



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NO. 391**

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

**CERTAIN ALUMINIUM EXTRUSIONS EXPORTED FROM CHINA
BY TONGLIAO JIAOJIAN ALUMINIUM CO. LTD.**

1 MARCH 2017

Consideration Report 391 – Aluminium Extrusions - China

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ABBREVIATIONS

the Act	<i>the Customs Act 1901</i>
ADN	Anti-Dumping Notice
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
Jiaojian	Tongliao Jiaojian Co. Ltd. (the applicant)
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science

1 SUMMARY AND RECOMMENDATION

This report provides the results of the Commissioner of the Anti-Dumping Commission's (the Commissioner's) consideration of an application by Tongliao Jiaojian Co. Ltd. (the applicant) for an accelerated review of the dumping and countervailing duty notices in respect of certain aluminium extrusions¹ exported to Australia from the People's Republic of China (China) in so far as those notices affect Jiaojian.

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)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 notice and countervailing duty notice by certain exporters of goods covered by the respective notices.

1.3 Findings and conclusions

The Commission has examined the application and is satisfied that:

- the application satisfies the requirements of subsection 269ZF(1);
- 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.

¹ Refer to the full description of the goods in Section 2.2.1 of this report.

² Unless stated otherwise, all legislative references in this report are to the *Customs Act 1901*.

2 BACKGROUND

2.1 Existing measures

A history of the anti-dumping measures applying to aluminium extrusions exported to Australia from China, as they affect Jiaojian, 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 2010 | 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. |
| 19 August 2015 | The then Parliamentary Secretary 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. <i>Final Report No. 248</i> and its corrigendum refer. ³ |
| 20 October 2015 | The then Parliamentary Secretary published a notice declaring the outcome of continuation inquiry 287. In that notice, it was declared that anti-dumping measures currently applying to aluminium extrusions exported to Australia from China (as at that date) would continue in force after 28 October 2015. Anti-Dumping Notice (ADN) No. 2015/125 refers. |

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.

³ The corrigendum relates to the treatment of certain residual exporters.

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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 >						
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	Showers 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 to 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

2.3 Consideration of the application for accelerated review

On 31 January 2017, Jiaojian lodged an application for an accelerated review of the dumping and countervailing duty notices that apply to aluminium extrusions exported to Australia from China in so far as the notices affect the applicant.

If the Commissioner does not reject the application or terminate the accelerated review, pursuant to subsections 269ZG(1) and (2) the Commissioner must, no later than 100 days after the application is lodged, provide the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)⁴ a report recommending:

- a) that the dumping duty notice and/or countervailing duty notice the subject of the application remain unaltered; or
- b) that the dumping duty notice and/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 **11 May 2017**⁵.

2.4 Public record

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, available at www.adcommission.gov.au.

⁴ On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this accelerated review, the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

⁵ If a due date in this report falls on a weekend or public holiday in Victoria, the effective due date will be the following business day.

3 APPLICATION FOR ACCELERATED REVIEW - COMPLIANCE WITH SECTION 269ZF OF THE ACT

3.1 Legislative Background

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

- be in writing (subsection 269ZF(1));
- be lodged in a manner approved under section 269SMS⁶ (subsection 269ZF(1));
- contain a description of the goods to which the dumping duty notice or countervailing duty notice relates (subsection 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 (subsection 269ZF(1)(b)).

3.2 Assessment of the application – compliance with section 269ZF

The application made by Jiaojian was in writing, lodged in a manner approved under subsection 269SMS (subsection 269ZF(1)), specifically it was and contains a description of the goods to which the dumping and countervailing duty notices relate (subsection 269ZF(1)(a)).

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

- Jiaojian is a new exporter from China and therefore may apply for an accelerated review.
- Jiaojian has not engaged in the exportation of the goods during the most recent review period, being January 2015 to December 2015; and
- Jiaojian is not related to an exporter whose exports were examined by the Commissioner in relation to the application for publication of the dumping duty and countervailing duty notices.

The Commissioner is satisfied that the application complies with subsection 269ZF(1).

3.3 Lodgement date

Subsection 269ZF(2) states that an application for accelerated review is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for accelerated reviews.

⁶ A copy of the Commissioner's instrument under section 269SMS can be found at <http://www.adcommission.gov.au/accessadsystem/Documents/Forms%20and%20Guidelines/Lodging%20and%20withdrawing%20applications.pdf>.

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On 31 January 2017, Jiaojian lodged an application for an accelerated review. A copy of its application is at **Confidential Attachment 1**. A non-confidential version of the application is available on the public record. On receipt of the application, the Commission recorded the date on which the application was received as 31 January 2017 in accordance with subsection 269ZF(3) of the Act. If the Commissioner does not reject the application, the initiation date will be taken to be the application lodgement date.

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 all 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 application for an 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 subsection 269T(1) as, in relation to the goods the subject of the application for a dumping or countervailing duty notice or like goods, an exporter who did not export such goods to Australia at any time during the investigation period in relation to the application.

Subsection 269ZE(1) 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 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) 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 to 30 June 2009 (the investigation period for the original investigation in relation to the application for publication of the dumping duty and countervailing duty notices in respect of the goods).

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 Jiaojian during the new exporter period, 1 July 2008 to 30 June 2009.

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

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

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

A declaration under subsection 269ZG(3)(b) has not been made 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 the exporter refused to cooperate in relation to the application for publication of a dumping duty notice or a countervailing duty notice, the exportations from that exporter were not investigated (in the original investigation), the Commissioner may reject the application.

A review of the information from the original investigation reveals that Jiaojian was not identified as an exporter. Further, there is no evidence of exports of the goods to Australia by Jiaojian during the investigation period for the original investigation. As a result, Jiaojian's cooperation was not sought during the original investigation.

The Commissioner considers that there are no grounds for rejection in terms of subsection 269ZE(2)(a).

4.4 Relationships with selected exporters

Subsection 269ZE(2)(b) of the Act provides that, if the Commissioner is satisfied that the exporter (i.e. the applicant for an accelerated review) is related to an exporter that had its exports examined in relation to the application for the publication of a dumping duty notice or countervailing duty notice, the Commissioner may reject the application.

Based on the information available, the Commissioner considers there are no grounds for rejection in terms of subsection 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 the goods during the original investigation period and is not an exporter in respect of whom a declaration has been made under subsection 269ZG(3)(b). 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 publication of the dumping duty notice and countervailing duty notice in relation to the goods, and 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 exporter that had its exports examined in the original investigation and therefore the application should not be rejected under subsection 269ZE(2)(b).

5 CONCLUSION

The Commission has considered the application made by Jiaojian to determine if it satisfied the requirements of sections 269ZE, 269ZF and the definitions provided in section 269T.

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

- the application satisfies the requirements of subsection 269ZF(1);
- 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 Jiaojian is eligible to apply for, and has lodged a valid application for, an accelerated review.

The Commission recommends that the Commissioner:

- decide not to reject the application for an accelerated review of the dumping and countervailing duty notices applying to the goods exported to Australia from China in so far as the notices affect the applicant;
- continue the accelerated review; and
- set the review period as 1 January 2016 to 31 December 2016.

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 in respect of consignments of goods, to which the application relates, entered for home consumption after the application is lodged and until the completion of the accelerated 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.

A table outlining the variable factors relevant to calculating the amount of securities is provided at **Confidential Attachment 2**.

7 APPENDICES AND ATTACHMENTS

Confidential Appendix	Application by Jiaojian
Confidential Attachment	Table outlining variable factors for the calculation of securities