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Ms Candy Caballero
Director, Operations 3
Anti-Dumping Commission
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Dear Ms Caballero

Anti-circumvention inquiry – Aluminium extrusions exported from China

This submission is made on behalf of Oceanic Aluminium Pty Ltd (Oceanic), P&O Aluminium (Perth) Pty Ltd (P&O Perth) and P&O Aluminium (Sydney) Pty Ltd (P&O Sydney). The three companies are collectively referred to as the ‘subject importers’ throughout this submission.

The submission is a response to the Anti-Dumping Commission (the Commission’s) issues paper (2014/02) published on 18 September 2014.

1. Inquiry period

The issues paper reveals that the Commission has decided to devote “greater focus” of the anti-circumvention inquiry to importations of goods that occurred during the period 1 January 2013 to 27 October 2013. The justification for doing so is that imports after 27 October 2013 remain open to a potential repayment of interim duty overpaid.

First, the Commission is aware that the subject importers are in the process of amending import declarations with the objective of seeking a refund of overpaid duties as a result of the Federal Court’s decision of 4 September 2014. The Federal Court found that the Minister was not entitled to fix different variable factors with respect to different finishes.

The effect of that decision is that the rates of dumping and countervailing duty imposed against exports by PanAsia Aluminium (China) Co. Ltd (PanAsia), had to be amended and these changes were applied retrospectively from 27 August 2011. Therefore, the period of

focus by the Commission also remains open to a potential repayment of overpaid interim duty.

Second, the retrospective amendment of interim duties following the Federal Court's decision covered the period from 27 August 2011 to 10 October 2013. This leaves a total of 17 days during 2013 where importations of goods by the subject importers are not:

- a) open to repayment of overpaid duties by way of an application for duty assessment;
- b) subject to refund of overpaid duties; and
- c) covered by the differentiated measures which were subsequently found to be unlawful.

The subject importers therefore consider that there is no meaningful period in 2013 with which the Commission can reasonably undertake an objective examination and assessment of 'whether prices of imported goods subject to those measures have increased commensurate with the total amount of duty payable and, if not, why the price of the imported goods have not increased to a price that is commensurate with the total amount of duty payable.'¹

2. Sales of goods at a loss

The subject importers are concerned by the Commission's primary focus of simply attempting to establish the importer's profitability for sales of aluminium extrusions, and the lack of attention being paid to whether the importers have sold the goods in Australia without increasing the price commensurate with the total amount of duty payable.

During verification visits undertaken by the Commission, the subject importers have explained in detail the way in which prices for aluminium extrusions are typically set in the Australian market. Prices are set by reference to the London Metals Exchange (LME) price for aluminium plus a "spread" which captures all conversion, importation and selling costs.

This pricing formula of 'LME plus spread' remains unchanged in the Australian market prior to and since the imposition of duties on goods exported from China. The importance of the 'LME plus spread' was highlighted by Capral in a submission² to the original investigation:

It is important in this case to explain that the normal process for negotiating prices is based on "LME plus a Spread" where the term "spread" represents a processing fee for converting aluminium to the finished product.

The spread is required to cover ALL costs associated with the manufacture of the goods including but not limited to metal premiums, recovery losses and FIS delivery to customer.

¹ Issues Paper 2014/02 – Page 3

² Capral Supplementary Submission on Causal Link; January 2010; page 4.

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The importance of examining “Spread” (or processing fee plus profit) as separate to the “LME” base metal component of pricing was explained in the Application...

In a subsequent submission³ to the original investigation Capral stated:

As discussed in the original application and many submissions since, and as Customs will have verified throughout their investigations, \$ per kilogram “Spread” (ie: the difference between the \$ per kilogram total selling price and the \$ per kilogram LME price) is a key profitability driver of any extrusion business.

More recently, Capral informed customers in writing⁴ of the impact that LME aluminium prices have on the price of aluminium extrusions in the Australian market. In its letter, Capral states:

The purpose of this letter is to advise of significant increases in the international price for aluminium which is the primary factor in determining the cost of aluminium products in Australia.

The subject importers agree with Capral’s views on the way in which prices are set in the Australian market and the importance of the LME aluminium price on selling prices of aluminium extruded products.

To that end, the subject importers submit that following the imposition of duties, they have increased their prices commensurate with the total amount of duty payable, by ensuring that the “spread” component of their selling prices incorporates the additional cost of the interim dumping and countervailing duties. The existence of any losses during the inquiry period by the subject importers are therefore a function of other external factors, with the primary being the “depressed pricing”⁵ of the LME aluminium price.

The Commission has been provided with LME prices from January 2007 to April 2014 and it is noted that the data is consistent with the charted prices in Capral’s letter of 12 September 2014. Given that the LME price for aluminium is the primary factor that determines the selling price for aluminium extrusions in the Australian market, it is evident then that the depressed LME aluminium price has been the primary driver of the reduced selling prices of aluminium extrusions by the subject importers. These reductions have been consistent with reductions in selling prices by Capral and other competitors in the market.

The other significant issue impacting on the subject importers selling prices has been the impact of the unlawful imposition of ascertained export prices and interim duties by different finishes for a period over two years. The subject importers have outlined their views on the impact of the differentiated measures on their operations in an earlier submission and do not propose to repeat them here. However, in terms of the “LME plus

³ Capral Submission on USP & NIP; February 2010; page 3

⁴ Capral letter; “Re: Aluminium Price Increase – Q4 2014”; 12 September 2014

⁵ Ibid.

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spread” pricing formula, the differentiated measures by finish resulted in the inclusion of an incorrect amount for duties payable into the “spread” component of the subject importers’ market selling prices.

3. Revised dumping margin methodology

The Commission’s issues paper expresses the view that goods sold at a loss in accordance with subsection 269TAA(2) will not be treated as arms length transactions. The subject importers submit that irrespective of whether sales at a loss by importers are found to have occurred, other relevant matters and information presented to the inquiry clearly indicate that there are no reasonable grounds on which the Minister could exercise his discretion under subsection 269TAA(2) to treat the import transactions as not being at arms length.

Yours sincerely

John Bracic