

RESPONSE TO APPLICATIONS FOR EXEMPTION FROM DUTY UNDER THE CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975

Exemption inquiry EX0068 – response requested by 15 September 2018

1 Introduction

The Anti-Dumping Commission (the Commission) requests your response to an application for exemption from anti-dumping measures under the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act).

Subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act provide a discretion for the Minister (or his or her delegate) to exempt goods from anti-dumping measures, where he or she is satisfied that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

The Commission has received an application for exemption from anti-dumping measures in respect of certain **aluminium extrusions** of the goods exported to Australia from the People's Republic of China (China) as described at section 5 of this form ('the exemption goods').

Your company has been identified as an Australian producer of the goods.

The Commission seeks your assistance in this exemption inquiry by responding to the questions in this form. The Commission will use the information you provide in its assessment as to whether an exemption from anti-dumping measures may be recommended to the Assistant Minister for Science, Jobs and Innovation ('the Assistant Minister' as the relevant delegate of the Minister).

2 Measures on aluminium extrusions

Anti-dumping measures in the form of a dumping duty notice and countervailing duty notice (the notices) were initially imposed on aluminium extrusions on 28 October 2010, following consideration of *Trade Measures Report No. 148* by the then Attorney General.

The notices continued to have effect for a further five years from 28 October 2015, to which *Anti-Dumping Commission Report No. 287* refers.

The current rates of dumping duty and countervailing duty on aluminium extrusions exported to Australia from China are set out in Anti-Dumping Notice 2017/138, following a review of measures with which *Anti-Dumping Commission Report No. 392* refers.

3 Application for Exemption from Measures

An application for exemption has been made to the Commission by **Concrete Formwork Technologies Pty Ltd (CFT)**. The Commission has considered the application and after consultation with the applicant, accepted the application and will now undertake an examination to determine whether it should recommend the requested exemption.

4 Exemption Provision

The Dumping Duty Act provides a discretion for the Minister to exempt goods from dumping and/or countervailing duties if one of the criteria in subsections 8(7) and

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10(8) is met. The relevant parts of subsections 8(7) and 10(8) for current purposes are set out below.

Subsection 8(7)

The Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he or she is satisfied:

- (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;
- ...

Subsection 10(8)

The Minister may, by notice in writing, exempt goods from interim countervailing duty or countervailing duty if he or she is satisfied:

- (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;
- ...

The exemption provisions are subject to the discretion of the Assistant Minister and an exemption is not automatically granted, even where one of the criteria in the provisions is met.

5 The goods subject to the exemption application

The applicant, CFT, is seeking an exemption on goods, which it describes as aluminium sideforms produced by an extrusion process, intended to operate as part of a system for casting concrete, to support the concrete as it is poured and as it sets. The exemption goods possess the following properties:



- Height range of 100 mm to 600mm; and
- Lengths from 5,800 mm.

The exemption goods are classified to the tariff subheading 7604.29.00 (statistical codes 09 and 10) of Schedule 3 to the *Customs Tariff Act 1995*.

Goods produced in Australia

The applicant claims that there are no Australian manufacturers of aluminium extrusions that meet the specifications for which the exemption is sought.

6 Instructions on completing this 'Response to the Exemption Application'

Your company has been identified as an Australian producer of aluminium extrusions.

Consequently, the Commission has forwarded you this 'response to exemption application' (the response) to provide you with the opportunity to participate in this exemption inquiry.

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The Commission will use the information provided by Australian producers to determine whether like or directly competitive goods are offered for sale in Australia, and whether offers for sale of the goods are available to all purchasers on equal terms under like conditions having regard to custom and usage of trade.

Due date for the response

We request that you complete your response and return it to the Commission by no later than the close of business on **15 September 2018**.

Please email your response to: investigations2@adcommission.gov.au

Verification of the information that you supply

The Commission may seek to verify some all of the information supplied in the response. The Commission may request evidence to support the claims such as quotations and offers of sale.

An onsite visit by the Commission may be required in some cases. A report will be prepared of visits conducted and a non-confidential version will be placed on the public record.

There is no legislative timeframe for completion of an exemption inquiry, however a recommendation to the Assistant Minister will be made as soon as practicable after obtaining all relevant information.

Confidential and non-confidential submissions

We request that you also lodge a non-confidential version of your response suitable for placement on the public record. The Commission puts greater weight on submissions that are available to other interested parties for comment.

Please ensure that each page of information you provide is clearly marked either "FOR OFFICIAL USE ONLY" or "PUBLIC RECORD".

All information provided to the Commission in confidence will be treated accordingly. The non-confidential version of your submission will be placed on the public record.

Outline of information required by the response

Part A	Company contact information
Part B	Response to exemption application
Part C	Identical goods
Part D	Like or directly competitive goods
Part E	Capability to produce like or directly competitive goods
Part F	Additional comments
Part G	Your declaration

Response to Exemption Application

PART A – Company Information

A.1 Please provide the following company contact information;

Name:	Luke Hawkins
Position in company:	General Manager, Supply and Industrial Solutions
Address:	Level 4, 60 Phillip Street, Parramatta, NSW 2150
Telephone:	(02) 8222 0113
Facsimile number:	(02) 8222 0130
E-mail address of contact person:	Luke.Hawkins@capral.com.au

PART B – Response to Exemption Application

B.1

Does your company oppose or not consent to the request for an exemption?

NOTE: If your company does not oppose the request for an exemption, you do not need to complete all parts of the questionnaire. Please indicate that you do not oppose the request (stating the reasons why), answer the questions that are relevant to your reasons for not opposing the request, sign and return the form as soon as possible.

Capral Limited (“Capral”) is opposed to the request for exemption for certain aluminium extrusions as detailed in the application by Complete Formwork Technologies (CFT).

PART C – Identical Goods

C.1

Does your company produce, in Australia, goods that are identical in all respects to the goods described in section 5 of this ‘Response to Exemption Form’?

It is not clear from the partly-redacted goods description included in CFT’s application whether the subject goods can be produced by Capral. Capral is limited to responding to this question as the specifications of the goods have not been sufficiently disclosed in the public file version of CFT’s application for exemption.

It should be noted that the applicant has not provided the production diagrams (including specifications) for the subject goods. The absence of this information prevents Capral from accurately commenting as to whether identical or similar goods

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are already produced in Australia, or whether Capral has the capability to produce all categories of the goods.

The Anti-Dumping Commission (“the Commission”) has most recently validated that that Capral manufactures like goods (as per Section 5) in Investigation No’s 442 and 362 (and in earlier Reports No. 148, 241, 248 and 287).

C.2

Please provide evidence that you have produced and sold in Australia, in the last 12 months, goods that are identical in all respects to the goods subject to this application for exemption.

Evidence can be in the form of production reports and sales invoices. To the extent that production reports or sales invoices do not refer to the goods in the same detail as set out in the description of the goods (section 5), please provide additional information that indicates that identical goods have been produced or sold. The evidence should be attached to this form to ensure that it can be linked to this specific response. Please also include any available product literature respecting the identical goods you have produced and sold.

It is not possible for Capral to realistically complete or respond to this Section as it has insufficient information as to the specifications of the goods the subject of the exemption application.

C.3

Provide evidence of the terms and conditions of sale of these identical goods. Are these products available to all purchasers on equal terms under like conditions? If so, provide evidence and explain why you consider that these products are available to all purchasers on equal terms under like conditions.

Evidence can be in the form of sales invoices, sales contracts, sales reports or advertisements and brochures.

It is not possible for Capral to realistically complete or respond to this Section as it has insufficient information as to the specifications of the goods the subject of the exemption application.

PART D – Like or Directly Competitive Goods

D.1

If your company does not produce identical goods, does it produce and sell in Australia goods that are like or directly competitive to the goods subject to this application for exemption?

In determining whether the goods are like or directly competitive, the Commission will consider whether the goods have characteristics closely resembling each other and are substitutable.

The Commission may also consider;

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- whether physical characteristics of the goods are similar (including size, weight, shape, content, appearance, grade, standards, age, strength and purity);
- whether the goods are commercially alike, this may include consideration of the following;
 - whether the goods directly compete in the same market sector;
 - the extent to which participants in the supply chain are willing to switch between the goods and the goods subject to the application for exemption;
 - how the price of the goods and goods subject to the application influences consumption;
 - whether the goods share similar distribution channels; and
 - whether the goods are similarly packaged.
- functional likeness – whether the goods are suitable with regard to end use, this may include an assessment of;
 - the extent to which the goods are functionally substitutable;
 - the extent to which the goods are capable of performing the same or similar function;
 - whether the goods have the same or similar quality standards; and
 - consumer behavior in relation to the goods and goods subject to this application for exemption.
- production likeness, this may include an assessment of;
 - the extent to which the goods are constructed of the same or similar materials;
 - the manufacturing process of the goods; and
 - whether any patented processes or inputs are involved in the production of the goods.

It is not possible for Capral to realistically complete or respond to this Section as it has insufficient information as to the specifications of the goods the subject of the exemption application.

D.2

If you answered yes to question D.1, please provide a description of the goods produced by your company that you consider to be like or directly competitive to the goods subject to this application. Your description of the goods your company produces should refer to all aspects of the goods as set out in the description of the goods in section 5.

Characteristics	Description

Please provide evidence that the goods you consider like or directly competitive to the goods subject to this application for exemption have recently been produced or sold in Australia by your company. Evidence can be in the form of production reports

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and sales invoices. To the extent that production reports or sales invoices do not refer to the goods described in the above table, please provide additional information that indicates that the goods have been produced or sold. The evidence should be attached to this form to ensure that it can be linked to this specific response. Please also include any available product literature concerning the like or directly competitive goods you produced and sold.

It is not possible for Capral to realistically complete or respond to this Section as it has insufficient information as to the specifications of the goods the subject of the exemption application.

D.3

Provide evidence of the terms and conditions of sale of these like or directly competitive products. Are these products available to all purchasers on equal terms under like conditions? If so, provide evidence and explain why you consider that these products are available to all purchasers on equal terms under like conditions.

Evidence can be in the form of sales invoices, sales contracts, sales reports or advertisements and brochures.

It is not possible for Capral to realistically complete or respond to this Section as it has insufficient information as to the specifications of the goods the subject of the exemption application.

Capral standard Terms & Conditions of Sale are available on our website

<http://www.capral.com.au/Terms-of-Trade>

PART E – Capability to Produce Identical or Like or Directly Competitive Products

E.1

If your company has not produced and sold in Australia products that are identical to, or like or directly competitive to the goods subject to this application for exemption, is your company capable of producing such goods?

As indicated, Capral does not consider the application by CFT contains sufficient information for Australian industry members to objectively comment as to whether goods have been produced in Australia that are identical or similar to the goods the subject of the exemption application.

Capral can produce aluminium sideforms from [REDACTED] up to 12 inches in diameter (i.e. 300 mm) within the nominated height range and exceeding the minimum nominated length (i.e. 5,800mm). Please refer to Confidential Attachment 1 – Capral Ltd Campbellfield Aluminium Extrusion Production Capability.

It would appear at Section 3.5 – Commercial Likeness, paragraph (c) that the applicant Capral has had some correspondence with CFT and that a quote for supply for goods to certain specifications was received by CFT. It further states in paragraph (d) that ‘Capral is capable of manufacturing the goods’.

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Despite this, Capral does not have sufficient information from the CFT application for exemption to comment adequately as to whether Capral possesses the capability to produce the goods as required by CT.

This must be considered by the Commission as a shortcoming of the CFT application for exemption. Further detailed drawings and specifications of the goods the subject of the application must be disclosed for adequate consideration by Capral.

E.2

If you answered yes to question E.1, indicate whether the product that you can produce is identical to, or like or directly competitive to the goods subject to this application for exemption.

Capral considers that it possesses the capability to produce goods within the range that are directly competitive with the goods the subject of the exemption application No. 0068.

Additionally Capral has provided further evidence to the ADC in Exemption Inquiry 0038 regarding extrusions for Aluminium Sideforms showing we have produced these types of products.

E.3

If you are capable of producing identical, like or directly competitive goods, explain why you have not produced such goods.

Capral is willing to accept a commercial order for the goods from CFT within the specification capability of its production facilities (not limited to Campbellfield only). Capral has not been approached by CFT to quote on such an order.

Provide evidence of your production capability, including evidence of the production and sale of similar products, certification of the identical, like or directly competitive goods and at what cost they could be produced, as well as any plans for the imminent production of the goods or orders for the goods and any relevant information.

Please refer to Confidential Attachment 2 – Capral – Extrusion Capability Guide that highlights the production capabilities of all of Capral extrusion presses. Capral has also included its Manufacturing Brochure (Non-Confidential Attachment 3) and the Capral Aluminium Extrusion Catalogue (Non-Confidential Attachment 4) detailing the broad range of aluminium extrusions produced and supplied by Capral in Australia.

Additionally Capral produce a large volume of Exclusive Aluminium Extrusions that have IP related and as such are sold on individual arrangements with customers. These are not shown in these catalogues but have been part of verification with the The Anti-Dumping Commission (“the Commission”) and was most recently validated as part of the finding that Capral manufactures like goods (as per Section 5) in Investigation No’s 442 and 362 (and in earlier Reports No. 148, 241, 248 and 287).

E.4

If you are capable of producing identical, like or directly competitive goods, provide reasonable evidence of likely terms and conditions of sale for these goods.

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Capral considers that it can produce like goods to the goods the subject of the exemption application. However, in the absence of extrusion drawings (and specification detail), Capral cannot affirm that it currently makes identical goods but it does have the capability to produce like goods to the goods the subject of the exemption application.

PART F – Additional Comments

F.1

Provide any additional comments including any other information that will assist the Commission in reaching a recommendation to the Assistant Minister regarding this application for exemption.

CFT asserts that that local manufacturers are not willing to supply certain aluminium sideforms produced via the extrusion process that conforms to the very broad requirements as specified at Section 5 above, and that these goods are not available from local production (on equal terms for all customers).

Capral submits that it is willing to offer to supply the subject goods on commercial terms that are comparable with other customers of similar volumes, with similar products and tooling (die) requirements.

Capral notes that varying terms of sale where customers are purchasing different volumes of goods or have different purchase requirements does not warrant an exemption from the anti-dumping measures.

The CFT application for exemption does not provide sufficient detail for Capral to comment as to what capability it possesses to produce all (or, alternatively, some proportion of the goods range) of the subject goods. Capral does consider that it possesses the capability to produce some of the goods that it can assume are covered by the exemption application.

Capral therefore requests the Commission to not recommend that CFT be afforded an exemption from anti-dumping measures on imported aluminium extrusions as described at Section 5 above as some of the goods falling within this very broad description (and not disclosed via technical drawings) are readily available from Capral supply on terms and conditions consistent with other Australian industry customers.

PART G – Declaration

I hereby declare that.....(company)
has completed the attached response to application for exemption and,
having made due inquiry, certify that the information contained in this
submission is complete and correct to the best of my knowledge and belief.

Name : **Luke Hawkins**

Signature :

**Position in
Company** : **General Manager – Supply and Industrial Solutions**

Date : **14 September 2018**