



**Australian Government**  
**Australian Customs and  
Border Protection Service**

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**INVESTIGATION OF THE ALLEGED DUMPING AND  
SUBSIDISATION OF CERTAIN ALUMINIUM EXTRUSIONS**

**EXPORTED TO AUSTRALIA FROM THE PEOPLE'S REPUBLIC  
OF CHINA**

**PRELIMINARY AFFIRMATIVE  
DETERMINATION NO.148**

October 2009

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## ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
aluminium extrusions	the goods subject of the application
Australian industry	the Australian industry producing aluminium extrusions
Capral	Capral Limited
CEO	Chief Executive Officer of the Australian Customs and Border Protection Service
China	People's Republic of China
CSRB	Chinese State Reserve Bureau
CTMS	cost to make and sell
Customs and Border Protection	the Australian Customs and Border Protection Service
FIE	foreign invested enterprise
FOB	free on board
G. James	G. James Extrusion Co Pty Ltd
GOC	Government of China
GQ	Government questionnaire
LME	London Metal Exchange
Minister	The Minister for Home Affairs
NIP	non-injurious price
PAD	preliminary affirmative determination
SASAC	State Assets Supervision and Administration Commission
SME	Shanghai Metal Exchange
SOE	state-owned enterprise
Tariff Act	Customs Tariff Act 1995
the Act	Customs Act 1901
the goods	the goods the subject of the application
USP	unsuppressed selling price

## 1. INTRODUCTION

On 11 May 2009, Capral Ltd (Capral) lodged an application under section 269TB of the *Customs Act 1901* (the Act)<sup>1</sup> for the publication of dumping and countervailing duty notices in respect of aluminium extrusions exported to Australia from the People's Republic of China (China). Additional information was received from Capral on 14 May and 28 May 2009.

Following an examination of the application the delegate of the Chief Executive Officer of Customs and Border Protection (CEO) decided not to reject the application and an investigation into the alleged dumping and subsidisation of certain aluminium extrusions exported to Australia from China was initiated on 24 June 2009.

Customs and Border Protection published a notice was in *The Australian* on 24 June 2009, and released ACDN 2009/20, which contains further details on the investigation.

The investigation period, used to determine whether dumping and subsidisation has occurred, is from 1 July 2008 to 30 June 2009. Customs and Border Protection is examining the Australian market and the economic condition of the industry from 1 January 2006 to 30 June 2009 for the purposes of injury analysis.

## 2. PRELIMINARY AFFIRMATIVE DETERMINATION

At any time not earlier than 60 days after the date of initiation of an investigation as to whether there are sufficient grounds for the publication of a dumping duty notice, or a countervailing duty notice, in respect of goods the subject of an application, the CEO may, if he or she is satisfied:

- a) that there appears to be sufficient grounds for the publication of such a notice; or
- b) that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods;

make a preliminary affirmative determination under section 269TD to that effect.

In deciding whether to make a preliminary affirmative determination, the CEO must have regard to the application concerned, and to any submissions concerning publication of the notice that are received by Customs and Border Protection within 40 days after the date of initiation of the investigation. The CEO may also have regard to any other matters that the CEO considers relevant. The CEO is not obliged to have regard to any submission received after day 40 if to do so would prevent the timely consideration of whether or not to make a PAD.<sup>2</sup>

### 2.1 Ability to Take Securities

Customs and Border Protection may, at the time of making a PAD or at any later time during the investigation, require and take securities under section 42 in respect of

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<sup>1</sup> References to any section or subsection shall be references to sections or subsections of the *Customs Act 1901* unless otherwise specified.

<sup>2</sup> Findings, calculations, and conclusions discussed in this report are of a preliminary nature and may change between the time of its publication and the publication of the statement of essential facts.

interim duty that may become payable if the officer of Customs taking the securities is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

### 3. THE GOODS UNDER CONSIDERATION

#### 3.1 The Goods

The applicant, Capral Limited (Capral), included the following summary describing the goods the subject of its application:

‘Aluminium extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by The Aluminum 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 application also contained additional information to assist in understanding the goods the subject of the application.

#### 3.2 Tariff Classification

The goods may be classified to the following subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

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 hollow profiles;
7604.29.00/09	aluminium alloy non hollow angles and other shapes;
7604.29.00/10	aluminium hollow 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

#### 3.3 Like Goods

Customs and Border Protection understands that the Australian industry producing aluminium extrusions (Australian industry) manufactures a comprehensive range of aluminium extrusions, in ‘standard’ and ‘custom’ shapes, up to 421mm wide, and 27kg/m in weight. Capral has stated that it is able to extrude product in 1, 2, 3, 5, 6 or 7 series alloys.

Customs and Border Protection understands that imported and Australian products are generally substitutable, due to the standards under which the goods are sold, chemical composition, and physical dimensions.

Customs and Border Protection has visited the two largest Australian producers of like goods and observed the manufacture of aluminium extrusions.

### **Assessment of Like Goods**

Customs and Border Protection has considered the following matters in assessing whether goods produced by the Australian industry and like to the goods:

- i. Physical likeness:
  - Australian industry products have similar alloys and finish types and generally possess similar physical characteristics to the imported aluminium extrusions.
- ii. Commercial likeness:
  - Australian industry products compete directly with the imported goods in the Australian market.
- iii. Functional likeness:
  - Both imported and Australian produced goods have comparable or identical end-uses.
- iv. Production likeness:
  - Australian industry products are manufactured in a similar manner as the imported goods.

### **Conclusion on Like Goods**

Customs and Border Protection considers that its findings on i, ii, iii, and iv above all support a conclusion that the Australian products, while not identical, have characteristics closely resembling the goods.

## **4. THE APPLICANT AND OTHER AUSTRALIAN PRODUCERS**

The application was lodged by Capral on behalf of the Australian industry producing aluminium extrusions. The Australian industry is comprised of the following manufacturers:

- Capral
- G James Extrusion Co Pty Ltd (G James)
- Almax Aluminium Pty Ltd (Almax)
- Independent Extrusions Ltd (Inex)
- Extrusions Australia Pty Ltd
- Extrusion Profiles Australia
- Aluminium Shapemakers Pty Ltd (AluShapes)
- Ullrich Aluminium Pty Ltd (Ullrich)

Since the initiation of this investigation, Customs and Border Protection has requested information from each of the above manufacturers in relation to their production and sale of like goods.

At the time of writing, such information has been received from each company listed above, with the exception of Extrusion Profiles Australia and AluShapes. Customs and

Border Protection has conducted verification visits with Capral and G James, and has also met with Ullrich<sup>3</sup>.

Capral accounted for more than 50% of the Australian production of like goods during the investigation period. G James was the second largest Australian producer.

## 5. IMPORTERS

Following the initiation of the investigation, Customs and Border Protection performed a search of its database and identified 306 importers, of which seven were classified as 'intermediate' and seven were classified as 'major' importers of the goods<sup>4</sup>. A full list of the importers that were identified from this search is at **Confidential Appendix 1**.

Letters were sent to the 292 'minor' importers informing them of the investigation and inviting submissions from these importers<sup>5</sup>. The intermediate and major importers were sent importer questionnaires<sup>6</sup>.

Customs and Border Protection undertook visits to the following importers and prepared reports following the visits:

- Darley Aluminium Pty Ltd
- Kam Kiu (Australia) Pty Ltd
- PanAsia Aluminium (Melbourne) Pty Ltd
- PanAsia Aluminium (Sydney) Pty Ltd
- PanAsia Aluminium (Brisbane) Pty Ltd
- Press Metal Aluminium (Australia) Pty Ltd
- Tai-Ao Aluminium (Australia) Pty Ltd

Customs and Border Protection estimates that the above companies collectively accounted for more than half the volume of the goods imported during the investigation period.

The delegate of the CEO has had regard to the matters discussed in these visit reports.

## 6. PRODUCER EXPORTERS

From the same search of its database described above, Customs and Border Protection also identified more than 300 possible exporters and suppliers of the goods manufactured in China. Each of these companies was sent a preliminary information request.<sup>7</sup> After the PIR responses were received, Customs and Border Protection selected seven suppliers for further investigation<sup>8</sup>. The four exporters selected for further verification were:

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<sup>3</sup> For a familiarisation type visit

<sup>4</sup> Public file 2009/021268-05 folio 48 refers

<sup>5</sup> Public file 2009/021268-05 folios 72-73 refers

<sup>6</sup> Public file 2009/021268-05 folios 49-71 refers

<sup>7</sup> Public file 2009/021268-05, folios 86-74 refers

<sup>8</sup> Public file 2009/021268-05 folios 88-89 refers

- Producer exporters:
  - Panasia Aluminium (China) Ltd;
  - Tai Ao Aluminium (Taishan) Co Ltd;
  - Tai Shan City Kam Kiu Aluminium Extrusion Co Ltd; and
  - Zhaoqing New Zhongya Aluminium Co Ltd.
  
- Traders associated with the four exporters selected for further verification are:
  - Kam Kiu Aluminium Products Sdn Bhd;
  - Opal (Macao Commercial Offshore) Ltd; and
  - Zhongya Shaped Aluminium (HK) Holding Ltd.

Customs and Border Protection has received completed exporter questionnaires from the selected producer exporters listed above and associated traders. These responses were considered for this PAD.

## 7. AUSTRALIAN MARKET

Customs and Border Protection has combined import data from its commercial database with Australian industry sales data to estimate the size of the Australian market for aluminium extrusions during the investigation period. Summary data is at **Confidential Appendix 2**.

## 8. PRELIMINARY EXPORT PRICE

For the purpose of determining preliminary dumping margins, Customs and Border Protection has based its analysis on exports to Australia of aluminium extrusions by:

1. the four exporters selected for further verification;
2. residual exporters; and
3. all other selected exporters.

Exporters were classified by Customs and Border Protection to one of the three categories listed above following two preliminary information request (PIR) exercises conducted shortly after the initiation of the investigation. During these exercises, Customs and Border Protection asked suppliers of the goods whether they were willing to cooperate in this investigation.

Given the large number of suppliers that indicated an intent to cooperate in their PIR responses, Customs and Border Protection decided that it was not practical to determine the existence of dumping and work out individual dumping and countervailing margins for each of them, and that it was necessary to select exporters for further investigation for the purposes of s.269TACB(8) and s.269TACC(8).

Four exporters that fully responded to the PIR and indicated intent to cooperate, and which represented a significant proportion of exports during the investigation period, were selected for further verification ('the four exporters selected for further verification').

Exporters that responded to the PIR in full, and which indicated intent to cooperate have been classified as 'residual exporters'.

Exporters that did not fully respond to the PIR, or responded and indicated that they would not cooperate with the investigation have been classified as 'all other selected exporters'.

Having regard to the exporter responses, Customs and Border Protection has preliminarily determined that, in the case of three of the four exporters selected for further verification:

- the goods were exported to Australia otherwise than by the importer, and
- the goods have not been purchased by the importer from the exporter.

In the case of the fourth exporter, Customs and Border Protection has preliminarily determined that the goods were imported to Australia by the exporter.

Customs and Border Protection has preliminarily calculated monthly weighted average export prices for each of the four exporters selected for further verification under s.269TAB(1)(c), having regard to all the circumstances of the exportation.

For each of the four exporters selected for further verification, Customs and Border Protection has separately calculated preliminary export prices by finish type (i.e. mill finish, anodised, painted/powder coated, other) using information provided in those companies' respective submissions.

For residual exporters, the weighted average export prices of the four exporters selected for further verification were used to calculate preliminary export prices by finish type.

For all other selected exporters, the lowest identified export price by finish type of the four exporters selected for further verification was chosen to calculate preliminary export prices.

Preliminary export price calculations for the four exporters selected for further verification are at **Confidential Appendix 3**.

## **9. PRELIMINARY NORMAL VALUE**

### **9.1 Suitability of domestic sales for preliminary normal value**

In consideration report no.148, Customs and Border Protection considered that the applicant provided sufficient evidence to support the claim that domestic sales of aluminium extrusions were unsuitable for the purposes of determining a normal value, given the degree of government interference and the impact on competitive conditions on the domestic market in China.

Following receipt of questionnaire responses from exporters and the Government of China (GOC), Customs and Border Protection has examined the evidence submitted to form a preliminary view as to whether the situation in the Chinese market for aluminium extrusions is such that sales are not suitable for use in determining a price under s.269TAC(1).

### Provision of subsidies

Customs and Border Protection considers that the existence of government assistance programs is relevant to deciding whether sales are suitable for normal values. Capral claimed in its application for countervailing measures that aluminium inputs were provided by the GOC at less than fair value.

An examination of three of the exporter responses indicated that they sourced supply of primary aluminium from state-owned enterprises (SOEs). Whilst the fourth exporter indicated that they were not aware whether their suppliers of primary aluminium were SOEs, Customs and Border Protection considers that there is sufficient evidence to suggest that SOEs are significant suppliers of primary aluminium to the aluminium extrusion industry in China.

Within China, the State Assets Supervision and Administration Commission (SASAC) at the Central Government level, and its provincial equivalents, are responsible for managing the GOC's assets in SOEs.

As part of its response to the Government Questionnaire (GQ), the GOC has provided a copy of the *Interim Measures for the Supervisions and Administration of State-Owned Assets of the Enterprises* (the *Interim Measures*). The GOC observed that, under this law, it is 'directed not to interfere with the company's commercial activities through its asset ownership'. Further, the GOC notes in its submission that SASAC, in relation to Chinese SOEs involved in the production and sale of aluminium and/or aluminium extrusions, 'only supervises the administration of the state owned assets in those SOEs, and has no role in the business operation, including management and production'.

Additionally, Customs and Border Protection notes the GOC's statement at a recent meeting with Customs and Border Protection that Chinese SOEs 'are not public bodies with public functions directed by the GOC to supply aluminium to aluminium extruders'.<sup>9</sup>

Despite these claims, Customs and Border Protection notes the *Interim Measures* state that the SASAC or equivalent provincial supervisory body will:

- '...be responsible for directing...(SOEs) to establish the modern enterprise system, for examining and approving the restructuring and stock system reform schemes...' (Article 20);
- '...decide the major matters of solely state-owned enterprises...such as splitting, merger, bankruptcy, dissolution, increase and reduction in capital, issuance of company bonds, etc.' (Article 21); and
- '...appoint or remove, or suggest the appointment or removal of the enterprise principals of SOEs, including the general manager, vice general manager, general accountant, board chairperson, vice board chairperson and directors and other enterprise principals of wholly-owned SOEs' (Article 17).

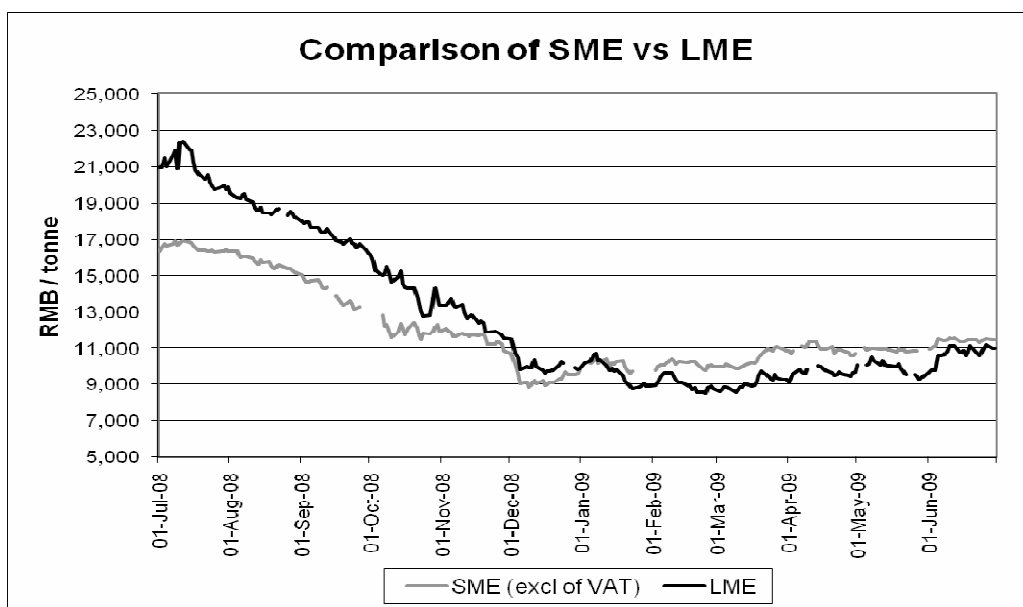
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<sup>9</sup> Government of China – Australian Customs and Border Protection Service Record of Meeting – 24 September 2009

Consequently, Customs and Border Protection preliminarily concludes that the GOC (through SASAC and its provincial equivalents) does have a major role in the management and monitoring of China's SOEs, which dominate the Chinese primary aluminium market.

Customs and Border Protection understands that a reliable indicator of China's domestic prices for aluminium is the Shanghai Futures Exchange (SME). The graph below provides a comparison of monthly average prices for primary aluminium on both the SME and the London Metal Exchange (LME), the world's largest non-ferrous metals market (generally accepted as the exchange that establishes the international price benchmark for primary aluminium). However Customs and Border Protection notes that Article 5.2 of Chapter V of the Trading Rules of the Shanghai Futures Exchange, confirm that trading prices are inclusive of value-added tax (VAT).

For the purposes of comparison, the 17% VAT was removed from the listed SME monthly aluminium price. The listed SME monthly aluminium price is charted against the monthly LME aluminium prices for the investigation period in the chart below.



Further discrepancies between domestic prices and LME prices for aluminium are evident from the exporter responses. The quarterly purchase prices of domestic aluminium provided in the exporter responses were found to be up to 20% below quarterly LME prices.

Given the degree of involvement by SOEs in supplying raw material inputs to the Chinese aluminium extrusion industry, and the extent to which domestic prices are below the international benchmark established by the LME, Customs and Border Protection considers, for the purposes of this preliminary determination, that the cost of raw material inputs by the four exporters selected for further verification do not reasonably reflect competitive market costs associated with the manufacture of like goods sold on the domestic market.

Accordingly, it is Customs and Border Protection's preliminary view that the SME price of aluminium raw materials during the investigation period are not suitable for

calculating the costs of production for the goods in accordance with Regulation 180 of the *Customs Regulations 1926* (the regulations).

*GOC National 11th Five-Year Plan*

Within its response to the GQ, the GOC provided a translation of the Central Government's Guidelines of the Eleventh Five-Year Plan for National Economic and Social Development. This plan covers the period 2006-2010.

Customs and Border Protection notes that in Chapter 13 of the plan, Section 1 states that the GOC aims to:

Control the total quantity of electrolytic aluminium, moderately develop alumina, encourage the development of deep aluminium processing and new type alloy material and enhance the comprehensive utilization level of aluminium industrial resources.

Customs and Border Protection notes that the term 'electrolytic aluminium' refers to the electrolysis process used to produce aluminium from alumina and is synonymous with the term 'primary aluminium'. In Customs and Border Protection's opinion this is evidence of the GOC's intent to control production levels of primary aluminium in China during the investigation period.

*GOC industry policies*

Within the GQ, Customs and Border Protection requested the GOC provide numerous industry policies that appeared both general in application and specific to the aluminium industry in China.

Included in these requested policies were documents known as:

- *the Industrial Development Policy for the Aluminium Industry* (Industrial Development Policy);
- *the Special Development Plan for the Aluminium Industry* (Special Development Plan);
- *China's Aluminium Industry Layout and Restructuring Proposal* (Layout and Restructuring Proposal);
- *the Guidelines for Accelerating the Restructuring of the Aluminium Industry*; and
- *the Emergent Circular on Curbing Rebound Investment in the Aluminium Industry*.

Of these, the GOC has declined to provide the Industrial Development Policy, the Special Development Plan, and the Layout and Restructuring Proposal. The GOC advised these documents were not provided because none of these documents were said to have been approved by the State Council and are thus not in operation. The GOC further advised that these documents were privileged, confidential working documents of the GOC.

In its discussion of its refusal to provide these documents, the GOC has highlighted the following.

- The Australian Government often receives policy recommendations from various investigatory bodies, and these are not generally released publicly until it is determined how the Government will respond. Additionally, Australian legislation protects documents being considered by the Australian Government from forced disclosure under freedom of information laws.
- The GOC has provided Customs and Border Protection with large amounts of requested material in its response to the GQ and Supplemental Government Questionnaire (SGQ), and the GOC considers there to be sufficient information within these documents for Customs and Border Protection to make various assessments during its investigation.
- The Canadian Border Services Agency (CBSA) in its investigation into aluminium extrusions (during which the GOC also refused to provide the above-mentioned documents) suggested that these documents could be in force despite the GOC's contention that they were not, as the CBSA located subsequent references to the documents in other documents provided by the GOC.

At C5(b) of the GQ response, the GOC dismissed this contention as being unfounded and notes that the fact that there are few mentions of the documents in the public domain, which indicates that the documents 'are not formally intended to impact on behaviours of other governments in China'.

Further, the GOC advised that these subsequent references are made on the basis of copies of the 'State Council's working documents being circulated before the promulgation of the policies themselves'.

Like the CBSA, Customs and Border Protection has noted references to both the Industrial Development Policy and Special Development Plan within the *Guidelines for Accelerating the Restructuring of the Aluminium Industry* and in other documents, indicating these are in effect and should be conformed to. Additionally, Customs and Border Protection notes the *Emergent Circular on Curbing Rebound Investment in the Aluminium Industry* also makes reference to the Industrial Development Policy, noting that local governments should implement the policy.

- The contents of these documents, while confidential, 'deal with the typical concerns of the GOC at this stage of its economic development, such as the efficient use of resources at the macro-economic level, (and) environmental concerns'.

Despite the GOC's claims that they are not in effect, Customs and Border Protection considers these documents are likely to contain information relevant to its investigation and may seek further clarification of their contents throughout the investigation. The GOC has been requested to provide them in its response to the Second Supplemental Questionnaire.

Regardless, Customs and Border Protection notes that the GOC has provided several policies, circulars, notices and directories in its response to the GQ that directly or indirectly affect the Chinese aluminium industry.

Customs and Border Protection has not identified direct evidence in these provided industrial policies that exhibits direct price setting by the GOC within the aluminium or aluminium extrusions industries. However, these policies appear to demonstrate the level of influence the GOC exerts over both industries. In particular, these policies establish such conditions as:

- production scale market entry criteria for newly-built and existing secondary aluminium projects;
- directions as to the main products to be produced by aluminium processing enterprises (which include aluminium extrusions, aluminium strip and aluminium foil);
- minimum production capacity restrictions for multi-product and single-product aluminium processing projects (which includes aluminium extruders);
- restrictions (and total bans) on the types of aluminium smelting machinery that can be used in China; and
- efficiency standards for new and existing aluminium projects (e.g. energy usage per Tonne produced).

In Customs and Border Protection's preliminary assessment, this influence appears to exceed the level of intervention expected to be exerted by the government in a reasonably competitive market, and this intervention has considerable effects on the operations of aluminium and aluminium extrusion businesses.

#### Import and export restrictions

Article III (7) of the *Guidelines for Accelerating the Restructuring of the Aluminum Industry (Fa Gai Yun Xing [2006] No.589)*, provided by the GOC in its response to the GQ, notes that one of the primary measures and policies to accelerate structural adjustment for the aluminium industry is to 'strictly control the export of electrolytic aluminium'.

However, in its response to the GQ, the GOC explained that:

- there are no licensing requirements for the importing of primary aluminium, bauxite or alumina;
- there are no export regulations, controls, licensing or free trade zones in place for aluminium extrusion or aluminium products;
- bauxite is subject to export licensing; and
- alumina is not subject to export licensing.

Despite this lack of direct regulation, Customs and Border Protection notes that in recent years, the GOC has made several changes to the levels of export and import duties/tariffs and VAT rebates applicable to aluminium extrusions (and other finished aluminium products), primary aluminium and aluminium raw materials. A recent example of this was the implementation of VAT rebates of 13% to aluminium bars, rods, and profiles within certain tariff classifications under *CaiShui [2009] #43*.

Prevailing evidence suggests that the GOC uses its VAT, and export and import tariff taxation to encourage or discourage the import and export of specific products, by increasing the cost of exports or imports. Confirmation of this practice can be found in

Attachment 59 of the GOC's response to the GQ (the *Circular Concerning the Measures to Control the Export of Products of High Energy Consumption, High Pollution and Resource*). On page 865 of this attachment, the 'Withdrawal or Reduction of Export VAT Refund Entitlement' is listed as a measure to control the export of high-energy, high-pollution and resource intensive products from China.

In addition to these tax controls, the GOC identified at D3.14 of its response to the GQ that aluminium was listed as a prohibited commodity in processing trade until early June 2009. 'Processing trade' refers to the practice of importing goods tax and duty free on the condition that processed goods are then exported. It is unclear why this restriction was removed in June 2009.

The GOC provided a copy of the *Catalogue of Prohibited Commodities in Processing Trade* with its GQ response, which displayed processing trade prohibitions on a range of aluminium and aluminium products, including aluminium profiles. These prohibitions are also listed in Attachment 59 as a control measure against environmentally damaging exports.

These indirect import and export controls have the effect of impacting on the domestic supply of both aluminium and aluminium extrusions (both directly and indirectly as a flow-on due to price effects on primary aluminium). In Customs and Border Protection's preliminary view, these actions by the GOC to influence the supply of aluminium and aluminium products represents a supply intervention that can reasonably be expected to impact the domestic prices of those products.

#### GOC direct price measures

In its response to the GQ, the GOC stated that 'there are no specific laws, decrees, rules, promulgations, regulations or directives in China regarding the regulation of aluminium prices, in the sense of directly influencing such prices or stating what they should be or how they might be worked out'. The GOC further advised that aluminium prices in China are determined by market forces.

Along with its response to the GQ, the GOC provided a copy of the *Price Law of the People's Republic of China*. Within this price law, Customs and Border Protection notes Article 18, which states the GOC shall issue government-set or government-guided prices for certain merchandise and services if deemed necessary.

Article 19 of the price law states that the 'scope of specific items and uses for government-set or guided prices shall depend on the price catalogs issued by the central and local governments'. The GOC provided *The Catalog of Price Regulated by the State Development Planning Commission and Other Department Under the State Council* (promulgated August 2001) as Attachment 159 of its GQ response. Neither aluminium extrusions, aluminium, alumina or bauxite are listed within the price catalogue as having their prices directly regulated by the GOC. At the time of writing, it is unclear whether this is the only 'in-force' price catalogue for the Central Government, or whether such price catalogues exist that include aluminium at the provincial level.

Additionally, Customs and Border Protection notes Article 28 of the price law, which provides that 'in order to better control prices government price departments shall establish a price monitoring system to monitor changes in the prices of major

merchandises and services'. Customs and Border Protection also highlights Article 27 of the price law, which provides for the GOC to build a 'major merchandise reserve system and establish a price regulation fund'.

It is unclear what form these GOC price regulation departments and their monitoring systems take, and the nature of their involvement in the aluminium extrusion or related industries. However, it is Customs and Border Protection's understanding that the GOC's merchandise reserve system (noted in Article 27 of the price law) is administered by the Chinese State Reserve Bureau (CSRB). The CSRB has recently played an active role in the Chinese aluminium market (see below).

#### Purchase of primary aluminium by the CSRB

Within its response to the GQ, the GOC responded to questions posed regarding activity by the CSRB during the investigation period to purchase and stockpile large quantities of primary aluminium from the Chinese domestic aluminium market.

The GOC explained in its response that the CSRB is a Chinese government entity under the control of the National Development Reform Commission (NDRC).

In its response, the GOC acknowledged that two bulk purchases of primary aluminium were made by the CSRB.

The GOC advised that these purchases were made under FIS terms.

In its response, the GOC described these purchases as 'emergency action' during the Global Financial Crisis made as 'part of a wider effort involving other fiscal means....to stabilise economic conditions and restore corporate and consumer confidence'. The GOC stressed that these purchases 'were not directed towards or intended to effect price'.

Within the GQ response, the GOC declined to disclose the purchase price of this aluminium. However, the GOC advised in its GQ response that the purchase prices were based on 'market price, plus freight and insurance costs'. Additionally, the GOC did provide spot prices for the Yangtse River Nonferrous Metal Spot Market.

Despite the GOC's failure to disclose the exact purchase price of these acquisitions by the CSRB, Customs and Border Protection's research has indicated that these purchases were made at a price significantly higher than the prevailing market price in China at the time.<sup>10</sup>

Within the GQ response, the GOC observed that it was 'difficult to assess' the effect (if any) these CSRB purchases had on domestic aluminium prices in China. The GOC noted that spot prices after these CSRB purchases were inconsistent and that 'voluntary

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<sup>10</sup> The article 'Interesting Trends in the Chinese Aluminium Market' *China Aluminium Monitor* Harbor Intelligence, January 2009 quotes the purchase price of 25 December 2008 to be US\$1,800/Tonne (RMB 12,303), while the China Mining Federation notes that the purchase price for the 20 February 2009 purchase is anticipated to be at a price 10% higher than the market price (*China's state reserve agency stockpile to buy aluminum sector*, China Mining Federation, 2008 <http://www.chinamining.org/News/2008-12-29/1230511043d20595.html> - accessed 6 October 2009).

plant shut downs and bankruptcies of aluminium producers' caused market disturbances throughout late 2008 and early 2009.

The GOC included a confidential chart at D2.11(b) of its GQ response showing capacity utilisation of Chinese aluminium producers, that the GOC interprets 'shows a huge drop' in production at and around the time of the CSRB purchase. However, Customs and Border Protection notes that its reading of the graph provided does not fully support the GOC's interpretation of the data.

Additionally, Customs and Border Protection notes that, following a steady decline in SME aluminium prices from July 2008, SME aluminium prices began to progressively increase in January 2009, immediately following the first bulk purchase of aluminium in China by the CSRB. This is displayed in the 'Comparison of preliminary aluminium prices' graph discussed earlier in this report.

Customs and Border Protection also notes that the above price comparison graph shows that in January 2009, the SME aluminium price rose above that of the LME, and that the gap between the two grew in the first quarter of 2009, following the CSRB purchases. The SME aluminium price then sustained its level above that of the LME for the remainder of the investigation period, which is an unusual trend, as in recent years the LME aluminium price has been consistently higher than the SME price.

This price activity leads Customs and Border Protection to a preliminary conclusion that the CSRB's purchases of aluminium in China did impact domestic aluminium prices during the investigation period.

#### Preliminary finding - market situation

Customs and Border Protection has discussed above several factors that it considers as appearing to have an impact upon the domestic market for aluminium extrusions in China. These factors are:

- the effects of a subsidy in the form of the GOC providing aluminium inputs to aluminium extrusion producers at less than fair market value;
- the controls of various forms placed by the GOC upon electrolytic aluminium, secondary aluminium, bauxite, alumina and aluminium extrusion producers in terms of efficiency standards, existing enterprise and market-entry production scale criteria, and prohibition of processing trade;
- the intermittent changes over time by the GOC to levels of import and export taxes, and/or to levels of VAT rebates for exports, in relation to aluminium and aluminium products (including aluminium extrusions); and
- the purchases by the CSRB of primary aluminium in volumes that are not insignificant.

Customs and Border Protection has formed the preliminary view that these factors collectively represent significant GOC intervention in the Chinese domestic market for aluminium extrusions. As a consequence, the nature of the sales of aluminium extrusions in the domestic market in China is such that domestic prices are not determined by the ordinary forces of supply and demand without significant interference from the government. The nature and degree of GOC intervention therefore represents a situation in the market for aluminium extrusions in China such that the

domestic sales do not permit a proper comparison to export prices. For these reasons, Customs and Border Protection considers the domestic sales of aluminium extrusions in China are not suitable for use in determining a price in terms of s.269TAC(1) of the Act.

## 9.2 Calculation of normal values

As mentioned above, it is Customs and Border Protection's preliminary assessment that s.269TAC(1) is not suitable for use in calculation of normal values in this case.

Additionally, Customs and Border Protection preliminarily determines that it is not suitable to determine normal values under s.269TAC(2)(c) of the Act using the costs provided by each exporter in their submission.

This is having regard to Regulation 180 of the Regulations, as Customs and Border Protection is of the preliminary view that the cost of primary aluminium for the four exporters selected for further verification does not reasonably reflect competitive market costs associated with the manufacture of like goods sold on the domestic market.

Customs and Border Protection considered whether it was possible to establish normal value under s.269TAC(2)(c) by firstly estimating the cost of production by using the actual manufacturing overheads for each of the four exporters selected for further verification and substituting the cost of the primary aluminium with an acceptable market cost, having regard to the LME price for primary aluminium. However, the costing information contained in the exporter responses did not allow for a simple substitution of the unit price of the primary aluminium.

Consequently, Customs and Border Protection preliminarily considers it suitable to construct normal values under s.269TAC(6), having regard to all relevant information.

As an alternative, Customs and Border Protection had regard to the costing model contained in Capral's application which was used by the applicant to estimate a normal value for aluminium extrusions sold domestically in China during 2008. This costing model incorporated numerous assumptions about LME prices, waste recovery rates and other overheads. After examining the cost model and amending the estimate for metal scrap recovery consistent with the Australian industry's rate of recovery, Customs and Border Protection considers that it provides a reasonable basis for estimating normal values based on costs.

In using the cost model, Customs and Border Protection was able to calculate the cost of production for each month in the investigation period by adding the corresponding monthly LME price for primary aluminium to the manufacturing costs established in the cost model. In addition to the cost of production, Customs and Border Protection included an amount for domestic selling general and administrative costs (SG&A) from each of the exporter responses, and a 7% upward adjustment to account for VAT liability incurred on exports (based on the information provided by one of the four exporters selected for further verification).

## 10. PRELIMINARY DUMPING MARGIN

Each monthly unit normal value was weighted by corresponding monthly export volumes for each of the four exporters selected for further verification to determine a weighted average dumping margin for the investigation period.

The preliminary dumping margins for the four exporters selected for further verification ranged from 10% to 23%.

## 11. PRELIMINARY COUNTERVAILING MARGIN

For the purposes of determining a preliminary countervailing margin, Customs and Border Protection has had regard to the GOC response and each of the four exporters selected for further verification responses.

Where an exporter has confirmed being a recipient of a government program under investigation, Customs and Border Protection has undertaken a preliminary assessment as to whether the definition of a countervailable subsidy has been met. Within the exporter submissions received from the four selected exports, only two of the alleged subsidy programs (Program 10 and Program 13) were confirmed to have applied to the four exporters selected for further verification.

In addition to those programs, Customs and Border Protection has also examined the program titled 'Provision of goods at less than fair value' (Program 15) given the preliminary findings about SOE involvement in supply of primary aluminium and the evident difference between domestic prices for primary aluminium and the LME price for primary aluminium.

Customs and Border Protection has sought information from the four exporters selected for further verification, and the GOC, concerning 43 alleged subsidy programs, but has only examined 3 in detail for the purpose of this Preliminary Affirmative Determination.

Customs and Protection is undertaking further enquiries regarding the remaining 40 alleged programs, and will make future determinations regarding each as more information concerning each program is gathered.

### 11.1 Program 10: Reduced tax rate for productive Foreign Invested Enterprises (FIEs) scheduled to operate for a period not less than 10 years

#### *Is there a subsidy?*

Customs and Border Protection had investigated this program as part of its countervailing investigation into toilet paper exported from China. It found that the program provides a financial contribution by the GOC, to the extent that it was made in connection with the production/manufacture of toilet paper from China, that involves the foregoing, or non-collection, of revenue due to the GOC by eligible production orientated FIEs in China.

This financial contribution confers a benefit in relation to eligible production orientated FIE manufacturers because of the tax savings realized. Other tax payers are taxed at the

prevailing income tax rate (25% for FIEs and 33% for domestic invested enterprises (DIEs)) but eligibility for this program exempts these particular enterprises (i.e. productive FIEs having a profitable year) from income tax either totally (for the first two profitable years) or partially (for the subsequent three years).

If exporters of aluminium extrusions during the POI received tax savings under the program in connection with the production, manufacture or export of those goods, it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

*Is the subsidy a countervailable subsidy?*

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. Only FIEs are eligible for the subsidy. Other companies in China (being DIEs) are not eligible for the subsidy. Customs and Border Protection understands that the GOC has estimated that FIEs constitute 3.2% of all enterprises in China. This means that the preferential tax treatments explicitly limited to FIEs are not available to approximately 97% of enterprises in China. It should be noted that the limitation to particular enterprises is further pronounced as not all FIEs are eligible for the program, only 'production orientated' FIEs are eligible.

As the criteria or conditions providing access to the subsidy favour particular enterprises, eligible production orientated FIEs, over all other enterprises in China, the specificity of subsidy is not excepted by reference to s.269TAAC(3).

For these reasons the subsidy is specific.

*Preliminary finding*

Based on consideration of the available information, Customs and Border Protection preliminarily concludes that the *Reduced tax rate for productive Foreign Invested Enterprises (FIEs) scheduled to operate for a period not less than 10 years* program constitutes a countervailable subsidy.

*Calculation of benefit conferred to the goods*

Using the total amount of exempted tax and operating income for the investigation period for the applicable exporter(s), Customs and Border Protection calculated the benefit as a percentage of net revenue.

## **11.2 Program 13: Exemption of tariff and import VAT for imported technologies and equipment**

*Is there a subsidy?*

Customs and Border Protection investigated this program as part of its countervailing investigation into toilet paper exported from China. It found that the VAT and tariff exemptions on imported equipment is a financial contribution by the GOC which involves the foregoing, or non-collection, of revenue due to the GOC by eligible encouraged FIEs in China.

Customs and Border Protection found that the financial contribution conferred a benefit in relation to eligible FIE manufacturers because of the tax and duty savings realized. If eligible exporters received tax savings under the program in connection with the production, manufacture or export of those goods, it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under s.269T.

Customs and Border Protection notes that three of the four exporters selected for further verification indicated being recipients of VAT and tariff exemptions under this program.

*Is the subsidy a countervailable subsidy?*

As provided for in s.269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises. Customs and Border Protection has previously concluded that that FIEs constitute a set of particular enterprises.

Customs and Border Protection previously found that whilst certain domestic enterprises were eligible to receive VAT and tariff exemptions under this program as well as FIEs, it did not consider that this broadened the reach or the particularity of enterprises sufficiently to render the program non-specific.

In particular, Customs and Border Protection found that to be eligible an FIE must fall in the 'encouraged' or 'restricted' categories in the *Catalogue of Industries for Guiding Foreign Investment (2004)* (until 30 November 2007) or the *Catalogue of Industries for Guiding Foreign Investment (2007)* (after 1 December 2007).

For these reasons the subsidy is specific.

*Preliminary finding*

Based on consideration of the available information, Customs and Border Protection preliminarily concludes that the *VAT and Tariff Exemptions on Imported Equipment* program constitutes a countervailable subsidy.

*Calculation of benefit conferred to the goods*

For each exporter, Customs and Border Protection apportioned the total amount of exempted VAT over the useful life of the asset to calculate the amount of benefit received during the investigation period. Each exporter's total sales volume was used to calculate the amount of benefit per kilogram of aluminium extrusion.

### **11.3 Program 15: Primary aluminium provided by Government at less than fair market value**

*Is there a subsidy?*

Exporter responses confirm that SOEs supply primary aluminium to the Chinese aluminium extrusion industry. An enterprise categorised as a SOE in China implies that the GOC has control of that enterprise. Customs and Border Protection considers such enterprises to be public bodies, and effectively the government, for the purposes of a countervailing investigation.

As explained earlier in the report, evidence indicates that domestic prices for aluminium in China were below the LME price during some parts of the investigation period. The LME price is considered to be an appropriate benchmark for establishing a fair value for aluminium.

Based on the information above, the provision of aluminium by SOEs provides a financial contribution. This financial contribution confers a benefit to the exported goods, being the difference between the purchased price for aluminium supplied by SOEs and the fair value for aluminium.

*Is the subsidy a countervailable subsidy?*

As provided for in s.269TAAC(2)(a) of the Act, a subsidy is specific if access to the subsidy is explicitly limited to particular enterprises. Customs and Border Protection considers that the provision of primary aluminium by aluminium producing SOEs is specific as it is limited to enterprises engaged in the manufacture of processed aluminium products.

*Preliminary finding*

Based on consideration of the available information, Customs and Border Protection preliminarily concludes that the provision of goods at less than fair value to the aluminium extrusion industry constitutes a countervailable subsidy.

*Calculation of benefit conferred to the goods*

For each of the exporters, Customs and Border Protection calculated the amount of benefit received by comparing quarterly average prices paid for domestic aluminium with quarterly average LME prices over the investigation period. Given that approximately 1.25 tonnes of primary aluminium is required to produce a tonne of aluminium extrusion<sup>11</sup>, the total net benefit received was adjusted to reflect the benefit received per kilogram of exported aluminium extrusion.

#### **11.4 Preliminary conclusion - countervailing**

Customs and Border Protection has preliminarily assessed the above three subsidy programs and determined that each represents a countervailable subsidy, the total of which is not de minimus.

## **12. PRELIMINARY INJURY ANALYSIS**

For the purpose of this investigation, the period from 1 January 2006 to 30 June 2009 is being examined for injury analysis purposes.

Capral accounts for more than half the Australian production of like goods. To facilitate the timely preparation of this report, the injury analysis discussed in this section is based largely on the economic performance of Capral.

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<sup>11</sup> Assuming an 80% efficiency of conversion.

The Capral economic data discussed in this section relate to i) external sales to arms length customers, and ii) internal transfers to Capral's distribution business by Capral's manufacturing businesses, i.e. data pertaining to production plants.

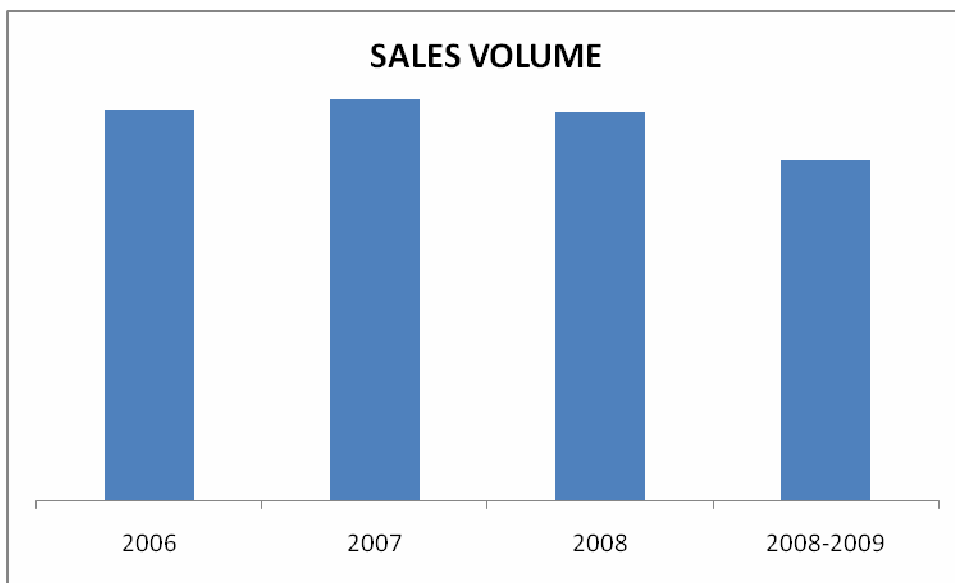
Customs and Border Protection recognises that sales and costs of Capral's distribution businesses have not been separately considered in this report. Customs and Border Protection has examined income statements relating to the distribution businesses, and annual reports relating to Capral Ltd, and is of the preliminary view that these results support preliminary conclusions drawn herein.

As noted earlier, information has been received from each Australian industry member, with the exception of Extrusion Profiles Australia and AluShapes. Customs and Border Protection has conducted meetings with Capral, G James, and Ullrich<sup>12</sup>.

The economic performance observed in relation to Australian industry members other than Capral does not negate the preliminary view relating to injury to the Australian industry.

## 12.1 Sales Volume

The following chart shows Capral's sales volume during the injury analysis period.



The analysis shows relatively stable sales volume in the calendar years 2006 to 2008. However, during the investigation period (July 2008 to June 2009), there is a notable decline in sales volume. It therefore appears Capral has experienced injury in the form of lost sales. The analysis is at **Confidential Appendix 4**.

## 12.2 Price Suppression

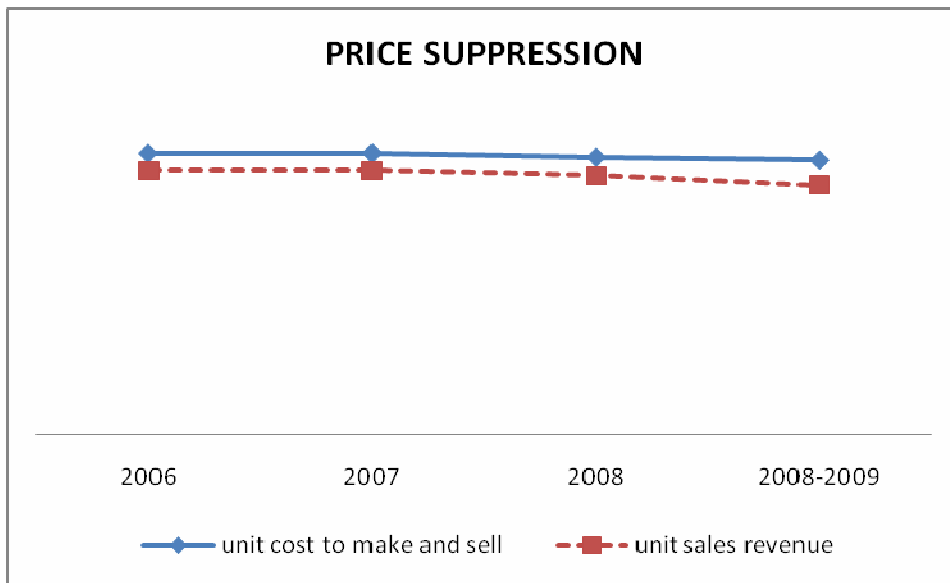
Price suppression occurs when price increases for the Australian industry's product, which otherwise would have occurred, have been prevented.

Capral claimed that its prices have remained suppressed, due to pressure for it to match prices quoted for imported Chinese aluminium extrusions.

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<sup>12</sup> For familiarisation purposes

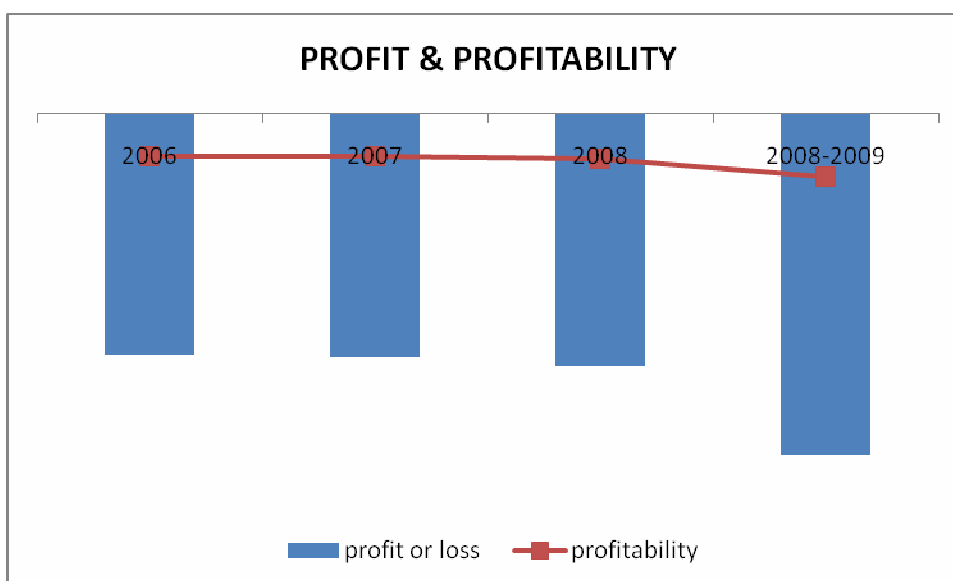
The chart below illustrates Capral's unit cost to make and sell like goods (including aluminium cost), and its unit sales revenue.



Cost and price trends are relatively consistent over the period 2006 to 2008. The investigation period, by comparison, shows reduced sales revenue and further divergence of selling prices away from the cost to make and sell. It's important to note also that over the entire period sales were made at a loss. It therefore appears Capral has experienced injury in the form of price suppression. The analysis is at **Confidential Appendix 5**.

### 12.3 Lost Profits and Profitability

Capral claimed to have experienced injury in the form of reduced profits and profitability. The following chart illustrates Capral's profit and profitability on sales of like goods.



Profit and profitability were consistently negative in each year between 2006 and 2008. The investigation period, by comparison, shows further reduction in profit and profitability. It therefore appears Capral has experienced injury in the form of reduced profits and profitability. The analysis is at **Confidential Appendix 6**.

### 13. SUBMISSIONS CONSIDERED

The delegate of the CEO has had regard to the submissions posted to the public record for this investigation, and to the matters raised in reports posted to the public record for this investigation as at 15 October 2009.

#### 13.1 Market Characteristics Questionnaire

To assist understanding of the Australian market for aluminium extrusions, Customs and Border Protection sent a market characteristics questionnaire to 22 aluminium extrusion purchasers in Australia. At 15 October 2009, 13 responses were received and those responses are summarised below.

For each of the following factors, respondents indicated the level of importance when choosing a supplier of aluminium extrusions – a score of 5 indicates that a factor is considered critical and a score of 1 indicates that it's not important. Average results are shown below.

Product quality	5
Specification meets needs	5
Product meets technical specifications	5
Reliability of supply	5
Range of product line	4
Credit terms	4
Order turnaround time	4
Lowest price	3
Discounts offered	3
Delivery cost	3
Minimum quantity requirement	3
Availability of inventory-on-hand	3
Order size tolerances	3

Customs and Border Protection notes that, according to the responses received, a variety of factors are considered important in making purchasing decisions.

For each of the factors listed in the table above<sup>13</sup>, respondents were asked to indicate, by answering yes or no, as to whether Australian produced extrusions and Chinese produced extrusions are comparable in their view. Answers were mixed, and several respondents answered 'yes/no' or 'N/A' to some criteria – making it difficult to draw meaningful conclusions. However, Customs and Border Protection notes that 'yes' was the most common answer.

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<sup>13</sup> As well as the factor 'after sales service or warranties'

## 14. PRELIMINARY CAUSATION ASSESSMENT

Customs and Border Protection has received evidence that supports the claim that certain aluminium extrusions exported from China to Australia in the injury analysis period appear to have caused material injury to the Australian industry. The most relevant evidence is:

1. Correspondence between Capral and a major customer concerning a Chinese exporter's proposed pricing, and requests for Capral to provide competitive pricing.<sup>14</sup>
2. Correspondence between Capral and a customer concerning a Chinese exporter's proposed pricing.<sup>15</sup>
3. Aluminium Specialities Group Pty Ltd (Alspec) submission to Customs and Border Protection which included details of purchases and prices, and views on the capacity of Chinese exporters of the goods to sell at prices Alspec believes to be artificially low.<sup>16</sup>
4. Capral-produced information relating to the Australian market, and purchasing trends of some major customers.<sup>17</sup>
5. Capral analysis of its monthly sales volume to, and prices achieved from, a major customer between 2007 and 2008.<sup>18</sup>

Collectively, the evidence listed above points to pressure on prices and volumes that can be achieved by Capral from its existing customers.

Additionally, as a purchaser of imported product, Capral is aware of prevailing prices for a range of products offered by Australia-based distributors of aluminium extrusions exported from China<sup>19</sup>. Considering this price transparency, it is reasonable to expect that Capral would be cognisant of, and may be influenced by, competitors' prices when determining the prices it can achieve in the Australian market.

Although according to the market characteristics questionnaire responses received, the 'lowest price' is considered less important than other factors in making purchasing decisions, the evidence that Customs and Border Protection has shows that purchasing decisions are still influenced by relative prices.

Customs and Border Protection considers that there appear to be sufficient grounds to conclude that customers of the Australian industry have used prices of Chinese extrusions to negotiate lower prices from the Australian industry – and that the Australian industry has reduced prices in order to maintain supply volumes – leading to financial losses. At other times it appears the Australian industry has been unable to match prices of Chinese products and it has therefore lost sales volume.

### 14.1 Injury Caused by Other Factors

Customs and Border Protection notes:

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<sup>14</sup> Application for Dumping and Countervailing Duties of May 2009 – confidential attachment A9.E

<sup>15</sup> Application for Dumping and Countervailing Duties of May 2009 – confidential attachment A9.D

<sup>16</sup> Dated 7 August 2009

<sup>17</sup> Capral visit report of July 2009 – confidential attachment GEN 6

<sup>18</sup> Capral visit report of July 2009 – confidential attachment GEN 6

<sup>19</sup> Confidential attachments IMP 3 to IMP 7 of the Capral visit report of July 2009

- Capral's application states that de minimus imports from countries other than China are having some influence in the market;
- new Australian manufacturers have started production of aluminium extrusions in 2009;
- the possible impact of the global financial crisis (GFC) on Australia's building and construction activity and the flow-on effects on the aluminium extrusions market; and
- statements made in Capral's annual reports since 2006 indicating issues with service delivery, market demand and the commissioning of its Bremer facility.

Customs and Border Protection will continue to consider these and other issues during the course of the investigation and will not assign injury caused by other factors to dumping or subsidy.

#### **14.2 Preliminary Conclusion – Causation**

Customs and Border Protection is satisfied that there appear to be sufficient grounds to make a preliminary finding that dumped or subsidised goods have caused material injury to the Australian industry.

### **15. PRELIMINARY NON-INJURIOUS PRICE ASSESSMENT**

Duties may be applied where it is established that dumped or subsidised imports have caused or threatened to cause injury to the Australian industry producing like goods. The level of dumping duty imposed by the Minister cannot exceed the margin of dumping, but a lesser duty must be applied if it is determined that it is sufficient to remove the injury.

The non-injurious price (NIP) provides the mechanism whereby this lesser duty provision is given effect. It is the price that would be sufficient to remove the injury caused to the Australian industry by the dumping. Anti-dumping duties are based on free-on-board (FOB) prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export.

Customs and Border Protection generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). Customs and Border Protection's preferred approach to establishing a USP observes the following hierarchy:

1. industry selling prices at a time unaffected by dumping;
2. constructed industry selling prices – industry cost to make and sell (CTMS) plus profit; or
3. selling prices of un-dumped imports.

Having calculated the USP, Customs and Border Protection then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into store costs and amounts for importer expenses and profit.

Customs and Border Protection considers the most appropriate basis for the USP, for the purpose of this PAD, is to use Capral's cost to make and sell, by finish type, during the investigation period, plus an amount for profit of 5%. The NIP has been calculated by deducting from the USP, amounts for:

- importer profit;
- importer administrative, selling and general expenses;
- importer into-store costs; and
- overseas freight and marine insurance.

Customs and Border Protection compared the NIPs calculated for the investigation period to weighted average ascertained export prices for the same period.

Customs and Border Protection calculated the difference between NIPs and export prices and found the NIPs exceeded the export prices by less than the calculated dumping margin in some cases. This means that the lesser duty rule will be applied for the purpose of setting provisional measures in certain instances.

## **16. REASONS FOR MAKING A PAD**

Customs and Border Protection has received exporter questionnaire responses from four Chinese exporters. Those responses permit assessments which show some level of dumping or subsidy.

Customs and Border Protection considers it reasonable to expect that Chinese imports experienced a competitive advantage in terms of price as a result of dumping and/or subsidy.

Customs and Border Protection considers it reasonable to expect that the increased competition with dumped or subsidised imports has prevented the Australian industry from achieving price increases which otherwise would have occurred, and has lead to lost sales.

Customs and Border Protection has calculated NIPs and found them to be above Chinese export prices. This supports a preliminary finding that exported aluminium extrusions have caused injury.

Customs and Border Protection is of the preliminary view that:

- the goods the subject of the application have been exported from China at less than the amount of their normal value, and/or benefited from subsidies;
- there is an Australian industry producing like goods that is experiencing material injury;
- the dumped and/or subsidised goods are causing material injury to the industry;
- it is necessary to require and take securities to prevent material injury to the Australian industry occurring while the investigation continues; and
- there appear to be sufficient grounds for the publication of a dumping duty notice in respect of the goods the subject of the application exported from China.

The CEO is satisfied that there appear to be sufficient grounds for the publication of a dumping duty notice, and countervailing duty notice, in respect of goods the subject of the application. The CEO has made a preliminary affirmative determination under section 269TD to that effect.

## 17. PROVISIONAL MEASURES

Section 269TD(4)(b) states that if the CEO makes a preliminary affirmative determination, Customs may, at the time of making that determination or at any later time during the investigation, require and take securities under section 42 in respect of interim duty that may become payable if the officer of Customs taking the securities is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

In order to prevent material injury occurring while the investigation continues, Customs and Border Protection requires that securities be taken under s. 42 of the Act in respect of interim dumping duty that may become payable in relation to certain aluminium extrusions exported to Australia from China that are entered for home consumption on or after 6 November 2009.

Customs and Border Protection separately compared weighted average export prices to weighted average normal values by finish type (i.e. mill finish, anodised and powder coated), for each of the four exporters selected for further verification. Using this information, Customs and Border Protection calculated a single country-wide dumping margin of 18%. Customs and Border Protection applied the lesser duty provision and calculated a China-wide provisional dumping duty rate of 16%.

The amount of dumping security required is a proportional (ad valorem) fixed rate of 16% of the actual export price of the goods.

Provisional countervailing duty securities are not, at this stage, required.

Details of the provisional measures are at **Confidential Appendix 7**.