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United Kingdom
Department for International Trade
Trade Remedies Authority

March 7, 2022

By e-mail

Dear Madams, Dear Sirs,

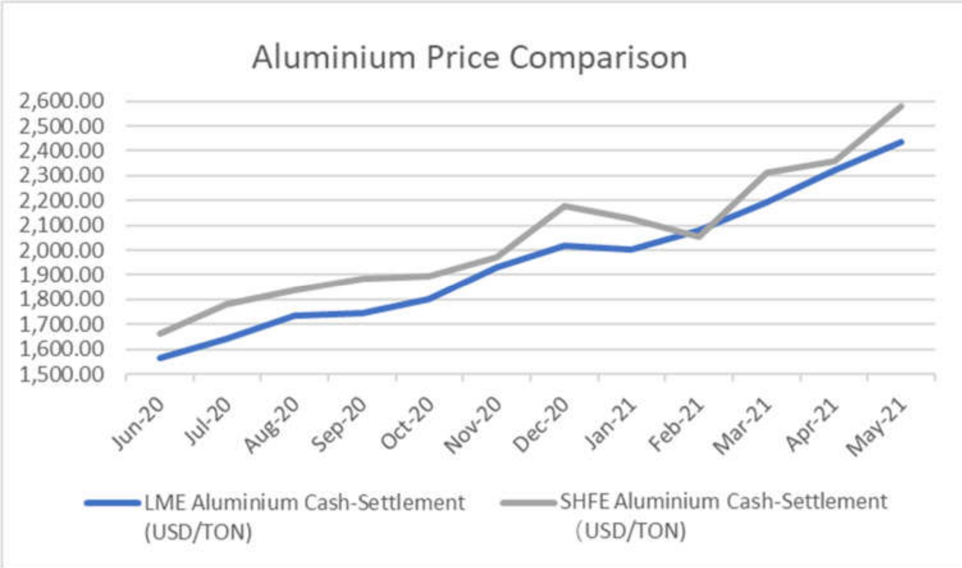
RE: AD0001 – Aluminium Extrusions originating in China – Comments on the alleged distortion in Chinese aluminium sector

Our client: Shandong Nanshan Aluminium Co., Ltd. ("Nanshan Aluminium")

It has been seven months since the ongoing review investigation was initiated on 21 June 2021. Our client, Nanshan Aluminium hereby submits its comments on the market distortions alleged by Hydro Aluminium in the application as applied to Nanshan Aluminium.

1. There are no distortions in Nanshan Aluminium's price of aluminium extrusions.

The common practice in the industry is that the prices are set based on the formula: metal base price + conversion price. The metal base price is not negotiated between Nanshan Aluminium and the customers but the monthly average price of aluminium ingot published by Yangtze River Spot Market (in line with the aluminium prices of Shanghai Futures Exchange, "SHFE") for the domestic sales and the prices published by the London Metal Exchange ("LME"), for the export sales. The metal prices published by SHFE and LME during the IP were at the similar level or even higher, which by no means were distorted.



The SHFE is one of three international exchanges on which aluminium futures are traded, the other two being the London Metal Exchange ("LME") and the Chicago Mercantile Exchange ("CME"). The prices for aluminium on the SHFE are widely used as references prices for the sale of aluminium inside China. Chinese futures companies and funds as well as foreign companies (e.g. Swiss trader Trafigura) participate actively through Chinese subsidiaries and domestic brokers. As reported by the Financial Times:

> *The price difference, or spread between the SHFE and LME, is closely watched, allowing traders and investors with access to various exchanges to take advantage of arbitrage opportunities. The introduction of night trading to the SHFE in late 2013 allows trading at the same time as exchanges in the US and Europe, giving Chinese funds and traders greater ability to influence the global price. It also allows instant arbitrage, the simultaneous buying and selling of different contracts to take advantage of price discrepancies.*[1]

As for the conversion price which reflects the value addition in the processing from ingot to extrusion, it is negotiated between Nanshan Aluminium and the customers based on the commercial terms. Nanshan Aluminium considers all the factors in settling the conversion price, including production cost, market conditions, customer relationship, sales quantity.

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[1] Financial Times, *Commodities Explained: Metals trading in China*, 2 April 2015. See also, Bloomberg, *'Mystery' Chinese Trades Fuel Aluminum's Biggest Gain Since May*, 8 August 2018.

2. The production factors used by Nanshan Aluminium are not distorted.

Nanshan Aluminium stresses that it has a full and integrated chain of aluminum production, i.e. alumina, aluminum liquid, billet and profile. Moreover, Nanshan Aluminium owns its own power generation plant to furnish electricity for production. Therefore, not like other Chinese producers, the primary raw materials used by Nanshan are bauxite to produce alumina and steam coal to generate electricity and steam, which take the majority of material cost. It should be emphasized that bauxite and steam coal are procured from unrelated suppliers in the commercial markets. The captive sales of alumina, aluminum liquid and billet are internal transfers only. Therefore, any allegation of distortion on alumina, ingot, liquid and billet are irrelevant to Nanshan Aluminium.

As reported in Nanshan's submission, during the POI, all bauxite were imported from Australia at commercial prices. For the steam coal, though it was domestically procured, the purchasing prices of Nanshan during the POI were demonstrated to be undistorted, as comparing with the IHS Report which includes prices from major producing countries or regions of steam coal worldwide, i.e. South Africa, Russia, Australia and Indonesia[2].

3. The reference to the EU Staff Working Report and OECD report is not appropriate.

It's noted that Hydro Aluminium claimed to apply Regulation 8(1)(a) of the Trade Remedies Regulation, due to the existence of the market distortions in Chinese aluminium sector, to determine the normal value by determining the costs of production plus a reasonable amount for administrative, selling and general costs and for profits. In its application, Hydro Aluminium mainly relied on the European Commission's Staff Working Document on Significant Distortions in the Economy of the PRC and an OECD Aluminium Report, "*Measuring distortions in international markets – The aluminium value chain*" to demonstrate its allegation.

It's noted that in its report the European Commission relies on a wide range of sources. These sources, however, are not necessarily reliable. For instance, several sources are already outdated. Since the report was published in December 2017, many sources used by the Commission date from 2016, 2015, 2014, or earlier, and, in turn, these sources often rely on even older data. The Chinese economy is characterised by rapid growth and even relatively recent data fail to adequately reflect the situation on the Chinese market. By relying on findings almost a decade old, the report risks being

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[2] Annex 1, IHS Markit, *IHS McCloskey Coal and Petcoke Prices (Confidential)*

outdated and inaccurate. The similar situation applies to the OECD Aluminium Report of 2019.

Hydro Aluminium also referred to the findings in several trade defense investigations initiated by the EU, the US or Australia concerning aluminium products to support its allegation. The type of findings cannot be considered, however, as providing for an objective assessment of the Chinese economy. Rather they reflect the conclusions reached by the domestic authorities with respect to specific circumstances in previous trade defense investigations. Moreover, the data on which such previous investigations relied may now prove to be outdated, making the findings in those investigations inapposite to the current situation on the Chinese market.

Regardless, as a fully integrated producer starting with imported bauxite, Nanshan Aluminum is distinct in terms of integration with global market, production factors and cost structure. These reports and the findings in trade defense investigation of other countries authorities therefore are not applicable to Nanshan Aluminum.

4. TRA's compliance with its obligations under Article 2.2 and Article 2.2.1.1 of the WTO Anti-Dumping Agreement

Without prejudice, if TRA were to find the existence of the market distortion and consequently to apply Regulation 8(1)(a) of the Trade Remedies Regulation, in situations where investigating authorities are allowed, exceptionally, to construct the normal value, Article 2.2 provides that this is to be done based on the "cost of production **in the country of origin** plus a reasonable amount for administrative, selling and general costs and for profits."

In the construction of normal value, the reported costing data of Nanshan Aluminum should be used because they are "in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration" in accordance with Article 2.2.1.1 of the WTO Anti-dumping Agreement.

In the scenario that TRA intends to substitute the costing data of Nanshan Aluminum for whatever reasons, the substitution should be limited to the specific production factor where TRA has substantiated evidence to demonstrate that the reported costing data do not reasonably reflect the cost of production of the subject goods.

Moreover, as the Appellate Body has clarified, in this construction, it is not impermissible for investigating authorities to rely on out-of-country benchmarks when reliance on the exporting producers' records is not possible. However, in such circumstances, the TRA cannot simply replace domestic costs with costs from outside the country of origin. Rather, in the words of the Appellate Body:

> [W]hatever the information that it uses, an investigating authority has to ensure that such information is used to arrive at the "cost of production in the country of origin". Compliance with this obligation **may require the investigating authority to adapt the information that it collects**.[3]

Thus, to comply with its obligations under Article 2.2 of the Anti-Dumping Agreement, an investigating authority must ensure that it uses information that will allow it to arrive to the cost of production in the country of origin. In other words, the information that it chooses to rely on must be as representative as possible, and if not, the authority is under an obligation to make adjustments, as necessary, to obtain data that is as close as possible to the actual cost data of the exporting producers.

In such circumstances, Nanshan reserves its right to comment on the selection and the reasoning of the appropriate representative country, if any, and the benchmark data in a later stage as well as the adjustments to establish the constructed normal value.

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3 Appellate Body Report, *EU – Biodiesel*, para. 6.73.