



7 December 2017

Director, Investigations 3 Anti-Dumping Commission

GPO Box 2013

Canberra ACT 2601

Australia

Dear Mr. King

Thai Exporter Submission by Schimmer Metal Standard Ltd. (SMS) regarding ADC Case No 362 Investigation into the alleged dumping of certain aluminium extrusions exported from P R China by Guangdong Jiangsheng Aluminium Ltd. And Guangdong Zhongya Aluminium Ltd. and The Kingdom of Thailand (Thailand).

We refer to the application by Capral Limited (Capral) under section 269TB(1) of the Customs Act 1901 (Cth) (Customs Act) for the publication of dumping and/or countervailing duty notices in respect of aluminium extrusions exported to Australia from P R China by Guangdong Jiangsheng Aluminium Ltd. And Guangdong Zhongya Aluminium Ltd. and The Kingdom of Thailand (the Application) and to the Anti-Dumping Commission's (Commission) Consideration Report published on 12 October 2017 (the Consideration Report).

This submission addresses a number of issues raised in the Application and the Consideration Report. In summary, we argue as follows:

- a. SMS did not export any aluminium extrusions to Australia in the period 1 October 2016 to 30 September 2017 (the Investigation Period) in a manner of countervailable subsidies were received in respect of its exported goods;
- b. SMS did not export any aluminium extrusions to Australia in the Investigation Period at dumped prices;
- c. Although the Commission finds that countervailable subsidies were received or aluminium extrusions were dumped (which SMS denies), SMS states that the Australian industry has not sustained any material injury. In this regard, SMS submits that:
  - i. there has been no material injury to the aluminium extrusions sector; and
  - ii. if any injury has been sustained in the aluminium extrusions market in Australia, it has not been caused by aluminium extrusions exported to Australia by SMS.



## **1. Background**

During the investigation period, SMS operated via a proprietary company:

SMS engages its business specialising in the production and distribution of aluminium extrusions. The company was established in 1992 in the Kingdom of Thailand under Thai law. Our manufacturing operations are wholly conducted in our Ayutthaya province approximately of 90 kilometres north of Bangkok. Our head office is situated in Bangkok. Our company is fully equipped in all facets of the extrusion process, including in-house die production, thermally broken extrusions, precision machining, anodising, powder coating, and fluorocarbon and woodgrain finishing. SMS Schimmer services a broad spectrum of industry groups including architectural, construction, automotive, industrial, furniture and electronics and a range of distribution networks. SMS predominately provides its services and trade of aluminium extrusion product over Thailand domestic market and exports its aluminium extrusions to various international markets.

For aluminium extrusions market in Australia, SMS engages its business primarily on aluminium extrusions sale, directly to its Australian private company customers, under wholesale and end-user level of trade.

## **2. Dumping**

SMS submits that SMS has not engaged in dumping of any of its aluminium extrusions during the investigation period. SMS submits that its export price for all exports was in line with the local and normal price in Thai domestic market of the aluminium extrusions – under the same level of trade - during the consideration period. SMS shall submit supplementary material providing evidence of this in a further submission and in SMS's Exporter Questionnaire responses. Further, in its Application, Capral refers to its proposed (should be called its estimated FOB selling price under its subjective view) selling price alleging that exporters in Thailand imposed very low selling – which tends to be inaccurate. SMS always imposes its selling price by its certain pricing method (LME + Conversion Cost + Packing and Shipping Cost).

Capral draws to the attention of the Commission that SMS (Thai exporter) engaged undercutting sales in Australian aluminium extrusions market – which is ultimately untrue.

### **2.1 Dumped Price**

SMS has not engaged its exports where the dumped pricing was applied in Australia domestic market. SMS exported price is always rely on true cost of manufacturing plus its business profit with no undercutting basis, dumped price, subsidiary/distributorship in Australian domestic market. The exported prices were generally adjusted based on various business terms with its customers based in Australia under wholesaler/stockist level.



## **2.2 Normal value**

For the purposes of Capral's Application, Capral also used its subjective estimation of the normal value, as it was unable to obtain domestic selling price information for aluminium extrusions in Thailand. SMS disputes the accuracy of the constructed estimates, and instead will provide the Commission with the details of the actual normal values in a supplementary submission and in SMS's Exporter Questionnaire responses.

## **3. No material injury**

SMS states that, although the Commission finds that SMS has engaged in dumping or has been the beneficiary of countervailable subsidies – which are wholly denied by SMS- there has been no material injury caused to the Australian aluminium extrusion industry.

### **3.1 Framework for analysing injury**

Anti-dumping duties may only be imposed when dumping causes, or threatens to cause, material injury to the Australian industry. Before assessing whether there has been injury, it is necessary to identify the Australian industry which is alleged to have sustained injury. Section 269T of the Act defines 'industry' in terms of production of like goods. This definition is from Article 4 of the WTO Anti-Dumping Agreement and Article 16 of the WTO Agreement on Subsidies and Countervailing Measures. Both identify a domestic industry to be: domestic producers as a whole of the like products or to those of them whose collective output of the products constitute a major proportion of the total domestic production of those products. In the Commission's Consideration Report, the Commission acknowledged that it is required to consider injury to the whole Australian industry, which necessarily includes considering more than just Capral's data. The Commission noted that: ... Capral's data alone may not be sufficient for assessing injury to the Australian industry as the investigation progresses.

### **3.2 Australian aluminium extrusion industry**

In the Application, Capral relies on the injury allegedly suffered by it as a sufficient basis for the Commission to determine there has been material injury to the Australian due to the increased exported volume from Thailand since 2015 up to date. No concrete evidence is provided by Capral as to any injury suffered by the Australian aluminium extrusion industry, other than the alleged injury that it has suffered. SMS submits that this is an inappropriate basis to determine that the industry has suffered material injury, particularly given the Commission's observation that the volume of production from producers of aluminium extrusions in Australia, other than Capral, is close to 60 per cent of total Australian production.

- a.* global margins for major aluminium producing countries have been in decline from 2005–2015. The decline in global margins includes China. Australia's margins have typically fallen in the middle of the range in most years during this period

- b. global capacity and inventory of aluminium has outstripped demand. As the Commission's Analysis observes, 'Australia's experience - in the steel and aluminium industries - has been quite similar to the rest of the world. Any 'injury' to the Australian market therefore, merely reflects the current global downturn in the aluminium industry and the 'normal ebb and flow of business'. SMS further submits that despite the context of slowed global growth in this industry, the Australian market share for aluminium extrusion has increased in each year from 2013 to 2017. Conversely, Capral's own data shows that the market share of imported extrusions were likely in decline in Australian aluminium extrusions market during this time.

### **3.3 Capral's Overstated Injury**

SMS submits that the injury to Capral is a relevant consideration only to the extent that it is relevant to consideration of the Australian aluminium extrusion industry. SMS insists that the injury claimed by Capral in its Application is exaggerated and that the injury is not material. Moreover, Capral's annual report also indicates its leveraged profit in 2016 (during investigation period) whether it EBITDA approximately of 21.1 million AUD.<sup>1</sup>

### **3.4 Price Suppression**

In its Application, Capral submits that it has experienced injury in because of the price suppression which would be caused by SMS (Thai exporter).SMS refutes based on the small percentage of imports supplied from Thailand that Thailand produces, or SMS would have any leverage in the Australian industry to create and environment of Price suppression. Further, comparing to Caprals Aluminium volume of sale of 63,000kg that quantum that SMS is delivering to the Australian market is 1.59% of Caprals' sale volumes<sup>2</sup>, notwithstanding a comparison of such export portion with outstanding sale volume of other local aluminium extrusion in Australia, SMS states such a small percentage from an external source of SMS export could not create price suppression.

### **3.5 Any injury is not material injury**

For any injury to be material injury, that injury must be greater than that likely to occur in the normal ebb and flow of business and must not be insubstantial or insignificant. SMS insists that, having regard to the Australian aluminium extrusion industry and the injury alleged to have been caused or sustained to Capral, there can be no finding that the Australian industry has suffered material injury. First, this is because any injury caused to the Australian industry is merely that which has been likely to occur in the 'normal ebb and flow of business'. In addition to the global factors discussed above, the Australian domestic industry is affected

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<sup>1</sup> Based on findings in Capral's Annual Report 2016, p. 2 key statistics - <http://www.capral.com.au/Annual-Reports>

<sup>2</sup> *Ibid*, p. 2



from the relatively strong Australian dollar in 2013 prior to its decline over 2015 up to date which adversely affected the domestic aluminium industry and should provide Capral with a cost base advantage over imports.

Secondly, in its Application, Capral has overstated any injury may have suffered. Such injury is immaterial and insignificant. There is no evidence to lead that the injury to the Australian industry is anything other than insubstantial, or not occurring in the normal ebb and flow of business, particularly given the cyclical nature of this market. SMS therefore submits that, with regard to the factors relevant to determining whether material injury has been caused to an Australian industry under section 269TAE of the Act:

- a. imported aluminium extrusions from Thailand more generally accounts as the smallest volume among the exporters from other countries of the Australian market. The import market for aluminium extrusions accounts is substantially low of the market in Australia. The exported extrusion from Thailand account should not be able to cause adverse effect merely as the material injury.
- b. the Australian aluminium extrusions market remains dominated by Australian producers – indeed, this market share is increasing. Within this market, Capral is clearly the largest producer, representing more than 40% of the aluminium extrusions produced in Australia between 1 January 2015 to 31 December 2016. Capral's market share increased each year from 2012/2016; and
- c. to the extent that there has been any price suppression during the investigation period, the price effects are not caused by any alleged dumping or subsidisation, but rather other factors, as explained in article 3.4 of this submission.

SMS therefore submits that there has been no material injury suffered by the Australian industry.

#### **4. No Causation**

Even if it the Commission finds that there has been material injury caused to the Australian industry, (which is not accepted by SMS), it needs to be shown that the subsidised or dumped imports are the cause of the injury. A causation finding is expressly required by the terms of the Act. The causation requirements in sections 269TG (1) and (2) of the Act reflect Australia's implementation of Article VI(6)(a) of the GATT:

'No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.'

The Ministerial Direction on Material Injury makes clear that injury caused by other factors must not be attributed to dumping or subsidisation. Section 269TAE(2A) of the Act expressly states that the



Minister must consider whether any injury to an industry is caused or threatened by multiple factors other than the dumping of those goods, for example;

- a. the volume and prices of imported like goods that are not dumped
- b. contractions in demand or changes in patterns of consumption
- c. restrictive trade practices of, and competition between, foreign and Australian producers of like goods
- d. developments in technology
- e. the export performance and productivity of the Australian industry

To the extent that Capral and the Australian industry has suffered any volume or pricing injuries (which is denied by SMS), SMS states that there are other causes for these effects, especially not from SMS exported goods or business engagements, and these should not be attributed to any subsidisation or dumping. In particular:

- a. the timeframes submitted in Capral's Application do not demonstrate that Capral's injury has been caused by imports from Thailand. However, Capral's Annual Report Year 2016 (investigation period) shows its 2016 volumes rose 9.7% to 63,400 tonnes (2015: 57,800 tonnes) while revenues of 425 million AUD increased in revenues was accompanied by a substantial increase in profitability driven by greater capacity<sup>3</sup>. However, Capral's Application submits that injuries caused to it by Thailand imports commenced in 2016. The fact that Capral's profit and sale volume increased in 2016 suggest that any injury caused to Capral does not correlate with increased imports from Thailand
- b. imports from China have continued to expand in local industry markets, despite the anti-dumping measures imposed by the Commission. The majority of industry imports are expected to come from China, due to cheaper labour costs and economies of scale. China's aluminium smelting industry is also likely to continue to be heavily subsidised by the Chinese government. Such low production costs will continue to mean that the ongoing effect of injuries caused by Chinese imports will contribute to decreased industry revenue for domestic producers. The continuing volume of imports from China indicates that Chinese exporters have maintained distribution channels into the Australian market since anti-dumping measures were imposed in October 2010. This trend in import volumes suggests that imports are likely to maintain similar volumes in the immediate future.

## 5. Conclusion

SMS has not exported aluminium extrusions to Australia in circumstances where countervailable subsidies have been received in respect of the goods. SMS does not purchase extrusions and raw materials from PRC nor has distributors/business partners with private sectors in PRC. Further, SMS has not exported aluminium extrusions to Australia at dumped prices and accordingly should not be subject to any dumping duties. Even if the Commission finds against SMS on either the subsidies or

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<sup>3</sup> *Ibid*, p. 3



dumping grounds, no material injury has been caused to the Australian industry by the subsidies and/or dumping, as any price and volume effects may be explained by other factors that are not attributable to import competition and these require careful consideration during the investigation.

SMS is concerned to ensure that neither countervailing nor dumping duties are imposed inappropriately to the detriment of increased competition in the Australian aluminium extrusions market.

SMS is willing to assist the Commission with any further queries during its investigation or on-site verification Thailand.

Best regards

A handwritten signature in blue ink, appearing to be 'Bowornsith Nitiyavanich', with a long horizontal line extending to the right.

Bowornsith Nitiyavanich

General Counsel  
Schimmer Metal Standard Ltd.