



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

**Anti-Dumping Commission**

**CUSTOMS ACT 1901 - PART XVB**

# **CONSIDERATION REPORT NO. 313**

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

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

**GUANGDONG NANFANG ALUMINIUM CO., LTD**

**9 October 2015**

## CONTENTS

<b>ABBREVIATIONS .....</b>	<b>3</b>
<b>1 SUMMARY AND RECOMMENDATION .....</b>	<b>4</b>
1.1 RECOMMENDATION .....	4
1.2 APPLICATION OF LAW TO FACTS .....	4
1.3 FINDINGS AND CONCLUSIONS .....	4
<b>2 BACKGROUND.....</b>	<b>5</b>
2.1 BACKGROUND AND EXISTING MEASURES .....	5
2.2 THE GOODS THE SUBJECT OF THE APPLICATION.....	6
2.3 CONSIDERATION OF THE APPLICATION FOR ACCELERATED REVIEW .....	7
<b>3 APPLICATION FOR ACCELERATED REVIEW - COMPLIANCE WITH SECTION 269ZF .....</b>	<b>9</b>
3.1 LEGISLATIVE BACKGROUND .....	9
3.2 ASSESSMENT OF THE APPLICATION – COMPLIANCE WITH SECTION 269ZF.....	9
3.3 LODGEMENT DATE .....	9
<b>4 CIRCUMSTANCES IN WHICH ACCELERATED REVIEW MAY BE SOUGHT – COMPLIANCE WITH SECTION 269ZE.10</b>	
4.1 BACKGROUND .....	10
4.2 STATUS AS A NEW EXPORTER .....	10
4.3 COOPERATION IN REGARDS TO THE APPLICATION FOR A DUMPING DUTY NOTICE AND COUNTERVAILING DUTY NOTICE .....	11
4.4 RELATIONSHIPS WITH SELECTED EXPORTERS.....	11
4.5 SUMMARY OF FINDINGS .....	11
<b>5 CONCLUSION.....</b>	<b>13</b>
<b>6 SECURITIES.....</b>	<b>14</b>
<b>7 APPENDICES AND ATTACHMENTS.....</b>	<b>15</b>

## ABBREVIATIONS

the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant	Guangdong Nanfang Aluminium Co., Ltd (also referred to in this report as Nanfang)
Capral	Capral Limited
China	the People's Republic of China
Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
EPR	Electronic Public Record
IDD	Interim dumping duty
REP 148	Trade Measures Branch Report No.148
REP 248	Final Report No. 248
SEF	Statement of essential facts
the goods	the goods the subject of the application (also referred to in this report as the goods under consideration or GUC). See section 2.2 of this report.
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry, Innovation and Science

## 1 SUMMARY AND RECOMMENDATION

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

The application is based on the applicant being a new exporter of aluminium extrusions to Australia.

### 1.1 Recommendation

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

### 1.2 Application of law to facts

Division 6 of Part XVB of the *Customs Act 1901* (the Act)<sup>1</sup> 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 respective notices.

### 1.3 Findings and conclusions

Nanfang's application for an accelerated review of the notices applying to aluminium extrusions exported to Australia from China has been examined.

The Commission 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 under subsection 269ZE(1) have been satisfied.

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

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<sup>1</sup> Unless stated otherwise, all legislative references in this report are to the *Customs Act 1901*.

## 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.

24 June 2009	The then Australian Customs and Border Protection Service initiated an investigation into the alleged dumping and subsidisation of aluminium extrusions exported to Australia from China following an application by Capral Limited.
28 October 2009	The then Attorney-General published a dumping duty notice and a countervailing duty notice applying to aluminium extrusions exported from China - <i>Trade Remedies Branch Report No. 148</i> refers.
27 August 2011	The then Attorney-General published new notices as a result of a reinvestigation of certain findings made in <i>Trade Remedies Branch Report No. 148</i> following a review by the former Trade Measures Review Officer. <i>International Trade Remedies Report No. 175</i> refers.
21 November 2012	Publication of the outcome of a review of the anti-dumping measures as they apply to Wuxi Xisha Photoelectric Aluminium Products Co., Ltd. <i>International Trade Remedies Report No. 186</i> refers.  Anti-dumping measures applicable to Wuxi Xisha Photoelectric Aluminium Products Co., Ltd. were altered as if different variable factors applied.
4 September 2013	The Federal Court ruled that dumping duty and countervailing duty notices cannot impose different variable factors for each finish of aluminium extrusion. <sup>2</sup>
8 May 2014	Publication of the outcome of 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. <i>Final Report No. 229</i> refers.
19 February 2015	Publication of the outcome of an anti-circumvention inquiry into the avoidance of the intended effect of duty concerning certain aluminium extrusions exported to Australia by PanAsia Aluminium (China) Co., Ltd. <i>Final Report No. 241</i> refers.

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<sup>2</sup> *PanAsia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870

19 August 2015      The 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.

Anti-dumping measures applying to aluminium extrusions exported to Australia from China are due to expire on 28 October 2015. On 27 March 2015, Capral lodged an application for the continuation of the anti-dumping measures. This continuation inquiry is currently ongoing. The Commissioner published Statement of Essential Facts (SEF) No. 287 on 12 August 2015 which outlined the essential facts on which the Commissioner proposes to base his recommendation to the Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary).<sup>3</sup> On 28 September 2015, Final Report No. 287 with the Commissioner's recommendations was provided to the Parliamentary Secretary.

## 2.2 The goods the subject of the application

### 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.*

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).

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<sup>3</sup> 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.

< 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 >						
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: Goods under consideration and like goods

### 2.2.2 Tariff classification

The goods are classified to the following tariff 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

Table 2: Aluminium extrusions tariff classifications

The goods exported to Australia from China are subject to a rate of duty of 5 per cent.

### 2.3 Consideration of the application for accelerated review

On 21 September 2015, Nanfang lodged an application for an accelerated review of the notices applying to aluminium extrusions exported to Australia from China in so far as the notices affect the applicant.

Pursuant to subsections 269ZG(1) and (2) the Commissioner must, no later than 100 days after the application is lodged, provide the Parliamentary Secretary 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 Commissioner's reasons for so recommending.

In relation to this application, this recommendation must be made no later than **30 December 2015**.

There is no legislative requirement for the Commissioner to maintain a public file for accelerated reviews. However, in the interests of ensuring the process is conducted in an open and transparent manner, a public file 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 (EPR), available at [www.adcommission.gov.au](http://www.adcommission.gov.au).



### 3 APPLICATION FOR ACCELERATED REVIEW - COMPLIANCE WITH SECTION 269ZF

#### 3.1 Legislative Background

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

- be in writing (subsection 269ZF(1));
- be lodged with the Commissioner in accordance with subsection 269ZF(2);
- contain a description of the goods to which the dumping duty notice or countervailing duty notice relates (paragraph 269ZF(1)(a)); 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 (paragraph 269ZF(1)(b)).

#### 3.2 Assessment of the application – compliance with section 269ZF

Section 269ZF sets out the manner in which an application for an accelerated review can be made. The application received from Nanfang, was in writing (subsection 269ZF(1)), lodged in accordance with subsection 269ZF(2), and contains a description of the goods to which the dumping and/or countervailing duty notice relate (paragraph 269ZF(1)(a)).

In accordance with the requirements of paragraph 269ZF(1)(b), the application also contains a statement from Nanfang that outlines the reasons why the company believes the current dumping duty and countervailing duty notices are inappropriate in so far as the notices affect Nanfang.

The application by Nanfang seeks an accelerated review on the basis that it is currently subject to the combined dumping and countervailing duty rate of 48.5 per cent, which reflects the margins determined for uncooperative exporters as outlined in REP 248. Nanfang requests that the determination of ascertained variable factors based on its own domestic sales, costs and other relevant financial information. This was because Nanfang 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 Commissioner is satisfied that the application complies with subsection 269ZF(1) and was lodged in accordance with subsection 269ZF(2) of the Act.

#### 3.3 Lodgement date

On 21 September 2015, a formal application for an accelerated review was lodged on behalf of Nanfang. A copy of the application is contained in **Attachment 1**. The non-confidential version of the application is available on the EPR. On receipt of the application, the Commission recorded the date on which the application was received as 21 September 2015, in accordance with subsection 269ZF(3). If the Commissioner does not reject the application, the initiation date will be taken to be the application lodgement date.

## **4 CIRCUMSTANCES IN WHICH 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 chapter are made on the basis of all currently available information. If, during the accelerated review, evidence becomes available that satisfies the Commissioner that the requirements of subsection 269ZE(3) are not met, the Commissioner may terminate the accelerated review.

### **4.2 Status as a new exporter**

#### **4.2.1 Background**

Subsection 269ZE(1) sets out that only a “new exporter” may apply for an accelerated review. A new exporter is defined in 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 Commissioner places on the Public Record the SEF in relation to the investigation of the application.

Subsection 269ZE(1) further provides that 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 or by a new exporter, provided a declaration has not already been made in respect of that exporter under subparagraph 269ZG(3)(b)(ii).

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.

#### **4.2.2 New exporter period**

To fall within the definition of a new exporter in subsection 269T(1), the period within which the applicant must not have exported to Australia (the 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 (the original investigation) was placed on the Public Record.

#### **4.2.3 Evidence of exports during the new exporter period**

A search of the Australian Border Force’s import database did not reveal any exports of the goods by Nanfang during the period 1 July 2008 to 28 February 2010.

Based on currently available information, the Commission considers that Nanfang should be considered as a new exporter for the purposes of the accelerated review.

#### **4.2.4 Declaration under subparagraph 269ZG(3)(b)(ii)**

Pursuant to paragraph 269ZE(1)(b) 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 subparagraph 269ZG(3)(b)(ii).

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

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

Paragraph 269ZE(2)(a) provides that, if the Commissioner 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 exportations from that exporter have not investigated (in the original investigations), the Commissioner may reject the application.

Given the above finding, there is no evidence of exports by Nanfang during the investigation period for the original investigation and the Commission notes that Nanfang's cooperation was not sought during the original investigation. A review of the information from the original investigation reveals that the company was not identified as an exporter.

As such, the Commission considers that there are no grounds for rejection in terms of paragraph 269ZE(2)(a).

#### **4.4 Relationships with selected exporters**

Paragraph 269ZE(2)(b) provides that, if the Commissioner is satisfied that the exporter (i.e. the applicant for an accelerated review) is related to an exporter who was a selected exporter in relation to the application for the publication of a dumping or countervailing duty notice, the Commissioner may reject the application.

To determine whether paragraph 269ZE(2)(b) applies, the exporter questionnaire responses and visit reports for the selected exporters from the original investigation were reviewed for company information and shareholding arrangements. There is no evidence to suggest that Nanfang is related to a selected exporter from the original investigation.

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

#### **4.5 Summary of findings**

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

- the applicant did not export aluminium extrusions to Australia during the new exporter period. Consequently, 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 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 exporter that had its exports examined in the original investigation and therefore the application should not be rejected under paragraph 269ZE(2)(b).

## **5 CONCLUSION**

The Commission has considered Nanfang's application to determine if it satisfied the requirements under sections 269ZE, 269ZF and the definition of a new exporter provided in subsection 269T(1).

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

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

Accordingly, the Commission is satisfied that Nanfang is eligible to apply for an accelerated review.

The Commission recommends that the Commissioner:

- not reject the application and initiate the accelerated review; and
- set the review period as 1 July 2014 to 30 June 2015.

## 6 SECURITIES

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 from the applicant in respect of consignments of goods entered for home consumption after the application is lodged and until the completion of the review.

However, pursuant to subsection 269ZH(b), the Commonwealth may, 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 2**.

## **7 APPENDICES AND ATTACHMENTS**

<b>Attachment 1</b>	Application by Nanfang
<b>Confidential Attachment 2</b>	Table outlining variable factors for the calculation of securities