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BY EMAIL

Dear Mr Williams

Exporter's supplementary submission by PMAA on behalf of Press Metal Berhad regarding ADC Case No 362 Investigation into the alleged dumping and subsidisation of certain aluminium extrusions exported from Malaysia and the Socialist Republic of Vietnam

We refer to:

- (a) the application by Capral Limited (**Capral**) under s 269TB(1) of the *Customs Act 1901* (Cth) (**Customs Act**) for the publication of dumping and/or countervailing duty notices in respect of aluminium extrusions¹ exported to Australia from Malaysia and the Socialist Republic of Vietnam (the **Application**) and to the Anti-Dumping Commission's (**Commission**) Consideration Report published on 8 August 2016 (the **Consideration Report**).
- (b) PMAA's submission on behalf of Press Metal Berhad (**PMB**) dated 22 September 2016 (the **Submission**), and seek to provide supplementary materials to that submission. We note that PMAA was granted further time to provide supplementary materials to the Commission following an email request sent on behalf of PMAA on 20 September 2016.

As PMAA is the Australian-based subsidiary of PMB, these supplementary submissions are made on behalf of PMB, as the relevant exporter of aluminium extrusions.

In these supplementary materials, PMAA provides the following details in support of the Submission:

- no subsidies have been received by PM Bintulu or PM Sarawak and passed through to PMB in the period from 1 July 2015 to 30 June 2016 (the **Investigation Period**);
- in relation to future possible subsidies, any hypothetical future benefits will be insignificant; and

¹ Classified as tariff subheadings 7604.10.00, 7604.21.00, 7604.29.00, 7608.10.00, 7608.20.00, 7610.10.00 and 7610.90.00 statistical code 26 of Schedule 3 to the *Customs Tariff Act 1995* (Cth).

- PMB has not engaged in dumping, since the figures provided in its Exporter Questionnaire of 27 September 2016 (*Exporter Questionnaire*) and supplementary materials show its export price exceeded the normal value during the Investigation Period.

1 Subsidies

1.1 Past subsidies

(a) No benefit

PMAA has submitted that no benefit has been received by PM Bintulu or PM Sarawak with respect to the Pioneer Status Program or the Investment Tax Allowance during the Investigation Period, as those companies earned insufficient taxable (*chargeable* in Malaysia) income to benefit from the tax relief provided by these programs. That neither PM Bintulu or PM Sarawak earned sufficient taxable income to benefit from the aforementioned subsidy programs is demonstrated in the following attachments—also provided with PMB's Exporter Questionnaire

- Year ended 31 December 2015
 - PM Bintulu—*Confidential PMBTU 2015 KPMG Tax return computation.pdf*
 - PM Sarawak—*Confidential PMS 2015 KPMG Tax return computation.pdf*
- Year ending 31 December 2016—this year yet to end so no taxable income arises for the POI

Refer also to the following Customs International Trade Remedies Branch reports:

- 7 June 2012 Report 177 page 183—*Hollow Structural Sections*
- 28 June 2013 Customs International Trade Remedies Branch Report 193 page 69—*Zinc Steel and Aluminium Coated Steel from China*

(b) No pass-through

The materials provided in PMB's Exporter Questionnaire and supplementary materials also show that, in any event, any alleged benefit is not 'passed through' to PMB. The Commission's Dumping and Subsidy Manual (the *Manual*) provides that demonstration of 'pass through' of an upstream subsidy to a downstream purchase is undertaken by comparing the price of the input product between the vendor and purchaser against a benchmark price.²

In this case, by comparing the prices of ingot sold by PM Bintulu (attached *Confidential PMBTU selling prices worldwide Jul 15 to Jun 16.pdf*) and prices of billet sold by PM Sarawak (attached *Confidential PMBTU selling prices worldwide Jul 15 to Jun 16.pdf*) against worldwide and regional prices for ingot and billet (LME + MJAP in *Public Harbors LM E3M & MJP Jan'15-Sep'16.pdf*), it is clear that PM Bintulu and PM Sarawak's sales prices do not result in any benefit to PMB since these prices are comparable to worldwide and regional prices.³ Harbor Aluminium (*harboraluminum.com*)

² Manual, Section 18.2, page 108. The Manual explains that the benchmark price may, in order of priority, be any one of the following:

- the price of a comparable and unsubsidised input product;
- average price data for an unsubsidised input product; and
- where appropriate, pricing information for a comparable industry where subsidies have not been paid on inputs.

³ These prices also demonstrate that the sales from prices PM Bintulu and PM Sarawak to PMB are arm's length. (Section 269TAA of the Customs Act provides that a purchase or sale of goods is not arm's length if, among other things, the price appears to be influenced by a commercial or other relationship between the buyer and the seller, or if the goods are sold by the importer at a loss.) That PM Bintulu and PM Sarawak are each 20% owned by Sumitomo Corporation Japan, an unrelated entity, further supports the conclusion that

the accepted industry worldwide reference for regional aluminium pricing—that includes delivery premiums, among them, *MJP*—Major Japanese Ports.

Therefore there is, evidently, no 'pass through' of any conceivable benefit from PM Bintulu or PM Sarawak to PMB.

1.2 Future subsidies

(a) Relevant provisions of the Customs Act

Section 269TJ(2) of the Customs Act provides that countervailing duties may be imposed where the Minister is satisfied that countervailable subsidies may be received in respect of goods exported to Australia in the future and, because of that, material injury to Australian industry is being threatened.

It is possible that, at some time in the future, PM Bintulu and/or PM Sarawak may earn sufficient taxable income to benefit from the tax relief resulting from the aforementioned subsidy programs. However — even taking into account possible future subsidies — the amount of any such benefit 'passed through' to PMB would very likely be insignificant, having regard to the following:

- PM Bintulu and PM Sarawak only sell a small percentage of their total tonnage output to PMB (around █% and around █%, respectively), and only around █% of ingot sourced from PM Bintulu and only around █% of billet sourced from PM Sarawak ends up in PMB's finished aluminium extrusions;
- less than █% of PMB billet (whether produced by PMB (from ingot, purchased scrap, PMB own scrap and other inputs, or sourced from PM Sarawak, ends up in finished extrusions); and
- PMB only sold a small proportion of its extrusions to PMAA (around █%).

These factors would dilute the effect of any conceivable benefit passed through from PM Bintulu or PM Sarawak to PMB, and would have to be taken into account in quantifying the effect of any future subsidy received by PM Bintulu or PM Sarawak and 'passed through' to PMB's export price for finished extrusions.

2 Dumping

As stated in the Submission, PMAA is the importer and PMB is the exporter of aluminium extrusions.

PMAA submits that PMB has not engaged in dumping exported aluminium extrusions during the Investigation Period or at any other time. The allegations of dumping are not sustained by any reliable evidence. As shown by PMB's Exporter Questionnaire and supporting materials, the export price for all extruded aluminium exports exceeded the normal value of the aluminium extrusions during the injury analysis period.

2.1 Export price

In its Application, Capral used constructed estimates to determine export price. PMB has now compiled the relevant information regarding export price, which was submitted in PMB's Exporter Questionnaire. PMAA submits that Capral's constructed estimates are inaccurate and cannot be considered as reliable against the evidence of the actual transactions between importer and exporter as provided by PMB.

PMB operates at arm's length from PM Bintulu and PM Sarawak insofar as the sales prices of ingot and billet are concerned because Sumitomo's due diligence monitoring of its investment in these smelters ensures they sell to PMB at competitive worldwide and regional prices.

(a) Export price should be calculated by using the price paid or payable by the importer

PMAA submits that the export price should be calculated by reference to the price paid for the goods by PMAA as importer.⁴ The prices paid by PMAA as importer are set out in 'Confidential Attachment B-9' to the Exporter Questionnaire.

(b) Arm's length transaction

According to section 269TAB(1) of the Customs Act, it is only appropriate to use the price paid by importer as the export price if the purchase of the goods was an arm's length transaction.

PMAA is a wholly owned subsidiary of PMB. However, PMAA's purchases of aluminium extrusions from PMB should nevertheless be treated as arm's length transaction because the price was not influenced by a commercial or other relationship between PMAA and PMB.⁵ This is because PMAA pays substantially similar prices for aluminium extrusions when compared to PMB's other non-related customers.

(c) Alternatively, if export price is not calculated using the price paid by PMAA as importer, export price should be calculated using the price at which the goods are sold by PMAA as importer

If, contrary to the evidence, the Commission finds that the transactions between PMAA and PMB are not arm's length (which PMAA disputes), PMAA submits that the export price should be calculated by reference to the price at which goods are subsequently sold by PMAA to unrelated parties in Australia .

PMAA has provided information supporting this submission to the Commission as an attachment to its Importer Questionnaire (see spreadsheet entitled 'With weight column Aust sales PMAA 1 Jul 15 to 30 Jun 16', submitted by email by PMAA to the Commission on 7 September 2016).

2.2 Normal value

(a) Normal value should be calculated by reference to the price of domestic sales of aluminium extrusions in Malaysia

In its Application, Capral used constructed estimates of the normal value, since it was unable to provide domestic selling price information for aluminium extrusions in Malaysia.⁶ PMB has now submitted detailed evidence relating to the calculation of the normal value in the Exporter Questionnaire and supplementary materials. This material demonstrates that Capral's estimates are inaccurate and should not be relied upon by the Commission.

PMAA submits that the normal value should be determined by reference to domestic prices in Malaysia, pursuant to s 269TAC(1) of the Customs Act. PMAA has provided information about these prices (in Exporter Spreadsheet Case 362, entitled 'D-4 16 PMB local sale unrelated').

⁴ Other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation: see Customs Act, s 269TAB(1),

⁵ Section 269TAA of the Customs Act states that 'a purchase or sale of goods shall not be treated as an arm's length transaction if ... the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller'.

⁶ Application, page 39.

(b) Even if normal value is calculated using the constructed method, the export price exceeds the normal value and there is no dumping

Section 269TAC(2)(c) provides that where the normal value cannot be ascertained by reference domestic prices in the country of export, the normal value of exported goods may be calculated using the constructed method.⁷ PMAA contends that, in this case, the normal value of extruded aluminium goods should not be calculated using the constructed method, since there are no relevant factors preventing the calculation of normal value using domestic prices of aluminium extrusions in Malaysia. In particular, neither the situation in the Malaysian market or any difficulty in obtaining relevant information prevents the calculation of normal value based on domestic prices of aluminium extrusions in Malaysia.⁸

If, contrary to the evidence, the Commission decides it is necessary to calculate the normal value using the constructed method, PMAA has provided evidence as to the cost of production and manufacture of the goods in Malaysia (see Exporter Spreadsheet Case 362, 'G-3 Domestic CTMS').

PMAA submits this evidence is far more reliable than the information relied on in Capral's application. Capral has conceded that it was unable to obtain domestic selling price information for aluminium extrusions sold in Malaysia, and that it calculated the cost of production largely on the basis of figures relating to Capral.⁹ By comparison, PMAA's figures include the actual domestic prices of aluminium extrusions sold domestically in Malaysia at arm's length prices, and also show the actual costs of production based on PMB's own data. As a result, Capral's estimates are wholly artificial and without foundation, and cannot be considered as reliable against the actual values that have been provided by PMB.

2.3 Conclusion: No dumping

Based on the above, PMAA submits PMB has not engaged in dumping, since the figures provided in its Export Questionnaire and supplementary materials show its export price exceeded the normal value at all times during the Investigation Period.

⁷ Section 269TAC(2) provides that the Minister may calculate normal value by taking the sum of costs of production or manufacture; selling, administrative and general costs; and profit on that sale. Section 9 of the Commission's Manual refers to this as 'normal value based on constructed method'.

⁸ Sections T69TAC(2)(a) and T69TAC(2)(b) provide that the presence of these factors make necessary the calculation of normal value using the constructed method.

⁹ Application, page 39.