

RIGBY COOKE LAWYERS

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2 July 2018

Mr Tim King
Assistant Director
Investigations 3
Anti-Dumping Commission
Level 35, 55 Collins Street
MELBOURNE VIC 3000

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

Dear Tim,

**United Aluminium Industry Pty Ltd and RCR International Pty Ltd
Investigation No. 442 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**

We refer to the SEF in this Investigation published on 12 June 2018.

We are instructed to make the following submissions in response to the SEF. In doing so we refer to the defined terms set out in the attached Schedule of Definitions.

1 Like Goods

- 1.1 We refer to RCR's submission dated 27 November 2017 and 23 April 2018. As previously discussed, RCR considers that the RCR Goods are not "like goods" to the Goods produced by the Australian Industry.
- 1.2 RCR has previously made submissions that the RCR Goods are not "like goods" as they do not bear a physical, commercial, functional or production likeness to the Goods.
- 1.3 We refer the ADC to RCR's submissions dated 27 November 2017 and 23 April 2018 for details in relation to RCR's position on "like goods" in this matter.
- 1.4 We refer to paragraphs 3.6.2 and 3.6.3 of the SEF. The SEF states that while the Goods are not identical to the goods subject to the investigation generally the ADC is satisfied that the Goods closely resemble the goods subject to the investigation on the basis that:

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"The primary physical characteristics of the imported goods and locally produced goods are similar...

The imported goods and locally produced goods are commercially alike as they are sold to common users, and directly compete in the same market...

The imported goods and locally produced goods are functionally alike as they have a similar range of end-uses...

The imported goods and locally produced goods are manufactured in a similar manner."

- 1.5 We reiterate RCR's position as set out in the RCR Submissions that the RCR Goods:
- (a) do not bear sufficient physical likeness to the Goods;
 - (b) are not targeted to the same market as the Goods;
 - (c) are not made to meet custom requirements; and
 - (d) are not produced or finished in the same or a similar manner to the Goods.

- 1.6 In respect to the RCR Goods we maintain that the RCR Goods are not "like goods" to the Goods.

2 UAI's adjustments

- 2.1 We refer to our letter dated 4 June 2018 in relation to the UAI Verification Report and our email dated 8 June 2018.
- 2.2 As discussed, we consider it appropriate that amendments to the Adjustments made to normal value (referred to in the Verification Report) be considered in circumstances where the costs on which those Adjustments are based relate to processes applied specifically to the RCR Goods and do not apply to any other Australian customer.
- 2.3 Specifically, the costs of the:
- (a) [REDACTED];
 - (b) [REDACTED]; and
 - (c) [REDACTED]

[ADJUSTMENTS WHICH RELATE SPECIFICALLY TO RCR]

are applicable only to the RCR Goods and are not applicable to goods produced for other importers to which UAI supplies. The Adjustments are upward adjustments to normal value. The costs of the [REDACTED] [ITEMS WHICH RELATE SPECIFICALLY TO RCR] are specific to the production of the RCR Goods. These costs are not applicable to other Australian customers.

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Details of the specific [REDACTED]
[REDACTED] [ITEMS WHICH RELATE SPECIFICALLY TO RCR] are included in RCR's submissions dated 27 November 2017 and 23 April 2018.

- 2.4 Accordingly, we consider it appropriate that the value of the Adjustments be adjusted to accurately reflect the proportion of sales made to RCR, to which these costs apply, as opposed to applying the Adjustments to all sales to UAI's Australian customers.
- 2.5 We consider it appropriate for the relevant Adjustments to be reduced by [REDACTED] [PERCENTAGE] to accurately reflect RCR's share of UAI's sales to which those costs actually apply, being [REDACTED] [PERCENTAGE].
- 3 Dumping margins and material injury**
- 3.1 We concur with the ADC's findings that goods imported from Thailand have not materially impacted on volumes, pricing offered by or profits of the Australian industry.
- 3.2 As set out in the SEF it has been found that any dumping of goods imported from Jiangsheng of China and UAI of Thailand are below the *de minimis* threshold of 2% and that imports from Zhongya of China are not being dumped.
- 3.3 We note that while UAI's dumping margin has been found to be below the *de minimis* threshold, the ADC is considering the further information provided in relation to UAI's credit terms and that this may affect its dumping margin. As discussed below, we do not consider any change in UAI's dumping margin to be of significant enough weight to warrant a reversal of the ADC's recommendation that the Investigation should be terminated.
- 3.4 Paragraph 6.3.2 of the SEF states that Thai market share in relation to imports of aluminium extrusions, including imports from UAI, had increased from a very low base of 0.7% to 1.3% during the injury analysis period. Thai import volumes also only accounted for 3.9% of total imports. While the volume of Thai imports is not negligible (in accordance with subsection 269TDA(5)(c) of the Act) those imports represent a minor portion of total imports and an even smaller portion of the Australian market.
- 3.5 The SEF states at 7.12 that:
- "The Commissioner did not find volume-based injury...*
- In relation to prices and profit, the Commissioner does not find that the small volumes of goods exported from Thailand at dumped prices had a material impact on pricing in the Australian market. While there is evidence that Capral's spread declined in the investigation period, the Commissioner is not satisfied that the pricing of goods sourced from Thailand materially impacted on the pricing offered by the Australian industry."*
- 3.6 In circumstances where Thai market share and import volumes are minimal as compared to other, particularly Chinese, imports we consider it appropriate that the Investigation be terminated. Any change to UAI's dumping margin as a result of its credit terms does not negate the findings that Thai imports are minimal in terms of

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total volume and market share and that they have not materially impacted on volume, pricing or profit in the Australian industry.

- 3.7 We concur with the ADC's findings that any material injury that may have been suffered by the Australian industry during the investigation period as a result of Thai imports was negligible. Accordingly, we consider the recommendation that the Investigation be terminated to be appropriate.

4 Capral's submission dated 2 May 2018

- 4.1 We refer to Capral's submission made on 2 May 2018 and the Cadence Economics Report. In response to Capral's 2 May 2018 submission we are instructed to make the following comments:

- (a) Capral has stated that the current trading environment, particularly in relation to the proposed imposition of tariff barriers by the United States and the ban on exports of raw material aluminium from Russia to the United States, that there is significant risk of "threat" of material injury.
- (b) While Capral has acknowledged that an increase in Thai imports is unlikely it states that Chinese imports have increased and are likely to increase in light of the current trading environment.
- (c) We submit that Capral's focus on Chinese imports as opposed to Thai imports further emphasises that Thai imports are negligible and should not be considered as contributory to any material injury caused by dumping that may be found.
- (d) The Cadence Economics Report clearly states at page 7:

"While some uncertainty remains in relation to how the Proclamations made by the White House might apply over time, this analysis considers the impacts at both ends of the spectrum in terms of country coverage: full exemptions to no exemptions. The results show that, regardless of where the country coverage sits in relation to these Proclamations, the results for Australian imports of both steel and aluminium... are within a narrow band and are, essentially, immaterial."
- (e) The Cadence Economics Report provides analysis of scenarios in which exemptions from US tariffs are and are not granted. These scenarios are speculative and provide a wide range of results. Any conclusions drawn in relation to the effect on Australia that the current trading conditions may have is purely speculative and should not be influential in the ADC's decision to terminate the Investigation.
- (f) In any event, any surge in Chinese imports would not be occasioned by dumping and would instead be the result of the current trading conditions which are not relevant to the Investigation or the decision to terminate the Investigation.

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- (g) In light of the findings in the SEF that Jiangsheng and Zhongya are either exporting goods at below the *de minimis* threshold or not exporting goods at dumped prices, and the conclusions in the Cadence Economics Report discussed above, we do not consider it appropriate that Capral's 2 May 2018 submission or any speculation in relation to future actions of the United States should be taken into account in the decision to terminate the Investigation.

5 Capral's submission dated 5 June 2018

5.1 In response to Capral's 5 June 2018 submission we are instructed to make the following comments:

- (a) the ADC has been provided with full information in relation to UAI's purchase price including its pricing methods and if any rates or premiums are included in the purchase price. The ADC has taken into account this information and made what we consider to be an accurate assessment of the true value of UAI's goods;
- (b) as requested and discussed above, the ADC has been provided with further information in relation to the credit terms used by UAI and we understand that this information is under assessment. If it is found that UAI's dumping margin should be changed we do not consider that change to be a significant enough factor to warrant reversal of the recommendation to terminate the Investigation. We reserve our clients' rights to respond to any issues that may be raised in relation to that information;
- (c) in relation to normal values, significant amounts of data in relation to UAI's sales were provided with UAI's Exporter Questionnaire and during the verification process. We consider this information to be sufficient to support the ADC's determinations in relation to normal value and concur with the ADC's conclusions in that regard; and
- (d) in relation to the adjustments made, please refer to our comments above. We otherwise consider the Adjustments to be reasonable.

6 Conclusions

- 6.1 For the reasons set out above we concur with the ADC's recommendation that the Investigation be terminated.
- 6.2 We note that the ADC is still assessing the additional information provided in relation to UAI's credit terms and that this assessment may affect UAI's dumping margin. We reserve our client's rights to respond to any issues that may be raised as a result of that assessment.
- 6.3 Further, as the recommendation to terminate the Investigation is based on a multitude of compelling factors we do not consider any change in UAI's dumping margin to be significant enough to warrant a reversal of the recommendation to terminate.

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- 6.4 Any change in UAI's dumping margin cannot change the ADC's finding that Thai imports are at minimal rates (3.9%) as compared to Chinese imports and that Thai imports have minimal market share (1.3%).
- 6.5 The SEF confirms that:
- (a) there have been no volume effects in the Australian market (and if there were, Thai imports would not be the cause);
 - (b) Thai imports have not significantly influenced the pricing in the Australian market in the investigation period; and
 - (c) Thai imports have not significantly influenced profits in the Australian market.
- 6.6 In light of the submissions set out above we consider it appropriate that the Investigation be terminated and do not believe any change in UAI's dumping margin that may be found should alter that recommendation.

Yours faithfully

Andrew Hudson
Partner

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Schedule of Definitions

- (a) "**Act**" means the *Customs Act 1901* (Cth);
- (b) "**ADC**" means the Anti-Dumping Commission;
- (c) "**Adjustments**" means the upwards adjustments made to UAI's normal value referred to in the UAI Verification Report;
- (d) "**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;
- (e) "**Cadence Economics Report**" means the "Cadence Economics Report: the potential for trade diversion in steel and aluminium" produced for the ADC and dated April 2018;
- (f) "**Capral**" means Capral Limited;
- (g) "**EPR**" means Electronic Public Record;
- (h) "**Goods**" means the goods the subject of the Application, more particularly described in the Consideration Report as follows:

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
Aluminium extrusions that: <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
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. 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.

- (i) "**Investigation**" means the investigation by the ADC in response to the Application;
- (j) "**Jiangsheng**" means Guangdong Jiangsheng Aluminium Co. Ltd;

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- (k) **"Manual"** means the Dumping Subsidy Manual dated April 2017;
- (l) **"RCR"** means RCR International Pty Ltd;
- (m) **"RCR Goods"** means aluminium extrusions imported by RCR from UAI which may be the subject of the Investigation;
- (n) **"RCR Submissions"** means the submission by RCR to the ADC in relation to the investigation made 27 November 2017 and 10 January 2018;
- (o) **"SEF"** means the Statement of Essential Facts published on 12 June 2018;
- (p) **"Submission"** means this submission on behalf of RCR;
- (q) **"UAI"** means United Aluminium Industry Pty Ltd;
- (r) **"UAI Verification Report"** means the verification report in respect to UAI published on 4 June 2018;
- (s) **"Zhongya"** means Guangdong Zhongya Aluminium Co. Ltd.