



Australian Government
Anti-Dumping Commission

R E P O R T

CUSTOMS ACT 1901 - PART XVB

ANTI-DUMPING COMMISSION
CONSIDERATION REPORT NO. 229

**CONSIDERATION OF AN APPLICATION FOR REVIEW OF
ANTI-DUMPING AND COUNTERVAILING MEASURES**

**CERTAIN ALUMINIUM EXTRUSIONS
EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA
BY
ALNAN ALUMINIUM CO., LTD**

APPLICANT: ALUGLASS AUSTRALIA PTY LTD

4 November 2013

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2 SUMMARY AND RECOMMENDATIONS

This report provides the results of the Anti-Dumping Commission's (the Commission) consideration of an application lodged by Aluglass Australia Pty Ltd (Aluglass) for the review of the dumping duty notice and countervailing duty notice applying to certain aluminium extrusions¹ exported to Australia from the People's Republic of China (China) by Alnan Aluminium Co., Ltd (Alnan).

The application is based on a change in the variable factors. The variable factors relevant to the review are the normal value, export price, non-injurious price and the amount of countervailable subsidy received in respect of the goods. The application states that all variable factors have changed.

Alnan agreed to cooperate with the original investigation but was not selected as part of the sampled exporter group. It falls under the 'Residual Exporters (Group 1)' category in the current measures.

2.1 Recommendations

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

If the Commissioner accepts this recommendation, to give effect to that decision, the Commissioner must publish the attached notice at **Appendix A** indicating that it is proposed to review the measures covered by the application.

2.2 Application of law to facts

Division 5 of Part XVB of the *Customs Act 1901*² sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the review of measures.

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

Depending on the Commissioner's decision, it may be necessary for the Commissioner to publish a notice indicating that it is proposed to review the measures covered by the application.

2.3 Findings and conclusions

Aluglass' application for a review of the anti-dumping measures applying to aluminium extrusions exported to Australia from China by Alnan complies with the requirements of s.269ZB.

¹ Refer to the full description of the goods in section 3.3 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.

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Having regard to the applicant's claims and other relevant information, there appears to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of anti-dumping measures have changed.

3 BACKGROUND

3.1 Existing measures

On 11 May 2009, dumping and countervailing investigations into aluminium extrusions exported from China were initiated following an application by Capral Limited. 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 Minister impose anti-dumping measures on the goods exported from China. On 28 October 2010, the Minister published a dumping duty notice and a countervailing duty notice on aluminium extrusions exported to Australia from China. Notification of the Minister'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 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 a new notice under s. 269ZZM. This notice, effective from 27 August 2011, replaced the dumping and countervailing duty notices published on 28 October 2010.

The effect of the new notice was that the level of the measures changed and the dumping duty notice no longer applied to Zhaoqing New Zhongya Aluminium Co Ltd.

In the original investigation, Alnan agreed to cooperate with the investigation but was not selected as part of the sampled exporters group. Alnan is listed in Table 5 of the Dumping Commodity Register - Residual Exporters (Group 1).

For Residual Exporters (Group 1) the following countervailable subsidies were found to apply:

Program 10 - Preferential Tax Policies for Foreign Invested Enterprises – Reduced Tax Rate for Productive FIE's scheduled to operate for a period of not less than 10 years;

Program 13 - Exemption of Tariff and Import VAT for Imported Technologies and Equipment; and

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Program 15 - Goods provided at less than adequate remuneration.

3.2 The current review application

On 15 October 2013, Aluglass lodged an application requesting a variable factors review of the anti-dumping measures applying to aluminium extrusions exported to Australia from China by Alnan. The application is not precluded by s. 269ZA(2), which requires that an application for review must not be lodged earlier than 12 months after the publication of a notice declaring the outcome of the last review of the notices. More than 12 months has lapsed since the publication of the last notice.

Pursuant to s. 269ZC(1), the Commissioner must examine the application and, within 20 days after the lodgement date, decide whether to reject the application. The decision must be made no later than 4 November 2013.

If the Commissioner is not satisfied, having regard to the application and to any other relevant information, of one or more matters referred to in s. 269ZC(2), the application must be rejected.

3.3 The goods subject to the measures

The goods the subject of the current anti-dumping measures (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.

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.

3.4 Tariff classification of the goods

The goods subject to the measures 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; |

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| | |
|---------------|--|
| 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 |

3.5 Australian industry producing like goods

During the original investigation, Customs and Border Protection found that:

- there was an Australian industry producing like goods;
- a substantial process of manufacture was carried out in Australia in producing the like goods;
- the like goods were wholly manufactured in Australia; and
- there was an Australian industry consisting of eight Australian companies that produce like goods in Australia.

The Commission remains satisfied that there is an Australian industry producing like goods.

4 CONSIDERATION OF THE APPLICATION

Having regard to the applicant's claims and other relevant information, the Commission is satisfied that, in respect of export price, the application complies with s. 269ZB and there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of anti-dumping measures have changed.

4.1 Legislative framework

Subsection 269ZB(1) requires that the application be in writing, be in an approved form, contain such information as the form requires and be signed in the manner indicated by the form.

Section 269ZB(2) requires that the application must include:

- a description of the kind of goods to which the measures the subject of the application relate; and
- a description of the measures the subject of the application; and
- if the application is based on a change in variable factors - a statement of the opinion of the applicant concerning:
 - the variable factors relevant to the taking of the measures that have changed; and
 - the amount by which each such factor has changed; and
 - the information that establishes that amount.

Section 269ZC(2) specifies the matters which must be considered in making a decision whether to reject the application. These matters are:

- that the application complies with s. 269ZB; and
- that there appear to be reasonable grounds for asserting either, or both, of the following:
 - (i) that the variable factors relevant to the taking of anti-dumping measures have changed; or
 - (ii) that the anti-dumping measures are no longer warranted

4.2 Compliance with s. 269ZB

The application lodged by Aluglass:

- is in writing;
- provides a description of the goods subject to the measures; and
- provides a description of the measures the subject of the application.

Compliance with the other requirement of s. 269ZB (to provide a statement of the opinion of the amount the variable factors have changed and information that establishes that amount) is discussed under each variable factor below.

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4.3 Information provided by Aluglass

Aluglass' application included information supplied by Alnan in the format of the Commission's standard exporter questionnaire. The questionnaire answers were supported by numerous attachments. The questionnaire has been completed with information relevant to the 2011 and 2012 calendar years. The questionnaire did not include sections relating to market situation or subsidies.

Aluglass also provided documentation, including commercial invoices, for two consignments of aluminium extrusions it imported from Alnan in May 2013.

4.4 Variable factors

4.4.1 Amount of subsidisation

Applicant's claims

Aluglass claims that the countervailing duty imposed is not appropriate in the case of exports of aluminium extrusions from China by Alnan. In its application, Aluglass provided the following information on each of the 19 subsidy programs found to be countervailable in the original investigation.

| Program | Comment |
|--|--|
| Program 1 - Preferential tax policies for enterprises with foreign investment established in the coastal economic open areas and economic and technological development zones; | Not received by Alnan. Alnan is not a foreign invested enterprise. |
| Program 2 - One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China' | Not received by Alnan |
| Program 3 - Provincial Scientific Development Plan Fund | Alnan <u>does</u> receive this benefit. |
| Program 4 - Export Brand Development Fund | Not received by Alnan |
| Program 5 - Matching Funds for International Market Development for SMEs | Not received by Alnan |
| Program 6 - Superstar Enterprise Grant; | Not received by Alnan |
| Program 7 - Research & Development (R&D) Assistance Grant | Alnan <u>does</u> receive this benefit. |
| Program 8 - Patent Award of Guangdong Province | Not received by Alnan |
| Program 9 - Training Program for Rural Surplus Labor Force Transfer Employment | Not received by Alnan |
| Program 10 – 'Preferential Tax Policies for Foreign Invested Enterprises – Reduced Tax Rate for Productive FIE's scheduled to operate for a period of not less than 10 years' | Not received by Alnan. Alnan is not a foreign invested enterprise. |
| Program 15 – Goods provided at less than adequate remuneration | Alnan purchased aluminium at market prices and mostly from privately owned enterprises |
| Program 16 - Preferential tax policies for enterprises with foreign investment established in Special Economic Zones (excluding Shanghai Pudong area) | Not received by Alnan. Alnan is not a foreign invested enterprise. |
| Program 17 - Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai | Not received by Alnan. Alnan is not a foreign invested enterprise. |
| Program 18 - Preferential tax policies in the Western Regions | Alnan receives government support but not a subsidy |
| Program 21 – Tariff and VAT Exemptions on Imported Materials and Equipments | Not received by Alnan |

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| Program 26 - Innovative Experimental Enterprise Grant | Alnan <u>does</u> receive this benefit. |
| Program 29 – Special Support Fund for Non-State-Owned Enterprises | Not received by Alnan |
| Program 32 - Venture Investment Fund of Hi-Tech Industry, | Alnan advised that this is not an investment fund but a preferential tax policy under which Alnan pays 15% rather than the standard 25%. |
| Program 35 - Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment | Not received by Alnan. Alnan is not a foreign invested enterprise. |

The Commission's assessment

The countervailing measures currently applying to the Residual Exporter (Group 1) category of exporters (which includes Alnan) are based on a finding that the following three schemes apply to exporters in this category:

Program 10 - Preferential Tax Policies for Foreign Invested Enterprises – Reduced Tax Rate for Productive FIE's scheduled to operate for a period of not less than 10 years;

Program 13 - Exemption of Tariff and Import VAT for Imported Technologies and Equipment;

Program 15 - Program 15 – Goods provided at less than adequate remuneration.

Aluglass claims that Alnan has not received a subsidy in respect of programs 10, 13 and 15 but that it does receive a subsidy under some of the other programs (3, 7, 26 and 32) found to be countervailable subsidies and applied to certain exporters in the original investigation.

Aluglass has not included in its application a statement of its opinion on how much the amount of countervailable subsidy received has changed and it is not possible to interpret the information provided as representing such a statement. In respect of this variable factor, the Commission concludes that the application does not comply with s. 269ZB of the Act.

4.4.2 Export price

Applicant's claims

Aluglass has included with its application, export documentation for two shipments of aluminium extrusions it imported from Alnan in May 2013.

The Commission's assessment

The export documentation provided by Aluglass contains information allowing the calculation of FOB export prices per kilogram for the aluminium extrusions imported. **Confidential appendix B** compares the free-on-board (FOB) export price for the imports with the ascertained export price for Residual Exporters (Group 1). The

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comparison shows that the ascertained export price is considerably different to the FOB export prices calculated from invoices provided by Aluglass.

The Commission is satisfied that, in respect of the export price variable factor, the application complies with s. 269ZB and that there appear to be reasonable grounds for asserting that this variable factor relevant to the taking of the anti-dumping measures has changed.

4.4.3 Normal value

Applicant's claims

Aluglass suggests that if Alnan's domestic sales are considered unsuitable for establishing normal values because a 'market situation' is deemed to still exist in China, normal values should be constructed under s. 269TAC(2)(c). Aluglass proposed that constructed normal values should be based on information supplied in attachments supplied by Alnan and submitted with the application for review.

Aluglass stated that adjustments to the constructed normal value should be made for ocean freight, value added tax and the difference in theoretical and actual weights.

The Commission's assessment

Aluglass suggests that information contained in the attachments to the application for review should be the basis of normal values for Alnan's exports to Australia. Aluglass has provided sales listings and cost information for calendar years 2011 and 2012. Much of the information is in Chinese with no English translation.

The Commission considers that the information supplied by Aluglass does not constitute a statement of its opinion of how much normal values have changed or provide information that establishes the amount of the change. Therefore, the Commission concludes that, in respect to the normal value variable factor, the application does not comply with s. 269ZB.

4.4.4 Non-injurious price

Applicant's claims

Aluglass claimed that the non-injurious price had changed but provided no statement of its opinion of the amount the non-injurious price had changed or information that establishes the amount of any change.

The Commission's assessment

The Commission considers that the information supplied by Aluglass does not constitute a statement of its opinion of how much the non-injurious price has changed or provide information that establishes the amount of the change. Therefore, the Commission concludes that, in respect to the non-injurious price variable factor, the application does not comply with s. 269ZB.

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4.5 Conclusion

In respect of one variable factor (ascertained export price), the Commission is satisfied that:

- the application complies with s. 269ZB of the Act; and
- there appear to be reasonable grounds for asserting that a variable factor relevant to the taking of the measures has changed.

It is recommended that the Commissioner not reject the application for a review of the variable factors relevant to exports of aluminium extrusions to Australia by Alnan.

4.6 Review Period

The recommended review period is from 1 October 2012 to 30 September 2013.