

24 February 2021

The Director  
Investigations 2  
Anti-Dumping Commission  
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**Public File**

Dear Sir/Madam

**Investigations No. 576 – Application for Accelerated Review – Panasia Enterprises (Nanyang) Company Limited – aluminium extrusions exported from China**

I. Introduction

I refer to the recent publication of Australian Dumping Notice 2021/013 (“ADN 2021/013”) concerning applications for accelerated review of measures by PanAsia Enterprises (Nanyang) Company Limited (“Panasia Nanyang”).

PanAsia Nanyang is seeking an accelerated review of measures applicable to its exports of aluminium extrusions to Australia from China that would confirm individual variable factors for the applicant exporter.

II. Legislation

Section 269ZE includes the circumstances in which an application for an accelerated review (i.e. determination of separate variable factors) may be made. Subsection 269ZE(1) states:

*“If a dumping duty notice or countervailing duty notice has been published:*

- (a) In respect of goods exported from a particular country of export; or*
- (b) In respect of goods exported by new exporters from a particular country of export;*

*A new exporter from that country (other than such an exporter in respect of whom a declaration has already been made under paragraph 269ZG(3)(b) in respect of a previous application) may, by application lodged with the Commissioner, request an accelerated review of that notice in so far as it affects that exporter.”*

It is stated in ADN 2021/013 that Panasia Nanyang is a “new exporter” in terms of section 269ZE(1) having not exported the goods to Australia in the original investigation period 1 July 2008 to 30 June 2009. The applicant commenced operation in early 2020 and commenced exports to Australia in July 2020.

Further, there has been no previous declaration to impose measures on the applicant Panasia Nanyang.

Sub-section 269ZE(2) relates to cooperation and whether the applicant is an associate of an exporter the subject of measures. Sub-section 269ZE(2) states:

*“If the Commissioner is satisfied that:*

- (a) Because that exporter refused to co-operate, in relation to the application for publication of that notice, the exportations of that exporter were not investigated; or*
- (b) **The exporter is related to an exporter whose exports were examined in relation to the application for publication of that notice**” (emphasis added).*

*the Commissioner may reject the application.”*

The Commissioner confirmed that Panasia Nanyang is related to Panasialum Holdings Company Limited (Panasia Group) and is therefore related to Panasia Aluminium (China) Limited (Panasia China), “a Chinese producer and exporter of aluminium extrusions located in Guangdong Province, and which was originally investigated.”

It is not denied that Panasia Nanyang is related to Panasia China and that the two exporters are associates of each other in accordance with subsection 269TAA(4).

### III. Commissioner’s discretion

ADN 2021/013 details the following:

*“The applicant [Panasia Nanyang] submits that, the Guangdong Provincial Government announced a major re-zoning of industrial land to be redeveloped into residential housing. Panasia China’s manufacturing facility was located within this area and consequently this re-zoning of land resulted in Panasia China’s manufacturing facility closing down and the establishment of a new manufacturing facility and legal entity, Panasia Nanyang (the applicant) located in the Henan Province.*

*The applicant submits that the transition from Panasia China to the applicant involved transferring manufacturing equipment, materials, etc. from Guangdong to the applicant’s new facility in Henan.”*

The Commissioner states that “...due to the unique circumstances set out above, in which it appears that the Panasia Group was required to restructure its manufacturing operations, I have decided not to reject the application”.

The Commissioner therefore published ADN 2021/013 commencing Panasia Nanyang’s accelerated review of measures.

### IV. Failure to reject application

The Commissioner states his conclusion in ADN 2021/013 as follows:

*“I am satisfied that, on the basis of currently available information in the application that:*

- the circumstances in which an accelerated review can be sought under section 269ZE(1) have been satisfied;*
- there are no grounds to reject the application under subsection 269ZE(2)(a);*
- the condition for rejection under subsection 269ZE(2)(b) is satisfied, **however due to the unique circumstances of this case I will not exercise my discretion to reject the application** (emphasis added); and*
- the applicant satisfies the requirements of section 269ZF.”*

The Commissioner in not rejecting Panasia Nanyang’s application for accelerated review has exercised his discretion to allow Panasia Nanyang’s application to proceed. The “unique circumstances” involving Panasia Nanyang’s relocation to Henan appears to be the grounds for the exercising of the discretion.

Capral Limited (“Capral”) does not agree that the Commissioner has correctly exercised his discretion to proceed with Panasia Nanyang’s application for accelerated review. The Commissioner has conveniently discarded Panasia China’s history of continued dumping of aluminium extrusions into the Australian market as validated in each of the following reviews of measures investigations:

- Review 248 – Panasia China dumping margin of 16.5 per cent (2015);
- Review 392 – Panasia China dumping margin of 41.3 per cent (2017); and
- Review 482 – Panasia China dumping margin of 55.2 per cent (2019).

The Panasia Group of companies has continued to export at dumped prices and cause injury to the Australian industry since measures were originally imposed in 2009.

The Commissioner has failed to consider Panasia China’s appalling export history into account when exercising his discretion under subsection 269ZE(2)(b) to not reject Panasian Nanyang’s application for an accelerated review.

V. Recommendation

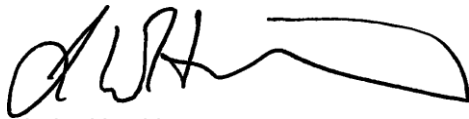
Capral does not agree with the Commissioner’s decision to exercise his discretion favourably and afford Panasia Nanyang an accelerated review of measures on exports of aluminium extrusions to Australia. Panasia Nanyang is a related company to Panasia China (in fact, will be the same company with the same manufacturing assets, with only its location differing). In accordance with subsection 269ZE(2)(b) the Commissioner should have rejected Panasia Nanyang’s application and not proceeded to formal investigation.

Having commenced the accelerated review investigation, Capral requests the Commissioner to terminate the review in accordance with subsection 269ZE(3)(b) which states that where the Commissioner becomes satisfied that “(b) *the exporter is related to an exporter whose exports were examined in relation to the application for publication of that notice*”.

Capral does not consider that the Commissioner has correctly exercised his decision to proceed with an accelerated review investigation and requests the Commissioner to now terminate Investigation 576.

If you have any questions concerning this submission please do not hesitate to contact me on (02) 8222 0113 or Capral’s representative Mr John O’Connor on (07) 3342 1921.

Yours sincerely



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