



**Australian Government**  
**Australian Customs and**  
**Border Protection Service**

PRR 1127

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**R E P O R T**

**CUSTOMS ACT 1901 - PART XVB**

**INTERNATIONAL TRADE REMEDIES BRANCH**

**CONSIDERATION REPORT NO. 186**

**CONSIDERATION OF AN APPLICATION FOR REVIEW OF  
ANTI-DUMPING AND COUNTERVAILING MEASURES**

**CERTAIN ALUMINIUM EXTRUSIONS**

**EXPORTED FROM**

**THE PEOPLE'S REPUBLIC OF CHINA**

**20 April 2012**

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**2 SUMMARY AND RECOMMENDATIONS**

This report provides the results of the Australian Customs and Border Protection Service's (Customs and Border Protection) consideration of an application by B&D Aluminium (Aust) Pty Ltd (B&D Aluminium) for the review of the dumping duty notice and countervailing duty notice applying to certain aluminium extrusions<sup>1</sup> exported to Australia from the People's Republic of China (China) by Wuxi Xisha Photoelectric Aluminum Products Co., Ltd (Wuxi Aluminium).

The applicant applied for a review of export price, normal value and subsidy.

**2.1 Recommendations**

Customs and Border Protection recommends that the Chief Executive Officer (CEO) of Customs and Border Protection decide not to reject the application.

If the CEO accepts this recommendation, to give effect to that decision, the CEO must publish the attached notice at **Appendix A** indicating that it is proposed to review the measures covered by the application.

**2.2 Application of law to facts**

Division 5 of Part XVB of the *Customs Act 1901*<sup>2</sup> sets out, among other things, the procedures to be followed by the CEO in dealing with an application for the review of measures.

The Division empowers the CEO to reject or not reject an application for review of anti-dumping measures.

Depending on the CEO's decision, it may be necessary for the CEO to publish a notice indicating that it is proposed to review the measures covered by the application.

**2.3 Findings and conclusions**

B&D Aluminium's application for review of anti-dumping measures applying to aluminium extrusions exported to Australia from China has been examined. The application complies with the requirements of s.269ZB.

Having regard to the applicant's claims and other relevant information, there appears to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of anti-dumping and countervailing measures have changed.

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<sup>1</sup> Refer to the full description of the goods in section 3.3 of this report.

<sup>2</sup> A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

### 3 BACKGROUND

On 29 March 2012, B&D Aluminium lodged an application requesting a review of anti-dumping measures applying to aluminium extrusions exported to Australia from China. This meets the requirements under s.269ZA(2) because more than 12 months has lapsed since the publication of the last notice.

The applicant subsequently provided further information in support of its application. As a result, Customs and Border Protection restarted the 20 day period for considering the application on 3 April 2012.

#### 3.1 Existing measures

On 11 May 2009 a dumping investigation into aluminium extrusions exported from China was initiated following an application by Capral Limited. In that investigation, and as outlined in Trade Measures Report No. 148, it was found that:

- with the exception of one exporter, Tai Ao (Taishan) Co Ltd (Tai Ao), the goods were exported from China at dumped prices;
- with the exception of Tai Ao, the goods exported from China were subsidised;
- the Australian industry producing like goods had suffered material injury as a result of those dumped and subsidised goods; and
- future exports from China may be dumped and subsidised and that continued dumping and subsidisation may cause further material injury to the Australian industry.

Accordingly, it was recommended that the Minister impose anti-dumping measures on the goods exported from China. On 28 October 2010, the Minister published a dumping duty notice for aluminium extrusions exported to Australia from China. Notification of the Minister's decision was given in Australian Customs Dumping Notice No. 2010/40.

Following a review by the Trade Measures Review Officer, Customs and Border Protection conducted a reinvestigation into certain findings made in Trade Measures Branch Report No. 148. International Trade Remedies Report No. 175 sets out the findings affirmed and new findings made by Customs and Border Protection as a result of the reinvestigation.

To give effect to this decision the Attorney-General published a new notice under section 269ZZM. This notice is in substitution of the dumping and countervailing duty notices published 28 October 2010. The new notice is effective from 27 August 2011 and replaces the earlier notice.

The effect of the new notice is that the level of the measures have changed and that the dumping duty notice no longer applies to Zhaoqing New Zhongya Aluminium Co Ltd.

### 3.2 The current review application

The applicant lodged an application for review of the measures on 29 May 2012. Section 269ZA(2) states that an application for review of measures must not be made earlier than 12 months after the publication of a notice declaring the outcome of the last review of the notice. More than 12 months has lapsed since the publication of the last notice and therefore affected parties are entitled to apply for a review of the measures.

Pursuant to s. 269ZC(1) the CEO must examine the application and, within 20 days after the lodgement date, decide whether to reject the application. The decision must be made no later than 23 April 2012.

If the CEO is not satisfied, having regard to the application and to any other relevant information, of one or more matters referred to in s. 269ZC(2) the application must be rejected.

### 3.3 The goods subject to the measures

The goods the subject of the current anti-dumping measures (the goods) 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 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.*

The goods include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. For example, 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 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.

### 3.4 Tariff classification of the goods

The GUC may be classified to the following subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

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

In most cases where goods are correctly classifiable to tariff codes with the prefix 7604 or 7608, those goods would be the goods subject of this investigation and subject to any resulting securities or duties.

### **3.5 Imports**

Since the imposition of measures, Chinese exporters have continued to supply the Australian market with aluminium extrusions.

### **3.6 Australian industry producing like goods**

During the original investigation Customs and Border Protection found that:

- there was an Australian industry producing like goods;
- a substantial process of manufacture was carried out in Australia in producing the like goods;
- the like goods were wholly manufactured in Australia; and
- there is an Australian industry consisting of eight Australian companies that produce like goods in Australia.

Customs and Border Protection remains satisfied that there is an Australian industry producing like goods.

## 4 REQUIRED INFORMATION

The application lodged by B&D Aluminium provides the required information to initiate a review.

### 4.1 Legislative framework

Subsection 269ZB(1) requires that the application be in writing, be in an approved form, contain such information as the form requires and be signed in the manner indicated by the form.

Section 269ZB(2) requires an applicant to provide:

- a description of the kind of goods to which the measures the subject of the application relate; and
- a description of the measures the subject of the application; and
- a statement of the opinion of the applicant concerning:
  - the variable factors relevant to the taking of the measures that have changed; and
  - the amount by which each such factor has changed; and
  - the information that establishes that amount.

Section 269ZB(3) and (4) cover procedural matters in relation to lodgement of the application.

Section 269ZC(2) specifies the matters which must be considered in making a decision whether to reject the application. These matters are:

- the application complies with s. 269ZB; and
- there appear to be reasonable grounds for asserting either:
  - (i) that the variable factors relevant to the taking of anti-dumping measures have changed; or
  - (ii) that the anti-dumping measures are no longer warranted

### 4.2 Customs and Border Protection's assessment

The application lodged by B&D Aluminium:

- was in writing;
- provided a description of the goods subject to the measures;
- provided a description of the measures the subject of the application; and
- provided statements of the factors that had changed and information to support those statements.

The applicant also provided non-confidential versions of the application for distribution to interested parties. The non-confidential version of the application adequately reflects the reasons for seeking a review of the anti-dumping measures.

## **5 CONSIDERATION OF REASONABLE GROUNDS**

Having regard to the applicant's claims and other relevant information, there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of anti-dumping and countervailing measures have changed.

### **5.1 Legislative framework**

For a review of measures to be undertaken, applications must demonstrate that there appear to be reasonable grounds for asserting either:

- (i) that the variable factors relevant to the taking of anti-dumping measures have changed; or
- (ii) that the anti-dumping measures are no longer warranted

The applicants have asserted that the export price, normal value and amount of subsidisation have changed since measures were imposed.

### **5.2 Grounds for asserting variable factors have changed**

#### **5.2.1 Amount of subsidisation**

##### **Applicant's claims**

The applicant claims that its supplier and the exporter of aluminium extrusions from China, Wuxi Aluminium, has not benefited from the receipt of countervailable subsidies. A supporting submission by Wuxi Aluminium was included in the application and outlined the basis of their claims in respect of each of the 19 subsidy programs found during the original investigation to have conferred a benefit.

In relation to Programs 1, 10, 16, 17 and 21, Wuxi Aluminium states that it is a private small to medium enterprise with all but 1% of shares held by two individual Chinese citizens. Therefore, the exporter does not qualify to receive benefits under these programs as it does not satisfy the eligibility criteria of a foreign-invested enterprise.

In relation to Programs 8, 18, 26, 29, 32 and 35, eligible enterprises must be established in specific locations within China. Wuxi Aluminium advised that it is not eligible to receive benefits under any of these programs as the company is located in Huishan District, Wuxi City, Jiangsu Province.

In relations to grants provided under Programs 2, 3, 4, 5, 6, 7 and 9, Wuxi Aluminium claims that it does not meet the specific eligibility criteria for these programs and therefore did not benefit from the grants.

In respect of Program 15 (goods provided at less than adequate remuneration), Wuxi Aluminium submits that it is not entitled to benefits under this program as 90% of its primary aluminium is supplied by private bodies. The remaining 10% of its primary aluminium is sourced from government-owned enterprises but it's claimed that a benefit is not conferred as the prices are similar to those from the private bodies.



**Customs and Border Protection's assessment**

Customs and Border Protection has assessed the applicant's claims after having regard to information contained in the application, information contained on the exporter's website and contemporary primary aluminium prices quoted on the London Metal Exchange (LME).

Wuxi Aluminium's website clearly identifies the company's address at the HuangNiBa Industrial Park, YuQi Town, Huishan District, Wuxi City, Jiangsu Province. Therefore it is reasonable to consider that the exporter did not receive benefits under the region specific programs.

There is no information on the Wuxi Aluminium's website which identifies it as a domestic or foreign invested enterprise but the statement by the exporter is considered sufficient for B&D Aluminium to assert that the foreign-invested enterprise based subsidy programs don't apply to the exporter.

In its submission, Wuxi Aluminium stated that it did not receive grants under the relevant programs as it did not meet the eligibility criteria. However, Customs and Border Protection notes that the company's website refers to the following information which may potentially relate to additional subsidy programs:

- "Xisha" products were elected "Jiangsu Famous Product" by Jiangsu Planning and Economic Committee through public appraisal;
- the company has won two utility model patents;
- the company was elected as "Jiangsu High-Technology Enterprise" through public appraisal;
- "Xisha" trademark was elected as "Jiangsu Famous Trademark" through public appraisal;
- the company was elected as "Wuxi Building Industry Excellent Company" by Wuxi Administration of Industry and Commerce;
- the company won "the Certificate of Special Engineering Designer Grade A";
- "Xisha" products were elected as "Wuxi Famous Product" by Wuxi Economic Commission;
- the company won the "Certificate of Building Curtain Wall Engineering Professional Contractor Level I" from the Ministry of Construction of PRC;
- the company has won three appearance design patents;
- "Xisha" trademark was elected as "China Famous Trademark" through public appraisal, and
- the company was elected as "Jiangsu Private High-Tech Enterprise" through public appraisal.

In respect of Program 15, Trade Measures Report No. 148 found in establishing a benchmark price for primary aluminum reflecting adequate remuneration, that the Government of China represented a significant percentage of the total number of aluminium producers in China and was therefore the predominant supplier of aluminium on the domestic market. In terms of production volumes, public bodies producing primary aluminium accounted for almost half of the total aluminum production in 2008.

Therefore it was Customs and Border Protection's view that prices of primary aluminium supplied by public bodies influenced domestic primary aluminium prices generally.

For that reason, Customs and Border Protection considered privately owned supplier prices of primary aluminium to be distorted and unsuitable for use as a benchmark in determining whether a benefit is conferred by the program.

In ascertaining an appropriate benchmark, Customs and Border Protection was mindful of the need to determine a price that reflects prevailing market conditions for like goods in China. This requirement is reflected in s.269TACC(5). Customs and Border Protection was able to confirm that an important factor in the purchasing decisions of Chinese exporters was the comparison of domestic prices reflected on the Shanghai Futures Exchange (SHFE) and equivalent prices for imported primary aluminium quoted on the LME.

Therefore, Customs and Border Protection considered that LME prices for primary aluminum are indicative of import prices into the Chinese market and as such, are a suitable benchmark for determining whether primary aluminium was provided at less than adequate remuneration and conferred a benefit in relation to the goods exported.

It's noted that LME prices have increased by approximately 56% from 30 June 2009 to 30 June 2011 whilst spot prices quoted on the SHFE over the same period rose by only 27%. A comparison of prices on the two exchanges over 2011 shows that LME prices were approximately 9% higher than equivalent prices in China.

Therefore it would appear that Wuxi Aluminium may still have received benefits through the purchase of primary aluminium at less than adequate remuneration.

## **5.2.2 Amount of export price and normal value**

### **Applicant's claims**

In its application, B&D Aluminium provided details of 2009 Chinese domestic prices and export prices to Australia. It subsequently provided a commercial invoice for a shipment in August 2011 which it claims demonstrated that export prices were higher.

### **Customs and Border Protection's assessment**

Customs and Border Protection reconciled the information in the August 2011 commercial invoice to its import database. It considers this information is reliable and provides sufficient evidence that export prices have changed.

The applicant provided no contemporary data in respect of domestic selling prices in China. However, as noted in section 5.2.1 there is evidence that the price of aluminium has risen since the original investigation. Customs and Border Protection considers this provides sufficient evidence that normal values have changed.

## **5.3 Conclusion on "reasonable grounds"**

There appears to be reasonable grounds for asserting the amount of subsidisation and export prices have changed. Accordingly, it is recommended that the CEO

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decide not to reject the application. The CEO must publish a notice indicating that it is proposed to review the measures covered by the application.

**5.4 Review Period**

The review period is from April 2011 to March 2012.