



CUSTOMS ACT 1901 - PART XVB

**TERMINATION REPORT
NO. 265**

**ACCELERATED REVIEW
OF A DUMPING DUTY NOTICE AND COUNTERVAILING DUTY
NOTICE APPLYING TO
CERTAIN ALUMINIUM EXTRUSIONS EXPORTED FROM THE PEOPLE'S
REPUBLIC OF CHINA
HUZHOU DULUN METAL PRODUCTS CO., LTD.**

November 2014

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ABBREVIATIONS

ACBPS	Australian Customs and Border Protection Service
ADN	Anti-Dumping Notice
Capral	Capral Limited
China	People's Republic of China
Commission	Anti-Dumping Commission
CTMS	Cost to make and sell
ICD	Interim countervailing duty
IDD	Interim dumping duty
FOB	Free on board
REP 148	Trade Measures Branch Report No.148
SEF	Statement of Essential Facts
SG&A	Selling, general and administration costs
Tai Ao	Tai Ao (Taishan) Co Ltd
The Act	<i>Customs Act 1901</i>
the applicant	Huzhou Dulun Metal Products Co., Ltd. (Dulun)
the Commissioner	the Commissioner of the Anti-Dumping Commission
the goods	Certain aluminium extrusions
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry

1 SUMMARY AND RECOMMENDATION

1.1 Background

This *Accelerated Review No. 265* is in response to an application¹ from Huzhou Dulun Metal Products Co., Ltd. (Dulun) seeking an accelerated review of the dumping duty and countervailing duty notices applying to certain aluminium extrusions² exported to Australia from the People's Republic of China (China).

1.2 Recommendation

The Anti-Dumping Commission (the Commission) recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) be satisfied that Dulun is refusing to co-operate with an aspect of the accelerated review. Accordingly, the Commission recommends that, in accordance with subsection 269ZE(3)(a) of the *Customs Act 1901* (the Act), the Commissioner terminate the accelerated review.³

1.3 Application of law to facts

Division 6 of Part XVB of the Act enables eligible parties to apply for an accelerated review of anti-dumping measures.⁴ The Division, among other matters:

- sets out the procedures to be followed by the Commissioner in dealing with applications or requests and preparing reports for the Parliamentary Secretary to the Minister for Industry (Parliamentary Secretary); and
- empowers the Parliamentary Secretary, after consideration of such reports, to leave the measures unchanged or to modify them as appropriate.⁵

The Commissioner may terminate an accelerated review if satisfied that:

- the exporter is refusing to co-operate with any aspect of the review; or
- the exporter is related to an exporter whose exports were examined in relation to the application for publication of that notice.⁶

1.4 Findings and conclusions

The Commission sent Dulun an exporter questionnaire in relation to the accelerated review. The exporter questionnaire requests the provision of essential information that is relevant to the accelerated review applied for by the applicant. Dulun failed to provide a complete exporter questionnaire response within the timeframe requested. The Commission considers that this amounts to a refusal to co-operate with an aspect of the

1 This application was lodged in accordance with section 269ZF of the *Customs Act 1901*.

2 Refer to Section 2.6 for a full description of the goods.

3 A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

4 Section 269T provides that 'anti-dumping measures' means the publication of a dumping duty notice or a countervailing duty notice or both; or the acceptance of an undertaking.

5 In December 2013, the Minister for Industry (the Minister) delegated responsibility for decision making on operational matters under Parts XVB and XVC of the Act and other anti-dumping legislation to the Parliamentary Secretary.

6 In terms of subsection 269ZE(3)

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accelerated review and it is recommended that the Commissioner terminate the accelerated review in accordance with subsection 269ZE(3)(a) of the Act.

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2 BACKGROUND

2.1 Accelerated Review process

If anti-dumping measures have been taken in respect of certain goods, a new exporter, who has not exported the goods to Australia during the period specified in section 269T of the Act, may request an accelerated review of those measures as they affect that particular exporter, if they consider the measures are not appropriate to that exporter.

If an application for an accelerated review of anti-dumping measures is received and not rejected, the Commission has up to 100 days to inquire and report to the Parliamentary Secretary on the accelerated review of the measures.

In making recommendations in its final report to the Parliamentary Secretary, the Commissioner must consider the application for an accelerated review and make such inquiries as considered appropriate.

In respect of a dumping duty notice or countervailing duty notice, the Commissioner must recommend to the Parliamentary Secretary that the dumping duty notice or countervailing duty notice:

- remain unaltered; or
- be altered:
 - so as not to apply to the particular exporter; or
 - to have effect in relation to the particular exporter as if different variable factors had been ascertained.

The Commissioner may terminate a review if satisfied that the exporter has failed to co-operate with any aspect of the review or the exporter is related to an exporter whose exports were examined in relation to the application for publication of that notice.⁷

2.2 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

⁷ In terms of subsection 269ZE(3)

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- 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.⁸ The Attorney-General accepted these recommendations and, on 28 October 2010, a dumping duty notice and countervailing duty notice was published. Details of the decision were published in Australian Customs Dumping Notice (ACDN) No. 2010/40.

Following a review by the Trade Measures Review Officer, the Australian Customs and Border Protection Service (ACBPS) conducted a reinvestigation into certain findings made in REP 148.⁹ *International Trade Remedies Report No. 175* (REP 175) sets out the findings affirmed and new findings made by ACBPS as a result of the reinvestigation.

The recommendations of REP 175 were to vary the dumping and countervailing duty notices to increase the rate of IDD for exporters of aluminium extrusions with ‘mill’ and ‘anodised’ finish, and remove Dulun New Zhongya Aluminium Co Ltd from the dumping duty notice. The rate of ICD remained unchanged. REP 175 found that ascertained export prices, ascertained normal values and non-injurious prices for the purpose of calculating IDD and ICD should be set by finish type.¹⁰

To give effect to these decisions the then Attorney-General published new notices under section 269ZZM. The new notices, which varied the anti-dumping measures by setting the measures for aluminium extrusions by “finish” (i.e. mill finish or anodised), came into effect on 27 August 2011, replacing the earlier notices.

Two Chinese exporters, Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd (Kam Kiu) (and its related companies Kam Kiu Aluminium Products SDN BHD and Kam Kiu (Australia) Pty Limited), and PanAsia Aluminium (China) Ltd (PanAsia) (and its related company Opal (Macao Commercial Offshore) limited), applied to the Federal Court of Australia (Federal Court) for judicial review of the then Attorney-General decision.

On 4 September 2013, the Federal Court decided in favour of the Commonwealth on nine of the ten grounds of review, finding in favour of the applicants for one other ground of review. The Federal Court held that the then Attorney-General had no power to vary the dumping and countervailing measures for aluminium extrusions by finish.

The effect of the Federal Court’s decision is that the rates of dumping and countervailing duty against the applicants, Kam Kiu and PanAsia, revert to single “consolidated” levels

⁸ 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.

⁹ The function of the Commission was formerly carried out by ACBPS.

¹⁰ See also ACDN 2011/31.

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(rather than by finish) previously set by the then Attorney-General in October 2010. These changes were applied retrospectively from 27 August 2011.¹¹

2.3 Notification and participation

On 12 August 2014, Dulun lodged an application for an accelerated review of the anti-dumping measures applicable to aluminium extrusions exported to Australia from China.

The Commissioner considered the application¹² to determine if it was valid as required by sections 269ZE, 269ZF and the definitions provided in section 269T of the Act. The Commissioner was satisfied that:

- Dulun was a new exporter as defined by section 269T of the Act;
- the application satisfied the requirements of section 269ZF of the Act; and
- the conditions for rejection under subsection 269ZE(2) of the Act were not met.

As the circumstances in which an accelerated review can be sought were satisfied the Commissioner did not reject the application and the accelerated review commenced. Consideration Report No. 265 (CON 265) provides further details in relation to the Commissioner's consideration of the application. CON 265 is available on the Commission's website at www.adcommission.gov.au.

The commencement of the accelerated review was publicly notified in Anti-Dumping Notice (ADN) No. 2014/88, which was published on 11 September 2014. The ADN is available on the Commission's website at www.adcommission.gov.au.

This ADN highlighted that interested parties had until 11 October 2014 to lodge submissions in relation to the accelerated review. It also advised that the Commissioner's recommendation to the Parliamentary Secretary will be made in a report on or before 20 November 2014.

For the purposes of the accelerated review the period examined is 1 August 2013 to 31 July 2014 (herein referred to as the review period).

2.4 Public record

There is no legislative requirement for the Commission to maintain a public file for accelerated reviews. However, in the interests of ensuring this process is conducted in an open and transparent manner, a public file for this accelerated review has been maintained and is accessible on the Commission's website at www.adcommission.gov.au.

¹¹ Further details regarding the findings of the course case and amendments to anti-dumping measures applicable to aluminium extrusions can be found in ADN 2013/80.

¹² In accordance with section 269ZG of the Act.

2.5 The goods

2.5.1 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.

2.5.2 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); and
- 7610.90.00 (statistical code 13).

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

3 TERMINATION GROUNDS

3.1 Findings

Dulun was sent an exporter questionnaire on 21 August 2014, with a due date of 27 September 2014 to submit its response to the Commission.

The Commission advised Dulun at the time it forwarded the questionnaire that:

- A late submission of the questionnaire may adversely affect Dulun's application as the Commission may not be able to address any deficiencies identified within the legislated timeframe; and
- Subsection 269ZE(3) of the Act provides for the review to be terminated where the exporter refuses to co-operate with any aspect of the review. An exporter may be deemed to be uncooperative if they do not provide all of the information sought, do not provide information within a reasonable time period, or do not allow the Commission to verify the information.

On 25 September 2014, Dulun requested a one week extension to the deadline for the exporter questionnaire response. The Commission granted this extension to 3 October 2014, on the basis that a complete and accurate questionnaire response would be submitted. The Commission advised Dulun at this time that the exporter questionnaire would need to be 'complete and accurate' as there would be no subsequent opportunity to address deficiencies due to the limited timeframe of an accelerated review.

Dulun provided confidential and non-confidential versions of its exporter questionnaire response on 3 October 2014. Upon review of the information, the Commission found the response to be incomplete for the purposes of the Commission's requirements to undertake the accelerated review under the Act.

On 28 October 2014, the Commission advised Dulun that the questionnaire response had a number of deficiencies. On 5 November 2014, the Commission sent Dulun's representative, Transways Logistics International (Transways) a letter including a list of deficiencies in the exporter questionnaire response (Confidential Attachment 1). Key deficiencies in the response included:

- incomplete, or aggregated domestic sales, Australian sales and aluminium purchases data;
- data not supplied for the review period specified;
- costs not broken down or data missing in cost to make and sell (CTMS) data;
- CTMS data provided by finish rather than by quarter; and
- source documents in Chinese were not accompanied with English translations.

The letter also highlighted the fact that the failure to provide a substantially compliant response to the questionnaire may be considered as a refusal to co-operate with an aspect of the accelerated review. Dulun was informed that as a potential consequence, the Commissioner may decide to terminate the accelerated review.

Dulun contacted the Commission on 10 November 2014, seeking to provide information in response to the deficiency letter by 14 November 2014. The Commission advised that information provided at this late stage of the accelerated review could not be considered

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due to the statutory timeframe specified in the legislation, specifically 269ZG(2) requiring that a report be provided to the Parliamentary Secretary by 20 November 2014.¹³

The Commission considers that the failure to provide a complete response to the questionnaire in a timely fashion amounts to a refusal to co-operate with an aspect of the accelerated review. This provides grounds to terminate the accelerated review in accordance with subsection 269ZE(3)(a).

¹³ 269ZG(2) requires that a report by the Commissioner must be completed as soon as practicable and in any case not later than 100 days after the day the application is lodged.

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4 EFFECT OF THE TERMINATION

As a result of this termination, Dulun's exports of aluminium extrusions will remain subject to the 'all other exporters' dumping duty and countervailing duty rates for China in accordance with the dumping duty notice published on 28 October 2010.¹⁴

Securities were imposed by the Commissioner on 11 September 2014 on exports by Dulun while the accelerated review proceeded.

In accordance with section 269ZH of the Act, if Dulun has exports of aluminium extrusions that were subject to securities (i.e. aluminium extrusions exported by Dulun that were imported and entered for home consumption in Australia between 12 August 2014 and the date that the review is terminated), these securities will now be converted to IDD and ICD at the rate applicable to 'all other exporters' from China. Future exports of aluminium extrusions by Dulun will also be subject to this level of duty.

This termination does not affect Dulun's right to apply for another accelerated review in accordance with sections 269ZE and 269ZF of the Act, should Dulun be in a position to be able to provide a substantially compliant response to the exporter questionnaire.

¹⁴ ADN 2010/40

5 RECOMMENDATIONS

It is recommended that the Commissioner be satisfied that Dulun has failed to co-operate with an aspect of the review, and therefore in accordance with subsection 269ZE(3) of the Act, terminate the review.

6 ATTACHMENTS

Attachments	
Confidential Attachment 1	Letter from the Commission to Dulun