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The Director, Investigations 3
GPO Box 2013
CANBERRA ACT 2601

By email: investigations3@adcommission.gov.au

Dear Sir/Madam,

**Re: Dumping Investigation Nos. 540 and 541 – Mill and Surface Finished Aluminium Extrusions to Australia from Malaysia
Supplementary Submission of Criterion Industries Pty Ltd**

We confirm that we act for Criterion Industries Pty Ltd (Criterion), which is an importer of both mill and surface finished aluminium extrusions.

Criterion filed an earlier submission on 5 January 2021 in response to the Statement of Essential Facts.

Subsequently, Criterion has noted on the public record the submission of Capral of 13 January 2021 in response to Criterion's earlier submission as well as and the submission of Press Metal Berhad regarding material injury dated 27 January 2021.

Criterion wishes to raise the following additional matters in relation to this investigation:

1. We refer to and **attach** herewith Capral's 2019 FY 2019 Results Presentation, which is also referred to in the submission of Press Metal Berhad. On slide 11 of this document Capral confirms that it estimates that it has a 26 percent market share of the Aluminium extrusion market. This slide also shows imports representing approximately 40 percent of the Australian market. Therefore, other Australian producers collectively would represent approximately 34 percent of the market (or 57 percent of Australian production). Capral therefore represents approximately 43 percent of the Australian Industry producing like goods. We fail to understand how the ADC is able to continue with this investigation and make any findings in relation to material injury to the Australian Industry in circumstances where Capral represents a minority of Australian production. In both the Consideration Report and the SEF the ADC refers to at least 8 other Australian producers that have not been subject to verification in this case. We strongly concur with the views expressed by Press Metal Berhad that there is no evidence that this application has satisfied the standing requirements set out in s269TB(6) of the Customs Act which stipulates as follows:

(6) An application under subsection (1) in relation to a consignment of goods is taken to be supported by a sufficient part of the Australian industry if the Commissioner is satisfied that persons (including the applicant) who produce or manufacture like goods in Australia and who support the application:

(a) account for more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and

(b) account for not less than 25% of the total production or manufacture of like goods in Australia.

Further, we do not see how the ADC can merely extrapolate data derived from less than half of Australian production to make findings regarding material injury to an Australian Industry. For instance, based upon Capral's own data on slide 11 of its 2019 Results Presentation, it is apparent that the market share of the Australian Industry (comprising Capral and other Australian producers) was stable (and did not materially contract) in the period from 2016-2019 as a proportion of the total Australian market. There is no evidence relied upon in the SEF that the ADC has investigated whether material injury (if any) suffered by Capral was due to losing business to other Australian extruders.¹ Below is a table which demonstrates this point:

¹ In addition, the ADC must investigate to what extent Capral has replaced its local extrusion production with imports which will have an impact on its market share (refer paragraph 5 of Criterion's submission to the ADC dated 5 January 2021).

Year	2016	2017	2018	2019
Estimated Market Volume ('000 tonnes)	186	186	190	173
Capral Market Share	29%	29%	27%	26%
Total Import Share	34%	34%	39%	40%
Australian industry share (exc Capral)	37%	37%	34%	34%

The ADC requires a high level of accuracy in any empirical evidence relied upon in order to reach findings affecting interested parties in a dumping investigation. Criterion does not see that there is a proper factual basis for the ADC to recommend that the Minister issue a dumping notice under s269TG of the Act.

2. We would also point out that the Capral 2019 FY 2019 Results Presentation demonstrates the strength and consistency of Capral's recent overall financial performance and the stability of its market share between 2018 and 2019, all of which is not consistent with the various claims of material injury by Capral.
3. Separately, Criterion contends that an important issue which has not to date been considered by the ADC is the long term trend in Australia of importing finished aluminium doors and windows rather purchasing these products from Australian-based fabricators². This has resulted in reduced demand for upstream produced aluminium extrusions in Australia as customers increasingly switch their purchasing preferences to imported finished aluminium products.³ Please see **attached** a Report from IbisWorld dated June 2020 that describes this longer term market trend. The executive summary of the Report on page 9 states:

Increased competition from imports has also contributed to declines in industry revenue over the past five years. Import penetration has risen over the period, with imported products satisfying a rising share of domestic demand. Foreign manufacturers in countries such as China have lower labour and operating costs, and can typically sell their goods at lower pricepoints, which increases their price competitiveness against locally manufactured goods.

4. This long term trend towards importation of finished aluminium products is articulated in the statistics on page 40 of the IbisWorld Report with the Australian dollar value of imports of finished aluminium windows and doors into Australia increasing almost 250% in the period from 2011-12 to 2018-19. This is in contrast to the stagnant size of the Australian market for aluminium extrusions which, according to Table 15 in section 7.3.1 of the SEF the total Australian industry for aluminium extrusions (meeting

² The ADC has referenced the role of fabricators in the Australian market in section 5.3 of the SEF.

³ It is also Criterion's experience that increasingly Australian extruders do not have the capability to manufacture to exact required product specifications.

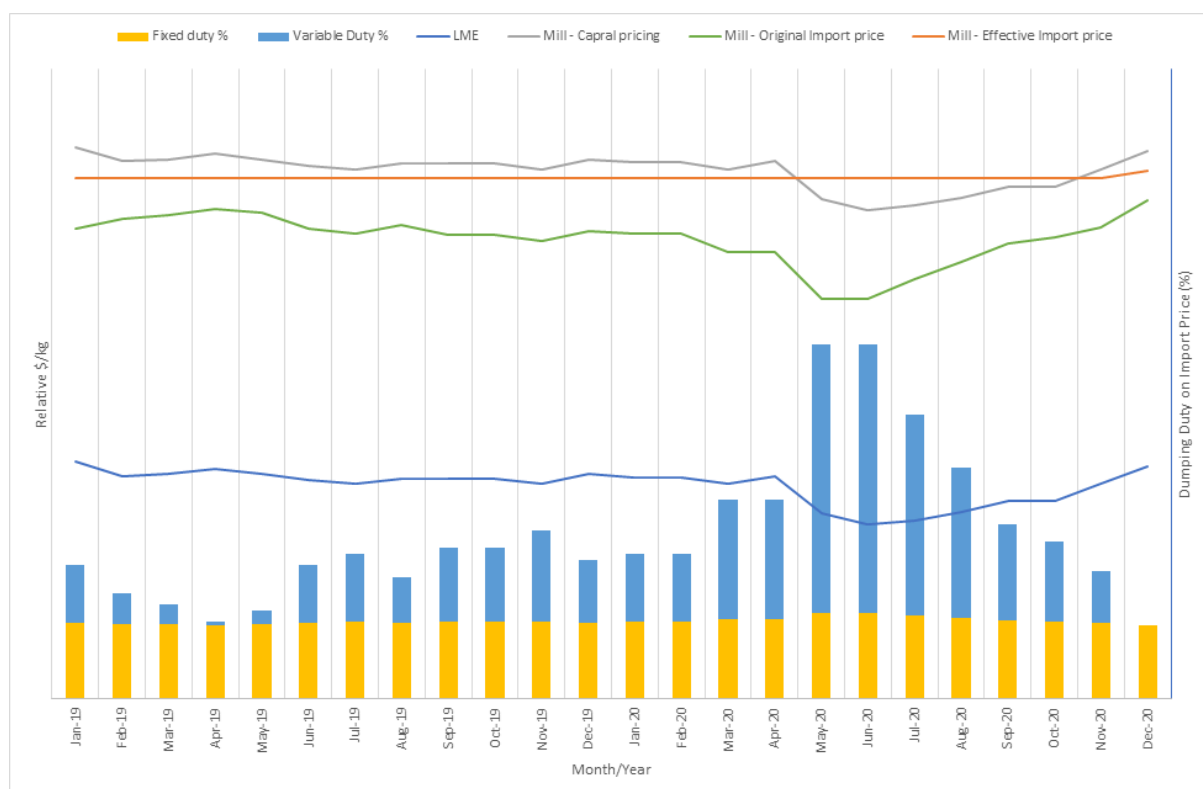
the GUC) grew by 6 percent in the period from 2016 to 2019 with no growth in the 2018-2019 period. This issue has not been discussed under the heading 'other factors' in section 8.10 of the SEF. It is incumbent upon the ADC to positively investigate and discount any other economic causes of material injury that may be claimed by an Australian Industry.

5. We also note the LME pricing trend information on slide 19 of Capral's 2019 Results Presentation refers to an 8% reduction in LME prices in AUD during 2019. In addition, Capral's Half Year Results Presentation 2020 that are **attached** herewith states: 'LME (in USD) declined 18% during 1H20, however a weaker AUD partially offset this decline resulting in a 14% reduction in LME in AUD (from AU\$2,595/t to AU\$2,243/t)'. This supports the position of Criterion articulated in its previous submission of 5 January 2021 that LME prices are not as the ADC assumes generally rising⁴. It also directly contradicts the proposition that dumping (rather than raw material pricing trends) has caused price depression and/or suppression and it also contradicts the basis for the proposal in section 11 of the SEF to impose a combination form of duty that would be punitive in nature and, on current market trends, would exceed any remedy to necessary alleviate the effects of any dumping found to have occurred.
6. In respect of Capral's submission in reply of 13 January 2021, we note that Capral has by and large simply endorsed and repeated the ADC's proposed findings in the SEF. Regarding the issue of price undercutting, Capral states that 'The lowest priced imports were the principle (sic) reason for the reduced prices resulting in price depression and price suppression in the investigation. Criterion's notional comments about 'pricing signals' from other imports are speculative'.⁵ It is noted that the reverse is self-evident, namely that there is no positive evidence to support the allegation that lower Malaysian export prices have caused injury to Capral given they were already much lower than Capral's prices even after taking into account the dumping margins determined by the ADC. Further, Capral's statement that combination measures are appropriate because 'the subject Malaysian exporters were aware of the dumping measures applied' is simply not a relevant consideration.
7. In regards to the punitive nature of combination measures, please see below a chart prepared by Criterion which shows the relationship between Capral's pricing, import pricing (inclusive of dumping duty) and the LME price for the 2019-20 period. The combination form of duties fixes the import price when the LME decreases but raises the import price when the LME increases (as demonstrated in December 2020). As such it can be seen that when the LME drops, Capral's prices are significantly lower than import prices as it is able to respond to this change in the LME price whereas the floor price ensures that import prices remain the same. This clearly evidences the punitive and anti-competitive nature of combination measures that are based upon an

⁴ Refer pp 94-5 SEF 540 and 96-7 SEF 541. See also reference on page 7 of Criterion's submission 5 January 2021.

⁵ Refer paragraph (iii) Capral submission of 13 January 2021.

historical AEP.⁶ Such measures exceed the level of trade measures that may lawfully be imposed under Australian anti-dumping legislation.



Notes to chart:

- Pricing is based upon an exchange rate of AU-USD of 0.68 and is based upon the case example of Criterion's purchases of mill finish aluminium extrusions.
- Line graphs shows the LME, original import price, Capral's price, and the flat line shows the "effective import price" after payable duty.
- Bar graph shows the % contribution of both fixed and variable component to the "original import price". That is, it shows the % difference between the "original import price" and the "effective import price".
- The proposed dumping duty model penalises importers on the movement of LME. The lower the LME drops, the larger the variable duty becomes (blue bar).
- Even when LME increases to raise the actual import price above the floor price, imports are still penalised by the fixed component (yellow bar) as it is applied on the greater of DXP or AEP.

8. We also reiterate that the ADC, in section 8.10 of the SEF, has failed to forensically analyse other economic factors that may be relevant to Capral's claims of material injury including factors such as:

- Reduced sales volumes caused by a decline in aggregate demand for the GUC in Australia during 2019. This was particular driven by a decline in demand in the residential construction sector, as is referenced on slide 7 of Capral's 2019 Results Presentation;

⁶ These effects of combination measures are also referenced in Capral's 2018 results presentation where Capral notes 'Import volumes and market shares have increased due to high LME negating impact of anti-dumping measures.'

- The historically high AU-US exchange rate existing during most of the Period of Investigation, which has created favourable conditions for importers of the GUC⁷; and
- The fluctuation in the LME during 2019 of approximately 40 percent; and
- Capral's profitability in circumstances where it has made a profit in 4 of the last 5 financial years but it did not in 7 of the previous 10 years (2006-2015).

We trust that the ADC will fully take into account the matters raised in this submission in preparing its final report and recommendations to the Minister.

Please contact the writer should the Commission require any further information or wish to discuss the matter generally.

Yours faithfully

GROSS & BECROFT



Dr. Ross Becroft

Principal

Encl.

⁷ Capral notes on page 14 of in its 2019 Annual Report that a strong Australian dollar makes imports less expensive to Australian customers, potentially impacting on Capral's volume and margins, and Capral further notes that the price paid by Capral for some raw materials is in USD which could make products more expensive.