



CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NO. 336**

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

**CERTAIN ALUMINIUM ROAD WHEELS EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA BY**

Danyang Jingyi Aluminum Industry Co., Ltd

April 2016

CONTENTS

CONTENTS..... 2

ABBREVIATIONS..... 3

1 SUMMARY AND RECOMMENDATION 4

1.1 RECOMMENDATION 4

1.2 APPLICATION OF LAW TO FACTS 4

1.3 FINDINGS AND CONCLUSIONS 4

2 BACKGROUND..... 5

2.1 EXISTING MEASURES 5

2.2 THE GOODS 6

2.3 CONSIDERATION OF THE APPLICATION FOR ACCELERATED REVIEW 6

2.4 PUBLIC RECORD 7

3 APPLICATION FOR ACCELERATED REVIEW - COMPLIANCE WITH SECTION 269ZF..... 8

3.1 LEGISLATIVE BACKGROUND 8

3.2 ASSESSMENT OF THE APPLICATION – COMPLIANCE WITH SECTION 269ZF 8

3.3 LODGEMENT DATE 8

**4 CIRCUMSTANCES IN WHICH AN ACCELERATED REVIEW MAY BE SOUGHT - COMPLIANCE WITH SECTION 269ZE
9**

4.1 BACKGROUND..... 9

4.2 STATUS AS A NEW EXPORTER..... 9

4.3 COOPERATION IN REGARDS TO THE APPLICATION FOR A DUMPING DUTY NOTICE AND COUNTERVAILING DUTY NOTICE 10

4.4 RELATIONSHIPS WITH SELECTED EXPORTERS 10

4.5 SUMMARY OF FINDINGS 10

5 CONCLUSION..... 12

6 SECURITIES..... 13

7 APPENDICES AND ATTACHMENTS..... 14

PUBLIC RECORD

ABBREVIATIONS

the Act	the <i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant	Danyang Jingyi Aluminum Industry Co., Ltd (also referred to in this report as Jingyi)
ARWs	aluminium road wheels (the goods)
China	the People's Republic of China
the 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 as the goods under consideration or GUC)
Jiangsu Yaozhong	Jiangsu Yaozhong Aluminium Wheels Co., Ltd
the notices	the dumping duty notice and the countervailing duty notice applying to certain aluminium road wheels exported from China
the Parliamentary Secretary	the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 181	<i>International Trade Remedies Report No. 181</i>
REP 263	<i>Anti-Dumping Commission Report No. 263</i>

1 SUMMARY AND RECOMMENDATION

This report provides the results of the consideration by the Anti-Dumping Commission (the Commission) of an application by Danyang Jingyi Aluminum Industry Co., Ltd. (the applicant or Jingyi) for an accelerated review of the dumping duty notice and countervailing duty notice (the notices) applying to certain aluminium road wheels (ARWs)¹ 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 ARWs to Australia.

1.1 Recommendation

The Commission recommends that the Commissioner of the Anti-Dumping Commission (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)² 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 or countervailing duty notice by certain exporters of goods covered by the respective notices.

1.3 Findings and conclusions

Jingyi's application for an accelerated review of the notices applying to ARWs exported to Australia from 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 under subsection 269ZE(1) have been satisfied.

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.

¹ Refer to the full description of the goods in Section 2.2 of this report.

² Unless stated otherwise, all legislative references in this report are to the *Customs Act 1901*. Following recent reforms to the anti-dumping legislation, several provisions of the Act have recently been revised in relation to accelerated reviews.

2 BACKGROUND

2.1 Existing measures

On 7 November 2011, an investigation (Investigation 181) into the alleged dumping and subsidisation of ARWs exported to Australia from China was initiated following an application lodged by Arrowcrest Group Pty Ltd. In that investigation, as outlined in *International Trade Remedies Report No. 181* (REP 181), it was found that:

- ARWs exported to Australia from China were:
 - with the exception of Zhejiang Shuguang Industrial Co. Ltd., dumped with margins ranging from 5.6 per cent to 29.3 per cent; and
 - with the exception of two exporters, Zhejiang Shuguang Industrial Co. Ltd. and CITIC Dicastal Wheel Manufacturing Co. Ltd., subsidised with margins ranging from 2.8 per cent to 58.8 per cent;
- the dumped and subsidised exports caused material injury to the Australian industry producing like goods; and
- continued dumping and subsidisation may cause further material injury to the Australian industry.

Accordingly, the then Chief Executive Officer of the Australian Customs and Border Protection Service recommended that the then Minister for Home Affairs impose anti-dumping measures in the form of interim dumping duty and interim countervailing duty on the goods exported to Australia from China, with the exception of those exporters noted above. The then Minister for Home Affairs accepted the recommendations in REP 181, and on 5 July 2012 published a dumping duty notice and a countervailing duty notice.

On 15 September 2014, the Commissioner initiated a review of the anti-dumping measures in respect of ARWs exported to Australia from China by all exporters following an application by Jiangsu Yaozhong Aluminium Wheels Co., Ltd (Jiangsu Yaozhong). As a result of this review, the Commissioner recommended that changes were warranted to the variable factors of normal value, export price, non-injurious price and the amount of countervailable subsidy received.

As outlined in *Final Report No. 263* (REP 263), it was found that:

- ARWs exported to Australia from China were:
 - with the exception of Jiangsu Yaozhong and Zhejiang Shuguang Industrial Co. Ltd., dumped with margins ranging from 7.8 per cent to 40.3 per cent; and
 - with the exception of Jiangsu Yaozhong, Zhejiang Shuguang Industrial Co. Ltd. and CITIC Dicastal Wheel Manufacturing Co. Ltd., subsidised with margins ranging from 2.5 per cent to 57.6 per cent.

PUBLIC RECORD

The Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary)³ accepted the recommendations in REP 263 and declared that, with effect from 22 October 2015, the notices currently applying to ARWs exported to Australia from China are to be taken to have effect, or have had effect, as if different variable factors had been fixed in respect of all exporters relevant to the determination of duty.

2.2 The goods

2.2.1 Description

The goods the subject of the application (the goods) are:

Aluminium road wheels for passenger motor vehicles, including wheels used for caravans and trailers, in diameters ranging from 13 inches to 22 inches. For clarification, the goods include finished or semi-finished aluminium road wheels whether unpainted, painted, chrome plated, forged or with tyres and exclude aluminium wheels for go-carts and All-Terrain Vehicles.

2.2.2 Tariff classification

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

- 8708.70.91 (statistical code 78);
- 8708.70.99 (statistical code 80); and
- 8716.90.00 (statistical code 39).

2.3 Consideration of the application for accelerated review

On 29 January 2016, Jingyi lodged an application for an accelerated review of the notices applying to ARWs exported to Australia from China in so far as the notices affect the applicant.

If the Commissioner does not reject the application or terminate the review, pursuant to subsections 269ZG(1) and (2) the Commissioner must, no later than 100 days after the application is lodged, give 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 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.

³ On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science.

PUBLIC RECORD

In relation to this application, this recommendation must be made no later than **8 May 2016**.⁴

2.4 Public record

There is no legislative requirement for the Commissioner to maintain a public record for accelerated reviews. However, in the interests of ensuring the process is conducted in an open and transparent manner, a public record 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 If a due date in this report falls on a weekend or public holiday in Victoria, the effective due date will be the following business day. As 8 May 2016 is a Sunday, the effective due date for the Commissioner's report will be the following business day, 9 May 2016.

3 APPLICATION FOR ACCELERATED REVIEW - COMPLIANCE WITH SECTION 269ZF

3.1 Legislative Background

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

- be in writing (subsection 269ZF(1));
- be lodged in a manner approved under section 269SMS and the application is taken to be lodged in accordance with subsection 269ZF(2);
- contain a description of the goods to which the dumping duty notice or countervailing duty notice relates (subsection 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 (subsection 269ZF(1)(b)).

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 Jingyi was in writing (subsection 269ZF(1)), is taken to have been lodged in accordance with subsection 269ZF(2) and in the manner approved under subsection 269SMS(2),⁵ and contains a description of the goods to which the notices relate (subsection 269ZF(1)(a)).

In accordance with the requirements of subsection 269ZF(1)(b), the application also contains a statement from Jingyi that outlines the reasons why the company believes the notices are inappropriate in so far as the notices affect it.

Jingyi's application states that the notices are inappropriate, because it did not export the goods to Australia during the relevant period and therefore it satisfies the definition of a 'new exporter' in subsection 269T(1) (further discussed at section 4.2.2).

The Commissioner is satisfied that the application complies with subsection 269ZF(1) and was taken to have been lodged on 29 January 2016, in accordance with subsection 269ZF(2), as discussed below.

3.3 Lodgement date

On 29 January 2016, Jingyi formally lodged an application for an accelerated review. A copy of their application is at **Attachment 1**. A non-confidential version of the application is available on the public record. The Commission recorded the date on which the application was lodged as 29 January 2016 in accordance with subsection 269ZF(3). If the Commissioner does not reject the application, the initiation date will be taken to be the application lodgement date.

⁵ The application was lodged by email to the Commission's nominated email address, in accordance with the Commissioner's instrument under section 269SMS of the *Customs Act 1901*.

4 CIRCUMSTANCES IN WHICH AN 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 chapter are made on the basis of all currently available information. If, during the accelerated review, evidence becomes available that satisfies the Commissioner that either or both of the matters outlined in subsection 269ZE(3) are 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 subsection 269T(1) as an exporter who, in relation to goods the subject of an application for a dumping duty notice or a countervailing duty notice, did not export such goods to Australia at any time during the investigation period in relation to the application.

Subsection 269ZE(1) 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 of export or in respect of goods exported by new exporters from a particular country of export, 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.

4.2.2 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 the goods to Australia (the new exporter period) is from 1 July 2010 to 30 June 2011 (the investigation period for the original investigation, being Investigation 181).

4.2.3 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 Jingyi during the period 1 July 2010 to 30 June 2011.

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

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

Pursuant to subsection 269ZE(1), 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).

Jingyi has not previously applied for an accelerated review. Therefore, the Parliamentary Secretary has not previously made a declaration under subsection 269ZG(3)(b) in respect of the applicant.

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

Given the above finding, there is no evidence of exports by Jingyi during the investigation period for the original investigation and the Commission notes that Jingyi's cooperation was not sought during the original investigation. A review of the information from the original investigation reveals that the company was not identified as an exporter.

As such, the Commission considers that there are no grounds for rejection in terms of subsection 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 that had its exports examined in the application for the publication of a dumping duty notice or countervailing duty notice, the Commissioner may reject the application.

To determine whether subsection 269ZE(2)(b) applies, the exporter questionnaire responses and visit reports for exporters whose exports were examined in the original investigation were reviewed for company information and shareholding arrangements. There is no evidence to suggest that Jingyi is related to a selected exporter from the original investigation.

Further, to be satisfied that Jingyi is a manufacturer and exporter of the goods, the Commission obtained a copy of Jingyi's business license and depreciation schedule for its manufacturing equipment. These and other relevant documents and information will be verified as per the Commission's usual practise if the Commissioner does not reject the application.

Given the information available, the Commission considers there are no grounds for rejection in terms of subsection 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 an accelerated review may be sought:

- the applicant did not export ARWs to Australia during the new exporter period and has not previously applied for an accelerated review. Consequently, the applicant meets

PUBLIC RECORD

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 the dumping duty notice and countervailing duty notice, and the application should not be rejected under subsection 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 subsection 269ZE(2)(b).

5 CONCLUSION

The Commission has considered Jingyi's application to determine if it satisfied the requirements of sections 269ZE, 269ZF and the definition of a new exporter provided in subsection 269T(1).

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

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

Accordingly, the Commission is satisfied that Jingyi is eligible to apply for an accelerated review.

The Commission recommends that the Commissioner:

- decide not to reject the application and initiate the accelerated review; and
- set the review period as 1 January 2015 to 31 December 2015.

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 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 accelerated 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.

Should the Commissioner not reject the application, and an accelerated review is conducted, the Commonwealth may 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 Jingyi
Confidential Attachment 2	Table outlining variable factors for the calculation of securities