



Australian Government
**Department of Industry, Science,
Energy and Resources**

**Anti-Dumping
Commission**

**EXEMPTION INQUIRY
REPORT NO EX0081**

**CERTAIN ALUMINIUM EXTRUSIONS
EXPORTED TO AUSTRALIA FROM
THE PEOPLE'S REPUBLIC OF CHINA,
THE SOCIALIST REPUBLIC OF VIETNAM,
AND MALAYSIA**

**APPLICANT:
ADRAD PTY LTD**

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ABBREVIATIONS

Abbreviations/short form	Full reference
Adrad, the applicant	Adrad Pty Ltd
ADN	Anti-Dumping Notice
Capral	Capral Limited
China	the People's Republic of China
commission	Anti-Dumping Commission
Commissioner	Commissioner of the Anti-Dumping Commission
Customs Act	<i>Customs Act 1901</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
the duties	interim dumping duty, dumping duty, interim countervailing duty and countervailing duty
EPR	electronic public record
the exemption goods	the goods subject of the application as described in section 3.3
the goods	certain aluminium extrusions the subject of anti-dumping measures
mm	millimetres
Minister	Minister for Industry, Energy and Emissions Reduction
Vietnam	the Socialist Republic of Vietnam

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This report sets out the findings of the Anti-Dumping Commission (the commission) in response to an application by Adrad Pty Ltd (Adrad, the applicant). Adrad requested an exemption from interim dumping duty and dumping duty, and interim countervailing duty and countervailing duty (the duties) under sections 8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975* (Cth)¹ (the Dumping Duty Act). The application relates to certain aluminium extrusions as described in section 3.3 of this report (the exemption goods) exported to Australia from the People's Republic of China (China), Malaysia and the Socialist Republic of Vietnam (Vietnam).

The Commissioner of the Anti-Dumping Commission (the Commissioner) has relied on this report to make a recommendation to the Minister for Industry, Energy and Emissions Reduction (the Minister) on whether or not to exempt the exemption goods from the duties.

1.2 Authority to make the decision

The Minister may, by notice in writing, exempt goods from the duties if satisfied of any criteria in sections 8(7) and 10(8) of the Dumping Duty Act.

1.3 Initiation of inquiry

After examining the application, the Commissioner initiated an inquiry on 6 May 2021. Details of the initiation are contained in Anti-Dumping Notice (ADN) no 2021/058.²

1.4 Findings and conclusions

The commission has considered the application, submissions from the applicant and submissions from one of the Australian manufacturers of like goods, Capral Limited (Capral). The commission has made the following findings and conclusions:

- There is no Australian industry producing like or directly competitive goods to the exemption goods.
- The exemption 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.
- The conditions of sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for the Minister to grant an exemption are satisfied.

1.5 Recommendation

The Commissioner recommends to the Minister that the exemption goods be exempted from the duties.

¹ A reference to a division or section in this report is a reference to a provision of the *Customs Tariff (Anti-Dumping) Act 1975* unless otherwise specified.

² Electronic public record (EPR) EX0081, no 002.

2 BACKGROUND TO THE ANTI-DUMPING MEASURES

2.1 Anti-dumping measures

The anti-dumping measures are in the form of dumping duty and countervailing duty notices. A dumping duty and countervailing duty notice applies to aluminium extrusions exported to Australia from China and Malaysia. A dumping duty notice applies to aluminium extrusions exported to Australia from Vietnam.

The anti-dumping measures relate to investigations outlined in Table 1 below and are subject to reviews and inquiries from time to time.

The current interim dumping and interim countervailing duty rates applicable can be found on the Dumping Commodity Register on the commission's website.³

If the Minister grants the exemption, the exemption goods will be exempt from the duties regardless of which country they are exported from.

³ The [Dumping Commodity Register](#) for aluminium extrusions.

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Country of export	Investigation No.	Notice(s)	Dumping duty notice	Countervailing duty notice
China	148 ⁴	Australian Customs Dumping Notice No. 2010/40 published 28 October 2010	Applies to all exporters with the exception of Guangdong Jiangsheng Aluminium Co Ltd and Guangdong Zhongya Aluminium Co Ltd	Applies to all exporters with the exception of Guangdong Jiangsheng Aluminium Co Ltd and Guangdong Zhongya Aluminium Co Ltd
Malaysia	362 ⁵	ADN No. 2017/072 (dumping) published 27 June 2017 ADN No. 2017/073 (countervailing) published 27 June 2017	Applies to all exporters with the exception of Press Metal Berhad, Superb Aluminium Industries Sdn Bhd, LB Aluminium Berhad, Milleon Extruder Sdn Bhd, Genesis Aluminium Industries Sdn Bhd and Kamco Aluminium Sdn Bhd	Applies to all exporters with the exception of Press Metal Berhad, Superb Aluminium Industries Sdn Bhd, LB Aluminium Berhad, Milleon Extruder Sdn Bhd, Genesis Aluminium Industries Sdn Bhd, Kamco Aluminium Sdn Bhd, Alumac Industries Sdn Bhd and EverPress Aluminium Industries Sdn Bhd
	540 ⁶	ADN No. 2021/033 published 2 June 2021	Applies to Kamco Aluminium Sdn Bhd, LB Aluminium Sdn Bhd and Milleon Extruder Sdn Bhd	Not applicable
	541 ⁷	ADN No. 2021/035 published 2 June 2021	Applies to Kamco Aluminium Sdn Bhd, LB Aluminium Sdn Bhd, Milleon Extruder Sdn Bhd and Superb Aluminium Industries Sdn Bhd	Not applicable
Vietnam	362 ⁸	ADN No. 2017/072 published 27 June 2017	Applies to all exporters	Not applicable

Table 1: Current anti-dumping measures

⁴ Applies to all aluminium extrusions regardless of finish.

⁵ Ibid.

⁶ Applies specifically to mill finish goods.

⁷ Applies specifically to surface finish goods.

⁸ Applies to all aluminium extrusions regardless of finish.

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2.2 The goods subject to anti-dumping measures

The goods subject to measures are:

Aluminium extrusions produced via an extrusion process, 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), with the finish being extruded (mill), mechanical, anodised or painted or otherwise coated, whether or not worked, having a wall thickness or diameter greater than 0.5 millimetres (mm), with a maximum weight per metre of 27 kilograms and a profile or cross-section which fits within a circle having a diameter of 421 mm.

The goods subject to measures include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. Aluminium extrusion products that have been painted, anodised, or otherwise coated, or worked (e.g. precision cut, machined, punched or drilled) fall within the scope of the goods.

The goods subject to measures do not extend to intermediate or finished products that are processed or fabricated to such an extent that they no longer possess the nature and physical characteristics of an aluminium extrusion, but have become a different product.

The following table provides guidance as to the goods subject to measures and goods not subject to measures.

Goods subject to measures				Goods not subject to measures		
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	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	Kits that, at time of import, comprise all necessary parts to assemble finished goods. For example, shower frame kits, window kits, unassembled unitised curtain walls	Unglazed window or door frames	Windows, doors

Table 2: Goods subject to measures and goods not subject to measures

2.3 Tariff classification

The goods subject to measures may generally, but not exclusively, be classified under the following subheadings in Schedule 3 of the *Customs Tariff Act 1995*.⁹

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

Table 3: Tariff classifications generally applicable to the goods

⁹ *Customs Tariff Act 1995* (Cth), Volume 5, Schedule 3, Section XV, Chapter 76. These tariff classifications and statistical codes may include goods that are both subject and not subject to the antidumping measures. The listing of these tariff classifications and statistical codes is for convenience and reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to the anti-dumping measures.

3 EXEMPTION INQUIRY

3.1 Exemption application

On 26 February 2021, the applicant wrote to the commission requesting an exemption from the duties in relation to its imports of certain aluminium extrusions.¹⁰

The applicant's letter outlined the following grounds in support of its application for an exemption from the duties:

*That like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under the conditions having regard to the custom and usage of trade (ss8(7)(a) and 10(8)(a) of the Customs Tariff (Anti-Dumping) Act 1975).*¹¹

3.2 Exemption inquiry

The commission accepted the applicant's letter as an application for an exemption from the duties. On 6 May 2021, the Commissioner initiated an exemption inquiry, by publishing ADN no 2021/058. ADN no 2021/058 advised that an exemption inquiry had been initiated, provided details of the goods subject to the inquiry and outlined the procedures to be followed during the inquiry.

The commission sent relevant members of the Australian industry an invitation to respond to the application on 6 May 2021, by completing the 'Response to Exemption Application' questionnaire (the questionnaire) and requested that responses be received no later than 11 June 2021.

A completed questionnaire was received from Capral on 11 June 2021.¹²

3.3 The exemption goods

Adrad referred to the following goods in its application:

Aluminium extrusions produced via an extrusion process manufactured from alloy number AA 3003.

Following a submission by Capral and with the consent of the applicant, the commission published a file note regarding the exemption goods subject to this inquiry.¹³

The file note outlined that the exemption goods subject to this inquiry are as follows:

Hollow aluminium extrusions of alloy AA 3003, with a profile or cross-section which fits within a circle having a diameter of less than 155 mm.

¹⁰ EPR EX0081, no 001.

¹¹ EPR EX0081, no 001, p 2.

¹² EPR EX0081, no 003.

¹³ EPR EX0081, no 005.

The findings and recommendations in this report are in relation to the exemption goods described immediately above as published in the file note (having been revised from how the exemptions goods were described in the application).

3.4 Claims made in the application

In support of its claim that like or directly competitive goods to the exemption 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, the applicant provided the following evidence:

- Correspondence with several members of the Australian industry in which it was unable to source the exemption goods.¹⁴
- A comparison outlining how the products offered by the Australian industry are not like or directly competitive with the exemption goods.¹⁵

3.5 Legislative requirements for an exemption

The applicant has applied for an exemption under sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

Section 8(7)(a) provides that the Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty 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 10(8) provides that the Minister may, by notice in writing, exempt goods from interim countervailing duty or countervailing duty 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.

The applicant requests that the Minister exempt the exemption goods from the duties on the basis that like or directly competitive goods are offered for sale in Australia but not to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

3.6 Definition of ‘like or directly competitive goods’

Like goods

The term ‘like goods’ is defined in section 269T(1) of the *Customs Act 1901 (Cth)* (the Customs Act). Section 6 of the Dumping Duty Act provides that the Customs Act is incorporated and shall be read as one with the Dumping Duty Act. Accordingly, the definition of ‘like goods’ in the Customs Act is applicable to the commission’s assessment of whether the exemption goods are ‘like goods’ under sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

¹⁴ Confidential attachment 7.

¹⁵ EPR EX0081, no 001, p 4.

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Section 269T(1) of the Customs Act defines 'like goods' as:

Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Chapter 2 of the commission's *Dumping and Subsidy Manual* embodies the commission's established policy and practice in relation to like goods. Where two goods are identical they are automatically like goods, but where two goods are not alike in all respects the commission will assess whether they have characteristics closely resembling each other including:

- physical likeness
- commercial likeness
- functional likeness
- production likeness.

Directly competitive goods

The term 'directly competitive' is not defined in the Dumping Duty Act or the Customs Act and has not been the subject of judicial consideration by Australian courts.

Accordingly, assistance in understanding this term can be derived by having recourse to relevant dictionary definitions and case law. Case law suggests an assessment of a 'direct' relationship is a question of fact and degree.¹⁶ Drawing on the Macquarie Dictionary and case law, the commission defines 'directly' as:

excluding that which is indirect or remote;¹⁷ absolutely; exactly; precisely.

The Macquarie Dictionary also defines 'competitive' as:

of, relating to, involving, or decided by competition; and

having a feature comparable or superior to that of a commercial rival.

The phrase '*directly competitive*' can therefore be taken to refer to goods with comparable features that rival each other in a commercial market. The assessment will be one of fact and degree, and the goods will not merely remotely or indirectly compete.

Alternatives to satisfying sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act

The exemption provisions in sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act specifically provide for exemptions where either like goods or directly competitive goods are not offered for sale in Australia. It is not necessary to be satisfied that there are both like goods and directly competitive goods for sale in Australia in order to deny the application for an exemption. It is sufficient for there to be either like goods or directly

¹⁶ *Adelaide Development Co Pty Ltd v Corporation of the City of Adelaide and Anor* (1991) 56 SASR 497 at [45].

¹⁷ *Ibid.*

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competitive goods for sale in Australia for the requirements of the exemption not to be met.

If there are no like or directly competitive goods offered for sale in Australia, then the requirements for exemption in sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act will be met.

If there are like or directly competitive goods, then it is necessary to consider whether these like or directly competitive goods are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

3.7 Definition of ‘custom and usage of trade’

Although the domestically produced goods may be ‘like or directly competitive goods’, the Minister may still grant an exemption to duties in circumstances where the ‘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’.

The term ‘custom and usage of trade’ is not defined in the Dumping Duty Act or the Customs Act. The Macquarie Dictionary defines ‘custom’ as:

a habitual practice; the usual way of acting in given circumstance; and habits or usages collectively; convention.

The Macquarie Dictionary defines ‘usage’ as:

*customary way of doing; a custom or practice;
the body of rules or customs followed by a particular set of people;
usual conduct or behaviour.*

As custom can only to be inferred from a large number of individual acts, the existence of a custom and usage of trade must involve:

the multiplication or aggregation of a great number of particular instances; but these instances must not be miscellaneous in character, but must have a principle of unity running through their variety, and that unity must show a certain course of business and an established understanding respecting it.¹⁸

Custom or usage of trade is a term used in common law in the interpretation of implied terms in contracts within a particular trade or industry.¹⁹ When considering what is ‘custom or trade usage’ the courts have concluded that:

- Custom or usage was established mercantile usage or professional practice: *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410 at 440

¹⁸ *Anderson v Wadey* (1899) 20 N.S.W.R. 412 at p. 417.

¹⁹ *Castlemaine Tocheys Ltd v Carlton & United Breweries Ltd* (1987) 10 NSWLR 468.

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- Evidence of actual market practices was crucial to the existence of a custom or usage. However, universal acceptance was not necessary: *Con-Stan Industries of Australia Pty Ltd v Norwich Winterthur Insurance (Australia) Ltd* (1986) 160 CLR 226.

4 ASSESSMENT OF CLAIMS

4.1 Finding

The commission finds that neither like nor directly competitive goods are offered for sale in Australia. Accordingly, the conditions of sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for the Minister to grant an exemption are satisfied.

4.2 Australian industry's offer for sale of like or directly competitive goods

4.2.1 The applicant's claims

The applicant claims that the Australian industry is not producing like or directly competitive goods to the exemption goods. To support its claim, the applicant tendered evidentiary documentation of its contact with known Australian industry members. All members contacted by the applicant did not provide a quotation on the basis that they don't produce aluminium extrusions from the AA3003 alloy. On this basis, the applicant considers that like or directly competitive goods are not offered for sale by the Australian industry.

4.2.2 Australian industry's response

In response to the claims made by the applicant, Capral provided a submission opposing the request for Adrad's exemption on the basis that the goods described in the application were too broad.²⁰

In its submission Capral stated that it manufactures certain aluminium extrusions that it considers are like goods or directly competitive goods to the goods described in the application. Capral suggested a revision to the goods described in the application which it considers more accurately captures goods which are not like or directly competitive to the goods it produces. As outlined in section 3.3 this became the exemption goods for this inquiry.

Capral did not oppose an exemption to the duties for the exemption goods.

4.3 The commission's assessment – like or directly competitive goods offered for sale in Australia

The commission has examined the evidence presented in the application, and Capral's questionnaire response and submission.

The commission considers that there are no goods currently offered by the Australian industry which are like or directly competitive with the exemption goods. This is on the basis that:

²⁰ EPR EX0081, no 004.

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- The applicant approached certain members of the Australian industry regarding their offer of the exemption goods for sale. The result was that the Australian industry did not offer the exemption goods for sale to the applicant.
- The Australian industry have not objected to the granting of an exemption of the duties.
- The commission did not identify any specific advertising material from any Australian manufacturer of aluminium extrusions that lists the exemption goods for sale in Australia.
- There is no evidence to support that the Australian industry sell identical or goods that closely resemble the exemption goods in Australia.

Whilst the Australian industry offer other goods which have some characteristics of the exemption goods, those other goods do not appear to closely resemble or have comparable features that rival the exemption goods in a commercial market. This is because there is a key physical requirement of the exemption goods, being that they are of the alloy AA 3003. This alloy is required in production to meet the functional requirements of applicant's final product. The largest Australian industry producer (Capral) have stated that they do not currently produce goods from alloy AA 3003. Capral and the applicant agree that aluminium extrusions from a viable alternative alloy are not available to the applicant in Australia and as a result the applicant is currently importing the exemption goods.

4.4 Conclusion

The commission finds that the Australian industry does not offer for sale like or directly competitive goods to the exemption goods.

As the exemption goods are not offered for sale, no further consideration of whether the goods are offered for sale on equal terms under like conditions having regard to the custom and usage of trade is required.

The conditions of sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for the Minister to grant an exemption are met.

5 RECOMMENDATION

5.1 Recommendation

Based on the commission's findings, the Commissioner considers that like or directly competitive goods to the exemption goods are not offered for sale in Australia.

Accordingly, the Commissioner recommends that the Minister exempt the exemption goods from the duties in accordance with section 8(7)(a) of the Dumping Duty Act, and section 10(8)(a) of the Dumping Duty Act.

5.2 Effective date of exemption

The applicant's application for exemption, examined in this report, was made on 26 February 2021.

The timing in relation to the granting of an exemption is at the discretion of the Minister. It is the commission's policy to recommend that an exemption is backdated to the date of the application, that is, to 26 February 2021.²¹

²¹ An exemption cannot be backdated to a date earlier than the date of application for the exemption – sections 8(8A) and 10(9A) of the Dumping Duty Act.

PUBLIC RECORD

6 ATTACHMENTS

Attachments	Confidentiality	Title	Electronic public record identifier
Attachment 1	Not confidential	Adrad Pty Ltd – Exemption application	EPR 001
Attachment 2	Confidential	Adrad Pty Ltd – Exemption application – Confidential attachment 1	N/A
Attachment 3	Confidential	Adrad Pty Ltd – Exemption application – Confidential attachment 2	N/A
Attachment 4	Not confidential	Adrad Pty Ltd – Exemption application – Attachment 3	EPR 001
Attachment 5	Not confidential	Capral – Questionnaire response	EPR 003
Attachment 6	Not confidential	Capral – Comments on exemption goods description	EPR 004
Attachment 7	Confidential	Adrad Pty Ltd – Correspondence regarding exemption goods description	N/A