



CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT NO. 304

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

ALUMINIUM EXTRUSIONS

EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

BY

PRESS METAL INTERNATIONAL LTD.

July 2015

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ABBREVIATIONS

Abbreviation	Full title
ACBPS	Australian Customs and Border Protection Service
the Act	<i>Customs Act 1901</i>
the applicant	Press Metal International Ltd
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
FIE	Foreign Invested Enterprises
the goods	the goods to which the anti-dumping measures apply
LME	London Metal Exchange
NIP	Non-injurious price
PMA	Press Metal Aluminium (Australia) Pty. Ltd.
PMH	PMH Aluminium Extrusion Co., Ltd.
Review period	1 July 2014 to 30 June 2015
SEF	Statement of Essential Facts
SHFE	Shanghai Futures Exchange
Tai Ao	Tai Ao (Taishan) Co., Ltd.

1 SUMMARY AND RECOMMENDATIONS

This report outlines the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by Press Metal International Ltd. (referred to as the applicant or PMI in this report) for a review of the anti-dumping measures (being the dumping duty notice and the countervailing duty notice) applying to certain aluminium extrusions¹ exported to Australia from the People's Republic of China (China) in so far as the anti-dumping measures affect the applicant.

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.

1.1 Recommendation

The Commission recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) not reject the application and initiate a review into the anti-dumping measures as they relate to the applicant.

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901*² sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures.

If the Commissioner does not reject the application, he is required to publish a notice indicating that it is proposed to review the measures covered by the application.

1.3 Findings and conclusions

PMI's application for review of the anti-dumping measures applying to certain aluminium extrusions exported to Australia from China has been examined and the Commission is satisfied that:

- the application complies with section 269ZB; and
- having regard to the applicant's claims and other relevant information, there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of the anti-dumping measures have changed.

¹ Refer to the full description of the goods in section 2.4 of this report.

² 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.

2 BACKGROUND

2.1 Existing measures

On 11 May 2009, the Commission initiated dumping and countervailing investigations into aluminium extrusions exported to Australia from China following an application by Capral Ltd. 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.³ 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 provided in Australian Customs Dumping Notice No. 2010/40.

Following a review by the then 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 then Attorney-General published a new notice under section 269ZZM. This notice, effective from 27 August 2011, replaced the dumping duty and countervailing duty notices published on 28 October 2010.

The effect of the new notice was that the level of the anti-dumping measures changed and the dumping duty notice no longer applied to Zhaoqing New Zhongya Aluminium Co., Ltd.

³ 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 and Science. The Minister for Industry and Science subsequently delegated responsibility for anti-dumping matters to the Parliamentary Secretary to the Minister for Industry and Science.

In the original investigation, PMI agreed to cooperate with the investigation however it was not selected as part of the sampled exporters. PMI is listed as a 'Residual Exporter (Group 1)' in Table 4 of the Dumping Commodity Register.⁴

2.2 Current review and continuation inquiry relating to anti-dumping measures applying to aluminium extrusions

At the time of preparing this consideration report, a final report has been submitted to the Parliamentary Secretary (Final Report No. 248) with respect to the review of the anti-dumping measures as they relate to all exporters of aluminium extrusions from China (review no. 248). There is also an inquiry into the continuation of anti-dumping measures in respect of aluminium extrusions exported from China.

Findings from review no. 248 and the continuation inquiry may be relevant for this review as they also concern the export of aluminium extrusions from China.

Further, given the recent finding that a market situation exists in China with respect to the domestic market for aluminium extrusions, making domestic sales prices unsuitable for establishing a normal value, this review will not reassess whether a market situation exists.

2.3 The current review application

On 2 July 2015, PMI lodged an application requesting a review of the anti-dumping measures as they apply to its exports of aluminium extrusions to Australia from China. PMI claims that certain variable factors relevant to the taking of the anti-dumping measures have changed.

As an exporter of the goods, PMI is directly concerned with the exportation of aluminium extrusions to Australia and satisfies the definition of "affected party" as defined in subsection 269T(1). Therefore, PMI is entitled to apply for a review of the measures applying to it.

The application is not precluded by subsection 269ZA(2)(a), which requires that an application for review must not be lodged earlier than 12 months after the publication of a dumping duty notice, countervailing duty notice, or the publication of a notice declaring the outcome of the last review of the dumping or countervailing duty notice, because no such notice was published within the 12 months preceding PMI's application.

Pursuant to subsection 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 July 2015.

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 subsection 269ZC(2), the Commissioner must reject the application.

⁴ Currently available on the Commission's website at www.adcommission.gov.au.

2.4 The goods subject to the anti-dumping measures

The goods subject to the 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

The goods subject to the anti-dumping measures may be 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

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

2.6 Australian industry producing like goods

During the original investigation, the 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; and
- there was an Australian industry consisting of eight companies that produce like goods in Australia.

Based on information provided to review no. 248, the Commission remains satisfied that there is an Australian industry producing like goods.

3 CONSIDERATION OF THE APPLICATION

3.1 Finding

Having regard to the applicant's claims and other relevant information, the Commission is satisfied that the application complies with section 269ZB and there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of anti-dumping measures have changed.

3.2 Legislative framework

Subsection 269ZB(1) requires that the application be in writing, be in an approved form for the purposes of subsection 269ZB(1), contain such information as the form requires, and be signed in the manner indicated by the form.

Subsection 269ZB(2) states that the application must include:

- (a) *a description of the kind of goods to which the measures the subject of the application relate; and*
- (b) *a description of the measures the subject of the application; and*
- (c) *if the application is based on a change in variable factors—a statement of the opinion of the applicant concerning:*
 - (i) *the variable factors relevant to the taking of the measures that have changed; and*
 - (ii) *the amount by which each such factor has changed; and*
 - (iii) *the information that establishes that amount;*

Subsection 269ZC(2) specifies the matters which the Commissioner must consider in making a decision whether to reject the application. These matters are:

- (a) *that the application complies with section 269ZB; and*
- (b) *that there appear to be reasonable grounds for asserting either, or both, of the following:*
 - (i) *that the variable factors relevant to the taking of anti-dumping measures have changed; or*
 - (ii) *that the anti-dumping measures are no longer warranted.*

3.3 Compliance with section 269ZB

The application lodged by PMI:

- is in writing (subsection 269ZB(1)(a));
- is in the approved form for the purposes of subsection 269ZB(1), (subsection 269ZB(1)(b));
- is signed in the manner indicated by the form (subsection 269ZB(1)(d));
- provides a description of the kind of goods to which the measures the subject of the application relate (subsection 269ZB(2)(a)); and
- provides a description of the measures the subject of the application (subsection 269ZB(2)(b)).

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.

3.4 Variable factors

To comply with subsection 269ZB(2)(c), the application must include a statement of the applicant's opinion concerning the relevant variable factors that have changed, the amount by which those variable factors have changed, and information that establishes the amount of change. The applicant is not required to demonstrate that all the variable factors have changed.

In its application, PMI claims that the anti-dumping measures imposed on it, as a residual exporter, are based on export prices, normal values and subsidies received by other exporters.

3.4.1 Export price

3.4.1.1 Applicant's claims

PMI claims that during the original investigation period (1 July 2008 to 30 June 2009), Press Metal Aluminium (Australia) Pty. Ltd. (PMA), an importer of aluminium extrusions and a related entity, mostly sourced its extrusions from PMH Aluminium Extrusion Co., Ltd. (PMH), a Hubei-based exporter of aluminium extrusions and a related entity.

PMI claims that PMH exported aluminium extrusions to Australia through two intermediaries - PMI's parent company and an independent trader, during the original investigation period. PMI further claims that PMH incurred fees for the services provided by these intermediaries which were reflected in the export price.

PMI claims that as it no longer engages these intermediaries in its export transactions, the export price relevant to the taking of the anti-dumping measures has changed since the original investigation.

3.4.1.2 The Commission's assessment

In support of its claim that PMI's export price has changed relative to the ascertained export price for residual exporters, PMI provided three copies of commercial invoices with associated packing lists and other export documentation from related companies and intermediaries. These invoices identify goods exported in 2010 via either the parent company, Press Metal Berhad (based in Malaysia), or a trader based in China. The importer in each case is identified as PMA.

Two of these three invoices appear to identify [REDACTED] [invoice details]. This invoice includes details such as the net invoice value, quantity and shipping terms of the export transaction.

To substantiate its claims that it no longer incurs certain fees from intermediaries, PMI provided a commercial invoice for a shipment in October 2013. This invoice includes details such as the net invoice value, quantity, unit price and shipping terms of the export transaction. [REDACTED]

[invoice details]

[invoice details]

Based on the information provided by PMI, in respect to the export price, the Commission is not satisfied that PMI has provided a statement of its opinion of the amount by which this variable factor has changed and has not provided information that establishes this amount. The Commission is satisfied that, in respect of a change in the variable factor of export price, the application does not comply with section 269ZB, specifically subsections 269ZB(2)(c)(ii) and 269ZB(2)(c)(iii).

3.4.2 Normal value

3.4.2.1 Applicant's claims

In arguing that the normal value has changed, PMI references the current review of measures relating to aluminium extrusions exported from China (review no. 248) where the statement of essential facts has recommended that domestic selling prices in China are not suitable for determining normal value due to Government of China influence and intervention in the Chinese primary aluminium market.

In Statement of Essential Facts (SEF) No. 248, the Commission determined normal values on the basis of a cost construction (subsection 269TAC(2)(c)) and replaced the costs of primary aluminium for each exporter with a benchmark cost based on London Metal Exchange (LME) aluminium prices plus other reasonable costs and charges.

With reference to this methodology, PMI claims that Chinese primary aluminium prices have changed significantly since the original investigation. To support this, PMI provided a comparison of average monthly Shanghai Futures Exchange (SHFE) aluminium prices and monthly LME aluminium prices over the period July 2008 to June 2009 and April 2013 to March 2014.

The comparison shows that from April 2013, the SHFE primary aluminium benchmark price, when converted to United States dollars, is higher than the LME benchmark price. PMI also demonstrates that, during the original investigation period (July 2008 to June 2009), LME prices were mostly higher than SHFE prices.

PMI further argues that primary aluminium makes up 80 per cent of the total cost of aluminium extrusions and on this basis, it is reasonable to assume that the normal value has changed significantly since the original investigation period.

In its application, PMI also provided a spreadsheet listing its domestic sales during May 2014. It also provided screenshots from its accounting system, presumably to demonstrate its costs.

3.4.2.2 The Commission's assessment

In the original investigation, the normal value for residual exporters was determined in accordance with subsection 269TAC(6), after having regard to all relevant information, being the normal values of aluminium extrusions by reference to the weighted average of normal values of the selected cooperating exporters. The normal values of the selected cooperating exporters were established using both subsection 269TAC(1) and subsection 269TAC(2)(c).

As outlined in SEF No. 248, the Commission has found that there is a situation in the market that makes the domestic selling price of aluminium extrusions in China unsuitable for the purpose of determining normal value under subsection 269TAC(1) of the Act. In constructing a normal value for the purpose of review no. 248, the Commission has used the LME as a benchmark, uplifted to include reasonable costs and charges.

PMI has provided information to suggest that primary aluminium prices quoted on the LME have changed since the original investigation period. This information, together with the Commission's findings in SEF No. 248, lead the Commission to conclude that there appear to be reasonable grounds for asserting that the ascertained normal value relevant to the taking of anti-dumping measures has changed. The Commission is satisfied that, in respect to this variable factor, the application complies with section 269ZB.

3.4.3 Subsidies

3.4.3.1 Applicant's claims

PMI contends that it has not received a direct benefit under *Program 15 – goods provided at less than adequate remuneration*.

PMI did not state whether it is receiving benefits from any other countervailable subsidies.

3.4.3.2 The Commission's assessment

The countervailing measures currently applying to the 'Residual Exporter (Group 1)' category of exporters (which includes PMI) are based on a finding that the following three schemes apply to exporters in this category:

- Program 10 - Preferential tax policies for Foreign Invested Enterprises (FIEs) – reduced tax rate for productive FIE's scheduled to operate for a period of not less than 10 years;
- Program 13 - Exemption of tariff and import value added tax for imported technologies and equipment; and
- Program 15 - Goods provided at less than adequate remuneration.

In the original investigation (refer International Trade Measures Report No.148), the amount of the benefit received under Program 15 was calculated as the difference between exporters' purchase prices of primary aluminium from State-Owned Enterprises and a benchmark competitive market price for primary aluminium, being prices quoted on the LME and adjusted for delivery and other costs. Further, it was found that the exporters' purchase prices of primary aluminium from local suppliers were closely linked to prices reported by the SHFE.

PMI provided a comparison of average monthly SHFE aluminium prices (which it purportedly pays for primary aluminium) 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.

PMI claims, on the basis that SHFE primary aluminium prices were higher than LME aluminium prices in the period April 2013 to March 2014, that it is reasonable to conclude that the amount of the countervailable subsidy has changed from the ascertained amount and that PMI has received no benefit under Program 15.

The Commission considers, in respect to the amount of countervailable subsidy received, that PMI has provided a statement of its opinion of the amount by which this variable 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 section 269ZB.

3.4.4 Non-injurious price

3.4.4.1 Applicant's claims

In its application, PMI claims that the non-injurious price (NIP) has changed; however, it provided no statement of opinion as to the amount that this variable factor changed.

3.4.4.2 The Commission's assessment

As part of the original investigation, the Commission established the NIP by reference to an unsuppressed selling price based on Capral's cost to make and sell over the investigation period, with no amount for profit. From the unsuppressed selling price, the Commission deducted importation costs (such as port, clearance and into-store costs); ocean freight costs; selling, general and administrative costs; and an amount for importer profit margin.

As the NIP calculated as part of the original investigation is based on confidential information, the Commission acknowledges that it is difficult for the applicant to determine any likely change in the NIP. However, as no reasonable attempt was made in the application to demonstrate any change in the NIP, the Commission is satisfied that, in respect to this variable factor, the application does not comply with section 269ZB, specifically subsection 269ZB(2)(c)(ii) and 269ZB(2)(c)(iii).

4 CONCLUSION AND RECOMMENDATIONS

The Commission has considered the application made by the applicant in accordance with sections 269ZB and 269ZC of the Act.

The Commission concludes, on the basis of the information provided in the application and other relevant information, that:

- the application complies with section 269ZB (in respect to the variable factors of normal value and countervailable subsidy received by the applicant); and
- there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of the anti-dumping measures have changed.

Accordingly, the Commission recommends that the Commissioner not reject the application for review of the anti-dumping measures applying to certain aluminium extrusions exported to Australia from China, in so far as the measures affect the applicant.

Should the Commissioner decide not to reject this application for a review, the Commission recommends that the review period be from 1 July 2014 to 30 June 2015.