



CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NO. 447**

APPLICATION FOR AN ANTI-CIRCUMVENTION INQUIRY

**CERTAIN ALUMINIUM EXTRUSIONS EXPORTED THROUGH
ONE OR MORE THIRD COUNTRIES FROM THE PEOPLE'S
REPUBLIC OF CHINA**

16 October 2017

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ABBREVIATIONS

the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant, or Capral	Capral Limited
China	The People's Republic of China
the Commission	Anti-Dumping Commission
the Commissioner	Commissioner of the Anti-Dumping Commission
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 148	<i>Trade Measures Report No. 148</i>

1 SUMMARY

This report provides the results of the consideration by the Commissioner of the Anti-Dumping Commission (the Commissioner) of an application requesting the conduct of an anti-circumvention inquiry into the export of certain aluminium extrusions from the People's Republic of China (China) through one or more third countries.

The Commissioner has examined the application in accordance with the requirements of the *Customs Act 1901* (the Act)¹ and is satisfied that:

- the application complies with section 269ZDBD;² and
- there appear to be reasonable grounds for asserting that circumvention activities in relation to the original notices have occurred.³

Accordingly, the Commissioner has not rejected the application and will initiate an anti-circumvention inquiry into the export of certain aluminium extrusions from China through various foreign countries including Indonesia, Malaysia, the Philippines and Thailand.

For the purposes of the inquiry, the inquiry period to determine whether anti-circumvention has occurred will be from 1 January 2015.

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

² Subsection 269ZDBE(2)(a) refers.

³ Subsection 269ZDBE(2)(b) refers.

2 BACKGROUND

2.1 Application

On 18 September 2017, Capral Limited (Capral), an Australian industry member,⁴ lodged an application requesting the conduct of an anti-circumvention inquiry into the circumvention of measures applying to certain aluminium extrusions exported to Australia from China.

Capral claims that it is appropriate to alter the dumping duty notice and countervailing duty notice (the original notices) because circumvention activities, in the form of the export of goods through one or more third countries, within the meaning of subsection 269ZDBB(4), have occurred. Specifically, Capral claims that the goods are exported to Australia from China through one or more third countries including Indonesia, Malaysia, the Philippines and Thailand.

2.2 Existing measures – China

Anti-dumping measures in the form of dumping and countervailing duties on aluminium extrusions exported to Australia from China were imposed on 28 October 2010 following consideration of *Trade Measures Report No. 148* (REP 148) by the then Attorney-General.

On 20 October 2015, the then Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science published a notice continuing the anti-dumping measures after 28 October 2015, with the exception of:

- exports by Tai Ao Aluminium Tai Shan Co Ltd and Guangdong Zhongya Aluminium Company Limited, to whom the dumping duty notice does not apply; and
- exports by Tai Ao Aluminium Tai Shan Co Ltd, to whom the countervailing duty notice does not apply.

For more information on the continuation of measures, refer to *Anti-Dumping Commission Report No. 287* (REP 287) and *Anti-Dumping Notice (ADN) No. 2015/125*. Further details of the measures in place are available in the *Dumping Commodity Register* on the public record.

A history of the main cases in respect of certain aluminium extrusions exported to Australia from China is summarised in Table 1. Further information related to these cases is available on the public record.⁵

Year	Case Description
2009-2011	The Australian Customs and Border Protection Service initiated an investigation, following an application from Capral. Following the investigation, the then Attorney-General published a dumping duty notice and a countervailing duty notice (REP 148 refers). Following a review by the former Trade Measures Review Officer, the then Attorney-General amended the dumping duty notice and countervailing duty notice as a result of a reinvestigation of certain findings made in REP 148. <i>International Trade Remedies Report No. 175</i> refers.

⁴ Capral has been confirmed to be an Australian industry member in various cases including cases numbered 148, 241, 248 and 362.

⁵ The public record is available on the Commission's web site at <http://www.adcommission.gov.au>.

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Year	Case Description
2015	<p>The Commissioner initiated <i>Anti-Circumvention Inquiry No. 241</i> into the avoidance of the intended effect of duty concerning certain aluminium extrusions exported to Australia by PanAsia Aluminium (China) Limited (PanAsia). Following <i>Anti-Dumping Commission Report No. 241</i> and ADN No. 2015/17 the then Parliamentary Secretary published a notice declaring that circumvention had occurred and altered the dumping duty notice and countervailing duty to have effect as if a different variable factor, the export price applied in relation to PanAsia.</p> <p>The Commissioner initiated an all exporter <i>Review of Measures No. 248</i> (Review 248) following an application from PanAsia. Following Review 248, the then Parliamentary Secretary published a notice declaring that she had altered the dumping duty notice and countervailing duty notice as if different variable factors had been ascertained for exporters generally.</p> <p>The Commission conducted <i>Continuation Inquiry No. 287</i>, following an application by Capral. The then Parliamentary Secretary continued the measures for a further five years, until 28 October 2020.</p>
2017	<p>The Commissioner initiated a review of the anti-dumping measures (in the form of a dumping duty notice and countervailing duty notice) applying to certain aluminium extrusions exported to Australia from China (Review 392).</p> <p>The review was initiated on 23 March 2017 after separate applications were lodged by:</p> <ul style="list-style-type: none"> • Guangdong Haomei Aluminium Co., Ltd (Haomei); • Guangdong YaoYinShan Aluminium Co., Ltd (YaoYinShan); • PanAsia Aluminium (China) Co., Ltd (PanAsia); and • Guangdong Jinxiecheng AL Manufacturing Co., Ltd (Jinxiecheng). <p>Each applicant considered it appropriate to review the anti-dumping measures because one or more of the variable factors relevant to the taking of the anti-dumping measures had changed. The variable factors that had allegedly changed are the export price, normal value, countervailable subsidy and non-injurious price (NIP).</p> <p>Although the application for the review was made by the above exporters, the change in circumstances upon which the applications were predicated was found to be common to all exporters. As such, the Commissioner recommended to the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)⁶ that the review be extended to all exporters of the goods from China generally to ensure that any changes to the anti-dumping measures are applied across all exporters. The Parliamentary Secretary accepted this recommendation.</p> <p>In its application, Jinxiecheng also sought a review of the anti-dumping measures on the basis that the anti-dumping measures are no longer warranted in relation to its exports of the goods, however the application for revocation of anti-dumping measures in relation to its exports was rejected by the Commissioner.</p> <p>On 25 August 2017, the Commissioner published a statement of essential facts in which it was proposed to recommend to the Parliamentary Secretary that the dumping duty notice and countervailing duty notice have effect as if different variable factors had been ascertained for all exporters generally.</p>

⁶ 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 investigation, the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

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Year	Case Description
	The Commissioner's final report and recommendations must be provided to the Parliamentary Secretary by 9 October 2017 or within such longer period as may be allowed.

Table 1 – Summary of main cases involving China

2.3 Existing measures – Malaysia and Vietnam

On 28 June 2017, the following measures were imposed:

- dumping duties on the goods exported to Australia by the category of 'uncooperative and all other exporters' from Malaysia and countervailing duties on the goods exported to Australia by the category of 'non-cooperative and all other exporters' from Malaysia; and
- dumping duties on the goods exported to Australia from Vietnam.

Further details of the measures in place are available in the *Dumping Commodity Register* on the public record.

2.4 The goods the subject of the application

2.4.1 Description

The goods that are the subject of the original notices and the subject of this application are:

Aluminium extrusions that:

- *are produced by an extrusion process;*
- *are 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);*
- *have finishes being:*
 - *as extruded (mill);*
 - *mechanically worked*
 - *anodized; or*
 - *painted or otherwise coated, whether or not worked;*
- *have a wall thickness or diameter greater than 0.5 mm;*
- *have a maximum weight per metre of 27 kilograms; and*
- *have a profile or cross-section fitting within a circle having a diameter of 421 mm.*

Table 2 provides examples of the coverage of the goods and like goods (and intended end-use applications) and is being used for this investigation. Examples of the goods and like goods are outlined in columns 1 to 4 and non-subject goods are outlined in columns 5 to 7.

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< 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 2 - The goods and like goods

2.4.2 Tariff classification

The goods are classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

Tariff code	Statistical code	Description
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 3 - Tariff classifications of the goods

2.5 Consideration of the application

If an application under section 269ZDBC of the Act for the conduct of an anti-circumvention inquiry in relation to an original notice is lodged, under subsection 269ZDBE(1) the Commissioner must within 20 days of lodgement, examine the application and decide whether or not to reject the application.

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In relation to this application, this decision must be made no later than 8 October 2017.⁷

Subsection 269ZDBE(1) specifies that the Commissioner shall reject the application if he:

- is not satisfied that the application complies with section 269ZDBD; or
- is not satisfied that there appear to be reasonable grounds for asserting that one or more circumvention activities in relation to the original notice have occurred.

The above matters are examined in the following sections of this report.

⁷ The due date of this decision falls on a weekend. The effective due date is the following business day: Monday 9 October 2017.

3 DOES THE APPLICATION COMPLY WITH SECTION 269ZDBD?

Subsection 269ZDBD(1) of the Act requires that the application must:

- be in writing; and
- be in an approved form; and
- contain such information as the form requires;
- be signed in the manner indicated by the form; and
- be lodged in the manner approved under section 269SMS.

Subsection 269ZDBD(2) of the Act requires that the application must include:

- a description of the kind of goods that are the subject of the original notice; and
- a description of the original notice the subject of the application; and
- a description of the circumvention activities in relation to the original notice that the applicant considers have occurred; and
- a description of the alterations to the original notice that the applicant considers should be made.

3.1 The application

The application is in writing, is in an approved form, contains such information as the form requires, is signed in the manner indicated in the form and was lodged in a manner approved by section 269SMS being by email to the Commission's nominated email address.

The application includes

- a description of the kind of goods that are the subject of the original notices;
- a description of the original notices the subject of the application that indicates they were made under subsections 269TJ(1), 269TJ(2), 269TG(1) and 269TG(2) and published on 28 October 2010 following REP 148;
- a description and supporting evidence of the circumvention activity in relation to the original notices that the applicant considers have occurred; and
- a description of the alterations to the original notices that should be made. Capral considers that the notices require amendment to identify exporters of transhipped goods that originated in China so that applicable measures (as if the goods were correctly entered as of Chinese origin) may be applied.

Confidential and public record versions of the application were submitted. The Commissioner considers that the public record version of the application has sufficient detail to allow a reasonable understanding of the substance of the information within the confidential application.

3.2 The Commissioner's assessment

Based on the information submitted by the applicant, the Commissioner considers that the application complies with section 269ZDBD.

4 REASONABLE GROUNDS – HAS CIRCUMVENTION OCCURRED

Subsection 269ZDBB(4) of the Act sets out the circumvention activity in the form of export of goods through one or more third countries. This circumvention activity occurs if the following apply:

- (a) goods (the circumvention goods) are exported to Australia from a foreign country in respect of which the notice does not apply;
- (b) before that export, there were one or more other exports of the goods from a foreign country to another foreign country;
- (c) the first of those other exports was from a foreign country in respect of which the notice applies;
- (d) the circumvention goods would be the subject of the notice if they were exported to Australia by an exporter in respect of which the notice applies; and
- (e) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.⁸

4.1 Applicant's claims

Capral claims that the available evidence indicates that Chinese aluminium extrusions have been transhipped through one or more third countries. Capral claims that it first became aware of the transshipment activities in 2015. Capral has also provided evidence that it has been informed of such activities occurring in 2017.

The evidence referred to by Capral relates to freight forwarders and logistics agents located in China. Capral claims that the evidence demonstrates that these parties contacted importers and informed them that Chinese aluminium extrusions could be exported to Australia through one or more countries including Indonesia, Malaysia, the Philippines and Thailand, and that dumping and countervailing duties could be avoided. Capral claims that upon export to the transshipping country, the goods would be placed in different containers and new export documentation, including certificates of origin, would be provided. Capral claims that this documentation would indicate that the goods did not originate from China and, as such, dumping and countervailing duties would not be payable upon importation into Australia.

4.2 The Commissioner's assessment

In respect of the requirements of subsection 269ZDBB(4):

- (a) The Commission has analysed import data and has found that goods (the circumvention goods) have been exported to Australia from various foreign countries in respect of which the notices do not apply, including Indonesia, Malaysia, the Philippines and Thailand.
- (b) The application includes evidence that reasonably supports claims that before those exports, there were one or more other exports of the goods from China to those other foreign countries.

⁸ Under subsection 269T(1), Dumping Duty Act means the *Customs Tariff (Anti-Dumping) Act 1975*.

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- (c) The application includes evidence that reasonably supports claims that the first of those other exports was from China.
- (d) The application includes evidence that reasonably supports claims that the circumvention goods would be the subject of the notice if they were exported to Australia by an exporter in respect of which the notices apply.
- (e) section 8 or 10 of the Dumping Duty Act does not apply to the export of the circumvention goods to Australia from foreign countries including Indonesia, Malaysia,⁹ the Philippines or Thailand.

The evidence provided by Capral in confidential attachments to its application includes correspondence and other documents that appear to indicate that freight forwarders and logistics agents located in China are willing and able to arrange exports of aluminium extrusions made in China to Australia through various foreign countries including Indonesia, Malaysia, the Philippines and Thailand. Included in this evidence are documents that appear to indicate that such exports can be arranged for the express purpose of avoiding anti-dumping measures that are in place. Further, this evidence appears to indicate that those freight forwarders and logistics agents have routinely engaged in this practice since 2015.

The Commissioner considers that the evidence supplied by Capral in its application appears to support its claims that freight forwarders and logistics agents located in China are willing and able to arrange exports of the goods through one or more third countries not subject to the original notices. The Commissioner also considers that this evidence appears to indicate that such exports can be arranged for the express purpose of avoiding anti-dumping measures that are in place.

4.2.1 Conclusion on *reasonable grounds*

The Commissioner is satisfied that there appear to be reasonable grounds for asserting that a circumvention activity in the form of export of the goods through one or more third countries not subject to the original notices have occurred and, as a result, the circumvention goods have not attracted the intended dumping duty and countervailing duty.

⁹ The Commission notes that since 28 June 2017 section 8 of the Dumping Duty Act does apply to some exports of the circumvention goods from Malaysia, but not exports made by Genesis Aluminium Industries Sdn Bhd, Kamco Aluminium Sdn Bhd, LB Aluminium Bhd, Milleon Extruder Sdn Bhd, Press Metal Bhd or Superb Aluminium Industries Sdn Bhd.

5 CONCLUSION

The Commissioner has examined the application and is satisfied that:

- the application complies with section 269ZDBD;
- there appear to be reasonable grounds for asserting that a circumvention activity in relation to the original notices has occurred; and
- there appear to be reasonable grounds for asserting that the circumvention goods would be the subject of the original notices if they were exported to Australia by an exporter in respect of which the notices apply.

Accordingly, the Commissioner has not rejected the application and will initiate an anti-circumvention inquiry into the export of Chinese aluminium extrusions to Australia from China through various foreign countries including Indonesia, Malaysia, the Philippines and Thailand.

The Commissioner notes that the claims and evidence provided by Capral suggest that the alleged circumvention activity may have occurred since 2015 and may continue to do so at present. The Commissioner considers that this warrants the inquiry period to determine whether anti-circumvention has occurred to be from 1 January 2015.