



8 July 2015

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### Continuation Inquiry 287: Response to file note

This submission is made on behalf of the applicant, Capral Limited, in relation to Inquiry 287 concerning the continuation of anti-dumping measures on certain aluminium extrusions exported to Australia from the People's Republic of China (China). We specifically refer to the file note placed on the public record on 19 June 2015.

The file note states that the Anti-Dumping Commission (the Commission) proposes to have regard to the outcomes of the current review of measures (Review 248) for the purposes of this continuation inquiry, however the outcomes from Review 248 may not be known prior to publication of the statement of essential facts (SEF) for this inquiry.<sup>1</sup>

We recently raised a number of issues in our response to SEF 248, which we anticipate will be addressed in the final report of Review 248. However, to the extent that those issues may not be fully addressed due to time constraints in that process, we would like the Commission to reconsider them as part of Inquiry 287. We therefore have attached our response to SEF 248 and ask the Commission to further examine these issues as required to ensure that they are fully considered in the outcomes of this continuation inquiry.

We also note that in SEF 248 the Commission found that the non-injurious price (NIP) has changed and we assume that the revised NIP will apply to the measures as one of the outcomes of the review.<sup>2</sup> We understand that as a result of legislative changes that came into effect on 1 January 2014, in considering whether to continue existing measures, in certain circumstances the Parliamentary Secretary is not required to consider fixing a lesser amount of

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<sup>1</sup> We note that the SEF for Inquiry 287 and the Parliamentary Secretary's decision in relation to Review 248 are both due 12 August 2015.

<sup>2</sup> SEF 248, p.45

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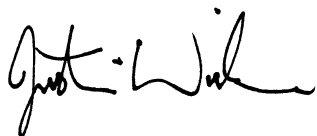
duty by reference to the NIP. The Commission has described the circumstances where lesser duty is not required as:

- in dumping cases, where there is a finding of a particular market situation for the goods in the country of export;
- in subsidy cases, where the country of export has not complied with World Trade Organization (WTO) obligations to notify subsidies; and
- in dumping and/or subsidy cases, where the Australian industry producing like goods consists of at least two small-medium enterprises (SMEs) – whether or not that industry consists of other enterprises.<sup>3</sup>

We submit that in this case all three circumstances apply as follows:

- Particular market situation – the Commission has recently found in Review 248 that government of China influences and interventions in the Chinese aluminium industry have created a ‘market situation’ in the domestic aluminium extrusions market, as set out under subparagraph 269TAC(2)(a)(ii) of the *Customs Act 1901* (the Act);<sup>4</sup>
- Subsidy notification obligations – the Commission has recently found in Review 248 that the goods are still in receipt of countervailable subsidies<sup>5</sup> and, consistent with the findings in the recent deep drawn stainless steel sinks and silicon metal cases, the government of China has not complied with its requirements under Article 25 of the *WTO Agreement on Subsidies and Countervailing Measures*;<sup>6</sup> and
- At least two SMEs – as outlined in Capral’s 2014 application for an anti-circumvention inquiry, the Australian industry currently comprises Capral and eight other aluminium extruders,<sup>7</sup> the majority of which are SMEs.

On this basis we submit that as part of this inquiry the Commission recommend that the Parliamentary Secretary not impose a lesser duty and the NIP be removed from the measures.



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Director

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<sup>3</sup> Anti-Dumping Notice No. 2013/108

<sup>4</sup> SEF 248, p.69

<sup>5</sup> SEF 248, p.39

<sup>6</sup> REP 237, p.64 and REP 238, p.78

<sup>7</sup> See <http://www.adcommission.gov.au/cases/Documents/003-Anti-circumventioninquiry-Application-PUBLIC-Redacted.pdf>



18 June 2015

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### Review 248: Response to SEF

This submission is made on behalf of Capral Limited, a member of the Australian aluminium extrusions industry, in relation to Statement of Essential Facts (SEF) No. 248 concerning the review of anti-dumping measures on certain aluminium extrusions exported to Australia from the People's Republic of China (China).

Capral welcomes the following preliminary findings in SEF 248:

- market situation finding that domestic selling prices in China are not suitable for determining normal value due to government of China (GOC) influences and interventions in the Chinese aluminium industry, although the effect of this finding on the calculation of normal value is not clear;
- inclusion of a regional premium, import costs and, where appropriate, a billet premium in the primary aluminium benchmark; and
- reliance on the importer verification and findings of *Anti-Circumvention Inquiry 241* in determining PanAsia's export price under subsection 269TAB(3) of the *Customs Act 1901* (the Act).

However there are some key areas that Capral believes should be re-examined as outlined below.

### Dumping: Guang Ya

We note Guang Ya was found to have a negative dumping margin, despite the fact that the importer did not cooperate with the review and the difficulties the Commission had verifying information submitted by the exporter. In these circumstances it is difficult for us to understand the outcome and we make the following comments on the preliminary findings outlined in the SEF.

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### Export price

The SEF states that transactions between Guang Ya and its Australian customers are arms length transactions.<sup>1</sup> However, Guang Ya's largest Australian customer (Trango Aluminium) refused to cooperate with the review, therefore we do not understand how the Commission came to be satisfied that the requirements of section 269TAA have been met.

We particularly refer to subsection 269TAA(2), which allows the Minister to treat sales at a loss as indicating that the importer will be compensated for part of the purchase price of the goods and thus fail to satisfy the requirement of paragraph 269TAA(1)(c). It is long-standing practice in Australian anti-dumping administration to rely on cooperation from importers to determine whether exports to Australia are being sold at a loss, in order to make a finding in relation to arms length transactions. The *Dumping and Subsidy Manual* states that:

*When examining export price, the Commission examines the importer's Australian sales in order to ascertain if they are profitable. The Commission will calculate the profitability of the importer's sales by comparing the sales revenue of the imported goods to the calculated fully absorbed cost to import and sell.<sup>2</sup>*

In circumstances where an importer has not provided the information required to examine the profitability of its sales, export price would normally be determined under subsection 269TAB(3) on the basis that sufficient information has not been furnished to determine export price under subsection 269TAB(1). If the requirements of subsection 269TAB(1) can be met without any information from importers, it could result in the non-cooperation of importers in all future anti-dumping investigations and inquiries.

We submit that, in accordance with subsection 269TAB(3), sufficient information has not been furnished to determine export price under subsection 269TAB(1) and export price must therefore be determined having regard to all relevant information. We further submit that, given the importer's refusal to cooperate with the review, the most relevant information is that concerning the lowest export price determined for the other selected exporters.

### Normal value

The SEF states that normal value has been determined under subsection 269TAC(6) using verified information from the other selected exporters due to difficulties encountered with verifying Guang Ya's data,<sup>3</sup> however the precise methodology is not detailed in the SEF. It is our understanding that in such circumstances the normal value for the exporter would be the same as the normal value calculated for uncooperative and all other exporters under subsection 269TAC(6). We submit that the normal value for Guang Ya should be the same as the normal value for uncooperative and all other exporters.

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<sup>1</sup> SEF 248, p.26

<sup>2</sup> *Dumping and Subsidy Manual*, p.24

<sup>3</sup> SEF 248, p.37

## **Dumping: Visited exporters**

On 4 May 2015 Capral made a submission in response to the three exporter verification reports in relation to the three visited exporters: Kam Kiu, PanAsia and Zhongya.<sup>4</sup> There is no indication that the issues raised in our submission have been considered for the purposes of the SEF, therefore we submit that the Commission reconsider these issues in making its final findings in the review. A number of the more critical issues are raised below.

### **Kam Kiu**

Finishing costs – It is important for the purposes of model matching export prices and normal values, that the costs for each model of extrusion exported to Australia, including finishing costs, are included in the corresponding normal value. The normal value for highly polished extrusions exported to Australia, for example, should include the full cost of that polishing work, which is likely to be higher than the average cost of polishing across Kam Kiu's product range. As another example, some customers in Australia specify a higher quality powder coating finish that is more expensive than the powder coat available in China.<sup>5</sup> Kam Kiu's overall finishing costs appear to have been verified, however it is not clear whether powder coating, anodising and polishing costs specific to the goods exported to Australia have been explored. We therefore urge further examination of this issue to ensure accurate model matching.

Packing costs – No adjustment was made to Kam Kiu's normal value for packing costs, on the basis that any difference in the cost of domestic and export packaging would be insignificant,<sup>6</sup> however goods exported to Australia are packed into timber crates,<sup>7</sup> while goods sold domestically typically are not.<sup>8</sup> This implies that export sales incur higher packing costs than domestic sales and we note that adjustments for packing costs were made to PanAsia's normal value.<sup>9</sup> We therefore urge further examination of this issue to ensure higher costs for exports to Australia are reflected in the normal value.

### **PanAsia**

Theoretical weight adjustment – PanAsia's normal value includes a claimed adjustment for the difference between sales to Australia made on the basis of the theoretical weight of the exported goods and domestic sales made on the basis of the actual weight of the goods sold.<sup>10</sup> We understand that adjustments will only be made where there is evidence that a particular difference affects price comparability.<sup>11</sup>

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<sup>4</sup> Document number 054 on EPR 248

<sup>5</sup> Capral submission on Kam Kiu's REQs (EPR doc. no. 46), p.2

<sup>6</sup> Kam Kiu exporter visit report at 9.2.1, p.32

<sup>7</sup> *ibid.* at 5.1, p.16

<sup>8</sup> *ibid.* at 7.1, p.27

<sup>9</sup> PanAsia exporter visit report at 8.3 and 8.4, p.40

<sup>10</sup> *ibid.* at 4.3.7, p.20

<sup>11</sup> *Dumping and Subsidy Manual*, Chapter 14

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In the original investigation PanAsia made the same claim for adjustment, but it was found that the evidence presented did not adequately support the claim.<sup>12</sup> In this case the evidence that the difference between actual and theoretical weight affects price comparability is not clear. We therefore submit that in the absence of evidence that circumstances have changed since the original investigation, in this instance the adjustment should not be accepted.

### Subsidies

*Position Paper 2014/04*<sup>13</sup> stated that the Commission would consider an additional 18 additional subsidy programs as part of this review, based upon information provided by Capral in our submission of 19 June 2014.<sup>14</sup> The Commission proposed to assess whether aluminium extrusions exported to Australia benefitted from these programs on the basis of all the facts available, in accordance with subsection 269TAACA(1) of the Act.

In SEF 248 it does not appear that subsection 269TAACA(1) has been applied in determining whether the additional programs are countervailable. As stated in Capral's further submission of 25 February 2015, we have provided sufficient evidence that each program involves a financial contribution from the GOC or a public body, confers a benefit in relation to the goods exported to Australia and is specific.<sup>15</sup> No other party has submitted any evidence to the contrary; therefore we do not understand the basis upon which these programs have been found to be not countervailable.

For example, there is clear evidence from the US investigation into aluminium extrusions from China that Program 44 and Program 45 have benefited the Chinese aluminium extrusions industry, including the same companies that were selected as part of this review. These programs are discussed further below, along with three other programs that were identified by the exporters but not fully addressed in the SEF.

### Program 44 – Preferential lending programs

The SEF states that verification of the selected exporters did not reveal that exporters were receiving preferential rates of lending,<sup>16</sup> however it is not clear how this has been determined. Capral has consistently submitted that the same methodology applied by the US should be applied in Australia, and we provided the appropriate US benchmarks to enable this assessment to be undertaken.<sup>17</sup>

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<sup>12</sup> Report 148 at 6.8, p.48

<sup>13</sup> Document number 044 on electronic public record (EPR) 248

<sup>14</sup> Document number 006 on EPR 248

<sup>15</sup> Document number 050 on EPR 248

<sup>16</sup> SEF 248, p.102

<sup>17</sup> See Capral countervailable subsidies submission, pp.2-3 (EPR Doc. No. 006), Capral further submission on subsidies and costs (EPR Doc. No. 050), and Attachment C to Capral competitive market costs submission (EPR Doc. No. 021)

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In relation to this program the US determined a countervailable subsidy rate of 1.14 per cent for Guang Ya<sup>18</sup> (a selected exporter in this review) and 10.54 per cent for all other exporters (except Zhongya)<sup>19</sup>. We again submit that the countervailability of Program 44 and amount of the benefit should be determined by reference to evidence from the US investigation into Chinese aluminium extrusions as provided by Capral during this review.

### Program 45 – Provision of land use rights for less than adequate remuneration

The SEF states that this program is not countervailable,<sup>20</sup> however there is no discussion of the program in the SEF or appendices. Capral has consistently submitted that the same methodology applied by the US should be used in Australia and we provided the appropriate US benchmarks to enable this assessment to be undertaken.<sup>21</sup>

In relation to this program the US determined a countervailable subsidy rate of 1.80 per cent for Guang Ya,<sup>22</sup> 4.97 per cent for Zhongya<sup>23</sup> (both selected exporters in this review) and 7.65 per cent for all other exporters<sup>24</sup>. We again submit that the countervailability of Program 45 and amount of the benefit should be determined by reference to evidence from the US investigation into Chinese aluminium extrusions as provided by Capral during this review.

### Other Programs

#### Program 7

The SEF states that one of the selected exporters received a benefit under Program 7 (along with Programs 5 and 26),<sup>25</sup> however it is not listed as an applicable program for any of the selected exporters or residual exporters.<sup>26</sup> We assume that the selected exporter referred to in the SEF is Guang Ya, since Guang Ya reported receiving a benefit under this program in its response to the exporter questionnaire. We therefore also assume that the omission of Program 7 from the subsidy margin for Guang Ya and residual exporters is an administrative oversight, and submit that this be corrected in the final findings.

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<sup>18</sup> Aluminium extrusions from China: Issues and decision memorandum for the final determination in the countervailing duty investigation, 28 March 2011, p. 25 (Attachment A)

<sup>19</sup> *ibid.*, p.13

<sup>20</sup> SEF 248, p.40 and p.71

<sup>21</sup> See Capral countervailable subsidies submission, pp.3-4 (EPR Doc. No. 006), Capral further submission on subsidies and costs (EPR Doc. No. 050), and Attachment E to Capral competitive market costs submission (EPR Doc. No. 021)

<sup>22</sup> Attachment A, p.39

<sup>23</sup> *ibid.* p.38

<sup>24</sup> *ibid.* p.14

<sup>25</sup> SEF 248, p.94

<sup>26</sup> *ibid.* pp.41-42



**Program 58**

The SEF states that Program 58 was found to be a countervailable subsidy on the basis of one of the selected exporters having received a benefit under the program,<sup>27</sup> however it is not listed as an applicable program for any of the selected exporters or residual exporters.<sup>28</sup> We assume that the selected exporter referred to in the SEF is Zhongya, since Zhongya reported receiving a benefit under this program in its response to the exporter questionnaire. We therefore also assume that the omission of Program 58 from the subsidy margin for Zhongya and residual exporters is an administrative oversight, and submit that this be corrected in the final findings.

**New program: Insurance fee refund**

In its response to the exporter questionnaire Guang Ya reported receiving a benefit under a new program not previously investigated or notified to the Commission,<sup>29</sup> however this program is not discussed in the SEF. Capral previously submitted that the evidence provided by Guang Ya supports a finding that this program is a countervailable subsidy.<sup>30</sup> We assume that the omission of this program from the subsidy margin for Guang Ya, residual exporters and uncooperative exporters is an administrative oversight, and submit that this be corrected in the final findings.

**Competitive market costs**

On 31 July 2014 Capral provided evidence that, in addition to primary aluminium, seven other costs of production are not competitive market costs and it would be appropriate to use an external benchmark in the constructed normal value.<sup>31</sup> It is not clear whether this evidence or the issues raised in our submission have been considered for the SEF. We submit that the Commission further examine the evidence previously provided by Capral that certain costs of production do not satisfy the requirements of subsection 43(2),<sup>32</sup> in that the costs do not reasonably reflect competitive market costs associated with the production or manufacture of like goods.

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<sup>27</sup> SEF 248, p.100

<sup>28</sup> *ibid.* pp.41-42

<sup>29</sup> Guang Ya response to exporter questionnaire, p.70

<sup>30</sup> Capral submission on Guang Ya's exporter questionnaire response, 23 February 2015, p.7 (EPR Doc. No. 049)

<sup>31</sup> Document number 021 on EPR 248

<sup>32</sup> Subsection 43(2) of the *Customs (International Obligations) Regulation 2015*

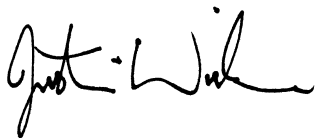


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### Conclusion

Capral submits that:

- export price for Guang Ya should be determined under subsection 269TAB(3) having regard to all relevant information, being the lowest export price determined for the other selected exporters;
- normal value for Guang Ya should be determined under subsection 269TAC(6) having regard to all relevant information, being the same normal value determined for uncooperative and all other exporters;
- issues raised by Capral in response to the exporter visit reports should be reconsidered, including finishing costs and packing costs for Kam Kiu, and PanAsia's claim for an adjustment to normal value for actual weight versus theoretical weight;
- the legal basis for findings on the countervailability of each of the 18 additional subsidy programs be clarified, taking into account the approach proposed in *Position Paper 2014/04*;
- the basis for finding that Program 44 and Program 45 are not countervailable in relation to aluminium extrusions exported from China be reassessed;
- apparent administrative errors in respect of Program 7, Program 58 and the new insurance fee refund program reported by Guang Ya be corrected; and
- evidence previously provided by Capral that certain costs of production do not satisfy the requirements of subsection 43(2) be re-examined.



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