



23 February 2015

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

## Review 248: Guang Ya exporter questionnaire response

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 Guang Ya Aluminium Industries Co., Ltd. (Guang Ya). In making the following comments in relation to the REQ we have also considered the fact that it does not appear that the purchaser of aluminium extrusions from Guang Ya in Australia, Trango Aluminium (Trango), has cooperated with this review.<sup>1</sup>

### Company structure and ownership

In its response to questions 5 and 14 of section A-3, Guang Ya has sought to keep its corporate group structure and details of related party transactions confidential. However in their 2011 countervailing investigation into aluminium extrusions from China, the United States (US) authorities also investigated four other members of the Guang Ya group:

- Foshan Guangcheng Aluminium Co., Ltd. (Guangcheng)
- Guang Ya Aluminium Industries Hong Kong (Guang Ya HK)
- Kong Ah International Company Limited (Kong Ah), and
- Yongji Guanghai Aluminium Industry Co., Ltd. (Guanghai).<sup>2</sup>

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<sup>1</sup> The website of Trango Aluminium names Guang Ya as Trango's supplier  
<http://www.trangoaluminium.com.au/trango-aluminium.htm#>

<sup>2</sup> 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 (*US Case*), p.2  
<http://enforcement.trade.gov/frn/summary/prc/2011-7926-1.pdf>

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Guangcheng is also a manufacturer of aluminium extrusions and the US authorities attributed subsidies received by Guang Ya and Guangcheng to the goods exported to the US because, in accordance with US regulation 19 CFR 351.525(b)(6)(ii), if two or more corporations with cross-ownership produce the goods, the authorities will attribute the subsidies received by either or both corporations to the goods produced by both corporations.<sup>3</sup>

Guanghai produces aluminium billet for Guang Ya and the US authorities also attributed subsidies received by Guanghai to the goods exported to the US because, in accordance with US regulation 19 CFR 351.525(b)(6)(iv), If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the authorities will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding sales between the two corporations).<sup>4</sup>

The Commission's Dumping and Subsidy Manual states that if a subsidiary company is under investigation and certain subsidies have also been received by related parties, some of that subsidy may be allocated to the subsidiary company where it relates to the goods. We submit that, similar to the treatment by the US, the Commission should investigate subsidies received by Guangcheng and Guanghai to determine whether those subsidies have also benefited the goods exported to Australia and attribute the subsidies to the goods as appropriate.

Unlike Guang Ya, Guangcheng is a foreign invested enterprise (FIE), and as such can qualify for a broad range of subsidies targeting foreign investment. Even if the Commission ultimately finds that subsidies received by Guangcheng have not benefited goods manufactured and exported to Australia by Guang Ya, it is imperative that, given the cross-ownership, the Commission is satisfied that all goods exported to Australia by Guang Ya are in fact manufactured by Guang Ya and not manufactured by Guangcheng. We further note that Guang Ya has provided the Commission with a copy of Guangcheng's business license<sup>5</sup> and we question why Guang Ya would have done this if Guangcheng is not involved in the manufacture or sale of the goods exported to Australia.

### Export price

As stated earlier, Trango, being the purchaser of aluminium extrusions from Guang Ya in Australia, does not appear to have cooperated with this review, therefore it is not possible for the Commission to assess whether the export sales from Guang Ya to Trango are arms length transactions. In such a case the Commission cannot use Guang Ya's selling price to Australia as the basis for export price under s.269TAB(1)(a). The Commission also does not have any information on Trango's selling prices in Australia on which to base a deductive export price under s.269TAB(1)(b) or s.269TAB(1)(c).

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<sup>3</sup> *ibid.*, p.4 and US Code of Federal Regulations <http://www.law.cornell.edu/cfr/text/19/351.525>

<sup>4</sup> *ibid.*

<sup>5</sup> Exhibit 21.H-1.1.E to the REQ

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In circumstances such as this, where sufficient information is not available to enable export price to be calculated under s.269TAB(1), the Commission has no option other than to determine export price under s.269TAB(3), having regard to all relevant information. We submit that the export price data submitted by Guang Ya is not reliable, because the Commission cannot be satisfied that it truly represents the price paid or payable for the goods in arms length transactions. We further submit that the most reliable data is the weighted average export prices of Kam Kiu, PanAsia and Zhongya, being the other cooperating exporters in this review.

### Cost to make and sell

We submit it is important that the following elements of the cost to make and sell (CTMS) the goods are adequately covered during the verification of Guang Ya's REQ to ensure all issues previously identified by Capral in relation to the CTMS aluminium extrusions in China can be addressed:

- verification of production records and wastage factors to ensure the metal cost per unit of output is reliable<sup>6</sup>
- verification that the powder coating costs attributed to the goods exported to Australia are specific to those goods and not an average of all powder coating costs<sup>7</sup>
- verification that the packaging costs attributed to the goods exported to Australia are specific to those goods and not an average of all packaging costs,<sup>8</sup> and
- investigation of the functions and accounts of related companies in the Guang Ya group to ensure all relevant costs are included in the CTMS.<sup>9</sup>

### Countervailable subsidies

Guang Ya was not investigated in the original investigation, however as discussed earlier, it was investigated by the US authorities in their investigation into aluminium extrusions exported to the US from China. In its REQ Guang Ya has admitted to receiving a benefit under five subsidy programs, however the US found that Guang Ya received benefits in relation to 17 subsidy programs. We make the following specific comments in relation to Guang Ya's REQ.

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<sup>6</sup> Capral submission on the primary aluminium benchmark dated 30 August 2015 refers.

<sup>7</sup> We understand that the powder coating required for goods exported to Australia may be of a different standard (and higher cost) to the powder coating for the domestic market. For example, the product brochure at Exhibit 4.A-3.11 highlights the variety of powder coating available.

<sup>8</sup> Despite Guang Ya's claim in response to questions E-1.4 and E-2.7 that packing is almost the same for domestic and export goods, it is common that there are different packing methods and costs associated with packing extrusions for domestic or export markets.

<sup>9</sup> Guang Ya states that it has no parent/holding company and therefore no management fees or corporate allocations, however there may be costs incurred by other companies in the Guang Ya group that are relevant to the CTMS the goods.

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### Part I-1 Preferential income tax programs

Guang Ya claims that it did not receive a benefit under any of the listed programs during the review period. The Commission should ensure that Guang Ya in fact paid income tax at the standard rate of 25% during the review period and did not receive a benefit under any of the preferential income tax programs.

We also note the US authorities found that Guangcheng:

- paid income tax at a reduced rate of 15% under a preferential tax program for FIEs recognised as high or new technology enterprises,<sup>10</sup> and
- received a tax offset under a Provincial Government of Guangdong tax offset for research and development program.<sup>11</sup>

As mentioned earlier, US authorities attributed the benefit received by Guangcheng under these programs to all goods produced by the group, including those produced by Guang Ya. We submit that the Commission should similarly attribute the benefits received under these programs to the goods exported to Australia.

### Part I-2 Grants and preferential policies

Guang Ya has reported receipt of benefits under four of the listed programs and an additional program during the review period,<sup>12</sup> however the US authorities found Guang Ya to have received a benefit under eight of the other listed programs that Guang Ya has not admitted to in its REQ.<sup>13</sup>

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

The US authorities found Guang Ya to have received a benefit under this program during 2009.<sup>14</sup> In that case Guang Ya reported receiving a grant under the Famous Brand program from the local government.<sup>15</sup> We note that Guang Ya's product brochure includes certifications for 'China Top Brands' and 'Guangdong Famous Trademark',<sup>16</sup> and it is reasonable to assume that Guang Ya continues to be recognised as a 'famous brand of China', which is the eligibility criteria for this program. The Commission must therefore ensure that Guang Ya did not receive a benefit under this program during the review period.

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<sup>10</sup> *US Case*, op. cit., p.21

<sup>11</sup> *ibid.*, p.30

<sup>12</sup> Programs 5, 7, 26, 56 and an 'insurance fee refund' program.

<sup>13</sup> Programs 2, 49, 51, 52, 53, 54, 55 and 57.

<sup>14</sup> The period of investigation in the US case was 1 January to 31 December 2009.

<sup>15</sup> *US Case*, op. cit., p.18

<sup>16</sup> Exhibit 4.A-3.11 to the REQ

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Program 5: Matching funds for international market development for SMEs

Program 7: Research and development (R&D) assistance grant

Program 26: Innovative experimental enterprise grant

Guang Ya reports receipt of a benefit under each of these programs during the review period. These programs were found to be countervailable subsidies during the original investigation and the information provided in the REQ confirms these findings.

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

The US authorities found Guangcheng to have received a benefit under this program during 2009. In that case Guangcheng 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 Guang Ya paid no construction tax and only 1% education tax.<sup>17</sup> The Commission should ensure that Guangcheng in fact paid construction and education taxes at the full official rate applicable for the review period, and therefore did not receive a benefit under this program.

As mentioned earlier, US authorities attributed the benefits received by Guangcheng to all goods produced by the group, including those produced by Guang Ya. We submit that the Commission should similarly attribute the benefits received under this program to the goods exported to Australia.

Program 51: Fund for SME bank-enterprise cooperation projects

The US authorities found Guang Ya to have received a benefit under this program during 2009. In that case Guang Ya reported receiving a grant under the program from the local government department.<sup>18</sup> It is reasonable to assume that Guang Ya continues to be recognised as one of 500 SMEs having the ‘greatest potential’ and the Commission must therefore ensure that Guang Ya did not receive a benefit under this program during the review period.

Program 52: Special fund for science and technology in Guangdong

The US authorities found Guang Ya to have received a benefit under this program during 2009. In that case Guang Ya reported receiving a grant under the program from the local government department.<sup>19</sup> It is reasonable to assume that Guang Ya continues to meet the criteria for this regional program and the Commission must therefore ensure that Guang Ya did not receive a benefit under this program during the review period.

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<sup>17</sup> *ibid.*, p.17

<sup>18</sup> *ibid.*, p.26

<sup>19</sup> *ibid.*

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### Program 53: Provincial fund for fiscal and technological innovation

The US authorities found Guangcheng to have received a benefit under this program during 2009. In that case Guangcheng reported receiving a grant under the program from the local government department.<sup>20</sup> It is reasonable to assume that Guangcheng continues to meet the criteria for this regional program and the Commission must therefore ensure that Guangcheng did not receive a benefit under this program during the review period.

As mentioned earlier, US authorities attributed the benefits received by Guangcheng to all goods produced by the group, including those produced by Guang Ya. We submit that the Commission should similarly attribute the benefits received under this program to the goods exported to Australia.

### Program 54: Provincial loan discount special fund for SMEs

The US authorities found Guangcheng to have received a benefit under this program during 2009. In that case Guangcheng reported receiving an interest subsidy grant under the program from the local government department.<sup>21</sup> It is reasonable to assume that Guangcheng continues to meet the criteria for this regional program and the Commission must therefore ensure that Guangcheng did not receive a benefit under this program during the review period.

As mentioned earlier, US authorities attributed the benefits received by Guangcheng to all goods produced by the group, including those produced by Guang Ya. We submit that the Commission should similarly attribute the benefits received under this program to the goods exported to Australia.

### Program 55: Export rebate for mechanic, electronic, high-tech products

The US authorities found Guangcheng to have received a benefit under this program during 2009. In that case Guangcheng reported receiving an export rebate grant under the program.<sup>22</sup> It is reasonable to assume that Guangcheng continues to meet the criteria for this export contingent program and the Commission must therefore ensure that Guangcheng did not receive a benefit under this program during the review period.

As mentioned earlier, US authorities attributed the benefits received by Guangcheng to all goods produced by the group, including those produced by Guang Ya. We submit that the Commission should similarly attribute the benefits received under this program to the goods exported to Australia.

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<sup>20</sup> *ibid.*, p.27

<sup>21</sup> *ibid.*, p.28

<sup>22</sup> *ibid.*

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### Program 56: PGOG special fund for energy saving technology reform

Guang Ya 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 adopt energy saving reforms after adopting new technology.

### Program 57: PGOG science and technology bureau project fund

The US authorities found Guang Ya to have received a benefit under this program during 2009. In that case Guang Ya reported receiving a grant under the program from the local government department.<sup>23</sup> It is reasonable to assume that Guang Ya continues to meet the criteria for this regional program and the Commission must therefore ensure that Guang Ya did not receive a benefit under this program during the review period.

### New program: Insurance fee refund

Guang Ya reports receipt of a benefit under this program during the review period. Limited information about the program is provided in the REQ, however it appears that the elements required for a countervailable subsidy are present:

- *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 have purchased export insurance and paid the insurance fee.

We submit that the Commission further investigate this program to ensure that the benefits received under the program are countervailable.

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

Guang Ya claims that it has not received any benefits under this program at all during the period from 2005 to 2014. This seems unlikely, as it is a commonly used program by all manufacturers in China and during the original investigation three of the four selected exporters were all found to have received benefits under this program.<sup>24</sup>

Guang Ya's own website claims that most of its more than 200 machines 'are from branded manufacturers around the globe'.<sup>25</sup> It is therefore likely that Guang Ya uses imported equipment to produce the goods exported to Australia.

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<sup>23</sup> *ibid.*, p.30

<sup>24</sup> Kam Kiu, Tai Ao and New Zhongya

<sup>25</sup> <http://en.guangyaal.com/About/Profile.aspx>

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The benefits received under this program are not merely realised at the time the equipment is imported, but are amortised over the expected useable life of the assets concerned.<sup>26</sup> The depreciation period for assets in the Australian aluminium extrusions industry is typically 15-20 years, therefore if any of Guang Ya's imported equipment is less than 20 years old it is highly likely that Guang Ya has received a benefit under this program during the review period.

The US authorities also found Guangcheng to have received a benefit under this program during 2009. In that case Guangcheng reported receiving VAT and tariff exemptions for equipment imported prior to 2009.<sup>27</sup> Given that benefits under this program are allocated over the useful life of the imported assets to which they relate, it is reasonable to assume that Guangcheng continues to receive benefits under this program and the Commission must therefore ensure that Guangcheng did not receive a benefit during the review period.

As mentioned earlier, US authorities attributed the benefits received by Guangcheng to all goods produced by the group, including those produced by Guang Ya. We submit that the Commission should similarly attribute the benefits received under this program to the goods exported to Australia.

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

All exporters are currently subject to countervailing duty under Program 15 in relation to primary aluminium purchased from SOEs during the original investigation period. It is imperative that the Commission fully verify Guang Ya's purchases of primary aluminium during the review period. We also note that the US authorities countervailed Guang Ya under this program.<sup>28</sup>

### Part I-6 Preferential loans

Guang Ya appears to have provided no information in response to the questions under this part, on the basis that it claims that no loans were provided to Guang Ya at less than the market rate. However, it is up to the Commission to determine whether any loans provided to Guang Ya meet the definition of a countervailable subsidy and whether any benefit was conferred to Guang Ya, based on information gathered from multiple sources. It is therefore imperative that Guang Ya provide detailed information on all of its loans since 1 January 2005 and that the Commission verifies this information.

The US authorities countervailed Guang Ya under this program.<sup>29</sup> We also note that Guang Ya's income statement includes financial expenses of 4.2% of sales.<sup>30</sup>

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<sup>26</sup> Report of the Minister No. 148, p.60 at 7.4.4

<sup>27</sup> *US Case*, op. cit., p.20

<sup>28</sup> *ibid.*, pp.32-36

<sup>29</sup> *ibid.*, pp.22-25

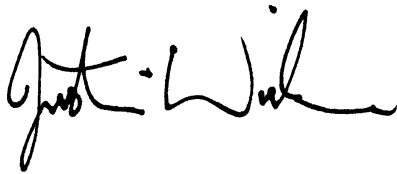
<sup>30</sup> Exhibit 7.A-5 to the REQ



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### Part I-7 Provision of goods programs

Guang Ya claims that it did not receive any 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 Guang Ya meets the definition of a countervailable subsidy and whether any benefit was conferred to Guang Ya, based on information gathered from multiple sources. It is therefore imperative that Guang Ya provide detailed information on all of its supplies of these goods and other relevant information including the area of land occupied by Guang Ya<sup>31</sup> and utilities usage, and that the Commission verifies this information.

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

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<sup>31</sup> Guang Ya's product brochure at Exhibit 4.A-3.11 states that Guang Ya occupies 260,000 sqm, however it is not clear whether this refers to building area or total land area.