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Australian Government

Australian Customs and
Border Protection Service

B602 (10/11)

APPLICATION

FOR

REVIEW OF
ANTI-DUMPING
MEASURES

International Trade Remedies Branch
Australian Customs and Border Protection Service



Specific Freight

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International Logistics

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APPLICATION UNDER SECTION 269ZA OF THE CUSTOMS ACT 1901 FOR REVIEW OF ANTI DUMPING MEASURES ON BEHALF OF WUXI PHOTOELECTRIC ALUMINIUM PRODUCTS CO LTD CHINA & B & D ALUMINIUM PTY LTD

Attention : JOHN BRACIC

Date: 18th April 2012

Fax 02 62756990

Please refer to the fax attachment for the amendment to include Subsidy as a factor change.

Thanking you once again for your assistance in this matter.

Regards

George Xanthos georgex@specificfreight.com.au

Phone 03 83363110

Fax 03 93351757

SPECIFIC FREIGHT PTY LTD

Melbourne

18-APR 012 12:35 FROM CUSTOMS

TO 00393361767

P.001/001

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**APPLICATION UNDER SECTION 269ZA
OF THE CUSTOMS ACT 1901 FOR
REVIEW OF ANTI-DUMPING MEASURES**

In accordance with section 269ZA of the *Customs Act 1901*, I request that the CEO initiate a review of anti-dumping measures in respect of the goods the subject of this application to:

1. ☐ revise the level of the measures because one or more of the variable factors relevant to the taking of measures have changed (a variable factors review)

In this case the factors that I consider have changed are:

- ☒ normal value
- ☒ export price
- ☐ non injurious price
- ☒ subsidy ✓

The variable factors review is in relation to:

- ☒ a particular exporter
- if so provide name and country details - WUXI PHOTOELECTRIC
ALUMINIUM PRODUCTS CO. LTD
CHINA
- ☐ exporters generally

or

2. ☐ revoke the measures because the anti-dumping measures are no longer warranted (a revocation review)

In this case the measure I consider should be revoked is:

- ☒ the dumping duty notice
- ☒ the countervailing duty notice
- ☐ the undertaking

The revocation review is in relation to:

- ☒ a particular exporter
- if so provide name and country details - WUXI PHOTOELECTRIC
ALUMINIUM PRODUCTS CO. LTD
CHINA
- ☐ exporters generally

NOTE

Where seeking variable factors review as well as a revocation review indicate this in both 1 and 2 above.

**APPLICATION UNDER SECTION 269ZA
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 - if so provide name and country details - WOXI PHOTO ELECTRIC
 ALUMINUM PRODUCTS CO. LTD
 (CHINA)
☐ exporters generally

or

2. ☐ **revoke the measures** because the anti-dumping measures are no longer warranted (a revocation review)

In this case the measure I consider should be revoked is:

- ☒ the dumping duty notice
☒ the countervailing duty notice
☐ the undertaking

The revocation review is in relation to:

- ☒ a particular exporter
 - if so provide name and country details - WOXI PHOTO ELECTRIC
 ALUMINUM PRODUCTS CO. LTD
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NOTE

Where seeking variable factors review as well as a revocation review indicate this in *both* 1 and 2 above.

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Wuxi Xisha Photoelectric Aluminium Products Co., Ltd

中国江苏省无锡市惠山区玉祁镇黄泥坝 邮编: 214183

Huang-ni-ba Village, Yuqi Town, Huishan District, Wuxi, China

Tel: (0086) 510-83330757 Fax: (0086) 510-83330567

To: Australian Customs and Border Protection Service

From: Wuxi Xisha Photoelectric Aluminium Products Co., Ltd

Dear Sir,

We, Wuxi Xisha Photoelectric Aluminium Products Co., Ltd. has manufactured and exported certain aluminium alloy sections to Australia.

On 24 June 2009, the Australian Customs and Border Protection Service (Customs and Border Protection) initiated an investigation into the alleged dumping and subsidization of certain aluminium extrusions from the People's Republic of China (China).

We have been identified as a possible manufacturer or exporter of certain aluminium extrusions from China. Accordingly, we have been invited to participate in Customs and Border Protection's investigation. We got a Preliminary Information Request and a relevant letter from Customs and Border Protection, which told us the investigation period is 1 July 2008 to 30 June 2009 and the responses due by 10 July 2009.

Regretfully we did not response by 10 July 2009 because of some special reasons during that period.

Thanks to Customs and Border Protection's understanding and giving us a chance, we had completed and returned all relevant parts of the **Preliminary Information Request** form on March 28 2011. At the same time we have submitted a letter and attached relevant evidences. Our letter on March 28 2011 gives following information about our export price, subsidization and export rate, that is, "we are not 'dumping' aluminium extrusions to Australia at a price lower than that in China, we are entitled to no subsidizations whatsoever, our exports are really insignificant (during the investigation period of 2008 we did not export aluminium extrusions into Australia; and during the investigation period of 2009 we exported only 77.097T) and it is impossible for us to be jeopardizing the aluminium industry in Australia. And the relevant evidence attached to our letter supported what we have said in the letter.

In our letter we have said that "welcome to make investigations, if necessary, at our premises and we'll provide any assistance you required". This means that we are cooperative with the investigation and we wish to be selected for further investigation, so that we might have our own dumping/subsidy situation assessment.

With help of our lawyer Mr. Wang Libo and by viewing case details, we know that by February 29 2012 the status of case 148 Aluminium Extrusions from China is pending approval. Because of no final determination or preliminary determination has been made for this case we think we still have a chance for a further investigation.

With help of our lawyer Mr. Wang Libo and by viewing case details, we also know that by February 29 2012 the status of case 148A Aluminium Extrusions from China - Resumed Investigation into Tai Ao is pending approval. We think we also have a chance for a resumed investigation.

We, Wuxi Xisha Photoelectric Aluminium Products Co., Ltd, sincerely apply for a further investigation or a resumed investigation into our company.

Please provide us with an Exporter Questionnaire and associated spreadsheets for completion so that a further investigation into our company can be done: or

Please tell us what and how to do so that a resumed investigation into our company can be done.

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We will fully cooperate with Customs and Border Protection's inquiries, including but not limited to, completing an exporter questionnaire, completing any other inquiries and/or answering any other questions and allowing Customs and Border Protection to conduct an on the spot verification visit at our premises.

We state that we are not 'dumping' aluminium extrusions to Australia, we are entitled to no subsidizations whatsoever, and that our exports into Australia are impossible to jeopardize the aluminium industry in Australia (please refer to our detailed statement attached).

We hope an individual dumping margin and/or amount of any subsidy will be determined for us based on our own data. Please give us another chance.

If you have any replies and/or questions concerning this matter, please contact any one of the following members:

Mr. Zhou Jianhua of our company on 0086 510 83330757, fax number 0086 510 83330567 or email Salec@xisha.com:

Lawyer Wang Libo of Juangsu Shenque Law Firm on 0086 510 80290008, Mobile phone 0086 13601514063, fax number 0086 510 82258968 or email wlb25@public1.wx.js.cn.

Yours faithfully

Ms. Wang yufen

Director of Wuxi Xisha Photoelectric Aluminium Products Co., Ltd

5 March, 2012

王玉芬

2012.3.5



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On 24 June 2009, the Australian Customs and Border Protection Service (Customs and Border Protection) initiated an investigation into the alleged dumping and subsidisation of certain aluminium extrusions from the People's Republic of China (China), with the investigation period from 1 July 2008 to 30 June 2009.

We have been identified as a possible manufacturer or exporter of certain aluminium extrusions from China. Accordingly, we have been invited to participate in Customs and Border Protection's investigation. We got a Preliminary Information Request and a relevant letter from Customs and Border Protection, which told us the investigation period is 1 July 2008 to 30 June 2009 and the responses due by 10 July 2009.

We state that we are not 'dumping' aluminium extrusions into Australia, we are entitled to no subsidisations whatsoever, and our exports into Australia are impossible to jeopardize the aluminium industry in Australia. The reasons and data are as following:

1. We are not 'dumping' aluminium extrusion product into Australia

We are a private small to medium-sized enterprise without foreign investment or government investment. No management personnel have been appointed by government into our company. The management of our company is independent. The foreign exchange from our exportation can be used independently and freely by us. The price of our aluminium is completely decided by market, not decided by government or guided by government. Our price of aluminium extrusions product is not affected by government. We think our company is a market economical enterprise.

Our selling price of aluminium extrusions is composed of fixed and variable cost of production plus administrative, selling and general costs and profit. The main variable cost of our production is aluminium ingot cost. The aluminium ingot cost depends on the market price of aluminium ingot, which depends on the information provided by Shanghai Metal Market. Our price of aluminium extrusions varies with the change to the aluminium ingot cost, so it is floating. In order to facilitate settlement, a relative fixed selling price is adopted in the contract with our Australian customer (generally in a period of three months), which is not lower than the selling price of the similar products in China.

According to Agreement on Implementation of Article VI on the General Agreement on Tariffs and Trade 1994, "A product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country".

Our aluminium extrusions are not introduced into the commerce of Australia at less than its normal value, our export price of the aluminium extrusions to Australia is not less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in China. Therefore, our aluminium extrusions should not be considered as being dumped into Australia. We are not 'dumping' aluminium extrusions into Australia.

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2. We are entitled to no subsidisations whatsoever and we have received no subsidizations whatsoever

A. The applicant has alleged that Chinese exporters of aluminium extrusions have benefited from the provision of goods by the Government of China at less than adequate remuneration. In particular it was claimed that primary aluminium, the main input used in the manufacture of aluminium extrusion, was being produced and supplied by government owned enterprises at less than adequate remuneration.

To be eligible for this Program 15 – Goods provided at less than adequate remuneration, the primary aluminium used in the manufacture of aluminium extrusion of the enterprise must be produced and supplied by government owned enterprises at less than adequate remuneration. However, the primary aluminium used in the manufacture of aluminium extrusion of our company is not produced or supplied by government owned enterprises at less than adequate remuneration. Ninety percent of the primary aluminium, aluminium ingot, was not supplied by Government owed enterprises. Only ten percent of the primary aluminium, aluminium ingot, was supplied by a government owed enterprise but with almost same price of non-government owed enterprises. So we are not entitled to subsidy benefits relating with Program 15 – Goods provided at less than adequate remuneration. We have not received any subsidy or grants from Program 15 – Goods provided at less than adequate remuneration.

B. The applicant has alleged that Chinese exporters of aluminium extrusions have benefited from preferential tax policies for foreign invested enterprises which are provided under the Foreign Invested Enterprise and Foreign Enterprise Income Tax Law, which provides Preferential Tax Policies for Foreign Invested Enterprises (Program 10).

To be eligible for this Program 10, the enterprise must be a foreign invested enterprise.

We, however, are not a foreign invested enterprise. We are a private small to medium-sized enterprise and almost all the shareholding of us is owned by two individual Chinese citizens during the investigation period. Mr. Pu Dexing and Ms. Wang Yufen, and only 1% of the shareholding of our company is owned by Jiangsu Xisha Aluminium Products Co., Ltd, which is a private small to medium-sized enterprise.

So we are not entitled to subsidy benefits relating with Program 10 - Preferential Tax Policies for Foreign Invested Enterprises. We have not received any subsidy or grants from Program 10 - Preferential Tax Policies for Foreign Invested Enterprises.

C. The application alleges that Chinese aluminium extrusion producers/exporters are likely to have benefited from exemptions to income tax based upon the location of the industry in the particular province or locality. Based on the available information, Custom and Border Protection concludes that the following programs constitute countervailable subsidies: Program 1 - Preferential tax policies for enterprises with foreign investment established in the coastal economic open areas and economic and technological development zones; Program 16 - Preferential tax policies for enterprises with foreign investment established in Special Economic Zones (excluding Shanghai Pudong area); Program 17 - Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai; Program 18 - preferential tax policies in the Western Regions. To be eligible for program 1, the enterprise must be a foreign invested enterprise and must be established in the coastal economic open areas and economic and technological

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development zones. To be eligible for program 16, the enterprise must be a foreign invested enterprise and must be established in Special Economic Zones (excluding Shanghai Pudong area). To be eligible for program 17, the enterprise must be a foreign invested enterprise and must be established in Pudong area of Shanghai. To be eligible for program 18, the enterprise must be established in the Western Regions.

We, however, are not a foreign invested enterprises. We are located in Huangniba, Yuqi, Huishan District, Wuxi City, Jiangsu Province, People's Republic of China, not in the coastal economic open areas, in the economic and technological development zones, in the Special Economic Zone, in the Shanghai Pudong area or in the Western Regions. Therefore we are not eligible for subsidy benefits relating with Program 1, 16, 17 and 18. We are not entitled to income tax reduction based on location. We have not received any subsidy or grants from Income Tax Reduction based on Location (Program 1, 16, 17 and 18) during the investigation period.

D. The applicant has alleged that Chinese producers of aluminium extrusions are likely to have benefited from the program under which the Government of China provides an exemption of VAT and tariffs on imported equipment used as productive assets. Based on the available information, Custom and Border Protection concludes that the VAT and Tariff Exemptions on Imported Equipment program constitute a countervailable subsidy. The legal basis of this Program 21 is Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment (Guo Fa[1997] No. 37), etc.. To be eligible for this Program 21, the enterprise must be a foreign invested enterprise.

We, however, are not a foreign invested enterprise so we are not entitled to the subsidy benefits relating with Program 21, that is, we are not entitled to the exemption of VAT and tariffs on imported material and equipment. We have not received any subsidy or grants from Tariff and VAT Exemptions on Imported Materials and Equipments (Program 21) during the investigation period.

E. The applicant alleges that Chinese producers of aluminium extrusions are likely to have benefited from the following grant programs: Program 2 - One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'; Program 3 - Provincial Scientific Development Plan Fund; Program 4 - Export Brand Development Fund; Program 5 - Matching Funds for International Market Development for SMEs; Program 6 - Superstar Enterprise Grant; Program 7 - Research & Development Assistance Grant; Program 8 - Patent Award of Guangdong Province; Program 9 - Training Program for Rural Surplus Labor Force Transfer Employment; Program 26 - Innovative Experimental Enterprise Grant; Program 29 - Special Support Fund for Non-State-Owned Enterprises; Program 32 - Venture Investment Fund of Hi-Tech Industry, and Program 35 - Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment.

To be eligible for Program 2, the products of enterprises must qualify for the title of 'China Worldwide famous Brand', for the title of 'China well-known brand' and/or 'famous trademark', for the title of 'state products of exemption from check', or for the title of 'Guangxi well-known brand' or 'Guangxi famous trademark'.

Our products, however, neither qualify for the title of 'China Worldwide famous Brand' nor our products qualify for the title of 'China well-known brand' and/or 'famous trademark', for the title of 'state products of exemption from check', or for the title of 'Guangxi well-known brand' or

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'Guangxi famous trademark'. So we are not entitled to subsidy relating with Program 2 - One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'.

In order to receive the grant of Program 3 eligible enterprises must have close relation with high tech, for example, having "High-tech exports advanced enterprise" recognized by the provincial department of foreign trade economic cooperation and the department of finance and make products that meet the requirements of the Catalogue of Chinese New and High-tech Export Products.

We, however, are not a High-tech exports advanced enterprise recognized by the Provincial departments, neither we are making products that meet the requirements of the Catalogue of Chinese New and High-tech Export Products. So we are not entitled to subsidy benefits relating with Program 3 - Provincial Scientific Development Plan Fund.

In order to receive the grant of Program 4 it seems that eligible enterprises must have an export brand development plan.

We, however, do not have export brand development plan. So we are not entitled to subsidy benefits relating with Program 4 - Export Brand Development Fund.

To be eligible for program 5 the enterprise must have be a solid market development plan to open up new and emerging international markets and meet other criteria.

We, however, do not have a solid market development plan to open up new and emerging international markets. So we are not entitled to subsidy benefits relating with Program 5 - Matching Funds for International Market Development for SMEs.

To be eligible for program 6 the enterprise must be a superstar enterprise, which have five criteria.

We, however, do not meet the criteria of a superstar enterprise. So we are not entitled to subsidy benefits relating with Program 6 - Superstar Enterprise Grant.

To be eligible for program 7 the enterprise must have research projects addressing scientific and technological problems, technology innovation projects, projects aimed at innovation in science and technology in the agricultural sector, or some high and new technology industries.

We, however, neither have research projects addressing scientific and technological problems, nor we have technology innovation projects, projects aimed at innovation in science and technology in the agricultural sector or some high and new technology industries. So we are not entitled to subsidy benefits relating with Program 7 - Research & Development Assistance Grant.

To be eligible for program 8 the enterprise must be located in Guangdong and have patent which meet several criteria.

We, however, neither are located in Guangdong nor we have patent which meet several criteria of Program 8 either. So we are not entitled to subsidy benefits relating with Program 8 - Patent Award of Guangdong Province.

To be eligible for program 9 the enterprise must take on individuals belonging to a city's rural surplus labour force and that have obtained a training certificate.

We, however, do not take on individuals belonging to a city's rural surplus labour force, nor we obtain a training certificate. So we are not entitled to subsidy benefits relating with Training Program 9 - Training Program for Rural Surplus Labor Force Transfer Employment.

To be eligible for program 26 the enterprise must be located in Zhejiang Province.



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We, however, are not located in Zhejiang Province. So we are not entitled to subsidy benefits relating with Program 26 - Innovative Experimental Enterprise Grant.

To be eligible for program 29 the enterprise must be located in Yunan Province.

We, however, are not located in Yunan Province. So we are not entitled to subsidy benefits relating with Program 29 - Special Support Fund for Non-State-Owned Enterprises.

To be eligible for program 32 the enterprise must be located in the High-Tech Zone or the High-Tech Park of the new Northern District.

We, however, neither are located in the High-Tech Zone of the new Northern District nor in the High-Tech Park of the new Northern District. So we are not entitled to the subsidy benefits relating with Program 32 - Venture Investment Fund of Hi-Tech Industry.

To be eligible for program 35 the enterprise must be established in Guangzhou Municipality by a foreign investor.

We are not an enterprise established in Guangzhou Municipality by a foreign investor. So we are not entitled to subsidy benefits relating with Program 35 - Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment.

Therefore, we are not eligible for Financial Grants (Program 2, 3, 4, 5, 6, 7, 8, 9, 26, 29, 32 and 35).

We have not received any subsidy or financial grants from Financial Grants (Program 2, 3, 4, 5, 6, 7, 8, 9, 26, 29, 32 and 35) during the investigation period.

Therefore, we are entitled to no subsidizations whatsoever. And we have received no subsidizations whatsoever.

3. Our exports into Australia are impossible to jeopardize the aluminium industry in Australia. During the investigation period of 2008 we did not export aluminium extrusions into Australia; and during the investigation period of 2009 we exported only 77.097T aluminium extrusions into Australia. Compared to the Australian yearly demand of aluminium extrusions 140000 - 160000T, our exports of aluminium extrusions into Australia are really insignificant. Our insignificant exports into Australia are impossible to jeopardize the aluminium industry in Australia. And we are not 'dumping' aluminium extrusions to Australia. We have received no subsidizations whatsoever. Of course our exports into Australia are impossible to jeopardize the aluminium industry in Australia.

If you have any replies and/or questions concerning this matter, please contact any one of the following members:

Mr. Zhou Jianhua of our company on 0086 510 83330757, fax number 0086 510 83330567 or email Sale@xisha.com:

Lawyer Wang Libo of Juangsus Shenque Law Firm on 0086 510 80290008, Mobile phone 0086 13601514063, fax number 0086 510 82258968 or email wlh25@public1.wx.js.cn.

Yours faithfully

Ms. Wang yufen

Director of Wuxi Xisha Photoelectric Aluminium Products Co., Ltd

5 March, 2012

Handwritten signature and date: 2012.3.5