



29 February 2024

By Email

Ms Leora Blumberg
Panel Member, Anti-Dumping Review Panel
Department of Industry, Innovation and Science
Canberra City ACT 2601

Dear Ms. Blumberg,

Re: ADRP Review 168 - Aluminium Extrusions exported from the People's Republic of China – Submission

As you would be aware, I represent Tai Shan City Kam Kiu Aluminium Extrusions Co., Ltd and its related bodies corporate (**Kam Kiu**) amongst others in this review, ADRP Review 168.

This submission is made on behalf of my client in relation to the Second Ground specified in its application. That Ground was that the reviewable decision, in so far as it related to Kam Kiu and its exports to Australia, was not the correct or preferable decision because, amongst other things, the ascertained export price was incorrectly determined for the reasons set out in the application.

Essentially that reason was that the ascertained export price was incorrectly based on a deductive export price, which deductive export price was incorrectly used because it was considered that transactions between KHK¹ and its Australian customers were not at arm's length because they were at a loss and that KHK would be reimbursed for that loss.

In this regard, while the discretion to treat sales at a loss as not being at arm's length is a wide discretion and has been so held judicially, it nevertheless, in accordance with administrative law principles, must be exercised reasonably, that is, on some reasonable factual basis and not arbitrarily.

In that context, the following should be noted:

- (i) there is no reason, whether commercial or financial, why KAE, the producer of the aluminum extrusion products exported to Australia, would reimburse KHK, its parent company, from any losses that its parent company incurred in transactions entered into by KHK or, at least, none was identified or advanced by the Anti-Dumping Commission; and
- (ii) that there is no reason why KAE would reimburse KHK for any sales transactions at a loss would especially be the case where, as here, KAE had no involvement in those transaction, including negotiations on price; and

¹ The abbreviations used by the Anti-Dumping Commission in Report 609 in relation to the Kam Kiu entities have been adopted here.

- (iii) there was no evidence, either in KHK's or KAE's audited financial statements of any such reimbursement; and
- (iv) sales at a loss does not of itself constitute 'dumping', although it may be indicative of so-called 'hidden dumping', such as where the exporter sells at an un-dumped export price to an importer but the importer on-sells into the importing country at a lower price than the price it paid to the exporter and hence at a loss. Obviously that was not occurring in respect of Kam Kiu's exports where the loss was due to the payment of interim dumping duty; and
- (v) the only entity to financially benefit from the sales at a loss transactions by KHK was the Australian Government in the form of payment of interim dumping duties, which would not have accrued to the Government had the floor price duty method been adopted, and the Government was unlikely to reimburse KHK for its losses.

To reiterate, therefore, Kam Kiu contends that transactions between KAE and KHK were incorrectly considered to be not at arm's length for these and the reasons set out in the application and that the ascertained export price should have been determined based on the prices actually paid by KHK's Australian customers inclusive of the interim dumping duty in the price less overseas freight and insurance.

Also, the Australian Government cannot be considered to be a passive observer to events occurring in the Australian aluminium extrusion products market. It has extensively interfered in that market overtime and, especially in pricing of aluminium extrusion products in that market, through the conduct of dumping and subsidy investigations, reviews and inquiries and consequent imposition of anti-dumping measures as disclosed in the history of anti-dumping measures in Report 609 and in the Anti-Dumping Commission's *Dumping Commodity Register* ([dcr - aluminium extrusions 2.pdf \(industry.gov.au\)](#)).

Hence its involvement is as an active participant and is intended to and does affect pricing the market including the pricing of exports by exporters. Here, as set out in its application, the Government's imposition of anti-dumping measures on exports by Kam Kiu resulted in sales to Australian customers at duty inclusive prices as being at a loss. However, those prices, as set out in its application, were un-dumped prices notwithstanding as being at a loss. They thereby achieved the policy objective of the anti-dumping measures that such exports were entering into the commerce of Australia at un-dumped prices.

It also should be observed that, based on the reviewable decision, exports by Kam Kiu would attract interim dumping duty at the duty rate of 38.5%. The contention of the Anti-Dumping Commission presumably is that KHK's prices to its Australian customers would need to be uplifted by that margin to ensure that the prices payable by the Australian customers were not dumped prices and thereby ensure that such exports were not entering into the commerce of Australia at dumped prices and because of that causing material injury to the Australian industry.

However, there was no assessment or analysis, at least none referred to in Report 609, that either:

- (i) material injury was being caused and would continue to be caused to the Australian industry if the prices to KHK's customers were not uplift by that amount; or
- (ii) the full duty rate, as opposed to a lesser duty, was necessary to prevent material injury from being caused to the Australian industry.

As contended in the Third Ground of its application the determination of a non-injurious price for its exports was required under Part XVB of the *Customs Act 1901* in a review of the anti-dumping

measures under Division 5 of that Part and that the correct and preferable decision is that the non-injurious price, as calculated in the manner set out in the application, should have been determined to apply to its exports.

If there any questions, please let me know.

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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