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Mr Rowan Ramsey MP
Chair, House of Representatives Standing Committee on Agriculture and Industry
Parliament House
Canberra ACT 2600

Dear Mr Ramsey

Capral Limited submission on circumvention of anti-dumping laws

This submission is made by Capral Limited (Capral) in relation to the House of Representatives Standing Committee on Agriculture and Industry's inquiry into the circumvention of anti-dumping laws. Capral welcomes the Committee's inquiry and the opportunity to make a submission.

Background

Capral is a major extruder and distributor of aluminium products in Australia. Capral's manufacturing business produces extrusion products at five sites - Bremer Park (Qld), Penrith (NSW), Campbellfield (Vic), Angaston (SA) and Canning Vale (WA). The distribution business operates across all States and the Northern Territory, and supplies aluminium extrusion products and related components to residential and commercial construction markets, as well as to industrial fabrication and manufacturing markets.

In 2009 Capral applied for anti-dumping and countervailing duties on Chinese aluminium extrusions and duties averaging 7% were applied in October 2010. The Australian extrusion industry was bitterly disappointed with this outcome given that at around the same time the United States and Canada put in place duties of at least 30% on similar products from some of the same exporters. This case exposed severe shortcomings in Australia's anti-dumping framework and methodology compared to other jurisdictions.

Since the aluminium extrusions case the extrusion industry has been an active participant in the program of legislative reform that has taken place. Capral notes the government's pre-election commitment to further strengthen Australia's anti-dumping system and eagerly awaits these changes. In particular, the methodology applied when a 'particular market situation' is found in the exporting country needs to be addressed. Capral has previously submitted that a simple amendment to the Customs Act can be made as proposed by Stephen Lloyd QC.

Circumvention

The aluminium extrusion industry in Australia has been under severe financial distress as a result of dumping for some years now and the dumping and countervailing duties imposed on aluminium extrusions from China were expected to ease the price suppression being suffered by the industry. This hasn't happened and Capral suspects that the duties are being circumvented. Circumvention can occur in a number of ways, but the biggest problem that the aluminium extrusion industry has faced is with sales at a loss.



Sales at a loss – Extrusions are imported correctly and the appropriate amount of dumping and countervailing duties is paid, but the importer avoids the intended effect of the duties by not passing on the additional cost of the duties to its customers. This type of behaviour is often made possible as part of a non arms length arrangement with exporters.

In April this year Capral applied to the Anti-Dumping Commission for a formal anti-circumvention inquiry into sales at a loss by a group of importers supplied by the largest Chinese exporter of aluminium extrusions to Australia. The Commission is currently investigating the claim that the importers have been circumventing the intended effect of the dumping and countervailing duties by failing to recover the full cost of the extrusions, including the duties, and are continuing to cause injury to the Australian industry.

Based on its inquiries to date, the Commission has found the importers to have imported extrusions possibly on a non arms length basis and sold them in the Australian market at a loss. The Commission is due to report its findings to the Parliamentary Secretary to the Minister for Industry on 12 December 2014 and the Parliamentary Secretary is due to make a decision and release the findings by 11 January 2015.

The aluminium extrusion industry regards this as a vital decision and makes the following comments:

- Any measures taken to counter the circumvention found must have a strong deterrence factor in the level of additional measures. The timing of the effective date of any measures should be at least from the date of initiation of the inquiry but ideally from the date of the first offences found. Feedback from importers and exporters is that in the past the government has been slow to react to ongoing dumping and circumvention of duties, therefore it is imperative that the government send a strong message this time.
- Importers found to have circumvented duties must not be allowed to be wound up and have phoenix companies appear in their place. It is important for the Commission to have the powers necessary to ensure that importers cannot use phoenix companies to further circumvent dumping and countervailing duties.

Duties can also be circumvented in a number of other ways.

Transshipping – Extrusions destined for Australia are shipped from China to a third country and then shipped to Australia purporting to originate from the third country. Only Chinese extrusions are subject to dumping and countervailing duties, therefore importers claiming the goods are from another country will avoid paying the duties.

Misclassification – Extrusions are classified and described as goods other than extrusions on import. Customs uses its imports clearance system to collect dumping and countervailing duties, which relies on importers correctly classifying and describing the goods as extrusions in order to attract the duties. Importers will avoid paying the duties if the goods are misclassified or wrongly described.

Exporter arrangements – Extrusions produced by one exporter are shipped to Australia by a different exporter that has a lower rate of duty. A producer that has a high level of duties applicable to its exports could arrange for their extrusions to be exported to Australia by an exporter with lower duties, thus allowing the importer to pay the lower duty rate when the higher rate should apply.

Monitoring and auditing

Australia's current anti-circumvention framework relies on industry monitoring the market and preparing cases for the Anti-Dumping Commission to investigate. It would be preferable for the Commission to have the capabilities, powers and resources to proactively monitor and audit imports to ensure compliance with measures and lessen the burden on industry. Such monitoring and auditing could include:

- ongoing analysis of industries susceptible to dumping,



- periodic audits of importers subject to dumping duties,
- occasional spot inspections of imported goods subject to dumping duties, and
- placing analysts in key exporting countries to monitor export industries.

In addition, Capral has previously engaged with government agencies through a working group of the International Trade Remedies Forum (ITRF) and it is important for Australian manufacturers to continue to have a forum to engage with the Commission and Customs on these issues and to receive feedback on actions taken by the government to enforce dumping and countervailing duties.

Conclusion

Whilst Capral appreciates the legislative changes made by the Parliament in recent years and the current effort to address circumvention, Capral feels that more is needed as outlined above. Capral looks forward to the opportunity to engage further with the Committee on this issue during the course of its hearings.

Kind Regards,

for **Phil Jobe**
Director