



30 November 2023

By Email

Mr Andrew Stoler
Panel Member
Anti-Dumping Review Panel
Department of Industry and Science
Canberra City ACT 2601

Dear Mr. Stoler,

Re: Aluminium Extrusions exported from the People's Republic of China – Review 609

I refer to your letter of 27 November 2023 regarding the application made by Criterion Industries Pty Ltd (**Criterion**) for a review of the decision by the Minister for Industry and Science made under subsection 269ZDB(1) of the *Customs Act 1901 (Act)* in respect of certain aluminium extrusions exported from the People's Republic of China (**China**), the reviewable decision.

In response to my query of 28 November 2023 concerning that my client, Criterion, had not been provided with the calculations that you were requesting by the Anti-Dumping Commission in Review 609 as it was not its practice to do so, you have advised that you understand my client is unable to provide the information requested for the reasons given but that it should still proceed to respond to the remainder of the s.269ZZG notice.

Accordingly, my client's response to your remaining request, being clarification of my client's position regarding the non-injurious price, is set out below.

Ground Three

Regarding the determination of a non-injurious price applying to imports by Criterion, there was no such determination of a non-injurious price in the reviewable decision. It is noted, however, that the Anti-Dumping Commission did calculate a so-called non-injurious price, but it was not provided to Criterion. Presumably this was because a non-injurious price was not being recommended. It would be Criterion's contention that so-called non-injurious price is not a 'price', let alone the minimum price necessary to prevent material injury caused by dumping given the manner of its calculation (i.e., cost to make and sell plus an amount for profit).

In any event, regarding your query as to whether Criterion is contesting the way the Minister applied the lesser duty rule or is the applicant concerned about the ascertainment of non-injurious price, it is both. That is, Criterion contends that, in the circumstances, a non-injurious price should have been

determined and the amount of that non-injurious price should have been as set out in its application.

Specifically, Criterion's contention is that the Australian industry was not incurring injury let alone injury caused by exports from China whether at dumped or un-dumped export prices. Hence there was no injury that required anti-dumping measures (i.e., dumping duties) to remove or prevent. In such circumstances and in the absence of the revocation of the anti-dumping measures, the required rate of dumping duty must be 'zero'. In the absence of material injury caused by dumping of the subject exports, the rate of dumping duty can only be 'zero'.

By analogy, if there is no physical wound (i.e., injury), then no bandage is required, nor on the off chance of such an injury. Similarly, if there is no material injury being caused by dumping, then dumping duties is not required.

'Zero' as a rate of dumping duty is equivalent to 'Free' as a rate of customs duty, which is a rate of customs duty only that no customs duty is payable as a result. Similarly, 'zero' is a rate of dumping duty only that no dumping duty is payable, and no dumping duty is payable because it is unnecessary to increase the export price from a dumped export price to an un-dumped export price to prevent material injury being caused by the dumped export price.

For this to be a non-injurious price, as opposed to a rate of duty, it would be a non-injurious price of \$0. The rationale for this is that there is no minimum price necessary to prevent material injury caused by dumping because no material injury is being caused by dumping. Anything greater than \$0 as a non-injurious price would suggest that exports at an export price less than that non-injurious price would cause material injury because of dumping and there is no evidence to that effect. It would be merely speculative.

This is, of course, materially different from the reviewable decision that did not include a determination of a non-injurious price. Rather, it maintained the anti-dumping duties at the new, varied rate of dumping duty, being a 'floor price' equal to the ascertained export price of [REDACTED]/Kg (see **Attachment A**) so that actual export prices of shipments below that 'floor price' attract dumping duty. The difference between a 'zero' rate of dumping duty, that is, a non-injurious price of \$0 and a duty liability for exports at export prices less than the floor price of [REDACTED]/Kg is material.

It is noted that in Criterion's application it was suggested, by way of alternative to a 'zero' rate, that the minimum price necessary to prevent material injury or its recurrence must be a minimum floor price of some amount and that the starting point for that amount must be the lowest export price of any exports from any country by any exporter. If no exports are causing injury, then the lowest export price must be the minimum price necessary to prevent material injury as it is not causing injury. The Anti-Dumping Commission would have that export price from the import data it obtains from Australian Border Force.

Hence Criterion's contention that a non-injurious price should have been determined and that non-injurious price should be \$0 or, in the alternative, the lowest export price of imports into Australia from any country. Either way, it would be less than the 'floor price' of [REDACTED]/Kg

If you have any questions or require any further information, please do not hesitate to contact me.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Andrew Percival', with a large, stylized initial 'A' at the start.

Andrew Percival

Principal

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Attachment A

Ascertained Export Price for Residual Exporters

[Confidential extract detailing ascertained export price deleted]

Source: Anti-Dumping Commission