



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

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**R E P O R T**

**CUSTOMS ACT 1901 - PART XVB**

**TRADE MEASURES BRANCH**

**CONSIDERATION OF AN APPLICATION FOR A DUMPING  
DUTY NOTICE AND A COUNTERVAILING DUTY NOTICE  
REPORT NO. 148**

**CERTAIN ALUMINIUM EXTRUSIONS  
EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

**18 June 2009**

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## Abbreviations

ABS	Australian Bureau of Statistics
ACDN	Australian Customs Dumping Notice
aluminium extrusions	the goods subject of the application
ASCM	Agreement on Subsidies and Countervailing Measures
Capral	Capral Limited
CBSA	Canadian Border Services Agency
CEO	Chief Executive Officer of Customs and Border Protection
China	People's Republic of China
Customs and Border Protection	Australian Customs and Border Protection Service
DCS	Developing Country Status
FOB	free-on-board
G.James	G.James Extrusion Co Pty Ltd
GOC	Government of China
LME	London Metal Exchange
Minister	The Minister for Home Affairs
OEM	original equipment manufacturer
SHFE	Shanghai Futures Exchange
Tendata	Shanghai Tend Information & Technologies Co. Ltd

# 1 Introduction

## 1.1 Application

On 11 May 2009, Capral Limited (Capral) on behalf of the Australian industry manufacturing certain aluminium extrusions (aluminium extrusions)<sup>1</sup>, lodged an application requesting that the Minister for Home Affairs (the Minister) publish a dumping duty notice and a countervailing duty notice in respect of aluminium extrusions exported to Australia from the People's Republic of China (China).

On 14 May 2009 and 28 May 2009, the applicant provided further information in support of its application. As a result, Australian Customs and Border Protection (Customs and Border Protection) restarted the 20 day period for considering the application.

Capral alleges that the Australian industry has suffered material injury that can be attributed to aluminium extrusions exported from China to Australia at dumped and subsidised prices. The application has identified the injurious effects as:

- lost sales;
- lost market share;
- price undercutting;
- price suppression;
- reduced profits and profitability;
- lost utilisation of capacity resulting in increases in the unit cost of production;
- employment losses; and
- damaged customer relationships.

## 1.2 Consideration of the application

Under subsection 269TC(1) of the *Customs Act 1901*<sup>2</sup> the Chief Executive Officer (CEO) of Customs and Border Protection must examine the application and within 20 days of lodgement, decide whether or not to reject the application. This decision must be made no later than 18 June 2009.

Subsection 269TC(1) specifies that the delegate of the CEO shall reject the application if he/she is not satisfied that:

- the application complies with subsection 269TB(4); or
- there is, or is likely to be established, an Australian industry in respect of like goods; or
- there appear to be reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application.

The above matters are examined in the following sections of this report.

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<sup>1</sup> Refer to the full description of the goods in section 3 of this report.

<sup>2</sup> All references in this report to sections of legislation, unless otherwise specified, are to the *Customs Act 1901*

## **2 Does the application comply with subsection 269TB(4)?**

Subsection 269TB(4) requires that the application must be in writing, be in an approved form, contain such information as the form requires, be signed in the manner indicated by the form and be supported by a sufficient part of the Australian industry.

### **2.1 Approved form**

The application is in writing, is in an approved form, contains such information as the form requires (as discussed in the following sections) and is signed in the manner indicated in the form.

The applicant submitted confidential and public record versions of the application. Numerous appendices and attachments were also submitted. Customs and Border Protection considers that the public record version of the application contains sufficient detail to allow a reasonable understanding of the substance of the information.

### **2.2 Supported by Australian industry**

An application is taken to be supported by a sufficient part of the Australian industry if Customs and Border Protection is satisfied the persons who produce or manufacture like goods in Australia and who support the application:

- account for more than 50 percent of the total production or manufacture of like goods by that proportion of the Australian industry that has expressed either support for or opposition to, the application; and
- account for not less than 25 percent of the total production or manufacture of like goods in Australia.

Capral has identified the following other Australian producers of aluminium extrusions:

- G.James Extrusion Co Pty Ltd (G.James);
- Independant Extrusion Limited;
- Extrusions Australia Pty Ltd; and
- Almax Aluminium Pty Ltd.

The applicant has also identified two potential Australian producers of aluminium extrusions that are expected to commence production in 2009. These are Ullrich Aluminium Pty Ltd and Extrusion Profiles Australia.

The application indicates that G.James have provided their support for the application, with the remaining producers not commenting. G.James provided a letter to Customs and Border Protection stating their support for the application and their intention to fully cooperate in the event of an investigation commencing. As required by Appendix A1 of the approved form, Capral has provided production volumes for each of the Australian producers for the calendar year 2008. For those companies not commenting on the application, Capral has estimated the respective production volumes using its market intelligence.

Based on the evidence provided, Customs and Border Protection considers the application is supported by a sufficient part of the Australian industry.

### **2.2.1 Conclusion – Compliance with subsection 269TB(4)**

Based on the information submitted by the applicant, Customs and Border Protection considers that the application complies with subsection 269TB(4).

### 3 Is there an Australian industry in respect of like goods?

#### 3.1 The goods the subject of the application

The goods the subject of the application are described as:

Aluminium extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by *The Aluminum Association*<sup>3</sup> 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, originating in or exported from, the People's Republic of China.

##### 3.1.1 Additional information

**Extrusion** is the process of shaping heated material by forcing it through a shaped opening in a die with the material emerging as an elongated piece with the same profile as the die cavity. For greater clarity, the goods the subject of the application does not include goods made by the process of impact extrusion or cold extrusion.

**Alloys** are metals composed of more than one metallic element. Alloys used in aluminium extrusions contain small amounts (usually less than five percent) of elements such as copper, manganese, silicon, magnesium, or zinc which enable characteristics such as corrosion resistance, increased strength or improved formability to be imparted to the major metallic element, aluminium.

Aluminium alloys are produced to specifications in "International Alloy Designations and Chemical Composition Limits for Wrought Aluminum and Wrought Aluminum Alloys" published by The Aluminum Association. These specifications have equivalent designations issued by other certifying bodies such as the International Standards Organization.

The properties and characteristics of aluminum, such as density, conductivity, corrosion resistance, finish, mechanical properties, and thermal expansion, are modified by the addition of alloying elements. The resulting effect depends upon the principal alloying elements used, as detailed in the table below.

Wrought Alloy Designation	Major Alloying Elements and Typical Alloy Characteristics
1xxx Series	Minimum 99% aluminum High corrosion resistance. Excellent finishability. Easily joined by all methods. Low strength. Poor machinability. Excellent workability. High electrical and thermal conductivity.
2xxx Series	Copper

<sup>3</sup> Refer to Attachment Y(1) of the application for more information - "International Alloy Designations and Chemical Composition Limits for Wrought Aluminium and Aluminum Alloys".

	High strength. Relatively low corrosion resistance. Excellent machinability. Heat treatable.
3xxx Series	Manganese Low to medium strength. Good corrosion resistance. Poor machinability. Good workability.
4xxx Series	Silicon Not available as extruded products.
5xxx Series	Magnesium Low to moderate strength. Excellent marine corrosion resistance. Very good weldability.
6xxx Series	Magnesium & Silicon Most popular extrusion alloy class. Good extrudability. Good strength. Good corrosion resistance. Good machinability. Good weldability. Good formability. Heat treatable.
7xxx Series	Zinc Very high strength. Good machinability. Heat treatable.

Source: *The Aluminum Association (US)*

**Profiles and shapes** - All aluminium extrusions are produced as either hollow or solid profiles. Hollow profile extrusions generally cost more to produce and obtain higher prices than solid profile extrusions. Extrusions are often produced in standard shapes such as bars, rods, pipes and tubes, angles, channels and tees but they are also produced in customized profiles.

**Finishes** - In addition to 'as extruded' or mill finish, extrusions can be finished mechanically by polishing, buffing or tumbling. Extrusions can have anodized finishes applied by means of an electro-chemical process that forms a durable, porous oxide film on the surface of the aluminium. Also, they can be finished by painting with liquid or powder coatings utilizing an electrostatic application process.

For the purposes of this application, aluminium extrusions are further classified into four "finish" types:

- Mill Finish - Plain metal finish, uncoated (i.e. "as extruded from the die");
- Anodised - Surface converted to aluminium oxide (by electrolysis) and may be coloured by electrolytic or chemical dye means;
- Powder Coated - Charged powder particles are sprayed and adhere to electrically grounded surfaces, heated and fused into a smooth coating in a curing oven; and
- Painted or Other Finish - Painted or finished in other surface applications.

**Size range** - The ability to produce the full range of profiles is determined by the extrusion and ancillary equipment.

**"Working"** extrusions includes any operation performed other than mechanical, anodized, painted or other finishing, prior to utilization of the extrusion in a finished product.

**Standards** - Aluminium extrusions are manufactured to a variety of Australian and International standards. Products exported to Australia are often claimed to comply with one or more of the following standards:

- ASTM B221M-88 (USA)
- BS1474.1987 (UK) and
- GB/5237.1-2000 (China)

The most common Australian / New Zealand standard is AS/NZ 1866:1997, which specifies requirements for aluminium and aluminium alloy extruded rod, bar, solid and hollow products for general engineering purposes.

### **3.1.2 Tariff classification**

The applicant stated that the goods are classified to the following tariff subheadings:

- 7604.10.00 (statistical code 06)
- 7604.21.00 (statistical code 07 and 08)
- 7604.29.00 (statistical code 09 and 10)
- 7608.10.00 (statistical code 09)
- 7608.20.00 (statistical code 10)

Customs and Border Protection examined data obtained from its commercial database. In some cases the description of the goods was not clear and Customs and Border Protection notes that the applicant considers that some importations may have been incorrectly classified to other subheadings within tariff heading 7610. Customs and Border Protection will more closely examine these importations during the investigation.

The goods from China are subject to Developing Country Status (DCS) rates of duty - the current DCS rates are 4% for goods classified to headings 7604 and 7608 and 5% for goods classified to heading 7610.

Customs and Border Protection notes that there are numerous Tariff Concession Orders applicable to relevant tariff subheadings.

## **3.2 Locally produced like goods**

Subsection 269T(1) defines like goods as 'goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration'.

### **3.2.1 Applicant's claims**

The applicant claims that aluminium extrusions manufactured by the Australian industry possess characteristics closely resembling the goods exported from China. It outlines the physical, commercial, functional and production likeness between the imported and locally produced products.

In support of its claims, the applicant submitted a product catalogue listing the numerous types of aluminium extrusions produced and sold by Capral. For each type of aluminium extrusion, the catalogue indicates the type of aluminium alloy, profile, die cast number, available finishes, lengths and end-use of the extruded product.

### **3.2.2 Customs and Border Protection's assessment**

Customs and Border Protection considers that the primary physical characteristic of the goods the subject of the application is the aluminium alloy used in its manufacture. Secondary characteristics include the finish, profile, size and weight.

Customs and Border Protection has examined the evidence presented in the application and considers the Australian industry produces like goods to the goods the subject of the application on the following grounds:

- i) physical likeness
  - the applicant's extruded products are made of aluminium alloys
  - the applicant manufactures aluminium extrusions in numerous profiles
  - the finish of the applicant's aluminium extrusions are predominantly mill finish, painted and anodised.
- ii) commercial likeness
  - the applicant's products compete directly with the imported goods as evidenced by price quotations from Chinese manufacturers directly to some of Capral's key customers.
- iii) functional likeness
  - both imported and locally produced goods have the same end-use as evidenced by some of Capral's key fabricating and original equipment manufacturers (OEM) customers that have a multiple-sourcing policy.

### **3.3 Manufactured in Australia**

Subsections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

#### **3.3.1 Manufacturing/production process**

Capral has five Australian manufacturing operations, one each in Bremer Park (near Ipswich, Qld), Penrith (NSW), Campbellfield (Vic), Angaston (SA) and Canning Vale (WA).

The application contains a detailed description of the manufacturing process for aluminium extrusions undertaken by Capral.

#### **The Extrusion Process**

The fundamental features of the process are as follows: A heated billet cut from an aluminium alloy cast log (or for small diameters from larger extruded bar) is located in a heated container, usually around 450°C – 500°C. At these temperatures the flow stress of the aluminium alloys is very low and by applying pressure by means of a ram to one end of the billet the metal flows through the steel die, located at the other end of the container to produce a section, the cross sectional shape of which is defined by the shape of the die.

#### **Aluminium Alloys and Extrusion**

All aluminium alloys can be extruded but some are less suitable than others, requiring higher pressures, allowing only low extrusion speeds and/or having less than acceptable surface finish and section complexity. The term 'extrudability' is used to embrace all of these issues with pure aluminium at one end of the scale and the strong aluminium/zinc/magnesium/copper alloys at the other end.

The biggest share of the aluminium extrusions market is taken by the 6000, AlMgSi series. This group of alloys have an attractive combination of properties, relevant to both use and production. The result is a set of materials ranging in strength from 150 Mpa to 350 Mpa, all with good toughness and formability. They can be extruded with ease and their overall 'extrudability' is good but those containing the lower limits of magnesium and silicon e.g. 6060 and 6063 extrude at very high speeds – up to 100 m/min with good surface finish, anodising capability and maximum complexity of section shape combined with minimum section thickness.

### **Extrusion Machines**

Press load (extrusion pressure) capacities range from a few hundred tonnes to as high as 20,000 tonnes although most range between 1,000 and 3,000 tonnes. Billet sizes cover the range from 50 mm to 500 mm diameter with length usually about 2-4 times the diameter and while most presses have cylindrical containers a few have rectangular ones for the production of wide shallow sections.

### **The Anodising Process**

Aluminium anodising is the electrochemical process by which aluminium is converted into aluminium oxide on the surface of a part. This coating is desirable in specific applications due to the following properties:

- Increased corrosion resistance
- Increased durability / wear resistance
- Ability to be coloured
- Electrical insulation
- Excellent base or primer for secondary coatings

The process of anodising is relatively simple. It consists of an anodising solution typically made up of sulphuric acid. A cathode is connected to the negative terminal of a voltage source and placed in the solution. An aluminium component is connected to the positive terminal of the voltage source and also placed in the solution. When the circuit is turned on the oxygen in the anodising solution will be liberated from the water molecules and combine with the aluminium on the part forming an aluminium oxide coating.

### **The Paint Powder Coating Process**

Powder coating is a method of applying a decorative and protective paint finish to a wide range of materials and products that are used by both industries and consumers. The powder used for the process is a mixture of finely ground particles of pigment and resin, which is sprayed onto a surface to be coated. The charged powder particles adhere to the electrically grounded surfaces until heated and fused into a smooth coating in a curing oven. The result is a uniform, durable, high-quality, and attractive finish.

### **3.3.2 Conclusion**

Based on the above descriptions of the manufacturing process, Customs and Border Protection is satisfied that there is at least one substantial process of manufacture performed in Australia and, therefore, that the goods may be taken to have been produced in Australia.

Based on the information provided in the application, Customs and Border Protection is satisfied that there is an Australian industry producing like goods to the goods the subject of the application.

### **3.4 Australian market**

#### **3.4.1 Background**

The applicant states that aluminium extrusions are used in the Australian market in a wide variety of applications, including:

- commercial and residential buildings for window and door frame systems;
- prefabricated houses/building structures;
- roofing and exterior cladding;
- curtain walling;
- shop fronts;
- fencing;
- airframes;
- road and rail vehicles; and
- marine, electrical and general engineering.

Customs and Border Protection understands that the key sources of supply of aluminium extrusions in the Australian market include:

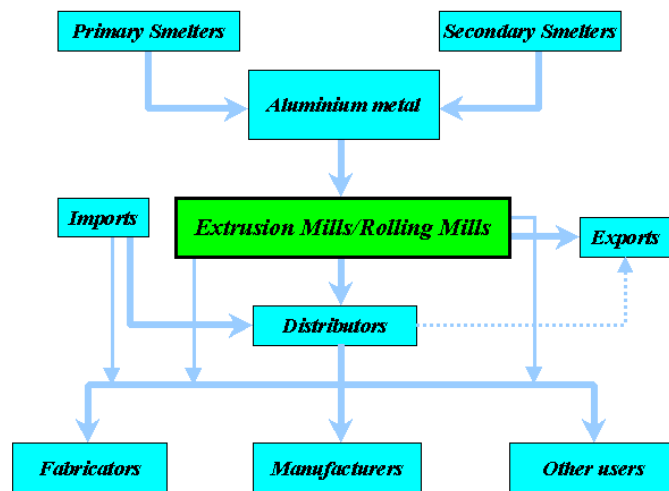
- the Australian producers such as Capral, G.James and other minor manufacturers;
- imports from China, and
- imports from countries other than China including Japan, New Zealand, Indonesia and other countries with minor exports.

#### **3.4.2 Marketing and distribution**

The applicant stated that sales into the Australian market typically involved distributors, metals service centres or retailers taking orders for aluminium extrusions from small to medium retail and trade end-users. These end-users also included smaller fabricators, manufacturers and other users. The choice of intermediary mainly reflects the size and complexity of orders, as well as the type of trading relationships between the parties.

Capral also advised that in some instances, very large OEMs, such as large aluminium window manufacturers, further finishers (e.g. anodisers, powder coat/painters) and fabricators buy directly from producers, normally in circumstances where the size and simplicity of order is such as not to upset relationships between producers and major distributors.

The diagram below outlines the applicant's understanding of the supply and distribution of aluminium extrusions in the Australian market.



### 3.4.3 Demand variability

The application states that there are no significant seasonal factors affecting demand. It considers that there is a strong correlation between demand for aluminium extrusions and building and construction, industrial and transportation activity.

### 3.4.4 Market size

The applicant provided their estimate of the size of the Australian market for aluminium extrusions at Appendix A2 of the application. The data was provided for a ten year period from 1998 to 2008.

Customs and Border Protection compared the estimates contained in the application to information on its database and found the applicant's estimates to be reasonable.

Analysis of the size of the Australian market is at **confidential appendix MKT**.

## 3.5 Australian industry information

### 3.5.1 Australian industry's sales

The applicant provided information in the application, including a summary of domestic and export sales volumes, revenue, discounts and rebates as required in Appendices A-2, A-3, A-5 and A-6. Customs and Border Protection examined the detail in, and link between, these appendices, and considers them reliable for the purposes of assessing the economic condition of the industry.

As required by Appendix A-4, the application includes detailed domestic sales of aluminium extrusions for calendar year 2008. Customs and Border Protection noted that the detailed sales information comprises transactions made by Capral's manufacturing plants to both related and unrelated parties, with the majority being made to unrelated parties. The related party transactions were between Capral's manufacturing business and its distribution business.

In order to be satisfied that these related party transactions were reliable and relevant for the purposes of assessing the applicant's injury claims, Customs and Border Protection undertook a benchmark analysis. Customs and Border Protection selected the most common model of aluminium extrusions sold by Capral and calculated monthly weighted

average unit prices for the period covering calendar year 2008. A comparison between transactions to Capral Distribution and sales made to two of Capral's largest unrelated parties showed only minor variations. Customs and Border Protection does not find these variations to be significant and therefore, based on information available, considers Capral's related party transactions to be relevant for examining the economic condition of the Australian industry.

### **3.5.2 General accounting/administration information**

The applicant provided a chart of accounts and audited financial reports for relevant periods. They also provided details of general accounting and administration information.

### **3.5.3 Cost information**

The applicant completed appendix A6 for domestic sales of their own production and their export sales. The information provided included production and sales volumes, manufacturing costs, selling, distribution and administrative expenses and sales volumes from 2006 to 2008. The information was also provided for each product finish manufactured by the Australian industry.

Customs and Border Protection examined the information provided and the link between other appendices and considers the information reliable for the purposes of assessing the economic condition of the industry.

### **3.5.4 Other economic factors**

The applicant completed Appendix A7 identifying assets, capital expenditure, research and development expenses, return on investment, capacity, capacity utilisation, productivity, cash flow measures and wages. The application included indices of revenue variations and employment numbers.

### **3.5.5 Conclusion – Australian industry**

Based on the information in the application, Customs and Border Protection consider that there is an Australian industry producing like goods to the goods the subject of the application and that the data contained in the application is sufficient for the purpose of analysing the economic condition of the industry since the beginning of calendar year 2006.

## 4 Reasonable grounds – Dumping and subsidisation

### 4.1 Dumping from China

The applicant presented data for the period from January 2008 to March 2009 to demonstrate that aluminium extrusions had been exported from China at dumped prices.

#### 4.1.1 Source of exports

At attachment B-1.4.1 of the application, the Australian industry identified producers, exporters and importers of aluminium extrusions from China. It estimated the volume of imports from China and seven other source countries for the calendar year 2008. To test the accuracy of the applicant's estimates, Customs and Border Protection compared the information submitted in the application with import data from its import database. Customs and Border Protection found that the estimates are accurate and is satisfied that the import volumes from China exceed 3% of the total import volume.

#### 4.1.2 Export price

Capral calculated free-on-board (FOB) deductive export prices for aluminium extrusions exported from China. The application contained evidence of quotations from Chinese suppliers of aluminium extrusions and made deductions it considered appropriate to arrive at FOB prices.

Customs and Border Protection has examined the evidence provided and considers the quotations to be reliable and relevant. However, given the terms of the quotations and the level of trade of the parties identified, Customs and Border Protection considers that deductions for profit and selling, general and administration expenses in Capral's calculation are inappropriate. Adjusting the deductive export price calculations to not reflect these deductions has the effect of increasing export prices.

The applicant also estimated FOB export prices for the goods using China export trade information from Shanghai Tend Information & Technologies Co. Ltd (Tendata). This information showed that average export prices for calendar year 2008 were slightly higher than Capral's deductive export prices.

Customs and Border Protection compared the adjusted deductive export prices and Tendata export prices provided by the applicant to export prices obtained from its commercial database. The export prices provided by the applicant appear to be reasonable. The analysis of export price is at **Confidential Appendix EP**.

#### 4.1.3 Normal value

The applicant has estimated normal values for aluminium extrusions sold domestically with reference to aluminium prices traded on the Shanghai Futures Exchange (SHFE). The remaining production and selling costs were estimated using a costing model relying on Capral's cost structure and assumptions about production levels for Chinese manufacturers. The constructed normal value also includes a 10% profit margin although no reliable evidence was provided to support this amount.

The application states that this level of profit has also been included in the constructed selling price, on the basis that a higher risk export business, especially with aluminium

extrusions, should return such a profit above fully absorbed cost, at any level of capacity, to justify the effort and risk associated with export, as opposed to domestic sales.

### *Market situation*

The applicant claims that a 'market situation' exists in China due to the distorting effect of the government's influence on sales of aluminium extrusions and raw material inputs and power used in the production of the goods. The applicant claims that the distorting effects are such that domestic sales of aluminium extrusions are considered unsuitable for establishing normal values.

The applicant refers to the recent findings of the Canadian Border Services Agency (CBSA) as part of its Section 20 investigation in the recent anti-dumping investigation into certain aluminium extrusions exported to Canada from China. Under Canada's Special Import Measures Act, Section 20 allows for an examination as to whether domestic prices are substantially determined by the government of that country and whether there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market.

In arriving at its findings, the CBSA had regard to information provided by eight cooperative Chinese exporters, previous CBSA reports, market intelligence reports, public industry reports, newspaper and internet articles as well as other government documents. It found:

“The information indicated that the wide range and material nature of the GOC measures have resulted in significant influences on the aluminum industry, including the aluminum extrusions sector, through means other than competitive market forces.”

“Accordingly, the President formed the opinion that domestic prices in the aluminum extrusions sector in China are substantially determined by the GOC and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.”

CBSA considered the following issues demonstrated that the GOC exerts a substantial degree of influence over the aluminium and aluminium extrusions industry in China:

- China's national and provincial development and industrial five-year plans
- Industry structure and involvement of state-owned enterprises
- Specific government industrial policies
- Government of China Preferential Treatment and Subsidies;
- Import and Export Restrictions;
- Impact of the Government of China's policies on domestic Chinese supply and price of aluminium and aluminium extrusions

Given the CBSA findings about the extent of government influence on competitive conditions in China, the applicant considers that a constructed normal value using prices for alumina traded on the SHFE is inappropriate. It has therefore provided alternative constructed normal values using an input metal cost based on London Metal Exchange (LME) prices. This constructed normal value also includes a 10% profit margin.

## *Legislation*

The existence of a 'market situation' could affect the approach to calculating normal value. In broad terms, it is generally the case that the normal value of the goods is the price for like goods sold for home consumption in the country of export. Such a price is subject to adjustments under s269TAC(8) to ensure any differences do not affect the comparison with the export price.

One of the exceptions to using domestic selling prices for this purpose is set out in s269TAC(2)(a)(ii). Again in broad terms, that exception provides that the domestic selling prices are not an appropriate basis for normal value if the Minister is satisfied that a situation in the market has rendered domestic selling prices unsuitable for establishing normal values.

One of these situations may be where the domestic selling prices in the country of export have been materially affected by government influence rendering those prices unsuitable for use in establishing normal values.

## *Assessment*

Customs and Border Protection has considered what has been provided by the applicant to support their claim of a 'market situation' and has formed the view that the information provides reasonable grounds for asserting that, because of the situation in the market in China, sales in that market are not suitable for establishing normal values. Customs and Border Protection notes that:

- Canada's anti-dumping legislation includes provisions relating to exports from countries with governments that may monopolise export trade and substantially determine domestic prices in the industry sector under review. Applicants can allege that the conditions set out in s20 of Canada's Special Import Measures Act exist. If the allegation is reasonably supported the authorities will conduct an investigation into whether the conditions exist ("s20 inquiry"). In the case of a prescribed country such as China, a finding that s20 exists in relation to a particular industry requires that domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market.
- Unlike Canada, Australia treats China as a market economy and establishes normal values for exports from China in the same way it would for any other country. While the systems differ, the substance of the CBSA findings are relevant to Customs and Border Protection's consideration of whether the situation in the market of the country of export is such that prices in that market are not suitable for use in determining normal values. Under Australia's anti-dumping laws, such findings would be relevant to determining normal values in any exporting country. In this circumstance, Customs and Border Protection considers the CBSA finding to be relevant given the close similarities between the industry sector, the goods the subject of the investigation and the Chinese exporting parties;
- The applicant alleges that government subsidies available to the aluminium extrusions industry provide benefits that flow through to the prices for the GUC. As discussed in section 5.5 of this consideration report, Customs and Border Protection considers there are reasonable grounds for the publication of a countervailing duty notice in relation to the GUC. It is possible that the existence

of subsidies on the domestic market may render domestic selling prices of the GUC unsuitable for the purpose of determining normal values.

In its examination of market situation allegations Customs and Border Protection will seek to determine:

- whether the impact of the government's involvement in the domestic market has materially distorted competitive conditions; and, if so
- whether domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market.

Customs and Border Protection will prepare questionnaires for certain interested parties for the purpose of gathering information relevant to establishing whether a market situation exists.

Any information on the issue of the suitability of domestic selling prices must be provided in a timely manner to allow Customs and Border Protection to investigate the evidence provided, within the timeframe of the investigation, while ensuring that the requirements of procedural fairness are met.

#### *Normal value*

Customs and Border Protection has examined the applicant's constructed normal values and considers that:

- the applicant provides no evidence or a reasonable basis for its estimate of a 10% profit margin; and
- some of the selling, general and administration expenses included in its calculation appear to be export related and therefore inappropriate.

Customs and Border Protection has estimated a normal value for Chinese aluminium extrusions using the applicant's constructed selling price and subtracting amounts for profit and export administration expenses. Analysis is at **confidential appendix NV**.

#### **4.1.4 Dumping margin**

Customs and Border Protection notes that the applicant has estimated dumping margins for exports of aluminium extrusions from China in the range of 60% - 101%. Customs and Border Protection has calculated a dumping margin of approximately 20%. Analysis is at **confidential appendix DM**.

#### **4.1.5 Conclusion - Dumping**

Customs and Border Protection considers that the applicant has provided sufficient information to demonstrate that aluminium extrusions from China have been exported to Australia at dumped prices and that the dumping margin was not negligible.

## **4.2 Subsidisation in China**

Capral has identified 56 programs existing in China that it alleges, either directly or indirectly, provide a financial contribution that confers a benefit to Chinese exporters of aluminium extrusions to Australia.

In support of its claims, the applicant has relied on the final determination and findings established by the Canada Border Services Agency (CBSA) in its recent subsidy investigation into aluminium extrusions exported from China. The application includes the CBSA's Statement of Reasons as supporting evidence of its allegations.

The applicant considers that the Canadian subsidy investigation and its findings are relevant and reliable given the similarities of the products under investigation and the common Chinese exporters involved in exporting aluminium extrusions into the Canadian and Australian markets.

#### **4.2.1 Government of China submission**

In accordance with s. 269TB(2C), Customs and Border Protection invited the GOC for consultations during the pre-initiation phase. The purpose of the consultations was to provide an opportunity for the government of the country nominated in the application to respond to the claims made in relation to subsidies, including whether they exist and, if so, whether they are causing, or are likely to cause, material injury to an Australian industry. The GOC was provided with a non-confidential version of the application and non-confidential attachments. The GOC requested consultation, which was held at Customs House in Canberra on 1 June 2009. At the meeting, the GOC provided Customs and Border Protection with a confidential submission in response to the application.

The GOC submission addressed aspects of the application other than the existence of countervailable subsidies including, inter alia, the description of the goods, dumping and material injury. Customs and Border Protection has not commented on these points of the GOC submissions in this report. However, Customs and Border Protection considered these submissions and does not consider that they change its view as to whether grounds exist to initiate an investigation. Customs and Border Protection will address the GOC views in detail in the course of the investigation.

Following is a summary of the GOC submissions as they related to the issue of countervailing:

##### *Reliance on findings by other administrations*

The GOC submitted that the Canadian findings cannot be used as primary evidence of countervailing for the current application because:

- The GOC is considering an appeal of the Canadian findings before the WTO as it is their view that the investigation had many procedural and substantial inconsistencies with WTO rules; and
- There are substantive errors of law in the CBSA investigation.

##### *Subsidy programs determined by the CBSA*

In relation to the subsidy programs identified by the CBSA in its findings, the GOC stated that:

- seven of these programs had “only a few words...to support the allegation”;
- five of the programs were based on evidence from local documents which the CBSA failed to indicate the locality of the documents;

- for two of the programs, the GOC was unable to identify the relevant source and documents relied upon by the CBSA ;
- the unreasonable requirements determined by the CBSA on the information provided by the GOC.

#### **4.2.2 The Canadian finding**

Customs and Border Protection examined the Statement of Reasons published by the CBSA in relation to its final determination on aluminium extrusions. The CBSA investigation covered exports of aluminium extrusions that are similar to the goods the subject of the application.

The Canadian authorities determined that seven Chinese exporters had provided information considered complete for the purposes of the final determination. Of the 56 potential subsidy programs that were investigated, one or more of the following 15 programs were determined to have conferred a benefit to the seven cooperative exporters.

1. Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and in Economic and Technological Development Zones
2. Research & Development Assistance Grant
3. Superstar Enterprise Grant
4. Matching Funds for International Market Development for SMEs
5. One-time Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"
6. Export Brand Development Fund
7. Preferential Tax Policies for Foreign Invested Enterprises - Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not less than 10 Years
8. Preferential Tax Policies for Foreign-Invested Export Enterprises
9. Local Income Tax Exemption and/or Reduction
10. Exemption of Tariff and Import VAT for Imported Technologies and Equipment
11. Patent Award of Guangdong Province
12. Training Program for Rural Surplus Labor Force Transfer Employment
13. Reduction in Land Use Fees
14. Provincial Scientific Development Plan Fund
15. Primary aluminium provided by Government at Less than Fair Market Value

Appendix 2 of the Statement of Reasons provides a summary of the findings in relation to these 15 programs. Where applicable, for each program the CBSA established the following information:

- the title, date of promulgation and date of effect of the program;
- the objective of the program;
- the responsible granting and administering authority;
- the nature of the program, and
- the amount of the benefit received

CBSA determined that the amounts of subsidy for the seven cooperative Chinese exporters ranged from 2.59 Renminbi per kilogram to 3.88 Renminbi per kilogram, or from 8% to 16% expressed as a percentage of export prices.

For all other Chinese exporters determined to be non-cooperative, the CBSA found that it: *does not have detailed descriptions of these programs; nor does it have sufficient information to determine that any of these programs do not constitute actionable subsidy programs. In other words, the CBSA does not have sufficient information to determine that any of these programs should be removed from the investigation for the purposes of the final determination.*

In calculating the amount of subsidy for these non-cooperative Chinese exporters, the CBSA used:

- 1) the highest amount of subsidy found for each of the 15 subsidy programs for the seven cooperative exporters located in China; plus
- 2) the simple average of these highest amounts in 1) applied to each of the remaining 41 potentially actionable subsidy programs for which information is not available or has not been provided at the final determination.

The Statement of Reasons provided no further information or findings in relation to the remaining 41 investigated programs.

#### **4.2.3 Customs and Border Protection Assessment**

Customs and Border Protection considers that, for the 15 programs listed in the previous subsection of this report, the applicant has provided sufficient information to demonstrate that there appear to be reasonable grounds for the publication of a countervailing duty notice. The supporting evidence indicates that each of the 15 subsidy programs meet the definition of a subsidy as defined in s.269T and are countervailable subsidies as defined in s.269TAAC.

Import information available to Customs and Border Protection supports the applicant's assertion that at least some of the exporters found by the CBSA to be receiving countervailable subsidies are also exporters of aluminium extrusions to Australia. The application also provides reasonable evidence that the alleged subsidies are above negligible levels.

For the remaining 41 programs, Customs and Border Protection does not consider that the application contains sufficient supporting evidence detailing:

- the nature of the subsidy;
- the government agency responsible for administering the subsidy;
- the recipients of the subsidy; and
- the amount of the subsidy.

Accordingly, Customs and Border Protection is not satisfied that the application has demonstrated that these programs are countervailable subsidies.

#### **4.2.4 Conclusion - Subsidisation**

Based on its examination of the application, Customs and Border Protection considers that it appears that countervailable subsidies have been received in respect of aluminium extrusions exported to Australia from China. Customs and Border Protection is also

satisfied following its preliminary analysis that the subsidy amount is likely to be more than 2%.

The countervailing investigation will involve an examination of the 15 subsidy programs outlined at subsection 4.2.2 of this report. This does not preclude Customs and Border Protection from examining additional subsidy programs should further information be provided in a timely manner.

## **5 Reasonable grounds – Material injury caused by dumped and subsidised imports**

The application alleges that aluminium extrusions have been exported from China to Australia at prices lower than the normal values, and that dumping and subsidisation has caused material injury to the Australian industry through:

- Price Undercutting
- Price Suppression
- Lost Utilisation of Capacity resulting in increases in the unit cost of production
- Lost Sales
- Lost Market Share
- Employment Losses
- Lost Profits and Profitability
- Damaged Customer Relationships.

Capral claims that imports of aluminium extrusions from China had commenced causing material injury to the Australian industry as early as 1998, and that the injurious effects have continued. Therefore the application alleges that the typical indicators of injury may not display the impact of dumped imports as the material injury commenced in 1998.

Customs and Border Protection is reluctant to place much weight on trends observed prior to 2006 given the lack of relevant sales and costing information for these earlier periods. The application contains key financial statistics for a ten year period, although Customs and Border Protection notes that this information relates to the Capral corporate entity as a whole.

In an effort to demonstrate that the claimed unhealthy economic condition of the industry is materially caused by dumped and subsidised Chinese imports of aluminium extrusions, the applicant has submitted evidence at attachment ZZ A9A to A9E. This evidence is largely market intelligence highlighting quoted prices from Chinese manufacturers for aluminium extrusions imports, and subsequent requests from Capral's customers for it to provide competitive pricing.

### **5.1 Volume effects**

Capral claims that it has suffered injury by way of lost sales, and that this impact is evident when sales are examined over the period 1998 to 2008. In support of this claim, the applicant has indexed the volume of aluminium extrusions sales for both Capral and imports from China since 1998. The information indicates that Capral's sales volume fell approximately 25% between 1998 and 2008, whilst imports from China increased almost 700% over the same period.

However, given that other Australian producers constitute over 40% of total Australian production, Customs and Border Protection considers that this analysis does not provide an accurate account of the industry's trend in sales. Customs and Border Protection has assessed the movement in sales volume of the Australian industry (using Capral's estimates for other Australian producers) and imports from China. The data shows that over the period 1998 to 2008, sales of aluminium extrusions by the Australian industry peaked in 2007, up 13% on 1998, followed by a 2% decline in 2008. Chinese imported

aluminium extrusions sales also peaked in 2007, up by over 600% on 1998 levels, and then fell by approximately 3% in 2008.

Capral also submits that the Australian market for aluminium extrusions has grown by over 40% over the past 10 years and that the strong increase in Chinese imports over that period has resulted in a deterioration of the industry's market share.

The data shows that for the period from 1998 to 2008:

- the Australian industry's share of the market fell approximately 22 percentage points;
- the market share of Chinese imports increased by approximately 27 percentage points, and
- imports from other countries fell by 5 percentage points.

By comparison, information for the most recent three years show the following:

- the Australian industry's share of the market remained unchanged;
- imports from China increased by one percentage point, and
- Imports from other countries fell by one percentage point.

An examination of the evidence at attachment ZZ A9.A to A9.E shows that the applicant has faced intense competition from Chinese imports to retain the commercial business of some of its largest existing customers. In particular, some of these sales related to significant tenders being offered by Capral's customers.

### **5.1.1 Conclusion**

Based on the information contained in the application, Customs and Border Protection is satisfied that the applicant has demonstrated that the Australian industry has suffered injury in the form of lost sales and loss of market share.

## **5.2 Price effects**

The applicant claims that market prices for Chinese imports have undercut industry's prices and as a result prevented the Australian industry from raising its prices to non-injurious levels. Price undercutting occurs when an imported product is sold at a price below that of the Australian manufactured product.

To demonstrate its claims of price undercutting, information contained in Attachment ZZ A.9A to A.9E provides evidence of prices being quoted to some of Capral's major customers for Chinese imported aluminium extrusions. In one example, the FIS prices for Chinese mill finish extrusions offered to a Capral major customer undercut Capral's existing agreed prices by between 13% - 22%. The evidence clearly identifies the need for Capral to provide competitive prices to ensure an ongoing relationship with the customer.

In another example, a Capral distributor customer notes the prices being offered for Chinese imports to a competitor. The evidence shows the customer requesting Capral to price match to ensure it remains competitive in the distribution market segment.

Price suppression occurs when price increases for the Australian industry's product, which otherwise would have occurred, have been prevented. Capral claims that its prices have remained suppressed due to the pressure for it to match prices being quoted for dumped and subsidised Chinese product by offering competitive pricing to its customers. It claims that the examples of price undercutting are indicative of the overall impact of Chinese imports in the Australian market.

Customs and Border Protection examined the applicant's unit cost to make and sell and unit sales revenue since 2006. Customs and Border Protection notes that whilst the movement in Capral's costs and prices are consistent over the past three calendar years, sales continue to be unprofitable.

Customs and Border Protection considers that the applicant has provided strong evidence supporting its claims that Chinese imports are undercutting industry's prices. Customs and Border Protection also notes that in the evidence presented, prices sought by Capral's customers are below existing Capral pricing levels. Customs and Border Protection also considers that the evidence provides strong support for the claim that the industry has been prevented from increasing its prices to non-injurious levels.

### **5.2.1 Conclusion**

Based on the information contained in the application, Customs and Border Protection is satisfied that the prices of aluminium extrusions from China have undercut the Australian industry's prices and that as a result, the Australian industry has suffered injury in the form of price suppression.

## **5.3 Profit effects**

The applicant provided details of their profits and profitability in Appendix A6 of the application and summarised indexed movements in section A8 of the application. The data shows that Capral continues to generate losses on its aluminium extrusions sales even after the total amount of losses improved in 2008, up 10% on 2006. Customs and Border Protection notes that this improvement is largely reflected in the decrease in raw material costs.

Capral claimed that price suppression, combined with lost sales volumes has contributed to the industry suffering injury by way of lost profits and profitability.

Customs and Border Protection considers that the applicant has provided sufficient evidence to demonstrate that the inability to raise its prices as a result of price undercutting by dumped and subsidised Chinese imports has directly impacted on profit and profitability.

### **5.3.1 Conclusion**

Based on the information contained in the application, Customs and Border Protection is satisfied that Chinese imports caused the Australian industry to experienced injury by way of lost profits and profitability.

## **5.4 Other injury factors**

The applicant completed Appendix A7 identifying other economic factors and summarised indexed movements in section A8 of the application. Capral claimed that the Australian industry also experienced material injury in the form of capacity utilisation and employment losses.

Customs and Border Protection examined the data provided by the applicant and notes:

- that capacity utilisation fell largely in response to increasing production capacity and not as a result of reduced production volumes,
- no evidence was provided by the applicant supporting the claim that Chinese imports caused a fall in employment;
- sufficient evidence was not provided linking the dumped and subsidised Chinese imports to the claimed damage to customer relationships; and
- the return on assets, capital investment, stocks and wages all fell between 2006 to 2008, although no evidence was provided attributing these declines to imports of aluminium extrusions.

## **5.5 Injury caused by factors other than dumping and subsidisation**

The application states that there are no other significant factors that may have caused the Australian industry to suffer injury.

In examining the application and information provided, Customs and Border Protection notes the following:

- At B-1 of the application, it is stated that de minimus imports from other countries are having some influence in the market;
- sales by other Australian producers have increased by more than threefold since 1998;
- a number of new manufacturers are expected to commence production of aluminium extrusions in 2009;
- the possible impact of the global financial crisis 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 intends examining these issues in greater detail during the course of the investigation.

## **5.6 Conclusion on material injury caused by dumped and subsidised imports**

Given the level of dumping and subsidisation demonstrated in the application, Customs and Border Protection considers it reasonable to expect that Chinese imports experienced a competitive advantage in terms of price. This appears to be further supported by the price undercutting evidenced by the Australian industry. Customs and Border Protection also considers it is reasonable to expect the price undercutting has

resulted in increased sales volume for the imported aluminium extrusions at the expense of sales and market share for the Australian industry.

Customs and Border Protection also considers it reasonable to expect that the increased competition with the dumped and subsidised imports has prevented the Australian industry from achieving price increases which otherwise would have occurred. This price suppression has contributed to the applicant's sales being unprofitable.

It follows that the combination of lost sales and reduced market share, together with price suppression resulted in lost profits and reduced profitability.

Based on the information available, it appears that the Australian industry has suffered injury in the form of:

- lost sales volumes;
- loss of market share;
- price undercutting;
- price suppression, and
- lost profits and profitability.

Customs and Border Protection has examined the accuracy and adequacy of the evidence in the application, in conjunction with information from its import database and other sources. Customs and Border Protection is satisfied that there are reasonable grounds to conclude that the dumped and subsidised goods caused the Australian industry to suffer material injury.

## **6 CONCLUSION**

Customs and Border Protection has examined the application and is satisfied that:

- the application complies with subsection 269TB(4); and
- there is an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for the publication of dumping duty and countervailing duty notices in respect of the goods the subject of the application exported from China.

For the purposes of the investigations:

- the investigation period to determine whether dumping and subsidisation has occurred will be from 1 July 2008 to 30 June 2009; and
- Customs and Border Protection will examine the Australian market and the economic condition of the industry from 1 January 2006 to 30 June 2009 for the purposes of injury analysis.

Accordingly, the delegate of the CEO has not rejected the application for the publication of a dumping duty and countervailing duty notice under subsection 269TB(1).

<b>7</b>	<b>CONFIDENTIAL APPENDIX</b>
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<b>Appendix MKT</b>	Market analysis
<b>Appendix EP</b>	Export price
<b>Appendix NV</b>	Normal value
<b>Appendix DM</b>	Dumping margin