Trade Remedies Authority

Reconsideration of the final negative determination of certain goods in investigation AD0012; Aluminium extrusions from Peoples Republic of China

February 2024

1 Introduction / Executive Summary

1. On 16 December 2022, the Secretary of State made the decision to accept the Trade Remedies Authority's (the TRA) recommendation for measures on certain aluminium extrusions originating from the People's Republic of China (PRC).[1]

2. The TRA published its finding of a final negative determination on certain large aluminium extrusions on 16 December 2022, with the effective date being the same[2].

3. An application from Hydro Aluminium UK Limited (the Applicant) (applicant in the original investigation) was received on 17 January 2023, requesting a reconsideration of the following two decisions.

   Decision 1: TRA's recommendation to the Secretary of State in relation to the anti-dumping amount; the applicant claims that there were errors in TRA's approach which have resulted in dumping duties which do not reflect the level of injurious dumping.

   Decision 2: TRA's finding of a final negative determination in relation to the exclusion of large extrusions from the measure.

4. A reconsideration was initiated[3] on 22 February 2023.

5. This report is in respect of the reconsideration of decision 2: the final negative determination in relation to certain products.

[1] Trade remedies notices: definitive anti-dumping duties on certain aluminium extrusions from China - GOV.UK (www.gov.uk)
[2] https://www.trade-remedies.service.gov.uk/public/case/AD0012/submission/f0403051-4eef-4959-a1d4-f773f18b66be/ AD0012-Aluminium Extrusions Notice Final Negative Determination.pdf
[3] https://www.trade-remedies.service.gov.uk/public/case/AD0012/submission/cdf36162-9f7c-48a4-8b50-f3aed3dfddce/ Notice of Initiation of Reconsideration AD0012 – Notice of Reconsideration Initiation

6. The reconsideration undertook to establish whether the decisions made during the original investigation, when assessed against the grounds in the application for the reconsideration, were reasonable.

1.1 Reconsidered decision

7. Following the reconsideration, the TRA upholds the final negative determination in respect of certain aluminium extrusions with a weight greater than 14kg/metre and of certain aluminium extrusions with a cross sectional dimension greater than 310mm.

2 Background

8. On 30 April 2021 the TRA received an application for a trade remedies investigation (the original application) lodged by Hydro Aluminium UK Limited. The Applicant alleged that certain aluminium extrusions imported into the UK from the PRC are being dumped and are causing injury to the UK Industry.

9. The original application contained evidence of dumping and resulting material injury that was sufficient to justify the initiation of the anti-dumping investigation. The case was initiated by the TRA on 21 June 2021, and the Notice of Initiation[4] was published on the same date.

10. On 16 December 2022, the TRA published its final negative determination[5] in respect of certain aluminium extrusions over 310mm dimension and extrusions weighing over 14kg/m (large extrusions).

11. Further to the TRA's conclusion in the anti-dumping investigation into aluminium extrusions, the TRA received an application[6] from Hydro Aluminium UK Limited (the Applicant) on 17 January 2023 which requested a reconsideration of the final negative determination.

2.1 Timing of reconsideration application

12. The final negative determination came into effect on the date it was published, 16 December 2022.

13. The application window for a reconsideration is one month beginning the day after the notice came into effect. The application for reconsideration was received on 17 January 2023.

[4] https://www.trade-remedies.service.gov.uk/public/case/AD0012/submission/58db49f3-2ec8-4b8d-9acc-82d85bb69037/ Notice of Initiation original investigation
[5] Notice of Final Negative Determination of certain aluminium extrusions, AD0012 Published 16 December 2022
[6] https://www.trade-remedies.service.gov.uk/public/case/AD0012/submission/cdf36162-9f7c-48a4-8b50-f3aed3dfddce/ Reconsideration Application

14. In accordance with regulation 10(2) of the Trade Remedies (Reconsiderations and Appeals) (EU Exit) Regulations (the R&A Regulations)[7] , the TRA must reject an application for reconsideration unless that application is received within one month, beginning on the day after the date on which the notice came into effect.

15. Having regard to the law and to relevant guidance, the TRA initiated[8] a reconsideration on 22 February 2023. The findings in relation to the final negative determination are presented below.

16. Under regulation 13(9) of the R&A Regulations[9], the TRA has wide discretion to reconsider an original decision in whatever way it considers appropriate, subject to any contrary provisions in those Regulations. The TRA considers the appropriate approach to a reconsideration is to review whether the original decision made by the TRA was correct and reasonable at the time it was made.

[7] The Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (legislation.gov.uk)
[8] Notice of Initiation of Reconsideration published 22 February 2023 on the Public File
[9] The Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (legislation.gov.uk)

3 Analysis of ground: The final negative determination in relation to large extrusions

3.1 Ground 5 of the application[10] – The finding of a final negative determination in relation to large extrusions was incorrect

17. In support of the application that the final negative determination is incorrect, the Applicant submitted a number of arguments which we describe as sub grounds.

18. This report will consider each of the sub grounds in turn setting out our understanding of the Applicant's sub ground. An explanation of the original investigation's conduct, in relation to that sub ground is then set out, together with the detail of any additional analysis undertaken as part of the reconsideration. The TRA's finding as the result of the reconsideration for the sub ground is then set out.

3.1.1 Applicant's sub ground: Imports into the UK of the goods

19. The Applicant's position is that there was a lack of clarity over the TRA's conclusion that extrusions with a weight above 14kg/m were imported from the PRC. This lack of clarity is due to the PCN structure not differentiating the various products with a weight greater than 10kg/m.

Original investigation

20. The PCN structure did not differentiate products over 10kg/metre category.

21. The original investigation had identified the goods concerned which were subject to the investigation. Sampled overseas exporters provided information within their questionnaire responses which when checked to HMRC import data confirmed that goods were imported into the UK.

[10] Reconsideration Application Challenge to the final negative determination was set out in ground

22. Analysis and verification of the confidential product data provided by the sampled overseas exporters identified exports to the UK of products over 14kg/metre.

23. The conclusion of this analysis is referenced in paragraph 109 -110 of the Final Determination. The Final Determination makes it apparent the TRA had determined that products of a weight greater than 14kg/m were imported from the PRC during the PoI.

Reconsideration Finding

24. Whilst the PCN structure did not differentiate products over 10kg/m, the subsequent investigation analysis of confidential product data supplied by the 3 sampled overseas exporters confirmed that products over 14kg/m were imported from the PRC.

3.1.2 Applicant's sub ground: PCN comparability

25. The Applicant's position is that where the TRA found a lack of comparability of 20% of the PCNs, it has not stated whether this was due to -

- A lack of manufacturing by the UK industry, or
- the absence of imports from PRC.[11]

Therefore, it is not known what the justification was for treating the larger extrusions differently to those products where there was no PCN compatibility and whether this was reasonable.

Original investigation

26. In the provisional affirmative determination[12] published on 17 August 2022, the original investigation stated that resulting from analysis of PCN data it was apparent products of a size greater than 310mm were not manufactured in the UK, thereby these products had been excluded from the provisional measure, but

[11] OPEN Application for Reconsideration para 124, page 24
[12] Provisional Affirmative Determination published 17 August 2022 on the Public File

the original investigation would continue to include them as part of the investigation.

27. In the Statement of Essential Facts (SEF)[13], published 20 May 2022 the original investigation concluded that, following analysis of verified data and submissions from interested parties, the UK did not manufacture nor had capacity to manufacture products of a cross sectional dimension greater than 310mm, nor products with a weight greater than 14kg/m.

28. The original investigation also considered the submission made by overseas exporters following the publication of the SEF that the UK was unable to manufacture “lighter” products. The analysis by the original investigation concluded that data provided by two UK producers identified products classified as a weight below 0.5kg/m and a weight between 0.5kg/m to 4.5kg/m were manufactured during the PoI and thereby there was sufficient comparability between the UK production and the goods concerned, so were included in the measures. This is detailed in paragraph 113 of the final determination.

Reconsideration finding

29. Those products where there was no PCN comparability included goods produced in the UK but not exported into the UK by the PRC, and products exported into the UK but not produced by the UK industry during the PoI.

30. The reason for excluding the larger extrusions from the measure was that the UK industry did not have the capability to manufacture these products during the PoI or at the present time. Information provided by the UK producers highlighted that to do so would require modifications to existing machinery and these were not in place at the time of the original investigation and no information was submitted with timings of when / if the UK producers were committed to updating their machinery.

[13] Statement of Essential Facts published 20 May 2022 on the Public File

31. The examination of the PCNs showed that the UK industry did not have a product that interchanged with a product of a size greater than 310mm. Thereby it was reasonable for the original investigation to not include those products greater than 310mm in the measure.

32. It was reasonable for the original investigation to adopt a different approach to the larger extrusions (where there was no UK ability to manufacture) and the other PCNs (where there was the ability to manufacture, but there were not made during the POI).

33. The final determination at paragraph 115 states that the goods excluded from the measure are those not manufactured in the UK. A final negative determination was made against these larger extrusions.

3.1.3 Applicant's sub ground: Dumping of goods concerned as a potential cause for the UK not producing the like goods

34. The Applicant has stated that the TRA found in the final recommendation there was the capacity in the UK to produce larger extrusions, but the TRA had not examined whether the dumping of these products resulted in the UK not actually producing them.

Original investigation

35. The TRA assessed where dumping is found, whether those dumped goods had caused injury to the domestic industry of those like goods.

36. Paragraph 5 of Schedule 4 of the Taxation (Cross Border Trade) Act 2018 defines injury to the UK industry as –

> (a) material injury, or threat of material injury, to the industry, or
> (b) material retardation of the establishment of the industry.

37. As the UK industry is established, the question of material retardation was not considered. The original investigation considered material injury, or threat of material injury.

38. The original investigation had considered the impact of dumping on the UK industry in accordance with regulation 33 the D&S regulations. When considering other factors which the TRA considered relevant, it assessed two other factors which may have injured the UK industry – inflation in raw materials costs and the COVID-19 pandemic.

Reconsideration finding

39. The TRA had acted in accordance with the domestic legislation in its assessment of the impact of dumped goods on the UK industry. It had taken into account the effects of two other factors it had deemed relevant.

40. It was reasonable for the original investigation not to consider material retardation in this case as the UK industry was already a substantive enterprise, not an emerging industry.

3.1.4 Applicant's sub ground: UK capacity to produce the goods

41. The Applicant claims the TRA was incorrect in its conclusion that there was no evidence of intent to produce these products in the short – medium term, by failing to consider information provided by Garnalex as evidence of that intent.

42. As part of the submissions following the SEF, UK producers had claimed that though they may not previously or currently manufacture these large and heavy products, they did in fact have the capacity to do so, and on that basis the TRA should not exclude these goods from the measure.

Original investigation

43. In response to the SEF Garnalex submitted information to indicate that they had the capability to manufacture extrusions of a cross sectional dimension of 310mm and above and products with a weight in excess of 14kg/metre. This was referenced in the final determination at paragraph 105 – 107, where the TRA acknowledged that the capability was there.

44. The confidential transaction by transaction list provided by Garnalex showed no evidence of transactions relating to products with a cross sectional dimension greater than 310mm and/or a weight in excess of 14kg/metre during the PoI or injury period of the original investigation.

45. The final determination, paragraph 107, states that no evidence has been received to demonstrate an intent to utilise the capability in the short to medium term.

Reconsideration finding

46. The information provided by Garnalex was taken into account in the final determination.

47. A review of the information provided by Garnalex at the time of the original investigation confirms the position as stated in paragraph 107 of the final determination. Examination of the information submitted by Garnalex in the original investigation and resubmitted by the Applicant in the reconsideration application indicates the existing machinery was potentially capable of producing the larger extrusions but only with modifications/upgrades to the existing machinery. It does not provide any information whether the modifications had been agreed; the timescales to implement the modifications; evidence of future contracts or quotes for producing these goods; or the planned intention to utilise this capacity.

3.1.5 Applicant's sub ground: Inclusion of related EU production in UK production/industry analysis

48. The Applicant asserts that the TRA had misunderstood the argument put forward following the SEF that the TRA should take into account the production within the EU common market when determining the UK production.

49. The Applicant argues that –

    a. Part 12 of the D&S Regulations indicates the legislators' intent to take UK inclusion within the common market into consideration, not that it directly relates to a new investigation.
    b. The UK was still within the EU customs territory for seven months of the PoI so WTO law was applicable at that time. Thereby any manufacturing within the common market was applicable to the UK.

Original investigation

50. The TRA's response to the submission following the SEF was provided within the final determination, paragraphs 101 – 102.

51. The final determination stated that it had defined the UK industry in accordance with paragraph 6 of Schedule 4 of the Taxation (Cross-Border Trade) Act 2018. The TRA went on to say it did not agree that the Applicant's production of goods in other member states should be included as part of its (UK) data set. It also stated the view that Part 12 of the regulations did not apply to new investigations.

Reconsideration analysis

52. The definition of UK industry is set out in Paragraph 6 of Schedule 4 to the Taxation (Cross Border Trade) Act 2018 (the Act) (emphasis added):

> '[1] "**UK industry**" in particular goods means—
>
> (a) all the **producers in the United Kingdom of like goods** (see paragraph 7), or

(b) those of them whose collective output of like goods constitutes a **major proportion of the total production in the United Kingdom** of those goods'.

53. The TRA considers that the domestic legislation is clear that for the purposes of dumping and subsidy investigations the UK industry is defined by the production of those like goods within the UK.

Reconsideration finding

54. The TRA maintains that Part 12 of the D&S Regulations do not apply to new investigations and that consequently it is not relevant to consider the intent of that part of the legislation in this case.

55. The TRA has taken into consideration UK industry as defined by paragraph 6 of Schedule 4 to the Act and as such finds the TRA acted in accordance with the domestic legislation when defining the UK industry.

3.1.6 Applicant's sub ground: Definitions of like goods for the purpose of injury assessments

56. The TRA has interpreted paragraph 140 of the Application as an argument that the TRA failed to properly apply regulation 27 of the D&S regulations by reference to paragraph 5 and 6 of Schedule 4 to the Act and that large extrusions should not have been excluded from the measure.

Original investigation

57. The definition of like goods in paragraph 7 of Schedule 4 to the Act. Paragraph 7(1) states that like goods, in relation to goods, means –

(a) goods which are like those goods in all respects, or

(b) if there are no such goods, goods which, although not alike in all respects, have characteristics closely resembling those of the goods in question.

58. In the context of the large extrusions, the original investigation did not find that the goods were alike in all respects.

59. In its consideration of whether the goods had characteristics closely resembling the goods concerned, the commercial assessment conducted by the original investigation found that the UK industry goods did not produce “like goods” in the context of the larger and heavier extrusions. Consumers did not consider the UK produced goods sufficiently interchangeable to be considered as a like good. So though there may be some physical characteristics which were similar i.e. the properties of the aluminium extrusions, this was not sufficient to include them as like goods.

Reconsideration finding

60. Regulation 27 of the D&S regulations refers to the determination of whether the dumped goods have caused or are causing injury to the UK industry of the like goods. The TRA has excluded those products not manufactured in the UK (large extrusions) as the UK industry did not produce those like goods in the PoI.[14]

61. The original investigation acted in accordance with the legislation in its determination of the large extrusions not being like goods. It was reasonable to consider that the goods were not a like in all aspects of the goods concerned, and to determine that the goods did not have characteristics closely resembling those goods when taking into account the commercial aspects.

62. The reconsideration finds that though it was a reasonable decision of the original investigation to determine that larger extrusions were not part of the like goods

[14] AD0012-Aluminium-Extrusions-Final-Determination Paragraph 10

for injury assessment purposes, it should have advised clearly how they had conducted their like goods assessment when defining the UK industry.

3.1.7 Applicant's sub ground: Evidence not presented at the time of the investigation

63. The Applicant has submitted new information purporting to evidence it did manufacture products with a weight greater than 14kg/m during the POI.

Original investigation

64. The original investigation undertook on site verification activities including to verify the products manufactured by the applicant during the PoI. During verification information did not indicate that products in excess of 14kg/metre or products with a cross sectional dimension greater than 310mm were manufactured by the Applicant or the UK industry during the PoI.

65. In its submission following the publication of the SEF the Applicant stated in its non-confidential submission[15] –

> The TRA correctly found that during the POI and IP, the Applicant had not produced extrusions of >310mm and >14kg/m. However, it is evident that the Applicant has the capability to do so.

66. In the absence of any evidence to show the UK industry had produced these goods during the PoI, and confirmation from the Applicant that they did not produce the goods, the original investigation determined these goods were not produced by the UK industry.

Reconsideration analysis

[15] SEF NON Conf SUBMISSION (v6)_20220630140238.docx (live.com) Hydro's Non Confidential SEF submission 30/06/2022

67. As part of the reconsideration application, the Applicant provided new information which they claim supports the assertion they had produced extrusions during the PoI that were of a greater weight than 14kg/metre. The confidential information provided had been taken from their software system which records production runs and engineering drawing of the model. The information showed there were some sales transactions of one product type produced by the Applicant during the PoI that had a weight greater than 14kg/metre.

68. As part of the reconsideration analysis the TRA verified the confidential information provided by requesting relevant sales invoices. Examination of the relevant sales invoices confirmed these transactions had been included in the original questionnaire annex submissions of transaction-by-transaction data and these transactions had taken place during the PoI. It was noted that the information provided in the questionnaire and supporting documentation during the investigation did not include the weight of the goods.

69. Included within the confidential new information was evidence that the model concerned had a standard weight of less than 14kg/metre.

70. The sales invoices examined confirmed that the weight of the model concerned was not consistent. Each production run may produce a slightly heavier or lighter product than the standard weight.

Reconsideration finding

71. Verified new information submitted with the reconsideration application does confirm that a small number of transactions were made in the PoI for a product with a weight greater than 14kg/m.

72. During the course of the original investigation the Applicant confirmed that they did not manufacture products greater than 14kg/m.

73. Verified new information confirms that the expected weight, according to the technical specifications supplied by the Applicant, standard weight for the product concerned is less than 14kg/m.

74. The conclusion in the original investigation was based on the Applicant's own confirmatory statement that they did not make products with a weight greater than 14kg/m.

75. No evidence has been provided during the reconsideration to support that goods produced during the POI had a cross section dimension of over 310mm.

76. On examination of the information provided by the Applicant, though there have been occasions where the product slightly exceeded 14kg/m, this was part of the range of tolerance of the product but the technical specification for the product is less than 14kg/m. Therefore, it is considered the decision made by in the original decision remains reasonable.

4 Reconsidered decision

77. Having considered the application the TRA's decision is that the final negative determination was reasonable and is upheld.

78. The reason for this decision is that the approaches and decisions taken in the original investigation were reasonable, as set out above and summarised below.

- Whilst the final determination did not specifically state that products with a cross sectional dimension greater than 310mm were imported from PRC, the investigation confirmed that both this and the products over 14kg/m were imported.
- Following an assessment, it was determined that as the UK industry did not manufacture the larger extrusions it was reasonable to treat them differently to other non-matching PCNs.
- The TRA had treated the larger extrusions as not like goods based on the commercial assessment on how consumers view the products in that they were not sufficiently similar.
- The information provided by Garnalex was taken into account in the original investigation.
- Part 12 of the D&S Regulations do not apply to new investigations and the approach in the original investigation was in accordance with the relevant legislation and specifically paragraph 6 of Schedule 4 Taxation (CBT) Act 2018.
- The TRA did not assess whether injury was caused by the large extrusions. The decision taken in the original investigation was that large extrusions were not like goods; the assessment of commercial likeness in particular the consumers view that the goods were not interchangeable; and the goods concerned were not produced in the UK. This was a reasonable conclusion

based alongside the Applicant's confirmatory statement that they did not produce those goods.

- New evidence now available to the reconsideration confirms that whilst a small number of products were produced with a weight greater than 14 kg/m, the standard weight as per the technical specifications, for such product was less than 14 kg/m.

5 Next steps

79. Our reconsidered decision will be published in a Notice and will be found in the public file, https://www.trade-remedies.service.gov.uk/public/case/AD0012/submission/cdf36162-9f7c-48a4-8b50-f3aed3dfddce/ .