



CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT NO. 259

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

**CERTAIN ALUMINIUM EXTRUSIONS EXPORTED FROM THE
PEOPLE'S REPUBLIC OF CHINA
ZHAOQING XINLIANCHANG METAL CORPORATION LTD.**

September 2014

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ABBREVIATIONS

The Act	<i>Customs Act 1901</i>
ACBPS	Australian Customs and Border Protection Service
ADN	Anti-Dumping Notice
The applicant	Zhaoqing Xinlianchang Metal Corporation Ltd (Zhaoqing)
Capral	Capral Limited
China	People's Republic of China
Commission	Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
ICD	Interim countervailing duty
IDD	Interim dumping duty
REP 148	Trade Measures Branch Report No.148
SEF	Statement of Essential Facts
Tai Ao	Tai Ao (Taishan) Co Ltd
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

1 SUMMARY AND RECOMMENDATION

This report provides the results of the Anti-Dumping Commission's (the Commission) consideration of an application by Zhaoqing Xinlianchang Metal Corporation Ltd (Zhaoqing) for an accelerated review of the dumping and countervailing duty notice in respect of certain aluminium extrusions from the People's Republic of China (China).

1.1 Recommendations

The Commission recommends the Commissioner of the Anti-Dumping Commission (the Commissioner) decide not to reject the application.

1.2 Application of law to facts

Division 6 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 accelerated review of dumping duty notice by certain exporters of goods covered by the notice.

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

1.3 Findings and conclusions

Zhaoqing's application for an accelerated review of anti-dumping measures applying to certain aluminium extrusions exported to Australia from the People's Republic of China has been examined.

The Commission finds:

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

Accordingly the Commission concludes that the applicant is eligible to apply for an accelerated review, and recommends that the Commissioner not reject the application.

2 BACKGROUND

2.1 Existing measures

On 11 May 2009, an investigation into aluminium extrusions exported to Australia from China was initiated following an application lodged by Capral Limited (Capral). In that investigation, as outlined in the *Trade Measures Branch Report No. 148* (REP 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 of the goods 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 Attorney-General impose anti-dumping measures (in the form of interim dumping duty (IDD) and interim countervailing duty (ICD)) on the goods exported from China.¹ The Attorney-General accepted these recommendations and, on 28 October 2010, notice of the decision was published in Anti-Dumping Notice No. 2010/40 (ADN 2010/40).

Following a review by the Trade Measures Review Officer, Australian Customs and Border Protection Service (ACBPS) conducted a reinvestigation into certain findings made in REP 148.² *International Trade Remedies Report No. 175* sets out the findings affirmed and new findings made by ACBPS as a result of the reinvestigation.

The recommendations of the report were to vary the dumping and countervailing duty notices to increase in the rate of IDD for residual exporters of aluminium extrusions with 'mill' and 'anodised' finish, and remove IDD for Zhaoqing New Zhongya Aluminium Co Ltd. The rate of ICD remained unchanged.

To give effect to these decisions the Attorney-General published new notices under section 269ZZM. These notices substitute the dumping and countervailing duty notices

¹ On 30 June 2010, the Minister for Home Affairs formed the view that he should not make decisions or play any role in this matter and as such the Attorney General considered the report and exercised powers under the Act in his place.

On 25 September 2013, responsibility for anti-dumping matters was transferred to the Minister for Industry. The Minister for Industry subsequently delegated responsibility for anti-dumping matters to the Parliamentary Secretary for the Minister for Industry.

² The Anti-Dumping Commission was formerly housed within ACBPS, but moved to the Department of Industry portfolio in late March 2014.

published on 28 October 2010. The new notices came into effect on 27 August 2011, replacing the earlier notices.

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.

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 (statistical code 6)

7604.21.00 (statistical codes 7 and 8)

7604.29.00 (statistical codes 9 and 10)

7608.10.00 (statistical code 9)

7608.20.00 (statistical code 10)

7610.10.00 (statistical code 12)

7610.90.00 (statistical code 13)

These goods are subject to a 5 per cent Customs duty.

2.3 Consideration of the application for accelerated review

On 21 July 2014, Zhaoqing lodged an application for an accelerated review of anti-dumping measures that apply to aluminium extrusions exported to Australia from China by Zhaoqing.

Pursuant to subsections 269ZG(1) and (2) the Commissioner must, no later than 100 days after the application is lodged, provide the Parliamentary Secretary a report recommending:

- a) that the dumping duty notice or countervailing duty notice the subject of the application remain unaltered; or
- b) that the dumping duty notice or countervailing duty notice the subject of the application be altered:
 - (i) so as not to apply to the applicant; or
 - (ii) 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 **29 October 2014**.

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.

Given the expedited nature of accelerated reviews and the shortened timeframe for the Commissioner to produce a final report, any submissions by interested parties should be lodged by 19 September 2014.

The Commissioner may not be able to have regard to submissions received after this date if to do so would, in the Commissioner's opinion, delay the timely preparation of the final report to the Parliamentary Secretary.

3 APPLICATION FOR ACCELERATED REVIEW - COMPLIANCE WITH SECTION 269ZF

3.1 Legislative Background

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

- be in writing (subsection 269ZF(1));
- be lodged with the Commission in accordance with subsection 269ZF(2);
- contain a description of the goods to which the dumping duty notice and the countervailing duty notice relates; 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.

3.2 Assessment of the application – compliance with section 269ZF

Section 269ZF sets out the manner in which an application for an accelerated review can be made. The application received from Zhaoqing, was in writing, lodged in accordance with subsection 269ZF(2), and contains a description of the goods to which the dumping and/or countervailing duty notice relate. The application also contains a statement from Zhaoqing that outlines the reasons why the company believes the current anti-dumping and countervailing notices are inappropriate to the company.

The Commissioner is satisfied that the application complies with subsections 269ZF(1) and 269ZF(2) of the Act.

3.3 Lodgement date

On 21 July 2014, Zhaoqing formally lodged an application for an accelerated review. A copy of their application is at **Attachment 1**. 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 21 July 2014 in accordance with subsection 269ZF(3). If the Commissioner does not reject the application, the initiation date is said to be the date of lodgement of the application.

4 CIRCUMSTANCES IN WHICH 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 section 269ZE are not met, the Commissioner may terminate the 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 section 269T as an exporter who did not export such goods to Australia at any time during the period:

- a) starting at the start of the investigation period in relation to the application; and
- b) ending immediately before the day the Commissioner places on the Public Record the statement of essential facts (SEF) in relation to the investigation of the application.

Section 269T 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

The Commission considers that, due to the definitions in section 269T, the period within which the applicant must not have exported to Australia (the new exporter period) is from 1 July 2008, the start of the investigation period, to 28 February 2010, the day before the SEF for Investigation 148 was placed on the Public Record.

4.2.3 Evidence of exports during the new exporter period

A search of ACBPS’s import database for any exports by the exporter Zhaoqing did not reveal any exports of the goods, by Zhaoqing during the period 1 July 2008 to 28 February 2010.

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

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 a dumping duty notice or a

countervailing duty notice, the exportations from that exporter have not investigated (in the original investigations), the Commissioner may reject the application.

Given the above finding that there is no evidence of exports by Zhaoqing during the investigation period, the Commission notes that Zhaoqing's cooperation was not sought during the original investigations. A review of the files from the original investigation reveal that the company was not identified as an exporter.

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

4.4 Relationships with selected exporters

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 who was a selected exporter in relation to the application for a notice, the Commissioner may reject the application.

To determine if the application for an accelerated review is valid in relation to paragraph 269ZE(2)(b), the exporter questionnaire responses and visit reports for the REP 148 selected exporters were reviewed for company information and shareholding arrangements. There is no evidence to suggest that Zhaoqing is related to a selected exporter.

Given the information available, the Commission considers there are no grounds for rejection in terms of paragraph 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 aluminium extrusions during the period for which new exporters cannot have exported. Consequently, the applicant meets the definition of a new exporter and satisfies the requirements for requesting an accelerated review as stated at 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 paragraph 269ZE(2)(a); and
- the applicant does not appear to be related to any selected exporters in the original investigations and the application should not be rejected under paragraph 269ZE(2)(b).

5 CONCLUSION

The Commission has considered the application made by Zhaoqing and all available information to determine if it was valid as required by sections 269ZE, 269ZF and the definitions provided in section 269T of the Act.

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

- the application satisfies the requirements of section 269ZF;
- the conditions for rejection under section 269ZE are not met; and
- the circumstances in which an accelerated review can be sought have been satisfied.

Accordingly, the Commission is satisfied that the manufacturer Zhaoqing, who the Commission considers to be a new exporter, is eligible to apply for an accelerated review.

The Commission recommends that the Commissioner:

- not reject the application and initiate the accelerated review; and
- set the review period as 1 August 2013 to 31 July 2014.

6 APPENDICES AND ATTACHMENTS

Attachment 1	Application by Zhaoqing
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