

19 December 2016

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Anti-Dumping Commission
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Public File

Dear Mr Crooks

Aluminium Extrusions exported from Malaysia and Vietnam (Investigation No. 362) – Sales not arms length between PMB and PMAA

I. Introduction

Capral Limited (“Capral”) refers to earlier correspondence dated 24 November 2016 and 14 December 2016 concerning export transactions between the Malaysian integrated manufacturer and exporter of aluminium extrusions Press Metal Berhad (“PMB”) and its affiliated Australian importer Press Metal Aluminium (Australia) Pty Ltd (“PMAA”).

The Commission has recently published the PMAA verification report indicating that it considers sales of aluminium extrusions in Australia by PMAA are based upon arm’s length export purchases from its related company, PMB.

II. PMAA

Capral has previously provided the Anti-Dumping Commission (“the Commission”) with ASIC records of PMAA’s 2013 and 2014 financial accounts. Whilst Capral recognizes that the year ending December 2014 accounts¹ do not reflect those for the investigation period (the 2015 accounts are not likely to be submitted until March 2017), the cash flow statement for the period indicates that PMAA has more outgoings than receipts and has operated at a loss. It is further noted that Note 19 (pg. 24 PMAA 2014 financial accounts): Related Party Transactions to PMAA’s statements reflects:

(a) *“The ultimate parent entity is Press Metal Berhad”*

(c) *“Amounts payable to Press Metal Berhad are trade creditors, are non-interest bearing and unsecured. The company has extended terms of trade. All amounts receivable and payable are settled in cash.”*

The note indicates that PMAA does not remit payment on time or on prescribed terms as would occur between non-related parties.

¹ Refer Confidential Attachment 1.

Additionally Capral notes the (o) Going Concern Assumption (p.12 PMAA 2014 financial accounts)

“The company’s ability to pay its debts as and when they fall due is dependent upon the Parent company, Press Metal Berhad, who issued a letter confirming its support for the company to pay its debts as and when they become due for the next 12 months of operation, Also refer note 23..”

“Note 23: Economic Dependence” (p.27 PMAA 2014 financial accounts

“ Over 90% of the company’s purchases are dependednt upon the supply arrangement with the parent entity, Press Metal Berhad, to wholesale and distribute aluminium products to its customers.

Press Metal Berhad funds the company’s working capital requirements by providing deferred settlement terms. As at 31st December 2014 \$10,488,511.87, representing 92% of liabilities, was payable to Press Metal Berhad. The liability is current but not payable on demand.”

Capral also notes the qualification included in the statements by the auditor UHY Haines Norton (P. 33 of PMAA Statements):

“Without modifying our opinion, we draw attention to notice 1(o) to the financial report which describes the going concern assumption. The conditions described in the financial report indicate the existence of material uncertainty that may cast significant doubt about the entity’s ability to continue as a going concern and therefore, the entity may be unable to realize its assets and discharge its liabilities in the normal course of business without continued support of its parent entity.”

The statements indicate that PMAA is reliant upon its parent PMB to ensure its ongoing operation, including the delayed and preferential payment terms for the purchase of aluminium extrusions manufactured by PMB for on-sale in Australia. Payment terms of this nature are only likely between related parties and are not reflective of non-related party transactions.

Capral draws to the attention of the Commission the intense trading conditions evident in the 2015/16 year when contrasted with the 2014 year (to which the most recently lodged ASIC return relates). The emergence of increased competition of aluminium extrusions sourced from Vietnam increased competitive pressures on suppliers in the Australian market (including PMAA) such that selling prices in 2015/16 (i.e. the investigation period) are lower than the 2014 calendar year. This level of competition increases the likelihood that in the 2015 year (and subsequent) PMAA would be increasingly reliant upon PMB for funds injection and/or improved trading terms (including delayed payments for goods sold in Australia).

It is not clear from the 2014 statements the terms that were made available to PMAA by PMB for extended payments. It would appear, however, that the terms are significantly delayed for the auditor to exercise a qualified opinion on the accounts.

PMAA operated at a loss in 2013 and 2014 and continues to trade as a going concern as a result of PMB providing favourable – non market payment arrangements. Based on the increasingly competitive environment it is reasonable to draw a conclusion that PMAA’s results in the investigation period are of a similar nature and continue to rely on PMB support.

III. PMB & PMAA common directors & ownership

Capral has noted that three Directors of PMAA (P.30 PMAA 2014 financial accounts)– Mr Poh Keong Koon, Mr Poh Ming Koon and Mr Poh Tat Koon – are also Directors of PMB (refer P.14 of PMB 2015 Annual Report).

Additionally, it is further observed that PMB is a 70 per cent shareholder in PMAA. (refer P. 19 & P.131 of PMB 2015 Annual Report).

IV. Export sales to Australia

Subsection 269TAA outlines the circumstances in which the price paid or payable shall not be treated as arms length. These are where:

- there is any consideration payable in respect of the goods other than price;
- the price is 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;
- in the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

Capral contends that the export price between the buyer (i.e. PMAA) and the seller (i.e. PMB) is influenced by the 70 per cent ownership of PMAA by PMB such that the export price payable by PMAA is not remitted on similar terms as non-related entities would operate and, that PMB extends favourable payment terms (i.e. extended) to its majority owned subsidiary company.

The export sales of PMB to PMAA cannot therefore be considered to be at arms length.

Capral has further detailed to the Commission that sales of aluminium extrusions by PMAA into the Australian market in the 2015/16 year reflected “extremely low selling prices for PMB supplied aluminium extrusions”. Capral reiterates that PMAA’s sales at the identified reduced levels can only be considered sales at a loss and that for the purposes of establishing export prices between the related parties PMB and PMAA a deductive export price methodology must be assessed by the Parliamentary Secretary.

Capral has reviewed PMAA’s verification report and is alarmed that the Commission has not conducted a visit to PMAA to fully validate information contained in the Importer’s Questionnaire Response (“IQR”). Capral considers that this omission in relation to the largest importer of aluminium extrusions the subject of the investigation is a glaring oversight that must be corrected prior to the publication of the Statement of Essential Facts (“SEF”). The available information submitted by Capral concerning the nature of the relationship between the Malaysian exporter PMB and the its 70 per cent owned subsidiary PMAA justifies a full and thorough verification of information contained in PMAA’s IQR.

It is Capral’s firm view that once the Commission takes full account of the information highlighted by Capral, and determines export prices between the associated parties as having been influenced by the relationship, and then assesses export prices on a deductive basis, PMB’s dumping margins will be re-assessed at above negligible levels across the 2015/16 investigation period.

V. Conclusions

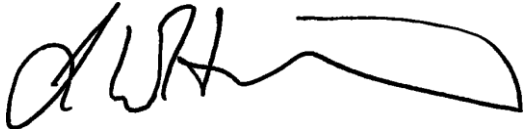
Capral has evidenced that PMB and PMAA are associated companies and that the export prices from PMB to PMAA are influenced by that relationship. PMAA is operating on a tenuous basis and is reliant upon the extended payment terms afforded to it by its parent company. The companies are intertwined to such an extent that three Directors of PMAA are also incumbent directors on the Board of PMB and it cannot be viewed that the parties operate independently (or on an arms length basis).

The Commission must conduct a verification visit with PMAA to validate the information contained in its IQR prior to the publication of the SEF. Market intelligence on prices offered by PMAA during the investigation period indicates that prices in 2015/16 are lower than during the 2014 period due to increased competition from imports ex Vietnam, and confirms that PMB would necessarily provide its subsidiary company with increasingly favourable terms for payment of aluminium extrusions purchased from PMB. The invoiced export prices accepted unverified by the Commission can therefore not be relied upon as representative of the actual prices paid by PMAA to its associated parent PMB.

Capral urges the Commission to re-examine its decision contained in the PMAA importer verification report and re-assess the prices paid as non-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

A handwritten signature in black ink, appearing to read 'L. Hawkins', with a long horizontal flourish extending to the right.

Luke Hawkins
General Manager – Supply and Industrial Solutions