in its submission<sup>51</sup> claims that it is important to obtain an unsubsidised price in order to determine a suitable benchmark for the construction of a normal value. The unsubsidised price used reflects the charges applicable in all market trades for primary aluminium external to China.
64. As indicated in paragraph 60, I discussed the PanAsia confidential spreadsheet in a telephone conversation with the ADC on the 7 December 2015. This confirms that the benchmark price of the primary aluminium used in the construction of normal value reflects the elements described in the REP 248 rather than the elements outlined in the PanAsia submission.

## Assessment

### Kam Kiu

65. It is acknowledged by the ADC, in its reinvestigation, that Kam Kiu’s AEP was incorrectly calculated and that a double currency conversion was unnecessary to calculate the AEP.<sup>52</sup> As the majority of export sales by Kam Kiu were in AUD it was unnecessary to apply an exchange rate to calculate the AEP and the weighted average export price over the review period. The ADC has recalculated the AEP as follows AUD [REDACTED] [Confidential exporter AEP] per kg, FOB.
66. While the submission by Capral<sup>53</sup> is correct in its comments as to the appropriate methodology to utilise in establishing the dumping margin, this is not the issue

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<sup>50</sup> REP 248 pages 37 - 45

<sup>51</sup> Letter from Capral Aluminium dated 11 November 2015 page 5

<sup>52</sup> REP 326 page 4

<sup>53</sup> Capral letter dated 11 November 2015

that created the error in the Kam Kiu AEP. I have had no further regard to these comments given the circumstances of the reinvestigation.

67. As the ADC acknowledged in REP 326, the effects of the double conversion should have been negligible<sup>54</sup> if it was applied to both the normal value and the export price. The ADC found there was a different issue which created the calculation errors in the AEP, dumping and subsidy margins determined in REP 248. This issue was the use of the Kam Kiu exchange rates in the calculation of the export price in RMB for comparison with the normal value. Kam Kiu, in an email to the ADC, accepted that the exchange rates it provided were incorrect<sup>55</sup>. The ADC has reached the conclusion, with which I agree, that the Reserve Bank of Australia (RBA) exchange rates best establish the material terms of the export sales by Kam Kiu for comparison with the normal value in RMB to determine the dumping margin and also to establish the subsidy margin.
68. The dumping and subsidy margins are a function of the weighted average export price over the period and need to be modified to take into account the RBA exchange rates. I have reviewed the revised calculations of the variable factors undertaken by the ADC in REP 326 and agree with the methodology employed and the use of the RBA exchange rates.
69. For the reasons outlined above, Kam Kiu's AEP, dumping margin and subsidy margin have been recalculated. The Kam Kiu dumping margin has increased from 2.0% to 20.1% and the subsidy margin has increased from 1.8% to 2.1%. This has led to changes in the Kam Kiu variable factors.
70. I agree with Kam Kiu's application that the AEP calculation is incorrect and hence the decision of the Minister was not the correct or preferable decision.
71. As noted at paragraphs 27 to 28 of this Report, Kam Kiu has raised a concern that the outcome of this review may be superceded by the continuation inquiry. As the applications by Kam Kiu and PanAsia do not relate to the continuation inquiry, any implications on the outcome of the continuation inquiry arising from this review are outside the scope of this review.

### *Ascertained Export Price*

72. PanAsia's main argument is whether the ADC has undertaken an objective examination of all available information and based its decision on the best available information in determining the AEP.

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<sup>54</sup> REP 326 section 4.4.1 page 10

<sup>55</sup> REP 326 section 4.4.1 page 10

73. I have reviewed the findings in REP 248 and consider that there is a comprehensive and objective description of the information and evidence considered by the ADC in determining the export price under Section 269TAB(3). The ADC made it very clear to interested parties early in its investigation that it would be relying on the evidence outlined in the anti-circumvention report (REP 241).
74. The ADC modified its approach with respect to PanAsia sales to Protector Aluminium in light of the PanAsia submission to SEF 248 to include these sales albeit not exclusively and not under Section 269TAB(1)(a). The ADC analysis as to why the export price could not be ascertained under Sections 269TAB(1)(a), (b) or (c) is very clear and reasonable in the context of the anti-circumvention findings.
75. The ADC also explained how it dealt with the issues surrounding sales in Quarter 1 2014 and its findings on finish types and time differences in determining the AEP.
76. The ADC has explained why sales to Protector Aluminium could not be used under Section 269TAB(1)(a) and given the circumstances of the relative volume of PanAsia exports sales the subject of the anti-circumvention findings it would seem reasonable to include all of this information in the assessment of the export price. Further, in my view, it is more relevant to use transactions related to the PanAsia export sales in determining the export price rather than sales by other exporters as has been suggested by PanAsia. I see no reason that this would not be classed as the best information available in the circumstances of this case.
77. There is a broad discretion in Section 269TAB(3) allowing the Minister to make a decision based on all relevant information. In the report to the Minister (REP 248), the ADC has clearly outlined what information it used in making a recommendation. I do not agree with PanAsia's comments that the ADC did not undertake a comparative assessment to identify the best information available. I find its explanation comprehensive and logical, and in my view, it is reasonable to have used the deductive export prices from evidence gathered in the anti-circumvention inquiry together with the Protector Aluminium sales as the most relevant information available in the circumstances of the review of measures.
78. PanAsia's claim that its sales to Protector Aluminium should have been used may have had some merit if the anti-circumvention inquiry did not exist. However, the ADC made it very clear from the beginning of the review of measures that the anti-circumvention inquiry evidence would be used. Further, it would seem inappropriate to ignore the findings of the anti-circumvention inquiry

given the large volume of PanAsia sales that were subject to the finding and the alignment of the periods. I have considered the export price approach outlined in REP 241 and find it reasonable.

79. In addition, the observation made by Capral in its letter<sup>56</sup> regarding whether the circumvention findings should be ignored is a valid and relevant question in my view.
80. The ADC in my view has met its legislative obligations under Section 269TAB and also is consistent with the intent of the ADA. There is a broad discretion in Section 269TAB(3) in determining the export price and the approach adopted by the ADC and determined by the Minister, is in my view, correct.
81. Accordingly, I do not agree with PanAsia's grounds that the Parliamentary Secretary did not make the correct or preferable decision in determining PanAsia's AEP. The ADC in REP 248 did, in my view, take into account all of the relevant available information, and undertake a comparative assessment to identify what it considered the best available information.

*Benchmark price for primary aluminium - "services" inclusion in establishing the amount of countervailable subsidy and construction of the normal value*

82. PanAsia's submission indicates that the subsidy and the constructed normal value are overstated due to the inclusion of "services" in the benchmark price for primary aluminium used in the manufacture of aluminium extrusions.
83. PanAsia has not disputed that a benchmark price should be established for use in the subsidy calculation or normal value construction. In my view, the essence of the PanAsia grounds relates to the quantum of the benchmark price and what has been included in such a price, for use in the determination of subsidy and normal value construction.
84. PanAsia asserts that the original investigation used the LME price as the benchmark price and this should have been retained in the review of measures, rather than the LME cash price plus the MJP premium. PanAsia's review application suggests that there were other elements in this benchmark price such as inland freight, import duty and importation charges. REP 248 is clear that these amounts have not been included and the confidential spreadsheets viewed, has confirmed this. Accordingly, I do not propose to discuss these issues further as they are not relevant.

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<sup>56</sup> Letter from Capral dated 11 November 2015

85. The main issue seems in my view, to centre on whether the benchmark price should include the MJP premium.
86. In considering this issue, I think it important to consider the intent. The objective, as outlined by the ADC in REP 248 (and supported by the Capral), in establishing the amount to be used in assessing the benefit conferred or the normal value, is the need to ascertain an unsubsidised price in order to determine an appropriate benchmark for primary aluminium.
87. I have found nothing in the ADC reasoning in REP 248 to suggest that the approach it has taken is inappropriate or incorrect. The ADC considered the approaches taken by other jurisdictions, the original inquiry, inquiries undertaken with another Chinese exporter, and also considered the findings on LME pricing in the Rusal judgement. Through this process the ADC has formed the view that the appropriate benchmark price should reflect a price available in the world market. It considers the LME price that incorporates the physical settlement of the goods as the most relevant information on the basis that it reflects the charges in all market trades for primary aluminium external to China.
88. The ADC has formed the view that such a market price needs to be based on the LME price including the regional premium. In this case it has determined that the MJP is the most appropriate premium. PanAsia's concern as to whether this includes ingot or billet premiums and transport charges have also been dealt with by ADC in its report.
89. PanAsia cites the Appellate Body Report on US - Softwood Lumber<sup>57</sup> as requiring that in the establishment of an appropriate benchmark there is a need to ensure that it relates or refers to, or is connected 'with prevailing market conditions in the country of provision, and must reflect price, quality, availability, marketability, transportation and other conditions of purchase or sale'. This is a relevant reference and has also been used by the ADC in REP 248.
90. The approach taken by the ADC is not inconsistent with the finding in the US - Softwood Lumber Appellate Body Report. Australia's legislation allows the Minister to determine the subsidy having regard to all available information. The ADC has provided a comprehensive assessment of the available information and excluded charges such as the import duty, importation charges and inland freight in order to reflect the transaction having taken place in China.
91. In my view there is a strong argument for creating an unsubsidised benchmark price that reflects what would be available as an alternative source or product in

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<sup>57</sup> Appellate Body Report US - Soft Lumber IV WT/DS257/AB/R, para 106, page 43

the world market. In this case, the LME price together with the regional premium (in this case the MJP premium) would appear both reasonable and appropriate. The discussion in REP 248 makes it clear that the price so established reflected what would be paid in order to source an unsubsidised product in the world market, that is, the LME price plus the MJP premium. Furthermore, this process has met the Australian legislative provisions.

92. For this reason I do not consider the ground put forward by PanAsia has established that the decision of the Parliamentary Secretary was not the correct or preferable decision in relation to the benchmark price used in the calculation of the subsidy and the construction of the normal value.

## Recommendations/Conclusion

93. Outlined above are the reasons that I am satisfied that the applicant, Kam Kiu, has established that the decision of the Parliamentary Secretary was not the correct or preferable decision. The findings in REP 326 concluded that the Kam Kiu AEP was incorrectly calculated due to currency conversion issues. Firstly, there was an unnecessary currency conversion of the AUD AEP to RMB and then back to AUD. Secondly, the exchange rates originally used in the review were supplied by Kam Kiu and these were found to not best establish the material terms of the export sale. The reinvestigation report recalculated the AEP, and also the weighted average export price in RMB for comparison with the normal value using the Reserve Bank of Australia exchange rates. As a result, the export price was modified and this impacted on the Kam Kiu dumping margin, which changed from 2.0% to 20.1%. Given the weighted average export price is also used to calculate the subsidy margin, this also needed to be revised. The revision of the subsidy margin is from 1.8% to 2.1%<sup>58</sup>.
94. The consequence of the changes to the recalculated Kam Kiu dumping and subsidy margins also impacts on the residual exporters' AEP, dumping and subsidy margins. The ADC advised in its letter dated 11 November 2015<sup>59</sup> that the residual exporters' variable factors relevant to the dumping and countervailing notices currently in place are a function, in part, of the weighted average export price of the selected co-operating exporters, including Kam Kiu's information.

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<sup>58</sup> Reinvestigation report No 326 - Certain Aluminium Extrusions exported from China Section 1.2 page 4

<sup>59</sup> ADC letter dated 11 November 2015 responding to the ADRP invitation to comment



95. For reasons as set out below I do not consider it is within the scope of my review to consider the consequential issues relevant to the residual exporters of CAE from China.
96. I agree with the remarks made by the then Senior Member of the Panel in an earlier report of the Panel when conducting a review.<sup>60</sup> I have repeated some of those remarks below as they are relevant to my approach in this current review.<sup>61</sup>

*11. The Act does not set out in a comprehensive way what the task of the Panel is in conducting a review. Nicholas J comparatively recently considered the role of the Trade Measures Review Officer (TMRO) under an earlier statutory scheme for the review of Anti-Dumping and other decisions under the Act: Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs of the Commonwealth of Australia [2012] FCA 1192. His Honour noted at [32] there are authorities (indeed many) that the word "review" is not a precise term. What a review entails is to be ascertained by reference to the statutory framework creating the review process: see, as a recent example, The Pilbara Infrastructure Pty v Australian Competition Tribunal Ltd [2012] HCA 36.*

*12. The Act does contain provisions that identify what the Panel can or should do in a review in certain respects. The first point to be noted, in relation to the review of a Ministerial decision (and I will confine the following remarks to such a review) is that the review has been preceded by what is likely to have been an extensive process of investigation and reporting by the Commissioner under Part XVB which, as to a similar earlier statutory scheme, has been described as a "detailed prescriptive regime": Pilkington (Australia) v Minister of State for Justice & Customs [2002] FCAFC 423 at [123].*

*13. The Panel does not undertake its own investigation in the sense of gathering fresh information and is confined, as a broad generalisation, to the information that had been before the Commissioner: s.269ZZK(4) and (6). The Panel must, in the ordinary course, report to the Minister within 60 days of the public notification of the review (unless the time is extended by the Minister or reinvestigation has been requested under s.269ZZL). The practical effect of this time limit, having regard to the right of interested parties to make submissions within 30 days of the public notification, is that the Panel may well have only 30 days to undertake the review with the benefit of submissions. While the practice of interested parties cannot inform the proper construction of these provisions, the Panel's experience to date is that mostly submissions are in fact made on the thirtieth day after the public notification or shortly before. Presumably interested parties do this in order to avoid responsive (and probably critical) submissions by other interested parties.*

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<sup>60</sup> ADRP Report 24 Power Transformers exported from the Republic of Indonesia, Taiwan, the Kingdom of Thailand and the Socialist Republic of Vietnam

<sup>61</sup> ADRP Report 24 Power Transformers exported from the Republic of Indonesia, Taiwan, the Kingdom of Thailand and the Socialist Republic of Vietnam pages 4-5 paras 11 - 14

*14. It seems to me that having regard to the fact that the Panel will ordinarily have to undertake a review in a comparatively short time frame against a background where the Commissioner will have ordinarily undertaken an extensive process of investigation and reporting, and also having regard to the fact that the Panel can require the Commissioner to reinvestigate, the Panel's role in a review does not entail full reinvestigation of matters considered by the Commissioner and raised by interested parties in the application for review. The investigation by the Commissioner will often entail the evaluation by the Commissioner of material gathered in the investigation both from overseas and domestically. That evaluation may involve subsidiary conclusions or decisions involving assessment and judgement. I do not see the Panel's role as involving this type of evaluation afresh. Rather the Panel's role includes, by way of illustration, assessing whether there has been inappropriate reliance on particular data to the exclusion of other data, assessing whether relevant data has been ignored, assessing whether there has been miscalculations or the misconstruction or misapplication of the Act or relevant regulations.*

97. Therefore, I consider that my power of review in this matter extends to a consideration of the matters relevant to the grounds of review set out in the application before me; that is, matters relevant to the grounds raised in applications by Kam Kiu and PanAsia. Further, in accordance with section 269ZZK(4) of the Act, I have had regard in this review only to information which was relevant information as defined in section 269ZZK(6). I have considered the grounds and information set out in the application made by the applicant subject to the constraints in sections 269ZZK(4) and (6).
98. As such, although the ADC letter dated 11 November 2015<sup>62</sup> makes findings in relation to the dumping duty and countervailing duty notices currently applying to residual exporters of CAE from China, my power of review does not extend to making recommendations about the Minister's decision as it relates to these exporters.
99. A new section 269ZZHA allowing for the ADRP to hold conferences applies in relation to reviewable decisions made on or after 2 November 2015. That provision does not apply to this review and so I haven't considered any implication it might have for my views on the power of the ADRP to afford procedural fairness.
100. In relation to the grounds raised by PanAsia, I reject each of the grounds the subject of the application, for the reasons set out at paragraphs 73 to 80 and 87 to 92 above.

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<sup>62</sup> ADC Letter dated 11 November 2015 Attachment B page 18

101. Accordingly, pursuant to section 269ZZK(1) of the Act, I recommend the decision be revoked so far as it relates to the AEP determined for Kam Kiu and a new decision is substituted which replaces the AEP for Kam Kiu with the AEP for Kam Kiu recommended in REP 326. The reviewable decision is otherwise affirmed.

A handwritten signature in black ink, appearing to read 'Jaclyne Fisher', written in a cursive style.

Jaclyne Fisher

Member

Anti-Dumping Review Panel

18 March 2016