

NON-CONFIDENTIAL VERSION

APPLICATION FOR REVIEW OF A DECISION BY THE MINISTER FOLLOWING A REVIEW INQUIRY

Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry and Science
10 Binara Street
Canberra City
ACT 2601
P: +61 2 6276 1781
F: +61 2 6213 6821
E: ADRP@industry.gov.au

INFORMATION FOR APPLICANTS

WHAT DECISIONS ARE REVIEWABLE BY THE ANTI-DUMPING REVIEW PANEL?

The role of the Anti-Dumping Review Panel (the ADRP) is to review certain decisions made by the Minister responsible for the Department of Industry and Science, or by the Anti-Dumping Commissioner (the Commissioner).

The ADRP may review decisions made by the Commissioner:

- to reject an application for dumping or countervailing measures;
- to terminate an investigation into an application for dumping or countervailing measures;
- to reject or terminate examination of an application for duty assessment; and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended in an application for duty assessment, or waiver of an amount over the amount of interim duty paid.

The ADRP may review decisions made by the Minister, as follows:

Investigations

- to publish a dumping duty notice
- to publish a countervailing duty notice
- not to publish a dumping duty notice
- not to publish a countervailing duty notice

Review inquiries

- to alter or revoke a dumping duty notice following a review inquiry
- to alter or revoke a countervailing duty notice following a review inquiry
- not to alter a dumping duty notice following a review inquiry
- not to alter a countervailing duty notice following a review inquiry
- that the terms of an undertaking are to remain unaltered
- that the terms of an undertaking are to be varied
- that an investigation is to be resumed
- that a person is to be released from the terms of an undertaking.

Continuation inquiries

- to secure the continuation of dumping measures following a continuation inquiry
- to secure the continuation of countervailing measures following a continuation inquiry
- not to secure the continuation of dumping measures following a continuation inquiry

- not to secure the continuation of countervailing measures following a continuation inquiry

Anti-circumvention inquiries

- to alter a dumping duty notice following an anti-circumvention inquiry
- to alter a countervailing duty notice following an anti-circumvention inquiry
- not to alter a dumping duty notice following an anti-circumvention inquiry, and
- not to alter a countervailing duty notice following an anti-circumvention inquiry.

Before making a recommendation to the Minister, the ADRP may require the Commissioner to:

- reinvestigate a specific finding or findings that formed the basis of the reviewable decision, and
- report the result of the reinvestigation to the ADRP within a specified time period.

The ADRP only has the power to make **recommendations to** the Minister to affirm the reviewable decision or to revoke the reviewable decision and substitute with a new decision. The ADRP has no power to revoke the Minister's decision or substitute another decision for the Minister's decision.

WHICH APPLICATION FORM SHOULD BE USED?

It is essential that applications for review be lodged in accordance with the requirements of the *Customs Act 1901* (the Act). The ADRP does not have any discretion to accept an invalidly made application or late-lodged application.

Division 9 of Part XVB of the Act deals with reviews by the ADRP. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure (available at www.adreviewpanel.gov.au).

There are separate application forms for each category of reviewable decision made by the Commissioner, and for decisions made by the Minister. It is important for intending applicants to ensure that they use the correct form.

This is the form to be used when applying for an ADRP review of a decision of the Minister under s 269ZDB, following a review inquiry. It is approved by the Commissioner pursuant to s.269ZY of the Act.

WHO MAY APPLY FOR REVIEW OF A DECISION FOLLOWING A REVIEW INQUIRY?

Any interested party may lodge an application for review to the ADRP of a review of a ministerial decision. An “interested party” may be:

- if an application was made which led to the reviewable decision, the applicant
- a person representing the industry, or a portion of the industry, which produces the goods which are the subject of the reviewable decision
- a person directly concerned with the importation or exportation to Australia of the goods
- a person directly concerned with the production or manufacture of the goods
- a trade association, the majority of whose members are directly concerned with the production or manufacture, or the import or export of the goods to Australia, or
- the government of the country of origin or of export of the subject goods.

Intending applicants should refer to the definition of “interested party” in s 269ZX of the Act to establish whether they are eligible to apply.

WHEN MUST AN APPLICATION BE LODGED?

An application for a review must be received within 30 days after a public notice of the reviewable decision is first published in a national Australian newspaper (s 269ZZD).

The application is taken as being made on the date upon which it is received by the ADRP after it has been properly made in accordance with the instructions under 'Where and how should the application be made?' (below).

WHAT INFORMATION MUST AN APPLICATION CONTAIN?

An application should clearly and comprehensively set out the grounds on which the review is sought, and provide sufficient particulars to satisfy the ADRP that the Minister's decision should be reviewed. It is not sufficient simply to request that a decision be reviewed.

The application should include a statement identifying what the applicant considers the correct or preferable decision should be, that may result from the grounds the applicant has raised in the application. There may be more than one such correct or preferable decision that should be identified, depending on the grounds that have been raised.

The application must contain a full description of the goods to which the application relates and a statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision (s 269ZZE).

If an application contains information which is confidential, or if publication

of information contained in the application would adversely affect a person's business or commercial interest, the application will be rejected by the ADRP unless an appropriate summary statement has been prepared and accompanies the application.

If the applicant seeks to bring confidential information to the ADRP's attention (either in their application or subsequently), the applicant must prepare a summary statement which contains sufficient detail to allow the ADRP to reasonably understand the substance of the information, but the summary must not breach the confidentiality or adversely affect a person's business or commercial interest (s 269ZZY).

While both the confidential information and the summary statement must be provided to the ADRP, only the summary statement will be lodged on the public record maintained by the ADRP (s 269ZZX). The ADRP is obliged to maintain a public record for review of decisions made by the Minister, and for termination decisions of the Commissioner. The public record contains a copy of any application for review of a termination decision made to the ADRP, as well as any information given to the ADRP after an application has been made. Information contained in the public record is accessible to interested parties upon request.

Documents containing confidential information should be clearly marked "Confidential" and documents containing the summary statement of that confidential information should be clearly marked "Non-confidential public record version", or similar.

The ADRP does not have any investigative function, and **must** take account only of information which was before the Minister when the Minister made the reviewable decision (s 269ZZ). The ADRP will disregard any information in applications and submissions that was not available to the Minister.

HOW LONG WILL THE REVIEW TAKE?

The timeframes for a review by the ADRP will be dependent on whether the ADRP requests the Commissioner to reinvestigate specific findings or findings that formed the basis of the reviewable decision.

If reinvestigation is not required

Unless the ADRP requests the Commissioner to reinvestigate a specific finding or findings, the ADRP must make a report to the Minister:

- at least 30 days after the public notification of the review
- but no later than 60 days after that notification.

In special circumstances the Minister may allow the Review Panel a longer period for completion of the review (s 269ZZK(3)).

If reinvestigation is required

If the ADRP requests the Commissioner to reinvestigate a specific findings or findings, the Commissioner must report the results of the reinvestigation to the ADRP within a specified period.

Upon receipt of the Commissioner's reinvestigation report, the ADRP must make a report to the Minister within 30 days.

WHAT WILL BE THE OUTCOME OF THE REVIEW?

At the conclusion of a review, the ADRP must make a report to the Minister, recommending that the:

- Minister affirm the reviewable decision (s 269ZZK(1)(a)), or
- Minister revoke the reviewable decision and substitute a specified new decision (s 269ZZK(1)(b)).

After receiving the report from the ADRP the Minister must:

- affirm his/her original decision, or
- revoke his/her original decision and substitute a new decision.

The Minister has 30 days to make a decision after receiving the ADRP's report, unless there are special circumstances which prevent the decision being made within that period. The Minister must publish a notice if a longer period for making a decision is required (s 269ZZM).

WHERE AND HOW SHOULD THE APPLICATION BE MADE?

Applications must be EITHER:

- lodged with, or mailed by prepaid post to:

**Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry and Science
10 Binara Street
Canberra City ACT 2601
AUSTRALIA**

- OR emailed to:

ADRP@industry.gov.au

- OR sent by facsimile to:

**Anti-Dumping Review Panel
c/o Legal Services Branch
+61 2 6213 6821**

WHERE CAN FURTHER INFORMATION BE OBTAINED?

Further information about **reviews by the ADRP** can be obtained at the ADRP website (www.adreviewpanel.gov.au) or from:

Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry and Science
10 Binara Street
Canberra City ACT 2601
AUSTRALIA

Telephone: +61 2 6276 1781
Facsimile: +61 2 6213 6821

Inquiries and requests for **general information about dumping matters** should be directed to:

Anti-Dumping Commission
Department of Industry and Science
Ground Floor Customs House
1010 Latrobe Street
MELBOURNE 3008

Telephone: 1300 884 159
Facsimile: 1300 882 506
Email: clientsupport@adcommission.gov.au

FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the ADRP written information that the person knows to be false or misleading in a material particular.

(Penalty: 20 penalty units – this equates to \$3400).

PRIVACY STATEMENT

The collection of this information is authorised under section 269ZZE of the *Customs Act 1901*. The information is collected to enable the ADRP to assess your application for the review of a decision of the Minister under s 269ZDB of the *Customs Act 1901* following a review inquiry.

APPLICATION FOR REVIEW OF A DECISION OF THE MINISTER FOLLOWING A REVIEW INQUIRY

Under s 269ZZE of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Minister responsible for Australian Customs and Border Protection Service:

To alter:

- ✓ a dumping duty notice(s) following a review inquiry
- ✓ a countervailing duty notice(s) following a review inquiry.

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- provides reasonable grounds for a review to be undertaken
- provides reasonable grounds for the decision not being the correct or preferable decision, and
- is complete and correct to the best of my knowledge and belief.

I have included the following information in an attachment to this application:

- Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).
- Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.
- Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.
- Full description of the imported goods to which the application relates.
- The tariff classification/statistical code of the imported goods.
- A copy of the reviewable decision.
- Date of notification of the reviewable decision and the method of the notification.
- A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.
- A statement identifying what the applicant considers the correct or preferable decision should be, that may result from the grounds the applicant has raised in the application. There may be more than one such correct or preferable decision that should be identified, depending on the grounds that have been raised.
- an additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Li Lei Quan

Signature:.....

Name: ...Li Lei Quan.....

Position: ...CEO.....

Applicant Company/Entity:

..... Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd
On behalf of Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd, and its related bodies
corporate Kam Kiu (Australia) Pty Ltd and Kam Kiu Aluminium Products SDN BHD

Date: 18 / 09 / 2015

APPLICATION FOR REVIEW

Review of Anti-dumping measures ADC 248 Certain aluminium extrusions exported from the People's Republic of China

Application by Kam Kiu

1 Applicant

Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).

Name Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd
and its related bodies corporate:

- Kam Kiu (Australia) Pty Ltd
- Kam Kiu Aluminium Products SDN BHD

(together **Kam Kiu**)

Address Suite 6, 1175 Toorak Road
CAMBERWELL VIC 3124

Form of business Company

2 Applicant's contact details

Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.

Contact person Ada Ye

Position General Manager

Contact details Telephone: +61 (3) 9889 4899
Mobile: +61 400289321
Fax: +61 (3) 9889 4891
Email: adaye@kamkiu.com

3 Applicant's representative

Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.

Kam Kiu is represented by Corrs Chambers Westgarth (**Corrs**) in this matter. A copy of a letter of authorisation is attached as **Attachment 1**.

4 Description of imported goods

Full description of the imported goods to which the application relates.

This Application is made in respect of certain aluminium extrusions exported from China. The goods are described in Final Report 248 as follows:

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 as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness or diameter

greater than 0.5 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.

5 Tariff classification of imported goods

The tariff classification/statistical code of the imported goods.

The imported goods are classified to the following subheadings in Schedule 3 of the *Customs Tariff Act 1995* (Cth):

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

6 Reviewable decision

A copy of the reviewable decision. Date of notification of the reviewable decision and the method of the notification.

A copy of the reviewable decision is attached as **Attachment 2**. That decision was notified and published in the Commonwealth of Australia Gazette and *The Australian* newspaper on 19 August 2015.

Applicant's reasons

A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.

A statement identifying what the applicant considers the correct or preferable decision should be, that may result from the grounds the applicant has raised in the application. There may be more than one such correct or preferable decision that should be identified, depending on the grounds that have been raised.

If the application contains material that is confidential or commercially sensitive an additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

1 Introduction

- 1.1 On 24 June 2009, the then Chief Executive Officer of the Australian Customs and Border Protection Service (**ACBPS**) initiated an investigation into the alleged dumping and subsidisation of certain aluminium extrusions exported to Australia from the People's Republic of China (**China**) (ITR 148).
- 1.2 As a result of that investigation and the resultant report (REP 148), on 28 October 2010, the Minister for Home Affairs (**Minister**) published a dumping notice and a countervailing duty notice applying to aluminium extrusions exported to Australia from China. Following a reinvestigation by the ACBPS into this matter, the Attorney-General published a new notice based on the findings in REP 175.¹ That notice was effective 27 August 2011 and replaced the 28 October 2010 notice.
- 1.3 Subsequently, Kam Kiu and PanAsia Aluminium (China) Co (**PanAsia**) (and its related entity OPAL (Macao Commercial Offshore) Limited) sought judicial review of the Attorney-General's decision based on REP 175. On 19 September 2013, the Federal Court of Australia ordered that the decision of the Attorney-General effective 27 August 2011 be set aside to the extent it applied to Kam Kiu and PanAsia,² and as a result, new dumping and countervailing duty notices were published in respect of those parties. These changes applied retrospectively from 27 August 2011.
- 1.4 On 2 May 2014, PanAsia applied for a review of the existing anti-dumping measures as they applied to its own exports of aluminium extrusions from China to Australia, on the basis that certain variable factors relevant to the taking of the anti-dumping measures had changed.
- 1.5 On 12 June 2014, the Anti-Dumping Commission (**Commission**) initiated a review (ADC 248), with the Anti-Dumping Commissioner (**Commissioner**) recommending to extend the review to include all exporters of aluminium extrusions from China, under sub-section 269ZC(4) of the *Customs Act 1901* (Cth) (**the Act**).
- 1.6 On 13 July 2015, the Commission completed its final report to the Parliamentary Secretary to the Minister for Industry and Science (**Parliamentary Secretary**) (**REP 248**)³ in which it recorded that it had found that the variable factors relevant to the

¹ Australian Customs and Border Protection Service, 'Reinvestigation of certain findings in Report No. 148: Certain aluminium extrusions exported from the People's Republic of China' (Report No 175, Australian Customs and Border Protection Service, 15 August 2011) <<http://www.adcommission.gov.au/cases/documents/REP175-FINALReport.pdf>>.

² *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth (No 2)* [2013] FCA 1117 (19 September 2013).

³ Anti-Dumping Commission, 'Review of anti-dumping measures: Certain aluminium extrusions exported from the People's Republic of China' (Report No 248, Anti-Dumping Commission, 13 July 2015) <<http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR248.aspx>>.

taking of anti-dumping measures in respect of goods exported by exporters including Kam Kiu and PanAsia had changed. Accordingly, the Commission recommended that the Parliamentary Secretary declare that the dumping duty notice and countervailing duty notice be taken to have effect in relation to goods exported by Kam Kiu, and other exporters, as if different variable factors had been ascertained.

- 1.7 On 12 August 2015, the Parliamentary Secretary accepted the Commissioner's recommendations (**Reviewable Decision**). Her decision to do so was published in the Commonwealth of Australia Gazette and *The Australian* newspaper on 19 August 2015.
- 1.8 In so far as concerns aluminium extrusions exported by Kam Kiu the Parliamentary Secretary:
- (a) imposed an 'effective rate of interim dumping duty (fixed component)' of 2.0% (**IDD Rate**) and an 'effective rate of interim countervailing duty' of 1.8% (**ICD Rate**); and
 - (b) varied the ascertained export price (**AEP**) and ascertained normal value (**ANV**) applicable to Kam Kiu (though those revised variable factors were confidential, and so not set out in the published notice of the Reviewable Decision).
- 1.9 Kam Kiu does not dispute the revised rates of duty imposed by the Parliamentary Secretary as part of the Reviewable Decision. However, Kam Kiu considers that the revised AEP applicable to exports by Kam Kiu pursuant to the Reviewable Decision is incorrect, or does not represent the preferable AEP which the Commission should have recommended, and the Parliamentary Secretary in turn accepted. As described in more detail in this Application for Review, Kam Kiu submits that the revised AEP applicable to Kam Kiu is erroneous, as a result of the manner in which the Commission carried out currency conversions on which the calculated AEP depended.
- 1.10 Therefore, Kam Kiu requests that the Anti-Dumping Review Panel (**ADRP**) review the Reviewable Decision insofar as it concerns the AEP calculated by the Commission and recommend that the AEP applicable to Kam Kiu as a result of the Reviewable Decision be varied.

2 Ascertainment of the revised variable factors applicable to Kam Kiu

- 2.1 Following the publication of the Reviewable Decision, Kam Kiu contacted the Commission with a number of queries in relation to the confidential revised variable factors applicable to Kam Kiu as a result of the Reviewable Decision.
- 2.2 On 27 August 2015, Gavin Crooks, Assistant Director – Investigations of the Commission, sent an email to the Chinese law firm Zhong Lun, which was acting on behalf of Kam Kiu. Mr Crooks provided Mr Guan with four spreadsheets containing calculation files in respect of the revised variable factors applicable to Kam Kiu. In that email the Commission also set out the calculation to determine the actual duty liability in respect of exports from Kam Kiu in the following terms:

If dumping export price is *above* AEP the duty payable is:

$$\text{export price} \times \text{quantity (kg)} \times \text{interim rate of dumping duty}$$

If dumping export price is *below* AEP the duty payable is:

$$(\text{AEP} - \text{export price}) \times \text{quantity (kg)} + \text{AEP} \times \text{quantity (kg)} \times \text{interim rate of dumping duty}$$

- 2.3 On 1 September 2015, Zhong Lun responded to the Commission, querying how the AEP of [REDACTED] AUD/kg for Kam Kiu was calculated. Zhong Lun noted that one of the spreadsheets that the Commission had provided set out a “free on board” (FOB) price of [REDACTED] Yuan/kg, but that Kam Kiu was not aware of the specific exchange rate that the Commission had used to convert the currency from RMB to AUD.
- 2.4 On 3 September 2015, the Commission replied to Zhong Lun, stating that “the weighted average FOB export price for all finish types was calculated in RMB and converted to AUD by applying the average monthly exchange rate (AUD:CNY) over the investigation period [REDACTED] and that the Commission “used the Reserve Bank of Australia exchange rates for this purpose”.
- 2.5 A copy of that email correspondence is attached as **Confidential Attachment 3**.
- 2.6 In a subsequent email exchange between Corrs and the Mr Crooks on 7 September 2015 (**Confidential Attachment 4**), the Commission advised Kam Kiu that:
- (a) the spreadsheets attached to the Commission’s email to Zhong Lun of 27 August 2015 constituted those parts of confidential attachments 1 and 2 to the Commission’s report REP 248 which related to Kam Kiu;
 - (b) following the Reviewable Decision the revised AEP for Kam Kiu was [REDACTED];
 - (c) prior to the Reviewable Decision, the AEP applicable to Kam Kiu was [REDACTED].

3 The Commission’s calculation of interim dumping duty liability

- 3.1 In addition to the explanation of Mr Crooks referred to in paragraph 2.2 (above), the Commission has also explained the application of this method to aluminium extrusions in the “dumping commodities register” (DCR) published on the Commission’s website on 19 August 2015.⁴
- 3.2 The DCR sets out the calculation for interim dumping duty liability in the following terms:
- **fixed component of IDD:** dumping export price (DXP) or AEP, whichever is the greatest, multiplied by the applicable IDD ad valorem duty rate; plus
 - **variable component of IDD:** the amount, if any, by which the DXP is lower than the AEP.
- 3.3 The application of the methods described by Mr Crooks and in the DCR leads to the same results. Accordingly, Kam Kiu understands that in respect of any exported goods the subject of the Decision, the importer is liable for:
- (a) the greater of the export price or the AEP, times the IDD Rate; **and**
 - (b) the amount, if any, by which the AEP exceeds the export price.
- 3.4 Therefore, the consequences of a higher AEP are as follows:
- (a) if AEP is greater than export price, the amount paid in 3.3(a) will be higher;
 - (b) the probability of the payment in 3.3(b) being triggered is greater; and

⁴ Anti-Dumping Commission, ‘Aluminium extrusions’ (Dumping Commodity Register, Anti-Dumping Commission, 27 August 2015) <<http://adcommission.gov.au/measures/Pages/default.aspx>>.

- (c) if the payment in 3.3(b) is triggered, the amount will be higher than it otherwise would have been, as the difference between AEP and export price will be greater.

3.5 Consequently, it is clear that the AEP applicable to Kam Kiu has a significant impact on duty payable on exports by Kam Kiu.

4 Basis for application for review

4.1 As noted in paragraph 2.4 (above), Kam Kiu understands that the Commission calculated the AEP in respect of its goods by calculating the weighted average FOB export price in RMB and then converting that value to AUD by applying the average monthly exchange rate (AUD:CNY) over the investigation period, which the Commission stated to be approximately [REDACTED].

4.2 Kam Kiu respectfully disagrees with this methodology and submits that:

- (a) The AEP calculated by the Commission is even higher than the gross invoice price at DDP level; and
- (b) the Commission has performed an unnecessary double currency conversion for the determination of AEP from AUD to RMB and back to AUD.

4.3 Accordingly, Kam Kiu submits that the AEP calculated by the Commission, and adopted by the Parliamentary Secretary is incorrect.

4.4 Each of these issues is dealt with in further detail below.

5 The Commission's double conversion of currency

5.1 Kam Kiu's FOB export prices were already stated in AUD when they were provided to the Commission. In these circumstances, Kam Kiu submits that it was not appropriate, or necessary, for the Commission to perform a "double conversion" of those export prices from AUD to RMB and then back to AUD.

5.2 The spreadsheet provided to Kam Kiu by the Commission on 27 August 2015, referred to in paragraph 2.2 (above), titled 'REP248 KK Dumping Margin (Uplifted version).xlsx', contains the calculations used by the Commission to determine the AEP in respect of Kam Kiu's goods. This process apparently involved the following steps for each transaction:

- (a) calculating the 'gross invoice value from [Kam Kiu] to independent customers in Australia, AUD' from the 'gross invoice value';⁵
- (b) calculating the 'net invoice value' in AUD from the 'gross invoice value from [Kam Kiu] to independent customers in Australia, AUD', 'rebates' and 'other charges';
- (c) calculating the 'FOB export price' from the 'net invoice value' and 'air freight', 'ocean freight', 'Australia Inland transport', 'duty paid', 'duty refund which should be added to the invoice price' and 'marine insurance' stated in AUD; and
- (d) calculating the 'FOB export price RMB' from the 'FOB export price' and 'exchange rate (RMB:AUD)', which involved a currency conversion from AUD to RMB.

⁵ Of the [REDACTED] sales records contained within the spreadsheet, [REDACTED] of these involved invoices in [REDACTED] currency, with the balance being in AUD currency.

- 5.3 On the basis of these calculations, the Commission has determined the weighted average FOB export price in RMB, being █████ Yuan/kg. As discussed in paragraph 2.4 (above), the Commission has then determined an AEP of █████ UD/kg in AUD by dividing the FOB price in RMB by a supposed average monthly exchange rate (AUD:CNY), being approximately 5.669 over the investigation period.
- 5.4 Accordingly, the methodology employed by the Commission to calculate AEP involved a “double conversion”, first from AUD to RMB and then from RMB to AUD.
- 5.5 Kam Kiu submits that this double conversion is unnecessary. Given that the clear majority of inputs into the equation described in paragraph 5.2 above were provided to the Commission in AUD and that the ultimate output of the equation is necessarily given in AUD, it would have been more appropriate for the Commission to perform the entire calculation in AUD, only performing currency conversions (using the relevant RBA historic daily rate) to convert inputs stated in currencies other than AUD into AUD.
- 5.6 In *United States – Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea*, the WTO Panel (the **Panel**) considered the appropriateness of certain currency conversions in the context of Article 2.4.1 of the *Agreement on the Implementation of Article VI of the GATT 1994*. The Panel made the following comments in its Report:⁶
- [6.11] ...While Article 2.4.1 does not spell out the precise circumstances under which currency conversions are to be avoided, we consider that it does establish a general – and in our view, self-evident – principle that currency conversions are permitted only where they are required in order to effect a comparison between the export price and the normal value...
- [6.12] ...[W]e consider it sufficient to conclude, for the purposes of this dispute, that currency conversion is not "required", and would thus not be permissible under Article 2.4.1, in instances where the prices being compared are already in the same currency.
- ...
- [6.14] ...It follows from our discussion in the previous section of this Report that such an unnecessary "double conversion" would be inconsistent with Article 2.4.1 of the AD Agreement.
- 5.7 Kam Kiu submits that this principle is also applicable to the current situation and that the Commission’s calculations involved an unnecessary “double conversion” from AUD to RMB and then back to AUD.

6 Conclusion

- 6.1 For the foregoing reasons, Kam Kiu respectfully submits that the Commission erred in its assessment of the AEP in respect of Kam Kiu’s goods. The effect of the Commission’s error, and its adoption by the Parliamentary Secretary in the Reviewable Decision, is that the AEP for Kam Kiu is significantly higher than it otherwise would be, and that as a result higher levels of duty will be levied on exports from Kam Kiu than should be the case.
- 6.2 Kam Kiu requests that the ADRP:
- (a) reviews the Reviewable Decision under s 269ZZE of the Act; and

⁶ Panel Report, *United States – Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea*, WTO Doc WT/DS179/R (22 December 2000) [6.11]–[6.14].

(b) recommends that the Parliamentary Secretary revoke the Reviewable Decision and substitute a new decision to be specified by the ADRP on the basis of a corrected assessment of the AEP in respect of Kam Kiu's goods, adopting the approach proposed by Kam Kiu in this submission.

6.3 Kam Kiu submits that the correct or preferable calculation of the AEP would be a calculation using the Australian dollar prices of Kam Kiu's exports to Australia which were assessed by the Commission.

ATTACHMENT 1



台山市金桥铝型材厂有限公司
Tai Shan City Kam Kiu Aluminium
Extrusion Co., Ltd.

Anti-Dumping Review Panel
10 Binara Street
Canberra City ACT 2601

18 September 2015

Dear Panel Members

**APPLICATION FOR REVIEW OF A DECISION BY THE MINISTER FOLLOWING
A REVIEW INQUIRY IN RELATION TO ALUMINIUM EXTRUSIONS EXPORTED
TO AUSTRALIA FROM THE PEOPLE'S REPUBLIC OF CHINA**

We are writing to advise that Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd and its related entities, Kam Kiu (Australia) Pty Ltd and Kam Kiu Aluminium Products SDN BHD (together **Kam Kiu**), have engaged Corrs Chambers Westgarth (**Corrs**) to represent it in respect of an application for review of the decision of the Parliamentary Secretary to the Minister for Industry following a review inquiry in relation to aluminium extrusions exported from the People's Republic of China to Australia. Notification of that decision was published on 19 August 2015. Kam Kiu is an exporter of such goods.

Corrs is authorised to communicate on our behalf in respect of the application for review of the Parliamentary Secretary's decision, including by signing the application for review.

All communications concerning this matter should be directed to:

Mr Andrew Korbelt

Partner

Phone: (02) 9210 6537

Fax: (02) 9210 6611

Email: Andrew.Korbelt@corrs.com.au

Ms Aditi Kogekar

Senior Associate

Phone: (02) 9210 6168

Fax: (02) 9210 6611

Email: Aditi.Kogekar@corrs.com.au

Corrs Chambers Westgarth
GPO Box 9925
SYDNEY NSW 2001

If you have any queries, please do not hesitate to contact me.

Yours sincerely

Li Lei

CEO

ATTACHMENT 2



Certain Aluminium Extrusions

Exported from the People's Republic of China

Findings in relation to a Review of Anti-Dumping Measures

Public Notice under subsection 269ZDB(1)(a)(iii) of the Customs Act 1901

The Commissioner of the Anti-Dumping Commission has completed the review, which commenced on 12 June 2014, of the anti-dumping measures in respect of certain aluminium extrusions ('the goods') exported from the People's Republic of China (China) to Australia.

The recommendation resulting from the review, reasons for the recommendation and material findings of fact and law in relation to the review are contained in *Anti-Dumping Commission Report No. 248 (REP 248)*.

I, KAREN ANDREWS, the Parliamentary Secretary to the Minister for Industry and Science, have considered REP 248 and have decided to accept the recommendation and reasons for the recommendation, including all material findings of fact and law set out in REP 248.

Under subsection 269ZDB(1)(a)(iii) of the *Customs Act 1901* (the Act), I declare, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), that, with effect from the date of publication of this notice, the dumping duty notice and countervailing duty notice currently applying to the goods exported to Australia from China is to be taken to have effect or to have had effect, in relation to all exporters from China, as if different variable factors had been fixed in respect of all exporters, relevant to the determination of duty.

The dumping duty that has been determined is an amount that has been worked out in accordance with the combination of fixed (*ad valorem*) and variable duty method pursuant to subsection 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*, as detailed in the table below and the notice has effect accordingly.

The countervailing duty that has been determined is an amount that has been ascertained as a proportion of the export price of the goods pursuant to subsection 10(3B)(a) of the Dumping Duty Act, as detailed in the table below and the notice has effect accordingly.

Exporter	Effective rate of interim dumping duty (fixed component)	Effective rate of interim countervailing duty	Duty Method
Guang Ya Aluminium Industries Co. Ltd	0.0%	4.5%	Dumping – combination of fixed (ad valorem) and variable duty method.
PanAsia Aluminium (China) Co Ltd	16.5%	5.4%	
Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd	2.0%	1.8%	
Guangdong Zhongya Aluminium Co. Ltd	N/A	0.6%	Countervailing – (ad valorem)).
Residual Exporters [#]	9.4%	8.1%	
All other and uncooperative exporters (except Tai Ao)	28.3%	20.2%	

- As specified in REP 248

The actual duty liability may be higher than the effective rate of duty due to a number of factors. Affected parties should contact the Anti-Dumping Commission (the Commission) on telephone number 13 28 46 or email at clientsupport@adcommission.gov.au for further information regarding the actual duty liability calculation in their particular circumstance.

To preserve confidentiality, the revised variable factors such as ascertained export price, normal value, non-injurious price and countervailable subsidy amount will not be published. Bona fide importers of the goods can obtain details of the new rates from the Commission on telephone number 13 28 46 or email at clientsupport@adcommission.gov.au.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au) in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

REP 248 has been placed on the public record. The public record may be examined at the Commission's office by contacting the case manager on the details provided below. Alternatively, the public record is available at www.adcommission.gov.au.

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2418, fax number +61 3 8539 2499, or email at operations3@adcommission.gov.au.

Dated this 12th day of August 2015

KAREN ANDREWS
Parliamentary Secretary to the Minister for Industry and Science

CONFIDENTIAL ATTACHMENT 3

CONFIDENTIAL ATTACHMENT 4