



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 Press Metal International Ltd (**PMI**) 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 note that you have advised in response to my query of 28 November 2023 that you understand my client is unable to provide the information requested (e.g., ascertained export prices, ascertained normal values, etc.) for the reasons given, but that my client should still proceed to respond to the remainder of the s.269ZZG notice.

Accordingly, its response to your remaining request for clarification of my client's position regarding the non-injurious price below.

Ground Three

Regarding the determination of a non-injurious price applying to PMI's exports, there was no such determination of a non-injurious price for PMI's exports in the reviewable decision. It is noted, however, that the Anti-Dumping Commission did calculate a so-called non-injurious price based on a so-called unsuppressed selling price, but it was not provided to PMI. Presumably, this was because it was not being recommended by the Anti-Dumping Commission. It would be PMI's contention that the so-called non-injurious price is not a 'price', let alone the minimum price necessary to prevent material injury cause by dumping given, amongst other things, 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 PMI is contesting the way the Minister applied the lesser duty rule or is concerned about the ascertainment of a non-injurious price, it is essentially both. That is, PMI's contention is 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 PMI's application.

Specifically, PMI'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, including those of PMI as a residual exporter, the rate of dumping duty can only be 'zero'.

'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. 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 so as to prevent material injury being caused by the dumped export price as there is none being so caused.

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.

Finally, it is noted that PMI, in its application, suggested, by way of alternative to a 'zero' rate, that if the minimum price necessary to prevent material injury or its recurrence must be a minimum floor price of some amount greater than zero, then 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 and has available to it from Australian Border Force.

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 or clarification, please do not hesitate to contact me.

Yours faithfully,



Andrew Percival

Principal

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Attachment A

Ascertained Export Price for Residual Exporters

[Extract detailing ascertained export price deleted]

Source: Anti-Dumping Commission