

## PUBLIC VERSION



### GUANGDONG JIANGSHENG ALUMINIUM (AUSTRALIA) PTY. LTD.

Address : Suite 9, 19-21 Central Road, Miranda. N.S.W. 228

Postal : P.O. Box 1073, Miranda. N.S.W. 1490

(TEL): (02) 9531 7281 (FAX): (02) 9531 2924 E-MAIL: [admin@jsaluminium.com.au](mailto:admin@jsaluminium.com.au)

---

12 March 2020

Mr. Dale Seymour  
Commissioner  
Anti-Dumping Commission  
Level 35, 55 Collins Street  
Melbourne Victoria 3000  
For Public File  
Dear Mr. Seymour,

#### **Request to Terminate Investigation No. 542**

Dear Director

This submission is made on behalf of Guangdong Jiangsheng Aluminium (Australia) Pty Ltd (JS Aluminium) in response to the application by Aluminium Shapemakers Pty Ltd (Alushapes) for the publication of dumping duties on “micro extrusions” exported from the Peoples Republic of China (China).

Whilst JS Aluminium may address and respond to broader material injury allegations made Alushapes, at a later point in the investigation, it strongly believes that its exports into Australia remain fairly priced. This is supported by the two previous investigations in which it fully cooperated (Case no. 148 and 442) and included products forming the subject goods of the current investigation, and which were both terminated on the basis of no dumping or subsidisation.

The primary purpose of this submission then is to bring to the Anti-Dumping Commission’s (the Commission) earliest attention a number of critical deficiencies requiring urgent reconsideration with respect to the scope of the Australian industry producing like goods. Depending on the definition of like goods and the resulting scope of the Australian industry, Alushapes’ application may be invalid as it may not comply with the minimum required production volumes to meet the standing requirements set out in subsection 269TC(6) of the *Customs Act 1901* (the Act), and accordingly, not possess sufficient standing in its own right to be considered representative of the Australian industry producing like goods.

Of particular concern, is the applicant’s very narrow and selective description of the subject goods, with no physical, technical or market justification. The apparent cherry-picking approach by Alushapes provides a worrying precedent for future investigations and reviews across all industries. For example, allowing Alushapes to limit the scope of the investigation to its described micro-extrusions would then open

## PUBLIC VERSION

the door for other applicant's to further narrow the scope of potential future applications. This could include:

- profiles between 0.2 & 0.4kg/m, or
- powder coated extrusions with a paint perimeter less than 300mm, or
- profiles powder coated in a particular colour.; or
- anodised profiles with a coating ranging between 10-20microns.

The list of potential product sub-categories is almost endless, and not consistent with the intent of the dumping system.

Therefore, JS Aluminium urges the Commission to carefully consider and canvass the issues raised in this submission, and urgently seek further necessary and relevant information from other potential Australian producers of like goods, to ensure a proper determination of the composition of the Australian industry is made.

In the event that it is established that production by Alushapes and those supporting the application does not meet 50% of those that commented, or production by Alushapes and those supporting the application does not meet at least 25% of total local production of like goods, we respectfully request the Commissioner to promptly terminate the investigation.

### **The scope of goods subject of the application**

The goods subject of the application and subject to investigation as notified in ADN 2019/26 are:

*Aluminium micro-extrusions, in the form of hollow profiles, weighing less than 200 grams per metre (<0.2kg/m) in length, whether or not alloyed, mill finish, powder coated, anodised, or further coated.*

Goods specifically excluded from investigation are:

*Solid aluminium micro-extrusions (including angles, rectangles, solid rounds and squares)*

### **Like goods – all aluminium extrusions**

It is noted that the applicant has specifically excluded all solid aluminium extruded profiles and all aluminium extrusions exceeding 0.2kg/m in weight from the subject goods description. Given that all extruded profiles possess the same essential characteristics, JS Aluminium suspects that the exclusion of other extruded profiles is linked to Alushapes lack of standing as the applicant, given its relatively minor production volumes.

Despite this apparent contrived goods description, JS Aluminium accepts that it is ultimately the applicant's decision to define the scope of the goods subject to investigation. However, it is equally important to note that the responsibility for defining 'like goods' rests with the Commission.

Determining which like goods fall within the definition of local production and the Australian industry requires assessing whether products have characteristics closely resembling each other. The Commission's like goods framework undertakes this assessment against the following factors:

- physical likeness;

## PUBLIC VERSION

- commercial likeness;
- functional likeness;
- production likeness; and
- any other relevant considerations raised by interested parties.

To that end, it is worth noting Alushapes' assessment of the like goods framework against its own production of hollow profiles. It is clear that the justification for hollow micro-extruded profiles being like goods applies equally to all other extruded profiles. That is, all aluminium extrusions are:

- made from aluminium, in thousands of different shapes and profiles to suit the customers particular end-use;
- commercially alike as they are sold to common customers for similar applications;
- functionally alike as they have the same or similar end-uses;
- manufactured in the same manner – via an aluminium extrusion process and the respective surface treatment processes.

Critically, the goods description outlined in the application is relevant only in the context of establishing which 'goods' (ie, the exported goods) are to be included in the determination of dumping. However, the determination of like goods is not limited to the goods description as like goods are able to encompass products beyond the goods description and which are found to possess characteristics closely resembling the exported goods. Likewise, the goods to be investigated for determining dumping cannot be broadened by the industry's like goods.

This point was made in a submission by OneSteel Manufacturing dated 23 March 2017 to the investigation into alloy round bars from China<sup>1</sup>:

The issue of whether or not the applicant produces in Australia, like goods to the goods under consideration is a secondary matter. Therefore, the assessment of a domestic producer's production of "like goods" does not "*broaden the scope of range of goods in this investigation*" as the respondent's submission appears to suggest. [original emphasis]

JS Aluminium agrees with OneSteel Manufacturing's interpretation that the domestic manufacturer's production of like goods does not and cannot broaden or narrow the scope of the range of goods under investigation. That is, the parameters of the goods under investigation is to a large extent determined and defined by the applicant in its application, and nothing prevents the locally produced like goods being determined and found to be broader than or narrower than the goods subject to investigation. The only required determination by the Commission is to establish whether the local industry manufactures like goods and to ensure that all such like goods are included in its assessment of material injury.

To highlight using the example in the Commission's guidelines for applicants<sup>2</sup>, if the applicant defines the goods as blue and red pencils and specifically excludes yellow

---

<sup>1</sup> EPR 384 – record no. 11, [Submission - Australian industry - One Steel Manufacturing](#)

<sup>2</sup> [ADC - Guidelines for applicants](#), pages 9-10.

## PUBLIC VERSION

pencils, but itself produces blue, red and yellow pencils, the goods subject of the investigation for the purposes of determining dumping is not defined by the applicant's like goods. The investigated goods are defined by the goods description, being blue and red pencils, and like goods are defined by the applicant's 'like' production, being blue, red and yellow pencils (assuming yellow pencils are found to possess characteristics closely resembling).

In our view and the accepted understanding within the aluminium industry, all aluminium extrusion profiles are considered the same as they all possess common essential characteristics, with little to distinguish between them. As the Commission would be well aware from its experience and history of investigating aluminium extrusions, there are tens of thousands of different profiles to suit every possible and imaginable end-use application. Aside from the obvious physical differences relating to finish and to a lesser extent alloy, all aluminium extrusions are largely the same.

This is supported by the two previous investigations in which JS Aluminium was involved, which included the subject goods of this current investigation, where the local industry and Commission concluded that all aluminium extrusions were like goods to the goods exported. In its application for dumping duties, Capral states:

The extrusions imported from the Chinese exporters, Jiangsheng and Zhongya, and by all exporters from Thailand, are similar in all aspects to the goods manufactured by Capral and members of the Australian industry.

Capral also highlights:

In Reports No. 148 and 362 the key essential characteristics of the locally produced and imported aluminium extrusions was previously examined. The conclusions of the Commission were as follows:

- The primary physical characteristics of the [imported] goods and locally produced goods are similar;
- The goods and locally produced goods are commercially alike as they are sold to common users, and directly compete in the same market;
- The goods and locally produced goods are functionally alike as they have a similar range of end-uses; and
- The goods and locally produced goods are manufactured in a similar manner.

Capral considers that the goods manufactured by the Australian industry possess the same essential characteristics as aluminium extrusions imported from China (by Jiangsheng and Zhongya) and Thailand and are considered "alike" in all respects.

Finally, the Commission's finding in that investigation concluded that all aluminium extrusions were like goods, and that '*... despite variations in shapes,*

## PUBLIC VERSION

*the primary physical characteristics of the goods and locally produced goods are sufficiently similar to be considered to be physically alike.'*

Therefore, JS Aluminium contends that all aluminium extruded profiles are and should be considered like goods to the imported subject goods, as they possess characteristics closely resembling those of the imported goods. The inclusion of all aluminium extrusions in the definition of like goods would result in a substantially expanded Australian industry, which in our view would result in Alushapes not being representative of the Australian industry given their relative production volumes.

Therefore, JS Aluminium requests that the Commission canvass the issue with interested parties by way of an issues paper that seeks the views of local producers and Australian market participants, on whether all aluminium extrusions possess characteristics closely resembling micro-extrusions described in the Alushapes' application.

### **Like goods – hollow sections less than 0.2kg/m**

In its application, Alushapes appears to make inconsistent statements about the degree to which other local entities manufacture like goods.

Firstly it states that whilst other local manufacturers have the capability to manufacture products within the very narrow goods description (ie hollow micro-extrusions less than 0.2kg/m), they opt not to manufacture such products<sup>3</sup>. It appears that Alushapes is suggesting that it is sole local manufacturer of hollow micro-extrusions less than 0.2kg/m. This is further supported by the applicant's statement on page 12 of its application, that it '*is therefore the only specialist manufacturer of micro-extrusions of < 200 gm/metre in Australia.*'

Despite this clear statement of being the sole local producer of hollow micro-extrusions less than 0.2kg/m, in response to question A-4.4 of the application, Alushapes states that '*... it accounts for a majority (i.e. greater than 50 per cent) of Australian production*' and offers letter of support from other local manufacturers of aluminium extrusions including '*commercially sensitive details concerning production of micro-extrusions by one Australian producer.*'

It then goes on to state with regards to flyscreen profiles that it is '*...the only Australian manufacturer who offers these profiles commercially to third party customers*'. This statement is deliberately misleading. The subject goods manufactured by other local producers are offered and sold commercially into the Australian market, but as complete window systems. In these cases, the extrusions used in the window system would constitute production of like goods.

The inconsistent statements by Alushapes raises the clear doubt as to whether it is representative of the Australian industry, and which local extruders form part of the Australian industry. To that end, JS Aluminium notes the requirements to comply with the standing requirements outlined in subsection 269TB(6) of the Act, and which

---

<sup>3</sup> *It is Alushapes' understanding that while a number of the above local manufacturers have the capability to produce hollow micro-extrusions (<0.2kg/m), they elect not to manufacture the goods that are the subject of the application, namely complicated hollows like flyscreen profiles and thin wall small tubing which are overwhelmingly imported in larger volumes and stocked by distributors [sic] and stockists.*

## PUBLIC VERSION

reflects Article 5.4 of the Anti-Dumping Agreement (ADA). Article 5.4 of the ADA makes clear that:

*An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed<sup>(13)</sup> by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.<sup>(14)</sup> The application shall be considered to have been made “by or on behalf of the domestic industry” if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.*

We raise this particular point as it is our understanding that both Capral and G. James manufacture flyscreen profiles. This is important as it is our understanding that local extruders other than Alushapes manufacture in excess of 200 tonnes, and the overall size of the Australian market is estimated to be between 1,500 to 2,000 tons. It is therefore unclear whether the application was supported by more than 25% of total local production.

It is therefore crucial that the Commission establish the relative production volumes of each local producer prior to undertaking any assessment of the economic condition of the Australian industry. In the event that Alushapes represents less than 50% of the industry supporting the application, then it is incumbent on the Commission to seek detailed cost and sales information from the other local producers to ensure it has sufficient data that is representative of the Australian industry as a whole.

Given the recent applications by the Australian industry for an expiry review against aluminium extrusions exported from China, a review of measures against aluminium extrusions exported from Vietnam, and new dumping investigations against aluminium extrusions exported from Malaysia, it is reasonable to expect that the Commission would already have possession of relevant production and sales information by the various local extruders to accurately estimate their individual portions of the Australian industry in this particular case.

As an aside, JS Aluminium also notes recent submissions by interested parties to cases 540 and 541<sup>4</sup> which demonstrates that ‘market intelligence’ relied upon applicants can and are inaccurate or misleading. This is of particular concern and relevance in the current micro-extrusion investigation given Alushapes’ reference to ‘commercially sensitive details concerning production of micro-extrusions by one Australian producer’ is estimating production volumes and support of other local producers. JS Aluminium seeks to understand the degree to which the Commission tested the veracity of the evidence submitted by Alushapes.

In summary then, we consider that there remains uncertainty as to whether the applicant has met the requirements of the approved form, by demonstrating sufficient

---

<sup>4</sup> EPR 540, Record no 4 and 5.

## **PUBLIC VERSION**

support by the Australian industry, or that the applicant is sufficiently representative of the Australian industry for the Commission to rely solely on its information for the purposes of assessing material injury.