



30 November 2023

By Email

Mr Andrew Stoler
Panel Member
Anti-Dumping Review Panel
Department of Industry, Innovation 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 Tai Shan City Kam Kiu Aluminium Extrusions Co., Ltd (**Kam Kiu**) 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.

Your requests for further information are addressed below.

1. Ground Two

Kam Kiu's calculation of dumping margin is attached as **609 Confidential Attachment 1 Kam Kiu Dumping Margin calculation**. The dumping margin calculated by it is materially different from that in the reviewable decision because it is either -█% or +█% depending upon how calculated (see later below), whereas that in the reviewable decision is 38.5%.¹

Initial observations

As an initial observation, I refer to '**609 Confidential Attachment – Appendix 4 – Kam Kiu - Dumping margin – Revised EXP - DM**'. If the export price is revised to the FOB export price (AUD) by deleting the amounts in Columns █, being the amounts for interim dumping duty, general selling and administration and profit, and that export price is compared with the normal values as determined by the Anti-Dumping Commission, the result is a dumping margin of negative █% (i.e., -█%).

The point of this calculation is to demonstrate that Kam Kiu's exports were entering into the commerce of Australia at un-dumped prices.² That is, the imposition of anti-dumping measures was

¹ The dumping margin of 38.4% is as specified in Report 609. However, in the spreadsheet calculations provided by the Anti-Dumping Commission it was initially 38.4% but reduced to 37.1% on 13 July 2023 following some revisions requested by Kam Kiu. The reasons for discrepancy in Report 609 are not known but likely to be due to 38.5% being the combined effective rate of dumping and subsidy.

² Refer Article 2.1 of the WTO Anti-Dumping Agreement.

achieving its policy objective of preventing material injury being caused by the dumping of such exports. This appears not to have been taken into account.

Further, the fact that such sales may have been at a loss does not mean that they were not dumped – sales at a loss does not mean that the prices are dumped prices. Sales at a loss and dumping are different concepts.

As set out in Kam Kiu's application, this was not a case of 'hidden dumping'. Instead, it was for the reasons for the sales at a loss were, as set out and discussed in the application, due to the Australian government's intervention into pricing in the aluminium extrusion market by imposing anti-dumping measures and, specifically, through application of the fixed and variable duty method for working out any interim dumping duty payable. The fact of such an intervention and its implications for exporters and the pricing of their exports cannot be ignored but should be taken into account in the assessment of whether exports are being dumped.

In particular, had the 'floor price' duty method been adopted for working out any interim dumping duty payable, then, without altering the prices to the Australian customers, Kam Kiu would be retaining as revenue the full amount of the purchase price paid by its Australian customers instead of, effectively, paying a portion of it as interim dumping duty resulting in its sales at a loss. In both cases, the price at which Kam Kiu's exports would be entering into the commerce of Australia at un-dumped prices. That is the objective of anti-dumping measures, not to procure that export sales to Australia are profitable for the exporter.

It is Kam Kiu's contention that the role of anti-dumping has been misconceived in this regard in relation to Kam Kiu's exports.

Calculations

Ascertained export prices

The revised ascertained export price, as set out in Kam Kiu's application, consists of deducting the amounts from **Columns [REDACTED]** of '**Copy of 609 Confidential Attachment – Appendix 4 – Kam Kiu - Dumping margin – revised**' to produce the export price, being the price paid by Kam Kiu's Australian customers to Kam Kiu (i.e., to KHK). This is the export price at which Kam Kiu's exports enter into the commerce of Australia and may and should be determined under section 269TAB(1)(c) of the *Customs Act 1901*. The resulting dumping margin, as indicated earlier above, is negative [REDACTED] %.

Ascertained normal values

The required adjustment to the ascertained normal value to effect a fair comparison consists of, as set out in the application, deducting from **Column [REDACTED]** of '**Copy of 609 Confidential Attachment – Appendix 4 – Kam Kiu - Dumping margin – Revised NV - DM**' the interim dumping duty amount of \$[REDACTED] referred to at the top of **Column [REDACTED]** converted to CYN at the AUD/CYN exchange rate specified in **Column [REDACTED]**. Without adjusting the export prices determined by the Anti-Dumping Commission in that spreadsheet, the resulting dumping margin is positive [REDACTED] %.

Obviously, if the ascertained export price is revised as set out about, then no adjustment is required of the ascertained normal values and vice versa.

Those dumping margins are materially different from the dumping margin in the reviewable decision of +38.4%.

2. Ground Three

Calculations uploaded

As requested, the spreadsheets setting out the Anti-Dumping Commission's calculations of the following for Kam Kiu's exports, being the following, have been uploaded:

- export prices (**609 Confidential Attachment - Kam Kiu Appendix 1- Export Sales**);
- normal values (**609 Confidential Attachment - Appendix 3 - Kam Kiu – Normal value - revised**);
- dumping margin (**609 Confidential Attachment - Appendix 4 - Kam Kiu – Dumping - revised**); and
- countervailable subsidy (**609 Confidential Attachment - Appendix 5 - Kam Kiu – Subsidy margin -revised**).³

The calculation of a non-injurious price applying to Kam Kiu's exports has not been provided because there was no determination of a non-injurious price for Kam Kiu's exports in the reviewable decision. It is noted that the Anti-Dumping Commission did calculate a so-called non-injurious price, but it was not provided to Kam Kiu. In any event, Kam Kiu's contention is that the Anti-Dumping Commission's calculation is not a 'price', let alone a non-injurious price. If you require further details on this, please let me know.

Determination of non-injurious price

Regarding your query as to whether Kam Kiu 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, it is Kam Kiu's contention that, in the circumstances, a non-injurious price should have been determined and the amount of that non-injurious price should have been an amount as set out in Kam Kiu's application.

Specifically, Kam Kiu'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, including not by Kam Kiu's exports. 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' – there is no material injury caused by dumping to be removed and/or prevented.

'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. 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 a zero rate of duty to be a non-injurious price, as opposed to a rate of duty, it must 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

³ Please note that there are other spreadsheets with calculations relevant to the dumping margin determination but have not been provided as they were not requested. If they are required, please let me know and they will be provided.

non-injurious price would cause material injury because of dumping and there is no evidence to that effect. It would be speculative.

This, of course, is 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, which in the case of Kam Kiu's exports was 38.5%. The difference between a 'zero' rate of dumping duty and a rate of dumping duty of 38.5% is material.

Hence PMI'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.

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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