



OPEN/NON-CONFIDENTIAL VERSION

TO THE TRADE REMEDIES AUTHORITY

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Reading, Berkshire, United Kingdom

APPLICATION FOR RECONSIDERATION

of a Final Determination and a Negative Determination in Case AD0012 the first of which concluded that aluminium extrusions originating in China were being dumped on the UK market causing injury to the domestic UK industry and that it was in the UK economic interest to impose measures, the second of which found that certain large sized extrusions should be excluded from the scope of the measures.

This Application is made by, and on behalf of, Hydro Aluminium UK Limited, which had made the application to the TRA leading to the two Determinations in AD0012. This Application for Reconsideration is submitted within the terms of Statutory Instrument 910 of 2019 (the Reconsideration and Appeals Regulations) and is submitted on 17 January 2023, within one month from the application of the Final Determinations.

In this Application for Reconsideration, the Applicant will set out, as required by Regulation 10(5) of SI 2019/910:

- a) the grounds for the application;
- b) the details of the Applicant's eligibility to apply for reconsideration under regulation 9;
and
- c) the outcome sought.

The Applicant for reconsideration will first address eligibility to make the application, secondly the outcome sought, and thirdly the grounds for the application.

In this application, the Applicant will rely on evidence already on the AD0012 file including its own submissions and those of other interested parties.

Eligibility

1. The Applicant for Reconsideration (hereafter the Applicant or Hydro UK) comes within the terms of regulation 9(2) of Statutory Instrument 2019/910 on the basis that the Applicant made an application to the Trade Remedies Authority (hereafter the TRA) leading to a determination referred to in Part 1 of Schedule 1 of the Reconsiderations and Appeals Regulations. Hydro UK therefore considers that, as it is the original Applicant for anti-dumping measures in Case AD0012, it is eligible to make an application for reconsideration.

The outcome sought

2. The Applicant seeks a reconsideration by the TRA of the two Determinations, and in particular:
 - an increase in the level of all the dumping margins found and the imposition of a dumping margin on Shandong Nanshan;
 - the inclusion within the scope of the measure extrusions with a maximum cross-sectional dimension of greater than 310mm or a weight per metre greater than 14kg.
3. The Applicant does not seek reconsideration of the findings of the TRA in relation to injury, causation (except to the extent that it concerns the out-of-scope goods) or the economic interest test.

The grounds for the application for reconsideration

4. The Applicant for reconsideration considers that the TRA has erred in its evaluation of the facts, and in the application of UK anti-dumping law. These errors have resulted in i) dumping duties which do not reflect the level of the injurious dumping, and ii) in the negative Determination in relation to certain large extrusions.¹ The application for the reconsideration of the dumping margins is based on 4 grounds and the exclusion of large extrusions on 1 ground. These grounds are set out in the text of this Application.
5. If the dumping margins of the sampled cooperating overseas exporters are found to be incorrect, this will, in turn, have an effect on the level of the dumping margin for non-sampled cooperating overseas exporters and the residual margin for all other exporters. This application for reconsideration will not address those consequential dumping margins but considers if the margins of the sampled overseas exporting producers are changed then the residual margins must consequentially be changed by the TRA.
6. The Applicant will address the issues of dumping for each sampled overseas exporting producer as well as the negative determination separately.

¹ Aluminium extrusions with a dimension above 310mm in width and a weight above 14kg per metre.

Ground 1: The normal value used by the TRA for Shandong Nanshan Aluminium was based on distorted aluminium extrusion sales prices in China in breach of Regulation 7 of the Trade Remedies Regulations

7. The Applicant considers that the TRA has erred in finding that the market price in China for aluminium extrusions was an appropriate comparable price for determining the normal value for Shandong Nanshan within the terms of Regulation 7(1). The extrusions market price was found to be low due to distortions in the markets for billet and energy.

A summary of the TRA findings in relation to Shandong Nanshan

8. The TRA found that Shandong Nanshan had a negative dumping margin of 1.8% in the period of investigation (see Table 5 of the Final Determination).² The TRA therefore recommended a zero duty for this overseas exporter (see Table 21).
9. The TRA calculated the dumping margin by comparing the Shandong Nanshan's export sales price to the UK (see paragraph 300) with the comparable price for Shandong Nanshan based on its sales of the Goods Concerned in China (see paragraph 325). To ensure a fair comparison (see section G4.3) between the normal value and the export price the TRA made adjustments as set out in Tables 3 and 4.
10. The comparable price for determining normal value was the price achieved by Shandong Nanshan on its sales of aluminium extrusions in the domestic market for aluminium extrusions in China. This comparable price was not used for all PCNs³ because the TRA determined that certain sales were not in the ordinary course of trade (see paragraphs 318 to 324).
11. The core matter to be reconsidered is that the TRA used the domestic sales price as the basis of the normal value⁴ and measured dumping by comparing a normal value based on those domestic prices to the export prices.

The TRA found in fact that prices on the market for aluminium extrusions in China should be 'higher' and therefore could not be used for determining the normal value for Press Metal International (PMI) and Haomei New Materials (Haomei), the two other sampled overseas exporters. If this price could not be used for two sampled overseas exporting producers it cannot be used for the third, Shandong Nanshan.

12. In paragraph 244, third bullet point, the TRA found that:

² References to paragraphs or tables in this application for reconsideration are to the paragraphs and tables in the Final Determination unless otherwise stated.

³ PCNs are Product Control Numbers. The PCN structure for aluminium extrusions is set out in Annex B to the Final Determination. PCNs are a break-down of different extrusions so as to allow the TRA to compare like UK produced extrusions with like Chinese exported extrusions. Thus, when comparing the Chinese and UK extrusions, the TRA does not compare complex or bespoke extrusions with standard extrusions or differently sized extrusions with each other.

⁴ Schedule 4 of the Taxation (Cross-Border Trade) Act 2018 provides, in Part 1, that goods are dumped into the UK if their export price is less than their Normal Value.

*Although the PRC benefits legitimately from economies of scale and integration, if these input costs [billet and energy] were not distorted, **a higher level of competitive pricing would exist in the PRC, resulting in higher normal value.** [emphasis added]*

13. The TRA found, as a matter of fact, that in the absence of the distortions in the markets for billet and energy, there would have been a higher price in the market for aluminium extrusions in China. This finding is independent of any finding, or the absence of any finding, of a PMS in input costs for Shandong Nanshan. Paragraph 244 is a finding about the extrusions market, not about the input costs of Shandong Nanshan.
14. The TRA has not shown that Shandong Nanshan was selling into a different aluminium extrusions market in China or that the market is somehow segmented geographically. It was the same domestic market in China for all three overseas exporters. If the market price is distorted for PMI and Haomei, it is distorted and 'lower' for all sellers on that market, including Shandong Nanshan and is therefore not an appropriate basis for the normal value for Shandong Nanshan.
15. The Applicant therefore considers that the TRA erred in finding that the domestic price in China for the sale of Shandong Nanshan's extrusions was suitable as the comparable price for the purposes of Regulation 7(1) or, in other words, that it was an appropriate proxy for the normal value. If the TRA has found that the extrusions market is distorted for two of the overseas exporters then it is distorted for all producers in China whatever their input costs.

The evidence on the file shows that up to 95% of the cost of production of aluminium extrusions is made up of billet and energy: thus, the domestic price in China cannot be the comparable price for Shandong Nanshan

16. In support of the finding in paragraph 244 of the Final Determination cited above, there is clear evidence of the inappropriateness of using an extrusions market price in China as a basis for the normal value for Shandong Nanshan.
17. Article 7(2) of the Trade Remedies Regulations⁵ provides that the comparable price (i.e. the domestic price in China) should not be used where, because of a particular market situation (PMS), use of that price is not appropriate for determining the normal value.
18. The TRA found that the market for aluminium billet (the main raw material for aluminium extrusions) and the market for energy (the second biggest cost of production) in China were distorted on the basis that those two markets were 'particular'. This finding is summarised in paragraph 173 of the Final Determination. These findings were general findings applicable to all extrusion producers in China unless, as with Shandong Nanshan, there was proof that the producer had their own billet and energy production.
19. In paragraph 177, the TRA found that aluminium billet typically constitutes 65% to 95% of the total cost of production, and that energy typically constitutes 3% to 12% of the cost of production. Thus, between 68% (the minimum cost of billet plus the minimum cost of energy) and 95% (the maximum cost of billet and energy) are made up of costs which the

⁵ Statutory Instrument 450 of 2019.

TRA found to be distorted. The Applicant therefore claims (and claimed during the underlying investigation – see paragraph 174) that if between 68% and 95% of the cost of production is distorted, the market for the final product (the Goods Concerned) must also be distorted (and not only for PMI and Haomei).

20. The TRA argues in paragraph 175 that a finding of a distortion (a PMS) ‘*in one cost area does not automatically mean that a PMS exists in other cost areas*’. This finding is in answer to the Applicant’s claim that the market for aluminium extrusions in China was distorted. The TRA has misunderstood the Applicant’s claim. The Applicant was not claiming during the underlying investigation, and does not claim now, that a PMS in one cost area *automatically* means a PMS in another cost area.
21. The Applicant’s claim is that if there are two PMSs in the two principal costs areas for the production of aluminium extrusions (making up to 95% of the total cost of production) this is evidence that there is a PMS in the market for aluminium extrusions, the final market for the good concerned.⁶ If that final market is distorted, as the TRA has found (in paragraph 244), then it cannot be used as the comparable price for the determination of Normal Value for any overseas exporting producer. The Applicant’s claim is supported by the findings of the TRA in paragraph 244 of the Final Determination.

The fact that all sales of aluminium extrusions on the market in China were at comparable levels confirms the Applicant’s claim that the market for aluminium extrusions itself is distorted as the main suppliers to that market benefitted from lower and distorted input costs for billet and energy allowing them to sell at lower prices

22. In paragraph 240 the TRA found that ‘*the average sales invoice prices in the PRC ... are broadly comparable across the sampled overseas exporters.*’ From this finding, the TRA seems to take comfort that the prices on the aluminium extrusions market in China are not distorted in relation to Shandong Nanshan. This finding is, in fact, a confirmation of the opposite, namely that the extrusions market price in China is distorted and prices from that market cannot be used as the normal value.
23. The evidence on the TRA file (as posted by the TRA on the open file on 14 July 2021)⁷ is that only one overseas exporter, Shandong Nanshan, did not have distorted billet and energy costs. The evidence on the file in relation to the non-sampled overseas exporters, as seen in the websites provided on their pre-sampling questionnaire responses, is that none of these companies are vertically integrated with their own billet and energy production. Thus, on the basis of the evidence on the file the majority of sellers of aluminium extrusions on the market in China, known to the TRA, do benefit from the input cost distortions which lower their cost of production and lower the price on the aluminium extrusions market in China.

⁶ The terms ‘Goods Concerned’ refers to the aluminium extrusions as defined in the Final Determination.

⁷ Most of the submissions of the cooperating overseas producers show the volume and the value of sales on the domestic market in China and the volume and value of the sale to the UK. Some submissions show exact figures, while others only provide ranges, and others claim confidentiality in relation to the volume and the value. One submission, from Foshan Kengye Metal, claims confidentiality for all domestic and export sales but its website, correctly posted in the pre-sampling questionnaire, shows that it produces 600,000 making it one of the largest producers in China.

24. Annex A to the Final Determination shows that 25 Chinese overseas exporters made themselves known to the TRA. Of these 25 producing exporters, 2 were considered to be non-cooperating, and 5 were sampled (3 PMI companies were subsequently treated as 1, so that there were 3 sampled overseas exporters). An examination of the evidence on the file shows that all overseas exporting producers also sold on the domestic market.
25. Confirmation that producers with distorted costs set the market price for aluminium extrusions in China can be seen in comparing the evidence on the file for Shandong Nanshan and Foshan Kengye Metal (a non-sampled cooperating overseas exporter). This evidence shows the Shandong Nanshan has a production capacity of 190,000 to 250,000 tonnes (and only actually produced 150,000 to 190,000 in the period of investigation) while Foshan Kengye's website⁸ shows that it has a production capacity of 600,000 tonnes. The TRA found that Foshan Kengye was not a significant exporter to the UK.⁹ This means that most of Foshan Kengye's production was sold on the domestic market in China, Foshan's distorted costs and prices are likely to have more influence in the overall market price for aluminium extrusions in China than are Shandong Nanshan's which sells a lower volume to that market.¹⁰
26. On the basis of the evidence available to the TRA,¹¹ the near totality of known Chinese producers selling aluminium extrusions on the market for aluminium extrusions in China have costs which are distorted by the PMSs in the markets for billet and energy. This near totality of sales must therefore set the market price.¹² Shandong Nanshan is not the price setter. The key issue is that just because the three sampled exporters (one of which is Shandong Nanshan) sell at broadly comparable prices, this does not mean that the market is not distorted. If the cost of production of the near totality of producers and sellers in China are distorted then the final market price must also be distorted.

The TRA did not examine the Applicant's claim that the market for aluminium extrusions in China was distorted

27. In paragraph 175, the TRA states '[w]e have assessed each allegation of a PMS individually in accordance with our guidance.' This is not correct. paragraph 140 demonstrates that the TRA only examined the Applicant's allegations of a PMS in the markets for labour, capital, land, government influence, raw materials and energy.¹³ It did not examine the allegation that the market for aluminium extrusions was affected by a PMS.

⁸ The Foshan Kengye website was visited on 23 December 2022.

⁹ Foshan Kengye submitted a pre-sampling questionnaire but was not sampled as it was not one of the biggest exporters to the UK.

¹⁰ As Foshan Kengye Metal was not sampled (the sample was chosen on the basis of the largest exporters to the UK – see paragraph 54 and the Notification of Sample on the file), it must mean the most of its production is sold on the domestic Chinese market. Foshan Kengye is not vertically integrated with its own billet and energy production. The costs of production of this company were therefore distorted by reason of the PMSs in the markets for billet and energy.

¹¹ While the production capacity of Foshan Kengye has not been verified by the TRA, even if it was found to be lesser than 600,000 tonnes, the point remains the same.

¹² The Applicant notes that in paragraph 199 the TRA found that the distortions in the billet and energy markets resulted in costs which were between 5% to 20% and 25% to 55% respectively lower than market economy benchmarks.

¹³ In paragraph 141 the TRA also states that it examined the market for the dies through which the aluminium is extruded to make aluminium extrusions.

28. The Applicant notes that the UK Guidelines¹⁴ on good administrative practice provides that reasons must be given for a decision. No reasons have been given for not examining whether the market for aluminium extrusions is affected by a PMS. This is an issue which is central to the determination of the normal value for Shandong Nanshan (and all other overseas exporting producers) and cannot be considered a minor issue for which reasons do not have to be given.

The Applicant had made a PMS claim in relation to the market for aluminium extrusions

29. In the application to the TRA to initiate an anti-dumping investigation in relation to aluminium extrusions originating in China, the Applicant alleged that the market for aluminium extrusions in China was affected by a PMS:

In this section of the Application the Applicant will demonstrate that:

- i) the market for aluminium extrusions in China is distorted and the markets for the factors of production of the product concerned are also distorted;*
 - ii) **the market for aluminium extrusions is a particular market situation** within the terms of Regulation 8 as are the markets for the different factors or production; [emphasis added]*
 - iii) TRA should apply Regulation 14 of the Trade Remedies Regulations;*
 - iv) in the alternative, as the individual markets for each factor of production are distorted and come within the provisions on particular market situations and the TRA can apply Regulation 8 of the Trade Remedies Regulations.*
30. The Applicant provided extensive evidence that all markets including the market for aluminium extrusions were distorted and affected by PMS. Specific evidence of distortions in the aluminium sector was provided not only from other OECD trade defence investigating authorities (including Australia and the USA) but also on the basis of a report from the OECD showing distortions by reason of subsidies and government interference in the market.
31. Paragraph 176 of the Final Determination states that the TRA examined cross-cutting distortions in *Section F2: Assessing allegations of a PMS* of the Final Determination. In Section F1, the introduction to the examinations of PMS, there is no evidence that the TRA examined cross-cutting distortions. Nor do the examinations of the different markets examined in Section F2 show that cross-cutting evidence was taken into consideration.
32. In paragraph 32 of the Final Determination the TRA states that the Applicant's allegations, including those contained in the comments on the Statement of Essential Facts, are summarised and addressed '*to the extent possible*' in the Final Determination. The Applicant considers that the cross-cutting distortions have not been addressed at all, let alone to the extent possible.

¹⁴ See: The Judge Over Your Shoulder, sections 2.56 to 2.61: <https://www.gov.uk/government/publications/the-judge-over-your-shoulder>

33. Paragraph 140 of the Final Determination demonstrates clearly that the allegations of a PMS in the market for aluminium extrusions was not examined by the TRA.
34. The Applicant considers that the TRA must reconsider the evidence that the market for aluminium extrusions is distorted and affected by a PMS. If it is found that that market is distorted, then prices on that market cannot be the comparable price for the determination of the normal value for Shandong Nanshan, and the Shandong Nanshan's dumping margin must itself be reconsidered.

The TRA misapplied the approach taken by the Australian Anti-Dumping Commission

35. Regulation 7(1) provides that the comparable price (Shandong Nanshan's sales price on the domestic China extrusions market) must be used unless it is not appropriate to use that price.
36. Regulation 7(2) provides that it is not appropriate to use that price where there is a particular market situation (PMS). If there is a particular market situation then the TRA cannot use the price on that market and must construct the normal value.
37. The TRA constructed the normal value for the other two sampled overseas exporters, PMI and Haomei on the basis of Regulation 7(2). To do so, it must first have determined that there was a PMS in the market for aluminium extrusions otherwise it was obliged to use the market price within the terms of Regulation 7(1). Once the TRA had determined that Regulation 7(1) did not apply and it was necessary to construct the normal value within the terms of Regulation 7(2), then it could determine that there were PMSs in two cost inputs.
38. The TRA states that it took guidance from the WTO Panel in the *Australia-Anti-Dumping Measures on A4 Copy Paper* (see paragraph 221).¹⁵ It is clear from that Panel Report, that prior to examining if there was a PMS in the market for the main cost input for copy paper (wood pulp), Australia had first determined that there was a PMS in the market for the Goods Concerned, i.e. in the Australia case the market in Indonesia for A4 copy paper and in AD0012 the market in China for aluminium extrusions.
39. In its Comments on the Statement of Essential Facts, the Applicant cited three extracts¹⁶ from the A4 Copy Paper WTO Panel Report, which confirms that Australia had first determined that the A4 Copy Paper market in Indonesia was subject to a PMS. This then allowed Australia to conclude that it was not appropriate to use that market price as the comparable price for the normal value.
40. Subsequent to that finding of a PMS in the market for A4 Copy Paper, Australia made a finding of a PMS in the market setting the cost of the main input for the production of A4 Copy Paper. However, that is a secondary step. Australia first had to determine that there was a PMS in the market for A4 Copy Paper. The law in the UK is similar to Australia. Normal Value must be determined on the basis of the market for the Goods Concerned in the domestic market unless it is determined that it is not appropriate to use that price. The TRA has misunderstood the Australian approach.

¹⁵ WTO Dispute DS529, see https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds529_e.htm

¹⁶ Paragraphs 7.21, 7.22 and 7.27 of the Panel Report all of which confirm

41. In the Australian examination of dumping of aluminium extrusions originating in China,¹⁷ the Australian Anti-dumping Commission found that the market for aluminium extrusions was distorted in China before examining if there were distortions in the markets for the input costs including billet and energy.
42. Thus, before it examines if there is a distortion in a market for an input cost, the Australian Commission first examines if the normal value should be based on prices in the market for the Goods Concerned.
43. The Applicant agrees with the findings of the TRA, that in constructing the normal value (similar to the situation in the Australia A4 Copy Paper case and the Aluminium Extrusions case) it was also necessary to determine if there was a PMS in the markets for the factors of production of aluminium extrusions. What the Applicant is claiming is that there must be a double evaluation: first a determination that the domestic market for the Goods Concerned is subject to a PMS (and thus prices on that market cannot be used within the terms of Regulation 7(1)), and then an evaluation (of one or more) of the markets for the main factors of production. This is what Australia did in A4 Copy Paper that guided the TRA in its approach to PMS.
44. The TRA did not examine the allegations of a PMS in the market for aluminium extrusions set out in the application for an investigation or in the Comments on the Statement of Essential Facts. On that basis alone the Final Determination is deficient as this was a key and not a minor claim both in the application and in the comments.

The cross-cutting distortions affect all markets in China

45. The Applicant alleged, and provided evidence in its Application for an Anti-Dumping investigation, that there were cross-cutting distortions affecting all markets in China.¹⁸ The Applicant further argued in its comments on the Statement of Essential Facts, that the TRA had not addressed cross-cutting distortions. It is evident from paragraphs 148 to 172 that the TRA has not assessed the impact of these distortions on the individual markets examined in those paragraphs. In other words, when assessing whether the market for labour or capital or land is or is not distorted, the TRA did not examine the impact of the cross-cutting distortions on those specific markets.
46. In *Australia-Anti-Dumping Measures on A4 Copy Paper* (DS529), the Panel found, as cited by the Applicant in its Comments on the Statement of Essential Facts:

*[f]inally, we are also **not persuaded** that “the particular market situation” references in this provision necessarily **excludes any situation that arises from a subsidy or other governmental action**. [emphasis added]*

¹⁷ see Report no. 543, *Inquiry into the continuation of anti-dumping and countervailing measures applying to aluminium extrusions exported to Australia from the People’s Republic of China*, 14 September 2020

¹⁸ The Applicant has been told that this evidence will be made available to the Reconsideration Panel as all evidence on the TRA file in AD0012 will be available to the Panel. If this is not the situation, the Applicant reserves the right to resubmit this information to the Reconsideration Panel.

47. The Applicant has demonstrated the Government of China is led by the Chinese Communist Party (CCP) which is, inter alia, in charge of the economy and the judicial system. As the Applicant has highlighted, the CCP is significantly involved in business decisions of Chinese enterprises. The Chinese financial system is also distorted with a high presence of the State and the CCP and the absence of normal market mechanisms.

48. Article 19 of the Chinese company law provides:

In a company, an organisation of the Communist Party of China shall be established to carry out the activities of the party in accordance with the charter of the Communist Party of China. The company shall provide the necessary conditions for the activities of the party organisation.

49. Within State-Owned Enterprises (SOEs)¹⁹ greater power has been given to the Party Committees so as to avoid efforts to establish boards of directors to push SOEs to make decisions based on market conditions, profitability and hard budget constraints. The FT reports President Xi saying that [a]ll the major decisions of the company must be studied and suggested by the party committees. Major operations management arrangements involving macro-control, national strategy and national security must be studied and discussed by the party committee before any decision by the board of directors or company management.²⁰

50. The TRA, in paragraph 165, merely states that it has received no evidence of influence by CCP cells despite recognising (in paragraph 164) that it did find evidence of the presence of these cells. The object and purposes of these cells is to ensure that the enterprise complies with CCP policy. The very presence of these cells ensures that decisions are made in compliance with party policy. The CCP cells do not issue orders to management: they are the management; and where they are not the management, management acts in the knowledge of the CCP policy. Thus, to require, as the TRA in effect does, that a smoking gun ‘order’ be provided in evidence is not reasonable. This is particularly so in relation to the findings of MI5 in relation to the CCP.

51. The Applicant notes that the Director General of MI5, Ken McCallum warned,²¹ alongside FBI Director Chris Wray, in July 2022 of the growing threat of the Chinese Communist Party to the security interests of the United Kingdom. The warning was specifically directed at the need to protect the economies of the United Kingdom and the United States. A section of the presentation to UK business leaders was headed ‘Risks to your Business’. The Applicant considers that the TRA must take this as evidence of the role of the CCP in controlling the activities of aluminium market players in China.

52. One key distortion which the Applicant highlighted in the application and which the TRA has not addressed in the Statement of Essential Facts or in the Final Determination, concerns subsidies²² provided by the government of China to the aluminium sector. The

¹⁹ The original application for an investigation demonstrated on page 46 that the largest supplier of aluminium billet in China (Chalieco) that the CCP cell must be consulted before any decision is made.

²⁰ See Comments on the Statement of Essential Facts page 22 on cross-cutting distortions.

²¹ See: <https://www.mi5.gov.uk/news/speech-by-mi5-and-fbi>

²² Even if subsidies can be subject to a different procedure before the TRA (an anti-subsidy investigation) they remain evidence of distortions for the purposes of finding of distortions for the purposes of constructing the normal value in anti-dumping investigations.

OECD report,²³ widely cited in the application,²⁴ clearly shows that a significant amount of financial support is provided in the aluminium industry from China's state-owned banks and SOEs. The extensive support granted to the Chinese aluminium industry has been recognised by different national competent authorities.²⁵

53. In the Australian examination of dumping of aluminium extrusions originating in China, the Australian Anti-dumping Commission found that the government of China has maintained a central role in the development of the Chinese aluminium industry, and by virtue of this has materially contributed to its rapid expansion and oversupply. The central role of the government of China in the Chinese aluminium industry is also reflected through the numerous planning documents and directives regarding the structure and composition of the Chinese aluminium industry.²⁶
54. These cross-cutting issues have not been taken into consideration by the TRA in examining distortions in the different factors of production markets to determine if there is a PMS in those markets.

Labour

55. The TRA's evaluation of the labour market is insufficiently comprehensive. The issue is not the rights to hire and fire under the Labour Law of China,²⁷ or the independence of trade unions under the Trade Union law,²⁸ but the control by the government of China of access to the labour market.
56. The government controls access to the labour market by means of residence permits.

*The [United Nations Committee on Economic, Social, and Cultural Rights] notes with deep concern the de facto discrimination against internal migrants in the fields of employment, social security, health service, housing, and education that indirectly result[s], inter alia, from the restrictive national household registration system (hukou) which continues to be in place despite official announcements regarding reforms.*²⁹

²³ 2019 OECD study 'Measuring distortion in international markets: the aluminium value'

²⁴ *The relationship in China between the government and companies generates opacity around the form and scale of government support. One example is the provision of inputs such as coal, alumina, or electricity by Chinese SOEs to other companies - public or private - for prices that are below market, and for which it can be very difficult to identify the specific policies that underlie support. This example illustrates a broader tendency for "provincial and municipality governments [in China to] subsidize purchases of raw materials by requiring other SOEs or pressuring their own suppliers to provide these inputs at below-market or even below-cost prices".*

²⁵ Austrian Anti-Dumping Commission Statement of Essential Facts No. 482, Review of Anti-Dumping Measures Applying to aluminium extrusions exported to Australia from the PRC, Page 84

²⁶ see Report no. 543, *Inquiry into the continuation of anti-dumping and countervailing measures applying to aluminium extrusions exported to Australia from the People's Republic of China*, 14 September 2020

²⁷ See paragraph 149 of the Final Determination.

²⁸ See paragraph 151.

²⁹ United Nations Committee on Economic, Social, and Cultural Rights, Concluding Observations of the Committee on the Initial Report of the People's Republic of China (including Hong Kong and Macao), May 13, 2005, pg 3.

57. While this summary from the UNCESCR is dated 2005, the situation has evolved but not changed significantly. Legal access to the labour market is controlled by controlling access to residence permits. Those workers without a legal residence permit can be, and are, discriminated by employers. This pool of illegal internal migrants employed in enterprises distorts the overall employment situation in those enterprises. The Applicant has shown that migrant workers still make up the majority of the work force. The current labour market is still impacted by the distortions of the past.

Capital

58. The capital market in China is distorted. China's Commercial Banking Law states that *commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State.*³⁰ Thus, decisions are not made on the commercial considerations but on the basis of strategic political considerations.

59. The 2019 OECD Report, as cited in the original application for an investigation, states:

The vast majority of financial support was provided by China's state-owned banks to Chinese aluminium SOEs; however, two large private firms also benefitted from support from state-owned banks: China Hongqiao, the world's largest producer of primary aluminium, and China's Zhongwang, China's largest producer of extraction products. While governments participate in the aluminium value chain via SOEs, state influence is at least as important as ownership, including because SOEs are both recipients and providers of support, especially in China, where SOEs provide SOEs and private producers alike with below-market-cost inputs and loans. This fluid relationship between the government and companies generates opacity around the form and scale of government support.

60. The TRA concludes in paragraph 159 that while the sampled overseas exporters accessed capital from state owned banks and received grants which may reflect non-commercial factors, that loan interest rates were comparable to international benchmarks.
61. However, there is no evidence on the file that the TRA has evaluated the credit ratings of the sampled overseas exporters to determine that the comparison with the World Bank benchmarks that it used is appropriate.
62. According to two studies published in 2016, China has close to a dozen domestic credit rating agencies, and in total, 60% of all rated corporate bonds in China had been rated by a state- owned ratings agency.³¹ In addition, according to one of these studies, one of the largest domestic credit rating agencies in China, Dagong Global Credit Rating, is 'private' from the standpoint of equity ownership, but has its origins in the government and is led by a politically well-connected controlling shareholder whose business model is closely

³⁰ *Law of the People's Republic of China on Commercial Banks* (December 27, 2003, 2015 Amended), Article 34

³¹ Lin, L.W. and Milhaupt, C.J. (2016). *Bonded to the State: A Network Perspective on China's Corporate Debt Market*. Columbia Law and Economics Working Paper No.543, p. 20; Livingstone, M. Poon, W.P.H. and Zhou, (2017). *Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry*, in *Journal of Banking & Finance*. p.9

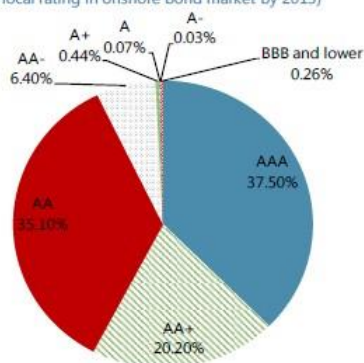
aligned with the policy objectives of the government.³² Furthermore, actors on the credit rating market are closely linked to the other state-owned players on the bond market.

63. In general, Chinese credit ratings do not provide a reliable estimation of the credit risk of the underlying asset. This is demonstrated by the fact that Chinese credit ratings are heavily skewed towards the highest end of the rating scale. According to the IMF, over 90% of Chinese bonds are rated AA to AAA by local rating agencies. This is not comparable to other markets, such as the EU or the US. For example, less than 2% of firms enjoy such top-notch ratings in the US market. Chinese credit rating agencies thus have very broad rating scales and tend to pool bonds with significantly different default risks into one broad rating category.³³

Comparison between Chinese and international credit ratings

Inflated Bond Ratings

(In percent, share of local rating in onshore bond market by 2015)



Inconsistent Local and International Ratings



Source: IMF. (2016). *Resolving China's Corporate Debt problem*. IMF Working Paper WP/16/203, p. 15.

64. The right hand table shows an estimation of what a Chinese rating could correspond to in terms of international ratings. For instance, AAA would correspond to a range from AA- to BBB-. While not necessarily representing a generally accepted standard view, this estimation illustrates the problems with the Chinese credit rating agencies. As for foreign rating agencies, they have established joint ventures with some local credit rating agencies and turned them into their affiliates, which do provide credit ratings for domestic bond issues.³⁴ However, these ratings follow Chinese rating scales and are thus not exactly comparable with international ratings, as explained above.

65. It can be concluded that comparing interest rates without rebasing the credit profile of the enterprises paying the interest rates is not an adequate comparison. Thus, the TRA finding in paragraph 159 is not based on an adequate examination of the facts underlying the

³² Lin, L.W. and Milhaupt, C.J. (2016). *Bonded to the State: A Network Perspective on China's Corporate Debt Market*. Columbia Law and Economics Working Paper No.543, p. 20.

³³ Livingston, M. Poon, W.P.H. and Zhou, L. (2017). *Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry*, in *Journal of Banking & Finance*, p.24.

³⁴ Elliott, D.J. and Yan, K. (2013). *The Chinese Financial System, An Introduction and Overview*, John L. Thornton China Center at Brookings, Monograph Series, Number 6, July 2013, p. 23. It should be noted that the current version of the Catalogue of Industries for Guiding Foreign Investment, amended on June 28, 2017, removed credit rating companies from the restricted category.

finding. To make a proper evaluation the TRA had to examine whether the credit ratings of the overseas producers was in line with international credit ratings benchmarks. Only then is a comparison of the interest rates charged to these companies valid.

66. The Applicant maintains its evidence that the capital market in China is distorted and asks that the Reconsideration Panel re-examines the evidence submitted in the application for an investigation and the findings of trade defence competent authorities in other OECD countries, by the OECD itself, and by the World Bank and the IMF. The Applicant considers if the TRA is to make findings at odd with other findings the burden of proof on it is higher than that displayed in the Final Determination. This consideration applies to all cross cutting considerations.

Land

67. The TRA concluded in paragraph 162 that there was no evidence that, despite the significant control by the government of China over land-use, that there was no evidence that the control of land-use impacts the final price of the Goods Concerned.
68. The issue not addressed by the TRA is the very fact that the producers in China have land at all so as to be able to manufacture the Goods Concerned. The Applicant has demonstrated that the allocation of land is based on government fiat and that the cost of land for favoured enterprises within the terms of the five-year plans is significantly below international benchmarks for land allocation in market economies.

Energy for Shandong Nanshan

69. The TRA found that there was a distortion in the energy market but that this distortion did not impact Shandong Nanshan as this company produced its own energy.
70. As the TRA has highlighted, Shandong Nanshan produces its own electricity and as a result of this it benefits from lower electricity costs. However, the production of electricity itself requires energy. Nanshan uses steam coal to generate electricity. Coal is the primary raw material used by Shandong Nanshan to generate electricity used in the production of the good concerned.³⁵
71. Distortions in the coal input market have not been addressed by the TRA in determining that that Shandong Nanshan's energy prices are not distorted.
72. The OECD has highlighted, the relatively high prices for coal in 2011-2015 should have affected the profit margins of aluminium producers negatively; rather, in the year that Chinese coal prices peaked, profit margins for a sample of Chinese firms were higher than average.³⁶ Shandong Nanshan is considered in this sample of firms.³⁷

³⁵ Allbright Law Offices letter on the open file (7 March 2022).

³⁶ OECD (7 January 2019), page 51

³⁷ OECD (7 January 2019), page 50

Conclusions in relation to Shandong Nanshan

73. The Applicant considers that Shandong Nanshan

- i) sells into the same aluminium extrusions market in China as PMI and Haomei and that this market is distorted;
- ii) cannot float free of the specific and cross-cutting distortions that affect this market, lowering the price on that market
- iii) cannot float free of the distortions in all markets in China even if it is vertically integrated;
- iv) benefits from distortions in the markets for its costs of production including, labour, capital, land, and coal;
- v) that its prices on the market for aluminium extrusions cannot be considered the comparable price for the determination of normal value as the market for aluminium extrusions is distorted as found by the TRA in paragraph 244 of the Final Determination;
- vi) that its dumping margin must be reconsidered on the basis of an international benchmark for aluminium extrusions from an undistorted market.

Ground 2: The dumping margin of Press Metal International is vitiated by reason of errors in approach and in calculations

74. The Applicant argues³⁸ that the markets, not only for billet and energy, but also, land, capital and labour were affected by a PMS and therefore values from these markets could not be used for the purposes of constructing the normal value for PMI (or for Haomei). The Applicant considers that the comments made in relation to the costs from the markets for other inputs set out in Ground 1 of this Application must be taken into consideration in constructing PMI's normal value. All values used to construct normal value must therefore be reconsidered.

75. In constructing the normal value for PMI, paragraph 339 of the Final Determination shows that the TRA used the average profits achieved by two sampled overseas exporters in the Injury Period. No explanation is given for the choice of two exporting producers rather than three and which of the three sampled overseas exporters made up the two.

76. In the Comments on the Statement of Essential Facts, the Applicant demonstrated that PMI reported an EBITDA margin of 18.6% and a pre-tax profit of 13.1% while Shandong Nanshan reported a gross profit margin of 32% and a net profit of 19%. The TRA did not use profits from the period of investigation on the basis that i) they were distorted by COVID-19 and ii) they were not related to the production of the goods concerned.

77. The Applicant considers first, that profit margins of all three overseas exporters should be used and not just two of them. If the TRA has excluded the profit figures for Shandong Nanshan on the basis of its finding that that producer was not dumping on the UK market, that is not in line with the evidence on the file. The TRA must find a reasonable level of

³⁸ See above in relation to Shandong Nanshan.

profit and that reasonable level must be based on all the information available to the TRA and thus the reasonable profit must be based on all three overseas exporters.

78. Secondly, it is reasonable to use the level of profits achieved by the groups as a whole. Profit levels on individual production lines and for individual products such as aluminium extrusions can be manipulated by allocating costs to that production or not doing so. In addition, profits can be different depending on the sales made from stock and from immediate production. While it is clear that the TRA has found that most extrusions are made to order, many are not and stock allocations can distort the profits. Use of the overall profitability of an enterprise is therefore more appropriate for the determining the profit levels.
79. Finally, the Applicant notes that the Press Metal Annual Report 2020³⁹ shows the average EBITDA for the period 2017 to 2019 was 15.83% and average profits were 8.8%. The figures for Shandong Nanshan from its own website⁴⁰ shows average EBITDA of 20.7% and average profits of 10.5%. Thus, even if the earlier period for the determination of profitability is used, the average profits for these two companies remain significant. Data for the period 2017 to 2019 does not appear to be available for the Haomei New Materials Company.

The constructed export price for PMI must take account of the relationship between PMUK and PMI

80. The Statement of Essential Facts (SEF) shows that the constructed export price for PMI is based on the price of the related sales company PMUK to the first independent buyer in the UK, de-constructed back to a PMI ex works export price in China.
81. The Dumping Calculation Methodology (DCM) now shows how the export price for PMI was determined. Actual costs incurred by PMUK between importation and resale have been calculated by taking the administrative costs as a percentage of the total sales revenue from PMUK's financial accounts from 2020. This raises two questions:
- Are the costs incurred by PMUK complete and reliable and free from transfer pricing within the Press Metal Group;
 - Are the administrative costs reported by PMUK Financial Accounts the only costs incurred between importation and resale.

The costs reported by PMUK are not reliable as they are influenced by the relationship with PMI

82. Because PMUK and PMI are related, the costs incurred by one entity cannot be considered complete without analysing the costs by all entities of the group. Depending on group strategies and internal transfer pricing and cost sharing, the costs for certain administrative

³⁹ <https://www.insage.com.my/IR/interactiveAR/PMETAL/interactiveAR2020/12/>

⁴⁰ <https://www.marketscreener.com/quote/stock/SHANDONG-NANSHAN-ALUMINIUM-6497500/financials/>

operations carried out in the UK could be borne by other entities within the group. Profits can be allocated to different entities.

83. In the case of constructed export price, costs between importation and resale would be based on those incurred by an independent importer in the UK, unless it could be demonstrated that the related entity costs and profit are not affected by the relationship with the producing exporter.
84. PMUK's Note 18 to its Financial Statements 2021 titled "Related party transaction" mentions that the company has taken advantage of the exemption under FRS 102 from disclosing transactions and balances with other wholly owned group members.⁴¹
85. Thus, the accounts of PMUK are affected by the relationship with PMI. Absent this relationship an importer in the UK would have to disclose more. For this reason, the accounts of PMUK cannot be used as they do not reasonably reflect the actual costs incurred between importation and resale.

The costs incurred between importation and resale are more than the administrative costs used by the TRA

86. In the DCM, the TRA constructed PMI's export price by deducting actual costs incurred by PMUK to remove all costs between importation and resale. To do so, the TRA calculated a percentage based on the administrative costs compared to total sales revenue for the financial year 2020 and a reasonable level of profit.
87. The level of administrative costs was established at 2.91%, corresponding to £1,433,971.

Table 5: Costs incurred by PMUK 2020 (£)		
Administrative Costs	Total Sales	Percentage
1,433,971.00	49,309,201.00	2.91%
Source: Companies House		

88. However, an examination of the PMUK's accounts shows that a number of costs are omitted. This means that the administrative costs figure does not reflect, fully, all the costs associated with importation and resale of the goods concerned into the UK.
89. The cost of staff for instance, in Note 7 to the Financial Statements, PMUK disclosed its 2020 staff costs for 12 administrative staff, 6 sales staff, 1 quality control staff and 10 warehouse staff. The aggregate payroll costs incurred during 2020 amounted to of £1,592,310.⁴² This aggregate payroll of UK-based personnel employed by PMUK to perform all necessary actions between importation and resale significantly exceeds, on this cost item alone, the total amount taken as a reference for administrative costs by the TRA (at £158,339).

⁴¹ Press Metal UK Ltd. Financial Statements for the Year ended 31 December 2021, page 19, [Companies House](#)

⁴² Press Metal UK Ltd. Financial Statements for the Year ended 31 December 2021, page 16, [Companies House](#)

90. Under Note 3 to the Financial Statements, PMUK took advantage of paragraph 1.12 of FRS 102 not to disclose the aggregate remuneration of key management personnel.⁴³ If disclosed, this would further increase staff costs of UK-based personnel in charge of all operations between importation and resale.
91. The selection of the line administrative costs therefore leaves out other costs normally incurred by any importer of the goods concerned in the UK. A non-exhaustive list of these costs includes:
- Taxes and surcharges (including import duties);
 - Warehousing;⁴⁴
 - Internal transportation;
 - Selling expenses;
 - Administrative expenses;
 - Marketing expenses;
 - R&D expenses;
 - Financial expenses (including: interest expenses);
 - Any other expense between importation and resale.
92. It is only by taking all these costs into consideration that the TRA can legally construct the export price, a construction which requires the removal of all costs between import and sale in the UK.

The adjustment for credit should be maintained

93. Under the Fair Comparison section, the DCM notes that during the verification visit at PMI, the adjustment made to the export price to remove credit was withdrawn as it appears that this adjustment was not needed due to payment terms.
94. To the Applicant's knowledge, the only payment terms that do not require credit are cash payments on delivery. However, it is common knowledge in the market place that PMI offers generous terms for payments to its customers in the UK, generally at the level of 60 days. These terms of sales are offered by its related entity PMUK. PMUK's Financial Accounts report "*a very tight credit control policy in place and consider the company will remain in a positive cash position*".⁴⁵ This means that PMI through PMUK incurs credit expenses to offer these terms of payment.
95. The adjustment for credit is therefore necessary to ensure fair comparison in accordance with Regulation 16(2)(a). Whether this adjustment is performed in relation to the PMI export price, or accounted for in PMUK's costs incurred between importation and resales for the purpose of the constructed export price, normal credit expenses for payment terms have to be taken into account.
96. In addition, the Applicant has examined, in more detail in Ground 4 of this Application (below), the fact that PMI changed its pricing strategy in the UK in response to the EU

⁴³ Press Metal UK Ltd. Financial Statements for the Year ended 31 December 2021, page 12, [Companies House](#)

⁴⁴ Note 10 to PMUK Financial Statement mentions level of stocks held at the end of the year.

⁴⁵ Press Metal UK Ltd. Financial Statements for the Year ended 31 December 2021, page 2, [Companies House](#)

investigation which was ahead in time to the UK investigation into the same Goods Concerned. The evidence which merges from the EU investigation is that PMI was dumping of a level of over 50% prior to the period of investigation.

Conclusions on the Press Metal Export price

97. The Applicant has demonstrated that the TRA has erred in the construction of the PMI export price not fully deducting all the costs incurred in the sales to the first independent customers in the UK and thus the TRA has not arrived at a correct ex works export price.
98. The Applicant is concerned that the export price for the other exporting producers Haomei and Shandong Nanshan, has not been correctly determined. The data available to the Applicant by virtue of SEF §225 to §228 is simply not sufficient for a reasonable analysis.

Ground 3: The Haomei New Materials Company dumping margin does not reflect the distortions in other input markets

99. As for Shandong Nanshan and the Press Metal Group, the Applicant considers that the markets for factors of production in addition to billet and energy are distorted and cannot be used as the basis for the construction of the normal value. The Applicant considers that the comments made in relation to the costs from the markets for other inputs set out in Ground 1 must be taken into consideration for Haomei.
100. For this reason, the Applicant considers that the normal value for Haomei New Materials is undervalued.
101. The Applicant considers that the level of information provided in the Statement of Essential Facts and in the Final Determination are not sufficient for it to make a reasonable analysis of other aspects of the dumping margin.

Ground 4: Changes in price setting in the UK by overseas exporting producers lessened the dumping margin found in the Period of Investigation: the period of investigation should either be changed, expanded backwards in time or an adjustment to the dumping margins is required to remedy the distortions caused by the coincidence of an EU and an UK investigation into the same Goods Concerned

102. An examination of the prices charged by overseas exporting producers in the UK market shows that prices were set by them so as to minimise the level of the dumping. This factor was not taken into consideration by the TRA in the choice of the Period of Investigation. This distorted the findings on dumping by the TRA
103. The Applicant has shown that trade into the UK of aluminium extrusions was subject to provisional anti-dumping duties imposed by the EU between 12 October and 31 December

2020.⁴⁶ The EU investigation into dumping had commenced on 14 February 2020.⁴⁷ Thus, significant parts of the Injury Period and the Period of Investigation overlapped with the investigation in the EU.⁴⁸

104. Two of the three sampled overseas exporting producers in the UK investigation were the same as the two exporting producers which were sampled in the EU investigation. These companies were the Haomei group and Press Metal International. The EU only sampled two exporting producers.⁴⁹
105. Thus, two of the overseas exporting producers sampled in the UK investigation were, during the relevant periods, being investigated for dumping into the EU. The EU investigation was ahead of the UK investigation by more than a year. Knowing the level of dumping that had been found against these companies in the EU investigation, they changed their pricing behaviour so as to minimize the dumping into the (later in time) UK investigation.

Table showing the relative increase in prices of extrusions originating in China

	2019	2020	2021	2022
Situation	No EU Tariffs but investigation had begun	EU Tariffs announced August 2020	UK Case Initiated June 2021	Data from January to November
Delta of China Price compared to All countries	46,0%	54,1%	60,2%	68,4%
Delta of China Price compared to Spain Price	59,6%	67,7%	69,1%	71,9%
Delta of China Price compared to Turkey Price	52,1%	49,2%	68,1%	73,3%
Delta of China Price compared to Italy Price	32,3%	25,7%	44,9%	59,0%

Based on data set out in Annex 1 to this Application

106. This table shows that the difference (the delta) between the prices of imports into the UK from China and imports from all countries and specifically from Spain, Turkey and Italy decreased significantly. This decrease in the delta was due to Chinese overseas exporting producers raising their prices to bring them closer to prices from other origins and to decrease the level of the dumping.
107. Dumping measures the difference between the Normal Value (usually the price on the market of origin unless that price is not appropriate) and the Export Price. The Export Price

⁴⁶ Commission Implementing Regulation 2020/1428 of 12 October 2020 imposing a provisional anti-dumping duty on imports of aluminium extrusions originating the People's Republic of China.

⁴⁷ Ibid, recital 1.

⁴⁸ The UK exited the customs territory of the EU on 31 December 2020.

⁴⁹ Regulation 2020/1428 recital 24: this recital shows that the EU had sampled 3 companies but 1 of those did not cooperate and thus the sample was reduced to Haomei and PMI.

is constructed on the basis of the price in the market of export. Thus, if the price on the UK market increases, the Export Price increases and the dumping margin decreases. The evidence shows an increase of 14% of the Export Price to the UK between 2019 and 2022. This decreases the dumping margins.

Confirmation that i) overseas exporters changed their pricing in the UK and ii) that the choice of the POI reduced the dumping margins can be found in the figures for dumping into the UK by PMI found by the EU during the EU investigation

108. The previous section shows that overseas exporting producers changed their pricing strategy in the UK in consequence of the EU investigation.
109. The Applicant's understanding of pricing on the UK market is confirmed by examining the figures for PMI in the EU investigation. On 22 December 2020, the European Commission published its general disclosure document with the definitive findings on dumping that was still based on EU-28 figures (Sensitive Annex 2). Since the withdrawal of the United Kingdom of Great Britain and Northern Ireland ('UK') from the European Union, the Commission amended its findings by way of an additional final disclosure based on EU-27 (Sensitive Annex 3).
110. By comparing these two documents, it is possible to have a fair idea of the dumping margin found by the European Commission in the books of the main Chinese producer exporting extrusions to the UK: the Press Metal International Group.
111. First, the original final disclosure reveals dumping margin of [Sensitive] for the PMI Group as a whole:

[Sensitive table showing the original dumping margin for PMI into the EU based on EU 28 data]

112. Then, the additional final disclosure published in February 2021 recalculated the dumping margin the dumping margin on EU-27, i.e. by excluding prices to the UK from its export price analysis. It should be noted that the normal value was unaffected by the withdrawal of the UK. The issue being addressed is the Export price.

[Sensitive table showing the revised dumping margin for PMI into the EU based on EU 27 data]

113. It can be seen that the dumping margin to the EU decrease from [Sensitive] to [Sensitive] if export prices to the UK are removed from the export price to the EU. It means that the export prices from PMI Group to the UK during the investigation period were significantly lower than for the rest of Europe, and therefore that the dumping margin of PMI Group in the UK was higher than in the rest of Europe.
114. To quantify this, we turn to an annex (Sensitive Annexes 4 and 5) to the response to the Notice of Initiation submitted to the European Commission by the 2 PMI entities:

- Press Metal International Ltd. reported that 78% of its EU sales (value) were to the UK;
- Press Metal International Technology Ltd. reported that that 56% of its EU sales (value) were to the UK.

115. Assuming these two entities have an equivalent volume of sales, the PMI Group sells on average 67% of its European sales to the UK.

- If EU-28 sales revealed [Sensitive] dumping for PMI
- If EU-27 sales revealed [Sensitive] dumping for PMI
- PMI sales to the UK must have been made at a dumping rate of [Sensitive]

Conclusions on Ground 4: distortions in the period of investigation

116. The Applicant considers that the dumping margins must either be adjusted upwards to reflect the bigger dumping in the earlier period or an earlier Period of Investigation (or an extension of the POI back in time) be chosen so as to eliminate this distortion due to the unique circumstances of the exit of the UK from the customs territory of the EU.

Ground 5: Large scale extrusions should not be excluded from the scope of the measures

117. The TRA was unable to make a final affirmative determination in relation to the Goods Concerned originating in the People's Republic of China (PRC) with a maximum cross-sectional dimension of greater than 310mm or a weight per metre greater than 14kg.

118. The TRA has determined that the Like Goods were not manufactured by UK Industry during the period of investigation (POI) and that the Goods Concerned set out above have not caused, or are not causing, injury to the UK Industry. The TRA therefore made a Final Negative Determination in accordance with paragraph 11(6)(b) of Schedule 4 to the Act.⁵⁰

119. This issue of the exclusion of the large extrusions is examined in Section D5 of the Final Determination. In the Statement of Essential Facts, the TRA had excluded from the scope of the measures, extrusions with a cross-sectional dimension of greater than 310mm or a weight per metre of greater than 14kg. However, in paragraphs 105 and 106 of the Final Determination, the TRA accepts that the UK industry had the capacity to make extrusions above these dimensions. The TRA found in paragraph 107 that it had not been provided with evidence that this capacity was being used or that it would be used in the short to medium term.

120. The evidence for imports of extrusions with a weight per metre above 14kg is set out in paragraph 109. Paragraph 109 refers to evidence from the PCN. The PCN structure does not have a section for above 14kg. The PCN provides for above 10kg. The TRA states that

⁵⁰ The Applicant notes that the Final Negative Determination is not reasoned in the document itself but in a parallel document, the Final Determination. This seems at odds with the requirement that decisions are reasoned in the decision itself.

it examined these extrusions above 10kg. However, the evidence provided in paragraphs 109 and 110 is not clear. It is not possible to determine if the TRA was correct in concluding that there were imports of extrusions with a weight per metre above 14kg.

121. In paragraph 110, in relation to extrusions with a weight per metre greater than 14kg, the TRA concluded that these extrusions were not manufactured in the UK during the period of investigation but were imported into the UK from China during that period. In paragraph 112 in relation to extrusions with a dimension greater than 310mm, the TRA concluded that these dimensions were not manufactured in the UK during the period of investigation. The TRA does not say if these dimensions were imported into the UK during that period.

Eighty percent of PCNs were comparable: twenty percent were not. Thus, the TRA found dumping, causation and injury in relation to some PCNs for which there was no overlap between domestic UK production and imports in addition to the large sized extrusions. There is therefore no justification to exclude large extrusions only.

122. In paragraph 87, in its examination of the categories of Goods Concerned, the TRA states that it found an 80% overlap between the extrusions produced in the UK and by the exports to the UK of the sampled overseas exporters. This is a high percentage and in line with WTO practice. However, it also means that there was no overlapping or comparability of domestic and imported extrusions in 20% of the PCNs.
123. The absence of full comparability does not mean that 100% of the exports were not being dumped or were not causing injury to the UK industry. WTO Anti-Dumping law does not require a 100% comparability. In addition, the TRA found in paragraph 234 that the average undercutting of the UK market prices covered ‘all PCNs’ and that that average was 21.3% and for 60% of the PCNs the undercutting margin was 23.5%. The TRA also found price suppression (see Section H3.3) meaning that UK producers were not in a position to achieve the prices needed to produce aluminium extrusions including those of the larger sizes.
124. For the 20% of the PCNs for which there was no comparability, the TRA does not state whether the absence of comparability was due to the absence of production in the UK or the absence of export from China. It could be either. If that is the case, then the singling out of large size extrusions because they were not produced in the UK during the period of investigation, is not in line with the overall absence of comparability in relation to the other PCNs. No justification for this singling out is provided.
125. In any event, the TRA found that there was the capacity to make large sized extrusions in the UK. The TRA has not examined if the dumping of those large sized extrusions by the overseas exporters resulted in the UK producers not producing those same large sized extrusions. In other words, if the dumping of these extrusions caused the non-production in the UK.

The Garnalex evidence shows that it had the capacity to produce large sized extrusions and the intention to produce in the short and medium term

126. In paragraph 115 the TRA concludes that that it has not obtained evidence that the UK industry is likely to start manufacturing these sized and weighted extrusions.

127. In its submission of 6 July 2022, Garnalex submitted to the TRA its business plan. This business plan demonstrates the clear intention of Garnalex to use its existing presses to produce exclusions of the sized excluded and furthermore its intention to purchase larger presses to allow it to extrude bigger sizes than its current capacity.
128. Thus, the Applicant considers that the TRA erred in its conclusion that there was no evidence of the intention to commence manufacture of these extrusions in the short to medium term.

The Applicant's evidence demonstrated that it had the capacity to produce large sized extrusions and did produce them in the customs territory applicable at the relevant time

129. As indicated in paragraph 102, the Applicant argued that production within the EU common market should be taken into consideration for the purposes of determining production within the UK. The Applicant demonstrated that it produced extrusions with dimensions above 310mm and above 14kg per metre.
130. The TRA rejected this argument. This was in part because it found that Part 12 of the Regulation do not apply to new investigations. The Applicant considers that the TRA erred in this rejection.
131. Firstly, the Applicant had not argued that Part 12 applied directly to the current situation but that it was an indication of the legislator's intention to take the fact of the UK's inclusion within the common market into consideration.
132. Secondly, during 7 months of the period of investigation the UK formed part of the customs territory of the common market. For the purposes of the WTO law that was applicable during this period, manufacturing in any part of that common market was manufacturing within the customs territory applicable in the UK. The Applicant notes that the explanatory note to the Trade Remedies Regulations provides that:

These Regulations are intended to be consistent with the United Kingdom's obligations under those agreements.

133. The agreements referred to include: Article VI of the GATT and the Agreement on the Implementation of Article VI (the WTO Anti-Dumping Agreement). The applicable WTO law at the relevant time was in relation to the common market and not only the United Kingdom.
134. The WTO, in agreement with the UK, published a notice⁵¹ providing:

The United Kingdom was a member State of the European Union until 31 January 2020. The European Union and the United Kingdom agreed a Withdrawal Agreement pursuant to Article 50 of the Treaty on European Union, providing for a time-limited transition period until 31 December 2020 during which European Union law, as modified by the Withdrawal Agreement, continued to be applicable to and in the United Kingdom.

⁵¹ https://www.wto.org/english/thewto_e/countries_e/united_kingdom_e.htm

135. In a notice to the WTO of 4 January 2021⁵² the UK informed the WTO that, up to the end of the transition period, the UK's WTO commitments were those of the European Union.

2.1. For the duration of the United Kingdom's membership of the European Union and for the duration of the transition period, the United Kingdom's concessions and commitments on goods and concessions and specific commitments in services were contained within the schedule of concessions and commitments on goods and schedule of concessions and specific commitments in services of the European Union.

136. In addition, the UK informed the WTO that:

5.1. The United Kingdom has put in place a domestic trade remedies system coming into full effect from the end of the transition period.

137. In other words, until the end of the transition period, concepts applicable in EU trade remedies law applied to the UK. The EU considers the common market to be a single customs territory and that manufacture in any region of that customs territory is manufacture in the customs territory.

138. The WTO is a single undertaking. As the WTO explained⁵³ at the conclusion of the Uruguay Round of negotiations:

*Thus, a common institutional framework encompassing the GATT as modified by the Uruguay Round (i.e. the GATT 1994), alongside with all Agreements and Arrangements concluded under GATT auspices and other Agreements and Ministerial Decisions/Declarations resulting from the Uruguay Round is envisaged. This will serve as a vehicle to ensure a "single undertaking approach" to the results of the Uruguay Round: **membership in the WTO will automatically entail accepting all the results of the Uruguay Round without exception.** [emphasis added]*

139. Thus, the commitments and concessions applicable in the UK prior to the 31 December 2020 were those not only in relation to customs duties but all concessions agreed in the Uruguay Round including the recognition that the common market was a single customs territory and that what must be taken into consideration is manufacture in any part of the customs territory and not just in a part.

140. Fourthly, Regulation 27 of the Trade Remedies Regulations requires the TRA to determine if 'dumped goods ... have caused or are causing injury'. Paragraphs 5 and 6 of Schedule 4 to the Taxation (Cross-Border Trade) Act 2018 refer to injury to the UK producers of the 'Like Goods'. The Like Goods are the same as the Goods Concerned and include extrusions greater than 310mm and heavier than 14kg per metre.

⁵²

WTO

document

WT/GC/226:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/226.pdf&Open=True>

⁵³ https://www.wto.org/english/docs_e/legal_e/ldc2_512.htm

The Applicant now has evidence that it did, in fact, produce extrusions above 14kg per metre in the UK during the period of investigation.

141. In this Application for Reconsideration, the Applicant is submitting evidence that it was producing extrusions with a weight greater than 14kg per metre during the Period of Investigation.
142. Sensitive Annex 6 to this Application shows production in the Period of Investigation with running weights above 14kg⁵⁴ per metre. Users of extrusions in the UK were aware of the capacity of Hydro UK to make these weights of extrusions.

The Applicant has plans to upgrade a 9 inch press to a 10 inch press if conditions are right

143. Sensitive Annex 7 to this Application is a confidential internal deliberation within the Applicant to show the intention to upgrade a 9” press to a 10”. A 10” press can make extrusions above 310mm without the need to produce in a V form as currently within 8” and 9”. The outcome of this consideration depends on the outcome of this Application for Reconsideration.

Conclusions on the exclusions of large sized extrusions

144. For these reasons the Applicant considers that the TRA has erred in the application of the law to the facts of the current case and that the Final Negative Determination must be reversed such that exclusions with a dimension above 310mm or heavier than 14kg per metre must be included within the scope of the measures. Failure to do so is:
- Not in line with the facts which show that the Applicant produced extrusions with a weight above 14kg/m during the period of investigation;
 - Not in line with the applicable law which cannot require current production in the UK when there was production in the customs territory to which the UK belonged at the relevant time;
 - Will result in circumvention of the measures;
 - Will result in the loss of sales of when orders from users bundle large scale with small scale extrusions;
 - Will impede investments by the Applicant in upgrading their presses to 9 inch and 10 inch.

Overall conclusions on the application for reconsideration in AD0012

145. The Applicant concludes that there are substantive and sufficient grounds for a reconsideration by the TRA of the two Final Determinations in AD0012.

⁵⁴ The first slide is evidence of one extrusion at 14kg/m

146. The Applicant has shown that the TRA found that the prices on the market for aluminium extrusions were undervalued. Thus, these prices cannot be appropriate for the determination of the normal value for Shandong Nanshan.
147. The Applicant has shown that cross-cutting as well as other distortions applied to all markets in China and that prices on the markets for capital, land and labour cannot be used for the construction of normal value for any of the sampled overseas exporters. This is particularly so for the role of the CCP where other UK government agencies have found intention to disrupt business.
148. The Applicant has shown that the period of investigation was itself distorted by influence from the earlier in time EU investigation into the same goods and that dumping of one overseas exporting producer was significantly higher just before the period of investigation.
149. As the dumping margins for the sampled overseas exporters are distorted, the dumping margins for the non-sampled overseas exporter must be adjusted as well as the margin for all other overseas exporters.
150. The Applicant has shown that the UK industry actually produced, has the capacity to produce and the short- and medium-term intention to produce extrusions with a dimension above 310mm or a weight above 14kg per metre. The Applicant therefore considers that the second Final Determination should be removed, and the measures be applied to all of the Goods Concerned.

For Hydro Aluminium UK Ltd
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