

RESPONSE TO APPLICATION FOR EXEMPTION FROM DUTY UNDER THE *CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975*

1 Introduction

The Anti-Dumping Commission (Commission) has received an application under sections 8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) for exemption from dumping duty and countervailing duty in respect of certain aluminium extrusions (the goods) exported from Malaysia. The exemption goods are described at section 5 of this form.

Your company has been identified as an Australian producer of the goods, and in accordance with the Dumping Duty Act, the Commission requests your co-operation in this exemption inquiry by responding to the questions in this form. The Commission will use the information you provide in its assessment as to whether an exemption from dumping and countervailing duties under may be recommended to the Parliamentary Secretary to the Minister for Industry and Science (Parliamentary Secretary).

2 Current aluminium extrusion measures

Anti-dumping measures, in the form of a dumping duty notice¹ and a countervailing duty notice², were initially imposed on certain aluminium extrusions by public notice on 27 June 2017 by the Parliamentary Secretary following consideration of the *Anti-Dumping Commission Report No. 362* (REP 362). The dumping duty notice is applicable to all exporters from Malaysia and Vietnam, with the exceptions of the following Malaysian exporters:

- Press Metal Berhad,
- Superb Aluminium Industries ,
- LB Aluminium Berhad, Sdn Bhd
- Milleon Extruder Sdn Bhd,
- Genesis Aluminium Industries Sdn Bhd, and
- Kamco Aluminium Sdn Bhd.

The countervailing duty notice is applicable to all exporters from Malaysia with the exceptions of the following Malaysian exporters:

- Press Metal Berhad,
- Superb Aluminium Industries Sdn Bhd,
- LB Aluminium Berhad,
- Milleon Extruder Sdn Bhd,
- Genesis Aluminium Industries Sdn Bhd, and
- Kamco Aluminium Sdn Bhd.

The countervailing duty notice does not apply to the exporters from Vietnam.

¹ Anti-Dumping Notice 2017/72 refers.

² Anti-Dumping Notice 2017/73 refers.

3 Application for Exemption from Measures

Ezy Tools Pty Ltd has applied for exemption from measures on the ground 'that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade' (sections 8(7)(a) and 10(8)(a)).

The applicant alleges that:

- There are no known companies in Australia who are willing to make Ezy Tools' Australian designed 12 unique extrusions, with free tooling of their dies and supply Ezy Tools with the lower volumes they can order & afford, as an Australian SME.
- As a SME ('micro') Ezy Tools is not treated on 'equal terms' with other SME or larger companies seeking extrusions here in Australia from the local extruders.
- Unlike other larger companies here that can order in huge volumes and thereby get free dies, Ezy Tools is 'not on a level playing field' and would be charged significantly higher prices for dies than those free dies larger purchasers are able to negotiate for. So, Ezy Tools cannot obtain "like or directly competitive goods" (aluminium extrusions) "on equal terms" compared to larger companies with the ability to place orders for higher volumes.
- When Ezy Tools has tried to source the extrusions from Australian manufacturers, recently and in the past, they have not been successful in getting an equal bargain compared to other "purchasers on equal terms under like conditions having regard to the custom and usage of trade".
- Ezy Tools has made attempts to use Australian manufacturers and/or suppliers (importers) in the past. Ezy Tools has run out of its raw aluminium profiles three times previously due to being 'put last' or used to 'top up' other companies' orders (obviously affecting our business negatively) and that prompted Ezy Tools to find its own extruder overseas, as the local ones were too expensive for dies, would not offer the capacity to order smaller volumes and therefore would not offer Ezy Tools "like deals" compared to their high volume customers.

4 Exemption Provisions

Under the Dumping Duty Act, the Parliamentary Secretary may, by notice in writing, exempt goods from interim dumping and countervailing duties and dumping and countervailing duties if he or she is satisfied:

- that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade (sections 8(7)(a) and section 10(8)(a)).

It is noted that these exemption provisions are subject to the discretion of the Parliamentary Secretary and are not automatically granted where the criteria set out in the provision appear to be met.

5 The goods subject to the exemption application

The goods the subjects of the exemption inquiry (the exemption goods) are certain aluminium extrusions described in Attachment A to Anti-Dumping Notice No. 2017/120.

The exemption goods are classified to the following tariff subheadings and statistical codes of Schedule 3 to the *Customs Tariff Act 1995*.

Tariff code	Statistical code
7604.21.00	08
7604.29.00	10
7608.20.00	10

These goods are free of Customs duty.

The exemption inquiry will examine whether the exemption goods satisfy the conditions of paragraphs 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

6 Instructions on Completing this 'Response to the Exemption Application'

The Commission has forwarded you this *Response to Exemption* application (the response) to provide you with an opportunity to participate in this exemption inquiry.

Due date for response

We request a completed response be returned to the Commission by COB **09 November 2017**.

Responses may be lodged by either:

Mail: The Director
Investigations 3
Anti-Dumping Commission
GPO Box 2013,
Canberra ACT 2601,

Email: Investigations3@adcommission.gov.au

Fax: 03 8539 2499 or +61 3 8539 2499 (outside Australia).

Verification of the information that you supply

The Commission may seek to verify some or all of the information supplied in the response. The Commission may request evidence to support the claims such as quotations and offers of sale. An onsite visit by the Commission may be required. A report will be prepared of visits conducted and a non-confidential version will be made available to the applicant for comment.

There is no legislative timeframe for completion of an exemption inquiry. However, a recommendation to the Parliamentary Secretary will be made as soon as practicable after obtaining all the relevant information.

Outline of information required by Response

Part A	Company contact information
Part B	Identical goods
Part C	Like or directly competitive goods
Part D	Capability to produce like or directly competitive goods
Part E	Additional comments
Part F	Your declaration

Response to Exemption Application

PART A - Company Information

A.1 Please provide the following company contact information;

Name:	Luke Hawkins
Position in company:	General Manager – Supply and Industrial Solutions
Address:	Level 4, Phillip Street, Parramatta NSW 2124
Telephone:	(02) 8222 0113
Facsimile number:	(02) 8222 0130
E-mail address of contact person:	Luke.Hawkins@capral.com.au

PART B – Response to Exemption Application

B.1

Does your company oppose or not consent to the request for an exemption?

NOTE: If your company does not oppose the request for an exemption, you do not need to complete the questionnaire. Please indicate that you do not oppose the request, sign and return the form as soon as possible.

Capral Limited (“Capral”) is opposed to the granting of an exemption from the measures for Ezy Tools Pty Ltd (“Ezy Tools”).

B.2

If your company opposes or does not consent to the request wholly or in part, provide a description of that part of the request to which your company opposes or does not consent.

Capral is opposed to the granting of an exemption from measures as it manufactures like goods to the goods the subject of the measures. Additionally, Capral submits that it produces like (or ‘competitive’) goods to the goods the subject of the measures and offers these to all customers on the Australian market at equal or competitive terms.

PART C - Identical Goods

C.1

Does your company produce, in Australia, goods that are identical in all respects to the goods described in section 5 of this *Response to Exemption Form*?

Capral manufactures identical goods to aluminium extrusions as detailed in Section 5 of this Response to Exemption Form. Capral has previously produced and sold identical goods to the applicant Ezy Tools.

The Anti-Dumping Commission (“the Commission”) has most recently validated that that Capral manufactures like goods (as per Section 5) in Investigation No. 362 (and in earlier Reports No. 148, 241, 248 and 287).

C.2

Provide evidence that you have produced and sold in Australia, in the last 12 months, goods that are identical in all respects to the goods subject to this application for exemption.

Evidence can be in the form of production reports and sales invoices. To the extent that production reports or sales invoices do not refer to the goods in the same detail as set out in the description of the goods (section 5), please provide additional information that indicates that identical goods have been produced or sold. The evidence should be attached to this form to ensure that it can be linked to this specific response. Please also include any available product literature respecting the identical goods you have produced and sold.

Capral manufactures and sells identical goods to those detailed in Section 5. Please refer to Confidential Appendix A4 (twelve months to 30 September 2017) previously supplied by Capral to the Commission in Investigation No. 442 – aluminium extrusions from China and Thailand.

Capral has supplied to the Commission in that investigation purchase orders, sales invoices and product brochures for the like goods manufactured by Capral.

C.3

Provide evidence of the terms and conditions of sale of these identical goods. Are these products available to all purchasers on equal terms under like conditions? If so, provide evidence and explain why you consider that these products are available to all purchasers on equal terms under like conditions.

Evidence can be in the form of sales invoices, sales contracts, sales reports or advertisements and brochures.

Please refer to Response at C.2 above.

PART D - Like or Directly Competitive Goods

D.1

If your company does not produce identical goods, does it produce and sell in Australia goods that are like or directly competitive to the goods subject to this application for exemption?

In determining whether the goods are like or directly competitive, the Commission will consider whether the goods have characteristics closely resembling each other and are substitutable.

The Commission may also consider;

- Whether physical characteristics of the goods are similar (including size, weight, shape, content, appearance and grade);
- Whether the goods are commercially alike, this may include consideration of the following;
 - whether the goods directly compete in the same market sector;
 - the extent to which participants in the supply chain are willing to switch between the goods and the goods subject to the application for exemption;
 - how the price of the goods and goods subject to the application influences consumption;
 - whether the goods share similar distribution channels; and
 - whether the goods are similarly packaged.
- Functional likeness – whether the goods are suitable with regard to end use, this may include an assessment of;
 - the extent to which the goods are functionally substitutable;
 - the extent to which the goods are used for the same or similar function;
 - whether the goods have the same or similar quality standards; and
 - consumer behavior in relation to the goods and goods subject to this application for exemption.
- Production likeness, this may include an assessment of;
 - the extent to which the goods are manufactured from the same products;
 - the manufacturing process of the goods; and
 - whether any patented processes or inputs are involved in the production of the goods.

Capral manufactures like goods or directly competitive goods to the goods the subject of the exemption application. As already indicated, the goods manufactured by Capral are alike and directly competitive to the goods the subject of the Ezy Tools application. Ezy Tools has not specifically provided extrusion section drawings accompanying its application, that permits Capral the opportunity to determine if it currently produces identical goods. However, if Capral does not currently manufacture to the exact drawings, it possesses the capability to produce the die(s) and manufacture identical products.

Additionally, Capral has previously manufactured and sold goods to Ezy Tools demonstrating that it has supplied identical/like goods to the applicant.

D.2

If you answered Yes to question D.1, please provide a description of the goods produced by your company that you consider to be like or directly competitive to the goods subject to this application. Your description of the goods your company produces should refer to all aspects of the goods as set out in the description of the goods in section 5.

Characteristics	Description

Provide evidence that the goods you consider like or directly competitive to the goods subject to this application for exemption have recently been produced or sold in Australia by your company. Evidence can be in the form of production reports and sales invoices. To the extent that production reports or sales invoices do not refer to the goods described in the above table, please provide additional information that indicates that the goods have been produced or sold. The evidence should be attached to this form to ensure that it can be linked to this specific response. Include any available product literature concerning the like or directly competitive goods you produced and sold.

Capral does produce identical/like goods to those required by Ezy Tools (i.e. 'No' to D.1 above).

D.3

Provide evidence of the terms and conditions of sale of these like or directly competitive products. Are these products available to all purchasers on equal terms under like conditions? If so, provide evidence and explain why you consider that these products are available to all purchasers on equal terms under like conditions.

Evidence can be in the form of sales invoices, sales contracts, sales reports or advertisements and brochures.

Please refer to D.1 response above.

PART E – Capability to Produce Identical or Like or Directly Competitive Products

E.1

If your company has not produced and sold in Australia products that are identical to, or like or directly competitive to the goods subject to this application for exemption, is your company capable of producing such goods?

Capral produces like goods to the goods the subject of the exemption application. However, in the absence of extrusion drawings, Capral cannot affirm that it currently makes identical goods but it does have the capability to produce the goods the subject of the measures.

E.2

If you answered Yes to question E.1, indicate whether the product that you can produce is identical to, or like or directly competitive to the goods subject to this application for exemption.

Refer Capral's response to E.1.

E.3

If you are capable of producing identical, like or directly competitive goods, explain why you have not produced such goods.

Provide evidence of your production capability, including evidence of the production and sale of similar products, certification of the identical, like or directly competitive goods and at what cost they could be produced, as well as any plans for the imminent production of the goods or orders for the goods and any relevant information.

Capral does produce identical and directly competitive goods to the goods the subject of the application.

E.4

If you are capable of producing identical, like or directly competitive goods, provide reasonable evidence of likely terms and conditions of sale for these goods.

Refer Capral's response to E.1.

PART F – Additional Comments

F.1

Provide any additional comments including any other information that will assist the Commission in reaching a recommendation to the Parliamentary Secretary regarding this application for exemption.

Ezy Tools has contended that local manufacturers are not willing to supply certain (apparently 12 different) unique extrusions from local production on 'equal terms with other SMEs or large companies'.

Capral submits that it is willing to offer to supply and trade aluminium extrusions on commercial terms that are comparable with other customers of similar volumes, with similar products and tooling (die) requirements.

Capral notes that varying terms of sale where customers are purchasing different volumes of goods or have different purchase requirements does not warrant an exemption from the anti-dumping measures.

It has recently been determined (Refer most recently Report No. 362) that Capral does supply identical or comparable aluminium extrusions to the goods identified in Attachment A to Anti-Dumping Notice No. 2017/120. Investigation No. 362 confirmed that Capral does produce aluminium extrusions that have the same physical, commercial, functional and production likeness to imported aluminium extrusions³.

It appears that Ezy Tools is seeking a local producer to supply the 12 unique extrusions with free tooling of dies at reduced prices. This is not the basis for the Assistant Minister deciding whether 'like or directly competitive goods' are available from local supply. Capral is willing to supply the subject goods on terms and conditions consistent with industry practice. Capral therefore does not consider that Ezy Tools can sustain an argument that Capral is not inclined to supply it with identical goods that are on terms that are not equal to other purchasers having regard to the volume and trade of the goods.

Capral therefore requests the Commission to not recommend that Ezy Tools be afforded an exemption from anti-dumping measures on imported aluminium extrusions that are readily available from local supply on terms and conditions consistent with other Australian industry customers.

PART G - Declaration

I hereby declare that.....(company) has completed the attached response to application for exemption and, having made due inquiry, certify that the information contained in this submission is complete and correct to the best of my knowledge and belief.

Name :.....

Signature :.....

Position in Company :.....

Date :.....

³ Refer Section 3.6, P. 19.