



Australian Government
Anti-Dumping Commission

R E P O R T

REPORT TO THE MINISTER NO. 229

**REVIEW OF
ANTI-DUMPING MEASURES**

**CERTAIN ALUMINIUM EXTRUSIONS
EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA
BY
ALNAN ALUMINIUM CO., LTD**

16 April 2014

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1 SUMMARY AND RECOMMENDATIONS

1.2 Summary

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

1.3 Applicable law

Division 5 of Part XVB of the Act² enables affected parties to apply for the review of anti-dumping measures. The Division, among other matters:

- sets out the procedures to be followed by the Commissioner of the Anti-Dumping Commission (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 unaltered or to modify them as appropriate.

After conducting a review of anti-dumping measures, the Commissioner must give the Parliamentary Secretary a report containing recommendations³.

1.3 Recommendation

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

1.4 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 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);

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

² A reference in this report to a provision of legislation, unless otherwise specified, is a reference to the *Customs Act 1901*.

³ Section 269ZDA(1).

- 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 view in relation to export price and normal value, the non injurious price should 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 findings, the Commissioner recommends to the Parliamentary Secretary that the dumping duty notice and countervailing duty notice remain unaltered.

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 by Alnan.

The Commission examined the application and decided not to reject it. A notice indicating this decision was published in *The Australian* newspaper on 8 November 2013, with Anti-Dumping Notice 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 a review of 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 is from 1 October 2012 to 30 September 2013. This is the period over which exports were examined to establish whether the variable factors had changed.

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 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 review⁴ 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'⁵ in the original investigation.

2.3 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may apply for a review of 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.

⁴ *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870.

⁵ Residual exporters are cooperative exporters whose exports are not examined in a sampling process

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;
- the SEF; and
- any submission made in response to the SEF that was received by the Commission within 20 days of the SEF being placed on the public record.

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 and/or countervailing duty notice, the Commissioner must provide a recommendation to the Parliamentary Secretary that the dumping duty notice and/or countervailing duty notice⁶:

- 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 Responses to the SEF

The Commission received two responses to SEF 229, one from an Australian industry member, Capral, and one from Alnan, the Chinese exporter whose exports were the subject of the review. Consideration of these submissions is set out in section 4.3.

⁶ s. 269ZDA(1)(a) of the Act

3 GOODS SUBJECT TO THE REVIEW

3.1 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 goods⁷.

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.

⁷ In terms of s.269T.

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),
- 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 reinvestigation 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.

In the course of the review, no parties provided any reason to suggest that the Australian industry does not produce aluminium extrusions that are like goods to the goods under review.

4 VARIABLE FACTORS

4.1 Finding

Insufficient information has been provided to enable an ascertained export price, normal value or subsidy margin to be established relevant to Alnan's exports in the review period. The Commission therefore considers that sufficient information has not been furnished to establish that the variable factors have changed and that the appropriate outcome in these circumstances is for the Commissioner to recommend that the dumping and countervailing duty notices remain unaltered.

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.

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 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.

On 20 February 2014, Alnan submitted further information in response to the deficiency notice issued by the Commission. This was after the Commission had advised Alnan on 19 February 2014 that it had decided not to consider further information.

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

4.3.1 Capral

During the review

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.

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 did not have regard to this submission in formulating the SEF as he considered to do so would prevent the timely preparation of the SEF on the public record⁸. In view of the recommended outcome of the review (ie no change to the dumping or countervailing duty notices) it is not necessary for the Commission to canvass these issues in the context of the present review.

In response to SEF 229 and the Commission's assessment

Capral welcomed the preliminary finding in SEF 229 that Alnan was considered to be uncooperative. However, it did not support the proposed recommendation that the dumping and countervailing duty notices remain unaltered.

Alnan is, under the current dumping and countervailing duty notices, subject to rates applying to residual exporters. In respect of a review of anti-dumping measures where sampling is undertaken, a residual exporter is defined as an exporter whose exports were not examined as part of the review and the exporter was not an uncooperative exporter in relation to the review.

While recognising that residual exporters should only exist in cases where sampling had occurred, Capral argued that it was clearly against the spirit of the legislation to allow an uncooperative exporter to continue to receive the benefit of duty rates applying to cooperative exporters.

The present review was the result of an application by the importer, Aluglass who claimed that the variable factors relevant to the taking of the measures had changed. The Commission considers that sufficient information has not been furnished to establish that the variable factors have changed. The Commission considers that an appropriate outcome in these circumstances is for the Commissioner to recommend that the dumping and countervailing duty notices remain unaltered.

4.3.2 Alnan

During the review

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

⁸ Pursuant to s269TDAA(3) of the Act

extension to the timeframe for the SEF should be sought to allow the Commission to consider Alnan's information.

In response to SEF 229 and the Commission's assessment

Alnan disagreed with the Commission's preliminary view that Alnan had been uncooperative in the course of the review. It claimed it had been cooperative and accommodating throughout the review.

Alnan requested that the Parliamentary Secretary consider either extending the review period sufficiently to allow Alnan and Aluglass to respond and forward all information as requested, or allow Alnan to now submit all documentation prepared since the Commission had advised Alnan on 19 February 2014 that it would no longer accept further information.

The Commission considers that Alnan was given adequate opportunity to provide complete information that would have allowed the Commission to assess whether or not the variable factors relevant to the anti-dumping measures had changed. The Commission acknowledges that some communication problems occurred during the course of the review. However, the Commission considers that these problems were properly factored into deadlines during the review.

The standard 37 day period for an exporter to provide a response to an exporter questionnaire was, in Alnan's case, extended to 55 days. The Commission allowed Alnan until day 97 of the review to rectify deficiencies with its questionnaire response, notwithstanding that the Commission was required by law to place an SEF on the public record on day 110 of the review.

Alnan points out that timeframes for anti-dumping reviews and investigations are often extended. However, such extensions are normally associated with complex cases often involving multiple exporters and countries. The Commission does not consider it appropriate to seek an extension to the legislative timeframes where a single exporter is unable to meet a deadline extended well beyond the standard timeframes.

4.4 Export price and normal value

The Commissioner considers that information in the exporter questionnaire response as it pertains to export price and normal value should be disregarded on the basis that it is not considered reliable⁹.

The Commissioner considers that there is insufficient information to establish that these variable factors have changed.

⁹ Pursuant to s269TAB(4) and s.269TAC(7) of the Act

4.5 Subsidy margin

4.5.1 Reinvestigation

Following the reinvestigation, 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.

- **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.

4.5.2 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 receiving.

Grants and Preferential Policy Programs

Alnan advised that it received a number of grants listed by the Commission in the exporter questionnaire together with a number of grants not considered in the reinvestigation. In the questionnaire response, Alnan 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 into English, much of the information had 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 finding in relation to export price set out section 4.4 above a contemporaneous subsidy margin for this program would not be able to be established in any case due to the denominator (export price) being historical.

4.5.3 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, and the inability to establish an export price for the review period, the Commissioner considers that the subsidy margin from the original investigation remains the most relevant information.

4.6 Non-injurious price

The Commissioner considers that, on the basis of the available information, it cannot be established that the export price, normal value or subsidy margin have changed. Accordingly, it was not considered necessary to establish a contemporaneous non-injurious price. The Commissioner recommends that the non-injurious price remain unchanged from the original investigation.

5 EFFECT OF THE REVIEW

The Commissioner recommends that the dumping duty notice and the countervailing duty notice applying to aluminium extrusions remain unaltered. This means that Alnan will remain subject to the residual exporter rates of duty which have the following effective rates of duty.

- Mill – 12.4%
- Anodised – 9.6%
- Powder coated – 6.4%
- Other – 0%

6 RECOMMENDATION

The Commissioner recommends that the Parliamentary Secretary considers this report, and if agreed, sign the attached public notice (**confidential attachment 1**) to **declare** under s. 269ZDB of the Act, that, for the purpose of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, the dumping duty notice and the countervailing notice applying to certain aluminium extrusions exported to Australia from China are to remain unaltered.



Australian Government
Anti-Dumping Commission

Customs Act 1901 – Part XVB

Certain aluminium extrusions

Exported from the People’s Republic of China

Findings in relation to a Review of Anti-Dumping Measures

Public Notice under subsection 269ZDB of the Customs Act 1901

The Commissioner of the Anti-Dumping Commission has completed the review, which commenced on 8 November 2013, of the anti-dumping measures applying to certain aluminium extrusions (“the goods”) exported to Australia from the People’s Republic of China by Alnan Aluminium Co., Ltd.

The recommendation resulting from that review, reasons for the recommendation and material findings of fact and law in relation to the review are contained in *Anti-Dumping Commission Report No. 229 (REP 229)*.

I, ROBERT CHARLES BALDWIN the Parliamentary Secretary to the Minister for Industry, have considered REP 229 and have decided to accept the recommendation and reasons for the recommendation, including all the material findings of facts or law set out in REP 229.

Under subsection 269ZDB(1) of the *Customs Act 1901* (the Act), I declare that, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, the dumping duty notice and countervailing duty notice are to remain unaltered.

REP 229 has been placed on the public record. The public record may be examined at the Anti-Dumping Commission office by contacting the case manager on the details provided below. Alternatively, the public record is available at www.adcommission.gov.au.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au) in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Enquiries about this notice may be directed to the case manager on telephone number (02) 6275 6544, fax number 1300 882 506 or +61 2 6275 6888 (outside Australia) or operations2@adcommission.gov.au.

Dated this day of 2014

ROBERT CHARLES BALDWIN
Parliamentary Secretary to the Minister for Industry