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Dear Mr Crooks

Investigation No. 362 – Statement of Essential Facts No. 362

I. Summary

Capral Limited (“Capral”) welcomes the publication of Statement of Essential Facts No. 362 (“SEF 362”) concerning exports of aluminium extrusions (“the goods”) from Malaysia and Vietnam. Capral supports the Anti-Dumping Commission’s (“the Commission”) proposed recommendation to the Parliamentary Secretary to impose (in the form of a dumping duty notice for exports from Malaysia and Vietnam, and countervailing duty notice for Malaysia) measures as follows:

- In respect of dumping duty that may become payable by exporters from Malaysia and Vietnam based upon the combination duty form of duties; and
- In respect of countervailing duty that may become payable by exporters from Malaysia, as a proportion of the export price.

Capral acknowledges the effort and completeness of investigations with cooperating exporters. Whilst Capral is disappointed with the outcomes concerning cooperative exporters in Malaysia, it is recognised that the Commission has examined Capral’s representations and sought to validate with the relevant exporter the matters raised.

Capral supports and agrees with the Commission’s findings that anti-dumping and countervailing measures are required to address material injury (and the future threat thereof) from the dumped and subsidised goods. Capral requests that the Commission recommend in its final report to the Parliamentary Secretary that the measures to be applied to exports from Malaysia and Vietnam are those as detailed in SEF 362 (subject to the matters raised hereunder).

II. Importer verification

The Commission identified three importers of aluminium extrusions (“the goods”) that accounted for approximately 78 per cent of the total import volume during the investigation period. These importers were:

- ABRA Metals Pty Ltd (“ABRA”);
- Aus Star Holdings International Pty Ltd (“ASH”); and
- Press Metal Aluminium (Australia) Pty Ltd (“PMAA”).

Capral notes that the Commission conducted verification visits remotely with PMAA and ASH. It is understood that both companies provided “*internal records and source documents for import and sales transactions*”.

The conduct of a remote verification of data supplied by the Australian importer of the largest Malaysian exporter of the goods throughout the investigation period represents an unsafe risk to the integrity of the investigation process – particularly for a new investigation (as distinct from a review of measures, or continuation investigation). Capral has raised concerns during the investigation concerning the arms’ length nature of exports¹ from Press Metal Berhad SDN BHD (“PMB”) to its related party Australian importer PMAA and it is considered that an on-site verification was warranted for this importer.

III. Dumping investigation

(a) *Malaysia*

The Commission received exporter questionnaire responses from 10 Malaysian exporters. The Commission visited the following three Malaysian exporters:

- Press Metal Berhad SDN BHD;
- LB Aluminium Berhad (“LBA”); and
- Superb Aluminium Industries Sdn Bhd (“Superb”).

The cooperative exporters not visited that were considered ‘residual exporters’ by the Commission were:

- Milleon Extruder Sdn Bhd (“Milleon”);
- Genesis Aluminium Industries Sdn Bhd (“Genesis”); and
- Kamco Aluminium Sdn Bhd (“Kamco”).

The Commission states that exports from PMB, LBA and Superb account for approximately 64 per cent of the volume of aluminium extrusions exported to Australia from Malaysia in the investigation period.

Capral has reviewed the exporter verification reports for PMB, LBA and Superb. Submissions in respect of each Malaysian exporter visited by the Commission have been made by Capral and are available on the EPR². It is not necessary to repeat earlier representations by Capral, however, it is noted that there does not appear to be a consistent treatment of certain due allowance adjustments under subsection 269TAC(8) concerning export packaging costs (including stillages and export packaging costs incurred for exports).

Capral notes that PMB incurred costs “relating to the return of shipping stillages used for its exports to Australia”. It is stated in the PMB verification report that “the cost of stillage return is the transport costs incurred for shipping the stillages from Australia back to PMB’s location in Australia”. The Commission included an upward adjustment to PMB’s normal value for the costs associated with the return of the stillages. In respect of Superb, the Commission has determined that “domestic packaging costs were cheaper than those reported for export sales and used different materials”. As a result, the Commission made a downward adjustment to Superb’s normal value for domestic packaging costs and an upwards adjustment for export packaging costs.

Capral advised the Commission during the exporter briefing process that it considered there existed differing packaging costs for exporters between domestic and export markets. This included the use of stillages in export sales. Given that PMB seeks the return of the stillages and identifies a cost of the freight transport for the return of the stillages in its accounts, the stillage cost therefore is not insignificant. It would therefore be expected that each exporter (including in Malaysia and Vietnam) would have incurred the cost of stillages on export sales but this cost has not been validated by the Commission at each exporter (excluding PMB).

¹ Refer Investigation No. 362, EPR Documents 45, 52 and 54.

² Refer EPR No’s 52, 53 and 65.

It is Capral's view that each exporter has incurred a cost associated with export sales to Australia that relates to the use of stillages. Capral anticipates that this export related cost is incurred by each exporter and should be included as an upward adjustment to each exporter's normal value. Similarly, as was verified at Superb, there exists a cost differential for packaging incurred between domestic and export sales, with the latter being at a higher cost (as was evidenced at Superb).

Capral requests the Commission to re-visit each exporter's costs (for Malaysia and Vietnam) to ensure a consistent approach is taken with regards to the treatment of costs associated with stillages and packaging costs for the exported goods.

The Commission identified that PMAA incurred a trade creditor liability with its parent PMB for purchases of the goods. It is claimed that the trade creditor liability had a "*net reduction of the accounts receivable balance by PMAA*". The Commission viewed this as demonstrating that PMAA had paid for all of its imports during the investigation period. It is further stated by the Commission that the trade creditor liability identified in PMAA's financial statements "*appears to have resulted from sales which occurred prior to the investigation period and have not impacted prices within the investigation period*"³.

It is not clear to Capral that this conclusion concerning the trade creditor liability and the net reduction during the investigation period can be readily made. Capral would highlight that there is a cost to an entity in maintaining a trade creditor liability and it is not clear that this has been adequately accounted for as a cost of conducting business by PMAA.

(b) Vietnam

Capral has similarly made a submission to the Commission in respect of East Asia Aluminium Company Limited ("EAA")⁴. This submission addressed adjustments for packaging (differences between domestic and export) and export handling costs.

It is highlighted with the Commission that aluminium extrusions exported from Vietnam are also packaged in containers where stillages are used and each exporter in Vietnam should have a cost incurred associated with this expense.

Capral requests that the Commission examine each Vietnamese exporter's normal value and adopt a consistent approach for due allowance adjustments that relate specifically to the identified export costs (stillages and export packaging).

IV. Subsidies – Malaysia

The Commission has confirmed that the Government of Malaysia ("GOM") provides the following countervailable subsidy programs:

- Program 1 – Income Tax Reductions ('Pioneer Status');
- Program 2 – Income Tax Allowance;
- Program 3 – Double deductions for export credit insurance;
- Program 4 – Double deductions for freight charges relating to goods originating from Sabah and Sarawak;
- Program 5 – Double deductions for insurance premiums paid by exporters and importers; and
- Program 6 – Reinvestment allowance.

The Malaysian 'residual exporters' had a 1.49 per cent negligible margin determined in respect of three of the identified programs (namely Programs 4, 5 and 6). The methodology followed by the Commission in determining the amount of benefit from subsidies received by the residual exporters was to determine "*a unit of measures and export price which were based on the weighted average of selected cooperating exporters*".

³ Refer SEF 362, P.30.

⁴ Refer EPR Document No. 55.

Capral considers that the Commission could have used each of the residual exporter's weighted-average export price to calculate the benefits received, and queries whether this would have delivered a different outcome for each of the residual exporters.

V. Economic condition of the Australian industry and materiality

The Commission has determined that the Australian industry manufacturing aluminium extrusions has experienced material injury in the investigation period in the following forms:

- Price depression;
- Price suppression;
- Loss of profits;
- Reduced profitability;
- Reduced capital expenditure;
- Increased closing stock levels; and reduced return on investment ("ROI").

In its assessment of material injury sustained by the Australian industry, the Commission has had regard to the *Ministerial Direction on Material Injury 2012* (Material Injury Direction).

Capral welcomes the Commission's findings concerning material injury sustained by the Australian industry. The industry has experienced ongoing volume and price pressures from the dumped (and subsidised) exports from Malaysia and Vietnam that have undercut the Australian industry's selling prices. The levels of price undercutting from the injurious exports were determined in the range of 11 per cent to 25 percent. Capral's selling prices for the goods have been heavily influenced by the injurious imports – particularly the imports from Vietnam which were at the lowest pricing levels in the Australian market. The increase in market share for imports sourced from Malaysian and Vietnam during the investigation period can only have been achieved due to the price undercutting that occurred.

The Material Injury Direction is relevant to the circumstances of the Australian aluminium extrusions industry. In particular recognition that the Australian industry could have been more prosperous but for the presence of dumped and subsidised imports. The Australian industry has been prevented from achieving improvements in profit for its sales of locally produced aluminium extrusions due to the influence of the dumped and subsidised imports from Malaysia and Vietnam.

Accordingly, Capral concurs with the Commission's assessment of injury sustained by the Australian industry during the investigation period, and further agrees that the injury is material based upon the growth in market share achieved and the level of undercutting by the injurious exports.

VI. Non-Injurious Price

The Commission is proposing to recommend to the Parliamentary Secretary that the non-injurious price ("NIP") for each exporter be determined at a price equal to the un-dumped and un-subsidised price. On this basis, the Parliamentary Secretary will not be required to have regard to the lesser duty rule.

The Australian market for aluminium extrusions is a price sensitive market. The customers' purchasing decision is primarily driven on the basis of price. As such, Capral is cognisant of prevailing import prices for which the injurious exports from Malaysia and Vietnam have been key influencing benchmarks. Capral accepts the Commission's assessment that it is appropriate to determine the NIP for each exporter on the basis of the non-dumped and non-subsidised selling prices for the goods.

It is appropriate to further highlight with the Commission that the Australian industry comprises a number of Small to Medium sized enterprises ("SMEs") including AluShapes, APA, EA and Olympic. Capral understands that the Commission has confirmed one entity's position as an SME. Capral also understands that a further entity readily qualifies as an SME and will draw this to the attention of the Commission.

VII. Form of measures

SEF 362 confirms that the Commissioner proposes to recommend to the Parliamentary Secretary that the form of measures to apply to the injurious exports from Malaysia and Vietnam take the form of:

- In respect of interim countervailing duty (“ICD”) that may become payable by exporters from Malaysia, as a proportion of the export price of the goods; and
- In respect of interim dumping duty (“IDD”) that may become payable by exporters from Malaysia and Vietnam, based upon the combination form of measure that includes both a fixed and variable component.

Capral welcomes the Commission’s proposed recommendation to base the form of measure applicable to IDD on the combination method. The Commission is aware that in respect of aluminium extrusions exported from China circumvention activity resulted in the non-payment of IDD. The combination form of measure represents the most effective basis for ensuring the correct IDD is paid and that the effect of the measures to remove injury from dumping is achieved.

It is observed at Section 11.4 of SEF 362 the Commission’s comments concerning the recent price movements of the key determinant in relation to aluminium extrusions i.e. the LME price. The LME price and the Major Japanese Port (“MJP”) Premium have experienced sustained movements since the completion of the investigation period. The Commission has stated the following:

“Given that the market for aluminium following the investigation period appears to be indicative of a rising market it is unlikely that exporters will be disadvantaged if the combination duty method was imposed”.

Capral is concerned that it appears there is a degree of reluctance to recommend the combination form of measures on the dumped exports. It should be recalled that the dumped (and subsidised) exports have been called out as having caused material injury to the Australian industry. The Australian industry seeks the imposition of the most effective form of measure to address the injurious dumping. In this instance, measures based upon the combination method are deemed necessary to address injurious dumping.

The Commission has highlighted a highly relevant variable that has emerged post the investigation period. The rapid increase in the LME and the MJP premium post the investigation period confirms that variable factors determined for the exporters in Malaysia and Vietnam will be determined at reduced levels, meaning that the measures will not address the injurious effects of dumping in a rising market. Capral urges the Commission to consider whether it can adjust the proposed variable factors to take account of sustained movements in LME and MJP premium prices following the investigation period to ensure the measures imposed by the Parliamentary Secretary remain effective.

VIII. Conclusions

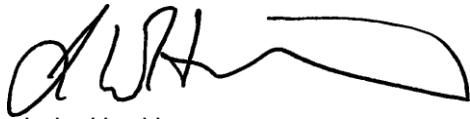
Capral welcomes the proposed findings and recommendations in SEF 362 to impose anti-dumping measures on exports of aluminium extrusions from Malaysia (except for exports by selected and residual exporters) and Vietnam, and countervailing measures on exports by uncooperative exporters in Malaysia.

Prior to proceeding with the proposed termination of investigation into exports of the goods by PMB, LBA, Superb, Milleon, Genesis and Kamco, Capral requests that the Commission examine due allowance adjustments relating to export costs associated with the goods exported to Australia (namely stillage and export packaging costs).

Capral supports and welcomes the Commission’s proposed recommendation that the form of IDD to be applied to the injurious exports is based upon the combination method as this is considered the most effective form of measure to address the injurious effects of dumping.

If you have any questions concerning this submission, please do not hesitate to contact me on (02) 8222 0113 or Capral's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely

A handwritten signature in black ink, appearing to read 'LHAWKINS', followed by a long, horizontal, slightly wavy line that extends to the right.

Luke Hawkins
General Manager – Supply and Industrial Solutions