



## **ANTI-DUMPING NOTICE NO. 2013/80**

### **Amendments to anti-dumping measures applicable to**

### **Aluminium extrusions**

### **Exported from the People's Republic of China**

### **Implementation of Federal Court findings**

#### **Purpose**

The purpose of this Anti-Dumping Notice (ADN) is to advise interested parties of amendments to the anti-dumping measures applying to certain aluminium extrusions exported from the People's Republic of China (China) by Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd (Kam Kiu) and PanAsia Aluminium (China) Limited (PanAsia). These amendments are required in order to implement recent Federal Court of Australia (Federal Court) findings for the following matters:

- *Panasia Aluminium (China Limited) & Anor v Attorney-General of the Commonwealth NSD 1653 of 2011*; and
- *Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd & Ors v Attorney-General of the Commonwealth & Ors NSD 1869 of 2011*.

#### **Background**

##### **Anti-dumping measures**

On 28 October 2010, dumping and countervailing duty notices were published in respect of certain aluminium extrusions exported from China. This followed the Attorney-General's (the Attorney's) acceptance of the Australian Customs and Border Protection Service's (ACBPS's) recommendations as outlined in Trade Measures Report No. 148 (REP 148).

Several applications were made to the Trade Measures Review Officer (TMRO) for review of the Attorney's decision. The TMRO recommended that the Attorney direct the Chief Executive Officer (CEO) of the ACBPS to conduct a reinvestigation into certain findings made in REP 148. International Trade Remedies Report No. 175 (REP 175) sets out the findings affirmed and new findings made by the ACBPS as a result of the reinvestigation.

Subsequently, the Attorney accepted the ACBPS's reinvestigation findings and affirmed the decision to impose measures, and varied the levels of those measures. To give effect to this decision the Attorney published new notices under section 269ZZM of the

*Customs Act 1901*. The new notices came into effect on 27 August 2011, replacing the earlier notices to the extent of any inconsistencies.

### Federal Court findings

Two Chinese exporters, Kam Kiu (and its related companies Kam Kiu Aluminium Products SDN BHD and Kam Kiu (Australia) Pty Limited); and PanAsia (and its related company Opal (Macao Commercial Offshore) limited), applied to the Federal Court for judicial review of the Attorney’s decision.

The resulting matters (as listed at the “*Purpose*” section) addressing ten grounds of review brought by the applicants were heard on 14 to 15 May 2012. This ADN does not address these grounds in detail.

### **Federal Court findings**

On 4 September 2013, the Federal Court handed down its decisions for the matters listed above. The Federal Court:

- decided in favour of the Commonwealth on nine of the ten grounds of review (as mentioned above, this ADN does not discuss these grounds in detail); and
- decided in favour of the applicants on one ground of review relating to the Attorney’s decision following the re-investigation to re-ascertain variable factors and vary the anti-dumping measures imposed, by setting the measures for aluminium extrusions by “finish” (i.e. mill finish or anodised). This varied the single “consolidated” measures for all types of aluminium extrusions set following the original investigation.

The Federal Court held that the Attorney had no power to vary the dumping and countervailing duty notices to impose anti-dumping measures for aluminium extrusions by finish.

The effect of the decision is that the rates of dumping and countervailing duty against the applicants, Kam Kiu and PanAsia, will revert to single “consolidated” levels (rather than by finish) that were previously set by the Attorney in October 2010. These changes will be applied retrospectively from **27 August 2011**. Reflecting the Federal Court Orders, the changes to the anti-dumping measures only relate to aluminium extrusions exported by Kam Kiu and PanAsia.

Reflecting REP 148, in respect of aluminium extrusions (all finishes) exported by Kam Kiu and PanAsia, particulars of the dumping and subsidy margins have been re-established. The effective rate of duties and relevant duty methods applicable are set out in the following table.

<b>Exporter / goods</b>	<b>Dumping Margin</b>	<b>Subsidy margin</b>	<b>Effective rate of combined interim duty</b>	<b>Duty methods</b>
Kam Kiu All finishes	3.1%	3.8%	2.1%	Dumping - fixed (ad valorem) and variable duty methods  Countervailing – fixed (ad valorem) duty method

Exporter / goods	Dumping Margin	Subsidy margin	Effective rate of combined interim duty	Duty methods
PanAsia All finishes	10.1%	6.1%	10.1%	Dumping - fixed (ad valorem) and variable duty methods  Countervailing – fixed (ad valorem) duty method

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) (see contact details provided below) for further information regarding the actual duty liability calculation in their particular circumstance.

To preserve confidentiality, the export price, normal value and non-injurious price will not be published. Bona fide importers of the goods can obtain details of the rates from the Client Engagement and Business Support Section (see contact details provided below).

### **Refunds and duties owed**

The Commission is currently identifying importers that have paid interim dumping and countervailing duties in relation to consignments of aluminium extrusions imported (directly or indirectly) from Kam Kiu and PanAsia from China during the period of **27 August 2011 to 10 October 2013**. In respect of these consignments, importers may:

- be eligible for a refund of duties paid; or
- be required to pay additional duties.

Affected importers will be contacted by the Commission shortly regarding the refund and payment processes.

### **Changes to measures applicable to other aluminium extrusions exporters**

No changes have been made to the anti-dumping measures applicable to other Chinese exporters of aluminium extrusions.

### **Anti-Dumping Commission contact**

Enquiries about this notice may be directed to the Client Engagement and Business Support Section on telephone number 1300 884 159 or +61 2 6275 6066 (outside Australia), facsimile number 1300 882 506 or +61 2 6275 6888 (outside Australia) or email at [clientsupport@adcommission.gov.au](mailto:clientsupport@adcommission.gov.au).

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