



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

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT NO. 415

**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 BY**

SKYLINE ALUMINIUM CO LTD

May 2017

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ABBREVIATIONS

| | |
|----------------------------------|---|
| the Act | <i>Customs Act 1901</i> |
| ADN | Anti-Dumping Notice |
| the applicant | Skyline Aluminium Co Ltd (Skyline) |
| China | the People's Republic of China |
| 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 in this report as the goods under consideration or GUC). See section 2.2 of this report. |
| Skyline | Skyline Aluminium Co Ltd |
| the notices | the dumping and countervailing duty notices |
| the Parliamentary Secretary | the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science |
| the then Parliamentary Secretary | the then Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science. |
| REP 148 | Trade Measures Branch Report No.148 |
| REP 248 | Final Report No. 248 |

1 SUMMARY AND RECOMMENDATION

This report provides the results of the Commissioner of the Anti-Dumping Commission's (the Commissioner) consideration of an application by Skyline Aluminium Co Ltd (Skyline) for an accelerated review of the dumping and countervailing duty notices (the notices) applying to certain 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)¹ 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 and/or countervailing duty notice by certain exporters of goods covered by the respective notices.

1.3 Findings and conclusions

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

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 and that the accelerated review continue.

¹ 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 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. |
| 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. |
| 30 August 2013 | The Federal Court ruled that dumping duty and countervailing duty notices cannot impose different variable factors for each finish of aluminium extrusion. ² |
| 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. |

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

- 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. *Final Report No. 248* 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.
- 9 February 2016 Publication of the outcome of a review of anti-dumping measures as they apply to Press Metal International Ltd (PMI). The anti-dumping measures were altered as if different variable factors had been ascertained in relation to PMI. *Final Report No. 304* 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.

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).

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

PUBLIC RECORD

| < 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

2.3 Consideration of the application for accelerated review

On 10 May 2017, Skyline 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.

PUBLIC RECORD

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 (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 recommendation must be made no later than **18 August 2017**.

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.

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

3.1 Background

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

The conclusions in this chapter are based on 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 accelerated review.

3.2 Compliance with subsection 269ZE(1)

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) 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 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.

3.2.1 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).

3.2.2 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 Skyline during the new exporter period 1 July 2008 to 30 June 2009.

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

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

Pursuant to subsection 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 subsection 269ZG(3)(b).

Skyline 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 Skyline.

3.3 Compliance with subsection 269ZE(2)

3.3.1 Non-cooperation during the original investigation

Section 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 were not investigated (in the original investigation), the Commissioner may reject the application.

Given that there is no evidence of exports by Skyline during the investigation period for the original investigation and Skyline's cooperation was not sought during the original investigation, the Commission considers that there are no grounds for rejection pursuant to subsection 269ZE(2)(a).

3.3.2 Relationship with an exporter whose exports were previously examined

Subsection 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 whose exports were examined in relation to the application for publication of that notice, the Commissioner may reject the application.

To determine whether section 269ZE(2)(b) applies, preliminary background research of Skyline was conducted to ascertain if it was connected or related to exporters from the original investigation in any form. There is no evidence to suggest that Skyline is related to an exporter whose exports were examined during the original investigation. Therefore, the Commission considers there are no grounds for rejection pursuant to subsection 269ZE(2)(b).

3.4 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 and is not an exporter in respect of whom a declaration has already 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 a dumping duty notice or a countervailing duty notice, and the application should not be rejected under section 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 section 269ZE(2)(b).

4 APPLICATION FOR ACCELERATED REVIEW - COMPLIANCE WITH SECTION 269ZF

4.1 Application requirements

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

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

4.1.1 Compliance with section 269ZF(1)

The application received from Skyline was in writing and lodged in a manner approved in the Commissioner's instrument made under section 269SMS, being by email to the Commission's nominated email address.

4.1.2 Compliance with section 269ZF(1)(a)

The application from Skyline contained a description of the goods to which the notices relate, in section 1 of its application.

4.1.3 Compliance with section 269ZF(1)(b)

The application contained a statement from Skyline that outlined the reasons why the company believes the notices are inappropriate in so far as they affect Skyline.

In its application, Skyline also noted the following points:

- It was not investigated during the dumping and subsidy investigation as it had not exported the GUC during the investigation period.
- It seeks to have a determination of ascertained variable factors based on its own domestic sales, costs and other relevant financial information as the variable factors applicable to Skyline, which are those ascertained for uncooperative exporters in the most recent review of measures (REV248), do not reflect Skyline's actual domestic sales, cost of production and subsidies received.
- In addition Skyline highlighted other factors such as its business practices, economies of scale, location of plants and non-receipt of subsidies from Government of China as reasons for having different variable factors as compared to those investigated in previous investigations.

The Commission considers that Skyline's application complies with subsection 269ZF(1) of the Act.

4.2 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.

Further, section 269ZF(3) states that the day on which an application is taken to be lodged must be recorded on the application.

On 10 May 2017, an application for an accelerated review was lodged by email to the Commission on behalf of Skyline and was received by a Commission staff member doing duty in relation to applications for accelerated reviews on the same day. The Commission considers that the application was lodged on 10 May 2017 in accordance with subsection 269ZF(2).

A copy of the application is contained in **Attachment 1**. On receipt of the application, the Commission recorded the date on which the application was received as 10 May 2017, in accordance with subsection 269ZF(3).

5 CONCLUSION

The Commission has considered Skyline's application to determine if it satisfied the requirements of sections 269ZE and 269ZF.

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) are not met; and
- the application satisfies the requirements of subsection 269ZF(1).

Accordingly, the Commission is satisfied that Skyline is eligible to apply for, and has lodged a valid application for an accelerated review.

The Commission recommends that the Commissioner:

- not reject the 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 and continue with the accelerated review; and
- set the review period as 1 April 2016 to 31 March 2017.

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, to which the application relates, 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.

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

7 APPENDICES AND ATTACHMENTS

| | |
|----------------------------------|--|
| Attachment 1 | Application by Skyline |
| Confidential Attachment 2 | Table outlining variable factors for the calculation of securities |