

May 8 2015

Anti-Dumping Review Panel
c/o ADRP Secretariat
Legal Services Branch
Department of Industry and Sciences
GPO Box 9839
ACT 2600 Australia

SUBMISSION - by email ADRP@industry.gov.au

This submission is in response to the application from Capral Limited to the Anti- Dumping Review Panel for a review of the decisions published in the Anti-Circumvention Inquiry Final Report 241 and ADN 2015/17.

Capral have requested that actions taken under s.269ZDBH to alter the original anti-dumping and countervailing notices should have applied to LIG Australia Pty Ltd (LIG) and Success Aluminium Pty Ltd. (Success) from the date of the commencement of the inquiry (14 April 2014).

Further to Capral's application;

- a) With regard to Paragraph 5 of Capral's application– Correct or Preferable Decision. Capral use a heading "Phoenix companies" and continue to use the same phrase all the way through their application, which is hysterical, defamatory and inaccurate. Phoenix company definition – 'A phoenix company is a commercial entity which has emerged from the collapse of another through insolvency'. 'Illegal phoenix activity involves the intentional transfer of assets from an indebted company to a new company to avoid paying creditors, tax or employee entitlements.' (www.asic.gov.au). There has been no avoidance of any liabilities, or any proof of such avoidance provided by Capral. Nor was there ever such a claim or finding made by the Commission in its Report 241.
- b) Success Aluminium is a separate entity with separate legal ownership to any so called "predecessors" (i.e. the P&O Aluminium businesses). Whilst its incorporation on 1 May 2014 was 2 weeks following the Customs notification of the commencement of an inquiry published on 14 April 14; the business negotiations, planning, due diligence for the purchase of some parts of the separate P&O Aluminium entities, subsequent purchase negotiations, and incorporation of Success Aluminium, took place over many months prior to any notification of a Circumvention Inquiry, and not in a 2 week period as Capral claim. Nor would it have even been possible at the time to know of any potential outcome from the Circumvention Inquiry, the result of which was finally published some 12 months later.

- c) Success Aluminium was never a subject of this inquiry, nor was it ever requested to provide information to the inquiry pertaining to its business. Capral comments in its application; “If LIG and Success were truly independent of the nominated importers it is reasonable to conclude that they would have cooperated fully with the Commission’s inquiry to ensure that they avoided any adverse outcome as a result of the behaviour of their “predecessors”. This statement is completely false. Success Aluminium was never involved in the inquiry, investigated, nor was any information pertaining to its business ever requested.
- d) Capral further asserts; “LIG and Success have different company names, ABNs and shareholders to their predecessors, but conduct the exact same business, as evidenced by the fact that LIG/Success: _____. “. As previously stated, Success purchased some parts of the P&O Aluminium businesses. It however does not purchase from the same suppliers. Success Aluminium buys off a number of suppliers. Import data from the ACBS for the last 3 months (Feb 2105 to April 2015) compared to any previous corresponding period, including volume imported from the exporter PanAsia, would verify this. It does not purchase the same volumes at the same prices, nor sell at the same prices. Where is the evidence for this, other than a statement by Capral? The Success Aluminium purchasing, pricing, sales and marketing strategies are completely different than any “predecessor”. Success Aluminium has never avoided the intended effect of a duty. The pricing practices of Success Aluminium have never been the subject of the Circumvention Inquiry or subsequent investigation, which is supposedly a key criterion as specified in s.269DBB(5A) of the Act. Capral’s point in its closing paragraph; “there was sufficient evidence of ongoing circumvention by the phoenix companies to justify prospectively altering the notices”, is completely false.
- e) Capral also state that Success employ the same staff which is further “evidence” of it being a “phoenix company” and continuing the exact same business as its “predecessor”. Success Aluminium have employed some staff who were previously employed by P&O Aluminium, but in an industry such as the Aluminium extrusion industry, it is not uncommon for similar people to be involved in various businesses within the same industry over a period of time. All senior managers of Success and most of the sales staff where in fact employed by Capral at one time, and Success also deals with some of the same customers as Capral. Does this mean Success and Capral are related entities, according to their logic?
- f) It is unjust for all importers to be penalised for the actions of one importer that had been found to be circumventing. It is even more inconceivable that retrospective duties could apply to a business and separate entity without any investigation or detail concerning its business practices, profitability, or pricing in the marketplace, or whether there has been any circumvention by it. Success Aluminium fully support a competitive and level playing field in the Australian market and the work of the Commission to remedy any injury to the local industry caused by dumping or subsidisation. Accepting Capral’s application would be unjust and anti-competitive.



Success Aluminium Pty Ltd
(ABN 57 169 262 999)
2 / 1-15 Bennett Street, Chester Hill, NSW 2162
PO Box 573 Chester Hill, NSW 2162
Ph: (02) 9724 1568 Fax: (02) 9724 5722

Capral's application requesting that the correct and preferable decision would have been to apply the alterations to the notices to LIG/Success retrospectively from the date of commencement of the inquiry (14 April 2014) is based on no facts or evidence. Success Aluminium was never the subject of the Anti-Circumvention Inquiry; it was never investigated for any circumvention activity, nor was any information requested of it pertaining to its business. We therefore request that the Dumping Review Panel reject the application.

Yours Sincerely

A handwritten signature in blue ink, appearing to read 'K. Lehmann'.

Kevin Lehmann
General Manager