

RESPONSE TO APPLICATION FOR EXEMPTION FROM DUTY UNDER THE *CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975*

1 Introduction

The Anti-Dumping Commission (the Commission) requests your response to an application for exemption from anti-dumping and countervailing measures under the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act).

Sections 8(7)(a) and (e) and 10(8)(a) and (d) of the Dumping Duty Act allow the Minister to exercise discretion to exempt goods from duty under certain conditions.

The Commission has received an application for exemption from dumping duty in respect of certain aluminium extrusions (the goods), which are described at section 5 of this form.

You have been identified as an Australian producer of the goods.

The Commission seeks your assistance in this exemption inquiry by responding to the questions in this form. The Commission will use the information you provide in its assessment as to whether an exemption from dumping duties may be recommended to the Parliamentary Secretary to the Minister for Industry and Science (Parliamentary Secretary).

2 Current aluminium extrusion measures

Anti-dumping measures, in the form of dumping and countervailing duties, were initially imposed on aluminium extrusions by public notice on 28 October 2010 by the Minister following consideration of the *International Trade Remedies Branch Report No.148* (REP 148). These measures are as follows:

- dumping duties in respect of aluminium extrusions exported by all exporters from China (other than Tai Ao Aluminium Tai Shan Co Ltd); and
- countervailing duties in respect of aluminium extrusions by all exporters from China (other than Tai Ao Aluminium Tai Shan Co Ltd).

Following a review by the Trade Measures Review Officer, the Australian Customs and Border Protection Service (ACBPS) conducted a reinvestigation into certain findings made in *REP 148*. The results of that reinvestigation, including the findings affirmed and new findings, are set out in *International Trade Remedies Report to the Minister No. 175*. To give effect to the reinvestigation, the Attorney-General published a new notice under section 269ZZM of the *Customs Act 1901* (the Act). This notice, effective from 27 August 2011, replaced the dumping and countervailing duty notices published on 28 October 2010.

The effect of the notice of 27 August 2011 was that the level of the measures changed and the dumping duty notice no longer applied to Zhaoqing New Zhongya Aluminium Co Ltd.

Several parties sought judicial review¹ in the Federal Court of various decisions made by the Attorney-General in respect of the aluminium extrusion investigation. As a result of the Federal Court's decision in that matter, the notice of 27 August 2011, does not apply to Tai Shan City Kam Kiu Aluminum Extrusion Co., Ltd and PanAsia Aluminium (China) Limited (refer ADN 2013/80).

The Anti-Dumping Commission is currently conducting a review of the anti-dumping measures on aluminium extrusions exported from China (EPR 248) as they relate to all exporters of the goods from China. The final report is due to be provided to the Parliamentary Secretary on 13 July 2015.

3 Application for Exemption from Measures

An application for exemption has been made to the Parliamentary Secretary by SRB Systems Pty Ltd (SRB). The grounds for the application are as follows:

- The specific goods are not offered for sale in Australia; and
- The specific goods are for sample and display purposes only.

This exemption inquiry is being conducted in relation to both grounds.

The applicant alleges that:

- the aluminium extrusions are not standard sections available on the market, but a novel design unique to SRB which it has patented;
- SRB does not sell its products in Australia;
- the aluminium extrusions are listed in the company's *Distributor Kit* which indicates that all samples are cut to 575mm lengths whereas the patented design aluminium sideforms are 5.8 metres in length. SRB claims that 575mm lengths cannot be used in production.

4 Exemption Provisions

Under the Dumping Duty Act, the Minister may, by notice in writing, exempt goods from interim dumping and countervailing duties and dumping and countervailing duties if he or she is satisfied:

- that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade (section 8(7)(a) and section 10(8)(a));
- that the goods, being articles of merchandise, are for use as samples for the sale of similar goods (section 8(7)(e) and section 10(8)(d).

It is noted at the outset that these exemption provisions are subject to the discretion of the Minister and are not automatically granted where the criteria set out in the provision appear to be met.

¹ Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth [2013] FCA 870.

5 The goods subject to the exemption application

The goods the subject of the exemption inquiry (the exemption goods) are described by the applicant as:

- *Spartan Sideform* Extrusions; and
- *Spartan Sideform* Extensions (an extruded aluminium accessory that can be used with *Spartan Sideform* Extrusions)

The exemption goods are classified to the tariff subheading 7610.90.00 (statistical code 13) of Schedule 3 to the *Customs Tariff Act 1995*. These goods are subject to 5 per cent duty.

6 Instructions on Completing this 'Response to the Exemption Application'

The Commission has forwarded you this *Response to Exemption* application (the response) to provide you with the opportunity to participate in this exemption inquiry.

Due date for response

We request a completed response be returned to the Commission by COB **9 July 2015**.

Responses may be lodged either by mail to the following.

The Director
Operations 4
Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001

Or by email to operations4@adcommission.gov.au, or by fax to 03 8539 2499 or +61 3 8539 2499 (outside Australia).

Verification of the information that you supply

The Commission may seek to verify some or all of the information supplied in the response. The Commission may request evidence to support the claims such as quotations and offers of sale. An onsite visit by the Commission may be required. A report will be prepared of visits conducted and a non-confidential version will be made available to the applicant for comment.

There is no legislative timeframe for completion of an exemption inquiry. However, a recommendation to the Parliamentary Secretary will be made as soon as practicable after obtaining all the relevant information.

Outline of information required by Response

Part A	Company contact information
Part B	Identical goods
Part C	Like or directly competitive goods

For Public Record

Part D	Capability to produce like or directly competitive goods
Part E	Additional comments
Part F	Your declaration

Response to Exemption Application

PART A - Company Information

A.1 Please provide the following company contact information;

Name:	Tyrone D'Souza
Position in company:	Finance Manager
Address:	33-39 Licola Cres Dandenong South VIC 3175
Telephone:	03 97680000
Facsimile number:	03 97682748
E-mail address of contact person:	tyrone.dsouza@inexaus.com.au

PART B – Response to Exemption Application

B.1

Does your company oppose or not consent to the request for an exemption?

Yes, INEX Australia vigorously opposes the request for an exemption.

NOTE: If your company does not oppose the request for an exemption, you do not need to complete the questionnaire. Please indicate that you do not oppose the request, sign and return the form as soon as possible.

B.2

If your company opposes or does not consent to the request wholly or in part, provide a description of that part of the request to which your company opposes or does not consent.

INEX Australia opposes the request in its entirety.

PART C - Identical Goods

C.1

Does your company produce, in Australia, goods that are identical in all respects to the goods described in section 5 of this *Response to Exemption Form*?

If No, go to Part D - Like or directly competitive goods.

C.2

Please provide evidence that you have produced and sold in Australia, in the last 12 months, goods that are identical in all respects to the goods subject to this application for exemption.

Evidence can be in the form of production reports and sales invoices. To the extent that production reports or sales invoices do not refer to the goods in the same detail as set out in the description of the goods (section 5), please provide additional information that indicates that identical goods have been produced or sold. The evidence should be attached to this form to ensure that it can be linked to this specific response. Please also include any available product literature respecting the identical goods you have produced and sold.

C.3

Provide evidence of the terms and conditions of sale of these identical goods. Are these products available to all purchasers on equal terms under like conditions? If so, provide evidence and explain why you consider that these products are available to all purchasers on equal terms under like conditions.

Evidence can be in the form of sales invoices, sales contracts, sales reports or advertisements and brochures.

PART D - Like or Directly Competitive Goods

D.1

If your company does not produce identical goods, does it produce and sell in Australia goods that are like or directly competitive to the goods subject to this application for exemption?

In determining whether the goods are like or directly competitive, the Commission will consider whether the goods have characteristics closely resembling each other and are substitutable.

The Commission may also consider;

- Whether physical characteristics of the goods are similar (including size, weight, shape, content, appearance and grade);
- Whether the goods are commercially alike, this may include consideration of the following;
 - whether the goods directly compete in the same market sector;
 - the extent to which participants in the supply chain are willing to switch between the goods and the goods subject to the application for exemption;
 - how the price of the goods and goods subject to the application influences consumption;
 - whether the goods share similar distribution channels; and
 - whether the goods are similarly packaged.
- Functional likeness – whether the goods are suitable with regard to end use, this may include an assessment of;
 - the extent to which the goods are functionally substitutable;
 - the extent to which the goods are used for the same or similar function;

- whether the goods have the same or similar quality standards; and
 - consumer behavior in relation to the goods and goods subject to this application for exemption.
- Production likeness, this may include an assessment of;
 - the extent to which the goods are manufactured from the same products;
 - the manufacturing process of the goods; and
 - whether any patented processes or inputs are involved in the production of the goods.

D.2

If you answered Yes to question D.1, please provide a description of the goods produced by your company that you consider to be like or directly competitive to the goods subject to this application. Your description of the goods your company produces should refer to all aspects of the goods as set out in the description of the goods in section 5.

Characteristics	Description
Similarity in – Production Processes	The Goods described in Section 5 and
Manufacturing Inputs	examining SRB/Reid website descriptions
Functional Substitutability	confirm that INEX Australia like extrusion
(for like extrusions manufactured)	bear close resemblance to the imported
Quality Standards	product and compete in the domestic
	Australian market.

Please provide evidence that the goods you consider like or directly competitive to the goods subject to this application for exemption have recently been produced or sold in Australia by your company. Evidence can be in the form of production reports and sales invoices. To the extent that production reports or sales invoices do not refer to the goods described in the above table, please provide additional information that indicates that the goods have been produced or sold. The evidence should be attached to this form to ensure that it can be linked to this specific response. Please also include any available product literature concerning the like or directly competitive goods you produced and sold.

The question with regard to like/competitive goods was addressed in the original investigation. The factors listed above were considered at the time and Australian aluminium extrusions produced domestically (including by INEX Australia as one of the major producers) were found to be like goods to aluminium extrusions exported from China. In making this finding Customs and Border Protection noted, in relation to physical likeness, the extrusions produced in Australia “are available in thousands of shapes or profiles (new or proprietary shapes can also be produced by creating new dies)”. Customs and Border Protection further noted consideration of factors listed above “lead to the conclusion that the Australian produced products while not identical have characteristics closely resembling the imported goods. These findings are not premised on a comparison of individual imported and domestically produced models, but rather represent a global consideration.”²

² See REP 148 at section 3.6 for the full assessment

An assessment of like goods does not require an examination of individual profiles (of which there are thousands), a fact acknowledged by Customs and Border Protection.

In conclusion, we (and other Australian Extruders) can extrude these extrusions if requested. However we believe these sections to be intellectual property of an existing Australian Business and would not copy them without permission. Hence we have no sales as such, but have the technology and equipment to produce the sections if required.

D.3

Provide evidence of the terms and conditions of sale of these like or directly competitive products. Are these products available to all purchasers on equal terms under like conditions? If so, provide evidence and explain why you consider that these products are available to all purchasers on equal terms under like conditions.

Evidence can be in the form of sales invoices, sales contracts, sales reports or advertisements and brochures.

A Confidential Attachment A is attached which shows like goods invoiced. INEX Australia further confirms that like products would be available to all purchases on equal terms under like conditions.

PART E – Capability to Produce Identical or Like or Directly Products

E.1

If your company has not produced and sold in Australia products that are identical to, or like or directly competitive to the goods subject to this application for exemption, is your company capable of producing such goods?

E.2

If you answered Yes to question E.1, indicate whether the product that you can produce is identical to, or like or directly competitive to the goods subject to this application for exemption.

E.3

If you are capable of producing identical, like or directly competitive goods, explain why you have not produced such goods.

Provide evidence of your production capability, including evidence of the production and sale of similar products, certification of the identical, like or directly competitive goods and at what cost they could be produced, as well as any plans for the imminent production of the goods or orders for the goods and any relevant information.

E.4

If you are capable of producing identical, like or directly competitive goods, provide reasonable evidence of likely terms and conditions of sale for these goods.

PART F – Additional Comments

F.1

Provide any additional comments including any other information that will assist the Commission in reaching a recommendation to the Parliamentary Secretary regarding this application for exemption.

In our opinion the goods described in Section 5 are entirely within our capability of being produced at our plants in Australia. We understand that some sections were produced by another Australian Producer and are now sought to be imported.

PART G - Declaration

I hereby declare that **INEX AUSTRALIA** has completed the attached response to application for exemption and, having made due inquiry, certify that the information contained in this submission is complete and correct to the best of my knowledge and belief.

Name : TYRONE D'SOUZA

Signature : 

Position in Company: FINANCE MANAGER

Date : 9th July 2015