



CONSIDERATION REPORT

APPLICATION FOR AN ACCELERATED REVIEW OF A DUMPING DUTY AND COUNTERVAILING DUTY NOTICE APPLYING TO

CERTAIN ALUMINIUM EXTRUSIONS EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA BY

LONGKOU CONGLIN ALUMINIUM CO. LTD (LCA)

REPORT NO. 194

November 2012

PUBLIC RECORD

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1 Summary and recommendations

This report provides the results of the Australian Customs and Border Protection Service's (Customs and Border Protection) consideration of an application by Longkou Conglin Aluminium Co., Ltd (LCA) for an accelerated review of the dumping duty notice and countervailing duty notice applying to certain aluminium extrusions exported to Australia from the People's Republic of China (China).

1.1 Recommendations

Customs and Border Protection recommends that the Chief Executive Officer (CEO) of Customs and Border Protection decide not to reject the application.

1.2 Application of law to facts

Division 6 of Part XVB of the *Customs Act 1901*¹ sets out, among other things, the procedures to be followed by the CEO in dealing with an application for the early review of a dumping duty notice or a countervailing duty notice by certain exporters of goods covered by the notice.

The Division empowers the CEO to reject or not reject the application for an accelerated review of anti-dumping measures.

1.3 Findings and conclusions

LCA's application for accelerated review of anti-dumping measures applying to aluminium extrusions exported to Australia from China has been examined.

Customs and Border Protection find:

- The application satisfies the requirements of section 269ZF;
- The conditions for rejection under section 269ZE were not met; and
- The circumstances in which an accelerated review can be sought have been satisfied;

Accordingly Customs and Border Protection conclude that the applicant is eligible to apply for an accelerated review, and recommend that the Delegate of the CEO not reject the application and the accelerated review continue.

¹ A reference to a division, section or subsection in this report is a reference to a provision of the Customs Act 1901, unless otherwise specified.

2 Background

2.1 Existing measures

On 11 May 2009 a dumping investigation into aluminium extrusions exported from China was initiated following an application by Capral Limited (Capral). In that investigation, and as outlined in Trade Measures Report No. 148, it was found that:

- with the exception of one exporter, Tai Ao (Taishan) Co Ltd (Tai Ao), the goods were exported from China at dumped prices;
- with the exception of Tai Ao, the goods exported from China were subsidised;
- the Australian industry producing like goods had suffered material injury as a result of those dumped and subsidised goods; and
- future exports from China may be dumped and subsidised and that continued dumping and subsidisation may cause further material injury to the Australian industry.

Accordingly, it was recommended that the Attorney-General impose anti-dumping and countervailing measures on the goods exported from China. On 28 October 2010, the Attorney-General published dumping and countervailing duty notices for aluminium extrusions exported to Australia from China. Notification of the Attorney-General's decision was given in Australian Customs Dumping Notice No. 2010/40.

Following a review by the Trade Measures Review Officer, Customs and Border Protection conducted a reinvestigation into certain findings made in Trade Measures Branch Report No. 148. International Trade Remedies Report No. 175 sets out the findings affirmed and new findings made by Customs and Border Protection as a result of the reinvestigation.

To give effect to this decision the Attorney-General published new notices under section 269ZZM. These notices substitute the dumping and countervailing duty notices published on 28 October 2010. The new notices came into effect on 27 August 2011, replacing the earlier notices.

2.2 The current review application

Name	Longkou Conglin Aluminium Co. Ltd
Role	Manufacturer/Exporter
Address	Conglin Industrial Park, Longkou City Shandong Province China 265705

On 9 November 2012, the applicant (LCA) lodged an application for an accelerated review of anti-dumping and countervailing measures applying to exports of aluminium extrusions from China to Australia in so far as it affects LCA. A copy of the application is at **confidential attachment 1**.

2.2.1 Review Process

Pursuant to s. 269ZG(1) and (2) the CEO must, no later than 100 days after the application is lodged, provide the Minister a report recommending:

- a) *that the dumping duty notice or countervailing duty notice the subject of the application remain unaltered; or*
- b) *that the dumping duty notice or countervailing duty notice the subject of the application be altered:*
 - i. *so as not to apply to the applicant; or*
 - ii. *so as to apply to the applicant as if different variable factors had been fixed;*

and set out the CEO's reasons for so recommending.

There is no legislative requirement for Customs and Border Protection to maintain a public file for this accelerated review. However, in the interests of ensuring the process is conducted in an open and transparent manner, a public file will be opened.

This Consideration Report along with a non-confidential version of the application and response to the exporter questionnaire will be published on the Electronic Public Record, available at <http://www.customs.gov.au/anti-dumping/cases/default.asp#Thepublicrecord>

Given the expedited nature of accelerated reviews and the shortened timeframe for Customs and Border Protection to produce a final report, any submissions by interested parties must be received before day 60 of the review – 8 January 2013. The CEO may not be able to have regard to submissions received after this date if to do so would, in the CEO's opinion, delay the timely preparation of the final report to the Minister.

2.2.2 Key dates

9 November 2012	Application lodged
15 December 2012	Response to exporter questionnaire due
8 January 2013	Submissions by interested parties due
17 February 2013	Final report to Minister due

3 Application for an Accelerated Review**3.1 Legislative Background**

Section 269ZF requires that an application for accelerated review must:

- be in writing (s. 269ZF (1));
- be lodged in accordance with s. 269ZF (2);
- contain a description of the goods to which the dumping duty notice relates; and
- contain a statement of the basis on which the exporter considers that the particular notice is inappropriate in so far as the exporter is concerned.

3.2 Application

The application received from LCA, was in writing, lodged in accordance with subsection 269ZF(2) and contains a description of the goods to which the dumping duty notice relates.

LCA's grounds for lodging an application are that it has not exported to Australia, was not involved in the original investigation and is not related to any exporter who was involved in the original investigation.

On receipt of the application, Director Operational Support recorded the date on which the application was received as 9 November 2012 in accordance with s.269ZF(3).

If the CEO's Delegate does not reject the application, the initiation date is said to be the date of lodgement of the application.

3.3 Finding under s269ZF

Customs and Border Protection is satisfied that the application complies with s.269ZF(1) and s.269ZF(2) of the Act.

4 Goods under review**4.1 Goods under review**

The goods covered by the dumping and countervailing duty notices are aluminium extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by The Aluminium Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodised or painted or otherwise coated, whether or not worked, having a wall thickness or diameter greater than 0.5 mm, with a maximum weight per metre of 27 kilograms and a profile or cross-section which fits within a circle having a diameter of 421 mm.

The goods include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. For example, aluminium extrusion products that have been painted, anodised, or otherwise coated, or worked (e.g. precision cut, machined, punched or drilled) fall within the scope of the goods.

The goods do not extend to intermediate or finished products that are processed or fabricated to such an extent that they no longer possess the nature and physical characteristics of an aluminium extrusion, but have become a different product.

Additional information to assist in understanding the goods is included in ACDN 2009/20 and issues paper 2009/148 – available at www.customs.gov.au.

The goods may be classified to the following subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

7604.10.00/06	Non alloyed aluminium bars, rods and profiles
7604.21.00/07	Aluminium alloy hollow angles and other shapes
7604.21.00/08	Aluminium alloy hollow profiles
7604.29.00/09	Aluminium alloy non hollow angles and other shapes
7604.29.00/10	Aluminium alloy non hollow profiles
7608.10.00/09	Non alloyed aluminium tubes and pipes
7608.20.00/10	Aluminium alloy tubes and pipes
7610.10.00/12	Doors, windows and their frames and thresholds for doors
7610.90.00/13	Other

5 Circumstances in which an accelerated review may be sought**5.1 Status as a New Exporter****5.1.1 Background**

Section 269ZE(1) sets out that only a new exporter may apply for an accelerated review. A new exporter is defined (s.269T) as an exporter who did not export such goods to Australia at any time during the period:

- (a) starting at the start of the investigation period in relation to the application; and
- (b) ending immediately before the day the CEO places on the public record the statement of essential facts (SEF) in relation to the investigation of the application.

Section 269T also defines “application” in relation to a dumping duty notice or a countervailing duty notice, as meaning an application for the publication of such a notice.

5.1.2 Application

Customs and Border Protection considers that, due to the definitions in s269T, the period within which a new exporter cannot have exported to Australia relates to the application for a dumping and countervailing duty notice, which in this case relates to the 2009 application by Capral.

Thus, Customs and Border Protection consider the period for which LCA must not have exported to Australia (new exporter period) is from 1 July 2008, the start of the investigation period, to 28 February 2010, the day before the SEF for Investigation 148 was placed on the public record.

5.2 Exports during the New Exporter Period

A search of Customs and Border Protection’s import database on 14 November 2012 for any exports by LCA did not reveal any exports from LCA during the period 1 July 2008 to 28 February 2010.

5.3 Cooperation in regards to the application for a dumping duty notice

Section 269ZE(2)(a) provides that, if the CEO is satisfied that because the exporter refused to cooperate in relation to the application for a dumping duty notice, the CEO may reject the application. To determine if the application for an accelerated review is valid in relation to s.269ZE(2)(a), the exporter files for the original investigation (REP 148) were examined for any correspondence between Customs and Border Protection and LCA.

The exporter files including the exporter initiation mail out file were examined with no reference to LCA found. This is consistent with the finding that LCA did not export the goods to Australia during the investigation period for REP 148.

There are no grounds for rejection in terms of section 269ZE(2)(a).

5.4 Relationships with selected exporters

Section 269ZE(2)(b) provides that, if the CEO is satisfied that because the exporter is related to an exporter who was a selected exporter in relation to the application for a notice, the CEO may reject the application.

To determine if the application for an accelerated review is valid in relation to s.269ZE(2)(b), the exporter questionnaire responses and/or visit reports for the REP 148 selected exporters were reviewed for company information and shareholding arrangements. There is no evidence to suggest that LCA is related to a selected exporter.

Given the information available there are no grounds for rejection in terms of section 269ZE(2)(b).

5.5 Circumstances in which accelerated review may be sought

In accordance with s269ZE, on review of the application, the following findings have been made about whether the circumstances exist in which an accelerated review may be sought:

- The applicant did not export aluminium extrusions during the period for which new exporters cannot have exported. Thus the applicant meets the definition of a new exporter and satisfies the requirements for requesting an accelerated review as stated at s269ZE(1);
- The applicant did not refuse to cooperate in relation to the application for a dumping duty notice, and the application should not be rejected under s269ZE(2)(a); and
- The applicant does not appear to be related to any selected exporters in the original investigation and the application should not be rejected under s269ZE(2)(b).

6 Conclusion

Customs and Border Protection considered the application made by LCA to determine if it was valid as required by sections 269ZE, 269ZF and the definitions provided in section 269T of the Act.

Customs and Border Protection conclude:

- The application satisfies the requirements of section 269ZF;
- The conditions for rejection under section 269ZE were not met; and
- The circumstances in which an accelerated review can be sought have been satisfied.

Accordingly, Customs and Border Protection conclude that the applicant is eligible to apply for an accelerated review, and recommend that the Delegate of the CEO not reject the application and the accelerated review continue.

Should the CEO's Delegate decide to not reject this application and the accelerated review continue, it is recommended that the inquiry period be 1 October 2011 to 30 September 2012.

7 Securities and Interim Dumping Duties (IDD) and Interim Countervailing Duties (IDC)

When an application for an accelerated review of a dumping duty notice is lodged, section 269ZH states that no interim duty can be collected in respect of consignments of goods entered for home consumption after the application is lodged and until the completion of the review. The CEO may, however, require and take securities under section 42 in respect of IDD and IDC that may be payable.

Should the delegate not reject the application, and continue an accelerated review, a declaration under s269ZH(b) will need to be made to ensure securities are collected for the period of the review. These documents have been prepared and attached.



Australian Government
**Australian Customs and
Border Protection Service**

CONSIDERATION OF AN APPLICATION UNDER SUB-SECTION 269ZF OF THE CUSTOMS ACT 1901

I, Kim Farrant, have considered, in terms of section 269ZF of the *Customs Act 1901* (the Act), an application by Longkou Conglin Aluminium Co. Ltd (LCA), a new exporter, for an accelerated review of the dumping duty notice and countervailing duty notice in respect of aluminium extrusions exported to Australia from China.

Having regard to the matters contained in the application and to other information considered relevant, I am satisfied that:

- the application satisfies the requirements of section 269ZF;
- the conditions for rejection under section 269ZE are not satisfied; and
- the circumstances in which an accelerated review can be sought have been satisfied.

In view of the above, I have decided that the application is valid.

The attached assessment details the consideration of the application and other relevant information, and provides the reasons relied on in making my decision in relation to the application.

Kim Farrant
Delegate of the Chief Executive Officer
Position Number 667

26 November 2012
