



Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NO. 490**

**Consideration of an application for
a revocation review
in relation to the anti-dumping measures applying to**

**aluminium extrusions
exported to Australia from
Malaysia by**

Alumac Industries Sdn Bhd

16 August 2018

TABLE OF CONTENTS

1	<i>SUMMARY AND RECOMMENDATION</i>	4
1.1	Background	4
1.2	Legislative background	4
1.3	Findings and conclusions	4
1.4	Recommendation	4
2	<i>BACKGROUND</i>	5
2.1	History of the existing anti-dumping measures	5
2.2	Current anti-dumping measures	6
2.3	The current application	7
2.4	The goods subject to the anti-dumping measures	8
2.5	Tariff classification.....	9
3	<i>CONSIDERATION OF THE APPLICATION</i>	10
3.1	Legislative background	10
3.2	Assessment of the application - compliance with section 269ZB.....	10
3.3	Grounds for revocation	11
3.3.1	Dumping duty notice.....	11
3.3.2	Countervailing duty notice	12
3.4	Assessment of the application – section 269ZC	13
3.5	Conclusions and recommendations.....	13
4	<i>ATTACHMENTS</i>	15

PUBLIC RECORD

ABBREVIATIONS

Abbreviation	Full title
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
Alumac	Alumac Industries Sdn Bhd
the Act	the <i>Customs Act 1901</i>
Assistant Minister	Assistant Minister for Science, Jobs and Innovation
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the goods	aluminium extrusions
the then Parliamentary Secretary	the then Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 362	<i>Anti-Dumping Commission Report No. 362</i>
investigation period (existing measures)	1 July 2015 to 30 June 2016

1 SUMMARY AND RECOMMENDATION

1.1 Background

This report provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by Alumac Industries Sdn Bhd (Alumac or 'the applicant'). Alumac's application requests a revocation review of the anti-dumping measures (in the form of a dumping duty notice and a countervailing duty notice) relative to its exports of aluminium extrusions (the goods) to Australia from Malaysia because the anti-dumping measures are no longer warranted.¹

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)² sets out, among other things, the procedures to be followed by the Commissioner of the Anti-Dumping Commission (the Commissioner) in assessing applications for a revocation review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject such applications. If the Commissioner does not reject an application, he is required to publish a notice indicating that he is proposing to review the anti-dumping measures covered by the application.

1.3 Findings and conclusions

The Commission is satisfied that, in relation to Alumac's application for a revocation review:

- with respect to the countervailing duty notice;
 - the application complies with subsections 269ZB(1) and (2); and
 - there appears to be reasonable grounds for asserting that the anti-dumping measures are no longer warranted.
- with respect to the dumping duty notice;
 - the application complies with subsections 269ZB(1) and (2); however
 - there **does not** appear to be reasonable grounds for asserting that the anti-dumping measures are no longer warranted.

1.4 Recommendation

The Commission recommends that the Commissioner not reject the application, in part, requesting, in relation to Alumac, a revocation of the anti-dumping measures relevant to the countervailing duty notice, for the reasons outlined at chapter 3 of this report.

¹ Subsection 269ZA(1)(b)(ii).

² All references are to the *Customs Act 1901*, unless otherwise stated.

2 BACKGROUND

2.1 History of the existing anti-dumping measures

Anti-dumping measures currently apply to aluminium extrusions exported to Australia from the People’s Republic of China (China),³ Malaysia⁴ and Vietnam.⁵

A history of the main cases relating to aluminium extrusions exported to Australia are summarised below in Table 5. Further information is also available on the Commission’s electronic public record.

Previous investigations	
2009-2011	<p>The then Australian Customs and Border Protection Service initiated an investigation (Investigation 148) in relation to aluminium extrusions exported to Australia from China, following an application from Capral. Following the investigation, the then Attorney-General published a dumping duty notice and a countervailing duty notice (<i>Trade Remedies Branch Report No. 148</i> (REP 148) refers).</p> <p>Following a review by the former Trade Measures Review Officer, the then Attorney-General amended the dumping duty notice and countervailing duty notice as a result of a reinvestigation of certain findings made in REP 148. <i>International Trade Remedies Report No. 175</i> refers.</p>
2015	<p>The Commissioner initiated an all exporter review (Review No. 248) of aluminium extrusions exported to Australia from China following an application from PanAsia Aluminium (China) Co., Ltd (PanAsia). Following Review 248, the then Parliamentary Secretary to the Minister for Industry and Science published a notice declaring that she had altered the dumping duty notice and countervailing duty notice as if different variable factors had been ascertained for exporters generally (Report No. 248 (REP 248) refers).</p> <p>The Commission conducted a continuation inquiry (Report No. 287 refers), following an application by Capral. The then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science continued the measures for a further five years, until 28 October 2020.</p>

³ The anti-dumping measures in respect of China (in the form of a dumping duty notice and a countervailing duty notice), apply to all exporters with the exception of Jiangsheng Aluminium, and noting that Zhongya Aluminium is subject to the countervailing duty notice only.

⁴ In the form of a dumping duty notice and a countervailing duty notice for all exporters except Press Metal Berhad, LB Aluminium Berhad, Superb Aluminium Industries Sdn Bhd, Kamco Aluminium Sdn Bhd, Milleon Extruder Sdn Bhd and Genesis Aluminium Industries Sdn Bhd.

⁵ In the form of a dumping duty notice for all exporters.

PUBLIC RECORD

2016	<p>The Commissioner initiated an investigation (Investigation No. 362), following an application from Capral, into the alleged dumping and subsidisation of aluminium extrusions exported to Australia from Malaysia and Vietnam.</p> <p>On 27 June 2017, the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science published a dumping notice in respect of the goods exported from Malaysia and Vietnam and a countervailing notice in respect of Malaysia. Certain aspects of this decision are currently subject to review by the Anti-Dumping Review Panel (ADRP).⁶</p>
2017	<p>The Commissioner initiated an all exporter review (Review No. 392) in relation to aluminium extrusions from China following applications from four Chinese exporters. Review 392 examined the review period 1 January 2016 to 31 December 2016 to determine whether the variable factors relevant to the taking of the existing anti-dumping measures in relation to China should be changed. The Commissioner provided his <i>Final Report No. 392</i> (REP 392) to the then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary) on 9 October 2017. At the time of publishing this report, the Parliamentary Secretary is considering REP 392.</p> <p>The Commissioner initiated an investigation (Investigation No. 442), following an application from Capral, into the alleged dumping of aluminium extrusions exported to Australia from China by two exporters, Guangdong Jiangsheng Aluminium Co., Ltd and Guangdong Zhongya Aluminium Company Limited, and the Kingdom of Thailand. The Commissioner terminated this investigation on 24 July 2018.</p>
2018	<p>The Commissioner initiated an all exporter review (Review No. 482) in relation to aluminium extrusions from China following a request by the Assistant Minister for Science, Jobs and Innovation to the Minister for Jobs and Innovation (the Assistant Minister)⁷. Review 482 will examine the period 1 July 2017 to 30 June 2018 to determine whether the variable factors relevant to the taking of the existing anti-dumping measures in relation to China should be changed. A statement of essential facts (SEF) is to be placed on the public record by 30 October 2018, or by such later date as allowed in accordance with section 269ZHI.</p>

Table 1 – History of anti-dumping measures

2.2 Current anti-dumping measures

The current anti-dumping measures relating to aluminium extrusions from Malaysia, applying to Alumac, were implemented following the outcome of Investigation 362. Investigation 362 examined the period of 1 July 2015 to 30 June 2016 (the investigation period) to determine whether dumping had occurred. Alumac was sent an Exporter Questionnaire (EQ) to complete in regards to this investigation.

⁶ ADRP Review No. 61 available at www.adreviewpanel.gov.au refers.

⁷ On 20 December 2017, the Prime Minister appointed the Parliamentary Secretary to the Minister for Jobs and Innovation as the Assistant Minister for Science, Jobs and Innovation. For the purposes of this request the Minister is the Assistant Minister

Alumac provided the Commission with a response to the EQ, however the response was not received by the Commission by the relevant legislated date. The Commissioner notified Alumac of his decision not to have regard to Alumac's response and, by operation of subsections 8(a) and 9(a) of the *Customs (Extensions of Time and Non-cooperation) Direction 2015*, to treat it as an uncooperative exporter pursuant to subsection 269T(1) and a non-cooperative entity pursuant to section 269TAACA.⁸

As a result of this investigation, exports of aluminium extrusions from Malaysia to Australia by Alumac are subject to an effective rate of 16.2 per cent, being an interim dumping duty of 13.0 per cent and an interim countervailing duty of 3.2 per cent.

2.3 The current application

On 27 July 2018, the Commission received an application from Alumac for a revocation review of the anti-dumping measures applying to aluminium extrusions exported to Australia from Malaysia insofar as they relate to Alumac.

This applicant claims that the measures are no longer warranted as Alumac is not dumping the goods and not receiving any countervailable subsidies, and that it is not likely that dumping or subsidisation will recur if the measures were revoked.

The application is not prevented by subsection 269ZA(2), which requires that an application for review of anti-dumping measures must not be made earlier than 12 months after the publication of a dumping duty notice, or countervailing duty notice, declaring the outcome of the investigation.⁹

Pursuant to subsection 269ZC(1), the Commissioner must examine the application and, within 20 days after receiving it, decide whether to reject the application.

As such, the decision to reject the application must be made no later than 16 August 2018.

If the Commission is not satisfied, having regard to an application and to any other information that he considers relevant, of one or more of the matters referred to in subsection 269ZC(2), the Commissioner must reject the application.

⁸ Refer to Final Report REP362.

⁹ ADN No. 2017/72 and ADN No. 2017/73 were published on 27 June 2017.

2.4 The goods subject to the anti-dumping measures

The goods the subject of this application are:

“Aluminium extrusions that:

- *are produced by an extrusion process;*
- *are 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);*
- *have finishes being:*
 - *as extruded (mill);*
 - *mechanically worked*
 - *anodized; or*
 - *painted or otherwise coated, whether or not worked;*
- *have a wall thickness or diameter greater than 0.5 mm;*
- *have a maximum weight per metre of 27 kilograms; and*
- *have a profile or cross-section fitting within a circle having a diameter of 421 mm”.*

Table 2 below provides examples of the coverage of the goods and like goods (and intended end-use applications) and is being used for this investigation. Examples of the goods and like goods are outlined in columns 1-4 and non-subject goods are outlined in columns 5 to 7.

< GUC >				< Non GUC >		
1	2	3	4	5	6	7
Aluminium extrusions	Aluminium extrusions with minor working	Aluminium extrusions that are parts intended for use in intermediate or finished products	Aluminium extrusions that are themselves finished products	Unassembled products containing aluminium extrusions, e.g. 'kits' that at time of import comprise all necessary parts to assemble finished goods	Intermediate or partly assembled products containing aluminium extrusions	Fully assembled finished products containing aluminium extrusions
< Examples >						
Mill finish, painted, powder coated, anodised, or otherwise coated aluminium extrusions	Precision cut, machined, punched or drilled aluminium extrusions	Aluminium extrusions designed for use in a door or window	Carpet liner, fence posts, heat sinks	Shower frame kits, window kits, unassembled unitised curtain walls	Unglazed window or door frames	Windows, doors

Table 2 - The goods and like goods

2.5 Tariff classification

The goods are classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

Tariff code	Statistical code	Unit	Description
7604.10.00	06	Kg	Non alloyed aluminium bars, rods and profiles
7604.21.00	07	Kg	Aluminium alloy hollow angles and other shapes
7604.21.00	08	Kg	Aluminium alloy hollow profiles
7604.29.00	09	Kg	Aluminium alloy non hollow angles and other shapes
7604.29.00	10	Kg	Aluminium alloy non hollow profiles
7608.10.00	09	Kg	Non alloyed aluminium tubes and pipes
7608.20.00	10	Kg	Aluminium alloy tubes and pipes
7610.10.00	12	Kg	Doors, windows and their frames and thresholds for doors
7610.90.00	13	Kg	Other

Table 3 - Tariff classifications of the goods

3 CONSIDERATION OF THE APPLICATION

3.1 Legislative background

Subsection 269ZB(1) requires that an application be in writing, be in a form approved by the Commissioner for the purposes of this section, contain such information as the form requires, be signed in the manner indicated by the form and be lodged in a manner approved under section 269SMS.

Without otherwise limiting the matters that can be required by the form, subsection 269ZB(2) provides that an application must include:

- a description of the kind of goods to which the anti-dumping measures the subject of the application relate; and
- a description of the anti-dumping measures the subject of the application; and
- if the application is based on a change in variable factors, a statement of the opinion of the applicant concerning:
 - the variable factors relevant to the taking of the anti-dumping measures that have changed; and
 - the amount by which each such factor has changed; and
 - the information that establishes that amount;
- if the application is based on circumstances that in the applicant's view indicate that anti-dumping measures are no longer warranted, evidence (in accordance with the form) of the circumstances.

Subsection 269ZC(2) specifies the matters which must be considered in making a decision whether to reject an application. These matters are:

- that the application complies with section 269ZB; and
- that there appear to be reasonable grounds for asserting either, or both, of the following:
 - that the variable factors relevant to the taking of anti-dumping measures have changed;
 - that the anti-dumping measures are no longer warranted.

3.2 Assessment of the application - compliance with section 269ZB

When considering the requirements of subsections 269ZB(1) and (2), the Commission notes that the application submitted:

- is in writing;
- is in the approved form (*Form B602 – Application for a review of measures*) and contains such information as the form requires. This includes evidence in support of the view that there are reasonable grounds for asserting that the measures are no longer warranted because dumping is not occurring and is unlikely to recur;
- is signed in the manner required by the form;

PUBLIC RECORD

- was lodged in a manner approved under section 269SMS, being by email to the Commission's nominated email address (as nominated in the Commissioner's instrument made under section 269SMS);
- provides a description of the kind of goods to which the anti-dumping measures the subject of the application relates;
- provides a description of the anti-dumping measures the subject of the application; and
- includes a statement of the opinion of the applicant concerning the circumstances that in the applicant's view indicate that the anti-dumping measures are no longer warranted.

As a result of the above, the Commission considers that the applicant has satisfied the requirements of subsections 269ZB(1) and (2).

3.3 Grounds for revocation

3.3.1 Dumping duty notice

Alumac submits that the current anti-dumping measures applying to its exports are no longer warranted as the evidence available supports the view that it does not export at dumped prices and does not receive countervailable subsidies.

In its application, Alumac notes that the uncooperative and all exporter rate was relevant to the measures applied on the goods it exports to Australia from Malaysia on the basis that information was provided to the Commission late and was considered deficient during Investigation 362.

The outcome of this investigation therefore, meant that the ascertained export price had been determined pursuant to subsection 269TAC(3), after having regard to all relevant information. Specifically, the Commission used the lowest export prices of those that were established for cooperating exporters in the investigation period.

The Commission determined normal value for the uncooperative exporters pursuant to subsection 269TAC(6), after having regard to all relevant information. Specifically, the Commission used the highest normal values of those that were established for the cooperating exporters in the investigation period.

The dumping margin calculated for uncooperative and all other exporters from Malaysia in Investigation 362 is 13.0 per cent.

Alumac seeks a revocation review on the grounds that it does not export aluminium extrusions to Australia at dumped prices. Alumac has provided the following points as evidence:

- The aluminium extrusions supplied are customised to each customer's specifications. The process is extensive and Alumac is able to charge a higher margin for this and therefore has no incentive to export at dumped prices.
- Alumac export only 1.38 per cent of their turnover to Australia and therefore have no motive to export at dumped prices.

PUBLIC RECORD

- The average export price that Alumac exports aluminium extrusions to Australia is higher than its average domestic gross invoice price.
- The average export price of aluminium extrusions exported to Australia is lower than the goods exported to third countries because of differences in the finishes exported to these countries.

Alumac has provided information on export sales, domestic sales, third country sales and costs to make and sell, as evidence that demonstrates that it has not exported aluminium extrusions to Australia at dumped prices.

A statement has also been provided by Alumac to say that it has 'no interest in operating its export business with a loss' and ensures that it will price to cover costs and profit.

The Commission's assessment

The Commission has assessed the claims brought forward by Alumac.

Based on the information provided by Alumac, the Commission considers that there appears to be evidence that Alumac may be exporting aluminium extrusions at dumped prices and therefore do not consider there are reasonable grounds for Alumac to assert that dumping is not occurring, nor that dumping is unlikely to recur and that the anti-dumping measures applying to Alumac's exports are no longer warranted.

Therefore, the Commission is not satisfied that, in respect of the evidence to support the applicant's view that the anti-dumping measures are no longer warranted, Alumac's application complies with section 269ZB.

3.3.2 Countervailing duty notice

During the investigation period of the original investigation the Commission identified six programs that were countervailable subsidies in relation to Malaysian exporters. The Commission had regard to the available relevant facts and determined that exporters in the non-cooperative entity category from Malaysia had received the highest level of subsidisation of the selected cooperating exporters.

The Commission calculated a subsidy margin for exporters in the non-cooperative entity category from Malaysia of 3.2 per cent.

Alumac has asserted that it is not eligible for any government subsidies or tax incentives with respect to the export of aluminium extrusions, providing a letter to this effect from its tax agent and a copy of its tax computation assessment for the financial year 1 July 2016 to 30 June 2017.

The Commission's assessment

The Commission has assessed the evidence provided and note that Alumac has indicated that it did not receive countervailable subsidies relevant to the export of aluminium extrusions during the period 1 July 2016 to 30 June 2017. The

PUBLIC RECORD

Commission did not readily identify any countervailable programs on the exporter's tax computation report and therefore considers that is likely that Alumac did not receive countervailable subsidies in the period, as stated.

The Commission considers that there appears to be reasonable grounds for Alumac to assert that they are not receiving countervailable subsidies and are unlikely to receive countervailing subsidies as Alumac has stated it is not eligible.

3.4 Assessment of the application – section 269ZC

Based on the Commission's analysis in section 3.3.1, with respect to the dumping duty notice, there does not appear to be reasonable grounds in respect of the application for asserting, under subsection 269ZC(2)(b)(ii), that the anti-dumping measures are no longer warranted.

Based on the Commission's analysis in section 3.3.2, with respect to the countervailing duty notice, there appears to be reasonable grounds in respect of the application for asserting, under subsection 269ZC(2)(b)(ii), that the anti-dumping measures are no longer warranted.

Therefore, the Commission recommends that the Commissioner reject the application in respect of the revocation review of the dumping duty notice only, pursuant to subsection 269ZC(1), as it is not satisfied of the matters referred to in subsection 269ZC(2).

The Commission recommends that the Commissioner not reject the application in respect of the revocation review of the countervailing duty notice, pursuant to subsection 269ZC(1), as it is satisfied of the matters referred to in subsection 269ZC(2).

3.5 Conclusions and recommendations

The Commission has considered Alumac's application in accordance with sections 269ZB and 269ZC. The Commission is satisfied, on the basis of the information provided in the application and other relevant information, that, in relation to relevant countervailing duties only, Alumac:

- has submitted an application that complies with section 269ZB;
- there appear to be reasonable grounds for asserting that Alumac does not receive countervailable subsidies relevant to the taking of the anti-dumping measures; and
- there appear to be reasonable grounds for asserting that the anti-dumping measures are no longer warranted.

PUBLIC RECORD

The Commission recommends that the Commissioner:

- **not reject** the application with respect to the countervailing duty notice; and
- initiate a review examining, in relation to Alumac, whether the anti-dumping measures are no longer warranted with respect to the countervailing notice.

Additionally, the Commission recommends that the Commissioner:

- **reject** the application with respect to the dumping duty notice.

4 ATTACHMENTS

Confidential Attachment 1	Alumac's confidential application with export price analysis
Confidential Attachment 2	Tax computation and letter from tax agent
Confidential Attachment 3	Preliminary dumping margin calculations