



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 6 July 2021 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application to the ADRP for 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

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s 269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

Contact

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.

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

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

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Capral Limited
Address: 15 Hunitongwood Drive, Huntingwood, NSW 2148.
Type of entity (trade union, corporation, government etc.): Company

2. Contact person for applicant

Full name: 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:

<p>Section 269T of the <i>Customs Act 1901</i> ("the Act") defines "<i>interested party</i>" for the purposes of an anti-dumping investigation includes "<i>a person or body representing, or representing a portion of, the industry producing, or likely to be established to produce, like goods</i>".</p> <p>Capral Limited ("Capral") is an Australian manufacturer of the goods to which the termination decision of the Commissioner relates in Investigation No. 591. Capral is therefore an interested party for the purposes of the Act and this application.</p>

4. Is the applicant represented?

Yes ☒ No ☐

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

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed**.

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

The goods the subject of the measures are aluminium extrusions. The goods are described as follows:

Aluminium extrusions produced via an extrusion process, 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), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness or diameter greater than 0.5 mm., with a maximum weight per metre of 27 kilograms and a profile or cross-section which fits within a circle having a diameter of 421 mm.

The goods under consideration ("GUC") include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. For example, aluminium extrusion products that have been painted, anodised, or otherwise coated, or worked (e.g. precision cut, machined, punched or drilled) fall within the scope of the goods.

The GUC do not extend to intermediate or finished products that are processed or fabricated to such an extent that they no longer possess the nature and physical characteristics of an aluminium extrusion, but have become a different product.³

³ REP 148, p. 18 at 3.2

The aluminium extrusions the subject of the measures include:

< GUC >				< Non GUC >		
1	2	3	4	5	6	
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	Window frames

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

The aluminium extrusions are classified to the following subheadings within Schedule 3 of the Customs Tariff Act 1995:

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

NON-CONFIDENTIAL

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: ADN 2022/042 – at Non-Confidential Attachment 1.

Date ADN was published: 24 June 2022.

****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 application 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 **highlighted in yellow**, and the document 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.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

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: ☐

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

Refer Attachment A.

10. 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 9:

Refer Attachment A.

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

Refer Attachment A.

NON-CONFIDENTIAL

12. Set out the reasons why the proposed decision provided in response to question 10 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.

Refer Attachment A.

13. Please list all attachments provided in support of this application:

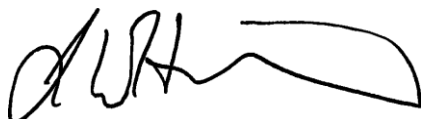
Non-Confidential Attachment 1 – ADN 2022/049
Confidential Attachment A.

PART D: DECLARATION

The applicant 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; and
- 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: 12 / 07 / 2022

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: 12 / 07 / 2022



ANTI-DUMPING NOTICE NO. 2022/042

Aluminium extrusions exported to Australia from Malaysia and the Socialist Republic of Vietnam (Vietnam)

Findings of Continuation Inquiry No. 591 into Anti-Dumping Measures

Public Notice under subsection 269ZHG(1) of the Customs Act 1901

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an inquiry, which commenced on 15 September 2021, into whether the continuation of the anti-dumping measures in the form of a dumping duty notice (Malaysia and Vietnam) and a countervailing duty notice (Malaysia only) applying to aluminium extrusions exported to Australia from Malaysia and Vietnam is justified.

Recommendations resulting from that inquiry, reasons for the recommendations, and material findings of fact and law in relation to the inquiry are contained in *Anti-Dumping Commission Report No. 591* (REP 591).

I, ED HUSIC, the Minister for Industry and Science, have considered REP 591 and have decided to accept the recommendations and reasons for the recommendations. That includes all the material findings of fact and law therein.

Under section 269ZHG(1)(a) of the *Customs Act 1901* (the Act), I **declare** that I have decided not to secure the continuation of the anti-dumping measures currently applying to aluminium extrusions exported to Australia from Malaysia and Vietnam. These measures will expire on **27 June 2022**.

REP 591 has been placed on the public record and is available at:

www.adcommission.gov.au

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au), in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Enquiries about this notice may be directed to the Case Manager on telephone number +61 3 8539 2408 or via email at: investigations1@adcommission.gov.au

Dated this 24 day of JUNE 2022.

ED HUSIC
Minister for Industry and Science

I. Background

On 24 August 2021 Capral Limited (“Capral”) made an application for the continuation of anti-dumping measures on exports of aluminium extrusions (“the goods”) to Australia from Malaysia and Vietnam. The anti-dumping and countervailing measures apply to exporters in Malaysia (except for the following exporters Milleon Extruder Sdn Bhd, Superb Aluminium Industries Sdn Bhd, Kamco Aluminium Sdn Bhd, LB Aluminium PMB and Genesis Aluminium Industries Sdn Bhd). The countervailing measures do not apply to the identified exporters and also to Alumatic Industries Sdn Bhd and EverPress Aluminium Industries Sdn Bhd). The anti-dumping measures apply to all exporters of the goods to Australia from Vietnam.

The anti-dumping measures applying to aluminium extrusions exported from Malaysia and Vietnam that are the subject of this application were imposed by public notice on 27 June 2017 by the then Minister following consideration of Anti-Dumping Commission Report No. 362 (“Report 362”). The original investigation and the imposition of the anti-dumping and countervailing measures resulted from an application made by Capral under section 269TB of the *Customs Act 1901*, representing the Australian industry producing like goods.

The applicable measures on exporters in Malaysia and Vietnam were review in Investigation No. 544 (finalised on 24 February 2020). An accelerated review (Investigation No. 577) was subsequently conducted by the Anti-Dumping Commission (“the Commission”) in respect of certain exports by PMB Aluminium Sdn Bhd (“PMBA”) with the Minister imposing revised measures from 10 June 2021. The current measures applicable to exporters in Malaysia and Vietnam are reflected in Table 1 below:

Table 1 – current measures applying to exports for the goods subject to the continuation inquiry No. 591

Country	Exporter	Dumping Margin	Subsidy Margin	Effective Rate	Form of anti-dumping measure
Malaysia	Alumatic Industries Sdn Bhd	N/A	0%	Dumping, Floor price	
	Premium Aluminium (M) Sdn Bhd	0%	0%	0%	Dumping – Floor price Countervailing – Proportion of export price
	PMB Aluminium Sdn Bhd	2.6%	0%	2.6%	Dumping – Combination duty method Countervailing – Proportion of export price
	Everpress Aluminium Industries Sdn Bhd	10.7%	N/A	10.7%	Dumping – Combination duty method
	All other exporters	10.7%	0%	10.7%	Dumping – Combination duty method Countervailing – Proportion of export price
Vietnam	East Asia Aluminium Company Limited	1.9%	N/A	1.9%	Dumping – Combination duty method
	All other exporters	1.9%	N/A	1.9%	Dumping – Combination duty method

Investigation No. 591 (“Invest 591”) confirmed that “there is a history of the goods being exported at dumped prices” and the Commissioner was satisfied that there was “sufficient evidence” to support a finding that exports of aluminium extrusions from Malaysia and Vietnam will likely continue at dumped prices in the absence of measures. On the basis of cooperation from one Malaysian exporter, the Commissioner was satisfied that future exports from Malaysia would not likely benefit from subsidies from the Government of Malaysia (“GOM”).

Whilst it was acknowledged that dumping was likely to continue, the Commissioner was not satisfied that material injury to the Australian industry, that the measures are intended to prevent, was likely to continue or recur in the absence of the measures.

The Commissioner therefore recommended to the Minister for Industry, Energy and Emissions Reduction (“the Minister”) that the notices in respect of the goods exported to Australia from Malaysia and Vietnam be allowed to expire on the specified day (being 27 June 2022).

Capral contends that the Minister’s decision not to take steps to continue the dumping and countervailing measures on exporters in Malaysia and the dumping measures on exports from Vietnam, was not the correct and preferred decision.

Capral’s grounds for review demonstrating that the available evidence supports a positive finding that the Minister should have taken steps to continue the anti-dumping measures are addressed below.

II. Grounds for review

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

- A. **Ground 1** – the absence of a ‘demonstrable connection’ between the price advantage that dumping gives to exporters from Malaysia and Vietnam is not the correct or preferred decision;

In Term 591 the Commission states that there is an absence of evidence demonstrating a connection between the “price advantage” of the dumped exports from Malaysia and Vietnam and the injurious price-effect impact on the Australian industry. In SEF 591 the Commission sought the “*presentation of additional evidence*” demonstrating the “*Australian industry price responses to the presence of dumped goods in the market*” so that it could reconsider its proposed recommendation to the Minister to not take steps to continue the subject measures.

The Commission stated in Report 591 that two of the Australian industry members provided information demonstrating that the dumped imports were being sold into the Australian market competing directly with sales by the Australian industry members. The Commission further states that “*these examples related to very small volumes in the context of the overall market*”. Additionally, it was commented by the Commission 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.*” and “*The commission notes that this differs from the findings in the original investigation*”.

The Commission confirmed the following dumping margins were determined for exports from Malaysia and Vietnam during the investigation period (i.e. 1 July 2020 to 30 June 2021):

Table 2 – Dumping margins confirmed by the Commission in Report 591

Country	Exporter	Preliminary Dumping Margin
Malaysia	Press Metal Berhad Aluminium Sdn Bhd	6.7%
	Alumac	-2.3%
	Uncooperative and all other exporters	27.0%
Vietnam	EAA	5.2%
	Uncooperative and all other exporters	9.0%

Capral notes that the dumping margins determined for Malaysian (except for exports by Alumac) were above negligible levels and were of sufficient magnitude to afford the exporters an advantage in negotiations with customers.

It is not disputed that future exports of the goods from Malaysia and Vietnam will likely be at dumped prices.

The Commission stated that the Australian market for aluminium extrusions was approximately 227 million kilograms (227,000 tonnes) in the 2021 financial year. Imports from Malaysia and Vietnam were variable following the imposition of measures since 2017, with Malaysian volumes remaining

steady since 2017 and Vietnam volumes declining following the imposition of measures before recovering and peaking in 2020 before tailoring off again. Capral submits that the trend in imports from Malaysia and Vietnam were heavily influenced by the level of the measures and the relativity of the cost of aluminium on the London Metals Exchange (“LME”). Specifically, as LME price increased following the imposition of measures the floor price in measures determined on the combination method rapidly became outdated and exports – from Vietnam in particular – increased. The review of measures Investigation No. 544 impacted the export prices from Malaysia and Vietnam following imposition, with volumes from Malaysia and Vietnam declining from early 2020 demonstrating a decline in market share for both Malaysia and Vietnam in FY 2021 as reflected in Figure 3 of Report 591 and, more relevantly Figure 12 on P. 64 that clearly depicts the influence of the review of measures inquiry No. 544).

Contrary to the Commission’s view about trends in sales volumes from Malaysia and Vietnam since the measures were imposed in June 2017, the import volumes over the following four-year period (through until 2021 financial year), were influenced by the contemporary nature of the applicable measures (that became outdated as LME prices increased).

It is not evident from Report 591 that the Commission has fully understood how selling prices that lag movements in the LME will, ultimately, result in injury to the Australian industry as the margin between the LME and selling price is eroded. Capral questions, therefore, the Commission’s assessment that “Figure 16 shows that in the inquiry period the rate of increase in the LME was **greater** than the rate of price increase from Capral and the **2 largest exporters, PMBA and EAA**” (emphasis added). The Commission further confirms that EAA’s prices showed the greatest divergence from the LME. Capral is confused why these findings did not register injury from the dumping (certainly in respect of exports by EAA) with the Commission. Both PMBA and EAA were found to have significant margins of dumping during the investigation period – 6.7 per cent and 5.2 per cent respectively, reflecting both exporter’s failure to pass on the full change in LME costs in selling prices. Figure 13 further confirms that both PMBA and EAA have capitalised on the dumping by increasing export volumes to Australia in 2020 and 2021.

Capral’s response to SEF 591 (EPR Document No. 028) included information relating to lost sales volumes at customers that have sourced supply from Malaysia and Vietnam, including during the investigation period (with lost sales volumes most notable in 2020 and 2021). The lost sales volumes (as reflected in Capral’s 7 April 2022 submission) cannot be considered “small” in nature, and demonstrate the impact of Malaysian and Vietnam exporters supplying at dumped prices.

Capral further highlighted in its response to SEF 591 of the difficulties associated with obtaining competitor pricing intelligence from customers. Since anti-dumping measures were first imposed on aluminium extrusions, customers have been reticent to provide feedback on pricing for imports due to the potential impost of anti-dumping measures. As such, accessing import pricing information for Australian industry members is challenging. This does not appear to have been a consideration of the Commission.

The Commission’s commentary and conclusions on the likelihood of a recurrence of material injury from dumping by exporters in Malaysia and Vietnam are dismissive of the evidence supplied by Capral (in response to SEF 591) confirming that, in the absence of measures, exports will likely escalate (confirmed by the Commission that exports will likely be at dumped prices). The continued dumping of exports from Malaysia and Vietnam will be attractive to a growing customer base in Australia to the detriment of Australian industry (as the full increase in LME prices are not reflected in the Malaysian and Vietnamese export prices) resulting in the recurrence of the material injury that the measures are intended to prevent.

Capral noted the Commission’s findings in SEF 591 concerning price undercutting from exporters in Malaysia and Vietnam including:

- *In respect of the first level of trade in all finishes, Capral was undercut “by EAA across the inquiry period” of between 2% and 12%);*
- *Capral was not undercut by PMBA for all finishes across the inquiry period, with Capral’s mill finish prices set just below PMBA. PMBA’s powder coated products were priced slightly above Capral’s prices, whereas PMBA’s anodized prices undercut Capral’s selling*

prices;

- *EAA was able to reduce its selling prices in Q1/2021, whereas Australian industry members were increasing prices;*
- *G James and INEX were undercut in powder coated products by EAA and PMBA, with some undercutting evident across all three finishes;*
- *In the second level of trade which involved comparisons with PMBA's selling prices, there was some undercutting evident and the Commission stated that there was "inconsistent examples and degrees of undercutting" evident.*

Capral had noted that all examples of price undercutting for the cooperative exporter EAA were across all types of finishes with a high level of certainty. Meanwhile, whilst price undercutting for the other cooperative exporter PMBA was not as prevalent, PMBA is recognised as a major supplier of Malaysian aluminium extrusions in the Australian market (as confirmed by the Commission in Figure 13 that confirms PMBA's growing volumes in 2020 and 2021). The price undercutting is made possible by EAA and PMBA as the exporters did not reflect the full increases in LME pricing thereby taking the opportunity to secure increasing sales volumes (at Capral's expense) in 2020 and 2021.

Capral's SEF 591 response identified three examples of lost sales volumes to imports from Malaysia and Vietnam. Example one identified exports from Malaysia as having secured volumes from Capral – that would only have been possible at prices that undercut Capral's offer for supply. Examples two and three related to Capral losing sales volumes to exports from Vietnam by [exporter] – again at prices that were lower than Capral.

The available evidence confirms that Capral has experienced price undercutting from dumped exports from Malaysia and Vietnam that has resulted in loss of sales at three accounts. It is Capral's position that it is likely that the prevalence of the price undercutting is widespread and that customers are reticent to disclose lower offers for extrusions from Malaysia and Vietnam as this would limit access to a cheaper (dumped) source of the goods into Australia (as the measures would likely be continued).

The Commissioner's finding that the available evidence is not reflective of a 'demonstrable connection' between the exports at dumped prices from Malaysia and Vietnam is not the correct and preferred decision. Evidence provided by Capral (in its response to SEF 591) is in conflict with the Commissioner's finding and conclusions. The available evidence confirms that in the absence of measures, exporters in Malaysia and Vietnam will export at dumped prices that will lead, or would be likely to lead, to a continuation of, or a recurrence of the material injury that the anti-dumping measures are intended to prevent.

10. 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 9

The correct or preferable decision resulting from Ground 1 is that dumped exports (including exports by PMBA and EAA) of aluminium extrusions from Malaysia and Vietnam were at levels that undercut Capral's selling prices (i.e. price-effect injury) that caused the loss of sales at the identified customer accounts as demonstrated by Capral.

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

Ground 1 (identified at Question 9 above) that demonstrates Capral has experienced price-effect injury from the dumped exports from Malaysia and Vietnam supports a correct and preferable finding that it is likely (on the basis of evidence supplied demonstrating injury previously experienced) the dumped exports will lead, or would be likely to lead, to a continuation of, or a recurrence of the material injury that the anti-dumping measures are intended to prevent.

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

The reasons provided in Question 10 (based upon Ground 1) confirm that Capral (representing the Australian industry) has experienced price-effect injury (contrary to the Commissioner's recommendation in Report 591 relied upon by the Minister) and the proposed recommendation to the Minister should have been that the Minister take steps to ensure the anti-dumping measures on aluminium extrusions exported from Malaysia and Vietnam do not expire.

- B. **Ground 2** – there is no evidence to demonstrate a connection between “the economic condition of the industry, specifically in terms of how it sets its prices which is distinct from the influence of other sources of the goods” is not the correct or preferred decision; and

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

The Commissioner stated in SEF 591 (Paragraph 8.1):

“As a result of these findings [that dumping has occurred and was likely to continue] and on the basis of the evidence currently available, the Commissioner is not satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent. The Commissioner therefore proposes to recommend that the notices be allowed to expire.”

Capral noted that the Commissioner did indicate that “the presentation of additional evidence, for example, evidence demonstrating Australian industry responses to the presence of the dumped goods in the market, may provide a basis for considering the proposed recommendation.”

Capral responded positively to the Commissioner's request (refer Capral response to SEF 591 – EPR Document 028). Capral provided evidence confirming the loss of sales volumes across three customers due to price-effect injury where the Malaysian and Vietnam exporters with the price-advantage afforded by the dumping had undercut Capral's selling prices resulting in lost sales volumes.

The information provided was separate from other influence (i.e. larger volumes imports from China) and specifically identified [redacted – exporter and importer] as the source of the injury, with information also identifying that Malaysian exports had caused injury at Capral's customer, [redacted – customer name].

The information provided was distinct and separate to other import sources of the subject goods.

The Minister's decision that there was no evidence to demonstrate a connection between the economic condition of the industry and specifically how it sets its prices and competes with the imports from Malaysia and Vietnam was not the correct or preferred decision.

10. 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 9

The correct or preferable decision resulting from Ground 2 is that Capral was able to provide evidence that the dumped exports from Malaysia and Vietnam distinctively had an impact on the economic condition of the Australian industry.

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

Ground 2 confirms that the dumped exports from Malaysia and Vietnam could be identified separately and distinctively from the injury caused by other sources of supply during the investigation period and had an impact on the economic performance of the Australian industry manufacturing like goods.

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

The reasons provided in Question 10 (in respect Ground 2, and also supported by evidence provided by Capral as referenced in Ground 1) confirm that the dumped exports from Malaysia and Vietnam were separately identifiable as a cause of injury to the Australian industry during the investigation period.

Capral responded positively to the Commissioner's request in SEF 591 for the Australian industry members to provide evidence of price-effect injury from the dumped exports from Malaysia and Vietnam. The information provided when considered in the context of being relevant and specific information that confirmed price and volume effect injury to the Australian industry directly linked to exports from Malaysia and Vietnam was sufficient evidence for the Commissioner to make a recommendation to the Minister that he take steps to ensure the anti-dumping measures on aluminium extrusions exported from Malaysia and Vietnam do not expire.

- C. **Ground 3** - In the absence of the measures it is likely that the Australian industry would experience a recurrence of the material injury that the measures are intended to prevent.

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

Capral responded to the Commissioner's invitation to provide supporting evidence that the Australian industry had experienced price-effect injury from dumped exports from Malaysia and Vietnam.

The information supplied by Capral confirmed that price undercutting from exports from the goods exported from Vietnam by EAA had resulted in lost sales volumes for Capral. Report 591 confirmed that the exports from Vietnam had increased in 2020 and 2021 which was consistent with Capral's understanding that the anti-dumping measures were not reflecting increased LME prices and that EAA had increased its export volumes to Australia (securing sales through price undercutting at Capral customers).

Capral was similarly able to provide an example at one of its customers where Malaysian exports had also secured sales through price undercutting at Capral's expense.

Capral understands that another Australian industry member was also able to provide the Commissioner with evidence demonstrating injury from the dumped exports the subject of Investigation No. 591.

Capral has noted the Commissioner's statement (at Section 8.8 of Report 591) that "*The data suggests that the main source of price pressure on the domestic industry would likely be from other imports with a much greater market share.*" The Commissioner's conclusion was that as the imports from Malaysia and Vietnam accounted for a 4 per cent market share and that "other" imports accounted for 31 per cent of the market, that the injury from other sources of supply would be the **likely** cause of injury. This conclusion, however, is erroneous as the Commissioner did not assess whether the exports from other sources were dumped and injurious during the investigation period in Investigation No. 591. The assumption was that imports from other sources of supply must have had a price-effect impact on the Australian industry. The Commissioner's conclusion cannot be relied

upon as it is not supported by evidence that the other sources of supply were offering prices at the same (or lower) levels than exports from Malaysia and Vietnam.

The Commissioner relied upon the erroneous assumption to conclude that the imports from other sources (accounting for 31 per cent market share) were more likely injurious than the dumped imports from Malaysia and Vietnam during the investigation period. This conclusion is unsafe as it cannot be concluded that the imports from other sources were dumped and injurious at the same time as the imports from Malaysia and Vietnam that were confirmed as being at dumped prices.

For the reasons identified the Commissioner's recommendation (accepted by the Minister) that the dumped imports from Malaysia and Vietnam were not likely to result in a continuation of, or a recurrence of the material injury that the anti-dumping measures are intended to prevent was based on an erroneous view as to the likely cause of material injury from imports that were not the subject of investigation (and could not be assumed to have been injurious).

10. 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 9

The correct or preferable decision resulting from Ground 3 is that in the absence of measures, exporters in Malaysia and Vietnam will export at dumped prices that will lead, or would be likely to lead, to a continuation of, or a recurrence of the material injury that the anti-dumping measures are intended to prevent.

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

Ground 3 (identified at Question 9 above) confirms that the Minister relied upon an erroneous conclusion of the Commissioner that it was likely that imports from sources that accounted for 31 per cent market share were the cause of injury that is material to the Australian industry rather than the subject imports from Malaysia and Vietnam that accounted for only 4 per cent market share.

The Commissioner did not assess the imports that accounted for 31 per cent market share as being dumped (or injurious) in Investigation 591. Rather, it was assumed by the Commissioner (incorrectly) that the imports accounting for a larger proportion of the market were likely more injurious than the subject imports (established as being at dumped prices) that accounted for 4 per cent market share.

It is well established that imports with only a small share of the market can significantly influence prices and cause injury that is material to an Australian industry.

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

The reasons provided in Question 10 above establish that the Commissioner's recommendation relied upon by the Minister was incorrect as to the *likely* cause of material injury to the Australian industry.

The correct or preferred decision is that the recommendation to the Minister should have been that the Minister take steps to ensure the anti-dumping measures on aluminium extrusions exported from Malaysia and Vietnam do not expire as the subject exports would likely cause a recurrence of material injury should the measures expire.