

Date: 10 July 2023

**By Email**

Dr Bradley Armstrong PSM  
Anti-Dumping Commissioner  
Anti-Dumping Commission  
Melbourne VIC

Dear Commissioner,

***RE: Aluminium extrusion products exported from Malaysia & Vietnam –Continuation Inquiry 591 - ADRP Review No.155 – Preliminary Reinvestigation Report***

As you know, I act for Press Metal Aluminium (Australia) Pty Limited (**PMAA**), PMB Aluminium Sdn Bhd (**PMBA**) and their related bodies corporate (collectively, **Press Metal**) in relation to the abovementioned matters.

This submission is made on behalf of my clients in response to the abovementioned preliminary reinvestigation report (**Report**) published by the Anti-Dumping Commission (**Commission**) on 26 June 2023.

**Background**

By decision of the Minister, the anti-dumping measures that had been imposed on exports of aluminium extrusion products by certain exporters, including by mt clients, from Malaysia and Vietnam in 2017 expired on 27 June 2022.

Capral Limited appealed that decision of the Minister to the Anti-Dumping Review Panel (**Review Panel**), which commenced a review of that decision on 17 August 2022.

As part of that review, on 5 October 2022, the Acting Senior Member of the Review Panel requested you to reinvestigate the following finding of fact that you made in Continuation Inquiry 591 on which the Minister's decision to allow the anti-dumping measures to expire was based, namely that:

*"... material injury to the Australian industry is not likely to continue or recur in the absence of measures."*

For that material injury to continue or recur or it must, of course, be caused by the continuation or recurrence of dumped exports from the subject countries.

As noted above, on 26 June 2023 the Commission published the Report setting out preliminary findings in the reinvestigation. Contrary to the original finding in Continuation Inquiry referred to above, it was preliminary found that, following the expiry of the anti-dumping measures on 27 June

2022 *'material injury to the Australian industry is likely to continue or recur in the absence of measures'*, presumably caused by the continuance or recurrence of exports from Malaysia and Vietnam by the subject exporters at dumped export prices.

### Submission

For the reasons set out in this submission, the abovementioned preliminary finding in the Report is incorrect. Neither the analysis nor the information and evidence in the Report support the preliminary finding for the reasons set out in this submission.

### Preliminary observation – likelihood of material injury continuing or recurring

By way of preliminary observation, events that have actually occurred during the twelve (12) months since the expiration of the anti-dumping measures on 27 June 2022 refute the preliminary finding that *'material injury to the Australian industry is likely to continue or recur in the absence of measures'*. As a factual matter, that has not occurred.

Since the expiration of the anti-dumping measures, the Australian industry has not incurred injury, let alone material injury or material injury caused by exports by the subject exporters at dumped export prices from Malaysia and/or Vietnam. That fact of itself is evidence that the analysis in the Report is necessarily flawed given that it reached a finding that has not occurred.

As far as exports by PMBA are concerned, as you would be aware, it is contended that its exports have not been at dumped export prices. [**Confidential Commercial Information Concerning PMBA Exports Redacted**] The preliminary findings in the Report as to what is likely to occur simply have not occurred, at least not in relation to PMBA's exports.

The deficiencies in the analysis in the Report that led to the incorrect preliminary finding is addressed later below in this submission.

In addition, exports from Malaysia and Vietnam account for about 4% or less of total imports into Australia and about 2% or less of the total Australian market. Further and importantly, the volume of exports from Malaysia and Vietnam by the subject exporters whose exports are subject to the anti-dumping measures that expired would be less than that and account for only a portion of those percentages.

Given such negligible volumes, it is inconceivable that they have caused or could cause injury, nor would likely to cause injury, following the expiration of the anti-dumping measures on 27 June 2022, let alone material injury even assuming that they were exported at dumped export prices.

Accurately reflecting the volume of exports from Malaysia and Vietnam by the subject exporters and their actual effect, supported by evidence, on the Australian industry as a whole in terms of pricing and sales volumes as well as pricing in the Australian market, is missing from the Report. It would seem fundamental to the issue the subject of the reinvestigation.

This issue is addressed further throughout this submission.

## Preliminary observation – dumping of exports

The preliminary finding that *‘material injury to the Australian industry is likely to continue or recur in the absence of measures’* is contingent upon a finding that exports from Malaysia and/or Vietnam at dumped prices is likely to continue or recur and because of that cause such material injury.

In Continuation Inquiry 591, it was determined that exports by PMBA were at dumped export prices.

That finding was challenged in a number of submissions. A primary ground of challenge was that a level of trade of adjustment to the normal value when being compared with export prices was wrongly disallowed. It was contended that that adjustment should not have been disallowed but, instead, was required to be made and, when made, resulted in a finding that PMBA’s exports were not at dumped export prices. See, for example: [591 - 034 - submission - exporter - pmb aluminium sdn bhd press metal aluminium au pl - supplementary submission in response to sef 591.pdf \(industry.gov.au\)](#)

In support of this challenge an independent expert opinion was obtained from Korda Mentha and its report submitted to the Commission. Korda Mentha’s engagement was undertaken in accordance with the Federal Court of Australia’s rules for the engagement of independent experts. No challenge has been made to that report or its findings. The non-confidential version of the Korda Mentha report is on the Commission’s public file: see [591 - 033 - submission - exporter - pmb aluminium sdn bhd - report of john temple code kordamentha forensic accounting regarding the lot adjustments.pdf \(industry.gov.au\)](#).

Korda Metha’s report supported the challenge and found that the required adjustment resulted in a finding that PMBA’s exports were not at dumped export prices. However, that report was disregarded in making your report and recommendations to the Minister and disregarded as there apparently was insufficient time to fully consider it despite its relevance to the findings and recommendations to the Minister.

Since then, the Commission has determined that there is a price difference in sales at different levels of trade not only by PMBA in the domestic Malaysian market and that a level of trade adjustment is required<sup>1</sup> but also between the different levels of trade in the Australian market<sup>2</sup>. It is expected that this will be confirmed in the review of the preliminary negative decision in Confidential Duty Assessment DA0243 by the Review Panel, with the appropriate manner of adjustment only to be decided.

In this context, it is self-evident that the dumping determination in relation to PMBA’s exports in Continuation Inquiry 591 was incorrect or, at least, sufficiently uncertain that it was correct to, in the interests of good government, leave unrectified.

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<sup>1</sup> Refer Confidential Duty Assessment DA0243.

<sup>2</sup> Refer Figure 1 in the Report and page 17 of the Report.

Despite this fact being known, no action has been taken to rectify this incorrect finding in Continuation Inquiry 591. Instead, it appears that the Commission, at least at this point, is willing to proceed with the reinvestigation and report to the Review Panel without addressing and rectifying this error in Continuation Inquiry 591.

If anything is to be learnt from the Royal Commission's report into Robodebt, is that government agencies should take prompt action to remedy known errors in government administration and action should be taken now to rectify this error in Continuation Inquiry 591 knowing that it exists.

If there are shortcomings in the formal review process in the anti-dumping regime that seemingly do not permit this error to be addressed, it nevertheless is incumbent that the error be brought to the attention of the Minister. This must be so especially in the present circumstances when the Minister's statutory discretion enables taking this issue into account in making a decision on whether to confirm the original decision to allow the subject anti-dumping measures to expire or to revoke that decision and determine that they continue for a further five-year period.]

We respectfully request that immediate steps be taken to rectify this error in Continuation Inquiry 591.

### **Submissions on the Report**

It must be noted at the outset that the Commission has taken about eight (8) months to complete its reinvestigation, with two extensions, to the point where it has published the Report. This is materially longer than the 155-days for a dumping investigation, review or inquiry and notwithstanding that it involves no new information, that is, information that was not before you when making your report and recommendations to the Minister in Continuation Inquiry 591.

Despite that extensive period in undertaking the reinvestigation and notwithstanding the short period of 14 days for interested parties to review and file submissions in response to the Report, the following deficiencies with the Report and the findings therein have been identified.

#### **1. *Reinvestigation – submissions by interested parties***

Apparently the Commission did not take into account submissions made by interested parties in connection with the reinvestigation whom one would expect would possess valuable knowledge of the matter(s) to be reinvestigated. It is not apparent why the submissions were not taken into account. Nevertheless, it is unfortunate that they were not.

It is unfortunate not for any information that may have been presented in a submission, which may be inadmissible in any event, but because the submissions could and may have raised issues relevant to the reinvestigation and, therefore, better inform the Commission of matters that it should address in the reinvestigation. Ultimately, this could benefit the reinvestigation by promoting a more robust, comprehensive reinvestigation of, and findings on, the matter(s) to be reinvestigated.

## 2. *Reinvestigation – methodology*

In undertaking the reinvestigation, it would have seem sensible, particularly in respect of certain aspects of the reinvestigation, the price undercutting analysis and assessment for example, to set out the methodology proposed to be used so as to clearly and transparently:

- identify the issue being reinvestigated;
- the methodology by which it is proposed to reinvestigate that issue;
- the information and evidence proposed to be included in that reinvestigation;
- the data and information that the assessment is expected to produce and how it is relevant to the issue being reinvestigated; and
- what that assessment is intended to establish to enable conclusions to be made.

Such an approach would inform both the Commission and interested parties whether the methodology was fit for purpose.

No such description of the methodology used is set out in the Report. It, therefore, is not possible to fully assess whether the methodology employed was in fact fit for purpose, whether there were shortcomings and other deficiencies with it and, consequently, whether findings made in the Report are credible and not affected by the methodology employed, that is affected by deficiencies in the methodology.

For reasons that will become apparent later in this submission, such an approach may have avoided deficiencies in the Report that are identified later in this submission.

## 3. *Reinvestigation – evidence*

Section 2 of the Report contains details of the information and evidence on which the Commission relied in its reinvestigation. That list is of interest both as to what it contains and what it does not contain.

For example, for the price undercutting analysis, the only detailed information on pricing provided by the Australian industry was apparently that provided by Capral. Information provided by G James Extrusions Co. Pty Ltd (**G James**) and Independent Extrusions Limited (**INEX**) was not suitable for this purpose, which would render them as ‘uncooperative’ had they been exporters. In other words, of the eight (8) members of the Australian industry, there was only one ‘cooperating’ member, with the other seven (7) members being ‘uncooperative’. Hence the price undercutting analysis was based on pricing information provided by only one (1) member of the Australian industry.

It, therefore, is unclear what findings on price undercutting could be made from such limited information and evidence. That is, given the structure of the Australian aluminium extrusion products market set out in the diagram at Figure 1 on page 15 of the Report, it would appear that there is no detailed pricing information and evidence from participants at each level of

trade in the market other than from Capral, such as from importers, distributors, fabricators, etc., as well as the other members of the Australian industry.

No explanation is provided in the Report on how any analysis could be conducted with such a dearth of relevant information and evidence, let alone how any conclusions could be drawn from it. Further, it is not apparent why the Commission proceeded with the reinvestigation with detailed information and evidence from only one member of the Australian industry, namely, Capral.

Similarly, regarding the economic performance of the Australian industry, no mention is made of the audited financial statements of members of the Australian industry filed with the Australian Securities and Investments Commission (**ASIC**) in accordance with the *Corporations Act 2001 (Cth)*. Those statements disclose economic performance by those members of the industry materially different to those of Capral, G James and INEX. See the further discussion on this issue below at section 8 of this submission.

It, therefore, is unclear what findings on the economic performance of the Australian industry could be made from such limited information and evidence.

Substantively, it is not apparent why the Commission proceeded with the reinvestigation with the limited relevant detailed information and evidence available to it for this purpose. That is, why it did not advise the Review Panel that it was not possible to reinvestigate the finding that was being requested to be reinvestigated due to the insufficiency of detailed relevant information.

#### 4. *Reinvestigation – price undercutting analysis - product*

The Commission's price undercutting analysis is contained in Section 3 of the Report. What is not apparent from that analysis is what prices of what products were used in that analysis. That is, whether it is:

- prices of aluminium extrusion products categorised according to the Commission's Model Control Code (**MCC**); or
- prices of aluminium extrusion products according to actual products (e.g., angles, rods, tee sections, etc.); or
- a mixture of both.

The term '*aluminium extrusions*' itself, of course, does not describe or identify a 'product'. Rather the term is a descriptor of a category or class of products produced from a certain metal (i.e., aluminium or, more specifically, aluminium alloys) by a particular manufacturing process (i.e., extrusion). In short, it does not describe or identify a product or products but is a descriptor of products produced using particular metal alloys and a specific manufacturing process, namely, extrusion.

Nor does the Commission's MCC categorisation refer to actual 'models' of a product. It categorises 'aluminium extrusions' by aluminium alloy and finish. The particular products

produced from each aluminium alloy and finish are not identified in the MCC and, therefore, the MCC does not identify or categorise 'models' of each product produced by extrusion from each aluminium alloy and finishes comprised in an MCC. That is, while a 'product' could span several MCCs depending upon the aluminium alloy from which it is made and its finish different 'products' could be and are included within the same MCC because they are of produced from the same aluminium alloy and with the same finish, However, they are different 'models' of the same 'product; but different 'products'.

The products produced by extruding aluminium alloys and their finishes, along with other characteristics, are listed in the catalogues of members of the Australian industry and on their respective websites. For example, a copy of Capral's catalogue is on the Commission's electronic public file; see Documents Nos 7 and 31 in [591 - Aluminium extrusions from Malaysia, Vietnam | Department of Industry, Science and Resources](#).

Those products are sold at a price per unit per product. That is, each product by aluminium alloy and by finish, along with other characteristics, are offered for sale at a per unit price. Such pricing is set out in price lists that are readily available from members of the Australian industry, including from Capral. No doubt the Commission has obtained copies of such price lists from members of the Australian industry or, at least, from Capral.

To undertake a price undercutting analysis it would seem necessary to undertake that analysis based on the prices at which each product in question is actually sold at each level of trade in the market and competes with other identical products on price. That is, not at a price per kilogram per MCC but a price per unit of the relevant product identified by its physical characteristics as specified, for example, in Capral's price lists.

Further, such an analysis to be meaningful would need to assess to what extent, if any, there was cross-elasticity of demand between actual products but also the price elasticity of demand for each product and the import price elasticity of demand for each product. The method ology for calculating price elasticity of demand and import price elasticity of demand are standard and set out in most economics texts.<sup>3</sup>

Such analysis is necessary because each product is, obviously, not substitutable for each other product given that each has a different end use and, therefore, they do not and cannot compete with one another on price or at all. An angle does not compete with a round rod which does not compete with a square tube which does not compete with a tee section and so on regardless of their respective prices. They are not substitutable one for the other as they have different end-uses. This is not recognised in the Commission's analysis.

Thus it is not apparent from the Report that the Commission's price undercutting analysis is based on actual prices of aluminium extrusion products offered for sale and sold in the

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<sup>3</sup> R>H Frank, B,S, Bernacke, K. Antonovics & O. Heffetz, *Principles of Economics*, 8<sup>th</sup> Ed, McGraw Hill.New York, USA, 2022, ChapterChapter 4; and L. Coppock & D Mateer, *Principles of Economics*, 3<sup>rd</sup> Ed, W.W. Norton & Company, New York USA, 2014, Chapter 4.

Australian market. In other words, it is not apparent what the Commission's price undercutting analysis is purporting to measure, but it does not appear to be differences in the actual prices of actual aluminium extrusion 'products' in the Australian market. Precisely what is being measured or sought to be measured is not apparent, as discussed further later below.

Hence the submission in relation to methodology at section 2 above.

#### 5. *Reinvestigation – price undercutting analysis – preliminary finding*

The main purpose of the Commission's price undercutting analysis is to address the finding in the continuation inquiry that there was no discernible pattern in price undercutting with each participant in the market undercutting the prices of other participants in the market and with the Australian industry, Capral in particular, undercutting the prices of other participants in the market, including, the prices of the subject exports when sold in the Australian market.

The preliminary finding in the Report that purportedly refutes this finding in the continuation inquiry is that the price advantage that exports would or should have derived from dumping was offset by the high overseas freight charges current during the review period in the continuation inquiry due to the effects of the COVID-pandemic. Apparently, removing those effects of the pandemic on overseas freight charges and the price advantage (i.e., undercutting) of exports from dumping will return. That, in substance, is the Commission's thesis.

That assumes, amongst other things, that all prices in the market remain static while overseas freight charges decline. If that assumption does not hold true, then neither will that thesis.

The likelihood of all prices remaining static is not only remote but commercially absurd. In an open competitive market, prices are constantly changing in response to prevailing market conditions and the likelihood of a change in a cost, such as overseas freight, is unlikely to provide a competitive advantage other than temporarily if at all. Further, no evidence is referred to in the Report that any price advantage that increased freight charges during the pandemic translated into increased sales of domestically produced products during the pandemic given that the Australian industry's production capacity was insufficient to meet demand. Hence the surge in imports from countries not subject to measures during this period, particularly from Indonesia – the source of Capral's imports: see the Commission's Trade Remedy Index: [Trade remedy index \(TRINDEX\) | Department of Industry, Science and Resources](#)

There is, however, several more fundamental problems with the Commission's price undercutting analysis. These problems are set out below.

#### *Problem One*

The first problem concerns the comparison of MCCs in the price undercutting analysis. The problem here is that it is not a proper (fair) comparison as it is not a like-for-like comparison.

Each MCC contains a range of products as discussed earlier above. Hence a weighted average of price of the products within the MCC will necessarily reflect the prices of the respective volumes of each of the products within the mix. In other words, it will be mathematically biased according to the product mix and sales volumes of each product comprised in the MCC.

Given then that the product mix of an MCC for each exporter and for each member of the Australian industry will be different both in terms of products within the MCC and the sales volumes of each such product, then comparing the weighted average price of an MCC for each exporter with those of member of the Australian industry will be comparing the weighted average prices of MCCs that have been differently affected by the product mix and sales volumes within the MCCs being compared. It is not a proper (fair) comparison as it is not a like-for-like comparison.

To make it a proper (fair) comparison an adjustment is required. That adjustment is one that accounts for the differences in product mixes and the sales volumes of each product within the MCC to eliminate the difference as it affects the weighted average prices being compared in the price undercutting analysis. The required adjustment is not dissimilar to the adjustments required of normal values by section 269TAC(8)(c) of the *Customs Act 1901* when being compared with export prices.

It is evident from the Report that no such adjustments have been made. Accordingly, the comparisons made in the price undercutting analysis and the resulting preliminary findings are not valid as they do not constitute a proper (fair) comparison.

### *Problem Two*

The second problem is that there is no causal link between the economic performance of the Australian industry, as (erroneously) represented by Capral, and the presence or absence of price undercutting by the subject exports, whether at dumped prices or not. In other words, those exports, whether undercutting the prices of the Australian industry or not and whether at dumped prices or not, have no effect on the economic performance of the Australian industry. Had the Commission prepared and adopted a proper methodology to undertake its analysis as contented should have been done, this would have been self-evident from the results of its analysis.

For example, in the continuation inquiry it was found that aluminium extrusion products competed in the market with some sourced domestically undercutting imports and vice versa and with, generally, no discernible pattern of price undercutting. It also was a fact that the subject exports were being imported and on-sold and successfully competing in that market. Regardless of whether the prices at which they competed in the market, they generated sales that generated revenue for the seller.

The fact that the Australian industry did not make those sales obtained by the subject exports at higher prices than the Australian industry had no effect on the economic performance including profitability of the Australian industry, as acknowledged and confirmed by the Commission. No evidence was referred to in the Report supporting any contention that the subject exports affected or materially affected sales volumes and/or prices of the Australian industry even as represented by Capral, nor prices in the market generally<sup>4</sup>.

Indeed, the Australian industry including Capral with limited production capacity was unable to meet demand and resorted to importing from countries such as Indonesia and Thailand whose exports were not subject to measures. Further, the subject exports had no effect on prices in the Australian market and could not have had any effect for a variety of reasons including because of demand exceeding supply and the negligible volume of the subject exports.

Claims that the prices of exports from Malaysia and Vietnam 'influenced' prices in the Australian market seems commercially unrealistic given that such exports held less than 2% of the Australian market and, in any event, did not drive demand in the market. Further, claims that prices of exports from Malaysia and Vietnam 'influenced' prices in the Australian market would require corroboration from more than one source in the Australian market and from sources other than members of the Australian industry itself, especially given the market structure set out in Figure in the Report.

The reality – the commercial reality – is that the sales volumes and prices of the subject exports were not relevant to the economic performance of the Australian industry, especially given their negligible volumes. The Commission's analysis should have been as to why this was the case.

In any event, there was no evidence referred to in the Report that the sales volumes and prices of the subject exports were not relevant to the economic performance of the Australian industry. Nor was there any evidence referred to in the Report that with the expiry of the anti-dumping measures, how and/or why the volume of exports from Malaysia and Vietnam by the subject exporters would increase to be of a sufficient magnitude to have a material effect on the Australian industry as a whole in terms of sales volumes and prices regardless of the then prevailing market conditions and notwithstanding competition from exports from other sources whether subject to anti-dumping measures or not and from domestically produced products. No such case was made in the Report supported by evidence.

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<sup>4</sup> It also is unlikely that the Commission's analysis could identify any affect that the subject exports could have had on prices in the Australian market notwithstanding their negligible volume given that the Commission's pricing analysis was not on a per unit per product basis, whether using a statistically relevant sampling methodology or similar.

### *Further problems*

Regarding the problems with the price undercutting analysis, it is not apparent to what extent, if any, dumping contributed or would contribute to price undercutting by the subject exports of the prices of the domestic aluminium extrusion products at each level of trade in Figure 1 in the Report. That is, whether and to what extent the dumping margin flows through from the export price of an aluminium extrusion product (e.g., angle, hollow square rod, tee section, etc.) to the price at which that product is on-sold at another level of trade in the supply chain? There does not appear to be any such 'flow through' analysis in the Report. In the absence of such analysis it is not apparent how any conclusions can be drawn of price undercutting at any level of trade.

In this regard, it is noted that as part of the price undercutting analysis in the Comparison 1 situation, the Commission calculated 'weighted average FIS prices' for each exporter based on the sum of:

- verified FOB prices,
- post FOB costs including handling, port charges and inland freight, and
- dumping duties for the exporter if relevant.<sup>5</sup>

The result is, of course, not a 'price' but a calculated amount that presumably represents the 'into store cost' to the importer. It is not apparent why 'into store costs' are being used in a price undercutting analysis. Nor is it apparent how any dumping margin purportedly captured in such 'into store costs flows through into downstream prices when it presumably included interim dumping duties. What is being sought to be measures?

From the analysis at Section 3.4.2.4, it would seem that the price undercutting analysis was undertaken on an 'MCC basis' as opposed to an aluminium extrusion product basis. As such, it is not clear what the price undercutting analysis was seeking to measures as the MCC would cover a range of different products, each being a separate and distinct article of commerce with its own end-use and with its own pricing to reflect its different production processes and end-use amongst other things. These products are not 'models' of the same product. Hence the question of what 'prices' of what 'products' was being sought to be measured in the price undercutting analysis, if any? Again, this goes back to the discussion of methodology.

As we do not have access to the Commission's price undercutting calculations in the Confidential Attachments we are not in a position to comment on those calculations, including not only on whether the calculations are correct but also their relevance to the reinvestigation. Nevertheless, as has been accepted that demand for aluminium extrusion products primarily emanates from the residential construction sector, this would indicate that pricing is set from the bottom of market structure in Figure 1 of the Report upwards

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<sup>5</sup> It is assumed that interim dumping duties have been correctly worked out by applying the applicable dumping margin to the export price as required and not to the import price (i.e., customs value).

and not from the top down, with the exception, of course, the effect of LME aluminium prices and the MJP premium on the prices of aluminium extrusion products. That is, the spread in the price in aluminium extrusion products would be governed by demand for product from the construction industry, principally the residential sector.

This, of course, would need to be confirmed by participants at all levels of trade in the Australian market. There is, however, no discussion in the Report of the effects of the market forces such as supply and demand on prices in the Australian aluminium extrusion products market, apart from the well-known effects of LME aluminium prices and MJP premiums, as well as who are the price makers and who are the price takers. This would seem fundamental to analysing pricing and purchasing behaviour in a market other than mathematical calculations to compare and determine whether certain prices are more or less than others.

### *Conclusion*

For the foregoing reasons, it is submitted that the price undercutting analysis in the Report is deficient and that no preliminary findings can be drawn from it.

#### *6. Reinvestigation – customer purchasing behaviour – preliminary findings*

The first point to note regarding the Commission's preliminary findings concerning customer purchasing behaviour is that the Commission had no direct information or evidence from the customers themselves regarding how they made purchasing decisions in the conduct of their respective decisions.

This absence of information and evidence was effectively acknowledged by the Commission in the section of the Report that identified its sources of information and evidence. It is also reflected in Section 3 and 4 of the Report with the absence of references to information and evidence obtained from customers. Presumably this is because such information and evidence were not obtained in the continuation inquiry.

Hence findings concerning customers' purchasing behaviour was not based on actual evidence obtained from customers regarding their purchasing behaviour.

The second point to note is that customers in the Australian market apparently obtained their requirements for aluminium extrusion products for their respective businesses from a variety of sources, both domestic and imported. That is unsurprising as it is commercially prudent to obtain supplies from more than one source, as the pandemic dramatically demonstrated.

Having multiple sources of supply, apart from being commercially prudent to ensure security and consistency in supply, would also suggest that those sources of supply are competitive with each other. However, information and evidence from the customers themselves would be required to confirm this.

The third point is that, given the multiple sources of supply, it is unsurprising that, from time-to-time customers would switch suppliers or switch suppliers for particular products or purchase the same product from multiple suppliers at the same time. There are a variety of reasons why this occurs but it occurs in any competitive market. It is typical, not unusual.

The fact that switching occurs from one suppliers to another and from one supplier's product to another supplier supplying the same product does not appear to be indicative of anything other than typical market conditions. Specifically, in the Australian market it primarily reflects two reasons for switching – limited production capacity and credit.

Customers will switch when the domestic industry is unable to meet demand due to limited production capacity. This became evident during the pandemic when lead times for supply from members of the Australian industry was extending from three to six months and more. This was further compounded with the Australian industry electing to cease production of low value products such a square tubes in preference of high value products for which higher prices and profits could be extracted. Hence customers 'switching' to imports and hence the surge in imports from Indonesia to meet demand due to insufficient domestic production capacity.

Customers also will switch when their credit with one supplier reaches its limit. This is a frequent reason for a customer switching sourcing products from different suppliers.

In any event, the point here is that information and evidence from the customers themselves is and would be required to confirm the reasons for their switching between suppliers in their purchasing behaviour. That information and evidence is absent.

The fourth point is that the Commission's analysis appears focused on purchasing decisions as if they were made in isolation. Customers are operating their respective businesses as businesses in competition with other businesses. Purchasing decisions are one of any number of decisions fundamental to the successful conduct and operation of those businesses. Purchasing decisions are not taken isolation but in the overall context of the conduct of the business. Hence in part the reason for multiple sources of supply, switching suppliers and the product mix from suppliers amongst other things.

The Commission's analysis fails to take this perspective into account. That is, the Commission's analysis is not from the perspective of the customer who is driving demand for aluminium extrusion products and ultimately who supplies the customer with its requirements of aluminium extrusion products for its business. The Commission appears not to have obtained information and evidence from such customers in the continuation inquiry. Rather, the Commission's analysis would seem to reflect only the perspective of the Australian industry and, in particular, one member of that industry.

While suppliers, one would expect, would seek to meet and satisfy the expectations of their customers, that is, the purchasing behaviour of their customers, whether they are successful

in doing so would require confirmation by information and evidence from the customers themselves. That information and evidence is not available.

The fifth point is the Commission's preliminary finding that price is the principal factor in purchasing decisions. On the assumption that that is in fact correct and the Commission's preliminary finding that the subject Malaysian and Vietnamese exports are the lowest priced in the Australian market, being a high price sensitive and transparent market, why do those exports surprisingly hold less than 2% market share?

If price is the principal factor governing purchasing decisions, shouldn't the market share of the subject exports be much greater? Why isn't it? No explanation is proffered by the Commission. Rather it is ignored in its analysis as set out in the Report. Hence the earlier discussion regarding methodology in section 2 of this submission.

Therein lies the problem. Despite considerable analysis of pricing and pricing behaviour in Sections 3 and 4 of the Report, the undeniable fact is that the subject exports from Malaysia and Vietnam hold and have held a market share of less than 2%. There is no evidence and none advanced by the Commission that that market share would materially change and increase in the absence of the anti-dumping measures or how or why they would do so, especially in competition with exports from other countries only some of which are subject to anti-dumping measures, as well as in competition with domestically produced products.

This, of course, is to be contrasted with exports from Indonesia, being Capral's source of imports: see the Commission's Trade Remedy Index: [Trade remedy index \(TRINDEX\) | Department of Industry, Science and Resources](#)

#### 7. *Reinvestigation –exporter pricing behaviour– preliminary findings*

Putting aside all of the foregoing temporarily, the substantive question to be reinvestigated is what will be the pricing behaviour of the exporters if the anti-dumping measures are allowed to expire? That is, will the expiry of the measures lead to or be likely to lead to the continuation or recurrence of exporters exporting at dumped export prices?

The Commission's preliminary finding in this regard was:

*“In a competitive market that is price sensitive, the commission considers that importers will be able to use the dumped import prices, absent the duties previously paid, to advantageously adopt competitive pricing strategies which include undercutting to a greater degree and with more frequency than was observed during the inquiry period. Further, end users which directly import from producers in Malaysia and/or Vietnam will face lower importation costs in the absence of measures. These lower costs will be relevant to their future purchasing decisions.”*

Essentially, the Commission is hypothesising that absent the measures exporters will export at dumped export prices as part of a 'competitive pricing strategy' so as to undercut others

prices in the Australian market to a greater degree and with more frequency to generate greater revenues or profits and that such behaviour will be encouraged by their customers.

An interesting hypothesis that could theoretically happen and exporters could behave in that manner, at least hypothetically. However would they?

Whether exporters would or would not behave in that way is irrelevant. The preliminary finding addresses the wrong question. The question to be asked is:

*‘Could the exporters export to Australia at export prices that are not less than their domestic selling prices in the country of export and for such exports to remain competitive when exported to Australia at those export prices?’*

or, in other words:

*‘What is the commercial benefit for exporters to export to Australia at export prices less than their normal value?’*

Essentially the question is whether the producers/exporters in the subject countries have a comparative competitive advantage? If they do, why would they export to Australia at export prices less than prices in their domestic market when they can obtain higher prices in exports to Australia and, therefore, greater profits than if they sold the same product domestically? Conversely, if they could obtain higher prices and, therefore, greater profits in their domestic market, why would they export to Australia at lower prices?

The Commission does not address that question in its Report. However, that is the only relevant question in assessing the future behaviour of exporters in the absence of anti-dumping measures, especially when exporting to a country whose domestic industry is a frequent user of the domestic anti-dumping regime.

As the Commission is fully aware, neither PMBA nor any other Press Metal conduct has any intention of exporting to Australia at dumped export prices whether anti-dumping measures are in place or not and has taken steps internally to avoid the risk of it doing so. It also has sought the Commission’s assistance and cooperation in this regard and has also proposed consideration be given to a scheme similar to the ‘safe harbour’ scheme in transfer pricing that could operate to the benefit of all stakeholders and for which it is still waiting for a response.

In any event, as referred to in the ‘preliminary observations’ section at the commencement of this submission, the likelihood of exports from Malaysia and Vietnam by the subject exporters increasing following the expiry of the anti-dumping measures has not **[Confidential Information Redacted]** and this despite the increase in demand in the Australian market following the expiry of the measures. The preliminary finding in the Report is factually incorrect in this respect as noted earlier above.

## **8. Reinvestigation – Australian industry and material injury – preliminary finding**

The Commission's assessment of the likelihood of the continuation or recurrence of material injury to the Australian industry was based on the economic performance of one member of the Australian industry, Capral. This was because the Commission considered that Capral, as the largest producer of aluminium extrusion products in Australia, its economic performance was or would be representative of that of the Australian industry as a whole.

No evidence was referred to in support of that assertion.

Capral's economic performance is not and never has been representative of the Australian industry and no evidence in any dumping investigation, inquiry or review been adduced that established that its economic performance is or was representative of the industry as a whole.

The Commission is aware that Capral's economic performance, along with that of G James and INEX, is not representative of the Australian industry. It has been provided with copies of audited financial statements of other members of the Australian industry whose economic performance was materially different. That is, while the economic performance of Capral, along with G James and INEX, was sub-optimal (i.e., unprofitable), that of other members was optimal (i.e., profitable).

A list of the audited financial statements provided to the Commission in the continuation inquiry is contained in a file note prepared by the Commission and placed on the electronic public file: see [591 - 009 - file note - adc - regarding the attachment files of pmaas submission received on 5 november 2021.pdf \(industry.gov.au\)](#) Apparently the Commission maintains a second 'hardcopy' public file in addition to its electronic public file, although this not mentioned in its website or elsewhere nor an index published as to what documents are contained and available to interested parties on that 'hardcopy' public file.

For information, those financial statements are filed pursuant to Division 5 of Part 2M.3 of the *Corporations Act 2001 (Cth)*. The requirements, including contents, of financial statements are set out in Divisions 1 to 4 of Part 2M.3 of the *Corporations Act 2001 (Cth)*. It includes a directors report setting out, amongst other things, *'the entity's principal activities during the year and any significant changes in the nature of those activities during the year'* (Section 299) and must provide a *'true and fair view'* of the *'financial position and performance of the company'* for the relevant financial year (Section 298). Here, of course, the principal activity of the companies in question was the production and sale of aluminium extrusion products in Australia. As investigative agency it seems unusual that the Commission is seemingly unaware of these financial reporting obligations under the *Corporations Act 2001 (Cth)* and have recourse to financial statements filed in accordance with those statutory obligations.

The former's economic performance was not representative of the latter's. If nothing else, the Commission, as an investigating authority, that further investigation was required to determine the reason for the difference in economic performance, including benchmarking

the former's economic performance against the latter's and the effect of import competition (if any) on each's economic performance.

No such further investigation occurred or has incurred despite being warranted. Presumably it is because the only fully cooperating member of the Australian industry has been Capral, which raises the question why the relevant investigation, inquiry or review was not effectively terminated when seven (7) out eight (8) members of the domestic industry were uncooperative but those investigations, inquiries and reviews were proceeded with and decisions made based on information of one (1) member of the industry?

The reason for that difference is reasonably apparent. The three major producers of aluminium extrusion products, Capral, G James and INEX, depend upon significant sales volumes in order to be profitable. If demand from the construction industry, in particular from residential construction, declines so do the fortunes (i.e., profitability) of these three major producers. If, on the other hand, demand from these sources increases, so does the profitability of these members of the Australian industry.

This has been pointed out in submissions to the Commission in various dumping investigations, reviews and inquiries. It also is evident in, for example, Capral's annual reports over any five year period.

The business models of the small members of the Australian industry would seem less dependent upon volume – that is, sales volumes. Rather, their business models would seem to focus on other aspects of the Australian market such as high value market segments that are less dependent upon sales volumes. Benchmarking their business models and economic performance would confirm this.

Capral's economic performance is not only not representative of the Australian industry as a whole for these reasons amongst others but also the business model of the major producers reflects another aspect of the Australian market that has not been addressed by the Commission in the Report. That is:

- when demand for aluminium extrusion products declines due to reduced demand from the construction industry, attempts are made to limit or exclude imports from the market so as to maintain the domestic industry's sales volumes or, at least, those whose business models are dependent upon sales volumes, but
- when demand for aluminium extrusion products increases and exceeds the production capacity of the Australian industry, recourse must be had to imports and the members of the Australian industry will switch domestic production to higher value products and meet the demand of their customers for other low value products by importing product from countries not subject to anti-dumping measures.

The consequence of this, of course, is the high cost of construction materials in Australia and the resultant high cost of construction in Australia, particularly residential construction.

As Capral's economic performance is not and cannot be representative of the Australian industry as a whole, reliance in the preliminary findings in the Report that Capral is representative of the Australian industry as a whole is, of course, a deficiency with the Report affecting the preliminary findings in the report. It cannot be contended that the expiry of the anti-dumping measures would or would likely lead to the Australian industry incurring material injury because it is simply not known what effect, if any, the measures would or would likely have on the Australian industry as a whole, if any.

Further, there is no evidence that the expiry of the measures would result in Capral incurring material injury in any event or, at least, none referred to in the Report, including in Section 7.3. That is, there is no evidence that incurring material injury is more probable than not on the expiration of the anti-dumping measures – only speculative claims unsupported by evidence. Events subsequent to the expiration of the measures have proven this to be correct – no material injury has been incurred since the measures expired whether from the subject exports or from any other source.

#### *9. Reinvestigation – Australian market*

The structure of the Australian aluminium extrusion products market is diagrammatically represented in the Report at Figure 1. It is understood that that that diagram was generated by and obtained from Capral by the Commission to which the Commission made some immaterial refinements.

In any event, the diagram reflects another fundamental problem with the Commission's analysis, that is, it depicts the structure of the Australian industry as being two dimensional when it is, in fact, three dimensional.

Australia is a geographic area with a variety of regions, cities and towns in which aluminium extrusion products are sold at the various levels of trade. This is, in fact, reflected on Capral's website where it shows where in Australia its sales/distribution centres are located.

The Commission's analysis does not take this into account and, in fact, it does not even recognise that Australia, as a market for aluminium extrusion products, is a geographic area. Consequently, there is no analysis of whether and, if so, to what extent the subject exports, given their limited volumes, penetrate into the geographic markets and sub-markets for aluminium extrusion products in Australia at all levels of trade and compete with the domestically produced products as well as other imports in those markets and sub-markets at each of those levels of trade on 'price'.

There is no such analysis in the Report notwithstanding that demand for aluminium extrusion products is generated by the construction industry and residential construction in particular. Hence that demand would be geographic, but there is no analysis of this in the Report and its implications for the Australian aluminium extrusion products market notwithstanding its relevance to the matter under reinvestigation.

10 *Reinvestigation – recurrence of material injury – preliminary finding*

At the conclusion of the Report, that is, at Section 7, the Commission preliminary found that:

*“... the expiration of the anti-dumping measures applying to exports from Malaysia and Vietnam would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the anti-dumping measures are intended to prevent”.*

That preliminary finding was based on the Commission’s assumption that, with the end of the pandemic, the Australian aluminium extrusion products market would return to pre-pandemic conditions whatever those conditions may have been. If that assumption was unfounded and not correct, then, of course, the Commission’s preliminary finding would not and could not be correct.

As at the date of the publication of the Report, with the benefit of hindsight, it is evident that that assumption was in fact unfounded and incorrect. While overseas freight charge may have reverted to more typical levels, the Australian aluminium extrusion products market has not. Demand continues to exceed supply and significantly so, the cost of construction materials is at historically high levels due to demand in the construction industry, particularly in the residential sector, with the result that an increasing number of construction companies have become insolvent. This has been due to their entering into fixed price construction contracts while the cost of construction materials continues to escalate and not due to a fall in demand in the construction industry.

Further, these prevailing market conditions are unlikely to change or abate in the foreseeable future, especially as governments at both Federal and State levels propose investing hundreds of millions of dollars in dwellings, both houses and appartements, to meet the existing housing crisis.

This has been reflected in the economic performance of the Australian industry – that is, all members of the Australian industry and not just Capral.

None has reverted to their pre-pandemic economic performance, although as the Commission is aware only a few members of the Australian industry had sub-optimal (i.e., unprofitable) economic performance at that time. For the reasons discussed earlier above, at least half of the members of the Australian industry were profitable at that time as disclosed by their audited financial statements filed with the ASIC in accordance with the *Corporations Act 2001 (Cth)*.

While the benefit of hindsight is useful, it nevertheless is the case that the Report itself discloses the flaw with the Commission’s preliminary finding. That is, the assumption that the Australian aluminium extrusion market would somehow revert to the market conditions that prevailed pre-pandemic. While that would or should have been the case is not explained.

At no time in history when there has been a pandemic have economic conditions reverted to those that prevailed pre-pandemic. Indeed, the Black Death in the mid-1300s led to the decline of serfdom and feudalism as economic models and the rise of new economic models throughout Europe, as well as parts of Asia. Why then would or could it be expected that economic conditions, including the Australian aluminium extrusion market, revert back to pre-pandemic conditions is not explained. Historical precedent was against such an eventuality.

As the Commission itself acknowledges, the Australian aluminium extrusion markets performance, that is, conditions prevailing in that market are largely determined by three construction markets in Australia, the commercial, residential and industrial. What is missing from the Commission's analysis is an analysis of these three market segments and their likely effect on the aluminium extrusion market post- pandemic even with the phasing out of government stimulus programmes whose effect would continue well afterwards.

The reason for the absence of such an analysis in the Report probably is due to the Commission not having the information and evidence to undertake it due to not being undertaken in the continuation inquiry.

## 11. Conclusion

In conclusion, it is submitted that, for the reasons set out above, the preliminary finding that *'material injury to the Australian industry is likely to continue or recur in the absence of measures'* is neither correct nor supported by the fact or the evidence.

There is no evidence and none referred to in the Report that supports that preliminary finding. Rather, it is submitted that the available evidence, including that referred to in the Report supports the original finding the subject of the reinvestigation, namely that *'material injury to the Australian industry is not likely to continue or recur in the absence of measures'*.

Specifically, there is no evidence that less than the subject exports comprising less than 4% of total imports and less than 2% of the Australian market could materially affect sales volumes and prices in the Australian aluminium extrusion products market, especially when members of the Australian industry have been and continue to be importing aluminium extrusion products in material quantities to make up the shortfall in domestic production capacity.

Finally, it is evident that a principal reason for the deficiencies with the Report and the analyses it contains is due to an insufficiency of relevant and detailed information and evidence regarding all levels of trade in the Australian market. The insufficiency of information and evidence could not and was not overcome by a reinvestigation. As a result it affects all aspects of the reinvestigation such that preliminary finding purportedly made is not supported by the evidence or by the facts.

If you have any questions, please do not hesitate to contact me.

Kind regards

A handwritten signature in black ink, appearing to read 'Andrew Percival', with a large, stylized initial 'A'.

Andrew Percival

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