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27 November 2017

Mr Tim King
Investigations 3
Anti-Dumping Commission
Level 35, 55 Collins Street
MELBOURNE VIC

By Email: tim.king@adcommission.gov.au

Dear Mr King,

RCR International Pty Ltd

Investigation into the alleged dumping of certain aluminium extrusions exported to Australia from the People's Republic of China by Guangdong Jiangsheng Aluminium Co., Ltd and Guangdong Zhongya Aluminium Company Ltd; and the Kingdom of Thailand

NON-CONFIDENTIAL VERSION - FOR PUBLIC RECORD

We refer to our previous correspondence and confirm we act for RCR and [REDACTED] [THAI SUPPLIER]. We will provide a separate Submission on behalf of [REDACTED] [THAI SUPPLIER]. We wish to reaffirm that our client will continue to cooperate with the ADC throughout the course of the Investigation and will provide the ADC with any further information or assistance it may require.

We are instructed to make the following Submission to the ADC in relation to the Investigation. We submit that RCR is an "interested party" as defined in paragraph 269T(1)(b) of the Act on the basis that it imported the Goods during the Investigation Period and as such it is entitled to provide this Submission to the Commission pursuant to paragraph 269TC(4)(c) of the Act

For the purpose of this Submission all defined terms have the meaning set out in the attached Schedule of Definitions.

1 Purpose of this Submission

- 1.1 The purpose of this submission is to express RCR's opposition to the views expressed in the Application that the Australian industry has suffered material injury from Thai exports which have been sold at artificially low prices through dumping practices which are therefore contrary to the Act.¹

¹ Application, pg. 26

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1.2 Further, our client generally rejects the finding in the Consideration Report that there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the Goods.²

1.3 RCR's reasons for these views are set out in the remainder of this Submission below.

2 Background

2.1 *Business of RCR*

- (a) RCR is an Australian company operating out of its office in Moorabbin, Victoria, and warehouse in Lynbrook, Victoria. RCR supplies Australian hardware store retailers with a range of aluminium extrusions.
- (b) RCR supplies the RCR Goods to many hardware stores and groups, such as [REDACTED] [HARDWARE STORE RETAILERS], and other independent hardware stores. The Goods sold to these customers are targeted at the "do-it-yourself" and "do-it-for-me" market.
- (c) RCR has been importing the RCR Goods to Australia from [REDACTED] [THAI SUPPLIER] for 18 years. RCR has maintained consistent imports from Thailand for 18 years and has not changed supplier in the past 18 years.
- (d) RCR markets a range of products known as "The Metal Mate System for Hardware Retailers". The range is designed specifically for hardware retailers and provides convenient pre-cut geometric aluminium profiles ranging from less than one metre, 1 metre, 2 metres and 3 metres in length. The range can be accessed here: www.metalmate.com.au.
- (e) RCR also supplies aluminium extrusions to the New Zealand retail hardware store market and has done so since 2004 by exporting goods from the Lynbrook warehouse to its wholly owned subsidiary in New Zealand.
- (f) As has been submitted to the ADC in respect of Anti-Circumvention Inquiry Number 447, the RCR Goods are Thai originating goods. [REDACTED] [THAI SUPPLIER] manufacture the goods from Thai sources in Thailand. As such, there can be no allegation of circumvention of measures in place in respect of Chinese imports of the Goods.

² Consideration Report, pg. 2.

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- (e) The description of the Goods is broad and could capture goods which are not properly considered “like goods” and which are not the cause of any material injury. We submit that the RCR Goods should be exempt from the description of the Goods for the reasons set out in this Submission.

3 The RCR Good are not “Like Goods” to the Goods

3.1 The Applicant alleges that it and other Australian producers manufacture aluminium extrusions that have characteristics that closely resemble the Goods.

3.2 In the Consideration Report the ADC found that the Australian Industry goods are “like goods” for the purposes of subsection 269T(1) on the following bases:

(a) **Physical likeness**

The Australian industry manufactures like goods that closely resemble the physical appearance of imported goods in terms of alloy composition, shapes and profiles and finish types.

(b) **Commercial likeness**

The Australian industry manufactures like goods that are sold to the same or similar customers and therefore compete directly with imported goods.

(c) **Functional likeness**

The Australian industry manufactures like goods that are used in the same or similar end-uses and are therefore functionally alike to imported goods.

(d) **Production likeness**

The Australian industry produces like goods in a similar manufacturing process, using the same or similar raw materials as imported goods.⁴

3.3 The meaning of “like goods” is considered in section 2 of the Manual, where the Department sets out the relevant principles as follows:

“In the context of like goods, identical goods are goods that are identical in physical characteristics, subject to variations in their presentation due to the need to adapt them to special conditions in the home or export market. If the goods are found to be identical, it is not necessary to further consider other factors such as channels of distribution, process of manufacturing etc. in determining the question of like goods.

If the goods are found not to be identical, it is necessary to determine whether the goods would still fall within the ambit of goods having characteristics closely resembling those of the goods under consideration. To determine whether the goods are goods having characteristics closely resembling those

⁴ Consideration Report, pgs. 15 - 16

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of the goods under consideration, Customs' practice is to have regard to the factors outlined below.

Physical likeness

Assess which physical characteristics are similar, and identify the extent of differences. Examples to consider:

- *Size*
- *Shape*
- *Content*
- *Weight*
- *Appearance*
- *Taste*
- *Grade*
- *Standards*
- *Age*
- *Strength*
- *Purity*

Are the goods classified to a matching tariff classification?

Commercial likeness

Commercial likeness refers to attributes identifiable from market behaviour.

- *Are the goods directly competitive in the market? e.g. do the goods compete in the same market sector? Within a market sector, are the goods similarly positioned?*
- *To what extent are participants in the supply chain willing to switch between sources of the goods and like goods? e.g. willingness of participants to switch between sources may suggest commercial interchangeability.*
- *How does price competition influence consumption? e.g. close price competition may indicate product differentiation is not recognised by the market.*
- *Are the distribution channels the same? How similar is the packaging used? Does different packaging reveal significant differences in the goods, or highlight different market sectors?*

Functional likeness

Functional likeness refers to end-use. End-use will not of itself establish like goods, but may provide support to the assessment of physical and commercial likeness.

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- *Do the goods have the same end use? To what extent are the two products functionally substitutable? e.g. both a shovel and an earthmoving machine can move earth.*
- *To what extent are the goods capable of performing the same, or similar functions? e.g. an earthmoving machine is capable of moving earth more rapidly than a shovel.*
- *Do the goods have differential quality? Quality claims can be subjective. Objective evidence has higher probative value e.g. by standards, or the extent consumers are willing to use the goods to perform the required functions.*
- *Is consumer preference likely to change in the future? Consider consumer behaviour in other markets/ countries?*

Production likeness

- *Different production processes may produce identical goods. However, different production processes may be used to create different product characteristics. A comparison of production process will not of itself establish like goods, but may highlight differences or provide support to the assessment of other considerations.*
- *To what extent are the goods constructed of the same or similar materials?*
- *Have the goods undergone a similar manufacturing process? If different, what is the impact of those differences?*
- *Are the costs to manufacture similar? A similarity in the cost of manufacture may be an indicator of likeness but is not determinative.*
- *Are there any patented processes or inputs involved?*

Other considerations

- *Matters raised by interested parties,*
- *Matters that Customs identifies during the course of the investigation,*
- *How similar is the marketing of the goods?"*

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3.4 Based on the criteria set out above, we submit that the Goods produced by the local industry do not produce like or directly competitive goods to the RCR Goods for the following reasons:

(a) ***Physical likeness***

- (i) The RCR Goods are not physically the same or similar to the Australian industry Goods for the reasons set out below.
- (ii) The Applicant produces custom made aluminium extrusions and long length aluminium extrusions for use in commercial and large scale projects. These extrusions generally have painted, powder coated or anodised finishes applied. Custom dies are also often used in the production of these extrusions.
- (iii) The RCR Goods are not customer specific and are not long lengths for commercial use.
- (iv) The RCR Goods are standard geometric profiles and are not made to any customised shape.
- (v) The RCR Goods do not use special or custom dies. Dies used to produce the RCR Goods are generic.
- (vi) The RCR Goods are cut to generic lengths of less than one metre, one metre, two metres and 3 metres. They are not cut to custom lengths.

[REDACTED]
[REDACTED] [INFORMATION
REGARDING THE RCR GOODS]

(b) Based on the comments above, we submit that the RCR Goods do not bear a physical likeness to the Goods due to differences in shape, size and finish.

(c) ***Commercial likeness***

- (i) The RCR goods do not compete directly with the Goods and are not in the same market sector as the Goods.
- (ii) The RCR goods are designed for retail customers being "home handymen" or DIY customers and are distributed through hardware retailers such as [REDACTED] [HARDWARE STORE RETAILERS] and others [REDACTED]
[REDACTED] [INFORMATION REGARDING RCR GOODS]
- (iii) The target market of the Goods are larger commercial customers with customised requirements for specific projects. The Goods are also produced in bulk for commercial customers.

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- (iv) The RCR Goods are not targeted at large commercial customers and are not produced with customised specifications. The RCR Goods are also not produced in bulk for commercial projects.

[REDACTED]

[INFORMATION REGARDING RCR GOODS]

- (vi) The Applicant has stated in the Application that it does not have a price list as the pricing of its goods will depend on the project to be undertaken and the specifications of the goods required.⁵
- (vii) RCR is required to have a wholesale price list to present to retail customers. The RCR Goods are sold off the shelves in retail stores for retail prices marked at the point of sale. Prices are not dictated by the scope of the project for which the RCR Goods are used which makes a price list essential to RCR's and the retailer's business model.

[REDACTED]

[REDACTED]

[REDACTED]

[INFORMATION REGARDING RCR GOODS]

- (xi) By comparison the Applicant supplies:

"...aluminium extrusion products... to residential and commercial construction markets, as well as to industrial fabrication and manufacturing markets."⁶

⁵ Application, pg 18.

⁶ Application, pg. 7.

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- (xii) The Applicant also states in its Application that it operates eight major distribution centres and ten "Capral Aluminium Centres" across all States and the Northern Territory.⁷
- (xiii) Price is not the sole determinant of the consumption of RCR Goods in respect of the market in which the RCR Goods are sold. Other factors include, but are not limited to [REDACTED] [INFORMATION REGARDING RCR GOODS], Point of Sale ticketing and stock availability for instant purchase by consumers. [REDACTED] [RCR BUSINESS MODEL].
- [REDACTED] [RCR BUSINESS MODEL].
- (xiv) [REDACTED] [RCR BUSINESS MODEL].
- (xv) RCR's business model is also dependent on an extensive field sales network and merchandising backup services. The services these networks provide include:
- (A) selling the system of product and display stands to retailers;
 - (B) setting up displays in the retail shops;
 - (C) regular visits to retailers to maintain the retail displays and calculate re-order quantity;
 - (D) placing price labels at point of sale to assist the end consumer in making their purchase decision; and
 - (E) monitoring item by item performance and stock levels.
- (d) Based on the comments above we submit that the RCR Goods do not bear a commercial likeness to the Goods as they do not directly compete with the Goods, consumption is not directly influenced by price competition, the distribution channels for the RCR Goods are not the same and the packaging

⁷ Application, pg. 7.

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and barcode labelling used is designed specifically for distribution to the retail market.

(e) **Functional likeness**

- (i) The RCR Goods are not custom made nor are they directed at specific large scale projects. They are a multipurpose product intended for small scale use by retail customers in a DIY or DIFM function.
- (ii) The RCR Goods are largely not substitutable for the Goods as they are generic and do not have additional finishes applied. The Goods are produced to custom specifications to meet specific requirements of commercial projects. The RCR Goods are not designed for use in commercial projects and are not made to custom requirements.
- (iii) The RCR goods and the Goods do not have comparable functionality as such end user preference cannot move between the RCR Goods and the Goods.
- (iv) The end use of the Goods is described in the Application as being wide ranging including commercial and residential buildings for window and door frame systems, prefabricated houses/building structures, roofing and exterior cladding, curtain walling, shop fronts, fencing, airframes, road and rail vehicles, marine, electrical and general engineering.⁸
- (v) RCR does not supply goods for use in the categories listed above or on the scale the Applicant appears to be targeting. RCR's target market is "home handyman" work or DIY or DIFM work.
- (vi) Based on the comments above, we submit that the RCR Goods do not bear a functional likeness to the Goods as they are not largely substitutable for the Goods, are not custom made for specific projects and end user preference cannot move between the RCR Goods and the Goods as the RCR Goods are not suitable for commercial projects.

(f) **Production likeness**

- (i) While the RCR Goods are produced from aluminium by an extrusion process the RCR Goods do not use custom dies. The dies used to produce RCR Goods are generic.
- (ii) [REDACTED] [INFORMATION REGARDING RCR GOODS]. We understand a large proportion of the Goods have paint, powder coated or anodised finishes applied as these are generally

⁸ Application pg. 14.

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necessary for the larger commercial and building projects for which they are designed.

- (g) Based on the comments above, we submit that there is not a production likeness between the RCR Goods and the Goods due to the dies used and finishes applied.

3.5 Although the description of the Goods may appear to indicate that the RCR goods are "like goods" the breadth of the Goods description makes it so that goods which are clearly not "like goods" may be caught. The RCR Goods are goods which may be caught by the description of the Goods but which, based on the comments above, are clearly not "like goods".

3.6 On this basis we submit that the investigation should be terminated so far as it relates to the RCR Goods.

4 The Australian Market and Market Size

4.1 The diagram included in the Application in respect of the Australian market indicates that distributors of the Goods sell to fabricators, manufacturers and other users.⁹

4.2 Other users is a catch-all term which possibly includes hardware store retail customers being the target market of RCR. However, these retail customers make up a small portion of those to whom distributors sell the goods as compared to commercial entities engaged in fabrication and manufacture.

4.3 RCR does not supply to manufacturers or fabricators. RCR's highly specific target market makes up a very small segment of the larger Australian Market.

4.4

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED] [RCR
BUSINESS MODEL]

4.5 Further, Figure 2 - Australian market for aluminium extrusions (T) provided in the Consideration Report¹⁰ appears to indicate that the Australian market has grown

⁹ Application pg. 14.

¹⁰ Consideration Report, pg. 17.

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since 2013 and that total Australian production as compared to total imports have remained relatively consistent since 2013.

- 4.6 Given RCR's minimal market share as compared to the Applicant and the growth in the Australian market we submit that RCR's behaviours in the Australian Market are inconsequential. Again on this basis we submit that the investigation should be terminated as against RCR and [REDACTED] [THAI SUPPLIER].
- 4.7 On this basis we submit that the Investigation should be terminated as far as it relates to the RCR Goods.

5 Supplier profiles

- (a) The Application and Consideration Report make repeated reference to Chinese suppliers and previous investigations, namely numbers 148, 248, 287 and 362.
- (b) The Applicant states in its Application:
- "Following the commencement of Investigation No. 362, Capral observed an upsurge in imports from Thailand. Based upon market intelligence, Capral became aware of low-priced exports to Australia by the two-exempt Chinese exporters, Jiangsheng and Zhongya. Capral understand the export volumes from Jiangsheng and Zhongya and the exports from Thailand, exceed the volume of exports at dumped prices (as per Investigation No. 362) from Malaysia and Vietnam."*
- (c) RCR has been importing from [REDACTED] [THAI SUPPLIER] for 18 years. RCR's choice of a Thai supplier is in no way related to Investigation No. 362. As such, any reference to Investigation No. 362 in the Consideration Report and Application is not applicable to RCR's activity in the market.
- (d) Any reference to Investigations in to Chinese goods, namely Investigations numbered 148, 248 and 287 are also not relevant to RCR due to its long history of importing from [REDACTED] [THAI SUPPLIER].
- (e) Further, the RCR Goods are Thai goods manufactured by [REDACTED] [THAI SUPPLIER] in Thailand; there is nothing to suggest that RCR is engaging in circumvention activity in respect to Chinese imports.
- (f) Chinese imports vastly outstrip Thai imports in the Australian market.¹¹ Any allegation of dumping or material injury should be properly concerned with Chinese imports and not Thai imports.
- (g) RCR's costs of production vary greatly from the Applicant's. This is due to differences in the production process itself, differences in labour costs and

¹¹ Application, pg 38.

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differences in RCR's supply chain in Australia (discussed above at paragraph 3.4).

5.2 Pricing

- (a) RCR's cost pricing mechanism is based on the [REDACTED]
[REDACTED] [RCR BUSINESS MODEL]
- (b) The RCR Goods are predominately simpler, mill finish profiles. Any price differential in the Thai market may be attributable to the purchase of more expensive paint, powder coated or anodise finished profiles. Any analysis of local Thai pricing as compared to RCR's pricing should only be concerned with simple, mill finish profiles.
- (c) Further, services in addition to producing the RCR Goods provided by [REDACTED] [THAI SUPPLIER], such as [REDACTED]
[REDACTED] [INFORMATION REGARDING RCR GOODS], are included in the pricing of the RCR Goods.
- (d) The Applicant's pricing includes "finish extras if applicable". In RCR's case the finish extras, which the Applicant refers to in its Application,¹² are not simply sundry items which may be applicable to imported goods. The finish extras are vital to RCR's business model as they are key to supplying any and all hardware retail stores. RCR's definition of finish extras is quite different to the Applicant's and includes labelling, display stands and a list of instore merchandising services.
- (e) [REDACTED] [RCR BUSINESS MODEL]
These are very transparent elements. RCR's cost price history shows dumping is not occurring.
- (f) [REDACTED] [RCR BUSINESS MODEL] All price increases have been reflective of increases in the cost of importing the RCR Goods. Price increases are based on sustained changes in RCR's landed costs and overheads. Any price increase must also be negotiated by RCR with the retailers. Price increases are contrary to any indication of dumping.
- (g) [REDACTED]

¹² Application, pg. 15.

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[REDACTED]
[REDACTED] [RCR BUSINESS MODEL]

- (h) RCR's cost pricing is detailed in the response to Parts B and C of the Importer Questionnaire. [REDACTED]

[REDACTED]
[REDACTED] [RCR BUSINESS MODEL] These extra finishes are not optional for RCR and are instead vital to its business model as a supplier to retail stores.

5.3 **Export Price**

- (a) The Applicant states that it relied on weighted average FOB export prices from published ABS import data for Thailand to determine an Export Price for Thailand.

- (b) The Consideration Report states:

"In relation to Thailand, the Commission identified a material difference between Capral's estimated weighted average FOB export prices and the weighted average FOB export prices the Commission calculated using data from the DIBP import database. The Commission considers that, given the greater level of detail available to it from the DIBP import database, this information is more reliable than Capral's estimated FOB export prices.

- (c) As extensive data on the value of the RCR Goods has been provided by RCR in its response to Parts B and C of the Importer Questionnaire we submit that the RCR Goods should be considered separately from other imports from Thailand generally and that a specific export price should be given to the RCR Goods.

- (d) The export price accepted by the ADC, as adjusted, in respect to Thai imports should not be applied to the RCR Goods. Significant data as to the actual value of the RCR Goods has been provided by RCR in its response to Parts B and C of the Importer Questionnaire. We request that the ADC review that data rather than rely on the export price submitted by the Applicant as adjusted by the ADC in determining the value of the RCR Goods.

5.4 **Estimated Normal Value**

- (a) In determining Normal Value for Thai imports the Consideration Report accepts the Applicant's Estimated Normal Value with a number of adjustments.¹³ An Estimated Normal Value was used by the Applicant for Thailand as it states it was unable to obtain domestic selling information for aluminium extrusions sold in Thailand.

¹³ Consideration Report, pg 23.

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- (b) The Applicant states that it has estimated the selling price based upon the prevailing LME price for aluminium ingot for the applicable quarter and adjusted for the MJP premium, a billet premium, plus amounts for conversion, packaging, SG&A and profit.¹⁴ Based on that information the Applicant calculated the dumping margin for Thailand as 78.1%.¹⁵
- (c) Minimal data is referred to by the Applicant in its Application in respect of normal value for Thai imports. Instead estimates have been provided based on the LME, MJP premiums, Billet premiums, ABS data and World Bank data.
- (d) The Application refers to the use of PanAsia accounts to determine SG&A expenses and profit.¹⁶ In respect of use of PanAsia accounts the ADC stated:
- “The Commission considers that there is no basis for Capral to rely on PanAsia’s accounts to 31 March 2014 to estimate SG&A expenses and profit in relation to Thailand. These amounts are not contemporaneous. The Commission replaced these amounts with verified SG&A expenses and profits obtained for a nearby country taken from Investigation 362.”*
- (e) The ADC stated in respect to the Applicant’s calculation of normal value:
- “Although certain elements of Capral’s estimated normal value were relevant and reliable, others were not.”*
- (f) The adjustments made by the ADC have led to a reduced dumping margin of 17.1%.
- (g) We agree with the ADC’s assessment that there is no basis for the use of PanAsia’s accounts to estimate SG&A expenses and profit in relation to Thailand. We further submit that verified SG&A expenses and profits taken from Investigation 362 should not be applied to RCR.
- (h) The ADC has considered data obtained from Review 392 and Investigation 362 in respect of costs of production in Thailand. We submit that data from Review 392 and Investigation 362, being data relevant to China, is not applicable to Thai imports generally or the RCR Goods specifically.
- (i) The Estimated Normal Value accepted by the ADC in respect of Thai imports should not be applied to the RCR Goods. Significant data will be provided by [REDACTED] [THAI SUPPLIER] in its response to the Exporter Questionnaire. We request that the ADC review that data rather than rely on the Estimated Normal Value submitted by the Applicant as adjusted by the ADC in determining the Normal Value of the RCR Goods.

¹⁴ Application, pg. 47.

¹⁵ Application, pg. 48

¹⁶ Application, pg. 21

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5.5 **General comments on allegations of dumping by the Applicant**

- (a) The Applicant's 2016 Annual Report indicates that the demand for aluminium extrusions has recovered from cyclical low levels and that the demand is expected to remain at current levels.¹⁷ The Annual Report refers only to cyclical declines in demand and makes no mention of extraneous effects such as dumping.
- (b) Further, RCR has been purchasing its goods from [REDACTED] [THAI SUPPLIER] for 18 years. There has been minimal change in pricing and volume during those 18 years.
- (c) The assertion by the Applicant in its Application that exports from Thailand have, on an opportunistic basis, displaced exports from Malaysia and Vietnam following the commencement of investigation No. 362 does not apply to RCR. RCR has been importing from the same Thai supplier for 18 years, as such, has not acted in response to investigation No. 362 or otherwise opportunistically.
- (d) The Application alleges that Thai imports increased in 2016 and 2017 by 28%. The Applicant attributes this increase to importers seeking to displace exports from Malaysia and Vietnam that are the subject of dumping measures.¹⁸ As discussed above, RCR has not modified its behaviour in response to Investigation No. 362.
- (e) Further, RCR has consistently been importing from Thailand for 18 years. No issues in respect of dumping have been raised previously in relation to [REDACTED] [THAI SUPPLIER] or RCR. There is no indication that dumping has become an issue in regards to RCR's imports from [REDACTED] [THAI SUPPLIER] to Australia.

6 **Causation of Material Injury**

- 6.1 In finding that there are reasonable grounds to support claims that the Australian industry has suffered injury caused by dumping and that that injury is material the ADC have applied a 'but for' test.¹⁹
- 6.2 To satisfy the 'but-for' test it must be shown that, had it not been for RCR's presence in the market, the Australian Industry would not have suffered material injury due to dumping activities.
- 6.3 The Manual, in respect of causation states:

"As injury caused by other factors cannot be attributed to dumped or subsidised imports, the Commission considers the influence of other factors when assessing

¹⁷ Capral Annual Report 2016, pg. 9.

¹⁸ Application, pg. 27.

¹⁹ Consideration Report, pg. 35.

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whether there is a causal link between the injury to the Australian industry and the present of dumped and/or subsidised imports in the market.

Such other factors may include, but are not limited:

- *the volume and prices of imports that are not dumped or subsidised;*
- *contraction in demand or changes in the patterns of consumption;*
- *trade restrictive practices of, and competition between, foreign and domestic producers;*
- *developments in technology;*
- *the export performance and productivity of the domestic industry.*

...

A determination of causation will be based on positive evidence and involve an objective examination of both:

- *The volume of the dumped and/or subsidised goods and the effect of those imports on prices in the domestic market for like goods; and*
- *The consequent impact of these imports on domestic producers of such goods."*

- 6.4 The Manual states that a 'but for' test is to be used only where no coincidence has been found, or a coincidence analysis has not been possible. The use of an alternative causation methodology will require a "compelling explanation" as to why causation exists notwithstanding the absence of any coincidence.²⁰
- 6.5 The ADC has found that there appears to be reasonable grounds to establish that the Australian industry has suffered material injury based on a "but for" analysis particularly in relation to the displacing of export volumes from Malaysia and Vietnam, price suppression and profit effects.
- 6.6 RCR submits that, if there is material injury, RCR's presence in the market has not been the cause of that material injury for the following reasons:
- (a) The Application indicates that aluminium extrusion imports from Thailand account for only 5.1% of the total import volume for the 2016/17 financial year.²¹

²⁰ Manual, pg. 127.

²¹ Application, pg. 38.

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- (b) The vast majority of aluminium extrusion imports for the 2016/17 financial year, namely 53.8%, are from Chinese suppliers.²²
- (c) Further, Malaysian imports accounted for 16% of aluminium extrusion imports, Vietnamese imports accounted for 7.5% of aluminium extrusion imports, Indonesian imports accounted for 5.5% of aluminium extrusion imports and New Zealand imports accounted for 6.2% of aluminium extrusion imports in the 2016/17 financial year.
- (d) By comparison to Chinese imports and imports from other countries, Thai imports of aluminium extrusions are negligible.
- (e) [REDACTED]
[REDACTED] [RCR BUSINESS MODEL].
- (f) RCR supplies exclusively to retail hardware stores, whose target market for the RCR Goods comprises DIY customers and small scale trades people. Further, as discussed above, we submit that the goods imported by RCR are not "like goods".
- (g) Based on the Application we understand that the Applicant operates on a large commercial scale, supplying customer custom made profiles, long length profiles and bulk quantities of profiles.
- (h) Based on the Application we also understand that the Applicant's main target market is larger scale commercial entities and applications.
- (i) To the best of RCR's knowledge, the Applicant has not attempted to enter the DIY retail market in the last 18 years.
- (j) RCR has been importing from [REDACTED] [THAI SUPPLIER] for 18 years. Investigation 362 has had no effect on RCR's behaviours, as such, it has not acted to displace exports from Malaysia and Thailand.
- (k) We submit that RCR's negligible presence in the aluminium extrusion market generally, its minimal market share, differences in the RCR Goods and the differences in its target market as compared to the Applicant's target market mean that RCR's behaviours could not have contributed any material injury the Australian industry may have suffered.

6.7 On this basis we submit that the Investigation should be terminated as far as it relates to the RCR Goods.

²² Application, pg 38.

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7 Exemption of RCR goods from any dumping or countervailing measure imposed as a result of the investigation

Even if the ADC concludes that there are reasonable grounds for the publication of a dumping duty notice in respect of the Goods, we submit that the goods imported by RCR should be eligible for exemption from any measures under paragraph 8(7)(a) of the *Customs Tariff (Anti-Dumping) Act 1975* (Cth) for the reasons expressed in this Submission that the goods manufactured by the Applicant are not "like goods" or "directly competitive" with those imported by RCR.

8 Conclusion and recommendations

8.1 In conclusion we submit that the investigation ought to be terminated by the Commissioner for the reasons set out in this Submission, namely:

- (a) The RCR Goods are not "like goods" as they bear no physical, commercial, functional or production likeness to the Goods;
- (b) The RCR Goods do not directly compete against the Goods as they are targeted at the DIY/DIFM small scale retail market.
- (c) Thai imports generally and RCR's presence in the market specifically are negligible in comparison to Chinese imports and imports from other countries.

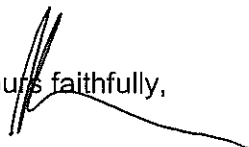
8.2 If the Investigation is not terminated as against Thailand or RCR, we submit that a separate normal value should be applied to the RCR Goods based on the actual data provided by [REDACTED] [THAI SUPPLIER] in its response to the Exporter Questionnaire.

8.3 If the Investigation is not terminated as against Thailand or RCR, we submit that a separate normal value should be applied to the RCR Goods based on the actual data provided by RCR in its response to Parts B and C of the Importer Questionnaire.

8.4 Further, if measures are imposed we submit that an exemption should be granted for the RCR Goods as the RCR Goods are not "like goods" and are not directly competitive.

Our client looks forward to continuing to assist the ADC throughout the Investigation and we would welcome the opportunity to discuss any of the issues raised in this Submission further at the ADC's request.

Yours faithfully,



Andrew Hudson
Partner

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Schedule of Definitions

- (a) "**ABS**" means Australian Bureau of Statistics.
- (b) "**Act**" means the *Customs Act 1901* (Cth).
- (c) "**ADC**" means the Anti-Dumping Commission.
- (d) "**Applicant**" means Capral Limited
- (e) "**Application**" means the application made by Capral for the publication of dumping and/or countervailing duty notices - Aluminium Extrusions exported by Guangdong Jiangsheng Aluminium CO. Ltd, Zhongya Aluminium Co. Ltd of PR China, and all exporters from Thailand dated 29 August 2017;
- (f) "**AUD**" means Australian dollars;
- (g) [REDACTED]; [HARDWARE STORE RETAILER]
- (h) "**DIBP**" means the Department of Immigration and Border Protection
- (i) "**DIY**" means do-it-yourself;
- (j) "**DIFM**" means do-it-for-me;
- (k) "**China**" means the People's Republic of China;
- (l) "**Commissioner**" means the Commissioner of the ADC;
- (m) "**Consideration Report**" means Consideration Report Number 442;
- (n) "**Department**" means the Department of Immigration and Border Protection;
- (o) "**Goods**" means the goods the subject of the Application, more particularly described in the Consideration Report as follows:

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2.3. The goods the subject of the application

Table 3 below outlines the goods as described in the application and their corresponding tariff classification.

Full description of the goods, as subject of the application
<p>Aluminium extrusions that:</p> <ul style="list-style-type: none"> • are produced by an extrusion process; • are 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); • have finishes being: <ul style="list-style-type: none"> ○ as extruded (mill); ○ mechanically worked; ○ anodized; or ○ painted or otherwise coated, whether or not worked; • have a wall thickness or diameter greater than 0.5 mm; • have a maximum weight per metre of 27 kilograms; and • have a profile or cross-section fitting within a circle having a diameter of 421 mm.
Further information
<p>The goods under consideration ("GUC") 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.</p> <p>The GUC 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.</p>

- (p) [REDACTED] [HARDWARE STORE RETAILER]
 - (q) "Importer Questionnaire" means the completed Importer Questionnaire Submission;
 - (r) "Investigation" means the investigation by the ADC in response to the Application;
 - (s) "Investigation Period" means the period beginning 1 October 2016 to 30 September 2017;
 - (t) "LME" means London Metal Exchange;
 - (u) "Manual" means the Dumping and Subsidy Manual published by the ADC in November 2015 which explains the practices used by the ADC in administering the anti-dumping and countervailing system;
 - (v) "[REDACTED]; [HARDWARE STORE RETAILER]
 - (w) "MJP" means Major Japanese Port;
 - (x) "RCR Goods" means aluminium extrusions imported by RCR from [REDACTED] [THAI SUPPLIER] which may be the subject of the Investigation;
 - (y) "Submission" means this submission on behalf of RCR;
- [REDACTED] [THAI SUPPLIER]

