19 January 2015

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

Review 248: Zhongya REQ and Darley importer visit report

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. We specifically refer to the response to the exporter questionnaire (REQ) provided by Guangdong Zhongya Aluminium Co., Ltd. (Zhongya). In making the following comments in relation to the REQ we have also considered the Darley Aluminium Trading Pty Ltd (Darley) importer visit report.

Export price

We note the recommendation in the Darley visit report that the import transactions between Darley and Zhongya (the exporter) are arms length in terms of s.269TAA.[1] However, it is clear from reading Zhongya's REQ that Darley does not purchase the goods from Zhongya, but instead purchases them from an unnamed trader who appears to be Zhongya's parent company.[2] In such a case there are no import transactions between Darley and Zhongya on which to base an arms length finding.

In any case, we note the ultimate recommendation of the Darley visit report is to establish export price under s.269TAB(1)(c) of the Act using the deductive export price method, starting with the invoiced CIF price from the unnamed trader to Darley. It is therefore imperative that the following elements of export price are adequately verified during the visit to Zhongya:

- selling prices from Zhongya to the trader
- ocean freight and marine insurance, and
- all relevant SG&A costs incurred by the trader and an amount for the trader's profit.

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[1] Darley importer visit report, p.18

[2] We assume the trader/parent company is Hong Kong based Zhongya Shaped Aluminium (HK) Holding Ltd, which is described in the US aluminium extrusions case.

Countervailable subsidies

In the original investigation Zhongya was found only to have received three countervailable subsidies as follows:

- Program 10: Reduced tax rate for foreign invested enterprises (FIEs)
- Program 13: Tariff and VAT exemption for imported equipment, and
- Program 15: Primary aluminium for less than adequate remuneration.

In this review Zhongya has claimed that it is no longer in receipt of benefits under Program 10 or Program 15, but that it has received benefits under two of the additional programs being examined as part of this review. However, there are a number of other programs that were found to apply to Zhongya by the US authorities that are not disclosed in Zhongya's REQ and require further investigation as detailed below.

Part I-1 Preferential income tax programs

Zhongya is already subject to countervailing duty under one of these programs (Program 10),[3] however Zhongya claims that it did not receive a benefit under any of the listed programs during the review period, including Program 10. Program 10 was found to have provided a benefit to Zhongya during the original investigation period and the US also found Zhongya to have benefited from this program.[4] We note that Program 10 has a limited life of five years and it is possible that this period has expired, however the Commission should ensure that Zhongya in fact paid income tax at the standard rate of 25% during the review period and did not receive a benefit under Program 10 or any other preferential income tax program.

Part I-2 Grants and preferential policies

Zhongya has admitted to receiving benefits under two of the listed programs,[5] however the US authorities found Zhongya to have received a benefit under three of the other listed programs that Zhongya has not admitted to in its REQ.[6]

Program 2: Grants for well-known trademarks and famous brands of China

The US found Zhongya to have received a benefit under this program during 2009.[7] In that case Zhongya reported receiving a grant under the Famous Brand program from the local government. It is reasonable to assume that Zhongya continues to be recognised as a 'famous brand of China' and the Commission must therefore ensure that Zhongya did not receive a benefit under this program during the review period.

[3] Customs and Border Protection 'Review of preliminary dumping and subsidy margins for exporters selected for further investigation' dated 21 January 2010 refers.

[4] Referred to in the US case as 'Two free, three half income tax exemptions for FIEs".

[5] Program 56 and Program 58.

[6] Program 2, Program 49 and Program 50.

[7] The period of investigation in the US case was 1 January to 31 December 2009.

Program 49: Exemption from city construction tax and education tax for FIEs

The US found Zhongya to have received a benefit under this program during 2009. In that case Zhongya reported that a 7% construction tax and a 4% education tax would have been payable in the absence of the program. The US found that as a result of the program Zhongya paid no construction tax and only 1% education tax. The Commission should ensure that Zhongya in fact paid construction and education taxes at 7% and 4% respectively and did not receive a benefit under this program.

Program 50: Refund of land use for firms located in the HDTDZ

The US found Zhongya to have received a benefit under this program during 2009. In that case Zhongya reported receiving a one-time refund of land-use taxes paid to the Zhaoqing Hi-tech Development Zone (ZHTDZ) local authority. Zhongya continues to be located in the ZHTDZ, therefore the Commission should ensure that Zhongya did not receive a benefit under this program during the review period.

Program 56: PGOG special fund for energy saving technology reform

Zhongya reports receipt of a benefit under this program during the review period. The information provided in the REQ confirms that this program is a countervailable subsidy, as all of the required elements are satisfied:

- *Financial contribution* – Direct transfer of funds by the GOC.
- *Benefit conferred* – Funds provided to the amount of the assistance.
- *Specificity* – Limited to particular entities that meet the (undisclosed) eligibility criteria related to energy saving technology reform.

Program 58: Development assistance grants from the ZHTDZ

Zhongya reports receipt of a benefit under this program during the review period. The information provided in the REQ confirms that this program is a countervailable subsidy, as all of the required elements are satisfied:

- *Financial contribution* – Direct transfer of funds by the GOC.
- *Benefit conferred* – Funds provided to the amount of the assistance.
- *Specificity* – Limited to particular entities located in the ZHTDZ.

Part I-3 Tariff and VAT exemptions on imported materials and equipment

Zhongya is already subject to countervailing duty under Program 13 in relation to its imported equipment[8] and should continue to do so as long as imported equipment is continuing to be used to produce the goods exported to Australia.

[8] Customs and Border Protection 'Review of preliminary dumping and subsidy margins for exporters selected for further investigation' dated 21 January 2010 refers.

Part I-4 Aluminium provided by government at less than fair market value

Zhongya is already subject to countervailing duty under Program 15 in relation to primary aluminium purchased from SOEs during the original investigation period,[9] however Zhongya now claims that it did not purchase any primary aluminium from SOEs during the review period. It is imperative that the Commission fully verify this claim.

Part I-6 Preferential loans

Zhongya claims it has not received any benefits under this program on the basis that its loans were all at fair market conditions. In support of its position Zhongya notes that the interest rates of foreign invested banks in China are almost the same as those of state owned and controlled banks (SOCBs) and that the interest rates of overseas banks in China are generally lower. However, the US has consistently found that no market determined interest rates exist in China, which precludes the use of an in-country benchmark to determine whether loans from SOCBs confer a benefit.[10]

Part I-7 Provision of goods programs

Zhongya claims it did not receive a benefit under any of these programs. However, it is up to the Commission to determine whether the provision of land use rights, electricity, water, natural gas or heavy oil to Zhongya meets the definition of a countervailable subsidy and whether any benefit was conferred to Zhongya, based on information gathered from multiple sources.

In relation to Program 45, we note that the US found Zhongya to have received land-use rights in the ZHTDZ for less than adequate remuneration, with a subsidy rate of almost 5%.[11] Zhongya continues to be located in the ZHTDZ, therefore it reasonable to assume that Zhongya continued to receive a benefit under this program during the review period.

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Director

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[9] ibid.

[10] Capral submission to this review dated 19 June 2014, p.2 refers (item 5 on EPR 248)

[11] ibid., p.4