

21 October 2016

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Operations 3
Anti-Dumping Commission
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Public File

Dear Mr Crooks

Aluminium Extrusions exported from Malaysia and Vietnam (Investigation No. 362) Capral comments re Press Metal Aluminium (Australia) Pty Ltd submissions of 22 September and 6 October 2016

I. Introduction

Capral Limited ("Capral") is the applicant company requesting the imposition of dumping and countervailing measures on exports of aluminium extrusions to Australia from Malaysia and Vietnam. Capral's application demonstrates that the exports from Malaysia and Vietnam have caused injury to the Australian industry that is material and that measures are required to prevent further material injury.

Press Metal Aluminium (Australia) Pty Ltd ("PMAA") has in its submissions of 22 September and 6 October asserted that exports by its associated exporter Press Metal Berhad ("PMB") have not been at dumped prices during the investigation period (1 July 2015 to 30 June 2016) nor have they benefited from subsidies paid (or payable) from the Government of Malaysia ("GoM").

II. PMAA representations re subsidies

PMAA has acknowledged that PMB's subsidiary companies Press Metal Sarawak Sdn Bhd ("PM Sarawak") and Press Metal Bintulu Sdn Bhd ("PM Bintulu") are eligible companies that can receive benefits under the Pioneer Status Program and the Investment Tax Allowance Programs operated by the GoM. It is claimed by PMAA that neither company received benefits under the programs and therefore it cannot be concluded that any benefits passed to either subsidiary.

PMAA confirms that under the *Malaysian Promotion of Investments Act 1986 (Act 327)* a company approved for Pioneer Status receives an income tax exemption of 100 per cent of its statutory income for a period of 10 years. It is understood by Capral that the Pioneer Status approval for PM Bintulu has been extended to 2027, indicating that the program extends beyond the stated 10 year period.

PMAA states that whilst PM Bintulu holds the Pioneer Status certification, it has not yet earned a "sufficient" taxable profit against which the benefit may be applied.

PMAA also confirms that under the *Malaysian Promotion of Investments Act 1986 (Act 327)* the GoM provides an Investment Tax Allowance ("ITA") for eligible companies. The ITA provision operates exclusively of the Pioneer Status program and provides a benefit for companies that invest in a "promoted

activity or form of production”. PMAA states that PM Sarawak has received zero benefits under this program. In its most recent submission (i.e. 6 October), PMAA has confirmed¹:

“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.....”

Whilst Capral acknowledges that the taxable income for PM Bintulu and PM Sarawak in the investigation period may not have been sufficient to provide for a tax liability (based upon PMAA’s representations and subject to verification by the Commission), this raises the issue as to whether PM Bintulu and PM Sarawak have recovered all costs to make and sell the ingot and billet (respectively) in the transfer price(s) to PMB for use in the production of the aluminium extrusions.

III. PMB Normal values

Capral submits that in the event PM Bintulu and PM Sarawak are operating at a loss throughout the investigation period, regard must be afforded to the price at which the entities are charging for the ingot and billet (respectively) is insufficient to recover all costs. The Commission must, therefore, be vigilant in examining whether PMB is purchasing from its related party suppliers, PM Bintulu and PM Sarawak, ingot and billet at full cost recovery.

In examining PMB’s domestic sales of aluminium extrusions, the Commission is required to be satisfied that:

- There are relevant domestic sales;
- The domestic sales are in sufficient volumes;
- The sales are suitable; and
- Sales are in the ordinary course of trade.

PMAA has indicated that PM Bintulu and PM Sarawak are not profitable in the investigation period. This indicates that the price at which ingot and billet has been sold by the PMB subsidiary companies, including the transfer price to the parent PMB, are likely not to reflect full cost recovery. Where the raw material input prices does not reflect the full cost of production (i.e. raw material costs plus conversion), and appropriate selling and administration expenses, this is likely to directly impact on PMB’s selling prices for the goods under consideration (in particular, PMB’s domestic selling prices for aluminium extrusions).

The Commission must consider whether the domestic sales are “suitable” for normal value purposes. This will involve an assessment as to whether the selling prices are artificially low or whether market conditions in Malaysia render the domestic selling prices unsuitable for determining normal values under s.269TAC(1). A factor that could render the domestic selling prices for aluminium extrusions unsuitable is the price at which the raw material ingots or billet are sold (or transferred) to PMB. Capral submits that the Commission must be satisfied that the raw material ingots and/or billet sourced from PMB’s subsidiary companies are priced in accordance with competitive market conditions and reflect full cost recovery.

Where it is evidenced that the raw material inputs are not priced in accordance with market competitive conditions and as a consequence domestic selling prices for aluminium extrusions are considered to be artificially low, the Commission will not determine normal values under s.269TAC(1). Where s.269TAC(1) is not available, normal values will then be considered under s.269TAC(2)(c) based upon the exporter’s production costs, plus amounts for S,G&A plus profit. Constructed normal values would require a competitive market cost for raw material ingot or billet (as appropriate). The cost for the ingot and/or the billet by the subsidiary companies can be determined upon competitive market prices or, calculated based upon the LME plus Major Japanese Port (“MJP”) premium, plus product premiums as appropriate.

¹ PMAA Submission, 6 October, P.2.

The determined normal values should reflect a competitive market price for aluminium extrusions which are not influenced by raw material inputs transferred in at less than market rates.

IV. Export Price

PMAA indicates that PMB has provided the Commission with the 'relevant information regarding export price'. It further claims that the actual transactions between the importer and exporter can be used by the Commission for export price determination. As PMB exports to its associated importer PMAA, the Commission will test the export prices between the related parties to assess whether the prices are at arms length, and whether influenced by the commercial relationship between the exporter and the importer. The Commission will have access to the export prices to Australia of other Malaysian exporters during the investigation period to establish whether it can be satisfied that PMB's export prices to PMAA are arms length.

Where it is established that PMB's export selling prices are not arms length, the Commission can establish export prices for PMB under s.269TAB(1)(b) utilizing PMAA's selling prices or under s.269TAB(3) having regard to all relevant information.

V. Conclusion

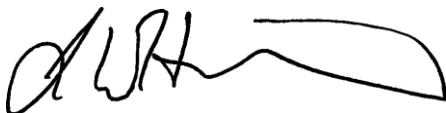
PMAA's submission of 6 October 2016 indicates that PMB's subsidiary companies PM Bintulu and PM Sarawak have incurred losses in the manufacture and sale of aluminium ingots and billets used as raw material inputs in the production of aluminium extrusions (the goods under consideration). The Commission will investigate whether PMAA's claims can be substantiated and whether any countervailable benefits have flowed to PMB under Program 1 (Pioneer Status) or Program 2 (Investment Allowance) via its subsidiary companies.

Where it is determined that the subsidiary companies supplying raw material inputs to PMB have operated at a loss, the Commission will examine whether the transfer prices for the raw material ingot and/or billet has been at full cost recovery.

In assessing PMB's export prices to Australia, the Commission will test PMB's export price transactions to determine whether the commercial relationship between the exporter and its associated importer PMAA to determine whether the prices can be considered arms length.

If you have any questions concerning this submission, please do not hesitate to contact me on (02) 8222 0113 or Capral's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely



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