



Australian Government
Anti-Dumping Review Panel

ADRP Decision No. 132

Aluminium Micro-extrusions exported from the
People's Republic of China

June 2021

<https://www.adreviewpanel.gov.au>

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Abbreviations

Term	Meaning
Act	<i>Customs Act 1901</i>
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice
Alushapes	Aluminium Shapemakers Pty Ltd
China	People's Republic of China
Commissioner	The Commissioner of the Anti-Dumping Commission
CTM	Cost to make
GAAP	Generally accepted accounting principles
Goods	Aluminium micro-extrusions exported from the People's Republic of China
Investigation period	1 January 2019 to 31 December 2019
Jiangsheng	Guangdong Jiangsheng Aluminium Co., Ltd
Minister	Minister for Industry, Science and Technology
TER 542	The report published by the Commission in relation to Aluminium micro-extrusions exported from China and dated March 2021
Review Panel	Anti-Dumping Review Panel
Termination Decision	The decision of the Commissioner made on 17 March 2021 to terminate the investigation into exports of aluminium micro-extrusions from the People's Republic of China
Zhongya	Guangdong Zhongya Aluminium Co., Ltd

Summary

1. This is a review of a termination decision of the Commissioner of the Anti-Dumping Commission (Commissioner) made pursuant to s.269TDA(1) of the *Customs Act 1901* (the Act) in respect of aluminium micro-extrusions exported from the People's Republic of China (China) (the Termination Decision). The applicant for the review was Aluminium Shapemakers Pty Ltd (Alushapes).
2. For the reasons set out in this report, I affirm the Termination Decision.

Introduction

3. Alushapes applied under s.269ZZO of the Act for a review of the decision of the Commissioner to terminate an investigation pursuant to s.269TDA(1) of the Act in respect of aluminium micro-extrusions exported from China. The application was made in accordance with the requirements set out in s.269ZZQ and within the relevant 30 day period required by the Act.¹
4. The Commissioner must terminate an investigation if dumping margins or countervailable subsidisation are negligible; negligible volumes of dumping or countervailable subsidisation are found; or the export causes negligible injury.²
5. Notification of the proposed review, as required by s.269ZZRC(1), was published on the Review Panel's website on 4 May 2021.
6. As Senior Member of the Anti-Dumping Review Panel (Review Panel), I directed in writing that the Review Panel be constituted by me in accordance with s.269ZYA of the Act.

Background

7. Alushapes is the sole Australian manufacturer specialising in the production of micro-extrusions for the Australian market. On 6 January 2020, Alushapes applied for the imposition of anti-dumping measures on micro-extrusions exported from

¹ Section 269ZZP.

² Section 269TDA.

China by Guangdong Jiangsheng Aluminium Co., Ltd (Jiangsheng) and Guangdong Zhongya Aluminium Co., Ltd (Zhongya).

8. The Anti-Dumping Commission (ADC) accepted the application and on 17 February 2020 notified the commencement of an investigation.³ The investigation period for assessing dumping was from 1 January 2019 to 31 December 2019 and the injury analysis period was from 1 January 2016.
9. On 17 March 2021, the Commissioner published a notice of the decision to terminate the investigation under s.269TDA(1)(b)(i) of the Act with respect to both Jiangsheng and Zhongya on the basis that there had been no dumping (the Termination Decision).⁴

Conduct of the Review

10. In accordance with s.269ZZT of the Act, if the application is not rejected under ss.269ZZQA, 269ZZR or 269ZZRA, the Review Panel must either affirm the reviewable decision or revoke it. If a decision is revoked, the Commissioner must publish a statement of essential facts as soon as practicable, after which the investigation of the application will resume pursuant to s.269ZZT. This decision takes effect as if it were a decision made by the Commissioner.⁵
11. In undertaking the review, s.269ZZT(4) of the Act requires the Review Panel to only take into account information that was before the Commissioner when the Commissioner made the reviewable decision, subject to certain exceptions.⁶
12. If a conference is held under s.269ZZRA of the Act, then the Review Panel may have regard to further information obtained at the conference to the extent that it relates to the information that was before the Commissioner, and to conclusions based on that information.⁷ A conference was held with representatives of Alushapes for the purpose of obtaining information regarding the application for

³ ADN 2020/13.

⁴ ADN 2021/38.

⁵ Section 269ZZV.

⁶ See ss.269ZZRA(2) and ZZRB(2).

⁷ Section 269ZZRB(2); ADRP Report No 24.

review. The conference was held on 26 April 2021. A summary of the conference was published on 4 May 2021 as required by s.269ZZX(1) of the Act.

13. A conference was also held with representatives of the ADC on 1 June 2021 for the purpose of obtaining information regarding the calculation of the exporters' production costs. As the information being discussed related to information confidential to the exporters it was not possible to invite Alushapes to the conference. A non-confidential summary of the conference was published on 9 June 2021. The information the subject of the conference had been referenced in TER 542 and no new information was provided at the conference which was not referenced in TER 542. For this reason and because I was unable to provide Alushapes with the exporters' confidential information, I did not have a further conference with Alushapes.
14. In conducting this review I have had regard to the application and documents submitted with or referenced in the application insofar as they were based on information before the Commissioner when the Termination Decision was made. I have also had regard to TER 542 and to documents provided to me by the ADC which were documents before the Commissioner when the Termination Decision was made. Finally, I have had regard to information or conclusions obtained at the conferences that related to or was based on information before the Commissioner when the Termination Decision was made.

Grounds of Review

15. The ground of review relied upon by the applicant, which the Review Panel accepted, was that the normal value of the exports was determined under s.269TAC(2)(c) whereas it should have been determined under s.269TAC(6).

Consideration of Grounds

The Legislation

16. If possible, the normal value for exports the subject of an anti-dumping inquiry must be determined under s.269TAC(1) of the Act as the price paid or payable for like

goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions or, if the goods are not sold by the exporter, by other sellers of like goods. In this case, it was not possible to assess the normal value under s.269TAC(1) because the Commissioner found that there was a particular market situation in China. Alushapes did not dispute this finding.

17. If the Minister is satisfied that, because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under s.269TAC(1), then the normal value is to be ascertained by the formula in s.269TAC(2)(c). With one exception, this formula is the sum of:

- (i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
- (ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the country of export-such administrative, selling and general costs associated with the sale and the profit on that sale.

18. The cost of production or manufacture of goods has to be worked out in accordance with s.43 of the *Customs (International Obligations) Regulation 2015*.⁸ Relevantly, this provides that if an exporter or producer of like goods keeps records relating to the goods and the records:

- are in accordance with GAAP in the country of export; and
- reasonably reflect competitive market costs associated with the production or manufacture of like goods;

then the Minister must work out the amount by using the information set out in the records.

19. Alushapes contends that the ADC erred in using the exporters' records to determine the normal values for the exporters based upon constructed costs under s.269TAC(2)(c). Rather, Alushapes argues, that the normal value should have been determined under s.269TAC(6). That subsection applies when the Minister is

⁸ Section 269TAC(5A)(a) and s.269TAAD(4)(a).

satisfied that sufficient information has not been furnished or is not available to enable the normal value to be determined under the preceding subsections of s.269TAC. In that case, the normal value is determined by the Minister having regard to all relevant information.

Alushapes Contentions

20. In TER 542, the ADC determined the cost of production for both Jiangsheng and Zhongya by using the information in their records but making an adjustment relating to the costs of aluminium. This adjustment was made because the ADC considered that, due to the influence of the Government of China in the domestic market for aluminium, the exporters' records did not reflect competitive market costs. Alushapes did not take issue with this finding.
21. However, Alushapes does dispute that, once the adjustment was made with respect to the cost of the aluminium, the records of the exporters reflected competitive market costs. Alushapes contends that the production of micro-extrusions involved higher costs than the typical aluminium extrusions and that these higher costs were not reflected in the exporters' records. The higher costs related to increased production times and the cost of powder coating.
22. In summary, Alushapes argues that the normal value for the exports should have been determined under s.269TAC(6) using information provided by Alushapes as to the actual costs of producing aluminium micro-extrusions and actual out-sourced costs for powder coating
23. Alushapes made specific claims with respect to each of the exporters.

Jiangsheng

24. Alushapes contends that the fact that Jiansheng did not provide cost data by form was a serious limitation on the ability to correctly determine whether the exporter's records reflected competitive market costs. The point is made by Alushapes that Jiangsheng's costs included costs for solid micro-extrusions whereas the goods under consideration were hollow micro-extrusions. According to Alushapes, the productions of hollow micro-extrusions is a time consuming process with lower

yields and higher associated costs involving considerably higher extrusion processing time. Alushapes estimated the higher overall costs as in the region of 35%.

25. The costs accepted by the ADC do not, according to Alushapes, take account of the delicate hollow micro-extrusion processing costs and understate the true costs of the aluminium micro extrusions. Alushape contends that the ADC's acceptance of the average cost methodology was incorrect and that average costing underpinned the unfair and cross subsidised flat pricing approach of Chinese exporters.
26. Alushapes also contended that the ADC's reliance on the information provided by Jiangsheng concerning powder coating costs for hollow micro-extrusions was understated and incorrect for determining the true competitive costs of the goods. In TER 542, the ADC referred to its finding that raw material cost accounts for the vast majority of the weighted average cost to make (CTM) for aluminium micro-extrusions and that powder coating did not have a material impact, as a percentage of the total CTM. The ADC also noted that the costs of powder coating were clearly identified in Jiangsheng's accounts, the allocation was based on actual costs and there was no evidence to suggest that Jiangsheng's powder coating costs were not competitive market costs. Alushapes disputes this and argues that the verified costs in Jiangsheng's accounts did not reflect the actual costs of powder coating hollow micro-extrusions.
27. The basis for the contentions made by Alushapes is the knowledge it has of the production process of aluminum micro-extrusions. It provided information to the ADC based on this experience which it claimed demonstrated the extended processing times, lower yield and associated costs for micro-extrusions compared with typical aluminium extrusions. Alushapes contends that this information did not receive fair consideration and submits that the failure of the ADC to require Jiansheng to provide detailed cost breakdowns of extrusion timeframes is central to the ADC's incorrect decision on the determination of Jiangsheng's normal values.

Zhongya

28. Alushapes claims that information provided by Zhongya confirmed the slower production rate, lower yields and higher costs associated with the production of

micro-extrusions. However, Alushapes contends that the allocation of costs by Zhongya continues to substantially understate the actual production costs.

29. In TER 542 the ADC outlined how Zhongya used a coefficient for cost allocation between micro-extrusions and all other extrusions. Alushapes claims this is an extremely broad brushed methodology which affords Zhongya with an advantage when a more accurate methodology is available through an examination of production records. The methodology is flawed, according to Alushapes, because it cannot be tested or verified or compared with actual production records.
30. According to TER 542, the coefficient was based on the yearly production of micro-extrusions through the two small extruders and the yearly production of other aluminium extrusions through the other extruders.⁹ Alushapes argues that it cannot be assumed that each of the extruders were operated at the same utilisation rate and therefore the calculated co-efficient is incorrect. Also, as pointed out in its submission to the ADC, the co-efficient is based on the weight of the output rather than the ratio of raw material and hourly product output, as reflected in Alushapes records.
31. With respect to Alushapes argument regarding the powder coating costs, the ADC again referred to the finding that the raw material cost accounts for the vast majority of weighted average CTM for aluminium micro-extrusions and that the powder coating cost did not have a material impact as a percentage of the total CTM. Alushapes contends that this confirms that the ADC was presented with the average powder costs applicable to all of the aluminium extrusions manufactured by Zhongya. According to Alushapes, this methodology is incorrect as it substantially undervalues the cost of powder coating micro-extrusions. Further, Alushapes claims that it has demonstrated to the ADC that the cost of powder coating is not immaterial.
32. Finally, Alushapes contends that the acceptance of Zhongya's cost information was due to the ADC's unfamiliarity with the aluminium micro-extrusion manufacturing process and the correct allocation of costs on a fully absorbed basis. Alushapes claims that allocations of cost have been made by Zhongya on the basis of average costs across all of its aluminium extrusions product range which is an incorrect

⁹ REP 542 section 4.6.5 at page 32.

approach and materially understates the actual cost of production for aluminium micro-extrusions.

Review Panel's Analysis

33. The approach of the ADC in TER 542 to the determination of a constructed normal value under s.269TAC(2)(c) by adopting a hybrid approach of using the exporters' records but adjusting them to reflect competitive market costs has received judicial support. In *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science*,¹⁰ Perram J. stated:

*The methodology in reg 43 does not purport to be an exhaustive statement on the topic of how production costs are to be determined. It deals with just one situation, viz, that obtaining when, compendiously speaking, the producer's records are adequate for task. Outside that situation, reg 43 is otherwise silent and s 269TAC(2)(c)(i) remains applicable on its own terms.*¹¹

34. The complaint by Alushapes does not however appear to be with the hybrid approach as such but rather that the records of the exporters should not be used to ascertain the cost of production because they are not reliable in that they understate the cost of producing the goods. The reason provided by the ADC for the use of the records despite the submissions made by Alushapes is that the records complied with the GAAP in China and were considered to accurately reflect the costs incurred by the exporters. The ADC also tested the impact of using the additional costs submitted by Alushapes and concluded it would not make any significant difference to the determination of the negative dumping margin found for those exporters.
35. In order for the Commissioner to proceed under s.269TAC(6), the Commissioner would need to form the view that sufficient information had not been provided or was not available to enable the normal value to be calculated under s.269TAC(2): *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation & Science* [2018] FCAFC 20 per Perram J. at [125]. Clearly, the

¹⁰ [2018] FCAFC 20.

¹¹ As above at [108].

Commissioner did not form this view. Essentially, the ground of Alushapes' application is that the Commissioner erred in this respect.

36. I have reviewed the ADC documents relating to the calculation of the production costs in the determination of the normal value for the exports by Jiangsheng and Zhongya. In particular, I reviewed the work program and other documents setting out the verification of the production costs conducted by the ADC. The steps taken by the ADC are summarised in TER 542. I am satisfied that the work done by the ADC, as described in this material, is a sufficient basis for the acceptance of the costs in the exporters' records (with an adjustment for the cost of the aluminium), as reflecting the costs incurred by them in producing the micro-extrusions including the powder coating costs.
37. It was reasonable for Alushapes to query the exporters' production costs given its knowledge of the production process for aluminium micro-extrusions. However, I am satisfied that the work done by the ADC to verify the costs was sufficient to accept those costs, despite the submissions made by Alushapes.
38. There was not the evidentiary basis for the Commissioner to form the view required by s.269TAC(6) and, accordingly, it would not have been the correct or preferable decision for the Commissioner to have ascertained the normal value for the exporters' exports under that subsection. Given this, I am not persuaded that Alushapes has established that the Termination Decision is not the correct or preferable decision on the basis of the ground set out in its application.
39. The approach taken by the ADC with regard to the production costs was tested by the ADC in a number of scenarios which included increasing the production costs to reflect that which Alushapes submitted should be the costs involved in producing micro-extrusions. I have reviewed those scenarios and they confirm that even if the exporters' production costs were substantially increased, as contended for by Alushapes, it would not have any impact on the finding of no dumping for the purpose of s.269TDA(1). All of the scenarios resulted in a significant negative dumping margin.
40. On the basis set out above, I am satisfied that the Termination Decision was the correct or preferable decision.

Conclusions

41. Pursuant to s.269ZZT of the Act and for the reasons given above, I consider that the reviewable decision, namely the Termination Decision, was the correct and preferable decision and therefore affirm it.
42. Interested parties may be eligible to seek a review of this decision by lodging an application with the Federal Court of Australia, in accordance with the requirements in the *Administrative Decision (Judicial Review) Act 1977*, within 28 days of receiving notice.



Joan Fitzhenry
Senior Panel Member
Anti-Dumping Review Panel
17 June 2021