



Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

Exemption inquiry report: EX0049

**Certain aluminium extrusions
Exported to Australia from the People's Republic of
China**

**Applicant:
Blackhawk Aviation Pty Ltd**

June 2017

Table of contents

Abbreviations	3
Tables	3
1. Summary and recommendations	4
1.1 Recommendation	4
1.2 Application of law to facts.....	4
1.2.1 Authority to make the decision.....	4
1.2.2 Initiation of inquiry.....	4
1.3 Findings and conclusions.....	5
2. Background to measures.....	6
2.1 Original investigation.....	6
2.2 The goods subject to measures	7
2.3 Tariff classification	8
3. Exemption inquiry	9
3.1 Exemption application.....	9
3.2 Exemption inquiry	9
3.3 Goods subject to the application for exemption.....	9
3.4 Claims made in the application and evidence relied upon	10
3.5 Legislative requirements for an exemption.....	10
4. Australian industry’s offer for sale of ‘like’ or ‘directly competitive’ goods	11
5. The Commission’s assessment – like or directly competitive goods offered for sale in Australia.....	11
5.1 Finding.....	11
5.2 Like or directly competitive goods offered for sale in Australia.....	11
5.3 Conclusion.....	11
6. The Commission’s assessment – to all purchasers on equal terms under like conditions having regard to the custom and usage of trade	12
7. Recommendation	13
7.1 Effective date of exemption.....	13
8. Attachments.....	14

Abbreviations

Applicant	Blackhawk Aviation Pty Ltd.
Capral	Capral Limited
China	The People's Republic of China
Commission	Anti-Dumping Commission
Commissioner	Commissioner of the Anti-Dumping Commission
Customs Act	<i>Customs Act 1901</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Duties	Interim dumping duty, dumping duty, interim countervailing duty and countervailing duty
Exemption goods	The goods subject of the application as described in section 3.3
Parliamentary Secretary	The Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
Questionnaire	'Response to Exemption Application' questionnaire

Tables

Table 1	History of investigations
Table 2	Aluminium extrusions tariff classifications
Table 3	Aluminium extrusions imported from China – transitional duty rates

1. Summary and recommendations

This report sets out the findings of the Anti-Dumping Commission (the Commission) in response to an application by Blackhawk Aviation Pty Ltd (the applicant) requesting an exemption from interim dumping duty, dumping duty, interim countervailing duty and countervailing duty (the duties) under subsections 8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975*¹ (the Dumping Duty Act) in relation to the exports of certain aluminium extrusions (exemption goods) from the People's Republic of China (China).

This report sets out the Commission's findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) relied to make a recommendation to the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)² on whether or not to exempt goods from the duties.

1.1 Recommendation

The Commission has found that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade. The Commission considers the conditions of subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for granting an exemption are satisfied.

The Commissioner recommends to the Parliamentary Secretary that the exemption goods (as that term is defined in section 3.3 of this report) be exempted from the duties.

1.2 Application of law to facts

1.2.1 Authority to make the decision

Subsections 8(7) and 10(8) of the Dumping Duty Act set out, among other things, the matters to be considered by the Parliamentary Secretary in deciding whether to exercise his or her discretion to exempt goods from the duties.

1.2.2 Initiation of inquiry

On 7 November 2016, the applicant wrote to the Commission requesting an exemption from the duties in relation to imports of the exemption goods. The applicant applied for an exemption under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

After examining the application and following further consultation with the applicant, the Commission initiated an inquiry on 30 March 2017.

¹ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Tariff (Anti-Dumping) Act 1975* unless otherwise specified.

² The Minister for Industry, Innovation and Science delegated responsibility for anti-dumping matters to the Parliamentary Secretary to the Minister for Industry, Innovation and Science. Accordingly, the Parliamentary Secretary is the relevant decision maker with respect to this exemption enquiry. On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary as the Assistant Minister for Science.

1.3 Findings and conclusions

The Commission has made the following finding based on the application and information provided by the major Australian manufacturer of certain aluminium extrusions, Capral Limited (Capral):

- there is no Australian industry producing goods that are like or directly competitive to the exemption goods;
- the exemption goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

Based on this finding the Commissioner recommends to the Parliamentary Secretary that the exemption goods (as that term is defined in section 3.3 of this report) be exempted from the duties.

2. Background to measures

2.1 Original investigation

On 28 October 2010, anti-dumping and countervailing measures were imposed on certain aluminium extrusions exported to Australia from China. The following table summarises the history of anti-dumping and countervailing measures relating to certain aluminium extrusions.

Table 1. History of investigations

24 June 2009	The then Australian Customs and Border Protection Service initiated an investigation (No. 148) into the alleged dumping and subsidisation of aluminium extrusions exported to Australia from China following an application by Capral Limited (Capral).
28 October 2010	The then Attorney-General published a dumping duty notice and a countervailing duty notice applying to aluminium extrusions exported from China. <i>Trade Remedies Branch Report No. 148</i> (REP 148) refers.
27 August 2011	The then Attorney-General published new notices as a result of a reinvestigation of certain findings made in <i>Trade Remedies Branch Report No. 148</i> following a review by the former Trade Measures Review Officer. <i>International Trade Remedies Report No. 175</i> refers.
21 November 2012	Publication of the outcome of a review of the anti-dumping measures as they apply to Wuxi Xisha Photoelectric Aluminium Products Co., Ltd. The anti-dumping measures were altered as if different variable factors applied. <i>International Trade Remedies Report No. 186</i> refers.
4 September 2013	The Federal Court ruled that dumping duty and countervailing duty notices cannot impose different variable factors for each finish of aluminium extrusion. ³
8 May 2014	Publication of the outcome of a review of anti-dumping measures as they apply to Alnan Aluminium Co., Ltd. The anti-dumping measures remained unaltered. <i>Final Report No. 229</i> refers.
19 February 2015	Publication of the outcome of an anti-circumvention inquiry into the avoidance of the intended effect of duty concerning certain aluminium extrusions exported to Australia by PanAsia Aluminium (China) Co., Ltd. <i>Final Report No. 241</i> refers.
19 August 2015	Publication of the outcome of a review of anti-dumping measures applying generally to certain aluminium extrusions exported to Australia from China. The anti-dumping measures were altered as if different variable factors had been ascertained. <i>Final Report No. 248</i> and its corrigendum refer. ⁴
28 October 2015	The then Parliamentary Secretary declared that the anti-dumping measures should continue in force after 28 October 2015. Anti-Dumping Notice (ADN) No. 2015/125 refers.
9 February 2016	Publication of the outcome of a review of anti-dumping measures as they apply to Press Metal International Ltd. The anti-dumping measures were altered as if different variable factors had been ascertained. <i>Final Report No. 304</i> refers.

³ *PanAsia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870.

⁴ The corrigendum relates to the treatment of certain residual exporters.

2.2 The goods subject to measures

The goods exported from China and covered by the current dumping duty and countervailing duty notices 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 subject to measures include aluminium extrusion products that have been further processed or fabricated to a limited extent. 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 subject to measures. The goods subject to measures 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

The goods subject to measures may be classified under the following subheadings in Schedule 3 of the *Customs Tariff Act 1995*.

Table 2: Aluminium extrusions tariff classifications

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 rate of Customs duty for the goods subject to measures is in transition as a result of the *China-Australia Free Trade Agreement*. The duty rate applicable to each relevant tariff classification is as follows.

Table 3: Aluminium extrusions imported from China – transitional duty rates⁵

Tariff code	Base Rate	20 December 2015	1 January 2016	1 January 2017
7604.10	5%	4%	3%	2%
7604.21	5%	3.3%	1.7%	0%
7604.29	5%	3.3%	1.7%	0%
7608.10 / 7608.20	5%	4%	3%	2%
7610.10	5%	3.3%	1.7%	0%
7610.90	5%	3.3%	1.7%	0%

⁵ <https://ftaportal.draft.gov.au>

3. Exemption inquiry

3.1 Exemption application

On 7 November 2016, the applicant wrote to the Commission requesting an exemption from the duties in relation to its imports of certain aluminium extrusions. (Attachment 1 – Exemption Application).

The applicant's letter outlined the following grounds in support of its application for an exemption from the duties:

that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

3.2 Exemption inquiry

After consultation with the applicant, the Commission accepted its application for an exemption of the duties. On 30 March 2017, the Commissioner initiated an exemption inquiry and published Anti-Dumping Notice (ADN) 2017/31. ADN 2017/31 advised that an exemption inquiry had been initiated, provided details of the goods subject to the inquiry and outlined the procedures to be followed during the inquiry.

On 30 March 2017, the Commission invited all known members of the Australian industry to respond to the application by completing the 'Response to Exemption Application' questionnaire (the questionnaire) and requested that a response be received by no later than 8 May 2017.

A completed response from Capral to the questionnaire was received on 26 April 2017. (Attachment 2 - Australian industry questionnaire response). No other manufacturers responded to the request to complete the questionnaire.

3.3 Goods subject to the application for exemption

The exemption goods are described in the exemption application as:

Extruded aluminium tubes manufactured from aluminium alloy designation 6061 with a T6 temper designation, with the following dimensions:

- outside diameter of 140 millimetres (mm);
- wall thickness of 1.8 mm; and
- length of 5000 mm.

The applicant further advised that the exemption goods are used to manufacture wing spars for recreational aircraft.

The exemption goods are classified to the tariff subheading 7608.2000 (statistical code 10) of Schedule 3 to the *Customs Tariff Act 1995*. For these goods the general rate of duty is currently 2 per cent for goods imported from China⁶.

⁶ <https://ftaportal.dfat.gov.au>

3.4 Claims made in the application and evidence relied upon

In support of its claim that the like or directly competitive goods were not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade, the applicant provided the evidence described below.

On 7 November 2016, the applicant provided confidential documents showing two responses from aluminium extrusion traders that the goods were not available for sale in Australia. On 15 March 2017, the applicant provided confidential documents demonstrating all known Australian producers had been contacted and responded to its requests in writing indicating that they could not supply the exemption goods.

3.5 Legislative requirements for an exemption

The applicant has applied for an exemption under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

Subsection 8(7) provides:

- (7) The Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he or she is satisfied:
 - (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

And:

Subsection 10(8) provides:

- (8) The Minister may, by notice in writing, exempt goods from interim countervailing duty or countervailing duty if he or she is satisfied:
 - (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

In its application, the applicant requests that the Parliamentary Secretary exercise his discretion to exempt goods from the duties on the basis that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

4. Australian industry's offer for sale of 'like' or 'directly competitive' goods

Capral is the only Australian industry member that responded to the Exemption Application Questionnaire. Capral stated that it would not oppose the application on the basis that the exemption goods remains as per ADN 2017/31. The Commission is satisfied as to the reliability of the information provided by Capral.

5. The Commission's assessment – like or directly competitive goods offered for sale in Australia

5.1 Finding

With respect to the exemption goods, the Commission finds that neither like nor directly competitive goods are offered for sale in Australia. Therefore, these conditions of subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for granting an exemption are satisfied with respect to the exemption goods.

5.2 Like or directly competitive goods offered for sale in Australia

The Commission has examined the evidence presented by interested parties in relation to the application and considers that like or directly competitive goods to the exemption goods are not offered for sale in Australia.

The applicant's claim that like or directly competitive goods to the exemption goods were not offered for sale in Australia was not disputed by Capral.

Capral, a major Australian producer of certain aluminium extrusions, advised that it would not oppose the application for exemption. None of the other known Australian manufacturers responded to the Commission's request to complete a questionnaire.

Based on this, and correspondence from manufacturers provided with the application, it is the Commission's assessment that there is no Australian industry producing goods that are like to or directly competitive to the exemption goods.

5.3 Conclusion

Accordingly, the Commission finds that the Australian industry does not offer for sale goods that are like or directly competitive to the exemption goods.

6. The Commission's assessment – to all purchasers on equal terms under like conditions having regard to the custom and usage of trade

The Commission finds that the Australian industry does not offer for sale goods that are like or directly competitive to the exemption goods. Accordingly, like or directly competitive goods to the exemption goods are not offered for sale to all purchasers under like conditions having regard to the custom and usage of trade.

7. Recommendation

Based on the Commission's examination of the application and Capral's submission to the inquiry, the Commissioner considers that goods that are like or directly competitive to the exemption goods are not offered for sale in Australia. Accordingly, the Commission considers that like or directly competitive goods to the exemption goods are not offered for sale to all purchasers under like conditions having regard to the custom and usage of trade.

Accordingly, the Commissioner recommends that the Parliamentary Secretary exercise their discretion to exempt the exemption goods from the duties under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

7.1 Effective date of exemption

The application for exemption, examined in this report, was made on 7 November 2016.

The timing in relation to the granting of an exemption is at the discretion of the Parliamentary Secretary. It is the Commission's policy to recommend that an exemption is backdated to the date of the application, that is, to 7 November 2016.

8. Attachments

Attachment 1	Exemption Application
Attachment 2	Australian industry questionnaire response