

8 November 2022

Mr Matthew Williams
Director
Investigations 4
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Dear Mr Williams

Public File

Reinvestigation No. 591 - Aluminium extrusions exported from Malaysia and Vietnam

I. Executive Summary

The Reinvestigation of matters identified by the Anti-Dumping Review Panel "ADRP") Member must take full account of the evidence supplied by Capral Limited ("Capral") that evidences injury caused by the dumping of aluminium extrusions ("the goods") from Malaysia and Vietnam.

The evidence supplied by Capral should not be dismissed as "small" in degree or nature but reflective of the injurious impact of importers actively seeking supply opportunities to undercut the Australian industry's selling prices.

The correct analysis and assessment of the price undercutting examples provided by the Australian industry confirms the existence of a likelihood of a recurrence of material injury should the measures expire. Capral concurs with the ADRP Panel Member's concerns that the lack of evidence as to direct competitor activity cannot be construed as an absence of current or future injury occurring when all parties are aware of the availability of the dumped exports in the Australian market.

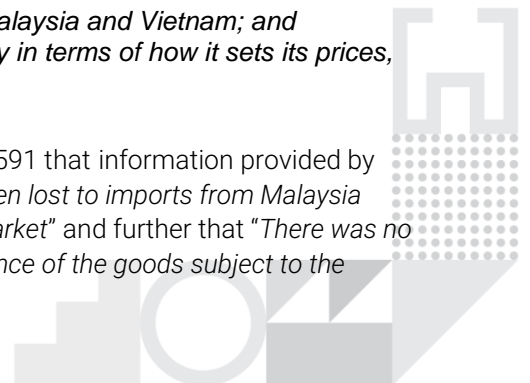
Capral requests the Commissioner to rescind the recommendations in Report 591 and replace with a recommendation to the Minister that he take steps to secure the continuation of measures on the goods exported from Malaysia and Vietnam.

II. Background

On 5 October 2022 the ADRP Panel Member wrote to the Commissioner requesting that he reinvestigate the following matters in relation to the Minister for Industry and Science ("the Minister") in respect of Report No. 591 ("Report 591"):

- ***The finding that material injury to the Australian industry is not likely to continue or recur in the absence of measures. This is because there is no demonstrable connection between:***
 - ***The price advantage that dumping gives to exporters from Malaysia and Vietnam; and***
 - ***The economic condition of the Australian industry, specifically in terms of how it sets its prices, which is distinct from the influence of other sources.***

In its application for review to the ADRP Capral rejected the findings in Report 591 that information provided by members of the Australian industry evidencing "sales that appeared to have been lost to imports from Malaysia and/or Vietnam.....related to very small volumes in the context of the overall market" and further that "There was no evidence presented which demonstrated that prices were impacted by the presence of the goods subject to the



notices in the Australian market” could not be construed as small (or minor) examples that injurious dumping was occurring from the dumped exports from Malaysia and Vietnam.

III. Evidence of ongoing supply ex Malaysia and Vietnam

We note the ADRP Panel Member’s comments that there is an absence of analysis of the non-injurious price (“NIP”) in respect of exports to Australia from Malaysia and Vietnam and the likely impact of import prices resulting in a recurrence of material injury. Capral contends that the dumped exports from Malaysia and Vietnam that were the subject of measures until 27 June 2022 undercut the Australian industry’s selling prices resulting in material injury that the measures are intended to prevent. We further note the ADRP Panel Member’s concerns about an ADRP Member colleague’s *comments in relation to continuation inquiry considerations* in a reinvestigation letter to the ADC, with which I agree and consider relevant:

A continuation inquiry does include a consideration of hypothetical injury. It is quite possible that the measures in place during the inquiry period are preventing material injury to the Australian industry. After all, that is what is intended by applying the measures and is contemplated by s.269ZHF(2) in the reference to a recurrence of the material injury.

In the first instance decision of Justice Rares in Siam Polyethylene Co Ltd v Minister of State for Home Affairs [No 2], His Honour stated “...a review under Div 6A of Pt XVB is not intended as a complete replication of the process under Div 3 involved in the initial imposition of anti-dumping measures. But, the continuation review under Div 6A is still directed to the purpose of preventing material injury or the threat of such an injury caused by dumping.” While his Honour’s decision was overturned on appeal, I do not read the judgment of the Full Court as disagreeing with this approach. It can be readily inferred that the legislative objective is to prevent such injury occurring or recurring.

Accordingly, I am concerned that the Commission, in its approach to the task to be undertaken in a continuation inquiry, may have misunderstood what is required. It is not sufficient to simply consider what has occurred during the inquiry period but based on the material and evidence obtained during the inquiry to consider what is likely to occur if the measures in place are not continued. This includes a consideration of what hypothetically may happen, including any material injury which may not be occurring during the inquiry period and the threat of such injury.¹”

Capral highlighted with the Anti-Dumping Commission (“the Commission”) the ADRP Member’s concerns about what is required to be undertaken in a continuation investigation². This follows Capral’s representations in its application for the continuation of measures that it had encountered price undercutting from exports of aluminium extrusions from Malaysia and Vietnam. Capral again draws to the attention of the Commission the ADRP Senior Member’s comments about the absence of market intelligence on price impacts of the dumped goods:

*“It seems to me that significant weight **is placed on the lack of evidence** (emphasis added) to the prices of imported product.....I am not sure that the correspondence is evidence supporting the conclusion reached by the Commission.....Both sides would be aware of the presence in the market of imported product and the significant price undercutting of such imports. The conclusion reached does not take account that price negotiations take place to have an effect.”*

¹ Letter to ADC from the Review Panel requiring a reinvestigation into exports of canned pineapples dated 12 January 2022.

² Capral submission dated 7 April 2022 (EPR Document No. 028, P.3).

Accessing competitor information concerning import price offers for goods the subject of anti-dumping measures is difficult. This task is even more challenging when the importers are the subject of a continuation of measures notice/investigation. It does not appear that the Commission has taken this consideration into account at all – although the ADRP Panel does appear to acknowledge this constraint.

Capral included an example of competition from the subject imports from Malaysia in its application for the continuation of measures (refer Confidential Attachment 8 to Capral's application). Further additional price undercutting information across three customers was provided in a response to SEF 591 (EPR Document No. 028). The additional information was quantified and in Capral's view cannot be dismissed as "very small" as the impact of the price undercutting filters through to a broader customer base than just the three customers identified.

Capral notes the ADRP Panel Member's comments during a conference about Capral's application for review. It was observed by the Panel Member that "*certain information used by the ADC in REP 591 as part of the price undercutting analysis was found to have been compared at an incorrect level*". The ADRP Panel Member further states:

"The comparison of the first level of trade selling prices in REP 591 reflected the selling prices of importers (onto the Australian market) rather than the exporters LDPIIS cost to the importers. This appears to have impacted all the exporters assessed and would have implications for the analysis at both levels of trade. At conference, the ADC was unable to provide a view as to the impact on the price undercutting analysis for each of the levels of trade because of this comparison."

The ADRP Panel Member has confirmed that the Commission erred in its comparison of the importers' selling prices with the Australian industry weighted average selling prices (when the correct comparison was the exporters LDPIIS with the Australian industry selling prices). This error impacts the Commission's analysis of price undercutting experienced by the Australian industry as the importers' selling prices are understood to show a lower level of price undercutting (or no undercutting) whereas the exporters LDPIIS comparison with Australian industry selling prices confirms price undercutting.

Capral's response to SEF 591 confirmed the existence of price undercutting – from both Malaysian and Vietnam exporters. The first example [*commercially sensitive information – customer name, exporter rates*] Capral identified a decline in its sales volumes (and a decline in margin) – that should have increased with the supply at the project.

The further two examples of customers being supplied by [*commercially sensitive information – importer name, exporter name*] of [*country*] Vietnam. The Commission established a dumping margin of xxxx per cent for exports by [*commercially sensitive information – exporter*] to Australia during the investigation period. Capral experienced price undercutting from [*commercially sensitive information – exporter*] by xxxx – xxxx per cent at [*commercially sensitive information – customer name, and further end-user with volume percent*]. Capral has lost almost all sales volumes at [*commercially sensitive information – customer name*] and in 2022, volumes are at approx. xxxx per cent of previous year levels.

With limited availability of price competition from imports – as a consequence of customers unwillingness to provide information that would prevent access to ongoing dumped pricing – Capral had been able to demonstrate that Malaysian and Vietnam exporters had been actively seeking supply opportunities at prices that undercut the Australian industry's selling prices.

We strongly disagree with the Commission's assessment in Report 591 that this competition from Malaysian and

Vietnam exporters can be considered to represent only “very small volumes” and that the pricing is considered to be more damaging as it enables the importers to seek increasing opportunities for supply in Australia.

Malaysia and Vietnam respectively are the third and fourth largest exporters to Australia of Aluminium Extrusion. These volumes cannot be considered to represent ‘very small volumes’.

Capral endorses the ADRP Senior Member’s comments in ADRP Report No. 144 that points directly to the evidence concerning the availability of the imported goods (i.e. aluminium extrusions) from Malaysia and Vietnam and the relative access to evidence of competitive prices from customers. The supply of the imported goods as reflected in the ABS import statistics confirms the supply of import volumes from both Malaysia and Vietnam (with the latter’s export volumes increasing in 2020 and 2021 to be more than double the levels of 2019, with declining unit FOB values in 2021³). The import data evidence confirms that increasing volumes of the goods at declining prices from Vietnam during the investigation period, with Malaysian volumes also declining in value (except for the final quarter⁴). The import data – known and observable to all parties – corroborates the evidence provided by Capral as to market competitor activity (provided in its SEF 591 response).

IV. Recent undercutting example

Capral has been notified by an industry member that one of their long-term customers in [*commercially sensitive information – customer name, state, pricing and volumes for imported goods*].

Please refer to Confidential Attachments 1 (a)) evidencing [*commercially sensitive information – importer*] supply.

Additionally Capral submits Confidential Attachments 1 (b) reflecting a price reduction by *commercially sensitive information – importer*] into the market in [*date*] (presumably partly as a result of the removed anti-dumping measures).

Confidential Attachments 1 (c) & (d) demonstrate pricing from *commercially sensitive information – importer and customer names*].

Capral has seen volume and margin from this customer disappear as it now purchases dumped imports from other parties including *commercially sensitive information – importer*]. In 2020 Capral supplied [*commercially sensitive information – customer name, state, pricing and volumes for imported goods*]. This is injury and price undercutting that has been evidenced and is continuing.

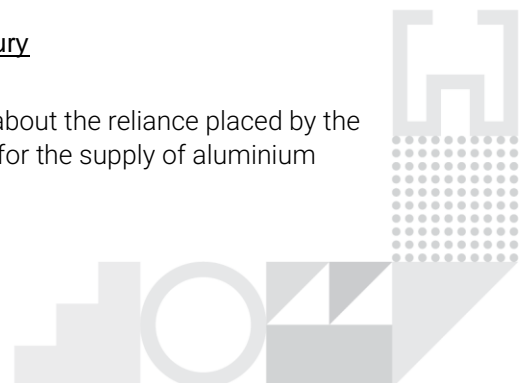
Capral is experiencing price suppression at this account and further loss of volumes.

V. Evidence supporting the likelihood of a recurrence of material injury

We strongly agree with the ADRP Panel Member’s concerns and reservations about the reliance placed by the Commission on the apparent absence of information as to competitor pricing for the supply of aluminium

³ Refer Capral’s application for continuation of measures, Table 4.

⁴ Ibid, Table 5.



extrusions from Malaysia and Vietnam as outlined in Report 591 that formed the basis of a recommendation suggesting a *lack of evidence* that the dumped imports from both countries were injurious to the Australian industry.

Capral submits that the available information and evidence as reflected in competitor activity provided by Capral – in its application, response to SEF 591 and in this submission – confirm the availability of dumped aluminium extrusions from Malaysia and Vietnam the subject of measures have undercut Capral's selling prices causing a loss in volumes and/or price suppression injury.

The injury demonstrated by Capral cannot be dismissed as limited or minor as the quotations can be considered to be representative of broader activity by importers supplying Malaysian and Vietnam sourced aluminium extrusions.

The available evidence supports a finding that the anti-dumping measures on exports of aluminium extrusions to Australia from Malaysia and Vietnam should not be allowed to expire. The anti-dumping measures are required to prevent a recurrence of material injury that is already occurring as evidenced by the loss of sales and price effect injury caused by price undercutting from the dumped exports. From Malaysia and Vietnam.

VI. Recommendation

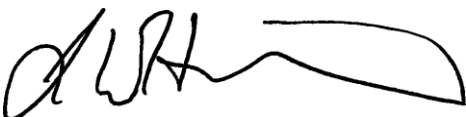
Capral urges the Commissioner to reconsider the recommendations contained in Report 591 based upon the available evidence that supports a finding that the Australian industry is experiencing price undercutting from the dumped exports from Malaysia and Vietnam.

The ADRP Panel Member's concerns about the reliability of the Commission's price undercutting analysis in Report 591 are well founded. The available evidence as provided by Capral confirms the existence of price undercutting from the dumped exports from Malaysia and Vietnam despite the difficulties associated with obtaining such evidence to substantiate injury occurring.

The evidence supplied by Capral confirms material injury in the form of lost sales volumes and price suppression has occurred during and post the investigation period. This injury will likely continue should the Commissioner not reverse his findings and recommend to the Minister that he take steps to secure the continuation of the measures.

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



Luke Hawkins
General Manager – Supply and Industrial Solutions

