



CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS NO. 229

**REVIEW OF ALUMINIUM EXTRUSIONS
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

3 March 2014

SEF 229 Aluminium Extrusions - China

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ABBREVIATIONS

ACBPS	Australian Customs and Border Protection Service
The Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant	Aluglass Australia Pty Ltd
Alnan	Alnan Aluminium Co., Ltd
Aluglass	Aluglass Australia Pty Ltd
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
SEF	Statement of Essential Facts
the goods	certain aluminium extrusions
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry

1 SUMMARY AND RECOMMENDATIONS

1.1 Summary

This review is in response to an application from Aluglass Australia Pty Ltd (Aluglass) to review the anti-dumping measures of aluminium extrusions¹ exported to Australia from the People's Republic of China (China) by Alnan Aluminium Co. Ltd (Alnan).

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Parliamentary Secretary to the Minister for Industry (Parliamentary Secretary).

1.2 Proposed recommendation

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice and countervailing duty notice remain unaltered.

1.3 Preliminary findings and conclusions

The Commissioner is satisfied that Alnan did not give the Anti-Dumping Commission (the Commission) information that he considers relevant to the review within a reasonable period and considers Alnan to be uncooperative in terms of the definition in s.269T of the *Customs Act 1901* (the Act).

The Commissioner preliminarily considers that:

- not enough information has been provided to enable an ascertained export price for the review period to be established, relevant to Alnan's exports (section 4.4);
- not enough information has been provided to enable an ascertained normal value for the review period to be established, relevant to Alnan's exports (section 4.5);
- based on the preliminary view in relation to export price and normal value the non injurious price remain as per the original investigation; and
- not enough information has been provided to enable a subsidy margin to be ascertained for the review period, relevant to Alnan's exports (section 4.6).

Based on these preliminary findings, and subject to any submissions received in response to this SEF No.229, the Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice and countervailing duty notice remain unaltered.

¹ A full description of the goods is at section 3.3.

1.4 Final report

The Commissioner's final report and recommendations must be provided to the Parliamentary Secretary by **16 April 2014**.

2 BACKGROUND

2.1 Initiation

On 15 October 2013, Aluglass lodged an application requesting a review of the dumping duty notice and countervailing duty notice applying to aluminium extrusions exported to Australia from China.

The Commission examined the application and decided not to reject the application. A notice indicating this decision was published in *The Australian* newspaper on 8 November 2013, with ADN 2013/87 being released containing additional information about the review. Anti-Dumping Consideration Report 229 (CON 229) was also published on the Commission's website.

Aluglass' application sought to review the variable factors pertaining to Alnan only. Aluglass did not seek the review to be extended to other exporters of aluminium extrusions from China.

The review period for this inquiry is from 1 October 2012 to 30 September 2013.

2.2 Previous cases

On 24 June 2009, the Australian Customs and Border Protection Service (ACBPS) initiated an investigation into the alleged dumping of certain aluminium extrusions exported from China. This investigation followed an application by Capral Limited (Capral), representing the Australian industry manufacturing aluminium extrusions. During the investigation, and as outlined in Trade Measures Report No. 148 (REP 148), the ACBPS found that:

- with the exception of one exporter, Tai Ao (Taishan) Co Ltd (Tai Ao), aluminium extrusions were exported from China at dumped prices;
- with the exception of Tai Ao, aluminium extrusions 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 aluminium extrusions from China may be dumped and subsidised and continued dumping and subsidisation may cause further material injury to the Australian industry.

Accordingly, the ACBPS recommended that the Attorney-General publish dumping and countervailing duty notices in respect of aluminium extrusions exported to Australia from China. The Attorney-General accepted these recommendations and on 28 October 2010, anti-dumping measures were imposed on aluminium extrusions exported from China. Notification of the Attorney-General's decision was published in *The Australian* newspaper and in the *Gazette* (Australian Customs Dumping Notice (ACDN) No. 2010/40 also refers).

Following a review by the Trade Measures Review Officer (TMRO), the TMRO recommended that the Attorney-General direct the Chief Executive Officer (CEO) of the ACBPS to conduct a reinvestigation into certain findings made in REP 148. International

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Trade Remedies Report No. 175 (REP 175) sets out the findings affirmed and new findings made by the ACBPS as a result of the reinvestigation.

Subsequently, the Attorney-General accepted the reinvestigation findings. To give effect to this decision the Attorney-General published new notices under s. 269ZZM of the Act. These notices substituted the dumping and countervailing duty notices published on 28 October 2010. The new notices came into effect on 27 August 2011, replacing the earlier notices to the extent of any inconsistencies.

Several parties sought judicial review² of various decisions made by the Attorney-General in respect of the aluminium extrusion investigation. The outcome of a recent Federal Court decision in respect of this matter is not detailed in this report.

Alnan is currently subject to the dumping and countervailing duty rates applicable to the category of residual exporters in the original investigation.

2.3 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may apply for, or the Parliamentary Secretary may request that the Commission conduct, a review of those measures if one or more of the variable factors has changed. The Parliamentary Secretary may initiate a review at any time, however, a review application may not be lodged earlier than twelve months after publication of the notice implementing the original anti-dumping measures or the notice(s) declaring the outcome of the last review.

If an application for a review of anti-dumping measures is received and not rejected, the Commission has up to 155 days, or such longer time as the Parliamentary Secretary may allow, to inquire and report to the Parliamentary Secretary on the review of the measures. Within 110 days of the initiation, or such longer time as the Parliamentary Secretary may allow, the Commissioner must place on the public record a SEF on which he proposes to base recommendation to the Parliamentary Secretary concerning the review of the anti-dumping measures.

In making recommendations in his final report to the Parliamentary Secretary, the Commissioner must have regard to:

- the application for a review of the anti-dumping measures;
- any submission relating generally to the review of the measures to which the delegate has had regard for the purpose of formulating the SEF;
- this SEF; and
- any submission made in response to this SEF that is received by the Commission within 20 days of it being placed on the public record.

² Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth [2013] FCA 870.

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The Commissioner may also have regard to any other matter considered to be relevant to the inquiry.

During the course of this review, the Commission examined whether the variable factors have changed. Variable factors in this context are a reference to:

- the ascertained export price
- the ascertained normal value
- the ascertained subsidy margin; and
- the non-injurious price.

In respect of a dumping duty notice or countervailing duty notice, the Commissioner must provide a recommendation to the Parliamentary Secretary that the dumping duty notice or countervailing duty notice³:

- remain unaltered; or
- have effect as if different variable factors had been ascertained; or
- in the case where a revocation of the anti-dumping measures is sought, that the dumping duty notice or countervailing duty notice be revoked.

Following the Parliamentary Secretary's decision, a notice will be published advising interested parties of the decision

2.4 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base final recommendations to the Parliamentary Secretary.

This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making his final report to the Parliamentary Secretary. The report will recommend whether or not the dumping duty notice and countervailing duty notice should be varied, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than **24 March 2014**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Parliamentary Secretary.

The Commissioner must report to the Parliamentary Secretary by 16 April 2014.

³ s. 269ZDA(1)(a) of the Act

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Submissions should preferably be emailed to operations2@adcommission.gov.au

Alternatively, they may be sent to fax number +61 2 6275 6990, or posted to:

Director Operations 2
Anti-Dumping Commission
Level 5, Customs House
5 Constitution Ave
CANBERRA ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record.

A guide for making submissions is available on the Commission's web site www.adcommission.gov.au.

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available by request in hard copy in Canberra (telephone (02) 6275 6547 to make an appointment), or online at www.adcommission.gov.au

Documents on the Public Record should be read in conjunction with this SEF.

3 THE GOODS AND LIKE GOODS

3.1 Preliminary finding

The Commission considers the Australian industry still produces aluminium extrusions that have characteristics closely resembling those of the goods under consideration, and therefore, aluminium extrusions manufactured by the Australian industry are considered like goods⁴.

3.2 Legislative framework

The Commissioner must be satisfied that the “like” goods are in fact produced in Australia. Ss.269T(2) and 269T(3) of the Act specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

3.3 The goods

The goods subject to anti-dumping measures, in the form of a dumping duty notice and a countervailing duty notice are certain aluminium extrusions (“the goods”). The applicant, Aluglass, provided further details as follows:

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.

3.4 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),

⁴ In terms of s.269T.

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- 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% Customs duty.

3.5 Like goods

During the original investigation the Commission found that:

- there was an Australian industry producing like goods;
- a substantial process of manufacture was carried out in Australia in producing the like goods;
- the like goods were wholly manufactured in Australia; and
- there is an Australian industry consisting of eight Australian companies that produce like goods in Australia.

4 VARIABLE FACTORS

4.1 Preliminary finding

Insufficient information has been provided to enable an ascertained export price, normal value or subsidy margin relevant to Alnan's exports to be established for the review period.

4.2 Alnan's exporter questionnaire response

The Commission provided Alnan with an exporter questionnaire to complete. The due date for a response was 19 December 2013. Following a request from Alnan the Commission granted an extension for completion of the questionnaire to 6 January 2014. Alnan's exporter questionnaire response was received on 8 January 2014. The response contained information with regard to its domestic and export sales, its customers and cost to make and sell worksheets. It also provided details of company ownership and the details of tax paid and payable.

The exporter questionnaire was accompanied by a number of exhibits to support its narrative in the exporter questionnaire responses.

4.2.1 Deficiencies

After examining the exporter questionnaire response, the Commission identified a number of deficiencies. Deficiencies were advised to Alnan via emails on 30 January 2014 and 10 February 2014 with an opportunity to remedy those deficiencies by 17 February 2014.

The following deficiencies remained as at 17 February 2014:

- the public file version of the questionnaire response was insufficient in accordance with the requirements of s.269ZJ(2) of the Act in that large sections were redacted without any summary of the information redacted;
- supporting documentation was not in English and required translation;
- delivery and payment terms for each transaction were not identified;
- there was no explanation of levels of trade;
- there was no explanation of proportional differences between sales volumes and values for different customers;
- there was no explanation of packing charges; and
- supporting exhibits provided in email number 27 of original submission were missing.

In addition, the Commission identified significant inconsistencies in the turnover and sales information presented. It asked Alnan to explain why the sales data provided in the domestic and export sales spreadsheets did not reconcile to the turnover spreadsheet. The explanation provided to the Commission did not provide a reasonable level of

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satisfaction that the data could be relied upon. Further, Alnan advised that it had detected a number of errors in the original data provided and this was not rectified by 17 February 2014.

Based on the above the Commissioner considers Alnan to be uncooperative in terms of the definition in s269T of the Act being satisfied that Alnan did not provide information relevant to the review within the timeframe considered reasonable.

4.3 Consultation/submissions

Capral Ltd (Capral)

During the review process, Capral made several submissions regarding the following issues:

- market situation – Capral submitted that the situation in the Chinese domestic market for aluminium extrusions is such that domestic selling prices are not suitable for use in determining normal values;
- countervailable subsidies – Capral alleged that Alnan receives subsidies in addition to those covered in the existing countervailing duty notice and that additional programs should be investigated as part of the current review; and
- non-market costs – Capral submitted that Alnan's production costs do not reasonably reflect competitive market costs therefore it is appropriate for the Commission to substitute benchmark costs from surrogate countries.

The Commission responded to Capral that it would not examine issues that would apply to exporters beyond the exporter the subject of the review, that is, Alnan. The Commission also noted that it would only examine new countervailable subsidies programs if they were evident in Alnan's records.

The Commission met with Capral to discuss the general review process and address Capral's claims that the review should be extended. The Commission's correspondence with Capral and a record of this meeting can be found on the Commission's electronic public record at www.adcommission.gov.au

After Alnan's non-confidential version of the exporter questionnaire response was placed on the electronic record (albeit in a state that the Commission considered inadequate), Capral submitted that the Commission should disregard Alnan's questionnaire response if no remedy was provided within an adequate time frame based on the fact that it contained insufficient information in accordance with s.269ZJ(5) of the Act.

Alnan

Alnan emailed the Commission and objected to the Commission's decision not to accept any further information after 17 February 2014. It stated that in its opinion the Commission had contributed to its inability to provide the required information within a reasonable timeframe and expressed its view that an extension to the timeframe for the SEF should be sought to allow the Commission to consider Alnan's information.

Late Submission

On 26 February 2014, Capral lodged a submission regarding the primary aluminium benchmark to be used to calculate normal values and Program 15 subsidy amounts for Alnan. The Commissioner considers that having regard to this submission would prevent the timely preparation of the SEF on the public record⁵. The non-confidential version of the submission has been placed on the public record. The contents of that submission will be considered prior to the final report being prepared.

4.4 Export price

The Commissioner proposes to recommend that the Parliamentary Secretary disregard the information in the exporter questionnaire response as it pertains to export price on the basis that it is not considered reliable⁶.

Based on the above, the Commissioner proposes to recommend that the Parliamentary Secretary be satisfied that sufficient information has not been furnished and is not available to enable export prices of aluminium extrusions exported to Australia by Alnan to be determined under ss.269TAB(1)(a), (b) or (c) of the Act⁷.

The Commissioner considers that the only relevant information available in these circumstances is the export price for residual exporters from the original investigation.

4.5 Normal value

The Commissioner proposes to recommend that the Parliamentary Secretary disregard the information in the exporter questionnaire response as it pertains to normal value on the basis that it is not considered reliable⁸.

Based on the above, the Commissioner proposes to recommend that the Parliamentary Secretary be satisfied that sufficient information has not been furnished and is not available to enable the normal value of aluminium extrusions exported to Australia from China by Alnan to be determined under ss.269TAC(1) or (2)⁹.

The Commissioner considers that the only relevant information available in these circumstances is the normal value for residual exporters from the original investigation.

4.6 Subsidy margin

4.6.1 Original investigation

Following the original investigation the Attorney General signed countervailing duty notices with the effect that Alnan's exports were subject to the 'residual exporter rate' of 6.4%. This rate was calculated based on the following programs.

⁵ Pursuant to s269TDAA(3) of the Act

⁶ Pursuant to s269TAB(4) of the Act

⁷ Pursuant to s269TAB(3) of the Act

⁸ Pursuant to s269TAC(7) of the Act

⁹ Pursuant to s269TAC(6) of the Act

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- **Program 10:** Preferential Tax Policies for Foreign Invested Enterprises – Reduced Tax Rate for Productive FIEs scheduled to operate for a period of not less than 10 years;
- **Program 13:** Exemption of tariff and import VAT for imported technologies and equipments; and
- **Program 15:** Goods provided at less than adequate remuneration.

4.6.2 Current review

Preferential Income Tax Programs

Alnan provided details on subsidy programs it received. Substantial information detailing two particular income tax programs was provided, however the supporting documentation for these programs was in Chinese without accompanying translations.

The VAT and Tariff spreadsheet attachment to the exporter questionnaire was completed by Alnan as part of its response.

In its application, Aluglass indicated that Alnan did not receive benefits under programs 10, 13 and 15, however did receive benefits under programs 3, 7, 26 and 32. Alnan's exporter questionnaire response provided information that differed to that provided by Aluglass and listed many additional subsidies it was in receipt of.

Grants and Preferential Policy Programs

Alnan advised that it received a number of grants listed by the Commission in the exporter questionnaire together with an additional number of grants not provided for in the original investigation. In the questionnaire response, Alana referred to a spreadsheet attachment that listed all the government grants/benefits it had received.

As part of the deficiency list sent to Alnan, the Commission noted that this supporting list was not provided with the original questionnaire response and requested it be provided. A "government benefits" list was received by the Commission on 17 February 2014. The list outlined up to 15 benefits for 2012 and 13 benefits for 2013. While some details in the spreadsheets had been translated to English, much of the information was not.

In order to properly assess these additional claims, the Commission considers that it would need to seek further information from the Government of China together with further clarification from Alnan, which was not possible within the timeframe following receipt of the outstanding information.

Goods provided at less than adequate remuneration

Alnan provided spreadsheets with its exporter questionnaire response that listed its purchases of aluminium ingot and billet during the review period.

The spreadsheets did not indicate whether or not the manufacturer and/or supplier of the aluminium was a State Invested Enterprise (SIE). In the original investigation the Commission assumed that the supplier and manufacturer were SIEs where this was not identified by the exporter, however given the preliminary view in relation to export price set out section 4.4 above a contemporaneous subsidy margin for this program would not

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be able to be established in any case due to the denominator (export price) being historical.

4.6.3 Subsidy conclusion

The Commissioner is satisfied that Alnan has not provided information considered to be relevant to the review within a reasonable period. The Commissioner proposes to recommend to the Parliamentary Secretary (in accordance with s.269TAACA(1)(b) of the Act) that the amount of countervailable subsidy in respect of Alnan's exports during the review period be determined on the basis of all facts available.

While some information has been provided in respect of certain subsidy programs, without the ability to determine the amount of countervailable subsidy associated with other potential programs the Commissioner considers that the subsidy margin from the original investigation remains the most relevant information.

4.7 Non-injurious price

The Commissioner proposes to recommend the export price, normal value and subsidy margin be determined from the variable factors from the original investigation. Accordingly, it was not considered necessary to establish a contemporaneous non-injurious price. The Commissioner proposes to recommend the non-injurious price remain unchanged from the original investigation.

5 EFFECT OF THE REVIEW

The Commission proposes to recommend that the dumping duty notice remain unaltered. This means that Alnan will remain subject to the residual rates of duty set out in the current anti-dumping measures.