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The Director  
Anti-Dumping Commission  
Investigations 3  
Industry House  
10 Binara Street  
Canberra  
Australian Capital Territory 2600

By email

Dear Director

## **Darley Aluminium – alleged dumping of aluminium extrusions Further submission on Capral’s injury and causation allegations**

As you know, we represent Darley Aluminium Pty Ltd (“Darley”) in this investigation.

This submission comments on new injury allegations made by the applicant, Capral Limited (“Capral”) in its recent submission (“Capral submission”),<sup>1</sup> in reply to Darley’s first injury submission (“Darley’s first submission”).<sup>2</sup>

<b>1</b>	<b>Capral admits there is no volume based injury.....</b>	<b>1</b>
<b>2</b>	<b>No “displacement” of other imports by the sources now under investigation .....</b>	<b>2</b>
<b>3</b>	<b>No replacement of injurious effect by pricing of imports under investigation .....</b>	<b>3</b>
<b>4</b>	<b>Return on investment injury claim is baseless .....</b>	<b>4</b>
<b>5</b>	<b>Capral’s failure to sufficiently address other injury factors .....</b>	<b>5</b>

### **1 Capral admits there is no volume based injury**

Darley’s first submission pointed out that Capral has not alleged volume based injury.<sup>3</sup> This comment relates to the Consideration Report No 442, which states that the Anti-Dumping Commission (“the Commission”) considered that loss of market share was a possible ground of injury. In response, Capral has now expressly denied the presence of volume based injury, stating:

*Darley has sought to address volume injury in its submission, however, Capral has not claimed that it has suffered volume injury in the investigation period...<sup>4</sup>*

<sup>1</sup> See Public Record Doc 032.

<sup>2</sup> See Public Record Doc 024.

<sup>3</sup> See Darley’s first submission, at page 2.

<sup>4</sup> See Capral submission, at page 1.

In light of Capral's submission, and the analysis in Darley's first submission which illustrated that no volume based injury is evident, we respectfully ask the Commission to find that the Australian industry has not suffered any form of volume based injury caused by Zhongya and Jiangsheng.

## 2 No "displacement" of other imports by the sources now under investigation

Capral's key injury allegation is that exports from Jiangsheng, Zhongya, and Thailand, "displaced" the injurious exports from Malaysia and Vietnam which were found to be dumped and causing material injury to the Australian industry. Capral states:

*It is Capral's assertion that dumped exports from the two Chinese exporters, Jiangsheng and Zhongya, along with exports from Thailand have, on an opportunistic basis, displaced export volumes from Malaysia and Vietnam following the commencement of investigation No. 362.<sup>5</sup>*

We recall our comments in Darley's first submission concerning this issue, which were to this effect:

- *Imports from Zhongya and Jiangsheng did not increase during the POI – despite the overall growth of the total Australian market;*
- *Imports from Thailand increased, but still accounted for a very small share of the import market, at just over 3% of total imports, and just over 1% of the total Australian market;*
- *Imports from Malaysia, Vietnam, and China which are subject to dumping duty increased, and accounted for more market share than imports from Zhongya and Jiangsheng, at around 15% of total market share and over 44% of total import market.*
- *Imports from other sources not subject to this investigation and not subject to dumping duties, including the un-dumped imports from Malaysian also increased, and accounted for about 22% of import market, as compared to about 29% for imports from Zhongya and Jiangsheng.<sup>6</sup>*

There has been no material increase of import volumes from Zhongya and Jiangsheng. The presence of imports from Thailand is minimal. There are continued imports from other sources not subject to this investigation (including those already subject to dumping measures) that have *increased* in volume. Thus, there has been no displacement.

In this regard, Capral has now responded with the following in its latest submission:

*An examination of the trends in the import data confirms that Chinese export volumes increased in 2016/17, Malaysian and Vietnamese volumes declined and Thai exports increased. Capral suggests that these trends are supportive of a 'displacement' analogy.<sup>7</sup>*  
[underlining supplied]

By making this statement, Capral appears to have shifted its "displacement" claim as against the exports from Zhongya, Jiangsheng and Thailand, being the goods under consideration in this investigation, to "*Chinese export volumes*" - which must mean Chinese imports other than those that are here under investigation, because those here under investigation have likely stayed the same.

Darley does not dispute that the volume of imports from Chinese exporters *that are already subject to measures* have increased. Such increase does not support Capral's displacement allegation concerning the goods that are here under consideration at all. Indeed it points to the opposite, ie that

<sup>5</sup> See Public Record Doc 001, Capral Application, at page 26.

<sup>6</sup> See Darley's first submission, at pages 7 and 8.

<sup>7</sup> See Capral submission, at page 3.

there was no displacement of the injurious effect of the goods already subject to dumping duties which were previously found to be the source of material injury to the Australian industry.

To dispel the displacement myth once more, we refer to Capral's own statements:

*Exports from Jiangsheng and Zhongya were maintained at levels to previous years, due to the absence of measures on these exports, enabling both exporters to price at levels that undercut the Australian industry.*<sup>8</sup> {underlining supplied}

Once again, we submit that there is no evidence that exports from Zhongya and Jiangsheng “displaced” and were therefore causative of injury, in the sense of having replaced exports from other sources after Investigation 362. The facts are:

- Year on year, the market for the goods has increased in size.
- Exports from China subject to measures have increased in the investigation period (“POI”).
- Exports from Malaysia and Vietnam have increased in the POI.
- Exports from Zhongya and Jiangsheng have maintained the same level and have not increased in the POI.

### **3 No replacement of injurious effect by pricing of imports under investigation**

Capral submission’s merges its volume-based displacement allegation with a “price-based displacement” allegation.<sup>9</sup> We submit that this proposition is equally flawed. It would appear to us that Capral’s allegation in this regard is based on its belief that:

*Exports from Jiangsheng and Zhongya were maintained at levels to previous years, due to the absence of measures on these exports, enabling both exporters to price at levels that undercut the Australian industry.*<sup>10</sup> [underlining supplied]

and

*Capral again reiterates the pricing pattern as depicted in the recent review investigation No. 392 involving exports from China. The Commission concluded that all Chinese exports the subject of measures were at dumped prices. Darley has been an active supplier of Zhongya exports on the Australian market during 2016/17 and its prices have been at levels below suppliers of goods sourced from exporters the subject of measures (whether China, Malaysia or Vietnam). The selling prices for imports from Jiangsheng have undercut Capral (as evidenced by Capral) in 2016/17 to secure increasing sales volumes. Darley’s claims that the information does not support the existence of a causal link between the dumping and injury experienced by Capral and the Australian industry is not supported by the market intelligence made available to the Commission.*<sup>11</sup> [underlining supplied]

Capral’s claim the goods exported from Zhongya are priced at “levels below suppliers of goods sourced from exporters the subject of measures” are misleading and misinformed at best. This observation is not supported by the price analysis in Consideration Report No 442, which considered that the prices of the goods exported from Vietnam and Malaysia were clearly lower than the prices of

<sup>8</sup> Capral submission, at page 2.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Capral submission, at page 3

those from both Thailand and China.<sup>12</sup> We again refer to pages 8 to 10 of Darley's first submission in this regard.

The fact that export volumes from Jiangsheng and Zhongya have stayed the same for many years itself strongly indicates that those exports were unlikely to have displaced the injury to the Australian industry from other sources, either volume wise or price wise. Quite simply, if exports from Jiangsheng and Zhongya were indeed the price leaders in the market, and given that they were apparently less affected by dumping measures as compared to other imports, then why did the sales volume of those two exporters *not* increase against all other sources? The fact that exports from Jiangsheng and Zhongya have been free from anti-dumping duties for years whilst maintaining a steady sales volume in the Australian market suggests that the Australian industry did not suffer any new or additional injury caused by exports from Jiangsheng and Zhongya during the POI. The Australian industry suffered material injury caused by exports from Malaysia, Vietnam, and other exporters from China prior to the POI, and the export volumes from those sources have increased, at lower prices than those from Jiangsheng and Zhongya, during the POI. All of these factors point towards the inference that exports from Jiangsheng and Zhongya could not have caused material injury to the Australian industry during the POI, even if they were at dumped prices.

#### 4 Return on investment injury claim is baseless

Capral submission's presses its "return on investment" based injury claims. In this regard, we submit that a "return on investment" based injury claim must also fail if it cannot be demonstrated as having been due to dumping by the sources under investigation and as having effected the Australian industry as a whole – and not only Capral. In any case, Capral's submission notes that its return on investment performance during the POI was not worse than the previous year, which was affected by both dumped and undumped exports from Malaysia, Vietnam and other exporters from China. Any such injury – if there is such injury – can hardly be attributed to the alleged dumping of the GUC from Jiangsheng, Zhongya and Thailand during the POI. This is best illustrated by Capral's own words:

The relatively poor return achieved (i.e. \$xxxx Million profit on turnover of \$xxxxx Million) has been adversely impacted by the growth in import volumes at dumped (and subsidised) prices that have continued since 2009/10. The growth in sales achieved by Capral has been as a result of the buoyant housing market which is forecast to slow in 2018/19 and 2019/20. The improvements that Capral has achieved during the period since measures were first imposed can be attributed to the increased production volumes sold into the housing sector and an expanding market, and not from the recovery anticipated in margins over cost that should have followed from the imposition of measures.[underlining supplied]

Capral appears to claim that it has never achieved any "anticipated recovery" from any of the injurious dumping it has claimed since 2010, despite the imposition of various dumping measures. Rather, market forces from the demand side, and other competition factors have consistently had a much more significant impact on Capral's return on investment performance. In this regard, we refer the Commission to Capral's own performance analysis in its result presentation for the first half of calendar year 2017. Exports from Zhongya and Jiangsheng were not mentioned as being factors affecting Capral's financial performance:<sup>13</sup>

<sup>12</sup> See, Darley first submission, at pages 8 and 10

<sup>13</sup> Capral "First Half 2017 Results Presentation", at page 10, see <http://www.capral.com.au/ArticleDocuments/776/2017%20Half%20Year%20Results%20presentation.pdf.aspx>

- 1H17 half Trading EBITDA<sup>1</sup> continues historical pattern of lower first half return
- Volume down 6% against prior period which had benefited from anti-dumping measures and a very strong residential market
- Imports from SE Asian countries continue to put downward pressure on domestic pricing
- Margin compression in 1H17 due to:
  - Aluminium price (LME) increasing by ~22% from an average of \$US 1,525 in 1H16 to \$US 1,855 in 1H17
  - Lower capacity utilisation due to lower volumes
- 1H17 earnings also materially impacted by reduction in WA demand

## 5 Capral's failure to sufficiently address other injury factors

In Darley's first submission, we referred the Commission to a number of key factors affecting the performance of both Capral and the Australian industry which are not related to the alleged dumping of exports subject to this investigation. This includes:

- competition from other imports which have been found to be responsible for material injury to the Australian industry in the past;
- past and present circumvention activities; and
- competition within the Australian industry.

In relation to the first two points, we noted in Darley's first submission that:

*Therefore, Capral's current injury claim, for the POI, can be summarised as follows:*

- *Capral was injured by dumped and subsidised imports from China back in 2009;*
- *despite the imposition of duties, the injury continued, due to circumvention by PanAsia;*
- *the injury continued again after the anti-circumvention inquiry, by dumped and subsidised imports from Malaysia and Vietnam;*
- *injury from dumped and subsidised imports from Malaysia and Vietnam has continued during the POI;*
- *injury from dumped and subsidised imports from other Chinese exporters has continued during the POI;*
- *further injury has been caused due to Chinese imports which may have circumvented the duty by way of trans-shipping from third countries during the POI.*

*The outcome of Report 362 implies that imports from Zhongya and Jiangsheng were not the cause of material injury to the Australian industry during the 2015/16 period, because the material injury was caused by dumped and subsidised imports from Malaysia and Vietnam. Since then, the Australian industry has further recovered, but injurious imports from Malaysia, Vietnam, and other Chinese exporters have continued, together with the circumvention goods from China via third countries.*



*It follows that, for the POI, any injury suffered by the Australian is even less attributable to imports from Zhongya and Jiangsheng, than it was attributable to those imports in Report 362.<sup>14</sup>*

In response, the Capral submission merely repeats its flawed volume analysis, and “*acknowledges that injury may have been caused by exports from suppliers the subject of measures, however, this level of injury would have diminished throughout the course of 2016/17.*” With respect, Capral’s comments are not supported by any evidence, nor by its own performance presentation as referred to above, which appear to demonstrate that the injury and the established sources of injury never “diminished”.

The Capral submission also states:

*Capral notes that the Parliamentary Secretary must be satisfied that the dumped and injurious exports by Jiangsheng, Zhongya and Thai exporters must have caused, or threatens to cause, injury to the Australian industry that is considered material. That is not to say that the Australian industry must not have also experienced material injury from other factors during the investigation period; the injury from the dumped exports that is material may also have coincided with injury from other factors that may also be considered material.*

We accept that it is theoretically possible for the Australian industry to be materially injured by multiple causes. However, there can only be “so much” material injury caused to an Australian industry. If the *material* injury has already been attributed to other factors, which appear to be more prominent in terms of both their volume and price competitiveness, then it becomes increasingly probable that any injury and causes of injury “left over” would be *immaterial*. Capral set up its claim for relief on the basis that the exports of the goods under consideration in this investigation *displaced* the injury determined in the previous investigation. Now it would seem that Capral’s game has changed. Now, faced with a better understanding of the market situation, Capral argues that the Australian industry was materially injured by the goods under consideration during the POI *in addition to or on top of* the material injury determined in the previous investigations. This is an attempt to cumulate (if any dumping of the goods under consideration is determined to have taken place) the impact of goods in one investigation – this one – with goods that have already had dumping measures imposed against them in a different investigation. This approach is improper as it directly contradicts the conditions which would otherwise permit “cumulation” under Section 269TAE(2C) of the *Customs Act 1901*.

Capral and the Australian industry continue to face pressure from goods exported from Malaysia, Vietnam, and other Chinese exporters, including whatever goods the anti-circumvention inquiry might find have originated in those countries but have been exported from other countries. These sources of injury are not related to the goods under consideration in this investigation. The anti-circumvention inquiry appears to be a complex one, as illustrated by the number of submissions on the public record of the inquiry and the Commission’s decision to extend the SEF due date by 200 days. Capral has a strong interest in that inquiry. Based on Darley’s market intelligence, circumvention activities likely extend beyond “third country” transshipment. For example, Darley has second hand reports of mislabelling and false declarations with respect to aluminium extrusion imports. Clearly, circumvention is considered to be a serious and substantial issue affecting the Australian industry’s performance, which is unrelated to the GUC exported from Zhongya, Jiangsheng and Thailand.

In relation to the issues concerning competition within the Australian industry, the Capral submission is entirely silent. The Commission is required to consider the performance of the whole Australian industry to determine the presence of any material injury. That industry is not “represented” by Capral, and Capral’s experience cannot be accepted as being “representative” of the performance of each member of the industry. Darley has first-hand knowledge of the fierce competition within the Australian industry members. The dynamic market relations and conditions of competition amongst the Australian industry members for aluminium extrusions was presented by us in Darley’s first

<sup>14</sup> Please see Darley’s first Submission, at page 12.

submission.<sup>15</sup> To further assist the Commission's consideration in this regard, we wish to convey other facets of Darley's market intelligence:

- certain Australian industry members, such as [CONFIDENTIAL TEXT DELETED – Australian industry member], regularly undercut Capral's prices on the market;
- despite [CONFIDENTIAL TEXT DELETED – Australian industry member] lower price and presumably lower LME-based spread as compared to Capral, [CONFIDENTIAL TEXT DELETED – Australian industry member] and other Australian industry members have expanded their production capacity in recent years;
- Capral often represents itself as the price leader in the market, offering prices to its Australian customers as low as other import sources and even below Darley's landed cost from Zhongya; and
- during the POI Darley purchased aluminium extrusions from Australian industry member [CONFIDENTIAL TEXT DELETED – Australian industry member], at prices higher than offered by Capral.
- There is a growing excess of capacity amongst the Australian industry.<sup>16</sup>

All of these factors are unrelated to the goods under consideration in this investigation. Darley believes that its unsatisfactory experience with Capral is not a stand-alone case. Indeed the Commission might readily form the view that the difficulties that customers have had in dealing with Capral has been a key driver of the entry of domestic competitors over recent years.


In summary, these other factors must be evaluated. Capral's prices and performance cannot be assumed to have been driven by the prices of exports from Zhongya, whether or not they are found to have been dumped. Capral does not represent the whole Australian industry. Any price suppression it claims to have experienced is not likely to have been shared by all other Australian industry members, where those other members have been able to achieve higher prices and better growth. The Commission should ask Capral whether its injury has been self-triggered - when it has been the price leader – and whether Australian market competition is in truth not just about the price of imports.

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Our client respectfully submits that Capral's response to Darley's first submission reinforces the inconsistencies and contradictions that were identified by Darley in that submission. The Commission is requested to carefully interrogate and examine the claims made by Capral. It is Darley's view that the Commission must come to the conclusion that there is insufficient evidence that the allegedly dumped exports from Zhongya and Jiangsheng have caused material injury to the Australian industry during the POI.

Darley again urges the Commission to terminate the investigation at its earliest opportunity.

Yours sincerely



Charles Zhan  
Senior Associate

<sup>15</sup> Please see Darley's First Submission, at pages 12 and 13.

<sup>16</sup> Please see Exemption Inquiry EX0055, Public Record Doc 004, Ullrich Aluminium submission at page 1 and Capral "First Half 2017 Results Presentation", at page 6.