

13 January 2021

Mr Gavin Crooks
Assistant Director
Investigations 3
Anti-Dumping Commission
Level 35
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Melbourne Victoria 3000

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Public File

Dear Mr Crooks

Investigations No. 540 and 541 – Submission by Criterion Industries Pty Ltd of 5 January 2021

I refer to the submission on behalf of Criterion Industries Pty Ltd (“Criterion”) dated 5 January 2021 in response to Statement of Essential Facts No. 540 and 541 (“SEF 540 & 541”).

Criterion asserts that there is “no factual or legal basis” for the ADC’s preliminary findings as detailed in SEF’s 540 and 541. The submission has also identified Criterion’s concerns about the SEF 540 & 541. These are addressed hereunder.

(i) Australian industry participation

The Anti-Dumping Commission (“the Commission”) was satisfied that Capral Limited (“Capral”) being the largest manufacturer of aluminium extrusions in Australia was sufficiently representative of the Australian industry. This position has been well established in Investigations commencing in 2009 with Investigation 148, including up until the recently completed Continuation of Measures Investigation No. 543.

(ii) Aluminium extrusion pricing

It is asserted that as the LME trend for aluminium is a key influencing factor in pricing for aluminium extrusions, then the decline in the LME “*would more than account for any price reductions that are labelled as suppression and depression as referred to in section 7.4 of SEF 540 and 541.*”

This statement is unsupported in the Public File version of Criterion’s submission. Statements have been redacted and not adequately summarized in a non-confidential manner to establish what is referred to by “Confidential – pricing information”.

The Commission conducted an on-site verification with Capral to validate costs and selling prices and was satisfied that price suppression to Capral was evident. The Commission’s finding is based upon factual evidence.

(iii) Price undercutting

Criterion repeats the Commission’s finding that Capral’s selling prices were undercut by an average 20 per cent in each quarter of the investigation period.

Criterion queries why dumping margins determined between 0.2 per cent and 13.2 per cent could be considered to be the cause of material injury to the Australian industry. However, Criterion conveniently overlooks the finding that the dumped exports from Malaysia were the lowest priced imports during the investigation period. The lowest priced imports were the principle reason for the reduced prices resulting in price depression and suppression during the investigation period. Criterion's notional comments about 'pricing signals' from other imports are speculative. The Commission's finding was based upon facts concerning the price undercutting by dumped Malaysian exports.

(iv) Imports from China and Vietnam

Criterion references imports from China and Vietnam and how these have increased over the injury analysis period. Imports from China and Vietnam (and certain other Malaysian exporters) have anti-dumping measures applied (based upon combination form of measure) and are therefore prevented from falling below a floor price level. The dumped exports from Malaysia were priced below the imports from China, Vietnam and other Malaysian exporters to secure volume and market share, with lower prices.

Contrary to Criterion's claims, the Commission has had regard to the imports the subject of measures. The dumped Malaysian exports were priced at levels below the countries the subject of measures and could therefore be factually considered "injurious".

(v) Imports by Capral

The Commission is aware that Capral has imported limited volumes of aluminium extrusions during the investigation period. The Commission has also established that Capral recovered all of its costs on sales of imported goods. The minor volume of imports by Capral, therefore, have not been the cause of injury to Capral during the investigation period.

Criterion has referenced claims by Capral concerning price suppression and price depression, however, these comments in the public file submission have been redacted and the non-confidential summaries are insufficient to enable the reader to understand Criterion's claims against the Commission's finding.

Criterion has made additional claims about Capral's impending purchase of an extrusion plant from G James with effect 31 January 2021. This acquisition falls outside the injury period and does not alter the Commission's findings as to material injury sustained during the investigation period from the dumping.

Criterion references its experiences with claimed defective products supplied by Capral. Capral takes the customer's concerns about product quality seriously and endeavours to address concerns in this area.

(vi) Injury analysis and causation

Criterion has urged the Commission to base its findings on positive evidence and ensure that the Commission has considered other factors that may have caused injury to the Australian industry.

Paragraph 8.3 details the Commission's approach to injury and causation analysis, with Paragraph 8.10 addressing factors other than dumping in its injury analysis. The Commission has based its findings on factual evidence and in accordance with the legislative provisions.

(vii) Form of measures

Criterion advocates for the Commissioner to recommend to the Minister that anti-dumping measures be based upon the ad valorem methodology so as not to penalise exporters in the event there is a decline in the LME and MJP post imposition of measures.

Capral would highlight that the Malaysian exporters that have been assessed as having exported at dumped and injurious prices in Investigations 540 and 541 were previously involved in the Commission's earlier Investigation No. 362 that involved all exporters of aluminium extrusions from Malaysia.

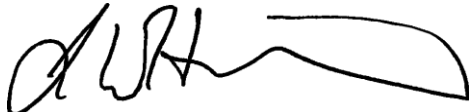
Whilst the findings in Investigation No. 362 did not impact the exporters the subject of the current investigations, the subject Malaysian exporters were aware that dumping measures applied and were familiar of the form of measures applied previously (to not only Malaysian and Vietnam exporters, but also exporters from China).

Capral agrees with the Commission's proposal to recommend to the Minister that measures be applied upon the combination methodology.

Capral has examined Criterion's concerns with SEF 540 and 541 and does not consider that the Commission has based its preliminary findings upon information other than the available facts and evidence. Capral strongly endorses the Commission's findings in SEF 540 & 541 and urges the Commissioner to recommend the imposition of measures on Malaysian exporters as per the proposed recommendations in SEF 540 and 541.

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', with a long horizontal flourish extending to the right.

Luke Hawkins
General Manager – Supply and Industrial Solutions