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The Director
Operations 4
Anti-Dumping Commission
5 Constitution Avenue
Canberra ACT 2601

Review 248: Countervailable Subsidies

This submission is made on behalf of Capral Ltd, a member of the Australian aluminium extrusions industry, in relation to Review 248 of certain aluminium extrusions exported to Australia from China by. We specifically refer to countervailable subsidies and submit that Chinese extruders are in receipt of subsidies additional to those covered by the existing countervailing duty notice.

In the original aluminium extrusions investigation (Investigation 148) Customs investigated 43 alleged subsidy programs and ultimately countervailed 19 of those. We submit that the Commission review possible receipt of benefits under all of these programs, including by exporters previously investigated.

We further submit that Chinese producers of aluminium extrusions have potentially received benefits under an additional 19 programs not previously investigated:

- Fifteen programs countervailed by the United States (US) in relation to aluminium extrusions subsequent to Investigation 148
 - a preferential lending program
 - two provision of goods programs
 - four tax programs, and
 - eight grant programs.
- Four additional programs.

These subsidy programs are analysed in detail below, with references to supporting evidence in the footnotes. A list of the evidence with full citations is contained in the appendix.

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1. Preferential lending program countervailed by the US

1.1. Policy loans to Chinese aluminium extrusion producers

The US has countervailed preferential lending or ‘policy loans’ in nearly all subsidy cases against China since 2007, including in relation to aluminium extrusions.¹ The US has successfully defended the countervailing of China’s policy loan programs at the WTO.² The European Union (EU) has also countervailed preferential lending programs in both of its successful subsidy cases against China.³ Additionally, as noted in the Commission’s subsidies register, in 2008 Customs preliminarily found preferential lending to encouraged industries to be a countervailable subsidy during the toilet paper investigation.⁴

These cases clearly support the existence of policy loans as countervailable subsidies in the aluminium extrusions industry. The essential elements of the subsidy are outlined as follows.

Financial contribution

- Direct financial contribution in the form of loans from Chinese policy banks and state-owned commercial banks (SOCBs).
- The US has found SOCBs to be ‘public bodies’ (or ‘authorities’ in US terminology) and the WTO upheld this approach in DS379.⁵
- In more recent cases the US noted that the government of China (GOC) has provided no evidence to warrant reconsideration of this finding.⁶

Benefit conferred

- The difference between the amount paid on the loan and the amount that would have been paid on a comparable commercial loan.
- The continued significant intervention of state-owned banks in China's banking sector precludes the use of a benchmark within China because no fully market-determined rates exist. China's banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the GOC's continued dominant role in the sector.⁷
- The benchmark should be derived using the same methodology applied by the US—based on IMF interest rates (or LIBOR and corporate BB bond rates for foreign currency denominated loans) and World Bank economy groupings with an adjustment for 'governance indicators' and a further adjustment applicable to long-term loans.⁸

¹ *Coated paper (US)* at I.A; *Aluminium extrusions (US)* at VII.G

² *DS379* at IV-VI

³ *Coated paper (EU)* at 4.2.1; *Coated steel (EU)* at 3.3.2

⁴ *Toilet paper* at Chapter 4

⁵ *DS379*, pp.134-138

⁶ *Frozen shrimp (US)* at VI.A.1; *Wind towers (US)* at Comment 4

⁷ *Coated paper (US)* at Comment 10; *Wind towers (US)* at Comment 4

⁸ *Frozen shrimp (US)* at IV.E

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- The benchmark must also include an upward adjustment to reflect normal market risk and the unreliability of the creditworthiness of Chinese exporters, as happens in the US and EU.⁹

Specificity

- Preferential treatment by banks in the granting of loans to producers of aluminium extrusions as members of an ‘encouraged’ industry.
- Aluminium extrusions production is an encouraged industry as detailed in the US case,¹⁰ which relied on the same GOC plans and documents that Customs relied upon in its aluminium road wheels (ARWs) dumping and subsidy investigation, particularly the:
 - *Guidelines for Accelerating the Restructuring of the Aluminium Industry*,¹¹ and
 - *Nonferrous Metal Industry Adjustment and Revitalization Plan*¹²

Application to Review 248

- This subsidy has been countervailed by the US in relation to Chinese producers of aluminium extrusions, including exporters that cooperated with the US investigation.
- It is highly likely that some Chinese extruders exporting to Australia had interest costs during the review period.

2. Provision of goods programs countervailed by the US

2.1. Provision of land-use rights for less than adequate remuneration

The US has countervailed the provision of land-use rights for less than adequate remuneration (LTAR) in most cases against China since 2008, including in relation to aluminium extrusions.¹³ The EU has also countervailed the provision of land-use rights in both of its successful subsidy cases against China.¹⁴

These cases clearly support the existence of land-use rights for LTAR as a countervailable subsidy in the aluminium extrusions industry. The subsidy applies generally to all land-use rights across China. The essential elements of the subsidy are outlined as follows.

⁹ *Photovoltaic cells (US)* at VI.A.2 & Comment 17; *Coated steel (EU)* at 3.3.2(h)

¹⁰ *Aluminium extrusions (US)* at VII.G

¹¹ Attachment A1 to the GOC’s questionnaire response in *ARWs* (Referred to in *Aluminium extrusions (US)* as the Aluminium Industry Guidelines and in *ARWs* as the Guidelines)

¹² Attachment A47 to the GOC’s questionnaire response in *ARWs* (Referred to in *Aluminium extrusions (US)* as the Nonferrous Metal Plan and in *ARWs* as the Nonferrous Plan)

¹³ *Laminated woven sacks (US)* at VI.A.1; *Aluminium extrusions (US)* at VII.T & VII.U

¹⁴ *Coated paper (EU)* at 4.2.5; *Coated steel (EU)* at 3.3.1.2

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Financial contribution

- Provision of a good by a provincial or local government authority.¹⁵

Benefit conferred

- The difference between the amount paid for land-use rights and the benchmark price.
- Use of an in-country benchmark is precluded because the purchase of land-use rights in China is not conducted in accordance with market principles—due to the overwhelming presence of government involvement in the land-use rights market and the widespread and documented deviation from the authorised methods of pricing and allocating land.¹⁶ This finding is supported by the fact that the bidding and auction system supposedly in place to ensure competition in the Chinese land market is not being followed in practice.¹⁷
- The benchmark should be derived using the same methodology applied by the US—based on rental rates and rates paid for land purchased in industrial parks outside Bangkok.¹⁸

Specificity

- The access to industrial land is by law limited only to companies respecting the industrial policies set by the GOC and only certain transactions are subject to a bidding process, with prices often being set by the authorities.¹⁹
- Alternatively, the subsidy may be regionally specific—ie the financial contribution is limited to an enterprise or industry or group thereof located within a designated geographical region.²⁰ This approach to regional specificity has been upheld by the WTO.²¹

Application to Review 248

- This subsidy has been countervailed by the US in relation to Chinese producers of aluminium extrusions, including exporters that cooperated with the US investigation.
- The US found a subsidy rate of 4.97% for one of the cooperating exporters, New Zhongya,²² which was also a cooperating exporter in Investigation 148.
- It is highly likely that other Chinese extruders had costs for land-use rights during the review period.

¹⁵ *Laminated woven sacks (US)* at Comment 8

¹⁶ *Laminated woven sacks (US)* at VI.A.1

¹⁷ *Photovoltaic cells (US)* at Comment 11; *Coated steel (EU)* at 3.3.1.2(d)

¹⁸ *Photovoltaic cells (US)* at II.E & Comment 11

¹⁹ *Coated steel (EU)* at 3.3.1.2(e)

²⁰ *Laminated woven sacks (US)* at Comment 9

²¹ *DS370*, pp.138-163

²² *Aluminum extrusions (US)* at VII.T

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2.2. Provision of electricity for less than adequate remuneration

The US has countervailed the provision of electricity for less than adequate remuneration (LTAR) in most cases against China since 2008, including in relation to aluminium extrusions.²³ The EU and Canada have also countervailed the provision of electricity in their most recent subsidy cases against China.²⁴

These cases strongly support the existence of electricity for LTAR as a countervailable subsidy in the aluminium extrusions industry. The subsidy applies generally to all electricity supply in China. The elements of the subsidy are outlined as follows.

Financial contribution

- Provision of a good by a public electricity supply company.²⁵

Benefit conferred

- The difference between the amount paid for electricity and the benchmark price.
- The benchmark should be derived using the same methodology applied by the US, EU and Canada—based on rates set by the GOC that are generally applicable to large industrial users.²⁶

Specificity

- The lower rate of electricity is limited to certain enterprises in certain specified sectors included in a sub-category of industrial users.²⁷
- Alternatively, the subsidy may be regionally specific—ie the financial contribution is limited to an enterprise or industry or group thereof located within a designated geographical region.²⁸

Application to Review 248

- This subsidy has been countervailed by the US in relation to Chinese producers of aluminium extrusions and by the US, EU and Canada in relation to manufacturers in many other key industrial sectors.
- The aluminium industry has been a focus of the GOC for over a decade.²⁹
- The GOC has numerous policies and plans to encourage certain producers and discourage other producers in the aluminium sector.³⁰

²³ *Thermal paper (US)* at I.N & Comment 11; *Aluminium extrusions (US)* at VI & X.V

²⁴ *Coated steel (EU)* at 3.3.1.4; *Silicon metal (Canada)* at Appendix 3.VI

²⁵ *Photovoltaic cells (US)* at VI.A.5; *Coated steel (EU)* at 3.3.1.4(d)

²⁶ *Photovoltaic cells (US)* at VI.A.5; *Coated steel (EU)* at 3.3.1.4(e); *Silicon metal (Canada)* at Appendix 3.VI

²⁷ *Coated steel (EU)* at 3.3.1.4(f) para.(148)

²⁸ *Coated steel (EU)* at 3.3.1.4(f) para.(149)

²⁹ *ARWs*, p.17

³⁰ *ARWs*, pp.20-28

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- It is therefore likely that some Chinese extruders have received electricity at lower rates than those set by GOC authorities.

3. Tax programs countervailed by the US

3.1. Preferential tax policies for High and New Technology Enterprises (HNTes)

Under this program, pursuant to the *Circular of the State Council concerning the approval of the national development zones for new and high technology industries and the relevant policies and provisions* at Article 2 and 4 of Appendix III, 'Regulations on the tax policy for the national new and high technology industries parks', foreign invested enterprises (FIEs) designated as HNTes in high and new technology parks pay a reduced income tax rate of 15%.³¹

Financial contribution

- The foregoing, or non-collection, of revenue due to the GOC.

Benefit conferred

- Funds provided to the amount of the tax savings.

Specificity

- Limited by law to eligible high and new technology enterprises.

Application to Review 248

- This subsidy has been countervailed by the US in relation to Chinese producers of aluminium extrusions, including exporters that cooperated with the US investigation.
- Since Investigation 148 Australia has found this subsidy in relation to ARWs and three steel products.³²
- It is therefore likely that some Chinese extruders have received a benefit under this subsidy program.

3.2. Provincial Government of Guangdong (PGOG) tax offset tax for R&D

Under this program, administered by the PGOG's Science and Technology Department and the Economic Trade Commission pursuant to the *Trial administrative measures for the pre-tax deduction of enterprises R&D expenses*, R&D expenses incurred for developing new products and technologies can be deducted as a tax offset.³³ For R&D expenses that cannot be treated as intangible assets, 50% of the R&D expense can be deducted as a tax offset; for R&D expenses considered intangible assets, the tax offset can be amortized based on 150% of the R&D expense.

³¹ *Aluminium extrusions (US)* at VII.F

³² *ARWs Program 22; Coated Steel (Aus) Program 10; HSS Program 35; Plate Steel Program 11*

³³ *Aluminium extrusions (US)* at VII.P

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Financial contribution

- The foregoing, or non-collection, of revenue due to the GOC.

Benefit conferred

- Funds provided to the amount of the tax savings.

Specificity

- The GOC and the PGOG have targeted the aluminium extrusion industry for development and assistance to encourage and support the growth and development of the aluminium extrusions industry.³⁴

Application to Review 248

- This subsidy has been countervailed by the US in relation to Chinese producers of aluminium extrusions, including exporters that cooperated with the US investigation.
- All four major exporters investigated in Investigation 148 are located in Guangdong province.
- It is therefore likely that some Chinese extruders have received a benefit under this subsidy program.

3.3. Exemption from city construction tax and education tax for FIEs

Local tax authorities exempt all FIEs from the city maintenance and construction tax and education fee surcharge pursuant to the *Circular concerning temporary exemption from urban maintenance and construction tax and additional education fees for foreign-funded and foreign enterprises* (GUOSHUIFA (1994) No. 38).³⁵

The construction tax is based on the amount of product tax, VAT, and/or business tax actually paid. The rate payable depends on an entity's location: 7% for urban areas; 5% for counties or townships; and 1% for other areas. For the education fee surcharge, FIEs pay only 1% of the actual amount of the product tax, VAT, and/or business tax paid, whereas other entities pay 4%.

Financial contribution

- The foregoing, or non-collection, of revenue due to the GOC.

Benefit conferred

- Funds provided to the amount of the tax savings.

Specificity

- Limited by law to eligible FIEs.

³⁴ *Aluminium extrusions (US)* at VII.P

³⁵ *Aluminium extrusions (US)* at VII.A

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Application to Review 248

- This subsidy has been countervailed by the US in relation to Chinese producers of aluminium extrusions, including New Zhongya, which was also a cooperating exporter in Investigation 148.
- It is therefore likely that other Chinese extruders have received a benefit under this subsidy program.

3.4. Refund of land-use tax for firms located in the Zhaoqing New and High-Tech Industrial Development Zone (ZHTDZ)

The ZHTDZ local authority has provided a refund of land-use tax at a rate of three RMB per square meter contingent upon an entity's location in the ZHTDZ.³⁶

- The foregoing of revenue due to the GOC.

Benefit conferred

- Funds provided to the amount of the refund.

Specificity

- Limited to firms located in the ZHTDZ.

Application to Review 248

- This subsidy has been countervailed by the US in relation to Chinese producers of aluminium extrusions, including New Zhongya, which was also a cooperating exporter in Investigation 148.
- It is likely that New Zhongya has continued to receive a benefit during the review period.
- Other Chinese extruders may have also received a benefit.

4. Grant programs countervailed by the US

4.1. Fund for SME bank-enterprise cooperation projects

Under this program, administered by the PGOG's Department of Finance and the Bureau of SMEs pursuant to the *Circular on printing and distributing of the measures on implementing the 2009 government-bank-enterprise cooperation special fund program* (YUECAI GONG (2009) No. 54), eligible SMEs receive loan interest assistance.³⁷

Financial contribution

- Direct transfer of funds by the GOC.

³⁶ *Aluminium extrusions (US)* at VII.Q

³⁷ *Aluminium extrusions (US)* at VII.H

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Benefit conferred

- Funds provided to the amount of the assistance.

Specificity

- Limited by regulation to eligible SMEs.

Application to Review 248

- This subsidy has been countervailed by the US in relation to Chinese producers of aluminium extrusions, including exporters that cooperated with the US investigation.
- All four major exporters investigated in Investigation 148 are located in Guangdong province.
- It is therefore likely that some Chinese extruders have received a benefit under this subsidy program.

4.2. Special fund for science and technology in Guangdong

Under this program, administered by the Guangdong Science and Technology Department pursuant to the *Provisional measures on administration of Guangdong important science-technology project special fund (YEUCAIGONG (2009) No. 166)*, the PGOG seeks to support technology R&D and promote technology achievements and diffusion of technological knowledge.³⁸ This program appears different to the existing Program 8, which concerns patents.

Financial contribution

- Direct transfer of funds by the GOC.

Benefit conferred

- Funds provided to the amount of the grant.

Specificity

- Limited to entities located in Guangdong province.

Application to Review 248

- This subsidy has been countervailed by the US in relation to Chinese producers of aluminium extrusions, including exporters that cooperated with the US investigation.
- All four major exporters investigated in Investigation 148 are located in Guangdong province.
- It is therefore likely that some Chinese extruders have received a benefit under this subsidy program.

³⁸ *Aluminium extrusions (US)* at VII.I

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4.3. Provincial fund for fiscal and technological innovation

Under this program, administered by the Provincial Department of Finance and Economic and Trade Commission of Guangdong Province pursuant to the *Provisional measures on administration of exploration and renovation provincial level fund* (YUECAIQI (2003) No. 140), the PGOG provides grants to firms for the purpose of promoting technological and fiscal innovation.³⁹ This program may be different to the existing Program 3.

Financial contribution

- Direct transfer of funds by the GOC.

Benefit conferred

- Funds provided to the amount of the grant.

Specificity

- Limited to entities located in Guangdong province.

Application to Review 248

- This subsidy has been countervailed by the US in relation to Chinese producers of aluminium extrusions, including exporters that cooperated with the US investigation.
- All four major exporters investigated in Investigation 148 are located in Guangdong province.
- It is therefore likely that some Chinese extruders have received a benefit under this subsidy program.

4.4. Provincial loan discount special fund for SMEs

Under this program, administered by the Provincial Department of Finance and the Guangdong Provincial SME Bureau pursuant to the *Measures on administration of SME loan interest assistance special fund* (YUECAIGONG (2009) No. 124), the PGOG provides interest subsidy grants in order to promote and support SMEs.⁴⁰

Financial contribution

- Direct transfer of funds by the GOC.

Benefit conferred

- Funds provided to the amount of the grant.

³⁹ *Aluminium extrusions (US)* at VII.K

⁴⁰ *Aluminium extrusions (US)* at VII.L

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Specificity

- Limited to entities located in Guangdong province.

Application to Review 248

- This subsidy has been countervailed by the US in relation to Chinese producers of aluminium extrusions, including exporters that cooperated with the US investigation.
- All four major exporters investigated in Investigation 148 are located in Guangdong province.
- It is therefore likely that some Chinese extruders have received a benefit under this subsidy program.

4.5. Export rebate for mechanic, electronic, high-tech products

Under this program, eligible entities receive an export rebate for mechanic, electronic and high-tech products.⁴¹

Financial contribution

- Direct transfer of funds by the GOC.

Benefit conferred

- Funds provided to the amount of the grant.

Specificity

- Limited to entities that export certain eligible goods.

Application to Review 248

- This subsidy has been countervailed by the US in relation to Chinese producers of aluminium extrusions, including exporters that cooperated with the US investigation.
- It is therefore likely that some Chinese extruders exporting to Australia have received a benefit under this subsidy program.

4.6. PGOG special fund for energy saving technology reform

Under this program, administered by the PGOG's Department of Finance and the Economic Trade Commission of Guangdong pursuant to the *Provisional measures on administration of Guangdong energy-saving special fund (YUECAIGONG)* (2008) No. 126), the PGOG provides grants in the amount of RMB 200 for every one metric ton (MT) of standard coal saved through increased energy efficiency during a given year.⁴²

⁴¹ *Aluminium extrusions (US)* at VII.M

⁴² *Aluminium extrusions (US)* at VII.N

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Financial contribution

- Direct transfer of funds by the GOC.

Benefit conferred

- Funds provided to the amount of the grant.

Specificity

- Limited to entities located in Guangdong province that demonstrate annual energy savings equivalent to 2,000 MT of standard coal.

Application to Review 248

- This subsidy has been countervailed by the US in relation to Chinese producers of aluminium extrusions, including exporters that cooperated with the US investigation.
- All four major exporters investigated in Investigation 148 are located in Guangdong province.
- It is therefore likely that some Chinese extruders have received a benefit under this subsidy program.

4.7. PGOG science and technology bureau project fund

Under this program, administered by the PGOG's Department of Finance and Department of Science and Technology, the PGOG distributes grants to universities and firms to support, among other things, industrial development and innovation in the province.⁴³

Financial contribution

- Direct transfer of funds by the GOC.

Benefit conferred

- Funds provided to the amount of the grant.

Specificity

- Limited to entities located in Guangdong province.

Application to Review 248

- This subsidy has been countervailed by the US in relation to Chinese producers of aluminium extrusions, including exporters that cooperated with the US investigation.

⁴³ *Aluminium extrusions (US)* at VII.0

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- All four major exporters investigated in Investigation 148 are located in Guangdong province.
- It is therefore likely that some Chinese extruders have received a benefit under this subsidy program.

4.8. Development assistance grants from the ZHTDZ

Under this program the ZHTDZ local authority provides development assistance grants to certain entities located in the ZHTDZ based upon their output, tax payments, level of foreign investment and whether they have received famous brand designation.⁴⁴

Financial contribution

- Direct transfer of funds by the GOC.

Benefit conferred

- Funds provided to the amount of the grant.

Specificity

- Limited to entities located in the ZHTDZ that qualify as a ‘famous brand’.

Application to Review 248

- This subsidy has been countervailed by the US in relation to Chinese producers of aluminium extrusions, including New Zhongya, which was also a cooperating exporter in Investigation 148.
- It is likely that New Zhongya has continued to receive a benefit during the review period.
- Other Chinese extruders may have also received a benefit.

5. Other additional subsidy programs

5.1. Provision of water for less than adequate remuneration

The EU countervailed the provision of water for less than adequate remuneration (LTAR) in its recent coated steel case.⁴⁵ The subsidy applies generally to all water supply across China and the EU case supports the existence of water for LTAR as a countervailable subsidy for ‘encouraged’ industries, of which aluminium extrusions production is one such industry. The elements of the subsidy are outlined as follows.

⁴⁴ *Aluminium extrusions (US)* at VII.R

⁴⁵ *Coated steel (EU)* at 3.3.1.3

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Financial contribution

- Provision of a good by a public water supply company.⁴⁶

Benefit conferred

- The difference between the amount paid for water and the benchmark price.
- The benchmark should be derived using the same methodology applied by the EU—based on prices set by the GOC.⁴⁷

Specificity

- The lower price of water is limited to certain enterprises due to the apparent discretion conferred on local authorities.⁴⁸

Application to Review 248

- This subsidy has been countervailed by the EU in relation to manufacturers in a key industrial sector.
- Aluminium extrusions production is an encouraged industry as detailed above at 1.1.
- It is therefore highly possible that some Chinese extruders have received water at lower prices than those set by GOC authorities.

5.2. Provision of natural gas for less than adequate remuneration

The US has consistently found countervailable electricity subsidies in China (see 2.2 above), however there is evidence that other energy sources are also heavily subsidised by the GOC. We understand that some Chinese extruders use natural gas as an energy source in their production process, particularly in aluminium remelt operations, as gas-fired furnaces are common.⁴⁹ The GOC subsidises natural gas through pricing controls, which keep prices 60% lower on average than international prices.⁵⁰ The elements of the subsidy are outlined as follows.

Financial contribution

- Provision of a good by a public utility company.

Benefit conferred

- The difference between the amount paid for natural gas and the benchmark price.

⁴⁶ *Coated steel (EU)* at 3.3.1.3(c)

⁴⁷ *Coated steel (EU)* at 3.3.1.3(b) & (d)

⁴⁸ *Coated steel (EU)* at 3.3.1.3(e)

⁴⁹ *US energy requirements*, p.72

⁵⁰ *Haley & Haley*, p.42

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- Use of an in-country benchmark is precluded because of pricing controls on natural gas in China that are inconsistent with market principles—ie the price of natural gas in China is based on a regulated wellhead price plus costs rather than the market value of the gas.⁵¹
- The benchmark should be derived by reference to a suitable surrogate country or from an average of international prices.

Specificity

- Although the GOC central government sets the wellhead price, the price to consumers depends on region and industrial sector, with certain industries afforded lower prices.⁵²

Application to Review 248

- Aluminium extrusions production is an encouraged industry as detailed above at 1.1.
- It is therefore highly possible that some Chinese extruders have received natural gas at lower prices than those that apply generally in China.

5.3. Provision of heavy oil for less than adequate remuneration

The US has consistently found countervailable electricity subsidies in China (see 2.2 above), however there is evidence that other energy sources are also heavily subsidised by the GOC. We understand that some Chinese extruders use heavy oil as an energy source in their production process, particularly in aluminium remelt operations, as oil-fired furnaces are not uncommon.⁵³ Oil products such as heavy oil are produced at the refineries of China's two state-owned oil companies. The GOC subsidises heavy oil by setting prices and issuing rebates to the refineries to cover their losses. It is estimated that the GOC paid out at least RMB 130 billion in subsidies in 2008, or approximately 2.1% of government expenditure.⁵⁴ The elements of the subsidy are outlined as follows.

Financial contribution

- Provision of a good by a public oil company.

Benefit conferred

- The difference between the amount paid for heavy oil and the benchmark price.
- Use of an in-country benchmark is precluded because of pricing controls on oil products in China that are inconsistent with market principles—ie the price of oil products in China lag behind international prices.⁵⁵

⁵¹ *ibid.*

⁵² *ibid.*

⁵³ *US energy requirements*, p.72

⁵⁴ *Haley & Haley*, pp.43-44

⁵⁵ *ibid.*

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- The benchmark should be derived by reference to a suitable surrogate country or from an average of international prices.

Specificity

- Oil subsidies target ‘encouraged’ industries that require industrial furnaces—eg heavy oil subsidies to the flat-glass sector are estimated to be more than US \$1.5 billion per annum.⁵⁶

Application to Review 248

- Aluminium extrusions production is an encouraged industry as detailed above at 1.1.
- It is therefore highly possible that some Chinese extruders have received heavy oil at lower prices than those that apply generally in China.

5.4. Currency undervaluation

China’s currency is widely regarded as undervalued due to the GOC’s intervention in currency markets to limit the appreciation of the renminbi (RMB) against the US dollar (USD) and other currencies, including the Australian dollar (AUD).⁵⁷ This has a significant impact on current accounts and trade balances and the functioning of the global economy as a whole.⁵⁸

Economists estimated in 2011 that the RMB was undervalued by as much as 50% against the USD.⁵⁹ Earlier this year the International Monetary Fund (IMF) reported that the RMB is undervalued by 5% to 10% ‘compared with the level consistent with medium-term fundamentals and desirable policy settings’.⁶⁰ The same report shows that compared to the AUD, the RMB is undervalued in the range of 10% to 25%.⁶¹

A number of US industries, including the aluminium extrusions industry, have requested investigation of currency undervaluation by China as a countervailable subsidy. The US has never initiated an investigation, on the basis that these industries failed to support their claim that the subsidy is specific.⁶²

In February 2011 a comprehensive legal analysis of the countervailability of China’s currency regime was published, which strongly supports the assessment of currency undervaluation as a countervailable subsidy.⁶³ In October 2011 the US solar industry included this analysis as supporting evidence with its application for countervailing duties. The US again failed to initiate an

⁵⁶ *Haley & Haley*, p.90

⁵⁷ *CRS report*, p.1

⁵⁸ *Peterson*, pp.2-15

⁵⁹ *CRS report*, p.17

⁶⁰ *Bloomberg*

⁶¹ *IMF report*, p.28

⁶² *US subsidy assessment at I.I.C.*, pp.28-29

⁶³ *Journal of World Trade*

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investigation on the basis that the applicant did not provide any new information or evidence to address the deficiencies identified in previous cases.⁶⁴ However, all of the previous cases were initiated before the new analysis was published, therefore the US did not fully consider the new evidence provided by the solar industry. Unlike in the previous cases, the US did not revisit its decision not to investigate currency undervaluation in its final report.

Draft legislation was recently introduced into the US Congress that would force US authorities to investigate currency undervaluation as a countervailable subsidy.⁶⁵ We submit that continued refusal of the US to investigate currency undervaluation is not based on an objective assessment of the evidence, which strongly supports the existence of currency undervaluation as a prohibited export subsidy. The elements of the subsidy are outlined as follows.

Financial contribution

- Direct transfer of funds whereby banks are required to exchange foreign currency for RMB at the GOC's administered exchange rate.⁶⁶
- The US has found SOCBs to be 'public bodies' (or 'authorities' in US terminology) and the WTO upheld this approach in DS379.⁶⁷

Benefit conferred

- The difference between the amount of RMB received in exchange for foreign currency (AUD or USD) and the amount of RMB an exporter would have received under a benchmark exchange rate.
- The GOC controls both the RMB and foreign exchange market in China and plays a predominant role in setting and maintaining the AUD-RMB exchange rate, resulting in distorted currency markets in China and globally. "There is no market-determined USD-RMB [or AUD-RMB] exchange rate, free of GOC distortions, in any market in the world".⁶⁸
- GOC policies that result in distortion of foreign currency markets include:
 - the GOC maintains tight capital controls, which limit Chinese companies from freely purchasing and selling foreign currency
 - Chinese exporters are required to trade foreign currency for RMB
 - the GOC places stringent controls on the investment activities of both foreign and domestic companies, and
 - foreign currency is prohibited for circulation and may not be quoted for pricing or settlement in China.⁶⁹

⁶⁴ *US subsidy assessment* at I.I.C, pp.28-29

⁶⁵ *US Bill*, s.11(a)

⁶⁶ *Journal of World Trade*, p.195 at 2.2.2 & footnote 40; and p.200

⁶⁷ *DS379*, pp.134-138

⁶⁸ *Journal of World Trade*, p.205

⁶⁹ *US solar petition*, pp.94-95 & footnotes 359-364

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- US Congress is suggesting the benchmark exchange rate be the simple average of benchmark rates calculated under two of the three methods used by the IMF's Consultative Group on Exchange Rates (CGER) and based on IMF or World Bank data.⁷⁰
- The IMF has recently developed the external balance assessment (EBA) methodology as a successor to the CGER methodology and this was the methodology used to calculate the undervaluation of the RMB reported by the IMF earlier this year.⁷¹

Specificity

- Specificity under Article 2 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) is not required, as currency undervaluation is a prohibited export subsidy under Article 3.
- Receipt of the subsidy is contingent, in fact, upon export performance. A Chinese manufacturer must export its products in order to receive foreign currency, and in order for that manufacturer to receive the benefit of the subsidy, it must convert that foreign currency into RMB.⁷²
- The GOC acknowledges that the purpose of its policy of undervaluation is to encourage, support and develop China's export trade.⁷³ It is estimated that exporters account for 70% of China's foreign exchange earnings.⁷⁴
- The fact that foreign investors and tourists also benefit from currency undervaluation does not mean that the benefit received by exporters is not an export subsidy. The WTO has held that even though the same subsidy can be export contingent in one set of circumstances and obtained in another set of circumstances that is not export contingent, "[t]he fact that the subsidies granted in the second set of circumstances might not be export contingent does not dissolve the export contingency arising in the first set of circumstances".⁷⁵ Therefore, the fact that the currency undervaluation subsidy can be obtained in circumstances that does not involve the export of goods, the benefit received by exporters is still an export contingent subsidy.
- The draft legislation before the US Congress emphasises this last point.⁷⁶

Application to Review 248

- Exporters of aluminium extrusions from China will have received the subsidy if they converted any of the sales revenue for Australian exports to RMB. It is almost certain that this has occurred at some point during the 12-month review period.

⁷⁰ *US Bill*, s.11(b); *IMF CGER methodology*

⁷¹ *IMF EBA methodology; IMF staff report*, p.23 at Box 6

⁷² *Journal of World Trade*, p.212

⁷³ *Journal of World Trade*, pp.212-213 & footnote

⁷⁴ *Journal of World Trade*, pp.214 at footnote 133

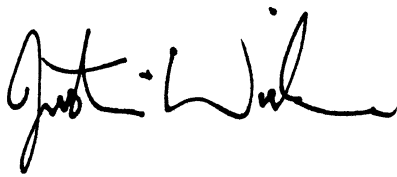
⁷⁵ *DS108*, p.37 at para.119

⁷⁶ *US Bill*, s.11(c)

6. Conclusion

We submit that the Commission review possible receipt of benefits under all of the subsidy programs covered by the existing countervailing duty notice, including by exporters previously investigated.

There is also strong evidence that Chinese producers of aluminium extrusions have received benefits under an additional 19 subsidy programs not previously investigated. We therefore submit that the Commission investigate these programs as part of Review 248 and we look forward to participating further in the review.

A handwritten signature in black ink, appearing to read "Justin Wickes". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

Justin Wickes
Director

7. List of evidence

Short title	Full title and document location
<i>Aluminium extrusions (US)</i>	Aluminium extrusions from the People’s Republic of China: Issues and decision memorandum for the final determination in the countervailing duty investigation, 28 March 2011 http://enforcement.trade.gov/frn/summary/prc/2011-7926-1.pdf
<i>ARWs</i>	Report to the Minister No. 181: Aluminium road wheels exported from the People’s Republic of China, 12 June 2012
<i>Bloomberg</i>	Brendan Murray, ‘Yuan’s real exchange rate undervalued 5%-10%, IMF report says’, <i>Bloomberg.com</i> , 1 August 2013 http://www.bloomberg.com/news/2013-08-01/china-s-real-exchange-rate-undervalued-5-10-imf-report-says.html
<i>Coated paper (EU)</i>	Coated fine paper originating in the People’s Republic of China: Council Implementing Regulation (EU) No 452/2011 imposing a definitive anti-subsidy duty, 6 May 2011 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:128:0018:0075:EN:PDF
<i>Coated paper (US)</i>	Coated free sheet paper from the People’s Republic of China: Issues and decision memorandum for the final determination in the countervailing duty investigation, 17 October 2007 http://enforcement.trade.gov/frn/summary/prc/E7-21046-1.pdf
<i>Coated Steel (Aus)</i>	Report to the Minister No. 193: Zinc coated steel and aluminium zinc coated steel exported from the People’s Republic of China, 28 June 2013
<i>Coated steel (EU)</i>	Certain organic coated steel products originating in the People’s Republic of China: Council Implementing Regulation (EU) No 215/2013 imposing a countervailing duty, 11 March 2013 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:073:0016:0097:EN:PDF
<i>CRS report</i>	Congressional Research Service (CRS) report for the US Congress, ‘China’s currency policy: An analysis of the economic issues’, 19 December 2011 https://opencrs.com/document/RS21625/
<i>DS108</i>	<i>United States – Tax Treatment for “Foreign Sales Corporations”: Recourse to Article 21.5 of the DSU by the European Communities</i> , WT/DS108/AB/RW, Adopted 14 January 2002 http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds108_e.htm
<i>DS379</i>	<i>United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China</i> , WT/DS379/AB/R, Adopted 11 March 2011 http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds379_e.htm
<i>Frozen shrimp (US)</i>	Certain frozen warmwater shrimp from the People’s Republic of China: Issues and decision memorandum for the final determination in the countervailing duty investigation, 12 August 2013 http://enforcement.trade.gov/frn/summary/prc/2013-20170-1.pdf
<i>Haley & Haley</i>	Haley, UCV & Haley GT 2013, <i>Subsidies to Chinese Industry: State Capitalism, Business Strategy and Trade Policy</i> , Oxford University Press, New York
<i>HSS</i>	Report to the Minister No. 177: Certain hollow structural sections exported from the People’s Republic of China, Republic of Korea, Malaysia, Taiwan and Kingdom of Thailand, 7 June 2013

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Short title	Full title and document location
<i>IMF CGER methodology</i>	International Monetary Fund (IMF) paper on the methodology for CGER exchange rate assessments, 8 November 2006 http://www.imf.org/external/np/pp/eng/2006/110806.pdf
<i>IMF EBA methodology</i>	International Monetary Fund (IMF) technical background paper on the external balance assessment (EBA) methodology, 25 June 2013 http://www.imf.org/external/np/res/eba/pdf/080913.pdf
<i>IMF staff report</i>	International Monetary Fund (IMF) multilateral policy issues staff report on the 2013 pilot external sector report, 1 August 2013 http://www.imf.org/external/np/pp/eng/2013/062013.pdf
<i>Journal of World Trade</i>	Benjamin Blasé Caryl, 'Is China's currency regime a countervailable subsidy?: A legal analysis under the World Trade Organization's SCM Agreement', <i>Journal of World Trade</i> , Volume 45, Issue 1, February 2011 (Attachment A)
<i>Laminated woven sacks (US)</i>	Laminated woven sacks from the People's Republic of China: Issues and decision memorandum for the final determination in the countervailing duty investigation, 16 June 2008 http://enforcement.trade.gov/frn/summary/prc/E8-14256-1.pdf
<i>Peterson</i>	Peterson Institute for International Economics policy brief, 'Currency manipulation, the US economy, and the global economic order', No. PB12-25, December 2012 http://piie.com/publications/pb/pb12-25.pdf
<i>Photovoltaic cells (US)</i>	Crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China: Issues and decision memorandum for the final determination in the countervailing duty investigation, 9 October 2012 http://enforcement.trade.gov/frn/summary/prc/2012-25564-1.pdf
<i>Plate Steel</i>	Report to the Minister No. 198: Hot rolled plate steel exported from the People's Republic of China, Republic of Indonesia, Japan, Republic of Korea and Taiwan, 16 September 2013
<i>Silicon metal (Canada)</i>	Certain silicon metal originating in or exported from the People's Republic of China: Statement of reasons concerning the making of final determinations with respect to the dumping and subsidising, 5 November 2013 http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1400/ad1400-i13-fd-eng.pdf
<i>Thermal paper (US)</i>	Lightweight thermal paper from the People's Republic of China: Issues and decision memorandum for the final determination in the countervailing duty investigation, 25 September 2008 http://enforcement.trade.gov/frn/summary/prc/E8-23271-1.pdf
<i>Toilet paper</i>	Preliminary report on existence of countervailable subsidies, September 2008 http://www.adcommission.gov.au/cases/documents/142-PreliminaryReportonExistenceofCountervailingSubsidies-GovernmentofthePeoplesRepublicofCh.pdf
<i>US Bill</i>	US Senate Bill: S. 1114: Currency Exchange Rate Oversight Reform Act of 2013, Introduced 7 June 2013 https://www.govtrack.us/congress/bills/113/s1114
<i>US energy requirements</i>	US Department of Energy 2007, <i>US Energy Requirements for Aluminum Production: Historical Perspective, Theoretical limits and Current Practices</i> http://energy.gov/sites/prod/files/2013/11/f4/al_theoretical.pdf
<i>US solar petition</i>	Petition from SolarWorld Industries America Inc. to the US government for the imposition of countervailing duties on crystalline silicon photovoltaic cells from the People's Republic of China, 19 October 2011 (Attachment B)

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Short title	Full title and document location
<i>US subsidy assessment</i>	Countervailing duty investigation initiation checklist: Certain crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China, 8 November 2011 (Attachment C)
<i>Wind towers (US)</i>	Utility scale wind towers from the People's Republic of China: Issues and decision memorandum for the final determination in the countervailing duty investigation, 17 December 2012 http://enforcement.trade.gov/frn/summary/prc/2012-30947-1.pdf