



Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application for review to the ADRP of a review of a ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

¹ By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

² As defined in section 269ZX *Customs Act 1901*.

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Further application information

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 10.8 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Capral Limited

Address: Level 4, 60 Phillip Street, Parramatta NSW 2150.

Type of entity (trade union, corporation, government etc.): Public company.

2. Contact person for applicant

Full name: Mr Luke Hawkins

Position: General Manager – Supply and Industrial Solutions

Email address: Luke.Hawkins@capral.com.au

Telephone number: (02) 8222 0113

3. Set out the basis on which the applicant considers it is an interested party

Capral Limited ("Capral") is the applicant company that requested the imposition of anti-dumping and countervailing measures on exports of aluminium extrusions from Malaysia and Vietnam.

4. Is the applicant represented?

Yes

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

Subsection 269TL(1) – decision of the Minister not to publish duty notice

Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

6. Provide a full description of the goods which were the subject of the reviewable decision

The goods the subject of the Assistant Minister’s decision include:

“Aluminium extrusions that:

- *Are produced by an extrusions process;*
- *Are of alloys having metallic elements falling within the alloy designations published by The Aluminium Association commencing with 1,2,3,5,6 or 7 (or proprietary or other certifying body equivalents);*
- *Having finishes being:*
 - *As extruded (mill);*
 - *Mechanically worked;*
 - *Anodized; or*
 - *Painted or otherwise coated, whether or not worked;*
- *Have a wall thickness or diameter greater than 0.5mm;*
- *Have a maximum weight per metre of 27 kilograms; and*
- *Have a profile or cross-section fitting within a circle having a diameter of 421 mm.”*

The Table below provides examples of the coverage of the goods and like goods (and intended end-use applications). Examples of goods and like goods are outlined in columns 1 – 4 and non-subject goods are outlined in columns 5 – 7.

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< GUC >				< Non GUC >		
1	2	3	4	5	6	7
Aluminium extrusions	Aluminium extrusions with minor working	Aluminium extrusions that are parts intended for use in intermediate or finished products	Aluminium extrusions that are themselves finished products	Unassembled products containing aluminium extrusions, e.g. 'kits' that at time of import comprise all necessary parts to assemble finished goods	Intermediate or partly assembled products containing aluminium extrusions	Fully assembled finished products containing aluminium extrusions
< Examples >						
Mill finish, painted, powder coated, anodised, or otherwise coated aluminium extrusions	Precision cut, machined, punched or drilled aluminium extrusions	Aluminium extrusions designed for use in a door or window	Carpet liner, fence posts, heat sinks	Shower frame kits, window kits, unassembled unitised curtain walls	Unglazed window or door frames	Windows, doors

7. Provide the tariff classifications/statistical codes of the imported goods

The goods are classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

Tariff Code	Statistical Code	Unit	Description
7604.10.00	06	Kg	Non alloyed aluminium bars, rods and profiles
7604.21.00	07	Kg	Aluminium alloy hollow angles and other shapes
7604.21.00	08	Kg	Aluminium alloy hollow profiles
7604.29.00	09	Kg	Aluminium alloy non hollow angles and other shapes
7604.29.00	10	Kg	Aluminium alloy non hollow profiles
7608.10.00	09	Kg	Non alloyed aluminium tubes and pipes
7608.20.00	10	Kg	Aluminium alloy tubes and pipes
7610.10.00	12	Kg	Doors, windows and their frames and thresholds for doors
7610.90.00	13	Kg	Other

8. Provide the Anti-Dumping Notice (ADN) number of the reviewable decision

If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

The ADN that was published announcing the Assistant Minister's decision was ADN 2017/72. A copy of ADN 2017/72 is attached at Non-Confidential Attachment 1.

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9. Provide the date the notice of the reviewable decision was published

ADN 2017/72 was published on 27 June 2017.

****Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application****

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so:

10. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.

- 10.1 Anti-Dumping Notice (ADN) 2017/72 published on 27 June 2017 announced a decision of the Assistant Minister for Industry, Innovation and Science and Parliamentary secretary to the Minister for Industry, Innovation and Science (the "Assistant Minister") to accept the recommendations of the Anti-Dumping Commission ("the Commission") in Report No. 362 pursuant to subsection 269TG(1) and (2) of the Customs Act 1901, to publish dumping duty notices in relation to exports of aluminium extrusions exported from Malaysia (by uncooperative and all other exporters) and Vietnam (all exporters) under those notices, was not the correct or preferred decision.
- 10.2 Capral respectfully submits that the decision was not the correct or preferred decision as the Assistant Minister, based upon recommendations of the Commission, failed to take account of 'relevant information' pertinent to the determination of normal values, export prices and non-injurious prices, that demonstrated sharp increases in the LME price for aluminium and the major Japanese port premium ("MJP"), in the period immediately following the investigation period³.
- 10.3 By submission dated 26 April 2017 in response to Statement of Essential Facts No. 362, Capral noted the Commission's comments at Section 11.4 concerning recent price movements of the key determinant in relation to pricing of aluminium extrusions, the LME aluminium price ("LME price"). It was further noted that the LME price and the MJP premium experienced sustained movements post the investigation period, with the Commission observing:

"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".

³ The investigation period in Investigation No. 362 was 1 July 2015 to 30 June 2016.

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- 10.4 Capral's representations concerning the Commission's observations included the following⁴:

"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."

Capral provided the above comments to the Commission following the publication of SEF 362 with the knowledge that LME prices and the MJP had increased sharply and that any measures based upon the investigation period would under-compensate for dumping and the subsequent injury to the Australian industry.

- 10.5 The Commission referenced Capral's concerns at Section 11.5 of Report No. 362 which included 'sustained' movements in the LME price and MJP following the investigation period. The Commission stated the following:

"In conducting investigations, the Commission's practice is to examine exporter's sales and cost data for a defined period. As stated in the Manual, this is usually a 12-month period preceding the initiation date and ending on the most recently completed quarter. The investigation period is outlined in the notice of initiation and is not changed during an investigation. Although this practice can lead to some degree of retrospectivity, setting a defined investigation period is transparent, provides certainty to all parties about the conduct of the investigation and allows for the verification of data and timely delivery of findings. The investigation has been carried out on this basis.

The Commission also considers that, although the raw material prices are currently higher than those during the investigation period, having regard to long term trends of MJP and LME prices, there is no evidence to establish that the current raw material prices are sustained or more representative than those verified in the investigation period.

The Commission does not recommend an adjustment to the variable factors for the investigation period to account for movements of LME and MJP following the investigation period."

- 10.6 Despite acknowledging the increase in the LME price and the MJP following the investigation period, the Commission erred by not adjusting the variable factors. Additionally, the Commission's failure to take account of the increases in LME prices and

⁴ Capral letter, 26 April 2017, EPR document No. 78, P.5.

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MJP results in less than adequate measures to address injurious dumping from the subject exporters in Malaysia and Vietnam.

- 10.7 In Investigation 188 (“Invest 188”) the then Customs and Border Protection (“C&BP”) adjusted the variable factors applicable to hot rolled coil exported from Japan, Korea, Malaysia and Taiwan based upon movements in raw material input prices (i.e. coking coal and iron ore) in the period post the investigation period, up until the date of the then Minister’s decision. The Australian industry appealed the decision to take account of information outside the investigation period to the Trade Measures Review Officer (“TMRO”). The TMRO confirmed⁵:

“74. I do not consider that the Customs Act provides any express or implied prohibition on the CEO having regard to information concerning prices outside the investigation period when formulating recommendations to the Minister on the separate issue of what measures should be put in place as a result of dumping having occurred during the investigation period. Indeed, as the purpose of the Customs Act is to safeguard Australian industry from the adverse effects of future dumping (but not from adverse effects otherwise arising), it would seem to be inconsistent with that policy if the CEO were to be so constrained.”

The TMRO astutely contemplated that the CEO (or, in this instance, the Commissioner) was not precluded from taking account of movements in prices “to safeguard Australian industry from the adverse effects of future dumping”. In the circumstances of Invest 362, the Commission failed to ‘safeguard Australian industry from the adverse effects of future dumping’ and recommended that the Assistant Minister apply dumping measures that it knowingly would under-address injury from dumping (due to prevailing higher raw material prices in the production of aluminium extrusions).

- 10.8 Capral submits that the Commission was in possession of information relating to contemporary LME and MJP prices at the time at which the Final Report 362 was forwarded to the Assistant Minister. A comparison of LME and MJP prices during the investigation period with those post the investigation period would have furnished a material difference in the relative prices (of approximately xxxx per cent⁶). This information is considered to be ‘relevant information’ to the Assistant Minister’s decision to impose measures that ‘safeguard Australian industry from the adverse effects of future dumping’.

- 10.9 It is not clear what information the Commission relied upon for it to conclude “having regard to the long-term trends of MJP and LME prices, there is no evidence to establish that the current raw material prices are sustained or more representative than those verified in the investigation period.” Capral was not contacted by the Commission to demonstrate representations in its 26 April submission that raw material LME and MJP price shifts were sustained. The Commission had sufficient time available to it to further

⁵ TMRO Report, Hot Rolled Coil Steel, at Non-Confidential Attachment 2.

⁶ Comparison of combined LME and MJP during investigation period with 12 months to June 2017 – refer Confidential Attachment 3 [name of worksheet].

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explore and understand Capral's concerns, however, this opportunity was not pursued. The Commission's unwillingness to assess Capral's claims further has denied the Australian industry access to effective measures that are necessary to ensure the Australian industry does not suffer injury from future dumping.

11. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10.

11.1 The preferable decision for the Assistant Minister was to adjust the variable factors for each of the exporters the subject of measures in Malaysia and Vietnam to account for the movements of LME and MJP (of approximately xxxx per cent) following the investigation period.

12. Set out the reasons why the proposed decision provided in response to question 10.8 is materially different from the reviewable decision.

Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

12.1 The proposed decision is materially different to the reviewable decision as the variable factors would be, as a minimum, approximately xxxx per cent higher to ensure the Australian industry is not subject to future dumping at injurious levels.

PART D: DECLARATION

The applicant/the applicant's authorised representative [*delete inapplicable*] declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected;
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.



Signature:.....

Name: Luke Hawkins

Position: General Manager – Supply and Industrial Solutions

Organisation: Capral Limited

Date: 25 / 07 / 2017

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PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

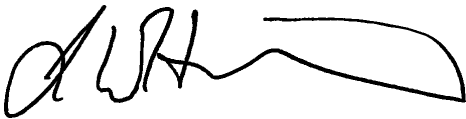
Provide details of the applicant's authorised representative

Full name of representative: John O'Connor
Organisation: John O'Connor and Associates Pty Ltd
Address: P.O. Box 329, Coorparoo QLD 4151.
Email address: jmoconnor@optusnet.com.au
Telephone number: (07) 3342 1921

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature: 

(Applicant's authorised officer)

Name: Luke Hawkins
Position: General Manager – Supply and Industrial Solutions
Organisation: Capral Limited

Date: 25 / 07 / 2017