



**CUSTOMS ACT 1901 - PART XVB**

**CONSIDERATION REPORT**  
**NO. 241**

**APPLICATION FOR AN ANTI-CIRCUMVENTION INQUIRY INTO  
THE AVOIDANCE OF THE INTENDED EFFECT OF DUTY**

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

**14 April 2014**

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**ABBREVIATIONS**

ACBPS	Australian Customs and Border Protection Service
Act	<i>Customs Act 1901</i>
the applicant	Capral Limited
China	The People's Republic of China
circumvention goods	the goods exported to Australia in relation to the alleged circumvention activity
Commission	Anti-Dumping Commission
Commissioner	the Commissioner of the Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tarff (Anti-Dumping) Act 1975</i>
goods	the goods the subject of the application (also referred to as the goods under inquiry)
ICS	Integrated Cargo System
Kam Kiu	Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd (and its related companies Kam Kiu Aluminium Products SDN BHD and Kam Kiu (Australia) Pty Limited)
Manual	Dumping and Subsidy Manual
Oceanic	Oceanic Aluminium Pty Ltd
original investigation	the antidumping and countervailing investigation initiated on 24 June 2009
original notice	the notice required under subsection 269ZDBC(1). For the purposes of this inquiry, the original notices are the notices published on 28 October 2010, as amended by the reinvestigation and finally by the Federal Court judgment (see section 2.4)
PanAsia	PanAsia Aluminium (China) Limited
P&O importers	Collective term used in section 4 of this report for P&O Aluminium (Brisbane) Pty Ltd, P&O Aluminium (Melbourne) Pty Ltd, P&O Aluminium (Perth) Pty Ltd and P&O Aluminium (Sydney) Pty Ltd
P&O Importer Visit Report	Importer Visit Report for PanAsia Aluminium (Brisbane) Pty Ltd, PanAsia Aluminium (Melbourne) Pty Ltd and PanAsia Aluminium (Sydney) Pty Ltd
Rep 148	Report to the Minister 148
Rep 175	International Trade Remedies Report No. 175
target price	the price constructed by the applicant to reflect the price that should have been seen in the Australian domestic market after the imposition of measures
Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry
TMRO	Trade Measures Review Officer

## 1 SUMMARY AND RECOMMENDATION

This report provides the results of the Anti-Dumping Commission's (the Commission) consideration of an application for:

- the publication of an altered dumping duty notice in respect of certain aluminium extrusions exported from the People's Republic of China (China); and
- the publication of an altered countervailing duty notice in respect of certain aluminium extrusions exported from China.

### 1.1 Considering an application

Division 5A of Part XVB of the *Customs Act 1901* (the Act)<sup>1</sup> sets out procedures for considering an application for an anti-circumvention inquiry. An application should set out, among other things, the elements outlined in the following sections of the Act:

- a) 269ZDBB (5A) – *Avoidance of intended effect of duty*;
- b) 269ZDBC(1) – *Applications by Australian industry*;
- c) 269ZDBD(1) and (2) – *Content of application*; and
- d) 269ZDBE(2) – reasonable grounds for asserting the occurrence of the circumvention activity.

#### 1.1.1 The role of the Commission

The Commission is responsible for preparing a report for the Commissioner of the Anti-Dumping Commission (the Commissioner), examining an application for an anti-circumvention inquiry into avoidance of the intended effect of duty.

In this report, the following matters are considered in relation to the application:

- whether the application complies with section 269ZDBD of the Act;
- whether there appear to be reasonable grounds for asserting that a circumvention activity in relation to the original notice has occurred; and
- whether there appear to be reasonable grounds for the publication of an altered dumping duty notice and countervailing duty notice in respect of the goods the subject of the application.

#### 1.1.2 The role of the Commissioner

The Act empowers the Commissioner, after having regard to the Commission's report, to reject or not reject an application for the publication of an altered dumping duty notice or a countervailing duty notice.

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<sup>1</sup> All references in this report to sections of legislation, unless otherwise specified, are to the *Customs Act 1901*.

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If the Commissioner decides not to reject the application, the Commissioner must give public notice of the decision providing details of the inquiry.

### 1.1.3 Circumvention activity

According to the Commission's Dumping and Subsidy Manual<sup>2</sup> (Manual):

*“Circumvention activity that avoids the intended effect of duty occurs where dumping and/or countervailing duty has been imposed (and is being paid by the importer) but there is little or no effect, over a reasonable period, on the price for the goods in the Australian market e.g. the price at which the goods are sold by the importer has not increased in line with the duty paid.”*

The Manual explains that it is expected that the prices of imported, dumped goods would increase in the Australian market after anti-dumping or countervailing duties have been applied. It is expected that the additional duty paid by the importer is generally passed on to the consumer or end user by way of increased domestic prices.

Where the inquiry concludes that the circumvention activity has occurred because of a lowering of the export price, sales at a loss, reimbursement or compensation from the exporter, or other activity of a similar nature, the Commissioner may recommend to the Minister that the notice be altered.

## 1.2 Findings and conclusions

The Commission has examined the application for the publication of an altered dumping duty notice and countervailing notice in relation to certain aluminium extrusions exported from China.

The Commission is satisfied that:

- the application complies with the requirements of section 269ZDBD (the reasons for being satisfied are set out in section 3 of this report);
- there appear to be reasonable grounds for asserting that circumvention activity in relation to the original notice has occurred (as set out in section 4 of this report); and
- there appears to be reasonable grounds for the publication of an altered dumping duty notice and/or a countervailing duty notice in respect of the goods the subject of the application.

## 1.3 Recommendation

The Commission recommends that the Commissioner decide not to reject the application.

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<sup>2</sup> The Dumping and Subsidy Manual can be accessed at: <http://www.adcommission.gov.au/reference-material/manual/default.asp>

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If the Commissioner accepts this recommendation, to give effect to that decision, the Commissioner must publish the notice at **Attachment 1** indicating that the Commission will inquire into whether the grounds exist to publish an altered dumping duty and countervailing notice.

## 2 BACKGROUND

The investigation that resulted in the applicable dumping duty and countervailing duty notices is relevant to the proposed anti-circumvention inquiry. Below is a brief summary of the investigation and the related reinvestigation and Federal Court proceedings.

### 2.1 Original investigation

In 2009, Capral Limited (the applicant), on behalf of the Australian industry manufacturing certain aluminium extrusions, lodged an application requesting that the then Minister for Home Affairs publish a dumping duty notice and a countervailing duty notice in respect of aluminium extrusions exported to Australia from China. Capral's application resulted in the initiation of an antidumping and countervailing investigation on 24 June 2009 (original investigation). One of the exporters identified in the original investigation is PanAsia Aluminium (China) Limited (PanAsia).

During the original investigation, the following importers:

- PanAsia Aluminium (Brisbane) Pty Ltd (now known as P&O Aluminium (Brisbane) Pty Ltd);
- PanAsia Aluminium (Melbourne) Pty Ltd (now known as P&O Aluminium (Melbourne) Pty Ltd ); and
- PanAsia Aluminium (Sydney) Pty Ltd (now known as P&O Aluminium (Sydney) Pty Ltd);

submitted responses to importer questionnaires.<sup>3</sup> Verification visits were conducted at the premises of these three importers. At the time of the verification visits, the three companies were related, and accordingly, only one verification report with respect to the three related entities (P&O Importer Visit Report) was produced.<sup>4</sup>

The Commission notes that during the original investigation, Oceanic Aluminium Pty Ltd submitted responses to the importer questionnaire, however no verification visit was conducted.

On 28 October 2010, anti-dumping measures, in the form of a dumping duty notice and countervailing duty notice were imposed on certain aluminium extrusions from China<sup>5</sup>. Trade Measures Report No.148 (REP 148) <sup>6</sup> set out the dumping and subsidy margins

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<sup>3</sup> At the time of the original investigation, it was considered that PanAsia Aluminium (Perth) Pty Ltd (now known as P&O Aluminium (Perth) Pty Ltd) was not a major importer. Accordingly, it was not invited to provide a response to an importer questionnaire.

<sup>4</sup> The P&O Importer Visit Report relating to PanAsia Aluminium (Brisbane) Pty Ltd, PanAsia Aluminium (Melbourne) Pty Ltd and PanAsia Aluminium (Sydney) Pty Ltd can be accessed at: <http://www.adcommission.gov.au/cases/148.asp>

<sup>5</sup> ACDN 2010/40

<sup>6</sup> The original investigation culminated in the Trade Measures Report no 148, "Certain aluminium extrusions exported from the People's Republic of China - Finding in relation to a dumping and subsidisation

applicable to Chinese exporters, except for Tai Ao Aluminium (Tai Shan) Co Ltd. The recommendations from REP 148 were presented to and subsequently accepted by the Attorney-General. Notice of the Attorney-General's decision was published in the Government Notices Gazette and *The Australian* newspaper on 28 October 2010.

## **2.2 Reinvestigation – Report No 175**

Several applications were made to the Trade Measures Review Officer (TMRO) for review of the Attorney-General's decision. The TMRO recommended that the Attorney – General direct the Chief Executive Officer of the ACBPS to conduct a reinvestigation into certain findings made in REP 148<sup>7</sup>.

International Trade Remedies Report No. 175 (REP 175) set out the findings as a result of the reinvestigation<sup>8</sup>. Subsequently, the Attorney-General accepted the recommendations from REP 175 and published new notices on 27 August 2011, replacing the earlier dumping duty and countervailing duty notices.

## **2.3 Federal Court proceedings**

Two Chinese exporters, Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd (and its related companies Kam Kiu Aluminium Products SDN BHD and Kam Kiu (Australia) Pty Limited) (Kam Kiu) and PanAsia (and its related company Opal (Macao Commercial Offshore) Limited), applied to the Federal Court for judicial review of the Attorney-General's decision based on REP 175.

On 4 September 2013, the Federal Court held that the Attorney-General had no power to vary the dumping and countervailing duty notices to impose anti-dumping measures for aluminium extrusions by finish. The effect of the decision was that the rates of dumping and countervailing duty against the applicants, Kam Kiu and PanAsia, had to be amended and these changes were applied retrospectively from 27 August 2011.<sup>9</sup>

## **2.4 Original notices**

As required under subsection 269ZDBC(1), this application is submitted in light of a dumping duty notice published under subsection 269TG(2) and a countervailing duty notice published under subsection 269TJ(2).

Due to the history of this matter, as set out in sections 2.2.1 to 2.2.3 above, the notices published on 28 October 2010, had been amended by the reinvestigation and then finally by the Federal Court judgment. For the purposes of this inquiry, the original notices are

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investigation, published 28 October 2010. This report is available at:  
<http://www.adcommission.gov.au/cases/ITR148.asp>

<sup>7</sup> ACDN 2011/21

<sup>8</sup> ACDN 2011/31

<sup>9</sup> ADN 2013/80



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the notices published on 28 October 2010, as amended by the reinvestigation and finally, by the Federal Court judgment (original notices). The final applicable dumping margin and level of subsidation established for PanAsia are set out in Table 1 below.

<b>Exporter / goods</b>	<b>Dumping Margin</b>	<b>Subsidy margin</b>	<b>Effective rate of combined interim duty</b>	<b>Duty methods</b>
PanAsia Aluminium (China) Limited All finishes	10.1%	6.1%	10.1%	Dumping - fixed (ad valorem) and variable duty methods  Countervailing – fixed (ad valorem) duty method

**Table 1 – Applicable dumping margin and level of subsidation for PanAsia**

## 3 THE APPLICATION

### 3.1 Capral's application

On 19 March 2014, Capral lodged an application requesting an inquiry into the circumvention of measures applying to certain aluminium extrusions exported to Australia from China. Capral considers that it may be appropriate to alter the original notices because of circumvention activity that has occurred that is avoiding the intended effect of the duties.

#### 3.1.1 Application by Australian industry representative under section 269ZDBC(1)

The applicant submitted the application pursuant to subsection 269ZDBC(1). This subsection of the Act requires that the applicant is "a person representing, or representing a portion of, the Australian industry producing like goods".

As previously identified in the original investigation (see above for discussion in section 2.1), the applicant is a manufacturer of aluminium extrusions. In the application, Capral identifies eight other manufacturers of aluminium extrusions in Australia, however it does not indicate whether any of these other industry members support the application. It is possible that the inquiry will draw out other industry members' support for the application. Regardless of other industry members' position on this application, the Commission is satisfied that the applicant represents the Australian industry producing like goods pursuant to subsection 269ZDBC(1)(b).

#### 3.1.2 Importers and exporter

The applicant claims that five importers are circumventing the intended effect of the dumping and countervailing duties by failing to recover the full cost of the goods and duties they are selling into the Australian market.

The exporter identified in the application is PanAsia.

The importers identified in the application are:

- P&O Aluminium (Brisbane) Pty Ltd (formerly known as PanAsia Aluminium (Brisbane) Pty Ltd );
- P&O Aluminium (Melbourne) Pty Ltd (formerly known as PanAsia Aluminium (Melbourne) Pty Ltd );
- P&O Aluminium (Perth) Pty Ltd (formerly known as PanAsia Aluminium (Perth) Pty Ltd);
- P&O Aluminium (Sydney) Pty Ltd (formerly known as PanAsia Aluminium (Sydney) Pty Ltd); and
- Oceanic Aluminium Pty Ltd (Oceanic).

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Having had regard to company searches, there is currently no evidence before the Commission that suggests that P&O Aluminium (Brisbane) Pty Ltd, P&O Aluminium (Melbourne) Pty Ltd, P&O Aluminium (Perth) Pty Ltd and P&O Aluminium (Sydney) Pty Ltd continue to operate as related entities. An examination of the P&O Aluminium website, however, shows that the four entities appear to have a business arrangement that allows them to conduct business under the banner of “P&O Aluminium”. The Commission will examine this further during the conduct of the inquiry.

### **3.2 Considering the application**

Under section 269ZDBE of the Act, the Commissioner must examine an application for the conduct of an anti-circumvention inquiry in relation to an original notice within 20 days of lodgement and decide whether or not to reject the application. In relation to this application, this decision must be made no later than 8 April 2014.

Subsection 269ZDBE (2) specifies that the Commissioner shall reject the application if he:

- is not satisfied that the application complies with section 269ZDBD; or
- is not satisfied that there appear to be reasonable grounds for asserting that one or more circumvention activities in relation to the original notice have occurred.

The above matters are examined in sections 4 and 5 of this report.

## 4 REQUIREMENTS UNDER SECTION 269ZDBD

### 4.1 Findings

Having regard to the matters contained in the application, the Commission is satisfied that the contents of the application comply with the requirements under section 269ZDBD.

### 4.2 Required content under subsection 269ZDBD(1)

Subsection 269ZDBD(1) requires that the application must:

- be in writing;
- be in an approved form;
- contain such information as the form requires; and
- be signed in the manner indicated by the form.

The application is in writing, is in an approved form, contains such information as the form requires (as discussed in the following sections) and is signed in the manner indicated in the form. Confidential and public record versions of the application were submitted.

The Commission considers that the public record version of the application contains sufficient detail to allow a reasonable understanding of the substance of the information within the confidential application.

### 4.3 Required content under subsection 269ZDBD(2)

Subsection 269ZDBD (2) requires that the application include:

- a description of the kind of goods that are the subject of the original notice;
- a description of the original notice the subject of the application;
- a description of the circumvention activities in relation to the original notice that the applicant considers have occurred; and
- a description of the alterations to the original notice that the applicant considers should be made.

#### 4.3.1 Description of the kind of goods

In its application Capral has described the goods as;

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

#### Additional product information

The application contains the following further information in relation to the goods the subject of the application.

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*“Aluminium extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations by The Aluminium Association commencing with 1,2,3,5,6 or 7 (or proprietary or the 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.”*

The Commission notes that REP 148 also includes the additional description of the goods:

The goods include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. For example, aluminium extrusion products that have been painted, anodised, or otherwise coated, or worked (e.g. precision cut, machined, punched or drilled) fall within the scope of the goods.

The goods do not extend to intermediate or finished products that are processed or fabricated to such an extent that they no longer possess the nature and physical characteristics of an aluminium extrusion, but have become a different product.

### 4.3.2 Description of the original notices

The application referred to the notices published on 28 October 2010 and indicated that the notices covered all exporters of aluminium extrusions from China except Tai Ao Aluminium Tai Shan Co. Ltd.

As required, the application also sets out the specific tariff classifications to which the notices apply, as set out below:

Tariff Classification	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	12	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

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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
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### 4.3.3 Other requirements

The description of the circumvention activities in relation to the original notices is discussed in section 5 below.

The description of the proposed alterations to the original notices is discussed in section 6 below.

## 5 Alleged circumvention activity under section 269ZDBB(5A)

### 5.1 Findings

Having regard to the matters contained in the application, the Commission is satisfied that there appear to be reasonable grounds for asserting circumvention activity has occurred that is avoiding the intended effect of duty.

### 5.2 Legislative Framework

Subsection 269ZDBB (5A) sets out the circumvention activity in the form of avoidance of the intended effect of duty. This circumvention activity occurs if the following apply:

- goods (the circumvention goods) are exported to Australia from a foreign country in respect of which the notice applies;
- the exporter is an exporter in respect of which the notice applies;
- either or both of sections 8 or 10 of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) apply to the export of the circumvention goods to Australia;
- the importer of the circumvention goods, whether directly or through an associate or associates, sells those goods in Australia without increasing the price commensurate with the total amount payable on the circumvention goods under the Dumping Duty Act; and
- the above circumstances occur over a reasonable period.

#### 5.2.1 Circumvention goods

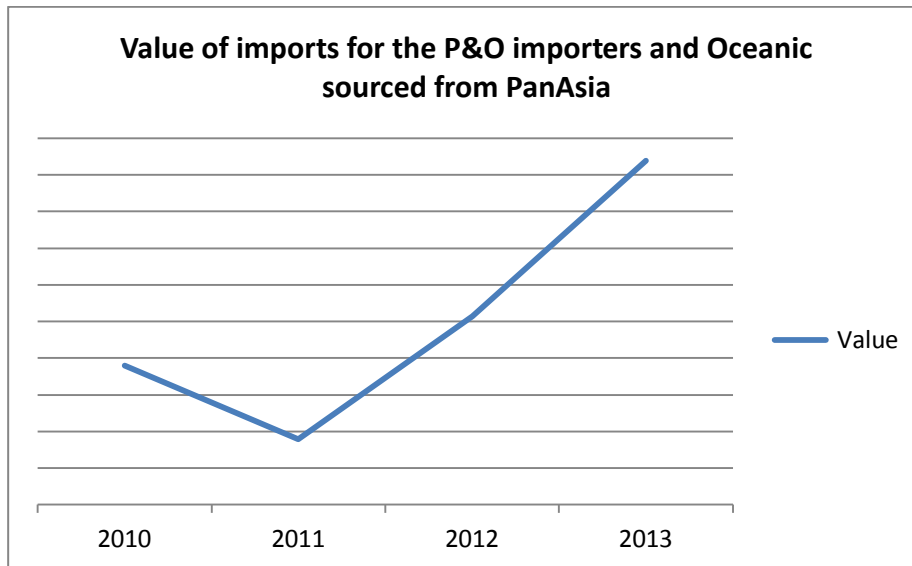
Pursuant to subsection 269ZDBB(5A)(a), Capral claims that “exports from China to Australia have continued in significant volume despite the imposition of dumping and countervailing duties.”<sup>10</sup>

Data from the ACBPS import database indicates that goods are exported to Australia from China, a foreign country in respect of which the notices applies as set out in section 2.2.4 above.

Figure 1 below depicts the total value of aluminium extrusions imported from PanAsia by the P&O importers and Oceanic and shows that the value of imports has continued to increase in the last two years.

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<sup>10</sup> Sourced from Page 7 of the Capral’s non confidential version of the application.



**Figure 1 – Free on Board (FOB) value of aluminium extrusions imported by the P&O importers and Oceanic from PanAsia**

### **5.2.2 Exporter**

In section 2.2.4, Table 1 shows that PanAsia is an exporter subject to the original notices.

### **5.2.3 Application of sections 8 and 10 of the Dumping Duty Act**

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties, respectively. In this case, the circumvention goods are subject to a dumping duty notice under s.269TG(2) and a countervailing duty notice under s.269TJ(2). Accordingly, the Commission is satisfied that sections 8 and 10 of the Dumping Duty Act apply to the export of the circumvention goods to Australia.

### **5.2.4 Sale of the circumvention goods in Australia**

Capral claims that the five identified importers have been selling the circumvention goods less than the target prices or what the prices should have been after the imposition of duties.

#### **5.2.4.1 Target Price**

##### **Capral's claims**

For the purposes of the application, Capral have constructed a “target price” for the sale of goods in the Australian market<sup>11</sup>. Capral asserts that the target price should have been the sale price in the Australian market following the imposition of measures. Capral calculated only two target prices for the five importers. A target price was calculated for Oceanic, while the four P&O entities were grouped together in constructing a target price. As noted in section 3.1.2 above, the Commission is of the view that the four P&O entities

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<sup>11</sup> Capral application Confidential Attachment B1 – Spreadsheet of all the workings and calculations to support this application. Worksheet 2a & 2b details Capral's methodology in constructing the “target price”.



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appear to be operating as separating entities. During the inquiry, the Commission will consider these issues further and the appropriate method of any price comparison.

The target price for the sale of the goods is constructed by Capral using estimates of the following:

- Ascertained export prices for mill, powder coated and anodised extrusions;
- Credit terms adjustment of 90 days at 5.6%;
- Customs duty of 4%;
- Effective rate of duty of 10.1%;
- Shipping and insurance;
- Import charges;
- Importer selling, general and administrative expenses (SG&A); and
- Importer profit of 5%<sup>12</sup>.

### The Commission's assessment

The Commission examined the calculations and supporting evidence supporting Capral's target prices. The Commission performed its own calculations by following Capral's methodology. The Commission arrived at slightly lower target prices after it excluded the profit component (see below for the discussion), however the variation was minimal. The Commission considers that the methodology used by Capral in their calculation of the target price is sufficiently reasonable based on the information available to them.

#### *Ascertained export price*

The ascertained export price is the price ascertained by the Minister during the investigation period and it takes into account the transaction price and the contractual arrangements between the importer and the exporter.<sup>13</sup>

The ascertained export price used by Capral, for the goods supplied by PanAsia, was compared against the Confidential Instructions attached to the Dumping Commodity Register<sup>14</sup> and found to be reasonable.

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<sup>12</sup> Source information is from Capral's Non-Confidential version of the application.

<sup>13</sup> S.269TAB

<sup>14</sup> Pages 164 of the Dumping and Subsidy Manual notes the following regarding Confidential Instructions (CI) of the Dumping Commodities Register (DCR): The CI pages contain all aspects of the measures to allow brokers to enter the shipment details and determine how much duty, if any, is payable. The CI pages are only released to bona fide importers for the goods they are entering. The DCR pages contain no confidential information and are available to the public. The DCR pages contain practical information on how to lodge a declaration and make the associated calculations once IDD has been imposed. Regional dumping liaison and securities officers are provided with both the CI and DCR versions of the measures.

*Credit terms*

The Commission compared the credit terms used by Capral for their calculations against the PanAsia 2013 Global Offering<sup>15</sup> (page 123) and against the P&O Importer Visit Report. The Commission considers that the credit terms applied by Capral were reasonable.

*Effective rate of duty*

The Commission was able to verify the effective rate of duty used by Capral for the goods supplied by PanAsia against the Confidential Instructions attached to the Dumping Commodity Register. The Commission found the effective rate of duty used by Capral to be accurate.

*Shipping and insurance costs*

The shipping and insurance costs estimated by Capral were compared against the responses to the importer questionnaire from the original investigation. The Commission was also able to test these costs against import declarations lodged by P&O Aluminium (Brisbane) Pty Ltd in the ACBPS Integrated Cargo System (ICS) in December 2013 and March 2014. The estimates for shipping and insurance costs used by Capral were within a reasonable range of costs identified from these sources.

*Import charges*

The import charges estimated by Capral were compared against the responses to the importer questionnaire from the original investigation<sup>16</sup>. The Commission considered the estimates used by Capral to be conservative and accordingly, reasonable in the circumstances.

*Importer SG&A*

The importer SG&A estimated by Capral was compared against the responses to the importer questionnaire from the original investigation. The Commission concluded that the estimates used by Capral in regard the SG&A of the P&O importers was overstated, while the SG&A for Oceanic was within a reasonable range identified from the sources considered.

*Importer profit*

The Commission was satisfied that the importer profit of 5% was within a reasonable range of the verified rate of profit indicated in the P&O Importer Visit Report.

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<sup>15</sup> Capral application Attachment A.3 - Extract from PanAsialum Holdings Co Ltd global share offering, 23 January 2013

<sup>16</sup> The Commission notes that there has been no recent information available as no application for a duty assessment or a review has been lodged by the importers.

## **5.2.4.2 Price Comparison**

### **Capral's claims**

Having calculated target prices, Capral compared these against actual and estimated prices offered by P&O and Oceanic in the Australian market. As noted in section 4.2.4.1 above, Capral has presented information by treating the four P&O Aluminium importers (P&O importers) as one entity. For the purposes of the application, the Commission considers that this is reasonable in light of the apparent arrangement among the four P&O importers to trade under the P&O Aluminium brand, however this will be further examined by the Commission in the course of the inquiry.

Capral claims that the prices offered by the P&O importers and Oceanic do not reflect prices that should be seen in the market commensurate with the level of dumping and countervailing duties that were imposed. Capral alleges that the P&O importers and Oceanic are in fact making significant losses on sales. Capral provided a number of documents evidencing pricing offers by the P&O importers and Oceanic, such as:

- a purchase order and tax invoice<sup>17</sup> as evidence of actual prices for aluminium extrusions offered by P&O Aluminium in December 2013;
- documents<sup>18</sup> evidencing “estimated market prices” offered by P&O and Oceanic comprising of emails between representatives of Capral and end users and other Australian manufacturers. They are considered ‘estimated’ because the documents do not explicitly state the P&O importers’ price offers, but rather, they have been used for price-matching negotiations with Capral;
- emails containing discussions of pricing offers from P&O and Oceanic; and
- unsuccessful quotes tendered by Capral in competition with P&O and Oceanic.

### **Commission's assessment**

The Commission is satisfied that the methodology employed by Capral in comparing the target prices to the actual and estimated prices offered by the P&O importers and Oceanic is reasonable. As noted above, the Commission has calculated lower target prices than the applicant. The Commission has compared its own target prices against the actual and estimated prices offered by the P&O importers and Oceanic and has found that they are still above the sale prices in the Australian market. In the Commission's view, there remains reasonable grounds for asserting that the importers are not selling the imported goods at prices that are profitable or recoverable within a reasonable period of time.

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<sup>17</sup> Capral application Confidential Attachment B6

<sup>18</sup> Capral application Confidential Attachments B5 and B7 - B15

## **PUBLIC RECORD**

### **5.2.5 Occurring over a reasonable period of time**

Capral claims that the circumvention activity has been occurring since the imposition of measures in October 2010. The information provided by Capral in its application is for the period from November 2013 to March 2014. Capral has provided some information suggesting possible circumvention activity dating back to the previous 18 months.

The Commission is satisfied from the evidence supplied by Capral that the circumvention activity alleged has occurred over a reasonable period of time.

## 6 NOTICE ALTERATIONS

### 6.1 Legislative framework

Section 269ZDBH details the Minister's powers in relation to an anti-circumvention inquiry.

Subsection 269ZDBH (2) details the following alterations that may be made to the original notice:

- The specification of different goods that are to be subject to the original notice;
- The specification of different foreign countries that are to be the subject of the original notice;
- The specification of different exporters that are to be the subject of the original notice;
- The specification of different variable factors in respect of existing exporters the subject of the original notice; and
- The specification of variable factors in respect of exporters that are to be the subject of the original notice.

### 6.2 Capral's suggested alterations

Capral claims that prices offered by the P&O importers and Oceanic in the market do not reflect prices that should be seen commensurate with the level of dumping and countervailing duties that were imposed.

Capral contends that the notices must be altered to ensure that reasonable prices are seen in the future, and proposes a deductive approach to reascertaining export prices.

Under this approach the reascertained export price will be the P&O importers and Oceanic's prices to customers less all importation costs and an amount for importer profit.

As a result Capral proposes that the notices be altered as follows:

- a reascertained export price be determined; and
- the fixed amount of dumping duty be increased to reflect the reduction in ascertained export price.

Capral also urges the Minister to exercise his discretion to make any increase in duties applicable from the date of commencement of the inquiry, arguing that the circumvention activity has been occurring since the measures were imposed and the industry has had to wait until new legislation came into effect in order to take action.

The Commission will take this into consideration when making final recommendations to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) at the conclusion of the inquiry.

## 7 CONCLUSIONS

The Commission has had regard to information provided by the applicant pursuant to the following:

- a) 269ZDBB (5A) – *Avoidance of intended effect of duty*;
- b) 269ZDBC(1) – *Applications by Australian industry*;
- c) 269ZDBD(1) and (2) – *Content of application*; and
- d) 269ZDBE(2) – reasonable grounds for asserting the occurrence of the circumvention activity.

The Commission has examined the application and is satisfied that:

- the application complies with subsection 269ZDBD; and
- there appear to be reasonable grounds for asserting that circumvention activity, that is the avoidance of the intended effect of duty, in relation to the original notices has occurred.

Accordingly, the Commission recommends to the Commissioner to not reject the application for the conduct of an anti-circumvention inquiry in relation to original notices under section 269ZDBE.

For the purposes of this inquiry, the inquiry period to determine whether circumvention has occurred will be from 1 January 2013 to 31 December 2013.

