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20 November 2015

Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry and Science
10 Binara Street
Canberra City ACT 2601
AUSTRALIA

**REVIEW OF THE DECISION TO ALTER A DUMPING AND COUNTERVAILING DUTY
NOTICE ON EXPORTS OF ALUMINIUM EXTRUSIONS EXPORTED FROM CHINA**

Dear Panel Member,

This submission is made on behalf of PanAsia Aluminium (China) Co. Ltd (PanAsia) in response to submissions made by Capral Limited (Capral) and the Anti-Dumping Commission (the Commission).

Capral submission

Capral submits that it is incorrect for PanAsia to declare that the Commission did not properly and reasonably have regard to all relevant information in ascertaining PanAsia's export prices. It considers that the Commission cannot '*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.*'

Whilst the point being made by Capral in this statement is somewhat confusing and difficult to grasp, it is understood that Capral considers that the circumstances of PanAsia's exportations was sufficiently different to that of other cooperating exporters to render information from these other exporters to not be relevant or appropriate for undertaking a comparative assessment.

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PanAsia notes that the Commission has not identified or highlighted any differences in the exportation of aluminium extrusions between the various cooperating exporters. So it is unclear on what basis Capral is able to make an assertion that circumstances are substantially different between exporting parties.

In fact, the primary ground for appeal outlined in PanAsia's application is that the Commission did not appear to undertake any meaningful comparative assessment of all relevant information available to it and required of it. Had the Commission fulfilled its mandatory obligations and properly evaluated all relevant information, it may well have found reasons why export prices from other cooperating exporters was not the best available information. However, in PanAsia's view no such evaluation was undertaken and as such, its determination of export prices on the basis of all relevant information is critically flawed.

Capral also responds to the issue of the volume of sampled sales relied upon by the Commission for the purposes of determining PanAsia's export prices. It submits that it was appropriate for the Commission to rely on selected sales that could be verified against source documents. It appears then that Capral considers that the volume of a sample is not an important factor in the consideration of whether such information is reliable and relevant for the purposes of making determinations of fact. It is unlikely that Capral would continue to hold this view if the randomly selected verified sales happen to be the highest priced products which resulted in a negative dumping margin.

PanAsia disagrees and continues to contend that the size of the sample is critical to understanding whether the data is representative of the population of sales and therefore sufficiently reliable to be properly considered to be the best available information.

Lastly, Capral submits that it was appropriate for the Commission to include a service charge relating to a Japanese port premium in determining a benchmark price for calculating the benefits received under subsidy Program 15, as it considers that this service charge *'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'*. Importantly, Capral clearly accepts that the costs at issue here related to the provision of services. It states:

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.

It appears that Capral has misunderstood the primary basis of the grounds for appeal relevant to this issue. PanAsia has not suggested or submitted that the service cost included in the Commission's benchmark price *'does not apply to primary aluminium trades (external to*

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China)'. PanAsia accepts and does not dispute that purchases of aluminium billet by Capral and other Australian industry members would include a Japanese port premium service charge.

Instead, PanAsia takes issue with the service charge being included in the benchmark price as it goes beyond the definition of a financial contribution in respect of Program 15 which relates to the provision of goods at less than adequate remuneration. By including this service charge in the benchmark price, the Commission is effectively countervailing the provision of services at less than adequate remuneration. This in PanAsia's view is not consistent with the requirements of the Act or the Minister's obligations in determining an appropriate benchmark.

To highlight further by example, it would clearly not be appropriate to include the service cost of ocean freight in the benchmark price for comparison with PanAsia's domestic purchase prices which are sourced on an ex-works basis. Simply because the service cost of ocean freight is included in the price of primary aluminium purchased in markets outside of China, does not provide adequate justification for its inclusion in the benchmark price for primary aluminium. This represents a service cost that ought to be excluded from the benchmark price to ensure proper comparison of the 'goods'.

Commission submission

PanAsia makes the following observations about the Commission's response to its application.

It is noted that the Commission does not dispute the claim made by PanAsia that the Commission did not conduct an evaluative, comparative assessment or any such critical assessment of all relevant information available to it. Therefore, the only issue to be considered by the ADRP is whether the mandatory obligations and conditions outlined in Annex II of the WTO Anti-Dumping Agreement (ADA), and reflected in subsection 269TAB(3) of the Customs Act (the Act), applied in these circumstances.

The Commission has stated that it *'considers that the application of subsection 269TAB(3) is not limited to situations involving uncooperative exporters. Nor does the use of subsection 269TAB(3) require the Commission to rely on other exporter's data.'* PanAsia does not argue that subsection 269TAB(3) of the Act requires the Commission to rely on other exporter's data. What is being argued is that 'having regard to all relevant information' necessarily requires the type of evaluative and comparative assessment envisaged and interpreted in Annex II of the ADA.

Only after a proper evaluation of all relevant information has been conducted, is the Minister in a position to properly determine which is the best available information. Clearly this did not occur in the determination of PanAsia's export prices.

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In terms of the sampled volume of selected sales, PanAsia is pleased to see that the Commission has provided the ADRP with the relevant sales information. However, PanAsia considers that the sampled sales in isolation are irrelevant without the total population of sales. Without the total population of sales, it would be difficult for the ADRP to properly observe the lack of representativeness of the sampled sales and their inconsistency in pricing across the relevant quarters of the review period. Notwithstanding the above, it is noted that the Commission does not dispute PanAsia's estimated size of the sampled sales relevant to total sales.

Finally, on the issue of the inclusion of costs relating to the Japanese port premium, it is noted that the Commission does not present its views or provide commentary on whether the included costs reflect charges for services. Throughout Report 248 and its response to this review, it continues to refer to the charges simply as premiums. By not addressing whether these charges are in fact costs related to services, the Commission overlooks the need to respond to the primary issue being raised by PanAsia. That is, that Program 15 relates to the provision of goods at less than adequate remuneration, and the inclusion of costs for services in the benchmark price is inconsistent with the definition of a benefit conferred by the financial contribution relevant to Program 15.

Conclusion

PanAsia considers that the information presented in the submissions by Capral and the Commission provide further grounds for the ADRP to request that the matters raised in its application be reinvestigated and/or make recommendations that the Minister revoke the decision and substitute a new decision.

Yours sincerely,

John Bracic