

Trade Remedies Authority
Department for International Trade
UK Government

June 18, 2022

RE: AD0012 - Aluminium Extrusions originating in China – Comments on Statement of Essential Facts

Our clients: Guangdong JMA Aluminium Profile Factory (Group) Co. Ltd., Foshan JMA Aluminium Co. Ltd and JMA (HK) Company Limited (collectively “JMA Companies”)

On behalf of our clients, we hereby submit our comments on the **Statement of Essential Facts (“SEF”)** published by the Trade Remedies Authority on May 20, 2022. When calculating the margin for non-sampled cooperating overseas exporters, the TRA should not exclude the sales with zero or minimal dumping margins of the sampled overseas exporters¹. The exclusion of sales with zero or minimal dumping margins is a zeroing method used in calculating the dumping margin. The practice of “zeroing” has been found inconsistent with Article 2.4.2 of the *Anti-Dumping Agreement* (“ADA”) in various WTO panel reports and AB reports.

1. The UK Regulations do not authorize the TRA to exclude the sales with zero or minimal dumping margins.

The regulation 37(3) of the Regulations states:

Subject to paragraph (5), the non-sampled overseas exporter amount is the *weighted average of the amounts determined for the overseas exporters in the sample.* (emphasis added)

From the wording of this regulation 37(3), it is clear that the dumping margin for non-sampled cooperating overseas exporters should be the weighted average of the amounts of the sampled overseas exporters. Accordingly, all sales used for determination of individual dumping margins should also be used for calculating dumping margin for non-sampled cooperating exporters, regardless of whether or not such sales have zero or minimal dumping margins. Therefore, the TRA has no legal basis to exclude the sales with zero or minimal dumping margins when making the weighted average calculation for non-sampled cooperating exporters.

¹ SEF, para. 236.

2. The zeroing method is inconsistent with Article 2.4.2 of ADA.

Excluding the sales with zero or minimal dumping margins results in *less sales transactions* which are used for weighted-averaging the dumping margin for non-sampled cooperating exporters. Such exclusion method for non-sampled exporters is essentially a zeroing method. Various WTO panel reports and AB reports have confirmed that the practice of “zeroing” is inconsistent with Article 2.4.2 of ADA. In the EC – Bed Linen (DS141) case, the AB Report states:

[W]hatever the method used to calculate the margins of dumping, in our view, these margins must be, and can only be, established for *the product under investigation as a whole*.² (emphasis added)

The excluded sales transaction are also the sales of *the product under investigation* which has the same definition as other sales (that were already considered for weighted-averaging) of the product under investigation by sampled exporters. The only reason the TRA excluded these sales in calculating weighted average dumping margin is that these sales have zero or minimal dumping margins. However, both the excluded sales by the TRA and sales already used for weighted-averaging should be deemed as a whole. Thus, in this regard, the TRA acted inconsistently with its obligations under Article 2.4.2 of ADA. The TRA should maintain the same standard for both sampled cooperating exporters and non-sampled cooperating exporters. The exclusion of the sales with zero or minimal dumping margins increases the dumping margin of non-sampled cooperating exporters, resulting in the imposition of higher anti-dumping duties.

To comply with its obligations under Article 2.4.2 of ADA and UK Regulations, the TRA should not exclude sales with zero or minimal dumping margins of the sampled exporters. Therefore, we respectfully request the TRA include these sales with zero or minimal dumping margins of the sampled exporters when calculating the margin for non-sampled cooperating exporters (including JMA Companies).

Respectfully submitted,

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² Appellate Body Report, EC – Bed Linen (DS141), para. 53.