



**Australian Government**  
**Anti-Dumping Commission**

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**EXEMPTION INQUIRY  
EX0020**

**CERTAIN ALUMINIUM EXTRUSIONS  
EXPORTED TO AUSTRALIA FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

**APPLICANT:  
P&O ALUMINIUM (SYDNEY) PTY LTD**

**August 2014**

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## **Abbreviations**

<b>Abbreviation</b>	<b>Full title</b>
ACBPS	Australian Customs and Border Protection Service
ACDN	Australian Customs Dumping Notice
ADN	Anti-Dumping Notice
anti-dumping measures	dumping duty notice and countervailing duty notice
Australian industry	the Australian industry producing aluminium extrusions
Capral	Capral Limited
China	People's Republic of China
REP 175	International Trade Remedies Report No. 175
P&O Aluminium	P&O Aluminium (Sydney) Pty Ltd
TCO	Tariff Concession Order
the Act	<i>Customs Act 1901</i>
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
the goods	the goods to which the anti-dumping measures apply
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry

## 1 Summary

This *Exemption Inquiry EX0020* Report is in response to an application to the Anti-Dumping Commission (the Commission) by P&O Aluminium (Sydney) Pty Ltd (P&O Aluminium) requesting an exemption from dumping duty and countervailing duty (anti-dumping measures) under sections 8 and 10 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act), in relation to the export of certain aluminium extrusions from the People's Republic of China (China).<sup>1</sup>

### 1.1 Decision

The Commission has found that for the goods (**refer to section 3.2**) that are the subject of P&O Aluminium's application, the Tariff Concession Orders (TCOs) under Part XVA of the *Customs Act 1901* (the Act) are no longer in force.

Accordingly, the Commissioner of the Anti-Dumping Commission (the Commissioner) has decided to terminate the exemption inquiry as the conditions of subsections 8(7)(b) and 10(8)(aa) of the Dumping Duty Act for granting an exemption are no longer met.

### 1.2 Application of law to facts

#### 1.2.1 Authority to make decision

Subsections 8(7) and 10(8) of the Dumping Duty Act set out, *inter alia*, the matters to be considered by the Parliamentary Secretary in deciding whether to exempt goods from dumping duty and countervailing duty.<sup>2</sup>

However, the Commissioner may decide to terminate the exemption inquiry in circumstances where an application for exemption is based on TCOs and these TCOs are no longer in force.

#### 1.2.2 Application

On 6 and 7 February 2014, P&O Aluminium wrote to the Commission requesting an exemption from anti-dumping measures in relation to its imports of certain aluminium extrusions.

The exemptions were sought pursuant to subsections 8(7)(b) and 10(8)(aa) of the Dumping Duty Act. Under these provisions, the Parliamentary Secretary may exempt goods from interim dumping and countervailing duties where he is satisfied:

'that a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force.'<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> In December 2013, the Minister for Industry delegated responsibility for anti-dumping matters to the Parliamentary Secretary to the Minister for Industry.

<sup>3</sup> Subsections 8(7)(b) and 10(8)(aa) of the Dumping Duty Act.

### **1.2.3 Initiation of inquiry**

After examining the application, the Commission was satisfied that:

- the claims put forward in the application warranted further inquiry;
- that an exemption inquiry should commence; and
- that a final report and recommendation to the Parliamentary Secretary presenting evidence on which he may rely to exercise his power to exempt goods under sections 8 and 10 of the Dumping Duty Act be prepared.

The initiation of the exemption inquiry was publicly notified in Anti-Dumping Notice (ADN) 2014/21, which was published on 14 March 2014 and is accessible on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au)

### **1.3 Findings and conclusions**

The Commission has considered P&O Aluminium's application and has made relevant inquiries, including with the Australian industry producing aluminium extrusions (the Australian industry). As a result of its inquiries, the Commission has found that:

- The exemption had been sought by P&O Aluminium on the basis of TCOs 1331293 and 1335698, that were in force at the time of application;
- TCO 1331293 had come into effect on 12 September 2013 and was subsequently revoked, with the last date of effect on 1 June 2014;
- TCO 1335698 had come into effect on 24 October 2013 and was subsequently revoked, with the last date of effect on 1 June 2014; and
- Capral Limited (Capral) has provided evidence of its production and sales in calendar years 2013 and 2014 of substitutable goods for those described in TCOs 1331293 and 1335698.

Based on these findings, the Commission considers that:

- no grounds exist under subsections 8(7)(b) and 10(8)(aa) of the Dumping Duty Act upon which the Parliamentary Secretary may exercise his discretion to exempt these goods in the future; and
- it would not be appropriate to recommend that the Parliamentary Secretary exempt goods under subsections 8(7)(b) and 10(8)(aa) of the Dumping Duty Act in relation to the period from receipt of P&O Aluminium's application on 6 February 2014 to the last date of effect for the TCOs on 1 June 2014.

## 2 Background to the anti-dumping measures

### 2.1 Original investigation

In October 2010, the then International Trade Remedies Branch of the Australian Customs and Border Protection Service (ACBPS) completed an investigation into the alleged dumping and subsidisation of certain aluminium extrusions exported to Australia from China. In that investigation, and as outlined in Trade Measures Report No.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 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 to the then Minister<sup>4</sup> to impose anti-dumping measures on the goods exported from China. On 28 October 2010, the Minister published a dumping duty notice and a countervailing duty notice applying to certain aluminium extrusions exported to Australia from China and notification was published in Australian Customs Dumping Notice (ACDN) 2010/40.<sup>5</sup> The ACDNs and Reports are available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Following a review by the Trade Measures Review Officer, ACBPS conducted a reinvestigation into certain findings made in Trade Measures Report No. 148.

The International Trade Remedies Report No. 175 (REP 175) sets out the findings affirmed as well as new findings as a result of the reinvestigation.

The Attorney-General accepted the recommendations, including the reasons and the material findings of fact or law on which the recommendations were based, as detailed in REP 175. To give effect to this decision, the Attorney-General published a new notice under section 269ZZM of the Act. This notice is in substitution of the earlier dumping duty notice and countervailing duty notice<sup>6</sup> published in respect of certain aluminium extrusions exported to Australia from China, which was notified on 25 October 2010. The new notice became effective from 27 August 2011 and further details are available in ACDN 2011/31.<sup>7</sup>

### 2.2 The goods subject to anti-dumping measures

The goods the subject of the current anti-dumping measures (the goods) are:

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<sup>4</sup> Prior to 25 September 2013, anti-dumping matters were the responsibility of the Minister for Home Affairs. 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 to the Minister for Industry.

<sup>5</sup> The reasons for the relevant Minister's decision in this case are contained in International Trade Remedies Branch Report 148.

<sup>6</sup> Under sections 269TG(2) and 269TJ(2) of the Act.

<sup>7</sup> The effect of the new notice was that the level of the anti-dumping measures had changed and the dumping duty notice no longer applied to Zhaoqing New Zhongya Aluminium Co Ltd.

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*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

The goods subject to the anti-dumping 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

## 3 Exemption Inquiry

### 3.1 Exemption inquiry

On 27 February 2014, the Commission accepted P&O Aluminium's two e-mails (sent on 6 February and 7 February 2014) as an application for an exemption of anti-dumping measures (**Confidential Attachment 1**). On 14 March 2014, the Commissioner initiated the exemption inquiry by publishing ADN 2014/21, with this notice providing detail on the goods subject to the inquiry and the inquiry process.

At the time of the initiation of the exemption inquiry, the Commission mistakenly addressed only one of the two TCOs relied upon in P&O's application; this error was identified after ADN 2014/21 had been published on 14 March 2014. A file note correcting the error was added to the public record on 2 April 2014. The error has no impact on the outcome of the investigation.

### 3.2 Claims made in the application

In support of the claim that the Australian industry does not supply the goods that are the subject of the inquiry, P&O Aluminium provided detail on TCOs 1331293 and 1335698 that were in force at the time of application. In summary:

- **TC 1331293**, with an effective date from 12 September 2013, covers the following:

"Aluminium extrusion profiles, extruded, conforming to Australian Aluminium Specification 7005 T593 (AAS 7005 T593), having all:

- (a) minimum cross sectional dimension not less than 6mm and not greater than 450mm;
- (b) minimum ultimate tensile strength not less than 350 MPa; and
- (c) minimum yield tensile strength not less than 300 MPa."

- **TC 1335698**, with an effective date from 24 October 2013, covers the following:

"Aluminium extrusion profiles, produced with alloy ENAW-5005A (ENAW-ALMg1C) having ALL of the following:

- (a) minimum cross sectional dimension of NOT less than 6 mm and NOT greater than 450 mm;
- (b) alloy chemical composition by percentage weight of ALL of the following:
  - (i) iron NOT exceeding 0.45%;
  - (ii) silicon NOT exceeding 0.3%;
  - (iii) manganese NOT exceeding 0.15%;
  - (iv) chromium NOT exceeding 0.1%;
  - (v) copper NOT exceeding 0.05%;
  - (vi) magnesium NOT less than 0.7% and NOT greater than 1.11%;
  - (vii) zinc NOT exceeding 0.2%
  - (viii) other impurities NOT exceeding 0.15%;
  - (ix) remainder Al."

### 3.3 Findings and Conclusion

On 17 April 2014, a public record submission in response to the initiation of the exemption inquiry was lodged on behalf of Capral. Capral's submission noted the existence of TCOs 1331293 and 1335698, and advised that it is able to produce



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substitutable goods for both types of extrusions and therefore, intended to apply for the revocation of both TCOs.

On 2 June 2014, as part of a second public record submission, Capral advised that it had lodged the application with the ACBPS for the revocation of both TCOs.

Subsequently, the Commission was notified by way of the *Commonwealth of Australia Tariff Concessions Gazette No. TC 14/26* that the two TCOs had been revoked by the ACBPS, effective from 1 June 2014 (**Non-Confidential Attachment 2**).

As TCOs 1331293 and 1335698 are no longer in force, no grounds exist under subsections 8(7)(b) and 10(8)(aa) of the Dumping Duty Act upon which the Parliamentary Secretary may exercise his discretion to exempt these goods in the future.

In addition, having had regard to the evidence provided by Capral in relation to its production and sales in calendar years 2013 and 2014 of substitutable goods for those described in TCOs 1331293 and 1335698, the Commission is of the view that it would not be appropriate to recommend that the Parliamentary Secretary exempt goods under subsections 8(7)(b) and 10(8)(aa) of the Dumping Duty Act in relation to the period from receipt of P&O Aluminium's application on 6 February 2014 to the last date of effect for the TCOs on 1 June 2014.

Accordingly, the Commissioner has decided to terminate the exemption inquiry as the conditions of subsections 8(7)(b) and 10(8)(aa) of the Dumping Duty Act for the Parliamentary Secretary to grant an exemption are no longer met.

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**4 Attachments**

<b>Confidential Attachment 1</b>	P&O Aluminium's application for an exemption
<b>Non-Confidential Attachment 2</b>	Extract of <i>Commonwealth of Australia Tariff Concessions Gazette No. TC 14/26</i> – TCOs revoked