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Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT NO. 347

**APPLICATION FOR AN ACCELERATED REVIEW
OF THE DUMPING AND COUNTERVAILING DUTY NOTICES
APPLYING TO**

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

GOOMAX METAL CO., LTD.

MARCH 2016

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PUBLIC RECORD**ABBREVIATIONS**

Abbreviation	Full title
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
the applicant	Goamax Metal Co., Ltd.
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the goods	the goods to which the anti-dumping and countervailing measures apply
Goamax	Goamax Metal Co., Ltd.
the Parliamentary Secretary	The Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 248	Anti-Dumping Commission Report No. 248
Review period	1 January 2015 to 31 December 2015

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1 SUMMARY AND RECOMMENDATIONS

This report provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application from Goomax Metal Co., Ltd. (the applicant or Goomax) for an accelerated review of the dumping duty and countervailing duty notices applying to aluminium extrusions¹ exported to Australia from the People's Republic of China (China) in so far as the notices affect the applicant.

1.1 Recommendations

The Commission recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) not reject the application.

1.2 Legislative background

Division 6 of Part XVB of the *Customs Act 1901* (the Act)² sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for an accelerated review of a dumping duty or countervailing duty notice by certain exporters of goods covered by the notice.

Subsection 269ZE(2) provides that the Commissioner may reject the application for an accelerated review of a dumping duty or countervailing duty notice if satisfied that the conditions set out in this subsection have been met.

1.3 Findings and conclusions

Goomax's application for an accelerated review of the dumping duty and countervailing duty notices applying to aluminium extrusions exported to Australia from China has been examined and the Commission finds that:

- the circumstances in which an accelerated review can be sought under subsection 269ZE(1) have been satisfied;
- the conditions for rejection under subsection 269ZE(2) have not been met; and
- the application satisfies the requirements of section 269ZF.

Accordingly, the Commission concludes that the applicant is eligible to apply for and has lodged a valid application for an accelerated review under the Act, and recommends that the Commissioner not reject the application.

¹ Refer to the full description of the goods in Section 2.2 of this report.

² 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 Background and existing measures

A history of the anti-dumping measures applying to aluminium extrusions exported to Australia from China is summarised below. This information is also available on the Commission's electronic public record at www.adcommission.gov.au

2009 – 2011: The then Australian Customs and Border Protection Service initiated an investigation, following an application from Capral Limited. The investigation resulted with the then Attorney-General publishing dumping duty notice and a countervailing duty notice applying to aluminium extrusions exported from China – *Trade Remedies Branch Report No. 148* refers.

Following a review by the former Trade Measures Review Officer, the then Attorney-General published new notices as a result of a reinvestigation of certain findings made in *Trade Remedies Branch Report No. 148*. *International Trade Remedies Report No. 175* refers.

2013: The Federal Court ruled that dumping duty and countervailing duty notices cannot impose different variable factors for each finish of aluminium extrusion.³

2015: The then Parliamentary Secretary to the Minister for Industry and Science published a notice declaring the outcome of *Review No. 248*. Anti-dumping measures applying to exports of certain aluminium extrusions from China were altered as if different variable factors had been ascertained.

The Commission conducted a continuation inquiry *Report No. 287*, following an application lodged by Capral Limited later that year. The Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary)⁴ secured the continuation of measures for a further five years, until 28 October 2020.

2.2 Goods under review

2.2.1 Description

The goods the subject of the application (the goods) 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, anodized 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.

³ *PanAsia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870

⁴ The Minister for Industry, Innovation and Science has delegated responsibility with respect to operational anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker.

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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.

The table below provides guidance to assist the categorisation of aluminium extrusions into the types covered by interim duties (GUC) and those that are not covered (Non GUC).

< GUC >				< Non GUC >		
1	2	3	4	5	6	7
Aluminium extrusions	Aluminium extrusions with minor working	Aluminium extrusions that are parts intended for use in intermediate or finished products	Aluminium extrusions that are themselves finished products	Unassembled products containing aluminium extrusions, e.g. 'kits' that at time of import comprise all necessary parts to assemble finished goods	Intermediate or partly assembled products containing aluminium extrusions	Fully assembled finished products containing aluminium extrusions
< Examples >				< Examples >		
Mill finish, painted, powder coated, anodised, or otherwise coated aluminium extrusions	Precision cut, machined, punched or drilled aluminium extrusions	Aluminium extrusions designed for use in a door or window	Carpet liner, fence posts, heat sinks	Shower frame kits, window kits, unassembled unitised curtain walls	Unglazed window or door frames	Windows, doors

Table 1: Aluminium extrusion categories

2.2.2 Tariff classification

The goods are classified to the tariff subheadings and rates of duty as documented in Schedules 3 and 12 of the *Customs Tariff Act 1995*. The rates of duty apply from 1 January 2016 – 31 December 2016.

Tariff classification	Goods description	Rate of duty
7604.10.00 / 06	non alloyed aluminium bars, rods and profiles	3%
7604.21.00 / 07	aluminium alloy hollow angles and other shapes	1.7%
7604.21.00 / 08	aluminium alloy hollow profiles	1.7%
7604.29.00 / 09	aluminium alloy non hollow angles and other shapes	1.7%
7604.29.00 / 10	aluminium alloy non hollow profiles	1.7%
7608.10.00 / 09	non alloyed aluminium tubes and pipes	3%
7608.20.00 / 10	aluminium alloy tubes and pipes	3%

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7610.10.00 / 12	doors, windows and their frames and thresholds for doors	1.7%
7610.90.00 / 13	other	1.7%

Table 2: Tariff rates for aluminium extrusions exported from China

2.3 Consideration of the application for an accelerated review (Division 6 of Part XVB of the Act)

On 11 March 2016, Goomax Metal Co., Ltd. lodged an application for an accelerated review of the dumping duty and countervailing duty notices applying to aluminium extrusions exported to Australia from China in so far as the notices affect the applicant (refer **Non-Confidential Attachment 1**).

If the Commissioner does not reject the application, the date of lodgement (11 March 2016) is the date on which the 100 day accelerated review timeframe commences.⁵

The assessment of this application is discussed in sections 3 and 4 of this report.

2.3.1 Review process

Pursuant to subsections 269ZG(1) and (2), the Commissioner must, no later than 100 days after an accelerated review application is lodged, provide the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary)⁶ with 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 so as to apply to the applicant as if different variable factors had been fixed;

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

In relation to this application, this report must be made no later than 19 June 2016.

2.3.2 Public record

There is no legislative requirement for the Commissioner to maintain a public record for this accelerated review. However, in the interests of ensuring the process is conducted in an open and transparent manner, a public record will be maintained.

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 at <http://www.adcommission.gov.au>.

⁵ Subsection 269ZG(2)

⁶ The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker.

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3 APPLICATION FOR AN ACCELERATED REVIEW – COMPLIANCE WITH SECTION 269ZF

3.1 Legislative background

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

- be in writing (subsection 269ZF(1));
- contain a description of the goods to which the dumping duty or countervailing duty notice relates (subsection 269ZF(1)(a));
- 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 (subsection 269ZF(1)(b)); and
- be lodged in a manner approved under section 269SMS and the application is taken to be lodged in accordance with subsection 269ZF(2).

3.2 Assessment of the application – compliance with section 269ZF

The application received from the applicant was in writing, is taken to have been lodged in accordance with subsection 269ZF(2) and contains a description of the goods to which the dumping duty and countervailing duty notices relate (subsection 269ZF(1)(a)).

The application was lodged in a manner approved in the Commissioner's instrument under section 269SMS (the Instrument), being by email to the Commission's nominated email address as provided in the Instrument. The application was therefore lodged in a manner approved under subsection 269SMS(2).

In accordance with the requirements of subsection 269ZF(1)(b), the application also contains a statement from the applicant that outlines the reasons why the company considers the current dumping duty and countervailing duty notices are inappropriate in so far as the notices affect the applicant. This was because the applicant did not export aluminium extrusions to Australia during the relevant period set out in the definition of a 'new exporter' in subsection 269T(1) (further discussed in section 4.2.1 of this report).

The Commission therefore recommends that the Commissioner be satisfied that the application complies with subsection 269SMS and subsection 269ZF(1) and was taken to have been lodged on 11 March 2016 in accordance with subsection 269ZF(2).

4 CIRCUMSTANCES IN WHICH AN ACCELERATED REVIEW MAY BE SOUGHT – COMPLIANCE WITH SECTION 269ZE

4.1 Background

Section 269ZE sets out the circumstances in which an accelerated review may be sought.

The conclusions in this section are made on the basis of currently available information. If, during the accelerated review, evidence becomes available that satisfies the Commissioner that the requirements of subsection 269ZE(3) are met, the Commissioner may terminate the review.

4.2 Status as a new exporter

Subsection 269ZE(1) provides that only a ‘new exporter’ can apply for an accelerated review if a dumping duty or countervailing duty notice has been published in respect of goods exported from a particular country of export or in respect of goods exported by new exporters from a particular country of export, provided a declaration has not already been made in respect of that exporter under subsection 269ZG(3)(b).

Subsection 269T(1) defines a ‘new exporter’, in relation to goods the subject of an application for a dumping duty notice or a countervailing duty notice. A new exporter:

in relation to goods the subject of an application for a dumping duty notice or a countervailing duty notice or like goods, means an exporter who did not export such goods to Australia at any time during the investigation period in relation to the application.

Subsection 269T(1) 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 in relation to the original investigation.

4.2.1 Evidence of exports during the original investigation period

To meet the definition of a new exporter, the period during which the applicant must not have exported aluminium extrusions to Australia is the investigation period from the original investigation that led to the imposition of the measures (original investigation period), which in this case is from 1 July 2008 to 30 June 2009.

A search of the Australian Border Force (ABF) import database by the Commission did not reveal any exports of aluminium extrusions, classified to tariff subheadings listed above at section 2.2.2, by the applicant during the original investigation period of 1 July 2008 to 30 June 2009.

4.2.2 Declaration under subsection 269ZG(3)(b)

Pursuant to subsection 269ZE(1) of the Act, a new exporter cannot apply for an accelerated review if they had previously applied for an accelerated review that resulted in a declaration being made in respect of that exporter under subsection 269ZG(3)(b).

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The applicant has not previously applied for an accelerated review and as such the Parliamentary Secretary has not previously made a declaration under subsection 269ZG(3)(b) in respect of the applicant.

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

Subsection 269ZE(2)(a) provides that, if the Commissioner is satisfied that, because an exporter refused to cooperate in relation to the application for a dumping duty notice or a countervailing duty notice, and the exportations of that exporter were not investigated, the Commissioner may reject the application.

Noting the above finding that there is no evidence of exports by the applicant during the new exporter period, the Commission notes that the applicant's cooperation would not have been sought during the original investigation as it would not have been identified as an exporter.

The Commission therefore recommends that the Commissioner consider that there are no grounds for rejection in terms of subsection 269ZE(2)(a).

4.3.1 Relationship with exporters

Subsection 269ZE(2)(b) provides that, if the Commissioner is satisfied that an exporter is related to an exporter whose exports were examined in relation to an application for the publication of a dumping duty or a countervailing duty notice, the Commissioner may reject the application.

To determine if the applicant is related to an exporter whose exports were examined in relation to the original investigation in accordance with subsection 269ZE(2)(b), the Commission reviewed the list of exporters from the original investigation. The ABF import database was also examined for any relevant company information.

The Commission did not find any information to indicate that the applicant is related to any of the exporters considered in the original investigation.

Given the information available, the Commission recommends to the Commissioner that there are no grounds for rejection in terms of subsection 269ZE(2)(b).

4.4 Findings under section 269ZE

In accordance with section 269ZE, on review of the application and all information currently available, the following findings have been made about whether circumstances exist in which the applicant may seek an accelerated review:

- the applicant did not export aluminium extrusions during the new exporter period and has not previously applied for an accelerated review, and therefore the applicant meets the definition of a new exporter and satisfies the requirements for requesting an accelerated review under subsection 269ZE(1);
- the applicant did not refuse to cooperate in relation to the application for a dumping duty and a countervailing duty notice, and therefore the application should not be rejected under subsection 269ZE(2)(a); and

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- the applicant does not appear to be related to any exporters whose exports were examined in the original investigation, and therefore the application should not be rejected under subsection 269ZE(2)(b).

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5 CONCLUSION AND RECOMMENDATIONS

The Commission has considered the application made by the applicant in accordance with sections 269ZE, 269ZF and the definition of a new exporter provided in subsection 269T(1) of the Act.

The Commission concludes, on the basis of currently available information, that:

- the circumstances in which an accelerated review can be sought under subsection 269ZE(1) have been satisfied;
- the conditions for rejection under subsection 269ZE(2) have not been met; and
- the application satisfies the requirements of section 269ZF.

Accordingly, the Commission recommends that the Commissioner not reject the application for an accelerated review of the dumping duty and countervailing duty notices applying to aluminium extrusions exported to Australia from China, in so far as the notices affect the applicant.

Should the Commissioner decide not to reject this application for an accelerated review, the Commission recommends that the review period for the accelerated review be from 1 January 2015 to 31 December 2015.

6 SECURITIES AND INTERIM DUMPING AND COUNTERVAILING DUTY

When an application for an accelerated review of a dumping duty and/or countervailing duty notice is lodged, subsection 269ZH(a) provides that no interim duty can be collected in respect of the consignments of goods, to which the application relates, entered for home consumption after the application is lodged and until the completion of the review.

Pursuant to subsection 269ZH(b), the Commonwealth may, however, on the importation of goods to which the application relates, require and take securities under section 42 in respect of interim dumping duty and interim countervailing duty that may be payable.

Should the Commissioner not reject the application, and an accelerated review is conducted, the Commonwealth may require and take securities under section 42 in respect of interim dumping duty and interim countervailing duty that may be payable.

A table outlining the variable factors relevant to calculating the amount of securities is provided at **Confidential Attachment 1**.

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Non-Confidential Attachment 1	Application for accelerated review on behalf of Goomax Metal Co., Ltd.
Confidential Attachment 1	Table outlining variable factors for calculation of securities

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