



**Australian Government**  
**Anti-Dumping Commission**

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**CUSTOMS ACT 1901 - PART XVB**

**ANTI-DUMPING COMMISSION**  
**CONSIDERATION REPORT NO. 248**

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

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

**22 May 2014**

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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 lodged by PanAsia Aluminium (China) Co., Ltd (PanAsia Aluminium) for the review of the dumping duty notice and countervailing duty notice as they apply to its exports to Australia of certain aluminium extrusions<sup>1</sup> from the People's Republic of China (China).

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 the normal value, export price and the amount of countervailable subsidy received in respect of the goods have changed.

PanAsia Aluminium was selected for investigation as part of a sampling exercise during the original investigation and has its own rates of countervailing and dumping duty, which form part of the current anti-dumping measures.

## 1.1 Recommendation

The Commission recommends that the Anti-Dumping Commissioner (the Commissioner) decide not to reject the application and initiate a review into the current anti-dumping measures, being both the dumping duty notice and the countervailing duty notice. It is also recommended that the Parliamentary Secretary to the Minister for Industry (Parliamentary Secretary) be asked to extend the review to cover all Chinese exporters of aluminium extrusions to Australia.

## 1.2 Application of law to facts

Division 5 of Part XVB of the *Customs Act 1901*<sup>2</sup> (the Act) 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.

If the Commissioner accepts the application, he is required to publish a notice indicating that it is proposed to review the measures covered by the application.

Subsection 269ZC(4) provides that the Commissioner, if he decides to not reject the application, may recommend to the Parliamentary Secretary that the review be extended to include any additional matters.

## 1.3 Findings and conclusions

The Commission is satisfied that:

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<sup>1</sup> Refer to the full description of the goods in section 3.3 of this report.

<sup>2</sup> 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.

- 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.

## 2 BACKGROUND

### 2.1 Existing measures

On 11 May 2009, the Commission initiated dumping and subsidy investigations into aluminium extrusions exported from China 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 then Minister for Home Affairs impose anti-dumping measures on the goods exported from China.<sup>3</sup> On 28 October 2010, the Minister published a dumping duty notice and a countervailing duty notice applying to 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, the Australian Customs and Border Protection Service (ACBPS) 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 ACBPS 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, PanAsia Aluminium was selected as one of the sampled exporters. PanAsia Aluminium cooperated during the investigation and received its own rates of dumping and countervailing duties.

Following the original investigation (Rep 148), the only countervailable subsidy that PanAsia Aluminium was found to be in receipt of was described as Program 15 – Goods provided at less than adequate remuneration. Program 15 relates to the

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<sup>3</sup> Prior to 25 September 2013, anti-dumping matters were the responsibility of the Minister for Home Affairs. On 25 September 2013, responsibility for anti-dumping matters was transferred to the Minister for Industry. The Minister for Industry subsequently delegated responsibility for anti-dumping matters to the Parliamentary Secretary to the Minister for Industry.

exporter of aluminium extrusions being conferred a benefit in the form of primary aluminium being provided by a public body an amount reflecting less than adequate remuneration, having regard to the prevailing market conditions in China.

## **2.2 Previous reviews**

On 2 November 2012, a notice was published declaring the outcome of a review of the anti-dumping measures as they apply to a single exporter, Wuxi Xisha Photoelectric Aluminium Products Co. Ltd.

On 8 May 2014, the Parliamentary Secretary published a notice following a review of anti-dumping measures as they apply to Alnan Aluminium Co., Ltd. Anti-dumping measures applicable to Alnan Aluminium Co., Ltd remained unaltered.

## **2.3 The current review application**

On 2 May 2014, PanAsia Aluminium lodged an application requesting a review of the anti-dumping measures as they apply to its exports of certain aluminium extrusions to Australia from China. PanAsia Aluminium claims that certain variable factors relevant to the taking of the anti-dumping measures have changed.

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 dumping duty notice or countervailing duty notice or a notice declaring the outcome of the last review of measures.

PanAsia Aluminium's application was lodged after the 12 months period following the publication of the notice relating to the review of measures applying to Wuxi Xisha Photoelectric Aluminium Products Co. Ltd. PanAsia Aluminium's application was also lodged before the Parliamentary Secretary published a notice declaring the outcome of a review of the anti-dumping measures on aluminium extrusions exported to Australia by Alnan Aluminium Co., Ltd.

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 22 May 2014.

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.

## **2.4 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.

## 2.5 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;                   |
| 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  |

## 2.6 Australian industry producing like goods

During the original investigation, ACBPS 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.

## **3 CONSIDERATION OF THE APPLICATION**

### **3.1 Findings**

Having regard to the applicant's claims and other relevant information, the Commission is satisfied that the application complies with s. 269ZB in respect of one of the variable factors (the amount of countervailable subsidy received in respect of the goods) and there appear to be reasonable grounds for asserting that a variable factor relevant to the taking of anti-dumping measures has changed.

### **3.2 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.

Subsection 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.

Subsection 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:
  - that the variable factors relevant to the taking of anti-dumping measures have changed; or
  - that the anti-dumping measures are no longer warranted.

### **3.3 Compliance with section 269ZB**

The application lodged by PanAsia Aluminium:

- 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.



Paragraph 269ZB(2)(c) of the Act requires that the application must also include, 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;
- the amount by which each such factor has changed; and
- the information that establishes that amount.

In addition, the approved form requires that the application include information about the applicant's opinion on the causes of the change in the variable factor(s) and whether these causes are likely to persist.

The Commission's consideration of whether the application complies with paragraph 269ZB(2)(c) of the Act and whether it contains all information required by the approved form is addressed in section 3.4 of this report under each variable factor. Section 3.4 also considers whether there appear to be reasonable grounds for asserting that the variable factors relevant to the taking of the anti-dumping measures have changed.

### **3.4 Variable factors**

The Commission considers that to comply with s.269ZB of the Act, the applicant must provide information to establish that, in the applicant's opinion, one or more of the variable factors have changed. The applicant does not have to provide information to establish that all the variable factors have changed.

In the original investigation primary aluminium prices in China were found to not reasonably reflect competitive market costs because of the nature and degree of government intervention in that market. As a consequence:

- a) in determining normal values and dumping margins Panasia's primary aluminium costs were substituted with international benchmark aluminium prices, based on London Metal Exchange prices (LME). This approach has the effect of increasing normal values and therefore dumping margins; and
- b) the benchmark aluminium prices were also taken into consideration in relation to subsidy Program 15 (i.e. the provision of goods by the Government of China at less than adequate remuneration).

Because the calculation of subsidy and dumping margins derive from the reference to the same substitute value for the raw material primary aluminium, the double-count has been removed in the calculation of dumping margins. Therefore if the subsidy margin is varied as a result of this review the dumping margin will similarly need to be updated.

The following sections consider PanAsia Alumium's claims that the normal value, export price and amount of countervailable subsidy have changed.

### **3.4.1 Normal value**

#### **3.4.1.1 Applicant's claims**

PanAsia Aluminium described the methodology used to calculate the current ascertained normal value for its exports to Australia. Certain factors found to be impacting on the market for aluminium in China during the original investigation period resulted in PanAsia Aluminium's primary aluminium costs being replaced with published LME aluminium prices.

In its application, PanAsia Aluminium provided monthly LME aluminium prices for the original investigation period (July 2008 to June 2009) and for the period April 2013 to March 2014. A comparison of the weighted averages for the two periods shows that average LME aluminium prices in the period April 2013 to March 2014 were approximately five per cent lower than during the original investigation period. PanAsia Aluminium considers it is reasonable to expect that normal values have decreased by a minimum of five per cent.

#### **3.4.1.2 The Commission's assessment**

PanAsia Aluminium's claim that its normal value has decreased by a minimum of five per cent is based on a five per cent movement in LME aluminium prices since the original investigation period. It is not clear from the application why PanAsia Aluminium believes the decrease in normal values would be at least five per cent.

In the original investigation, adjusted LME aluminium prices were incorporated into PanAsia Aluminium's cost of production in place of actual costs. The costs incorporating adjusted LME aluminium prices were used to test whether domestic sales by PanAsia Aluminium were in the ordinary course of trade. Normal values were established for PanAsia Aluminium using its selling prices in China for certain models and constructed normal values for models where comparable domestic sales in the ordinary course of trade were found to be in insufficient quantities.

PanAsia Aluminium's ascertained normal value is not a simple reflection of LME aluminium prices. For the same reasons that PanAsia Aluminium suggests that normal values have decreased by a minimum of five per cent and not five per cent precisely, it is conceivable that other factors could be operating to increase the normal value or leave it unchanged.

PanAsia Aluminium has not provided any information on its current selling prices in China, which might indicate that normal values have changed.

The Commission considers that PanAsia Aluminium has not provided information that establishes the amount of the claimed change in normal value. The Commission is satisfied that, in respect to this variable factor, the application does not comply with s. 269ZB of the Act.

From the information available, the Commission also considers that there do not appear to be reasonable grounds for asserting that the normal value as ascertained for PanAsia Aluminium has changed.

## **3.4.2 Export price**

### **3.4.2.1 Applicant's claims**

PanAsia Aluminium provided a comparison of the average Australian dollar to Renminbi (the currency of China) exchange rate for the original investigation period and the period April 2013 to March 2014. The comparison shows that the Australian dollar appreciated against the Renminbi between the two periods by 12.5 per cent.

PanAsia Aluminium considers that, all other things being equal, it is reasonable to expect that the appreciation in the Australian dollar would result in an increase in export prices by approximately 12 per cent.

### **3.4.2.2 The Commission's assessment**

PanAsia Aluminium has provided information on the movement in one factor (exchange rates) that might impact on its export prices to Australia. The legislation requires applicants to provide a statement of their opinion on how much a variable factor has changed. The applicant has, instead provided an opinion on how much export prices would have changed 'all other things being equal'. PanAsia Aluminium has not provided any information on its actual export prices to Australia that would support a claim that its export price has changed from that ascertained.

The Commission considers that PanAsia Aluminium has not provided information that establishes the amount of the claimed change in export price. The Commission is satisfied that, in respect to this variable factor, the application does not comply with s. 269ZB of the Act.

From the information available, the Commission also considers that there do not appear to be reasonable grounds for asserting that the export price as ascertained for PanAsia Aluminium has changed.

## **Amount of subsidisation**

### **3.4.2.3 Applicant's claims**

PanAsia Aluminium correctly identified that, in respect to the original investigation, the sole subsidy program found to exist in respect of its exports to Australia was Program 15 – provision of goods at less than adequate remuneration.

For the reasons explained in the report to the responsible Minister in the original investigation (Report 148) the amount of the benefit received under Program 15 was calculated by reference to a benchmark, being LME prices for primary aluminium (with some adjustments for delivery and other costs).

In its application, PanAsia Aluminium provided a comparison of monthly Shanghai Futures Exchange (SHFE) aluminium prices and monthly LME aluminium prices over the period April 2013 to March 2014. The comparison shows that in each month of the period, the SHFE price, when converted to United States dollars, is higher than the LME aluminium price. The reverse was the case for most of the original investigation period.

PanAsia Aluminium claims that, on the basis of the relationship between the SHFE and the LME in the period April 2013 to March 2014, it is reasonable to conclude that the amount of the subsidy it is receiving is zero.

#### **3.4.2.4 The Commission's assessment**

As explained above, the original investigation found that one program only (Program 15 – goods provided at less than adequate remuneration) applied to PanAsia Aluminium. The amount of the subsidy was calculated according to the difference between PanAsia Aluminium's purchase prices for primary aluminium from State Owned Enterprises (SOEs) and a benchmark competitive market price (adjusted LME aluminium prices).

PanAsia Aluminium's claim that the amount of the subsidy it receives by purchasing primary aluminium from SOEs relies on a comparison of SHFE aluminium prices (presumably as an indication of what PanAsia Aluminium now pays for primary aluminium purchased from SOEs) and LME aluminium prices used as the benchmark.

During the original investigation, it was found that the Chinese aluminium extrusion manufacturers' purchase price of primary aluminium from local suppliers was closely linked to pricing reported by the SHFE. Assuming this is still the case, and that LME aluminium prices still provide a reasonable estimate of competitive market primary aluminium prices, PanAsia Aluminium has provided information to establish that the amount of countervailable subsidy it receives in respect of its exports of aluminium extrusions to Australia has changed from the ascertained amount to zero.

The application makes no reference to whether PanAsia Aluminium is receiving benefits in respect of other countervailable subsidy programs.

In the Commission's view, in respect to the amount of countervailable subsidy received, PanAsia Aluminium has provided a statement of its opinion of the amount by which this factor has changed and has provided information that establishes that amount. The Commission is satisfied that, in respect to this variable factor, the application complies with s. 269ZB of the Act.

From the information available, the Commission also considers that there appear to be reasonable grounds for asserting that the amount of countervailable subsidy as ascertained for PanAsia Aluminium has changed.

### **3.5 Extending the review to include all exporters**

Subsection 269ZC(4) provides that if the Commissioner decides not to reject an application for review of anti-dumping measures, the Commissioner may, if he or she considers that the review applied for should be extended to include any additional matter, recommend to the Parliamentary Secretary that the review be extended accordingly.

As the change in circumstances upon which PanAsia Aluminium's application for review would be commenced (a change in the relationship between the SHFE and the LME) is common to all Chinese aluminium manufacturers, the Commission

considers that it would be appropriate to extend the review to ensure that any changes to the measures are applied across all exporters.

### **3.6 Conclusions and recommendations**

The Commission is satisfied that:

- the application complies with s. 269ZB of the Act (in respect to the amount of countervailable subsidy received by PanAsia Aluminium in respect of the goods); and
- there appear to be reasonable grounds for asserting that one of the variable factors (the amount of countervailable subsidy received) relevant to the taking of the measures has changed.

The Commission recommends that the Commissioner:

- not reject the application and initiate a review into the current anti-dumping measures, being both the dumping duty notice and the countervailing duty notice;
- the review period be set as 1 April 2013 to 31 March 2014; and
- recommend to the Parliamentary Secretary that the review be extended to all exporters of aluminium extrusions from China to Australia.