



## ISSUES PAPER 2014/02

# ANTI-CIRCUMVENTION INQUIRY CERTAIN ALUMINIUM EXTRUSIONS EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

## CASE 241

### PURPOSE

Issues papers generally are published by the Anti-Dumping Commission (the Commission) in order to afford interested parties the opportunity to comment on issues so that the Commission may consider those comments before publication of the statement of essential facts or final report (as appropriate) as a basis for recommendations to the Parliamentary Secretary to the Minister for Industry (Parliamentary Secretary). In the case of this inquiry, the *Customs Act 1901* (the Act) does not require the Commissioner to publish a statement of essential facts and will therefore be submitting a final report only.

The purpose of this paper is to outline the background and policy context of the anti-circumvention inquiry regarding certain aluminium extrusions exported from the People's Republic of China (China), and to communicate the Commission's proposed approach to conducting the inquiry.

In formulating its final report, the Commission will take into account interested parties' submissions provided in the course of the inquiry to date, and those made in response to this issues paper that are received no later than **3 October 2014**. Interested parties should attach relevant evidence to support the views expressed in their submissions. Non-confidential versions of each submission must be provided. Submissions should be sent:

by mail to: Director Operations 3  
Anti-Dumping Commission  
Customs House  
1010 LaTrobe Street  
DOCKLANDS VIC 3008

or by email to: [operations3@adcommission.gov.au](mailto:operations3@adcommission.gov.au)

or by fax to 03 9244 8902

## 1. BACKGROUND

In March 2014, Capral Limited (the applicant) lodged an application requesting the Commissioner conduct an anti-circumvention inquiry in relation to dumping and countervailing measures (the measures) imposed under a notice dated 28 October 2010 (the original notice). The measures apply to certain aluminium extrusions imported to Australia from China. In its application, the applicant asserted that it may be appropriate to alter the original notice because of alleged circumvention activity - in particular, importers avoiding the intended effect of duty imposed. Specifically, the applicant asserted that there are certain aluminium extrusions being sold at a loss in Australia. Following consideration of the application, the Commissioner published a notice on 14 April 2014 announcing the decision to initiate the inquiry (ADN 2014/31 refers).

For further information on the inquiry refer to [www.adcommission.gov.au/cases/ADC241.asp](http://www.adcommission.gov.au/cases/ADC241.asp).

## 2. INQUIRY PERIOD

The inquiry period for this anti-circumvention inquiry was originally set to be for the period of 1 January 2013 to 31 December 2013. However, it has become apparent to the Commission that imports of aluminium extrusions which arrived into Australia after 27 October 2013 are still open to a duty assessment.

Therefore, in this anti-circumvention inquiry for the purposes of the report to the Minister, greater focus will be given to the importations of certain aluminium extrusions during the period that is no longer subject to a duty assessment application from the importers, that is, from 1 January 2013 to 27 October 2013 as this is when the Commissioner can determine the total amount of duty payable in relation to the imported goods (except where the original notice is revoked or amended under any review of measures). As the total amount of duty payable forms part of the cost base of the circumvention goods subject to the relevant measures, this approach is necessary to ensure that the calculations relating to an importer's sale of goods accurately reflects the real cost to import and sell.

## 3. LEGISLATION

The applicant alleges that five importers are undertaking circumvention activity resulting in the avoidance of the intended effect of duty as described in subsection 269ZDBB(5A) of the Act. Subsection 269ZDBB(5A) provides:

*Circumvention activity, in relation to the notice, occurs if the following apply:*

- a) goods (the **circumvention goods**) are exported to Australia from a foreign country in respect of which the notice applies;
- b) the exporter is an exporter in respect of which the notice applies;
- c) either or both of sections 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods to Australia;
- d) the importer of the circumvention goods, whether directly or through an associate or associates, sells those goods in Australia without increasing the price commensurate with the total amount of duty payable on the circumvention goods under the Dumping Duty Act;

- e) *the circumstances covered by paragraphs (a) to (d) occur over a reasonable period.*

#### **4. SCOPE OF THIS INQUIRY**

An inquiry into the alleged avoidance of the intended effect of duty under Division 5A of the Act is aimed at investigating whether prices of imported goods subject to those measures have increased commensurate with the total amount of duty payable and, if not, why the price of the imported goods have not increased to a price that is commensurate with the total amount of duty payable.

In determining if circumvention activity as prescribed under subsection 269ZDBB(5A) has occurred, the Commission will give due consideration to the characteristics of the goods concerned, market conditions, the nature of the relationship between the importer and the exporter, the selling price of the goods, reasonable levels of profit and the total amount of duty payable under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act).

The Commission's view is that the prices of imported goods that are subject to dumping or countervailing measures should increase in the Australian market when measures have been imposed. This is because the additional duty paid by the importer is an additional cost borne by the importer and in the usual course of business, these costs would generally be passed on to the customer through increased domestic prices.

The scope of this inquiry, as it relates to certain aluminium extrusions exported to Australia from China, will firstly determine if the importer is selling the goods in Australia at prices not commensurate with a price that includes the total amount of duty payable on those goods. To determine this, the Commission will specifically consider whether the aluminium extrusions from China are sold at a loss, or whether or not an importer of aluminium extrusions from China is receiving some form of reimbursement or compensation from the exporter of the goods. The Commission may consider these matters to be an indicator that the importer is avoiding the intended effect of the measures. Further discussion of these types of circumvention activities is provided below at section 5 of this paper.

#### **Variable factors**

The Commission's policy is that an inquiry undertaken in relation to circumvention activity within the meaning of subsection 269ZDBB(5A) of the Act does not require the determination of a revised normal value. A revised normal value is more appropriately considered where an application for a review of anti-dumping measures is lodged with the Commission under section 269ZA of the Act.

#### **5. AVOIDANCE OF INTENDED EFFECT OF THE DUTY**

The Explanatory Memorandum to the Customs Amendment (Anti-dumping Measures) Bill 2013<sup>1</sup> provides examples of the types of circumvention activity that may occur under subsection 269ZDBB(5A). This may include the determination of sales at a loss, reimbursement or compensation from the exporter, or other activity of a similar nature. A brief explanation of types of circumvention activity is provided below:

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<sup>1</sup> Explanatory Memorandum to the Customs Amendment (Anti-dumping Measures) Bill 2013 <http://www.comlaw.gov.au/Details/C2013B00179/Explanatory%20Memorandum/Text>

***Sales at a loss***

In determining whether the imported goods, which are subject to measures, are being sold by an importer at a loss, the Commission will undertake a profitability analysis of those goods. The proposed methodology will consist of a comparison between the total sales revenue earned by the importer over the inquiry period with respect to the imported goods the subject of measures and the fully absorbed cost to import and sell those goods. If it is found that the total sales revenue does not cover the fully absorbed cost to import and sell the goods, the Commissioner may be satisfied that the goods are being sold at a loss and that circumvention activity is occurring.

***Reimbursement or compensation from the exporter***

When conducting an anti-circumvention inquiry, if the Commission finds that duty absorption is taking place through the reduction of profits and an importer is receiving reimbursement or compensation from the exporter, the Commission will undertake an assessment of the matters outlined in subsection 269TAA(1A) of the Act relating to arms length transactions. If the Commission concludes that the exporter is compensating or reimbursing the importer and the transaction is assessed to be not at arms length, then the Commissioner may be satisfied that circumvention activity is occurring.

***External factors, market conditions and cost reduction initiatives***

The Commission notes that the price of goods sold by an importer may be influenced by external factors, such as fluctuations in currency rates, changes in market conditions, such as base metal prices, or an importer's own actions, such as cost reductions. If the Commission finds in this inquiry that the price has been influenced in either of those ways and the inquiry has not identified goods sold at a loss or duty absorption facilitated by reimbursement or compensation from the exporter, the Commissioner may be satisfied that, under these circumstances, circumvention activity is not occurring.

**6. THE CURRENT ANTI-CIRCUMVENTION INQUIRY**

As discussed above, in this current anti-circumvention inquiry, the applicant has asserted that there are certain aluminium extrusions exported from China that are being sold at a loss in Australia and, as a result, prices have not increased commensurate with the total amount of duty payable.

To explain why it believes the above to be the case, the applicant has undertaken a price comparison between a calculated "target price" (the price the applicant contends should have been seen in the market following the imposition of measures) and actual and estimated prices offered in the market by the importers of the goods. The applicant alleges that the actual and estimated prices of the relevant goods in the market do not reflect that the duties payable on those imported goods which have been passed onto consumers, since those prices are less than the "target price".

**7. SALES OF GOODS AT A LOSS**

As previously stated in section 5, the sale of goods subject to measures which are sold at a loss can be an indicator of circumvention activity that is avoiding the intended effect of the duty. In this inquiry, the applicant alleges that that sale of the goods at a loss is why the price of the imported goods has not increased commensurate with the duties payable.

## PUBLIC RECORD

To test if the goods subject to measures are being sold at a loss for the purposes of this inquiry, the Commission will compare the total revenue earned from sales of the imported goods and the fully absorbed cost to import and sell the goods. It may be revealed through the verification activities that overall an importer's business is profitable, however the overall profitability of an importer's business is not a consideration for the current anti-circumvention inquiry. The basis of this comparison will be derived from the data contained in the importer questionnaire response provided to the Commission. It is expected that importers will provide adequate information and documentation to allow verification of the cost base and sales data for the goods which are subject to measures. In the absence of such documentation from an importer or if an importer has not provide a questionnaire response, the Commission will utilise other information that is considered relevant and reliable.

The fully absorbed cost to import and sell certain aluminium extrusions will generally include the following items:

- cost of the goods;
- overseas ocean freight and marine insurance;
- expenses associated with import clearance (for example, import duty, port charges, broker's fees, fumigation and quarantine charges, terminal handling, etc.);
- other direct expenses (for example, inland transport charges, repackaging expenses, warehousing, etc.);
- indirect selling, general and administration costs; and,
- total duties payable.

In the current inquiry, the Commission intends to establish the weighted average fully absorbed unit cost to import and sell by using the importer declarations of all the relevant shipments within the period of the inquiry in the Australian Customs and Border Protection Service import database, combined with any reliable data provided by cooperating importers in their questionnaire responses.

Similar to the approach used to establish the fully absorbed cost to import and sell the goods, the Commission has relied on importer's sales data to establish the total revenue earned from the sales of the goods subject to the measures.

The Commission acknowledges that it may be the case that the quantity of goods imported over the period does not correspond with the total quantity of goods sold. However, if this is the case, unless an importer can establish the exact cost of goods sold or facilitate an acceptable alternative method, the weighted average fully absorbed unit cost to import and sell the goods will be used.

To determine the total cost of goods sold in the inquiry period, a weighted average fully absorbed unit cost to import and sell the goods will be applied to the quantity of goods sold. The following example calculation illustrates a situation where imported goods have been sold at a loss:

### Step 1 – Determining the weighted average fully absorbed unit cost to import and sell

Fully absorbed cost to import and sell		\$200,000
Total quantity of goods imported		20,000kg
Weighted average (WA)	$\frac{\$200,000}{20,000/\text{kg}} = \$10/\text{kg}$	\$10/kg

Step 2 – Undertaking a profitability analysis

Sales Revenue		\$175,000
Total quantity of sales		20,000kg
Cost of Goods Sold	\$10/kg x 20,000kg (Apply WA from Step 1)	\$200,000
Profit (Loss)	Sales revenue <u>less</u> cost of goods sold	\$175,000 - \$200,000 = (\$25,000)

**8. REVISED DUMPING MARGIN METHODOLOGY**

If the Commissioner is satisfied that the current anti-circumvention inquiry in relation to certain aluminium extrusions establishes circumvention activity is occurring, the Commission proposes to calculate what the export price of the goods would have been if the importers' selling prices had passed on the duty. This methodology relies on the assumption that an importer's selling price would pass on all costs, including the total amount of duty payable, and had achieved a reasonable level of profit. Applying this methodology, the resulting export price should account for amount of duty payable which is not being passed on to customers. For the purpose of this Issues Paper, the calculated export price if the dumping duty was passed on through the importers' selling prices is referred to as the non-circumvention export price (NC export price).

In the current inquiry, calculating a NC export price relies on the assessment that the arms length test in subsection 269TAA(1A) of the Act is not satisfied or goods were sold at a loss in accordance with subsection 269TAA(2). In both cases, the purchase of the imported goods will not be treated as an arms length transaction. The NC export price will therefore be calculated using the existing provisions in subsection 269TAB(1)(b), which allows the Commission to determine a deductive export price.

For the anti-circumvention inquiry into certain aluminium extrusions, the NC export price shall be calculated by using the importer's weighted average unit selling price and deducting the weighted average sum of the import costs, applicable duties, selling, general and administrative costs (SG&A) and a reasonable profit margin. This approach is consistent with subsection 269TAB(2) of the Act, which sets out the prescribed deductions which can be made in relation to a sales of goods that have been exported to Australia. The remainder of the selling price less the sum of all other costs, duties payable and profit margin is the NC export price. An allowance for reimbursements or compensatory payments will be included in the calculation where applicable. The example below illustrates the calculation:

**NC export price** = The importer's weighted average selling price less the weighted average sum of importation costs, SG&A, applicable duties and a reasonable profit margin

The intended outcome of this approach is to establish a new export price for the purpose of calculating a revised dumping margin. If imported goods are being sold at a loss or it is found that an exporter is compensating an importer, it is likely that the NC export price will fall below the existing export price determined for the original notice.



## **9. IMPLEMENTATION OF MEASURES**

Pursuant to subsection 269ZDBG(1), after conducting an anti-circumvention inquiry, the Commissioner must give the Minister a report recommending:

1. the original notice remain unaltered; or
2. the following:
  - a. the original notice be altered because the Commissioner is satisfied that circumvention activities in relation to the original notice have occurred;
  - b. the alterations to be made to the original notice.

Subsection 269ZDBH(2) of the Act outlines the alterations that may be made to the original notice by the Minister. These are:

- the specification of different goods that are to be the subject of the original notice;
- the specification of different foreign countries that are to be the subject of the original notice;
- the specification of different exporters that are to be the subject of the original notice;
- the specification of different variable factors in respect of existing exporters subject of the original notice; and/or
- the specification of variable factors in relation to exporters that are to be the subject of the original notice.

In providing recommendations to the Minister in relation to whether a specification of different variable factors is an appropriate alteration to address the avoidance of the intended effect of the anti-dumping measures, the Commissioner may propose, in the current inquiry, specifying a new export price to determine a new dumping margin which will result in a higher level of duty being payable. The Commission's proposed method is to determine a new export price which, as outlined in section 8, is referred to as the NC export price.

A new export price (NC export price) may be calculated using the deductive export price method described in section 8 or by another method that the Commission has determined to be appropriate with respect to the particular circumstances of the inquiry. The difference between the new export price and the normal value, as determined for the original notice, will be reflected in a revised dumping duty rate.

The Commission notes the original notice issued under section 8 of the Dumping Duty Act refers to dumping and countervailing duties applied to exporters and does not make reference to specific importers (which is the Commission's usual practice). The Commission proposes that for the purposes of this anti-circumvention inquiry the Minister may consider amending the dumping and/or countervailing notice to increase the dumping duty payable for imports exported by certain specified exporters by certain specified importers. A new export price (NC price), which will be calculated for each importer that is found to be engaging in circumvention activity, will determine the increase in the dumping duty rate. This targeted approach is intended to ensure that the circumvention activity is appropriately addressed and at the same time those importers who have not been found to be engaging in circumvention activity are not adversely impacted.