Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 6 July 2021 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party[2] may lodge an application to the ADRP for review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time
Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences
The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information
You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s 269ZZG(1)). See the ADRP website for more information.

Withdrawal
You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

Contact
If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

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[1] By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: **Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd**
Address: **Shiqiao Industrict, Dajiang County, Taishan City, Guangdong, People's Republic of China**
Type of entity (trade union, corporation, government etc.): **Corporation**

2. Contact person for applicant

Full name: **Li Quan Lei**
Position: **Vice-President**
Email address: lilei@kamkiu.com
Telephone number: **+86 139 2905 3030**

3. Set out the basis on which the applicant considers it is an interested party:

Applicant is an 'interested party' because it is an importer of aluminium extrusion products from the People's Republic of China to which the anti-dumping measures the subject of Review 609 apply.

4. Is the applicant represented?

Yes ☒ **No** ☐

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.*

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

☐Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐Subsection 269TL(1) – decision of the Minister not to publish duty notice

☒Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☐Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed**.

6. Provide a full description of the goods which were the subject of the reviewable decision:

Aluminium extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by The Aluminium Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness or diameter greater than 0.5mm, with a maximum weight per metre of 27 kilograms and a profile or cross-section which fits within a circle having a diameter of 421mm.

7. Provide the tariff classifications/statistical codes of the imported goods:

Tariff Heading & Statistical Code	Description
7604.10.00 06	non alloyed aluminium bars, rods and profiles
7604.21.00 07	aluminium alloy hollow angles and other shapes
7604.21.00 08	aluminium alloy hollow profiles
7604.29.00 09	aluminium alloy non hollow angles and other shapes
7604.29.00 10	aluminium alloy non hollow profiles
7608.10.00 09	non alloyed aluminium tubes and pipes
7608.20.00 10	aluminium alloy tubes and pipes

7610.10.00 12	doors, windows and their frames and thresholds for doors
7610.90.00 13	other

8. **Anti-Dumping Notice details:**

Anti-Dumping Notice (ADN) number: **ADN No.2023/051**
Date ADN was published: **22 September 2023**

Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be highlighted in yellow, and the document marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☐

9. **Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:**

Please see Attachment A for each of the grounds on which the Applicant believes that the reviewable decision is not the correct or preferable decision.

10. **Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:**

Please see Attachment A for what, in the Applicant's opinion, is the correct or preferable decision resulting from each of the grounds set out in the responses to Question 9.

11. **Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:**

Please see Attachment A as to how each of the grounds set out in response to Question 9 support the making of the proposed correct or preferable decision in relation to each of those grounds on which it is believed the reviewable decision is not the correct or preferebale decision.

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

The proposed decisions provided in response to Question 10 are materially different from the reviewable decision for the reasons set out in Attachment A.

13. Please list all attachments provided in support of this application:

The following documents are attached to this application:

1. Attachament A to this Application
2. Anti-Dumping Notice ADN No.2023/051

PART D: DECLARATION

The applicant/the applicant's authorised representative *[delete inapplicable]* declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:

Name: **Li Quan Lei**

Position: **Vice-President**

Organisation: **Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd**

Date: 23/10/2023

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

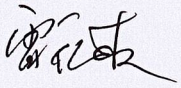
Provide details of the applicant's authorised representative:

Full name of representative: **Andrew Percival**
Organisation: **Percival Legal**
Address: **N/A**
Email address: **andrew.percival@percivallegal.com.au**
Telephone number: **0425 221 036**

Representative's authority to act

A separate letter of authority may be attached in lieu of the applicant signing this section

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature: 

(Applicant's authorised officer)

Name: **Li Quan Lei**

Position: **: Vice-President**

Organisation: **Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd**

Date: 23/10/2023

Australian Government
Department of Industry, Science and Resources

Anti-Dumping Commission

ANTI-DUMPING NOTICE NO 2023/051

Aluminium Extrusions

Exported to Australia from the People's Republic of China

Findings of Review No 609 into Anti-Dumping Measures

Notice under section 269ZDB(1) of the Customs Act 1901 and sections 8 and 10 of the Customs Tariff (Anti-Dumping) Act 1975

The Commissioner of the Anti-Dumping Commission (**the Commissioner**) has completed a review, which commenced on 8 August 2022, of the anti-dumping measures[1] applying to aluminium extrusions (**the goods**) exported to Australia from the People's Republic of China (**China**).[2]

The Commissioner's recommendations resulting from that review, reasons for the recommendations and material findings of fact and law in relation to the review are contained in *Anti-Dumping Commission Report No 609* (**REP 609**).

I, ED HUSIC, the Minister for Industry and Science, have considered REP 609 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts or law, set out in REP 609.

Under section 269ZDB(1)(a)(iii) of the *Customs Act 1901* (**the Act**), I declare that, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975* (**Dumping Duty Act**), the dumping duty notice and the countervailing duty notice applying to the goods exported to Australia from China:

- with effect from the date of publication of this notice, are taken to have effect as if different variable factors had been fixed relevant to the determination of duty for particular exporters, namely all exporters except Qingyuan City Huanan Copper & Aluminum Co., Ltd (**Qingyuan**), Foshan Lvqiang Metal Product Co., Ltd. (**Foshan Lvqiang**), Antai Technology Co., Ltd (**Antai**) and Qingyuan XinYueYa Aluminum Industry Co., Ltd (**XinYueYa**).[3]

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[1] The anti-dumping measures are in the form of a dumping duty notice and a countervailing duty notice.

[2] Exports by Guangdong Jiangsheng Aluminium Co., Ltd and Guangdong Zhongya Aluminium Company Limited were not covered by this review, as the anti-dumping measures do not apply to these entities. Accordingly, this notice does not apply to these entities.

[3] I have accepted the Commissioner's recommendation in REP 609 not to alter the variable factors for Antai and XinYueYa. My declarations and determinations in this notice do not apply to Antai and XinYueYa. I

- with effect from the date of publication of *Statement of Essential Facts No 609*, being 8 June 2023, are taken to have effect as if different variable factors had been fixed relevant to the determination of duty for particular exporters, namely Qingyuan and Foshan Lvqiang.

Interim dumping and countervailing duty

I determine that in accordance with sections 8(5) and 8(5BB) of the Dumping Duty Act and the *Customs Tariff (Anti-Dumping) Regulation 2013* (**the Regulation**), the amount of interim dumping duty (**IDD**) payable on goods the subject of the dumping duty notice is an amount worked out in accordance with the following methods:

- for Goomax Metal Co., Ltd Fujian (**Goomax**), Guangdong Jinxiecheng Al Manufacturing Co., Ltd (**Jinxiecheng**), Guangdong Xingfa Aluminium Co., Ltd (**Xingfa**) and exporters categorised as 'residual exporters'[4] – the floor price duty method as specified in section 5(4) of the Regulation, and
- for Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd (**Kam Kiu**) and exporters categorised as 'uncooperative exporters', the combination of fixed and variable duty method as specified in sections 5(2) and 5(3) of the Regulation.

The amount of interim countervailing duty (**ICD**) payable on goods the subject of the countervailing duty notice in respect of all exporters will continue to be ascertained as a proportion of the export price of those particular goods.

Consideration of the lesser duty rule

In relation to Goomax, Jinxiecheng, Xingfa and Kam Kiu, in accordance with sections 8(5BAAA)(a) and 10(3DA)(a) of the Dumping Duty Act, I have not had regard to the desirability of fixing a lesser amount of duty, due to the situation in the market in the country of export.

In relation to those exporters categorised as 'residual exporters', 'uncooperative exporters' and 'non-cooperative entities', pursuant to section 8(5BA) and 10(3D) of the Dumping Duty Act, I have had regard to the desirability of specifying a method such that the sum of the ascertained export price, IDD and ICD does not exceed the non-injurious price of the goods. I have determined that it is not desirable to specify such a method, for the reasons the Commissioner recommended in REP 609.

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recently altered the dumping duty notice and countervailing duty notice to have effect as if different variable factors had been fixed for Antai and XinYueYa following accelerated reviews AR 618 and AR 619. I accepted the Commissioner's recommendations in REP 618 on 11 July 2023 (see ADN 2023/037) and in REP 619 on 31 July 2023 (see ADN 2023/039). The new variable factors for Antai were declared to have effect from 3 March 2023 and for XinYueYa from 24 March 2023.

[4] The residual exporters are listed at chapter 4 of REP 609.

Effective duties

The dumping and subsidy margins, the effective fixed rates of duty, and the duty methods are set out in the following table.

Exporter	Dumping margin	Subsidy margin	Effective fixed rate of ICD and IDD[5]	Duty method
Goomax	-7.5%	0.7%	0.7%	Fixed rate of ICD. Floor price duty method: Variable component of IDD equal to the amount, if any, by which the actual export price is below the ascertained normal value.
Jinxiecheng	-7.7%	0.0%	0.0%	
Xingfa	-1.8%	0.3%	0.3%	
Residual exporters	-1.1%	0.5%	0.5%	
Antai	-1.6%	2.1%	2.1%	
XinYueYa[6]	NA	0.2%	0.2%	
Kam Kiu	37.1%	2.0%	38.5%	Fixed rate of ICD. Combination of fixed and variable duty method, consisting of a fixed rate of IDD, plus a variable component of IDD equal to the amount, if any, by which the actual export price is below the ascertained export price.
Uncooperative exporters and non-cooperative entities[7]	37.1%	10.1%	42.9%	

Table 1: Summary of dumping and subsidy margins, effective fixed rates of duty and duty methods

The actual duty liability may be higher than the effective rate of duty due to several factors. Affected parties should contact the commission on 132 846 or +61 2 6213 6000 or at clientsupport@adcommission.gov.au for further information regarding the actual duty liability calculation in their particular circumstance.

To preserve confidentiality, details of the revised variable factors such as ascertained export price, ascertained normal value and amount of countervailable subsidy received will not be published.

Review of this decision

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au), in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

REP 609 has been placed on the public record, available at www.adcommission.gov.au.

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[5] The sum of the IDD and ICD may not equal the total effective fixed rate of IDD and ICD. This is because certain subsidies affect both the IDD and ICD. The Anti-Dumping Commission's (commission) practice is to back out such subsidies to avoid double counting.

[6] Antai and XinYueYa's variable factors were not altered in this review; however, they have been provided in this table for completeness. Refer to chapter 4.3.4 of REP 609 and ***Anti-Dumping Commission Report No 618*** and ***Anti-Dumping Commission Report No 619*** for further details about Antai and XinYueYa.

[7] Refer to chapter 4.3.3 for further details about Qingyuan and Foshan Lvqiang.

REP 609 has been placed on the public record, available at www.adcommission.gov.au.

Enquiries about this notice may be directed to the Case Manager by phone on +61 3 8539 2470 or by email investigations3@adcommission.gov.au

Dated this 20th day of September 2023.

ED HUSIC
Minister for Industry and Science

Attachment A

Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd

Application for a Review of a Decision by the Minister in Review 609
Review of the anti-dumping measures applying to exports of aluminium extrusions exported from the People's Republic of China

Introduction

It is contended by the Applicant that the reviewable decision is not the correct or preferable decision on each of the separate grounds set out in Pars A, B and C of this Attachment, Those Parts also set out what is the correct and preferable decision in place of the reviewable decision, why the grounds as to why the reviewable decision is not the correct or preferable decision support the proposed correct and/or preferable decision and why the proposed correct and/or preferable decision is materially different from the reviewable decision.

Which of the proposed correct and/or preferable decisions is to replace the reviewable decision if it is determined that the reviewable decision is not the correct or preferable decision will depend upon which of the grounds in Parts A, B and C it is determined that the reviewable decision is not the correct or preferable decision.

Also, although the anti-dumping measures the subject of the reviewable decision concerned the dumping duty notice and the countervailing duty notice applying to exports from China, for convenience this application primarily refers only to the dumping duty notice. However, the application is made on the basis that the reviewable decision is not the correct or preferable decision in respect of both of the alterations to the dumping duty notice and the countervailing duty notice on the grounds set out in Parts A and C for the grounds set out in those parts and that the correct and/or preferable decision is as set out in those Parts for the reasons specified therein. In other words, Parts A and C apply equally to the reviewable decision as it relates to alterations to the dumping duty notice and the countervailing duty notice. Part B, of course, concerns only alteration to the dumping duty notice by the reviewable decision.

Finally, for convenience, references in this application to 'Kam Kiu' is to both Kam Kiu (Hong Kong) Limited (***KHK***) and Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd (***KAE***). KAE and KHK are referred to individually where necessary or appropriate.

Part A – First Ground

Question 9: Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

In so far as it relates to Kam Kiu, the reviewable decision is not the correct or preferable decision because no alteration of the dumping duty notice was required to prevent material injury being caused to the Australian industry by exports at dumped prices due to from changes in the variable factors (i.e., export prices and normal values) concerning of Kam Kiu's exports. This is because such exports were not causing material injury to the Australian industry regardless of whether they were determined to be being dumped. The Australian industry was incurring no injury during the review period. Hence there was no basis to alter the dumping duty notice to prevent injurious dumping

caused by Kam Kiu's exports as they were not causing any injury due to a change in the variable factors or otherwise.

This ground for why the reviewable decision is not the correct or preferred decision is set out in further detail below.

A review under Division 5 of Part XVB of the *Customs Act 1901* is a review of 'anti-dumping measures', that is, of anti-dumping measures that have been taken in respect of certain goods. Such a review may be applied for and undertaken where it is considered that it may be appropriate to review those measures because one or more of the variable factors relevant to taking those measures may have changed. However, when initiated, such a review is a review of the anti-dumping measures, not of the variable factors.

'Anti-dumping measures' consists of the publication of a dumping duty notice under section 269TG(1) and/or (2) of the *Customs Act 1901*. A review of anti-dumping measures, therefore, is a review of the publication of a dumping duty notice and a dumping duty notice may only be published by the Minister in circumstances where the Minister is satisfied that the exports in question are being dumped and, because of that, material injury is being caused or threatened to an Australian industry producing like goods to those exports.

The purpose of the publication of a dumping duty notice is to prevent the material injury being caused by dumping. This is achieved by operation of Section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* which, upon publication of the dumping duty notice, imposes dumping duties on the goods specified in the notice. Those dumping duties are intended to offset the injury being caused by dumping through increasing export prices by the margin of dumping.

Hence a review of anti-dumping measures is a review of the matters that the Minister was required to be satisfied of in order to publish the dumping duty notice in question, which, upon publication, results in the imposition of the protective dumping duties.

A review of anti-dumping measures, therefore, is not a review of the variable factors. Changes in the variable factors that may have occurred since when those variable factors were last ascertained are only the conditions upon which a review of the anti-dumping measures may be applied for and undertaken. That is, an application for a review of anti-dumping measures may be made when an applicant considers that it may be appropriate to do so because '*one or more of the variable factors relevant to the taking of the measures in relation to that exporter or those exporters have changed*': section 269ZA(1)(b) of the *Customs Act 1901*. However, when such an application is made, accepted and a review commenced, that review is a review of the anti-dumping measures, not of the variable factors, although the variable factors would necessarily be reviewed in the review of the anti-dumping measures.

A change in any one of the variable factors and, in particular, in the export prices and/or normal values does not of itself justify an alteration to the anti-dumping measures. A change in, for example, export prices and/or normal values may result in the dumping margin for the exports in question increasing or decreasing. However, an increase or decrease in the margin of dumping does not of itself justify an alteration to the anti-dumping measures. Dumping *per se* is unobjectionable. Just as dumping itself does not permit the imposition of anti-dumping measures, a change in the variable factors that determine the margin of dumping does not of itself justify an alteration to the anti-dumping measures. In the absence of evidence that material injury is being caused or likely to be caused because of changes in the variable factors, there is no reason to alter the dumping duty notice.

If changes in the variable factors reduce the effectiveness of the anti-dumping measures in preventing injurious dumping, then alteration of the dumping duty notice may be required to restore the effectiveness of the measures. Conversely, if, due to the changes in the variable factors, measures exceed what is required to prevent injurious dumping, then the dumping duty notice may be required to be altered to reduce the level of tariff protection afforded by the anti-dumping measures, thereby ensuring that the measures do no more than prevent injurious dumping.

The issue here is whether the changes to the variable factors relevant to the publication of the dumping duty notice the subject of review in Review 609 rendered the dumping duty notice ineffective or less effective in achieving its object of removing or preventing injurious dumping caused by the exports in question or exceeds what is required to achieve that objective. In other words, changes in the variable factors cannot be considered in isolation from their consequences to the objective in imposing anti-dumping measures, namely, to prevent material injury being caused by dumping. Mere change in the variable factors does not of itself mean that the measures have become, a result, less effective or excessive. That would need to be assessed and relevant evidence obtained of the consequences of changes in the variable factors.

Here changes in the variable factors, namely, export prices and normal values had not resulted in a recurrence of dumping by exporters. With the exception of several exporters, the exports of all exporters were determined not being dumped – that is, the exports of three sampled cooperative exporters and all twenty-five residual exporters were determined not being dumped. The conclusion to be drawn from this is that the change in the relevant variable factors and, specifically, the reasons for the changes in those variable factors was irrelevant to the occurrence of dumping. That is, the changes in the relevant variable factors was not determinative of the likelihood of the occurrence of dumping, let alone injurious dumping. Rather, it was simply irrelevant to that issue.

Moreover, the fact that the majority of exporters were determined not to be exporting to Australia at dumped export prices meant that any injury being incurred by the Australian industry could not be being caused by exports of those exporters. In the absence of dumping, there obviously can be no injury caused by dumping.

However, the issue of whether and to what extent any injury being incurred by the Australian industry was being caused by dumped exports as opposed to un-dumped exports, which, consistent with WTO jurisprudence, would require a quantitative analysis, does not arise here. This is because the Australian industry was not incurring any injury. Rather, its economic performance was the strongest than it had been for some time, with increased prices, increased sales volumes, increased sales revenues and, consequently, increased profits and profitability.[1] This strong economic performance would likely continue for the foreseeable future due to the strength of the Australian residential construction market, which was due in part to the significant financial investments being made by Australian governments. In the absence of the Australian industry incurring any injury, the issue of dumping causing injury cannot arise. In the absence of injury, it is evident that exports from China, whether dumped or un-dumped, were not causing injury and were unlikely to do so in the foreseeable future or, at least, there was no evidence to the contrary.

In this context, changes in relevant variable factors here were not only irrelevant to the likelihood of the occurrence of dumping but also to whether the anti-dumping measures were effective in

[1] Information and evidence of the Australian industry's economic performance were provided in submission to the Ani-Dumping Commission – see for example EPR Document No. 31 on the electronic public file: 609 - Aluminium extrusions from China | Department of Industry, Science and Resources

preventing material injury being caused by dumping. They were irrelevant because the Australian industry was incurring no injury despite the changes in the variable factors and despite no changes in the anti-dumping measures in response to any changes in the variable factors since the measures were last reviewed in 2020.

In other words, the economic performance of the Australian industry was and is not dependent upon receiving tariff protection in the form of dumping duties and for that protection to be adjusted if and when there is a change in the relevant variable factors regardless of the nature and extent of any such changes. The economic performance of the Australian industry was and is not contingent upon receipt of that tariff protection but is contingent upon, as has been acknowledged by members of the Australian industry and by the Anti-Dumping Commission, the strength of the residential construction industry. [It is the residential construction industry that determines the economic health of the Australian aluminium extrusion industry with the rise and fall of its economic performance reflecting that of the residential construction industry.][This is especially the case for those members of that industry whose economic performance is dependent upon sales volumes of commodity aluminium extrusion products destined for residential housing, which would be those with the largest production capacity.]

Regarding Kam Kiu and changes to the relevant variable factors in relation to its exports, those changes were neither relevant to nor the cause of the increased dumping margin determined for its exports. Rather, that increased dumping margin was due principally to a change in the methodology in determining the export prices of its exports. The issues with that methodology and its application to determining the export prices of Kam Kiu's exports are addresses in Part B of this Attachment A.

For present purposes, neither the changes in the variable factors of Kan Kiu's exports nor the determination of an increased dumping margin for Kam Kiu's is relevant. They are not relevant because regardless of any changes in those variable factors or the increase in the dumping margin, Kam Kiu's exports were not causing any injury. In other words, it was not necessary to alter the dumping duty notice to prevent injury from being caused by dumping by Kam Kiu of its export to Australia due to the change in its variable factors because those exports were not causing any injury regardless of any changes in the variable factors of those exports and regardless of any change in the dumping margin. Regardless of their export price, those exports were not causing any injury.

Hence there was no reason to alter the dumping notice to prevent injury due to the changes in the variable factors of Kam Kiu's exports. There was no injury to prevent.

Accordingly, and subject to the contentions set out in Parts B and C of this Attachment A, the reviewable decision was not the correct or preferable decision because the anti-dumping measures, that is, the dumping duty notice, did not require alteration because of changes in the variable factors in relation to Kam Kiu's exports. There being no injury to be prevented by altering the dumping duty notice, let alone material injury being caused by dumping due to changes in the variable factors of Kam Kiu's exports, there was no basis for the alteration of the dumping duty notice as it applied to exports by Kam Kiu that was made by the reviewable decision.

For these reasons, and subject to the contentions in Parts B and C, the correct and preferable decision is for the anti-dumping measures, that is, the dumping duty notice remain unaltered in respect of Kam Kiu and its exports.

Question 10: Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

Subject to the contentions in Parts B and C, the correct and preferable decision is that the dumping duty remain unaltered notwithstanding the changes to the variable factors applying to Kam Kiu's exports.

Question 11: Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

The grounds set out in Question 9 support the making of the proposed correct and preferable decision because those grounds establish that no alteration of the dumping duty notice was required to prevent material injury being caused to the Australian industry by exports at dumped prices by Kam Kiu resulting from changes in the variable factors of Kam Kiu's exports (i.e., export prices and normal values). This was because such exports were not causing material injury to the Australian industry despite the changes to the variable factors of Kam Kiu's exports. Hence alteration of the anti-dumping measures, that is, the dumping duty notice was not required.

Question 12: Set out the reasons why the proposed decision provided in response to question 0 is materially different from the reviewable decision:

The proposed correct and preferable decision is materially different from the reviewable decision because dumping duties were imposed on Kam Kiu's exports at a duty rate of 38.5% by the reviewable decision, whereas the proposed correct and preferable decision would leave the duty rates imposed on Kam Kiu's exports by the dumping duty notice when last reviewed unaltered at 25.6%

Part B – Second Ground

Question 9: Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

The reviewable decision, in so far as it related to Kam Kiu and its exports to Australia, is not the correct or preferable decision because:

(i) the ascertained export price was incorrectly determined; and
(ii) the ascertained normal value was incorrectly determined, and

consequently, the margin of dumping for Kam Kiu was incorrectly determined. The reasons for why these determinations are incorrect are set out below.

Ascertained export price

The ascertained export price in the reviewable decision for exports by Kam Kiu was incorrectly determined because it was based on the deductive export price method set out in section 269TAB(1)(b) of the *Customs Act 1901*. That method was adopted for determining the export price of Kam Kiu's exports was because it was considered that Kam Kiu's export sales transaction were not at arm's length on the grounds that sales by KHK, being the importer, to its Australian customers were at a loss. Because of that, pursuant to Section 269TAA(2) of the *Customs Act 1901*, those sales were to be treated as indicating that KHK would be reimbursed, compensated or otherwise receive a benefit for whole or any part of the price, thereby rendering the transactions between KAE and KHK, the export transactions, being considered to be not at arm's length under Section 269TAA(1)(c) of the *Customs Act 1901*.

It is contended that the transactions between KAE and KHK were incorrectly considered to be not at arm's length. The fact that legislative provisions permit certain things, in this case the consideration that the transactions between KAE and KHK were not at arm's length for the reasons set out above, to be done, does not mean that those things when done are correct because they were permitted. It is contended that this is the case here for the following reasons.

First, the provisions of Sections 269TAA and 269TAB(1)(b) of the *Customs Act 1901* may be appropriate in treating export sales transactions as not being at arm's length when sales transactions of the same goods between the importer and its customers were at a loss when there is no or little government intervention in the pricing of such transactions.

Here the Australian government had directly intervened in the pricing of export transactions by Kam Kiu by imposing anti-dumping measures on such exports. The object of imposing anti-dumping measures on Kam Kiu's exports was to encourage Kam Kiu to increase its export prices by amounts that resulted in the export prices for its exports being un-dumped. Alternatively, if export prices were not so increased, then the anti-dumping measures would achieve that objective of uplifting export prices to un-dumped prices by the imposition of dumping duties so that the prices at which those exports entered into the commerce of Australia would be un-dumped.[2]

However, that objective is affected by the duty method adopted for working out the interim dumping duty payable on exports. That is, the adoption of the combination fixed and variable duty method, as opposed to the floor price duty method, can and does result in different outcomes.

If, for example, the floor price duty method had been adopted and had the export price of Kam Kiu's exports been increased by amounts so that the export prices of those exports were un-dumped (i.e., equal to the floor price), then no interim dumping duty would be payable. The export prices would not be less than the floor price and the exports would enter into the commerce of Australia at un-dumped prices.

Further, as the increase in export prices would result in the prices paid by the Australian customers to KHK would be the same as the Delivered Duty Paid (DDP) prices (i.e., un-dumped prices) that they were already paying, they would be continuing to pay the same or similar prices to KHK. Hence there would be no impediment to Kam Kiu increasing its export prices in such circumstances.

However, the duty method adopted for Kam Kiu's exports was the combination fixed and variable duty method, which has a different outcome to the floor price duty method. The fixed component of the combination duty method effectively applies the dumping margin to the actual export price of Kam Kiu's exports. This is so regardless of whether the actual export price is a dumped or an un-dumped

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[2] Please refer to the Panel Members letter of 5 October 2022 to the Anti-Dumping Commissioner in ADRP Review No. 155 requestion a reinvestigation of certain findings in Continuation Inquiry 591 in which the Panel Member observed, correctly:
"*It is worth reflecting on the theory underpinning the impact of taking anti-dumping measures. When dumping measures are imposed, it is expected that one of two behaviours result. Firstly, exporters will increase their prices to a non-dumped level increasing their own revenues and ceasing dumping. The domestic industry will no* longer *be subject to dumped prices and the market will return to one not affected by dumped prices as the exporter increases the price to the importer which flows through to the domestic market.*

Alternatively, if exporters do not increase export prices, importers subject to dumping duties (to the extent of the dumping), will have additional costs (the dumping duty) and will respond by increasing their prices onto the domestic market to reflect the additional costs. Again, it is expected that the domestic market will no longer be impacted by the dumped exports as the prices will rise to a non-dumped level. The price in the domestic market is increased by the extent of the dumping margin."(page 6)

price – that is, regardless of whether the actual export price has been increased to an un-dumped price following the imposition of the measures.

If, therefore, consistent with the objective of imposing anti-dumping measures, export prices of exports are increased so that they are un-dumped export prices, dumping duties are nevertheless still imposed on such exports. They will be imposed by applying the fixed component of the combined duty method to the actual export prices of such exports, that is the increased, un-dumped export price.

The interim dumping duty payable is worked out by applying the dumping margin to the un-dumped export price. The result is that not only is interim dumping duty payable, which would not have been the case if the floor price duty method had been adopted, but also the amount of interim dumping duty payable is worked out by applying the dumping margin to the un-dumped export prices. This obviously has the effect that those prices are increased in excess of what is required to prevent those exports from entering the commerce of Australia at dumped prices. In other words, it has the effect referred to by the Panel Member in the extract of the letter to the Anti-Dumping Commissioner in ADRP Review No. 155 at Footnote 2 above (for the complete letter see: 2022_155_aluminium_extrusions_-_request_for_reinvestigation.pdf (industry.gov.au)).

From an exporter's perspective, here Kam Kiu's perspective, the issue is how best to comply with the Australian Governments intervention in the pricing of its exports to Australia? To increase its export prices to un-dumped export prices may not be commercially sensible because the application of the fixed component of the combination duty method would uplift the prices on the exports entering into the commerce of Australia by amounts that could render rendered it price uncompetitive[3]. The alternative is not to increase its export prices and pay the interim dumping duty payable, so that the exports still enter the commerce of Australia at un-dumped prices.

The latter was the option that Kam Kiu decided for its exports. That is, its export prices were not increased to an un-dumped price but, instead, it paid the interim dumping duty payable on such exports due to their being sold to KHK's Australin customers on Delivered Duty Paid (**DDP**) terms, which exports then entered into the commerce of Australia at un-dumped prices.

However, in calculating a deductive export price for Kam Kiu's exports, the Anti-Dumping Commission deducted, amongst other things, the interim dumping duty paid on such exports. This had the consequence of rendering KHK's sales to its Australian customers to be at a loss. If, on the other hand, the floor price duty method had been applied to Kam Kiu's exports, no interim dumping duty would have ben payable, sales to KHK's Australian customers would be profitable and the exports would enter into the commerce of Australia at un-dumped prices.

This is reflected in the Anti-Dumping Commission's calculation of the deductive export price for Kam Kiu's export. By deleting the deduction of the interim dumping duty paid from the calculation results in KHK's sales to its Australian customers as being profitable. Further, when the prices paid by KHK's Australian customers are compared with the constructed normal values calculated for Kam Kiu's exports it is evident that those prices are un-dumped.

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[3] It is not infrequently argued that applications for duty assessment to obtain refunds of excess interim dumping duty paid. However, such applications may only be made in respect of shipments over a six-month importation period and the duty assessment can take up to 155 days to complete. Obtaining refunds therefore involves considerable periods of time and the goods on which the interim dumping duties were paid would have entered into the commerce of Australia a considerable time before any refunds are obtained.

Accordingly, Kam Kiu's exports, when entering into the commerce of Australia, they were doing so at un-dumped prices not only because they were being sold to KHK's Australian customers on a duty inclusive DDP basis but also because, when compared with the constructed normal value calculated for Kam Kiu's exports, those prices were un-dumped by that measure as well. In other words, the anti-dumping measures had achieved their objective of increasing the prices of Kam Kiu's exports on entering into the commerce of Australia at un-dumped prices.

This is not a case of so-called 'hidden dumping', the mischief that Sections 269TAA and 269TAB(1)(b) of the *Customs Act 1901* are intended to address. Specifically, this is not a case of an importer on-selling a product into the Australian market after it has entered into the commerce of Australia at a loss, which constitutes 'hidden dumping'. Rather, the sales here are on importation and on terms that include any dumping duties payable so that the exports, on entry into the commerce of Australia, are at un-dumped prices even though the sales to which they relate are at a loss when the duties paid are deducted.

The issue then is what does it matter if the sales in which the exports in question enter into the commerce of Australia are at a loss if the loss-making prices in those transactions are un-dumped. In short, what is the relevance of the sales transactions being at a loss when they enter into the commerce of the importing country at un-dumped prices. If the prices on entry into the commerce of Australia are un-dumped, why does it matter that those sales are at a loss.

Unfortunately, these issues were not addressed in the application of Sections 269TAA and 269TAB(1)(b) of the *Customs Act 1901* to Kam Kiu's exports. That is, in treating the export transactions between KAE and KHK as not being at arm's length due to KHK's sales to it Australian customers being at a loss and because of that calculate a deductive export price from those sales, no consideration appears to have been given to whether the prices in those sales were un-dumped. That would seem to be a relevant consideration.

Accordingly, here the correct and preferable decision is not to treat the sales between KAE and KHK as not being at arm's length and, therefore, not calculate a deductive export price. Instead, those transactions should be treated as being at arm's length and the export price for Kam Kiu's exports be determined under Section 269TAB(1)(a) of the *Customs Act 1901* on the basis of the actual prices paid by KHK to KAE in the export transactions between them.

It also should be noted that the problem with a deductive export price, other than it invariably produces a positive dumping margin and that the fact that it is not an actual price paid or the purchase of goods but also here the deductive export price had no nexus with the actual price paid to KHK by its Australian customers. That is, whether the 'export prices' between KAE and KHK were dumped or not and, if dumped, the extent of the dumping, what relevance did that price have to the price at which the exports entered into the commerce of Australia?

The price at which Kam Kiu's exports entered into the commerce of Australia was the price paid by KHK's Australian customers, not the price paid by KHK to KAE. The price paid by KHK to KAE was for KAE to deliver the products ordered by KHK to KHK in China. Nothing more. It was not the price at which the exports entered into the commerce of Australia – that was the price that was actually paid by KHK's Australian customers, which price, as was established earlier above, was an un-dumped price.

It is not clear from Report 609 whether it is being contended that the prices paid by KHK's Australian customers was 38.5% less than the domestic selling price of aluminium extrusion products in China based on a constructed normal value, which clearly was not the case. That is, whether the full

dumping margin had flowed through to the prices in the transactions between KHK and its Australian customers.

Similarly, it is not clear from Report 609 whether it is being contended that while the 38.5% dumping margin may not have flowed through in full to the prices paid by KHK's Australian customers, that dumping margin had flowed to those prices to some extent and, if so, to what extent. That would seem unlikely given that the deductive export price was not an actual price paid by KHK to KAE.

In short, it was not known whether and to what extent, if any, the margin of dumping determined for the 'deductive export price' flowed through to the prices paid by the Australian customers so that it could be concluded that the prices at which Kan Kiu's exports were entering into the commerce of Australia were, in fact, dumped and the extent of that dumping. That is not known, nor apparently was it considered.

In this context, it would seem improbable that there would approximately 40% differences between KHK's prices to its Australian customers and the prices of other Chinese exporters to their Australian customers. The constructed normal values for those other Chinese exporters would be the same or similar to that for Kam Kiu and, for competitive commercial reasons, their prices to their Australian customers, being at the same level of trade, would not be materially different from those of KHK to its Australian customers. What then is the reason for the difference in margin of dumping with that for Kam Kiu's export prices being determined to be positive 38.5%, while of other selected cooperative Chinese exporters being determined to be negative dumping margins – that is a difference of approximately 40% in export prices given the similarity of constructed normal values. The likelihood of Kam Kiu's exports entering into the commerce of Australia at prices of approximately 40% less than other Chinese exporters would seem remote? So why the difference in the findings concerning dumping?

The answer would seem to be that the difference is due to the method in determining export prices and the fact that Kam Kiu's exports were sold via an intermediary company, KHK, and not directly from the producer, KAE, to the Australian customers, as was the case for the other Chinese exporters whose exports were investigated. It was not due to the differences in the prices at which their respective exports entered into the commerce of Australia.

This reinforces the contention that sales at a loss are not of themselves relevant to whether sales transactions are at arm's length, nor in the method for determining export prices. That will depend upon the circumstances of each case.

As contended earlier above, in the circumstances of Kam Kiu's exports to Australia, the correct and preferable decision was not to treat the sales between KAE and KHK as not being at arm's length and, therefore, not calculate a deductive export price. Instead, those transactions should have been treated as being at arm's length and the export price for Kam Kiu's exports be determined under Section 269TAB(1)(a) of the *Customs Act 1901* on the basis of the prices paid by KHK to KAE in the export transactions between them were at arm's length. This is the correct and preferred decision.

Ascertained normal value

Profit in constructed normal value

The ascertained normal value for Kam Kiu's exports was incorrectly determined because the profit margin used in the constructed normal value was the profit margin obtained in domestic sales in China by KAE to its customers, that is, to distributors, whereas the export sales by Kam Kiu to KHK were at a

different level of trade. KAE's sales to KHK were to a trading company, KHK, who on sold the goods to customers in Australia.

The profit margin obtained in sales to a distributor would be and were different from the profit margins obtained in sales to a trading company. No account was taken in the difference in levels of trade in the profit margin included in the constructed normal value calculation and/or in the comparison of export prices with the constructed normal value of such exports.

In addition, if a 'particular market situation' did in fact exist in the aluminium extrusion products market in China so as to render the domestic selling prices of aluminium extrusion products in that market unsuitable for the purposes of the comparison with export prices, then that would extend to the profits and profit margins achieved in such sales. If, therefore, the Minister consider the prices in domestic sales of like goods by KAE in China do be unsuitable because of a 'particular market situation' in China, then the profits in such sales should also have been determined as unsuitable and disregarded under Regulation 45(5) of the *Customs (International Obligations) Regulation 2015* as being unreliable.

For these reasons the profit margin used in the calculation of the constructed normal value was incorrectly determined.

To be comparable with the export prices, the profit margin that should have been used in the calculation of the profit margin realised by KAE in its sales to KHK.

Fair comparison of normal value with export prices

In order to make a 'fair (proper) comparison' between export prices and their normal value consistent with to, adjustments should have been made to the normal value under section 269TAC(9) of the *Customs Act 1901* to take account of differences between the constructed normal value and export prices due to their being modified in different ways by taxes and the circumstances to which each relates.

Specifically, the price from which the deductive export price was calculated, that is, the price paid by KHK's Australian customers was affected by the imposition of a tax (i.e., dumping duties) on the goods exported to those customers. That tax affected the price to those customers as set out earlier above.

No similar tax was imposed on like goods sold in domestic sales in China the ordinary course of trade by KAE.

Accordingly, to effect a 'fair (proper) comparison' as required by section 269TAC(9) of the *Customs Act 1901* – a comparison of like-with-like – adjustment was required to be made to the constructed normal value by deducting from it an amount calculated in the same way as the interim dumping duties payable on exports to Australia. That is, by deducting an amount equal to 28.5% of the constructed normal value from the constructed value when compared with export prices and thereby modify it in the same way that the prices on which the deductive export price was modified by that tax (i.e., interim dumping duties).

Question 10: Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

The correct and preferable decision is that the ascertained export price and ascertained normal value for the purposes of the dumping duty notice for Kam Kiu's exports be based on the weighted average

price of the prices paid by KHK to KAE in the export transactions between them during the review period. That is, the correct and preferable decision is for:

(i) the ascertained export price for Kam Kiu's exports be determined under section 269TAB(1)(a) of the *Customs Act 1901*; and

(ii) adjustments be made to the ascertained normal value for Kam Kiu's exports pursuant to section 269TAC(9) of the *Customs Act 1901* to take account of the effect taxes (i.e., interim dumping duties), as a cost, have on export prices so as to ensure a fair comparison; and

(iii) adjustments be made to the ascertained normal value by substituting the profit margin used in the calculation of the constructed normal value with the profit margin made by KAE in its sales to KHK.

Question 11: Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

The grounds set out in response to Question 9 support the making of the proposed correct and preferable decision set out in response to Question 10 because they identify the errors that were made in determining the ascertained export price and ascertained normal value specified in the reviewable decision and, therefore, the margin of dumping specified in the reviewable decision for the purposes of the dumping duty notice and what those determinations should have been absent those errors.

Question 12: Set out the reasons why the proposed decision provided in response to question 0 is materially different from the reviewable decision:

The proposed correct and preferred decision is different from the reviewable decision because the ascertained export prices and ascertained normal value are different to those in the reviewable decision, that is, their respective amounts are different, resulting in a materially different dumping than that in the reviewable decision for exports by Kam Kiu.

Part C – Third Ground

Question 9: Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

The reviewable decision is not the correct or preferred decision because the reviewable decision failed to include, as required, a statement specifying that a different variable factor, namely, a different non-injurious price to the non-injurious price specified in the original dumping notice for the purposes of determining the dumping duty payable in respect of Kam Kiu's exports.

As noted earlier above, when publishing a dumping duty notice under section 268TG(1) or (2) of the *Customs Act 1901*, section 268TG(3) of that Act require the Minister to include a statement specifying the respective amounts that the Minister ascertained, at the time of publication of the notice:

(a) was or would be the normal value of the goods to which the declaration relates; and
(b) was or would be the export price of those goods; and
(c) was or would be the non-injurious price of those goods.

So, when making a decision under section 269ZDB(1)(a)(iii) of the *Customs Act 1901* to alter a dumping duty notice, the Minister must declare that the dumping duty notice in question is to be

taken to have effect in relation to the subject exporters as if the Minister had fixed different variable factors in respect of those exporters relevant to the determination of dumping duty payable on exports by those exporters. One of the variable factors to be included in that declaration is the non-injurious price of the exports of the subject exporters.

A different non-injurious price was not included in the reviewable decision. The reasons why it was not included were set out in Section 6.4 of Report 609.

Essentially the reason was due to the operation of Section 8(5BAA) of the *Customs Tariff (Anti-Dumping) Act 1975*. That Section provides that the Minister is not required, in determining the method by which the interim dumping duty payable on goods the subject of the dumping duty notice is to be calculated, to make a determination under Section 8(5B) of that Act. A determination under Section 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975* is to specify a non-injurious price so that the sum of interim dumping duty payable does not exceed the non-injurious price.

As noted in Report 609, Section 8(5BAA) of the *Customs Tariff (Anti-Dumping) Act 1975* is a discretionary statutory provision. It permits the Minister not to determine a non-injurious price in a number of circumstances including where the normal value of exports to Australia is determined under Section 269TAC(1) of the *Customs Act 1901* because of the operation of Section 269TAC(2)(a)(ii) of that Act.

It would seem that such a determination should have been made in relation to Kam Kiu's exports. That is, when changes (increases) to the variable factors that measure dumping, namely, export prices and normal values, are neither relevant to the occurrence of dumping nor a proper measure of dumping and when, despite changes in the variable factors, exports are not causing injury notwithstanding the export prices have been determined to be dumped , it is appropriate to make the determination required under section 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*. In such circumstances only the non-injurious price is the proper measure for the prevention of injurious dumping.

Finally, while noting these provision in the *Customs Tariff (Anti-Dumping) Act 1975*, it also must be noted that that Act only comes into operation upon the publication of a dumping duty noticed and not before. That does not somehow override the obligations of the Minister under Part XVB of the *Customs Act 1901*. The Minister's obligations under section 268TG(1) or (2) of the *Customs Act 1901* and, consequently, section 269ZDB(1)(a)(iii) of the *Customs Act 1901* remain and require the Minister to include a non-injurious price in a decision under section 269ZDB(1)(a)(iii) of the *Customs Act 1901* to alter a dumping duty notice. That was not done in the making of the reviewable decision when it was required to be done.

Accordingly, the issue then is what would be the non-injurious price applying to Kam Kiu's exports?

A non-injurious price of goods exported to Australia is the minimum price necessary to, in so far as is here relevant, '*prevent the injury, or a recurrence of the injury, …. , referred to in paragraph 269TG(1)(b) or (2)(b) [of the Customs Act 1901*'; see Section TACA of the *Customs Act 1901*.

The 'injury' referred to in that Section is, of course, material injury to an Australian industry producing like goods caused or being caused by exports of the goods under consideration at dumped prices.

Here, of course, there is and can be no such minimum price. This is because Kam Kiu's exports have not and could not cause material injury given the nature of aluminium extrusion products it exports and the volume of such exports. In any event, the Australian industry has not incurred any injury let alone injury caused by imports, whether dumped or un-dumped and regardless from which country.

In this context, Kam Kiu's exports could not and did not cause any injury to the Australian because of dumping, whether by itself or with others.

Hence, there was and could be no minimum price to prevent material injury from being caused by dumping because there was no material injury being caused by dumped exports, including by Kam Kiu's exports.

Hence the minimum price necessary to prevent Kam Kiu's exports from causing material injury because of dumping is and can only be 'zero'.

To reiterate, this is because:

(i) the nature of the aluminium extrusion products exported to Australia by Kam Kiu, the Australian customers to whom they are exported and the volume of such products exported to Australia could not, of themselves, cause material injury and were not causing injury;

(ii) even when accumulated with dumped exports by other exporters from all exporting countries, Kam Kiu's exports could not cause material injury because of dumping given the relatively small volume of dumped exports entering Australia as compared with un-dumped exports from China, Malaysia, Indonesia, Thailand and Vietnam including a significant volume of s exports from Indonesia and Thailand being imported by members of the Australian industry; and

(iii) regardless of the matters mentioned in paragraphs (i) and (ii), Kam Kiu's exports, whether dumped or un-dumped and, if dumped, regardless of the dumping margin, have not caused injury to the Australian industry because the Australian industry has incurred and is incurring no injury.

In the absence of any injury being incurred by the Australian industry despite exports of aluminium extrusion products entering into the commerce of Australia at dumped prices, there is no material injury being caused to the Australian industry by dumped exports, including exports by Kam Kiu, that anti-dumping measures are required to remove or prevent. Hence the minimum price of exports necessary to prevent material injury caused by dumping is and can only be 'zero' because there is no material injury caused by dumping to be prevented. It is not possible to prevent something that is not occurring.

Also, a 'zero' rate of duty is appropriate when, as here, there is no material injury being caused by dumping to be prevented by the imposition of dumping duties but revocation is not possible because the statutory requirements for revocation have not been satisfied. The provision of a zero rate of dumping duty thus achieves the objective of maintaining the anti-dumping measures but without requiring payment of dumping duties because there is no injurious dumping to be offset, while also providing the opportunity for those measures to be reviewed if circumstances change and an alteration of the measures may be required.

However, if it is considered that the non-injurious prices must consist of some amount in order, for example, to be a 'price', then that minimum price must be the lowest export price of all exports to Australia regardless of whether dumped or un-dumped. This must be the case because no exports to Australia regardless of their circumstances are causing injury, including the exports with the lowest export price.

It is noted that the Anti-Dumping Commission dismissed this contention on the grounds that it considered that '*the presence of significant volumes of dumped and subsidised imports in the*

Australian market affects the pricing of un-dumped and unsubsidised imports' (Section 6.4.2 of Report 609). Whether that is true or not, and it was understood that exports from Malaysia had the lowest prices and were the price leaders, is irrelevant. This is because whether prices of some exports affected the prices of other is irrelevant when no injury is being caused by any of those prices.

It also is noted that the Anti-Dumping Commission calculated an unsuppressed selling price (**USP**) based on the Australian industry's cost to make and sell plus an amount for profit, which is considered to represent the price that the Australian industry could obtain in a market unaffected by dumping. Of course, a market in which the Australian industry is incurring no injury, it is unclear whether prices in that market are in fact affected by dumping. In any event, unless the USP is less than the lowest export price, which seems improbable, it is irrelevant. It cannot be the minimum price necessary to prevent material injury when there are lower prices that are not causing injury.

Accordingly, the reviewable decision was not the correct and preferred decision because it failed to include, as is required, a determination of new non-injurious price and had such a determination been made, that non-injurious price would have been:

(i) 'zero', being the minimum price necessary to prevent material injury being caused by dumping in circumstances when no injury was being incurred by the domestic industry including injury caused by dumping; or

(ii) if a monetary amount greater than zero is required, the lowest export price of all exports to Australia regardless of whether dumped or un-dumped.

Question 10: Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

The correct and preferable decision is that the anti-dumping measures as they apply to Kam Kiu be based on a non-injurious price of 'zero', being the minimum export price to prevent material injury being caused by dumping when no such injury was being so caused or, alternatively, the lowest export price of exports to Australia for the reasons set out in the response to Question 9 unless of course the USP calculated by the Anti-Dumping Commission is less.

Question 11: Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

The grounds raised in Question 9 support the making of the proposed correct and preferable decision because they established that there was no material injury being caused by Kam Kiu's exports, whether dumped or un-dumped and, if dumped, regardless of the margin of dumping. Hence there was no minimum price necessary to prevent material injury being so caused because there was no injury being caused by Kam Kiu's exports. In such circumstances, the non-injurious price must be and can only be 'zero' so that no dumping duties are payable on such exports regardless of their export price or, alternatively, the non-injurious price must be the lowest export price of exports to Australia for the reasons set out in the response to Question 9 unless of course the USP calculated by the Anti-Dumping Commission is less.

Question 12: Set out the reasons why the proposed decision provided in response to question 0 is materially different from the reviewable decision:

The proposed decision set out in response to Question 10 is materially different from the reviewable decision because there was no new non-injurious price determined for Kam Kiu's exports. The

proposed decision, on the other hand, includes, as required, a non-injurious price for Kam Kiu's exports, which would materially affect the liability for dumping duties of such exports as compared with the reviewable decision.