



Australian Government
Department of Industry,
Innovation and Science

Anti-Dumping
Commission

Anti-Dumping Commission
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Mr. Scott Ellis
Anti-Dumping Review Panel
C/- ADRP Secretariat, Legal Services Branch
Department of Industry, Innovation and Science
10 Binara Street
CANBERRA CITY ACT 2601

**ANTI-DUMPING REVIEW PANEL – REVIEW NO. 69
ALUMINIUM EXTRUSIONS FROM CHINA**

Dear Scott

I write with regard to the notice published under section 269ZZI of the *Customs Act 1901* (the Act)¹ on the Anti-Dumping Review Panel (ADRP) website on 1 February 2018. The notice advises of your intention to review the decision (the Reviewable Decision) by the then Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary) to publish a notice under subsection 269ZDB(1)(a) in relation to aluminium extrusions exported to Australia from the People's Republic of China (China) by Press Metal International Ltd (PMI).

The findings relating to the Reviewable Decisions were published on the Anti-Dumping Commission (the Commission) website on 10 November 2017.²

The following submission at Appendix A is for your consideration.

I and the Commission remain at your disposal to assist in this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dale Seymour'.

Dale Seymour
Commissioner, Anti-Dumping Commission
26 February 2018

¹ All legislative references are to the *Customs Act 1901* unless otherwise specified.

² Anti-Dumping Notice No. 2017/138

Ground 1: PMI should have been a selected exporter under subsection 269TACAA

I will address this ground in two parts. The first part deals with subsection 269TACAA(1), which provides:

(1) *If:*

(a) *one of the following applies:*

(i) *there is an investigation under this Part in relation to whether a dumping duty notice or countervailing duty notice should be published;*

(ii) *there is a review under Division 5 in relation to the publication of a dumping duty notice or countervailing duty notice;*

(iii) *there is an inquiry under Division 6A in relation to the continuation of a dumping duty notice or countervailing duty notice; and*

(b) *the number of exporters from a particular country of export in relation to the investigation, review or inquiry is so large that it is not practicable to examine the exports of all of those exporters;*

then the investigation, review or inquiry may be carried out, and findings may be made, on the basis of information obtained from an examination of a selected number of those exporters:

(c) *who constitute a statistically valid sample of those exporters; or*

(d) *who are responsible for the largest volume of exports to Australia that can reasonably be examined (emphasis added).*

Below is a table outlining the largest exporters by volume during the review period (1 January 2016 to 31 December 2016). These volumes are based on best available information, including verified data and import statistics from the Australian Border Force import database.

| Number | Exporter | Volume (kg) |
|--------|-------------|-------------|
| 1 | [REDACTED] | [REDACTED] |
| 2 | [REDACTED] | [REDACTED] |
| 3 | [REDACTED] | [REDACTED] |
| 4 | [REDACTED] | [REDACTED] |
| 5 | [REDACTED] | [REDACTED] |
| 6 | [REDACTED] | [REDACTED] |
| 7 | [REDACTED] | [REDACTED] |
| 8 | [REDACTED] | [REDACTED] |
| 9 | [REDACTED] | [REDACTED] |
| 10 | [REDACTED] | [REDACTED] |
| 11 | [REDACTED] | [REDACTED] |
| 12 | [REDACTED] | [REDACTED] |
| 13 | [REDACTED] | [REDACTED] |
| 14 | [REDACTED] | [REDACTED] |
| 15 | [REDACTED] | [REDACTED] |
| 16 | [REDACTED] | [REDACTED] |
| 17 | PRESS METAL | [REDACTED] |

Table 1: Largest exporters by volume during the review period

The exporters highlighted in orange are the exporters I selected for examination in accordance with subsection 269TACAA(1)(d), based on volume. As table 1 shows, PMI was not an exporter responsible for a large volume of exports, which PMI confirms in its application.

At a conference with the ADRP on 22 January 2018, PMI indicated that it was open for me to select it for examination under subsection 269TACAA(1). However, in order for PMI to be selected for examination under subsection 269TACAA(1), I would have been required to select a total of 17 exporters for examination, which is not practicable, and would have unreasonably delayed the timeliness of the review. This is contrary with the intent of the sampling provisions.

The second part of my submission on this ground deals with subsection 269TACAA(2), which states:

(2) If information is submitted by an exporter not initially selected under subsection (1) for the purposes of an investigation, review or inquiry, the investigation, review or inquiry must extend to that exporter unless to so extend it would prevent its timely completion.

Whilst this subsection provides that a review must extend to an exporter who has submitted information despite not being selected by me (such as PMI), consideration must be given to whether extending the review would prevent its timely completion.

NON-CONFIDENTIAL

In a submission to review 392, PMI referred to two other exporters to whom I did extend the review to under subsection 269TACAA(2), Jiawei and Goomax. I addressed PMI's submission in Report No. 392 (REP 392) at sections 4.3.1 and 4.3.4.

In addition, at section 4.2.2 of REP 392, I outlined that PMI's circumstances were different to Jiawei and Goomax. In relation to Jiawei, I had already examined data relating to nine months of the 12 months review period. In relation to Goomax, I had already examined data relating to the entire review period. This examination occurred in two completed accelerated reviews (numbers 387 and 399). Both of these accelerated reviews took 100 days to complete, and given the time previously invested, meant that extending review 392 to Jiawei and Goomax was straightforward, e.g. it did not prevent the timely completion of review 392. In contrast, information submitted by PMI to review 392 was entirely unverified and verifying this information would have prevented the timely completion of the review.

In a submission to the ADRP dated 5 February 2018, PMI indicate that it should have been preferred over Jiawei and Goomax due to the fact that it had some exports during the review period, whereas Jiawei and Goomax did not. I do not consider this a relevant consideration. There is no requirement for the extension of a review to an exporter under subsection 269TACAA(2) to be decided based on volume. In its submission, PMI quote section 2.6 of REP 392 to support its claims. However that section of REP 392 was in relation to my decision to select entities for examination under subsection 269TACAA(1) to which volume is a mandatory consideration, and is therefore has been taken out of context.

In its submission to the ADRP PMI also consider that the Commission could have conserved resources by verifying PMI's data in different ways. The Commission makes decisions on how to verify interested parties' data based on risk. Whilst the Commission elects to verify data in a number of different ways, including on-site or off-site verification, any verification process is time consuming and resource intensive, but is necessary to ensure that my decisions are rigorous and that the calculations of dumping and subsidy margins are evidence based.

I cannot predict exactly how long it would have taken to verify PMI's data.³ However it is noted that, for this review, the Commission committed multiple resources to verify the largest exporters on-site in China. This was a considerable task and required an extension of 45 days to the 155 day legislated period to conduct review 392. To include the verification of PMI's data, would have further delayed the timeliness of the review, and required a reallocation of resources dedicated to other matters. For this reason, I elected not to extend the review to include PMI because it would prevent the timely completion of the review.

³ For additional background regarding verification timeframes, I refer you to statistics published at www.adcommission.gov.au

Ground 2: The Minister should not have applied the residual exporter dumping and subsidy margins to PMI but should have ascertained individual dumping and subsidy margins for PMI with an ascertained export floor price.

For the reasons outlined above at ground 1, I consider that PMI was correctly treated as a residual exporter. I have not chosen to address ground 2 in much detail, other than to comment on PMI's preference for a floor price (duty collection method).

PMI state in its application at point 4, that the adoption of a floor price is the "...Commission's practice where an exporter has zero or limited review period shipments – even where other than a new exporter-as in PMI's Review 304 result where PMI had no shipments". This is a misrepresentation of the Commission's policy. Where an exporter has limited shipments, it may still be possible to use these shipments to determine the export price under subsection 269TAB(1) provided the information is sufficient. It does not necessarily follow that PMI would have received a floor price if individually examined.

Even where subsection 269TAB(1) is not available, the Commission can determine an export price under subsection 269TAB(3) having regard to all relevant information. This is a case by case assessment.

In the past, some zero or low volume exporters have had reviews that have resulted in a floor price. For example in review 304 at section 4.2 it was found that:

"...the Commission considers it appropriate to determine an export price, for the purposes of this review, under subsection 269TAB(3) having regard to all relevant information. Specifically, the Commission considers it appropriate to determine the ascertained export price to be the same amount as that determined to be the normal value for the purposes of this review. This price is at free on board commercial terms."

However, review 304 can be distinguished on its facts. Firstly review 304 was a single exporter review where information regarding export prices to Australia for the relevant review period was limited. PMI did not export during the review period applicable to review 304 and information from other exporters was not available. Conversely, PMI did export during the review period for review 392 and the Commission separately had other information available to it, including most relevantly, the verified information relating to the largest volume of exports to Australia from selected exporters.

Other comments

- PMI's submission to the ADRP at point 8 refers to confidential calculations which are not "relevant information" as defined by subsection 269ZZK(6). They should be disregarded, and in any event they are not verified or relevant to the application of subsection 269TACAA in review 392.
- PMI refers to past matters involving it and its related parties, but these are also irrelevant to the application of subsection 269TACAA in review 392, including that they relate to completely different circumstances including different periods of review, different investigated countries etc.

NON-CONFIDENTIAL

- PMI at point 14 of its submission to the ADRP claims that it should have been preferred for examination over the selected mills because certain selected exporters had their export prices determined differently. This is an irrelevant consideration in relation to the application of the subsection 269TACAA(1), which as outlined previously, in relation to the exporters I selected was based on volume. In any event, the export price provisions operate in a hierarchy and are all capable of producing arms length outcomes. It is not correct to assume, as PMI seem to do in its application, that certain export price provisions lead to inappropriate outcomes.