



**CUSTOMS ACT 1901 - PART XVB**

# **CONSIDERATION REPORT NO. 287**

## **APPLICATION FOR CONTINUATION OF ANTI-DUMPING MEASURES**

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

16 April 2015

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## ABBREVIATIONS

\$	Australian dollars
ADN	Anti-Dumping Notice
the Act	<i>Customs Act 1901</i>
the applicant	Capral Limited (Capral)
the Commission	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)
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry and Science

## 1 SUMMARY AND RECOMMENDATIONS

This report provides the results of the consideration of an application lodged by Capral Limited (Capral) for the continuation of anti-dumping measures<sup>1</sup> applying to certain aluminium extrusions exported to Australia from the People's Republic of China (China).

### 1.1 Recommendations

It is recommended that the Commissioner of the Anti-Dumping Commission (the Commissioner) decide not to reject the application.

If the Commissioner accepts this recommendation, to give effect to that decision, he must sign the instrument at **Attachment 1** and publish a notice indicating that it is proposed to conduct an inquiry into whether the continuation of the anti-dumping measures is justified.

### 1.2 Application of law to facts

Division 6A of Part XVB of the *Customs Act 1901* (the Act) sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the continuation of anti-dumping measures.<sup>2</sup>

The Division empowers the Commissioner to reject an application for continuation of anti-dumping measures if he is not satisfied that, inter alia, there appear to be reasonable grounds for asserting that the expiration of anti-dumping measures might lead or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

If the Commissioner decides not to reject the application, the Commissioner must publish a notice indicating that it is proposed to inquire whether continuation of the measures is justified.

### 1.3 Findings and conclusions

Pursuant to subsections 269ZHD (1) and 269ZHD(2) of the Act, the Commissioner must reject an application for the continuation of anti-dumping measures if he is not satisfied that:

- the application complies with section 269ZHC;<sup>3</sup> and/or
- there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.<sup>4</sup>

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<sup>1</sup> A reference to anti-dumping measures is a reference to dumping measures and countervailing measures collectively.

<sup>2</sup> A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

<sup>3</sup> Subsection 269ZHD(2)(a)

<sup>4</sup> Subsection 269ZHD(2)(b)

## **FOR PUBLIC RECORD**

Capral's application complies with the requirements of section 269ZHC, in that it is in writing, in a form approved by the Commission for the purposes of this section, contains the information that the form requires, is correctly signed, and was lodged with the Commission as prescribed in subsection 269ZHC(2).

Having regard to the applicant's claims and other relevant information, there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

The Commission recommends that the Commissioner not reject the application from Capral for the continuation of anti-dumping measures applicable to aluminium extrusions exported from China.

## 2 BACKGROUND

On 27 January 2015, in accordance with subsection 269ZHB(1) of the Act, a notice was published in *The Australian* newspaper inviting certain persons to apply to the Commissioner for the continuation of anti-dumping measures on aluminium extrusions exported to Australia from China.

On 27 March 2015, Capral, a member of the Australian industry, producing aluminium extrusions, lodged an application for the continuation of the measures, in accordance with the applicable legislative timeframes.<sup>5</sup>

### 2.1 History of the anti-dumping measures

Anti-dumping measures in the form of a dumping duty notice and a countervailing duty notice were first imposed in October 2010 following the investigation by the then International Trade Remedies Branch of Australian Customs and Border Protection Service (ACBPS) resulting in *Report to the Minister No. 148* (REP 148).<sup>6</sup> REP 148 was subject to a review by the then Trade Measures Review Officer who recommended that ACBPS conduct a reinvestigation. The dumping and countervailing duties were varied following this reinvestigation, and again following Federal Court proceedings.<sup>7</sup>

In the Federal Court proceedings, two Chinese exporters, Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd (and its related companies Kam Kiu Aluminium Products SDN BHD and Kam Kiu (Australia) Pty Limited) (Kam Kiu) and PanAsia Aluminium (China) Limited (PanAsia) (and its related company OPAL (Macao Commercial Offshore) Limited<sup>8</sup>), applied to the Federal Court for judicial review of the Attorney-General's decision based on *International Trade Remedies Branch Report No. 175*.<sup>9</sup>

The Federal Court held that then Attorney-General had no power to vary the dumping and countervailing duty notices to impose anti-dumping measures for aluminium extrusions by finish. The effect of the decision was that the rates of dumping and countervailing duty against the applicants, Kam Kiu and PanAsia, had to be amended and these changes were applied retrospectively from 27 August 2011.

On 2 November 2012, a notice was published by the then Minister for Home Affairs declaring the outcome of a review of the anti-dumping measures as they applied to a single exporter, Wuxi Xisha Photoelectric Aluminium Products Co. Ltd. On 8 May 2014, the then Parliamentary Secretary to the Minister for Industry published a notice following 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.

On 19 March 2014, Capral lodged an application under subsection 269ZDBC(1) requesting the Commissioner conduct an anti-circumvention inquiry (Anti-Dumping

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<sup>5</sup> In accordance with section 269ZHC(2).

<sup>6</sup> Details of this investigation can be found at: <http://www.adcommission.gov.au/cases/148.asp/>.

<sup>7</sup> PanAsia Aluminium (China) Limited v Attorney-General of the Commonwealth [2013] FCA 870

<sup>8</sup> formerly known as PanAsia (Macao Commercial Offshore) Limited

<sup>9</sup> Anti-Dumping Notice 2013/80.

Commission Case No 241) in relation to the avoidance of the intended effect of duties. Following the inquiry, the Minister for Industry and Science accepted the Commissioner's recommendation that the identified importers of the circumvention goods had engaged in circumvention activity and that a different variable factor apply to goods exported by PanAsia.

On 2 May 2014, PanAsia lodged an application requesting a review of the anti-dumping measures as they apply to the exports of certain aluminium extrusions to Australia from China, pursuant to subsection 269ZA(1). PanAsia is claiming that certain variable factors relevant to the taking of the anti-dumping measures have changed. The Commissioner decided not to reject the application and initiated a review of measures on 12 June 2014. The Commissioner also recommended that the review be extended to cover all Chinese exporters of aluminium extrusions to Australia. The Parliamentary Secretary to the Minister of Industry and Science (the Parliamentary Secretary) accepted the Commissioner's recommendation and the review was extended to all exporters of the goods from China (Anti-Dumping Commission Case 248). Case 248 is currently ongoing.

The Commission will consider whether or not the variable factors require further review as part of this inquiry.

## **2.2 The goods**

The goods, the subject of the current anti-dumping measures, 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.

## **2.3 Tariff classification of the goods**

The goods subject to the measures may be classified to the following 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

## **2.4 Australian industry producing like goods**

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

The Commission remains satisfied that there is an Australian industry producing like goods.



### **3 COMPLIANCE WITH SECTION 269ZHC**

#### **3.1 Legislative framework**

Subsection 269ZHC(1) specifies that an application under section 269ZHB must:

- (a) be in writing;
- (b) be in a form approved by the Commissioner for the purposes of this section;
- (c) contain such information as the form requires; and
- (d) be signed in the manner indicated in the form.

Subsections 269ZHC(2) and (3) cover procedural matters in relation to lodgement of the application.

#### **3.2 The Commission's assessment**

Capral's application was in writing, in the form approved by the Commissioner for the purposes of section 269ZHC, contained such information as the form requires and was signed in the manner indicated in the form.

The applicant also provided a non-confidential version of the application for distribution to interested parties.

The non-confidential version of the application adequately reflects the reasons for seeking a continuation of the anti-dumping measures. The non-confidential application will be available on the Commission's public record (which can be accessed electronically at [www.adcommission.gov.au](http://www.adcommission.gov.au)).

## **4 CONSIDERATION OF REASONABLE GROUNDS**

### **4.1 Legislative framework**

Subsection 269ZHD(2)(b) requires consideration of whether there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

For the purposes of considering subsection 269ZHD(2)(b), the applicant's claims have been examined and assessed according to whether it is reasonable to assert that, the expiration of anti-dumping measures might lead, or might be likely to lead, to a continuation of, or recurrence of, the material injury that the measures are intended to prevent.

### **4.2 Applicant's claims**

#### **4.2.1 Continuation of dumping**

In its application, Capral claimed that exports of aluminium extrusions from China have continued in significant volumes (Non-confidential Attachment 1).

Capral claimed that PanAsia is the largest exporter of aluminium extrusions to Australia and estimates that it accounts for around 55 per cent of all exports to Australia. Capral also claimed that in 2013, PanAsia maintained its market share and recorded revenue growth despite the deterioration of the Australian dollar and maintained its market share and revenue levels into 2014.

Exports from PanAsia to Australia were originally subject to dumping duties of 10.1 per cent, however as a result of the Commission's recent anti-circumvention inquiry (Case No 241), exports from PanAsia are now subject to dumping duties of 57.6 per cent.<sup>10</sup>

Capral claimed that the fact that the dumping margin for the largest exporter to Australia has recently increased is a clear indication that dumping is continuing and would continue should the dumping duty notice be allowed to expire.

#### **4.2.2 Continuation of subsidisation**

In its application, Capral claimed that the countervailing duty notice published in October 2010 covered 19 countervailable subsidy programs. Capral has examined the most recent version of the subsidies register on the Commission's website and stated that 15 of the 19 programs continue to exist and hence found to confer a benefit on goods produced in China. The Commission is currently investigating a further 18 programs as part of the review of measures inquiry (Case No 241). As part of this review, some exporters of aluminium extrusions declared receipt of benefits under some of the new programs being considered in their responses to the exporter questionnaires submitted.

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<sup>10</sup> Anti-dumping Notice No 2015/17 refers

In its application, Capral claimed that the majority of countervailable subsidy programs covered by the measures have been found to still be in existence. Further, Capral claimed that given that exporters of aluminium extrusions have recently declared receipt of benefits under other subsidy programs, there is a clear indication that subsidisation of aluminium exporters is continuing and would continue should the countervailing duty notice be allowed to expire.

#### 4.2.3 Continuation of injury caused by dumping and subsidisation

In its application, Capral claimed that material injury from dumped and subsidised Chinese imports commenced as early as 1998 and was found to have occurred during the original investigation period of July 2008 to June 2009. It also stated that the Australian industry has not recovered as would be expected following the imposition of measures and that Capral's sales volumes, as indicated in Table 1 below, have continued to decline since measures were imposed.

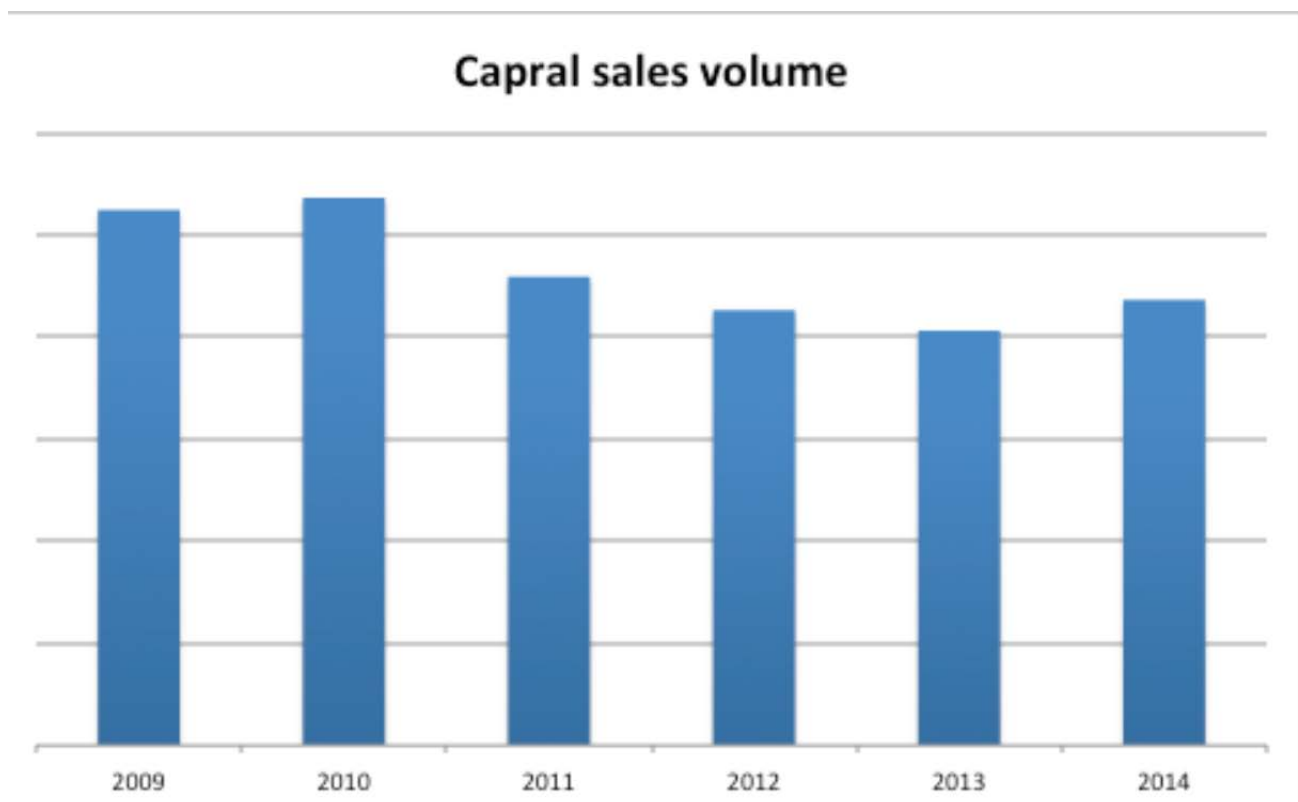


Table 1 – Capral sales volumes 2009 -2014<sup>11</sup>

The application also states that China continues to be the main source of imports into Australia which is at least in part due to the fact that importers supplied by the largest Chinese exporter have been circumventing the duties as the Commission recently found. Capral stated that circumvention of the duties has enabled the importers to continue to undercut the Australian industry's prices, causing the ongoing injury to the industry.

<sup>11</sup> Capral's application. The sales volumes were normalised to account for Capral's acquisition of a new business

Capral advised that it had previously provided evidence of price undercutting in the Australian market by imported extrusions from China in its application for the anti-circumvention inquiry (Case No 241).

Capral states that the fact that significant circumvention of the measures has enabled Chinese exports to continue to cause injury to the Australian industry, there is a clear indication that material injury caused by dumping and subsidies is continuing and would continue further should the dumping duty notice and countervailing duty notice be allowed to expire.

#### **4.3 The Commission's assessment**

The Commission considers that Capral's application sets out reasonable grounds for asserting that, if the anti-dumping measures are allowed to expire:

- dumping might or might be likely to continue – the Commission's findings in the recent anti-circumvention inquiry (Case No 241) are consistent with Capral's assertions that dumping is continuing. Although it is reasonable for the application to rely on dumping by one exporter to assert that dumping of aluminium extrusions from China will continue, the Commission will consider other exporters as part of this inquiry;
- subsidisation might or might be likely to continue – the Commission is aware that subsidy programs remain in effect in China that confer benefits on the exporters of aluminium extrusions; and
- material injury caused by dumping and subsidisation will continue – in addition to the application, Capral has provided evidence to the Commission, as part of the anti-circumvention inquiry, of price undercutting continuing. The application also demonstrated Capral's poor sales performance over the last 4 years through declining sales volumes.

The Commission considers that there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

Accordingly, it is recommended that the Commissioner not reject the application. If the Commissioner accepts this recommendation, in accordance with section 269ZHD(4), a notice will be published, indicating that the Commission will inquire into whether continuation of the anti-dumping measures is justified.

For the purpose of this inquiry, the Commission will use the period 1 April 2014 to 31 March 2015 in considering whether the variable factors should be altered.

## 5 LIST OF APPENDICES AND ATTACHMENTS

Attachment 1	Delegate's instrument
Non -Confidential appendix 1	Capral's application