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Australian Government

**Australian Customs and
Border Protection Service**

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**

**GUANGDONG JINXIECHENG AL. MANUFACTURING CO.,
LTD
REPORT NO. 205**

February 2013

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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 Guangdong Jinxiecheng Al. Manufacturing Co., Ltd (Guangdong Jinxiecheng) 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 (the Act) 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

Guangdong Jinxiecheng'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 finds:

- The application satisfies the requirements of section 269ZF;
- The conditions for rejection under subsection 269ZE(2) 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 recommends 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 of 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 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 these decisions 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	Guangdong Jinxicheng Manufacturing Co., Ltd Al.
Role	Manufacturer
Address	Dali Henggang Industry Zone Nanhai District Foshan City Guangdong, China

2.2.1 Background to the application for an accelerated review

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On 2 January 2013 Foshan Nanhai Newtime Co., Ltd (Foshan Nanhai Newtime) lodged an application for an accelerated review of anti-dumping measures applying to exports of aluminium extrusions from China to Australia in so far as it affects Foshan Nanhai Newtime.

Customs and Border Protection corresponded with Foshan Nanhai Newtime regarding their role in the export process in order to determine if Foshan Nanhai Newtime was a trader or manufacturer. Through this correspondence Foshan Nanhai Newtime informed Customs and Border Protection that:

- it was not a manufacturer of aluminium extrusions but a trading company;
- Guangdong Jinxiecheng was Foshan Nanhai Newtime's sole supplier of aluminium extrusions;
- it was not related to any manufacturers of aluminium extrusions;
- it was a privately-owned company not related to any other company; and
- it intended to export aluminium extrusions to Australia only after the accelerated review was complete and it had received its own rate of duty.

Upon further review of Foshan Nanhai Newtime's status as an exporter, Customs and Border Protection sent an email to Foshan Nanhai Newtime about the circumstances regarding the cooperation required from the manufacturer, Guangdong Jinxiecheng.

In that email Customs and Border Protection advised that it is rare that Customs and Border Protection would consider an intermediary trader such as Foshan Nanhai Newtime to be an exporter. As section 269ZE of the Act only allows a party considered to be an exporter to apply for an accelerated review, we suggested to Foshan Nanhai Newtime that Guangdong Jinxiecheng submit an application for an accelerated review.

Customs and Border Protection advised that regardless of which party is ultimately considered to be the exporter, the manufacturer from whom Foshan Nanhai Newtime wishes to purchase aluminium extrusions from needed to complete a detailed exporter questionnaire and agree to a verification visit from Customs and Border Protection.

On 18 January 2013, Customs and Border Protection received an application for an accelerated review from Guangdong Jinxiecheng.

2.2.2 Review Process

Pursuant to subsections 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.*

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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 should be lodged before day 60 of the review – 19 March 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.

2.2.3 Key dates

18 January 2013	Application lodged
18 March 2013	Response to exporter questionnaire due
19 March 2013	Submissions by interested parties due
29 April 2013	Final report to Minister due

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3 Application for an Accelerated Review

3.1 Legislative Background

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

- be in writing (subsection 269ZF(1));
- be lodged in accordance with subsection 269ZF(2);
- contain a description of the goods to which the dumping duty notice and the countervailing 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

On 18 January 2013, Guangdong Jinxiecheng formally lodged an application for an accelerated review. A copy of their application is at **Confidential Attachment 1**.

On receipt of the application, the Director of Quality Assurance and Operational Support recorded the date on which the application was received as 18 January 2013 in accordance with subsection 269ZF(3). 18 January 2013 was set as the initiation date for the accelerated review. If the CEO's Delegate does not reject the application, the initiation date is said to be the date of lodgement of the application.

3.2.1 Assessment of the application

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

Guangdong Jinxiecheng's grounds for lodging an application are that it has not exported aluminium extrusions to Australia. Guangdong Jinxiecheng was not investigated during the original investigation, was itself not involved in the original investigation and is not related to any exporter who was involved in the original investigation.

3.3 Finding under section 269ZF

Customs and Border Protection is satisfied that the application complies with subsections 269ZF(1) and 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 0.5mm, 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.

Tariff classification

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

Subsection 269ZE(1) sets out that only a new exporter may apply for an accelerated review. A new exporter is defined (section 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 section 269T, 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 Ltd.

Thus, Customs and Border Protection considers the period for which Guangdong Jinxiecheng 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 for any exports by the manufacturer Guangdong Jinxiecheng did not reveal any exports from Guangdong Jinxiecheng during the period 1 July 2008 to 28 February 2010.

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

Paragraph 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 or a countervailing duty notice, the CEO may reject the application. To determine if the application for an accelerated review is valid in relation to paragraph 269ZE(2)(a), the exporter files for the original investigation (REP 148) were examined for any correspondence between Customs and Border Protection and Guangdong Jinxiecheng.

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

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

5.4 Relationships with selected exporters

Paragraph 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 paragraph 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 Guangdong Jinxiecheng is related to a selected exporter.

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

5.5 Circumstances in which accelerated review may be sought

In accordance with section 269ZE, 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 subsection 269ZE(1);
- The applicant did not refuse to cooperate in relation to the application for a dumping duty notice or a countervailing duty notice, and the application should not be rejected under paragraph 269ZE(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 paragraph 269ZE(2)(b).

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6 Conclusion

Customs and Border Protection considered the application made by Guangdong Jinxiecheng 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 manufacturer Guangdong Jinxiecheng, who Customs and Border Protection considers to be the exporter, 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 January 2012 to 31 December 2012.

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

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 ICD that may be payable.

Should the delegate not reject the application, and continue an accelerated review, a declaration under paragraph 269ZH(b) will need to be made to ensure securities are collected for the period of the review. These documents have been prepared and attached at **Confidential Attachment 2**.

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

I, Margaret Power, have considered, in terms of section 269ZF of the *Customs Act 1901* (the Act), an application by Guangdong Jinxiecheng Al. Manufacturing Co., Ltd, 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 the People's Republic of 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(2) 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.

Margaret Power
Delegate of the Chief Executive Officer
Position Number

February 2013
