

Date: 28 July 2023

By Email

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

Dear Commissioner,

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

I refer to my previous submission of 10 July 2023 (**Submission**) on behalf of my clients, 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 memo is to clarify certain points in the Submission concerning the Anti-Dumping Commission's (**Commission**) preliminary reinvestigation report (**Report**), specifically, the points concerning:

- the insufficiency of information and evidence; and
- price undercutting analysis,

as well as to respond to submissions by Capral Limited (**Capral**).

1. Insufficient information and evidence and effluxion of time

The information and evidence relied upon by the Commission in its reinvestigation and upon which it based its preliminary findings, being the information and evidence set out in Sections 2.1 and 2.2 of the Report¹, is insufficient and, specifically, insufficient for the purposes of the reinvestigation and making the preliminary findings.

The insufficiency of information and evidence was in fact acknowledged in both SEF 591 and Report 591. That insufficiency cannot be remedied by a reinvestigation and it hasn't been in this reinvestigation. It remains insufficient to be positively satisfied as required by the legislation that, amongst other things, the expiration of the anti-dumping measures will lead or be likely to lead to a continuation or recurrence of the material injury that the measures are intended to remove or prevent.

¹ It is not apparent what is being referred to in Section 2.2 of the Report – that is, what is being clarified and how? Presumably it is information provided by the parties therein named during the continuation inquiry but, if so, how and why that information was being clarified in the reinvestigation is not explained.

This is discussed further below.

Effluxion of time

It is submitted that the Acting Senior Member of the Anti-Dumping Review Panel (**ADRP**) should have been advised upon receipt of the reinvestigation request of the fact that there was insufficient information available to the Commission to properly reinvestigate the finding in question. Instead, the Commission sought two extensions of time within which to complete the reinvestigation and to report back to the ADRP.

Both of those requests for extension were granted. Consequently, the time within which the reinvestigation was to be completed and for the Commissions to report back to the ADRP was extended by ten (10) months, and, importantly, well in excess of twelve (12) after the anti-dumping measures had expired.

Assuming that no further extensions are sought and granted, the Acting Senior Member of the ADRP will then have several months before reporting and making recommendations to the Minister. The Minister will then have at least 30 days within which to make a decision as to whether to confirm or revoke the original decision and, if the latter, to substitute a new decision.

By that time, the Minister will be making a decision when:

- the information and evidence being relied upon will be well out of date and of historical interest only, given that it relates to a review period of 1 July 2020 to 30 June 2021; and
- the information and evidence obtained in the continuation inquiry is insufficient to overturn the original decision, a point that was made and acknowledged even during that inquiry; and
- the anti-dumping measures, which expired on 27 June 2022, will have been expired for well over 12 months so that the likely consequences of the expiration of the measures will be known; and
- events subsequent to the making of the original decision and consequent expiration of the anti-dumping measures have confirmed that the original decision was the correct decision – that is, material injury to the Australian industry that the measures are intended to prevent or remove has neither continued nor recurred, assuming that it ever occurred in the first place.

The Report makes no mention of this and the fact that subsequent events have confirmed that the reviewable decision of the Minister was the correct decision. Although this was not requested to be addressed in the reinvestigation, including in the granting of the extensions of time, it is submitted that the Commissioner should and must include these matters in his report to the ADRP as being matters relevant to whatever findings are ultimately made in the reinvestigation.

Ministerial discretion

While section 269ZZM of the *Customs Act 1901* provides no guidance to the Minister as to what matters the Minister should or should not take into account when making a decision pursuant to sub-section (1) of 269ZZM of the *Customs Act 1901* other than, presumably, having regard to the report received from the ADRP and while the obligation to make a decision is mandatory, the decision whether to confirm or revoke the original decision is and must be discretionary. Otherwise, why vest that decision in the Minister and why confer a statutory discretion on the Minister when making that decision?

Accordingly, the Minister must have regard to the matters outlined above in the dot points, these being relevant considerations for the Minister to take into account and which, amongst other matters, ultimately will need to be brought to the Minister's attention, particularly given the effluxion of time since the measures expired.

Having regard to those matters, as well as other relevant considerations including the fact that exports by PMBA were erroneously determined to be at dumped export prices in the continuation inquiry, the Minister must affirm the original decision.

There is insufficient evidence for the Minister to be positively satisfied that the expiration of the anti-dumping measures would lead to or be likely to lead to the continuation or recurrence of the material injury that the measures are intended to remove or prevent. If anything, the evidence establishes the opposite, including that PMBA's exports are unlikely to be and have not been at dumped export prices following expiration of the measures.

Further, as noted, subsequent events have confirmed that permitting the expiration of the anti-dumping measures was the correct decisions.

Insufficient information and evidence

Despite the list in Sections 2.1 and 2.2 of the Report, the information and evidence relied upon in the Report principally consisted of that provided by the applicant for the continuation of the anti-dumping measures, Capral, particularly as to pricing and material injury. It also included to a lesser extent, import data from Press Metal and Australian Border force (**ABF**), sales data of PMAA, as well as limited, unverified information from two other members of the Australian industry, namely, G James Extrusions Co. Pty Ltd (**G James**) and Independent Extrusions Limited (**INEX**).

Viewed at from a different perspective, the information and evidence that is absent consists of, amongst other things:

- detailed pricing and sales volume information from seven (7) of the eight (8) members of the Australian industry; and
- detailed financial information from seven (7) of the eight (8) members of the Australian industry as to their economic performance during the review period, including their cost to make and sell, revenues and profits and profitability; and

- information and evidence from other interested parties at all levels of trade in the Australian extrusion products market, such as distributors, resellers, fabricators, Australian manufacturers, and others as detailed in Figure 1 of the Report and, ultimately, end-users of the aluminium extrusion products or products derived from them, on pricing, sales volumes, purchasing behaviour, market conditions and so on; and
- information and evidence on the influence, if any, that export prices of aluminium extrusion products exported from Malaysia and Vietnam had on members of the Australian industry and on the Australian market generally at all levels of trade, especially when such exports from both countries combined held less than 2% market share of the total Australian market, whereas Capral held 26% or more share of that market, the Australian industry in excess of 50% share of that market, exports from China approximately 40% share of that market, and there were exports from other countries in sizeable volumes such as Indonesia, Thailand and Malaysia by other exporters²; and
- information and evidence on the extent to which export prices and, if relevant, the dumping margins applying to the exports in question ‘flowed through’ into the prices of aluminium extrusion products and derivatives therefrom at the various levels of trade set out in Figure 1 in the Report; and
- information on how and to what extent demand from the construction industry and, in particular, the residential construction sector not only affected demand for aluminium extrusion products but also prices for such products, including information and evidence concerning the performance of the Australian construction industry and, in particular, the residential sector both during the review period but also the likely performance following expiration of the anti-dumping measures, including expert opinion from qualified and experienced experts in that industry; and
- information and evidence from ‘customers’ of suppliers of aluminium extrusion products into the Australian market, that is, distributors, resellers, fabricators regarding their decisions to source product from multiple sources, both domestic and overseas and their purchasing behaviour generally.

In assessing competition on price within a market, which, by definition, consists of sellers and buyers, the information and evidence available to the Commission is from a limited number of sellers (i.e., suppliers) and, in particular, one seller that is a domestic producer and none from buyers (i.e., customers). The implications of that insufficiency of necessary relevant information and evidence is self-evident. A reinvestigation cannot remedy this deficit in information and evidence and it hasn’t.

² It is important to note that exports from Malaysia include exports by other Malaysian exporters whose exports are subject to different anti-dumping measures, which were imposed on 2 June 2021 following Investigations 540 and 541, and from Malaysia by the exporters the subject of Continuation Inquiry 591 must be distinguished from those exports.

Further, that deficit is evident throughout the Report, as it was during Continuation Inquiry 591. In any event that deficit in information and evidence has not been and could not be rectified in the reinvestigation.

Despite being aware of and knowing the implications of this deficit in information and evidence, the Commission apparently proposes to report and make recommendations to the ADRP based on such insufficient information and evidence. Why the Commission has not advised and is not proposing to advise the ADRP that there is insufficient information and evidence to fully and properly reinvestigate the finding in question or, at least, reach a different conclusion on the finding in question supported by evidence.

It is submitted that this insufficiency of information and evidence needs to be addressed in the report to be made to the ADRP.

2. Price undercutting analysis

In the Submission attention was drawn to certain problems in using weighed average prices based on the Commission's Model Control Code (**MCC**) in the price undercutting analysis. Whatever benefits the use of MCCs may have in a dumping context, they are unsuitable for use in a price undercutting analysis for the reasons set out in the Submission and in this document.

The following discussion of deficiencies with the price undercutting analysis in the Report is based on the more detailed discussion at **Attachment B** to this memo.

Essentially, the problem with a price undercutting analysis based on MCCs is that MCCs are not 'products' nor 'models' of products. This was in fact recognised in the original dumping investigation, Investigation 362.

Rather, each MCC is a mix of 'aluminium extrusion products' and a mix of 'models' of each such 'product' with each 'model' having its own separate price per piece and sold in different volumes depending upon demand for that 'model'.

Further, the 'products' comprised within an MCC do not compete with one another on price and, indeed, do not compete with one another at all. This is because they are different 'products' with different end-uses and are not substitutable one for another. It also is doubtful whether 'models' of the same product compete with one another. That is, whether there is any price elasticity of demand between 'models' of the same aluminium extrusion product. At least, there is no evidence of any price elasticity of demand between 'models' of the same product as no such analysis has been undertaken.³

³ It is assumed that there is no cross elasticity of demand between different aluminium extrusion products nor necessarily between 'models' of such products because of the end use specific for each. However, typically cross elasticity of demand also would need to be assessed.

Not only has no such price elasticity of demand analysis been undertaken but also undertaking such an analysis appears not even to have been considered, presumably because there is insufficient information and evidence to undertake such an analysis. Nor has the lack of substitutability between different aluminium extrusion products and between different 'models' of the same aluminium extrusion product been considered despite its relevance to a price under cutting analysis.

Such analyses would provide objective, empirical data on the extent and degree of competition between products and 'models' of products in the Australian aluminium extrusion products market to enable conclusions to be drawn on the extent of competition with the Australian market, including the extent of any price undercutting and effect thereof on sales and prices, if any.

The problem, therefore, in comparing weighted average prices between different suppliers of the same MCC is what does any difference(s) in the weighted average prices being compared actually measure? Particularly as it would not be a proper (fair) comparison without appropriate adjustments to take account of differences between the MCCs being compared that affect their respective weighted average prices – that is, it is not a like-for-like comparison given, amongst other things, the product and model mix in an MCC. So, again, what is actually being measured in such a comparison, if anything?

For example, by way of analogy, what would be being measured in a comparison of weighted average prices of a basket of groceries from three supermarkets if the products in the basket were different for each supermarket and there were different brands of products and different 'models' of a product (e.g., different types of pasta) included in the basket and each had its own price point, whether in price per unit or price per gram or price per ml and there were different sales volumes according to the particular market that each supermarket was servicing? Would those weighted average prices inform which supermarket was the least expensive or most expensive? How could it be known as a fact? Would not an adjustment need to be made to the weighted average prices to ensure a proper (fair) comparison – that is, it is a like-for-like comparison – to take account of the differences affecting the weighted average prices?

Also, would the weighted average prices inform which products comprised within the basket were the most popular with customers and of the more popular products comprised within the basket, were they more popular because of price or demand? That is, whether price or demand was driving sales volumes of particular products?

For example, assume an MCC for two suppliers but sales for Supplier 1 during the review period were dominated by the more expensive tee sections, whereas sales for Supplier 2 were dominated by the less expensive tube sections. The weighted average price of the MCC for Supplier 1 would be skewed in favour of the tee sections, whereas the weighted average price of the MCC for Supplier 2 would be skewed in favour of the tube sections. Accordingly a comparison of the two weighted average prices of the MCCs discloses what?

It is not price undercutting by Supplier 2 of Supplier 1. What is being measured by the weighted average prices of each MCC and what does a comparison of those two weighted average prices measure? Hence one of the problems with the price undercutting analysis in the Report.

Similarly, if there a number of baskets each with a different mix of products but with each basket distinguished from the others because of one characteristic of the products comprised in the basket, what would differences in a comparison of the weighted average prices of such baskets show or measure? What would the differences in weighted average prices be measuring, especially when it was not known what was the product mix in a basket apart from the fact that they shared one common characteristic and it was not known what the individual prices and sales volumes for each product in a basket?

Additionally, a price undercutting analysis based on a comparison of weighted average prices of suppliers for products comprised within an MCC does not provide for a proper (fair) comparison – that is, it is not a like-for-like comparison – without:

- knowing precisely the products comprised within each basket being compared; and
- knowing the prices of each such product and sales volumes of each; and
- making the necessary adjustments to the weighted average prices to take account of those differences in the product and model mix comprised within the MCCs being compared, as well as differences in sales volumes and prices in the various products and models comprised within the MCCs, as they affect the weighted average prices being compared differently.

These facts are not known and, consequently, the necessary adjustments have not been made. Hence the problem of drawing a meaningful conclusion from a comparison of the weighted average prices of MCCs.

Even if appropriate adjustments are made, the question would still remain as to what the comparison in weighted average prices is measuring given that the products comprised within the MCCs and probably also each of the models of aluminium extrusion products comprised within the MCCs do not compete with other products or with other models of the same product, whether on price or otherwise. Rather, they only compete and compete on price with identical products and with the same 'model' of that product. That the price of one 'model' of a product, for example, is less than the price of another 'model' of the same or of a different product merely indicates the prices for those products are different. One is not undercutting the prices of the others because they do not necessarily compete with one another on price or otherwise. Hence what is being measured?

There is no analysis in the Report, nor any findings of fact supported by evidence, of the nature of competition within the Australian aluminium extrusion products market. An analysis of the nature of competition in the Australian market, involving information and evidence obtained from all participants at each level of trade in that market, is necessary to

determine what price undercutting and any other analysis is required to assess the effects of the prices of the exports in question on the market and the domestic industry in particular.

In this context, claims that the market is 'highly price sensitive' is not meaningful, especially as the claim is anecdotal and not supported by empirical evidence. Such claims typically are proffered to avoid the necessity of referring to evidence that supports the claim. Further, information and evidence as to the effects pricing have on purchasing decisions and behaviour from participants in the market is required to enable an empirical objective assessment of the price elasticity of demand, including the import price elasticity of demand, within the market to provide objective data for which a meaningful conclusion can be drawn as to whether and to what extent the market is price sensitive.⁴ That analysis has not been undertaken. Anecdotal information and evidence, particularly from one interested party, is not sufficient.

Interestingly, the price undercutting analysis in the Report is not relied upon as evidence of the 'influence' of the export prices of the subject exports from Malaysia and Vietnam on the prices of the aluminium extrusion products produced and sold by members of the Australian industry and the Australian market generally being a 'highly price sensitive' market. This would be because the comparison of weighted average prices of MCCs does not quantitatively measure the price elasticity of demand between aluminium extrusion products and, therefore, the influence of one on another. Instead, anecdotal evidence is relied upon and limited anecdotal evidence at that.

Importantly, in a price undercutting analysis of products in a 'highly price sensitive' market, a relevant consideration would be whether exports of the product in question would undercut the prices of the domestically produced products even at un-dumped prices. That is, whether the exports possess a comparative competitive price advantage over the domestically produced products? Further, whether exports from other countries also possess a comparative competitive price advantage over the domestically produced products? These and similar matters have not been addressed in the Report.

Again, the issue is what is actually being measured by a comparison of weighted average prices of different suppliers based on MCCs? This is not explained in the Report. The absence of an explanation presumably is because there the methodology to be employed in the reinvestigation has not been set out and tested as fitness for purpose, an issue raised in the Submission. A detailed, transparent methodology would have identified the issues to be reinvestigated, how they were to be reinvestigated, what empirical, objective and quantitative analysis was required for their reinvestigation, and what information and evidence was required to undertake that analysis in order to provide objective, quantitative

⁴ There is considerable WTO jurisprudence on the risks associated with relying on limited sources of information and that such risks should be identified and steps taken to eliminate or minimise the attendant risk of reliance upon limited sources of information and evidence. That jurisprudence, in addressing the issue, also recognised the inherent problems for investigating authorities in obtaining information and evidence from all stakeholders..

data from which meaningful conclusions could be drawn. This is seemingly missing in the reinvestigation and, consequently, in the Report.

In addition, in the above scenario regarding supermarkets, what information and evidence is there of the customers' purchasing behaviour? What is known about the customers – what is the socio-economic background of the customers each supermarket is supplying, what is their background, family composition, how close do they live to the supermarket, what is the demand for particular products as opposed to others in the particular area being supervised by the supermarket and so on. These are all relevant to the purchasing behaviour of customers, which is also relevant in a price undercutting analysis.

In the same way, the Australian aluminium extrusions products market is not simply the two-dimensional structure depicted in Figure 1 of the Report but it is three-dimensional market spread throughout geographic Australia consisting of a variety of sub-markets. As such demand for aluminium extrusion products will vary across market segments in geographic regions. This is also relevant in a price undercutting analysis, that is, to assess the presence and extent of any price undercutting in market segments and across geographic areas.

Accordingly, to what extent have the subject exports penetrated into the Australian market, both in terms of level of trade and geographically, as compared with those of the Australian industry? To what extent, if at all, do the subject exports compete with the domestically produced products on price in those sub-markets? Such analysis and findings of fact supported by evidence are missing from the Report.

These deficiencies in the price undercutting analysis presumably are to be attributed to the insufficiency of information and evidence pertaining to the Australian aluminium extrusion products market and its operation, as well as the sufficiency of information on information and evidence on prices and sales volumes at the various levels of trade by participants at each of those levels of trade and across geographic areas.

No doubt that deficit in information and evidence is attributable in part and, perhaps, principally because of the lack of cooperation and participation of stakeholders, including seven (7) of the eight (8) members of the Australian industry, in the continuation inquiry, as well as in other investigations, reviews and inquiries.

It is not apparent why a reinvestigation over a 10-month period would be undertaken in circumstances where it was known that the insufficiency of information and evidence could not be remedied and where that insufficiency was attributable, at least in part, to the uncooperative and non-participation of seven (7) of the eight (8) members of the Australian industry. Why persist with a reinvestigation where only one (1) member of the Australian industry had been actively cooperative in the continuation inquiry?

In any event, for the reasons outlined above, the Commission's preliminary finding in the Report is not supported by either its analysis or the evidence. Rather, the deficit in

information and evidence effectively precludes the preliminary finding – that is, there is insufficient supportive evidence of the preliminary finding and, unsurprisingly, events subsequent to the expiration of the measures disprove the preliminary finding.

It submitted that as it is known as a question of fact that, due to events that have occurred subsequent to the expiration of the anti-dumping measures, *'material injury to the Australian industry continuing or recurring in the absence of measures'* has not occurred, this should be acknowledged in the report to the ADRP. Why report a finding, for whatever reason, on what is believed to be the likelihood of an event occurring when it is known that event has not in fact occurred?

3. Other issues in the price undercutting analysis

The problem with the price cutting analysis identified above is, of course, not the only issue regarding that analysis in the Report. Other problems concerning the price undercutting analysis include:

- **(measuring causation):** there is no evidence in the price undercutting analysis that that analysis measures competition between the subject exports and the domestically produced products on price that can cause injury to the domestic industry especially when MCCs are not themselves 'products' and when individual aluminium extrusion products comprised within an MCC and 'models' of each such product are not substitutable for other aluminium extrusion products. Indeed, it is not apparent what the price undercutting analysis purports to measure and this is not explained in the Report as there is no articulation of the methodology being employed in the reinvestigation; and
- **(into-store costs):** comparing an importer's 'into-store costs' of imports versus domestically produced products on the pretext that an 'into store cost' is an 'FIS price' when it is factually not – the costs added to derive the into-store cost are not included or represented in the 'price' for the product. Further, that 'into store cost' fails to take into account a variety of factors relevant to an entity obtaining product from overseas, as well as domestically – that is factors affecting their purchasing decisions. Security and timeliness of supply are important. Typically this means a two-to-three-week domestic supply time, as opposed to two to three months' supply time from overseas suppliers until recently when supply times became considerably extended including for up to and over six months from certain domestic suppliers. This obviously affects prices and storage costs in maintaining stock levels, as also does the availability of credit from suppliers. However, these factors were not taken into account in the 'into store cost analysis' although relevant. Why not? Is it because the data for the "customer analysis" has been obtained from the supplier and not from customers and then only from one domestic supplier?; and
- **(levels of trade):** the analysis did not extend to all of the levels of trade depicted in Figure 1 in the Report notwithstanding that demand for aluminium extrusion products was acknowledged in the Report as being driven by residential construction in the

Australian construction industry, which is at the lowest level of trade in Figure 1, and this would require an analysis of the flow through of any dumping to prices at that level of trade to identify whether and the extent to which dumping was resulting in price undercutting at that level of trade. As noted earlier above, the analysis did not extend geographically to take into account differences in demand across geographic areas ; and

- **(influence on price):** apparently export prices from Malaysia were the lowest prices and “influenced” prices of the Australian industry (as represented by Capral) and in the Australian market. Not only is it not clear who made those claims but also those claims were not verified by obtaining relevant evidence. In any event, assuming the claims to be correct, the question is whether Malaysia export prices were the lowest export prices to Australia as well as being the lowest prices in the Australian market and, if so, why? That is, does Malaysia possess a comparative competitive advantage over other countries, including Australia and China, in the production and supply of aluminium extrusion products? In other words, there is no analysis of whether price undercutting by the subject exports would occur regardless of any dumping because of Malaysia and Vietnam having a comparative competitive advantage in the production and supply of aluminium extrusion products over other countries including Australia. This would seem relevant to a price undercutting analysis, as well as to why exporters would export at dumped prices if they possessed a comparative competitive advantage. Further and importantly, the price undercutting analysis was not used to quantitatively and empirically measure the ‘influence’ that export prices of Malaysian and/or Vietnamese exports had on prices in the Australian market, presumably because of the shortcomings of that analysis discussed earlier above in terms of what a comparison of weighted average prices of MCCs actually measures; and
- **(attribution):** no analysis of whether any price undercutting could be attributed to dumping of the subject exports and, if so, to what extent, nor any analysis of whether and to what extent the subject exports would undercut the prices of the products of the Australian industry and others in the Australian market at un-dumped export prices, nor an assessment whether and to what extent, if any, a margin of dumping flowed down through the pricing at the various levels of trade and the resultant price undercutting at each such level of trade, particularly that level of trade that determines demand for aluminium extrusion products; and
- **(economic performance):** no evidence that price undercutting (if any) affected the economic performance of the Australian industry, either as represented by Capral or as a whole⁵. That is, an assessment of a causal link between any price undercutting and the

⁵ It is noted that the ADRP considered the issue of whether a number of members of the Australian industry would be sufficient to represent that Australian industry as a whole and determined that they could: refer ADRP Report Nos 135 & 137. However, the ADRP appears to have misconceived ‘production’ with ‘sales’ in that review – that is whether a number of members of the domestic industry could represent the Australian industry for certain purposes based on their production capacity. However, whether those members could also represent the domestic industry’s economic performance in the domestic market is unrelated to their production capacity but their performance in the relevant domestic market was not addressed, that is, to what extent production capacity was relevant to economic performance in the domestic market. As the financial

extent of the price undercutting to any injury it was purportedly causing to the Australian industry and the materiality of that injury, especially when the subject exports held less than 2% share of the Australian market.

4. Other issues in the Report

Likelihood of price behaviour in absence of the anti-dumping measures

At Section 4.3.4 of the Report the Commission made the following statements regarding pricing behaviour in the absence of the anti-dumping measures:

“The commission considers that, whilst other factors such as security of supply, quality and provision of service are relevant, price is the highest-ranking factor in purchasing decisions. This is evidenced by:

- *The material number of common customers obtaining supply from more than one source.*
- *Evidence of common customers dual sourcing the same models in the same month from multiple suppliers.*
- *Customers switching between suppliers, including some examples of customers potentially switching to a lower priced supplier.*
- *Importers, at times, sourcing from multiple import sources, with some importers switching import sources in a likely response to the imposition of measures.*
- *A high degree of price transparency in the market, with pricing based on published movements in the LME and common customers considering pricing from multiple sources.*
- *A significant degree of price correlation in the market where common customers are purchasing similar models at similar levels of trade.*

Given that price is a key element in purchasing decisions, this results in a high degree of price sensitivity in the Australian market for aluminium extrusions.”

The problem with the foregoing is that the conclusions reached by the Commission are not supported by the matters it claims supports those conclusions. For example:

- **(ranking of purchase factors):** there is no evidence as to what is the highest-ranking factor in purchasing decisions by ‘customers’, at least none referred to in the

statements of other members of the Australian industry filed with the Australian Securities and Investments Commission (ASIC) demonstrated, their economic performance is different from those purporting to represent the whole of the Australian industry. They do not, as a question of fact supported by evidence. Unfortunately the ADRP Panel Member in ADRP Reviews Nos 135 & 137 apparently was unaware of financial reporting obligations of entities under the *Corporations Act 2001 (Cth)*, nor did the then Anti-Dumping Commission draw to the attention of the Panel Member that both the Commissioner and the Minister were in possession of such financial statements of members of the Australian industry before the Minister making the reviewable decision being reviewed.

Report. It also is unlikely that customers would rank or assign importance to certain factors over others in making purchasing decisions. If price was the highest ranking, then would other factors, presumably, would have no influence on purchasing decisions unless prices were identical and for the identical product. That seems unlikely. To assess the price elasticity of demand empirical analysis is required and it has not been undertaken, again, presumably, due to the insufficiency of information; and

- **(business not transactions):** customers of suppliers of aluminium extrusion products are managing their 'businesses', which cannot be undertaken on a transaction-by-transaction basis. To do so would be fatal for the business. In managing the business, purchasing decisions are made in that context – that is, a customer will have regard to the requirements of its business for aluminium extrusion products, what products are required when, how to ensure security to supply for when the product are required and when supplied they meet relevant specifications and quantities required, the lead times in obtaining supply both from domestic and overseas suppliers especially since the lead times for both have extended materially not only due to the pandemic but also to increased demand in the Australian residential construction market, which flows into ensuring that there is sufficient stock in hand to meet the requirements of the business, any quality, delivery and service issues with particular suppliers and the availability of credit from particular suppliers and so on.

All such matters need to be and are factored in by customers in making purchasing decisions affecting the business, with the disadvantage of some being offset against the benefits of others – in short, it is a mix of factors that are taken into account by the customer to work out which mix is best for its business. It can only be seen from the customer's perspective in managing its business. However, as Section 2.1 of the Report discloses, the Commission does not have information and evidence from the customers of suppliers. The Commissioner, therefore, does not have the necessary information and evidence to make findings of fact regarding customers' purchasing decisions – businesses purchasing product are being managed by the customer, not the supplier, and purchasing decisions are made by the customer in the interests of and from the perspective of the customer's business, not the supplier's. Hence, information and evidence from the customer, not the supplier, is required to make findings of fact concerning purchasing decision by customers and that information and evidence has not been obtained or provided by customers as the Report discloses and, therefore, is not available to the Commission to make findings of fact regarding purchasing decisions made by customers in the interests of their businesses; and

- **(multiple sources):** if 'customers' are sourcing product from more than one source, that is, from multiple sources, then price is not and cannot be the determining factor – that it is not the determining factor is consistent with a

decision to source from multiple sources. Security of supply and credit are more likely the determinants of having multiple sources of supply and possibly others, especially when the domestic industry has limited production capacity and especially in times of high demand and when there are supply and service issues with the domestic industry; and

- **(switching suppliers):** anecdotal evidence of ‘customers’ switching to a different supplier, presumably based on information and evidence provided by a supplier, is not objective, empirical evidence of purchasing behaviour or decisions of ‘customers’ on any analysis, particularly when it is statistically insignificant, such as the examples given by Capral of several such instances of switching that was provided in response to Statement of Essential Facts 591, which the Commission found insufficient then and remains so. Again, information and evidence from customers is required to make findings of fact concerning decisions by customers to switch sources of supply whether from domestic to overseas suppliers or between overseas suppliers in the same of different countries and/or between domestic suppliers; and
- **(imposition of measures):** the suggestion that ‘switching import sources in a likely response to the imposition of measures’ may occur is speculative as a ‘likely response’ with no evidence of this occurring and even if it occurs, what does it prove – again, it is at best anecdotal and it can only be anecdotal because there is insufficient information and evidence to undertake an objective, empirical assessment as discussed earlier above. The substantive issue is whether, when faced with an increase in costs of a particular kind, how will a customer respond from a business perspective? Again, it needs to be seen from the perspective of the customer. If it is an increase in the price/cost of imports from a particular overseas supplier due to the imposition of anti-dumping measures, will the customer switch to other overseas suppliers including in countries not subject to measures such as Indonesia or Thailand in preference to domestic suppliers or even to overseas suppliers in countries subject to measures such as China whose exports hold a 40% share of the Australian market or to a domestic supplier or to a combination of the foregoing. The Commission is not in a position to know how customers will respond to an increase in prices/costs of a particular kind without information and evidence from customers as to the management of their business and the making of purchasing decisions to enable findings of fact supported by evidence to be made – information from a supplier simply provides the supplier’s perspective, especially if it is only from one supplier, and renders any findings speculative unsupported by probative evidence at best; and
- **(correlation in prices):** the statement that there is a ‘significant degree of price correlation in the market where common customers are purchasing similar models at similar levels of trade’ is not meaningful. If it is referring to prices for the same model of aluminium extrusion products being the same or similar at each level of trade, that is hardly a surprising finding. The same would or should be found in any

market for the same or similar models of any product. However, the problem exists, as discussed earlier above, to what extent is there any price elasticity of demand between *'similar models'* and what in fact are the *'similar models'* here being referred to? The mere similarity in price is only evidence of similarity in price – it is not of itself evidence of switching between similarly priced models of a product or the extent of any such switching. There is no evidence of or the extent of any such switching in the Report. Further, the *'common customers'* are purchasing similar models at similar levels of trade at similar prices may and probably is more about security of supply and credit terms from different suppliers, than about price – if prices are the same and similar but purchases are from different suppliers, that would indicate purchasing decisions are being made from reasons other than price because if price was paramount and all other factors were equal between suppliers, why not purchase from a single supplier? This has not been addressed and, again, would require information and evidence from customers to enable meaningful findings to be made; and

- **(pricing key):** the concluding statement *'that price is a key element in purchasing decisions, this results in a high degree of price sensitivity in the Australian market for aluminium extrusions'* is a mere assertion, not a finding of fact supported by evidence. As Aristotle would advise, the statement is illogical as an exercise in logic for a number of reasons including being based on a number of unfounded assumptions. It assumes that price is a *'key element in purchasing decisions'*, which may or may not be correct but does not inform to what extent it is a key element in purchasing decisions. Nevertheless, assume that is correct, it does not inform what are the other key elements in purchasing decisions and what elements are not key elements and why. In addition, how that key element alone results in a *'high degree of price sensitivity'* is not explained, including what a *'high degree of price sensitivity'* means and how has it been measured and from whose perspective and so on? While price is likely to be a factor in purchase decisions and a major factor, it is not the sole factor nor the only major factor in making purchasing decisions in the management of a customer's business. That price is an important factor does not mean that the Australian market is characterised as possessing a *'high degree of price sensitivity'*. All markets are price sensitive – it is what defines a market. How sensitive a market is to changes in price and/or differences in prices between *'competing'* products requires an objective, empirical price elasticity of demand analysis to provide quantifiable data from which meaningful conclusions may be made. That analysis is missing, no doubt due to the insufficiency of information and evidence. Hence the above statement is illogical and not meaningful.

Fundamentally, what is missing is the relevance of the above extract from the Report to the fact that exports from Malaysia and Vietnam by the exporters in question hold less than 2% of the Australian market before, during and after the review period and before, during and after the pandemic and why that is the case if price is a key factor in purchasing decisions in a highly price sensitive Australian market and prices of the exports in question are the

lowest in the market? Why haven't the exports in question increased their market share at any time but apparently will in the absence of the anti-dumping measures. On what evidence is such expectation that the occurrence of this is more probable than not in the absence of the measures when it has not occurred in the past?

As discussed in the Submission, the Commission's finding appears to be predicated on that the unprecedented high overseas freight costs due to the pandemic will cease with the end of the pandemic resulting in a fall in export prices of the exports from Malaysia and Vietnam by the exporters in question. This, in turn, will confer on their exports a comparative price advantage. While it is not apparent why the exporters would reduce export prices in such circumstances, particularly after the challenging trading conditions resulting from the pandemic, or to what extent and no evidence adduced by the Commission why they would or the extent that they would, nevertheless, on the assumption that were this to occur, it is not apparent:

- why this would result in a loss of sales for the Australian industry – presumably a change in overseas freight rates would affect exports from other exporting countries similarly. Would they not be in a similar comparative competitive advantage to the Australian industry as a result, especially when those other exporting countries are the major sources of supply as compared to Malaysia and Vietnam. In short, it is not explained how a change in freight rates would change, including materially change, the existing market share of less than 2% for the subject exports from Malaysia and Vietnam, the 40% market share of exports from China, the over 50% market share of the Australian industry and the market share of exports from exporting countries such as Indonesia and Thailand not subject to measures; and
- why the ebb and flow of a cost, such as freight costs or, for example LME aluminium prices and MJP premiums or other costs to make and sell products are relevant to dumping other than in relation to issues of profitability given that dumping is principally if not exclusively concerned with 'prices', not 'costs, nor whether and why there is a direct relationship between 'costs' and 'prices' – if there was, why negotiate prices in a market and how could prices be 'highly sensitive' if there was such a direct relationship; and
- why exports from one or more country may possess a comparative competitive advantage over producers in the importing country is relevant in a dumping context other than to establish that the allegedly dumped exports would possess a comparative competitive advantage over the domestic products in the importing country on price even if un-dumped – this of course then raises the question why would exporters in the exporting country with a comparative competitive advantage export at dumped prices when higher prices can be obtained in the importing country than in the country of export and, consequently, greater profits?

The reasons why the conclusions are not supported by the evidence is presumably because there is an insufficiency of relevant evidence to support the conclusions. Without relevant

evidence, it is not possible to make any meaningful conclusions/findings regarding the purchasing behaviour of 'customers'. Anecdotal information and evidence principally from one 'supplier' to the market, Capral, , which was considered insufficient in that inquiry, remains insufficient now.

Therein lies the fundamental problem with the preliminary findings in the Report – there is insufficient information and evidence to make the preliminary findings purportedly made.

This is self-evident from the Report itself. It is evident from the text and language used in the Report, such as in the above extract, with multiple inferences being drawn from unidentified sparse anecdotal references to certain behaviours of entities from unidentified sources from which equally vague claims are made and conclusions drawn. This is as opposed to information and evidence from the entities making the purchasing decisions in the conduct of and in the interests of their businesses. Had sufficient relevant information and evidence existed, then there would no doubt be positive, clear findings of fact based on identified, objective relevant evidence with clearly articulated reasoning as to what that evidence established or disclosed and why it supported the finding of fact. That is not the case in the Report, unfortunately.

Likelihood of material injury continuing or recurring on expiration of the measures

At section 7.3.3 of the Report the Commission has preliminary found that:

*“Taken together, these factors **suggest** that, upon expiration of the measures, the Australian industry would likely be required to respond to Malaysian and Vietnamese import prices by reducing prices or suppressing any potential price increases to remain competitive (or otherwise risk losing sales volume to imports from Malaysia and/or Vietnam) – which is the material injury that the measures are intended to prevent.”* (emphasis added)

In other words, there is only a 'suggestion', a theoretical possibility, that expiration of the anti-dumping measures would lead or be likely to lead to a continuation or recurrence of material injury caused by dumping that the measures are intended to remove or prevent, but no evidence that that outcome is probable – that is, its occurrence is more likely than not. Further, that material injury would take the form of price related injury (i.e., price depression and suppression) as opposed to sales volume injury, which would occur only if the Australian industry (as represented by Capral) did not depress and suppress its prices,

Of course, as the Commission is aware, events subsequent to the expiration of the anti-dumping measures have confirmed that that outcome has not in fact occurred. This both indicates and confirms that the analysis in the Report is flawed.

However, putting that issue aside temporarily, the fundamental assumption in the above finding is that the Australian industry '*would likely be required to respond to Malaysian and Vietnamese import prices by reducing prices or suppressing any potential price increases*'.

Why the Australian industry would likely respond to exports that hold less than 2% of the market in this manner is not explained, nor supported by objective empirical evidence. If exports from Malaysia and Vietnam are the major influence on prices in the Australian market, as appears to be being contended, then why is their market share not greater?

As discussed earlier above, a price undercutting analysis should measure whether and the extent of any influence one group of prices, that is, the prices of certain exports, have on the prices of the products of other participants in the market, both domestic and overseas. However, for the reasons discussed, the price undercutting analysis in the Report does not provide such a measure. So it is not known as question of fact supported by evidence why members of the Australian industry would need to depress and/or suppress prices or to what extent or to what extent that is attributable to dumping.

Further, the pandemic with unprecedented overseas freight costs was only for about 12 or more months. Would the subject exports from Malaysia and Vietnam possess a comparative competitive advantage if and when freight rates returned to typical historic levels and would whether at dumped or un-dumped export prices? How would this compare with exports from other exporting countries some of which are subject to anti-dumping measures (e.g., China) and some not (e.g., Indonesia and Vietnam)?

Where and what is the evidence that the Australian industry, that is, all eight members of the Australian industry, would lose sales volumes if they failed to reduce prices to match Malaysian and Vietnamese export prices? Where and what is the evidence that exports would necessarily reduce prices and materially in response to a decline in overseas freight rates? Doesn't that assume that all other market conditions remain constant after the pandemic has ended and what is the evidentiary basis for that assumption?

As the Commission's finding appears predicated on a reduction of the unprecedented high overseas freight rates during the review period, how would a reduction in those rates to typical historic levels confer on the allegedly dumped subject exports a price advantage in the Australia market? Did they possess that price advantage prior to the pandemic when freight rates were lower and, if so, to what extent was that price advantage attributable to freight rates and no other factors? In this regard, it must be noted that anti-dumping measures only commenced to apply to PMBA's exports in June 2021 and, as was submitted, were incorrectly then determined and in Accelerated Review 577 (see footnote 6),

In the case of PMBA's exports the current (erroneous) dumping margin of 2.6% is 0.6% above being negligible. It is difficult to see how the absence of anti-dumping measures based on a dumping margin of that magnitude, even if correct, could confer a material price advantage or whether that price advantage would exist if the measures were continued at that level or the relevance of freight rates in this context.

However, in Continuation Inquiry 591, a different dumping margin was determined for PMBA's exports but that determination of dumping was wrongly determined. This has effectively been confirmed to be the case. The disallowance of a level of trade adjustment

to the normal value when being compared with export prices was wrongly disallowed. It should have been allowed and made. When allowed and made, the correct determination is that set out in the Korda Mentha report as submitted in the continuation inquiry, a non-confidential version of which is on the Commission's public file. It clearly sets out the error in the dumping determination. That error requires rectification as set out in the Korda Mentha report, with the result that PMBA's exports were not being dumped, which is consistent with previous findings⁶. Upon rectification of that finding, which is required, the reinvestigation of the findings on material injury and causation in Continuation Inquiry 591, along with the appeal to the ADRP, become otiose at least in so far as PMBA's exports are concerned. That is, there is no likelihood of dumping of exports by PMBA continuing or recurring because PMBA's exports have not previously been exported at dumped export prices.

Fundamentally the Report contains no objective, empirical and impartial analysis of competition between the subject exports, which hold less than 2% of the Australian market, and the domestically produced products on price at each level of trade. The reasons for these deficiencies in the analysis are self-evident – the insufficiency of information and evidence necessary to make relevant findings of fact concerning:

- competition on price between not only the subject exports and the domestically produced products but also exports from other exporting countries, some of which are subject to measures and others not, the hold in excess of 40% of the Australian market; and
- the shortfall of domestic production capacity in meeting demand by over 50%, resulting in not only domestic customers sourcing their requirements from overseas sources as well as domestic sources but also the Australian industry sourcing product from overseas to satisfy demand that they are unable to meet from domestic production.

How, in such circumstances, the subject exports with less than 2% market share could materially injure the Australian industry with or without the anti-dumping measures is inexplicable and not addressed in the Report. In any event, it has not occurred with or without the measures and it has not occurred since the expiration of the measures.

It is evident, therefore, that the preliminary finding, that is, the 'suggestion' that *'upon expiration of the measures, the Australian industry would likely be required to respond to Malaysian and Vietnamese import prices by reducing prices or suppressing any potential price increases to remain competitive (or otherwise risk losing sales volume to imports from*

⁶ The finding of a dumping margin of 2.6% in Accelerated Review 577 was due to the post-exportation deduction of "actual" overseas freight costs as opposed to such costs "represented" in the export prices. Actual costs cannot be 'represented' in prices because prices are set before the costs are actually incurred. Such costs, as represented in prices are, in accordance with industry practice, based on recent historic amounts of such costs. Had the amount of overseas freight costs represented in the export prices been deducted, instead of the actual costs, the finding would have been one of no dumping.

Malaysia and/or Vietnam) – which is the material injury that the measures are intended to prevent’ is wrong.

It has not happened in the past and there is no evidence that supports the proposition that the likelihood of this occurring is more probable than not following the expiration of the anti-dumping measures.

In any event, as a question of fact, it has not occurred. In the case of PMBA, the volume of its exports to Australia have declined since the expiration of the anti-dumping measures despite the increased demand in the Australian market due to the increased demand from the Australian residential construction industry. The Commission can confirm this from ABF import data.

Again, why is it not acknowledged in the Report that whatever may have been the position when the Commissioner reported to the Minister in Continuation Inquiry 591, that has been superseded by subsequent events and those facts, in fact, confirm that the Commissioner’s report and recommendation to the Minister to permit the measures to expire and the Minister’s decision to follow that recommendation to permit the measures to expire was the correct decision. The expiration of the anti-dumping measures has not led to a continuation or recurrence of the material injury that the measures are intended to prevent – simple question of fact supported by evidence.

Implications of Capral submissions

I also note that Capral has made submissions to the Commission in response to the Report, including its submission of 20 July 2023. The matters addressed in this document address Capral’s submission without doing so on a point-by-point basis.

However, what is interesting, although unsurprising, is Capral’s concurrence with the preliminary finding that the subject exports from Malaysia and Vietnam could cause it material injury in the absence of the anti-dumping measures.

It is interesting because those exports hold and are only likely to hold less than 2% of the Australian aluminium extrusion products market. In other words, Capral’s aluminium extrusion products business is apparently so operationally and financially tenuous that exports holding less than 2% of the Australian market would or could cause its business material injury on the expiration of the anti-dumping measures or so it seems to be claiming.

If correct that its business and economic performance could be so affected, then it would seem not unreasonable to expect that this would likely have a material effect on the price and/or value of Capral’s securities (e.g., shares) listed on the Australian Stock Exchange (**ASX**). That is, that exports holding less than 2% market share could materially adversely affect its principal business and economic performance would not unreasonably be expected to have a material effect on the value and/or price of its securities.

Presumably, therefore, this is information that is and should have been disclosed to the market pursuant to Rule 3.1 of the ASX Listing Rules:

“Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity securities, the entity must immediately tell the ASX that information.”

That the subject exports from Malaysia and Vietnam, which exports hold less than 2% of the Australian market, could cause material injury to Capral’s aluminium extrusion products business, being its principal business, in the form of reduced revenues and reduced profits and profitability as a result of the expiration of the anti-dumping measures would seem information that ought to have been disclosed to the market upon expiration of the measures.

There was, of course, no disclosure on or about 27 June 2022, the date of the expiration of the measures, by Capral, nor subsequently. It, therefore, would appear that Capral itself did not and has not considered the expiration of the anti-dumping measures as having a material effect on its business and, therefore, on the price and/or value of its securities. Presumably, this is because the expiration of the anti-dumping measures in fact would not lead to or be likely to lead to the continuation or recurrence of material injury caused by the subject exports, if any, that the measures were intended to prevent.

5. Summary of submissions

Finally, for convenience **Attachment A** sets out a summary of the submissions made in the Submission.

6. Conclusion

In light of the Submission and the foregoing, the preliminary findings in the Report are not supported by evidence. Indeed, there is insufficient information and evidence to support the preliminary findings just as there was insufficient evidence in Continuation Inquiry 591 to support certain findings of fact being contended for by Capral in that inquiry. That position could not change as a result of the reinvestigation.

The lack of sufficient information and evidence has led to and resulted in deficiencies in the analysis relied upon in making the preliminary findings in the Report, being the deficiencies as detailed in the Submission and in this document, particularly the price undercutting analysis but also the likelihood of material injury continuing or recurring following the expiration of the measures.

In addition, subsequent events have demonstrated and confirmed that the Minister’s decision to permit the anti-dumping measures to expire was the correct decision. The expiration of the anti-dumping measures has not led to a continuation or recurrence of the material injury that the measures are intended to prevent – simple question of fact supported by evidence.

Finally, subsequent events have also demonstrated and confirmed Press Metal's contention that PMBA's exports to Australia have not been and are not being at dumped prices and that the determination that they were in Continuation Inquiry 591 was incorrect for the reasons contended by Press Metal in that inquiry as the Commission is aware. As submitted, this error needs and must be corrected and would need to be rectified in any reconsideration by the Minister of the decision to permit the measures to expire.

In the circumstances, the Commissioner's report to the ADRP should be that he confirms his findings in Continuation Inquiry 591 that, on the evidence, it was not possible to be positively satisfied that the expiration of the anti-dumping measures would lead or be likely to lead to the continuation or recurrence of the material injury that the measures are intended to prevent or remove and, therefore, confirms his recommendation to the Minister that the anti-dumping measures be permitted to expire..

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' at the start.

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Attachment A

Summary of Principal Submissions

The following is a summary of the principal submissions made in the 10 July 2023 submission in response to the Anti-Dumping Commission's (**Commission**) Preliminary Reinvestigation Report (**Report**):

1. **(PMBA's exports):** As:
 - it has been confirmed that a level of trade adjustment was warranted in relation to sales by PMBA through its division JB; and
 - that the level of trade adjustment be made in accordance with the appropriate methodology and usual practice, being the methodology used by Korda Mentha in its report; and
 - when that level of trade is made, the resulting determination is that PMBA's exports were not at dumped export prices, as disclosed in the Korda Mentha report as well as submissions made by Press Metal in the continuation inquiry,

the recommendations to the Minister in Continuation Inquiry 591 need to be rectified to reflect the foregoing and correct the erroneous findings of dumping in relation to PMBA's exports. That is, the Minister should be advised not proceed with reconsidering the reviewable decision in ADRP Review 155 without this error not being corrected so that any reconsideration of the reviewable decision is based on correct findings of fact.

2. **(Likelihood of material injury):** Contrary to the Commission's preliminary finding in the Report, the expiration of the anti-dumping measures has not led to the continuation or recurrence of material injury to the Australian industry caused by exports from the subject exporters as evidenced by events occurring since the expiration of the anti-dumping measures. No injury has been incurred by the Australian industry since the expiration of the anti-dumping measures. Rather, the economic performance of the Australian industry has been strong, including the need to import product to meet demand to make up the shortfall in local production. This strong economic performance is likely to continue for the foreseeable future due to strong demand, especially from the residential construction sector. In other words, subsequent events have confirmed that the reviewable decision by the Minister was the correct decision.
3. **(Insufficient evidence):** There is insufficient information and evidence available to the Commission in the reinvestigation to alter the finding *'material injury to the Australian industry is not likely to continue or recur in the absence of measures'*. There was insufficient evidence to be positively satisfied that *'material injury to the Australian industry is likely to continue or recur in the absence of measures'*. The reinvestigation itself could not remedy

the deficit in information and evidence, which was largely attributable to the lack of cooperation by seven (7) of the eight (8) members of the Australian industry in the continuation inquiry. The Commission should have advised the ADRP of this on being requested to reinvestigate the finding in question. In any event, as noted in point 2 above, subsequent events have established that *'material injury to the Australian industry is not likely to continue or recur in the absence of measures'*. That is actually what has occurred.

4. **(Deficiencies in analysis):** The Report contained a variety of deficiencies that materially affected the preliminary finding that *'material injury to the Australian industry is likely to continue or recur in the absence of measures'*. These deficiencies included:
- (i) the price undercutting analysis was fundamentally flawed because:
 - (a) it purported to compare the weighted average prices of products within MCCs but that comparison was not a proper comparison as it did not compare like-for-like weighted average prices given that each was differently affected by the product and the sales volumes and prices of each product within the relevant MCC and no account was taken of such differences;
 - (b) it purported to compare FIS prices of imports and domestically produced products to importers in Australia but actually compared into store costs, not prices;
 - (c) it did not extend the analysis to all levels of trade within the Australian market as depicted in Figure 1 of the Report notwithstanding that demand for aluminium extrusion products is driven by the residential construction sector in the Australian construction industry, which is at the lowest tier on the levels of trade in the Australian aluminium extrusion products market.

The deficiencies in the sufficiency of information and evidence in the re-investigation contended by Press Metal are set out in submissions by it to the Commission, copies of which are available on the Commission's public file: [591 - Aluminium extrusions from Malaysia, Vietnam | Department of Industry, Science and Resources](#).

5. **(Attribution):** There was no analysis of whether and to what extent any price undercutting was attributable to dumping, nor whether price undercutting would occur regardless of whether the subject exports were being exported at dumped export prices. Further, if any price undercutting was attributable to dumping, whether that was flowing down through into prices at each level of trade and, if it was, to what extent and whether that gave rise to price undercutting at that level of trade.

Again, deficiencies in analysis undertaken in the re-investigation contended by Press Metal are set out in submissions by it to the Commission, copies of which are available on the Commission's public file: [591 - Aluminium extrusions from Malaysia, Vietnam | Department of Industry, Science and Resources](#).

6. **(Influence on prices):** There was no verified, objective evidence from other interested parties that the prices of exports from Malaysia and Vietnam “influenced” the prices of other participants in the Australian aluminium extrusion products market. The price undercutting analysis in the Report provides no quantitative, empirical evidence of any such influence or the extent of any such influence. Indeed, for the reasons discussed, that analysis cannot provide such evidence due to its shortcomings. Nor is there information and evidence as to how and to what extent they “influenced” prices in the Australian market, especially when such exports held less than 2% market share, especially when there is no analysis supported by evidence of whether the export prices flowed through to prices of those products when on-sold into the Australian market at the different levels of trade and various market segments. Also, there is no evidence of that “influence” regard is had to the Commission’s Trade Remedy Index ([Trade remedy index \(TRINDEX\) | Department of Industry, Science and Resources](#)). If export prices of the exports here in question “influenced “ prices, this would be reflected in price movements in the index, but that is not apparent.
7. **(Causation):** There was no evidence that the subject exports from Malaysia and Vietnam by the exporters in question, which held less than 2% market share of the Australian market, caused or could cause injury, let alone material injury, to the Australian industry and, if so, how? Nor is there any any analysis of why members of the Australian industry, such as Capral who has a market share in excess of 26% that includes Australian-wide market penetration, have no or minimal “influence” on prices in the Australian market, including through their imports from countries not subject to anti-dumping measures, such as Indonesia and Thailand, to meet the shortfall in satisfying demand of approximately [REDACTED] tpa from the limited domestic production of approximately [REDACTED] tpa.
8. **(uncooperative Australian industry members):** In Continuation Inquiry 591 only one (1) member of the Australian industry co-operated fully – namely, Capral. The other seven (7) members of the eight (8) member of the Australian industry did not cooperate. The insufficiency of information and evidence referred to above is due, in part, to that lack of cooperation. Capral’s economic performance is typically treated by the Commission as representative of the Australian industry as a whole notwithstanding that the economic performance of other members can be and has been materially different from that of Capral. Evidence of that fact has been submitted to the Commission. Press Metal’s contention is that the economic performance of the Australian industry must be assessed on the basis of that industry as a whole taking into account the economic performance of all members of the industry, especially given that they are likely to be conducting their businesses under different business models and supplying different segments of the Australian market.

Attachment B

Price Undercutting Analysis

In the Submission attention was drawn to a number of problems in using weighed average prices based on the Model Control Code (**MCC**) in the price undercutting analysis. These are discussed further below.

What are MCCs

MCCs are primarily intended to enable the matching of export models to the identical or comparable domestic models. This is on the assumption that what is being exported to Australia is a 'product' and that there may be a number of models of that 'product'. The MCC regime is intended to facilitate the matching of those models.

Here, however, what is being exported to Australia is not a 'product'. An 'aluminium extrusion' is not a 'product'. Rather, it is a 'descriptor' of a range of products in that it describes the metal alloy from which the products are produced (i.e., aluminium alloys) and the production process employed to produce the products from that metal alloy (i.e., extrusion). The end products, that is, angles, channels, tubes, rods, squares, tee sections, etc., are the aluminium extrusion products that are actually exported to Australia. The websites and catalogues of members of the Australian industry, as well as those of overseas producers and exporters, reflect and identify the range of such products.

Importantly, each of those products is not a 'model' of single product but there are 'models' of each of those individual aluminium extrusion products. That is, there are different 'models' of each of angles, channels, tubes, rods, squares, tee sections, etc. Differences in 'models' consist of differences in physical, chemical and mechanical characteristics for each product to produce the different 'models' of each product.

In this context it is important to note that not only do 'models' of the same product not compete against one another on price, but different products do not compete against one another on price or otherwise. This is because they are not substitutable for one another in its end-use. It is not possible to substitute a square tube for an angle, nor an angle for a tee section and so on. Each product and each 'model' of a product is a separate and distinct article of commerce, each with a particular end-use for it is suitable.

MCCs, therefore, do not reflect 'models' of a 'product'. Rather, they categorise a range of 'aluminium extrusion products' into separate MCCs according to three physical characteristics possessed by those products, namely, in order of use in the code:

- (i) finish;
- (ii) aluminium alloy; and
- (iii) temper.

In summary, each MCC is for a 'basket' of aluminium extrusion products that possess the same three characteristics referred to in the dot points above.

In light of this, the relevance of MCCs to price undercutting is not immediately evident. This is examined further below.

MCCs used in price undercutting analysis

Four MCCs were used in the price undercutting analysis in the Report, namely: M-6A-Ti, PC-6A-T1, A-6A-T1 and M-6C-T (refer page 17 of the Report). Comprised within each such MCC is a range of aluminium extrusion products that share three physical characteristics – the finish applied to the end-product (designated by the first letter in MCC), the aluminium alloy from which the products are made (designated by the first letter in MCC) and the temper (i.e., hardness) of the product (designated by the third letter in MCC).

Of the above four MCCs, then, all are of the same aluminium alloy and all of the same temper except the last which is of a different alloy and temper. The critical distinguishing characteristic between those MCCs is the finish, with 'mill' being the first, 'powder coated' being the second and 'anodised' being the third.

Hence, it would seem reasonable to assume that differences in weighted average prices between those four MCCs was principally, if not solely, due to their finishes. However, this is not necessarily so for the reasons discussed below.

The question that arises is what would a comparison of weighted average prices between suppliers in respect of one of those MCCs 'measure' in terms of differences between the suppliers' weighted average prices? Because the only factors that are known about the products comprised within the MCC are three physical characteristics, namely, aluminium alloy, finish and temper, the reasons for any differences in weighted average prices would seem unknown and unknowable.

This is because it is not known what particular products (e.g., angles, channels, rods, tubes, tee sections, etc.) are comprised within the MCC, or their physical characteristics (e.g., length and thickness), or each product's sales volumes or the prices at which each product is sold. In other words, because it is not known what the weighted average price of an MCC actually represents, it is not known and cannot be known what is being measured (if anything) in the differences in the weighted average price of the MCCs of the suppliers being compared.

Analysis of weighted average prices of MCCs

If one has regard to, for example, the customer price list of a member of the Australian industry, of which the Commission no doubt has obtained such lists then, taking one product, say 'angles', there could be approximately 200 to 300 or more angles falling within one of those first three MCCs referred to earlier above. Which MCC a particular angle falls within will depend upon its finish. This is because angles typically are made for the same

aluminium alloy and possess the same temper. Hence the only difference for the purposes of MCC classification is the finish.

However, angles falling within one of those three MCCs, say, the MCC for mill finish, would differ as between themselves in terms of physical characteristics as follows:

- the length of the angle bar (e.g., 4.2m to 6.5m); and/or
- the length of the vertical or horizontal section of the angle in milli-meters (**mm**); and/or
- the thickness of the angle bar in mm.

A different price per piece is fixed for each 'model' of the angle, that is, for each angle with those variations in physical characteristics. This, of course, applies not only for angles, but for each 'model' of each product classified to an MCC – that is, each 'model' of the product within an MCC has its own price per piece. Hence the price list containing prices per piece for approximately 200 to 300 or more angles falling within one of those first three MCCs referred to earlier with each having a separate price per piece.

This is then replicated for each aluminium extrusion product produced by the relevant producer so that there is a multitude of 'models' for each product with a price per piece for each 'model'.

Therefore, to know what a weighted average price for products comprised within an MCC sold over a period of time, it would be necessary to know what 'models' of what products were included in the MCC, their respective prices per piece and their sales volumes over the relevant period. That information would inform as to what the weighted average price actually represented and how it had been influenced by the products and the 'models' of the products comprised in the MCC, as well as their respective prices and sales volumes during the relevant period. Without that information, a weighted average price is not meaningful. It is not known what that weighted average price is actually measuring.

A similar issue exists in relation to the Consumer Price Index (**CPI**). For example, changes in the CPI is used as a measure of the rate of inflation. However, without knowing precisely what is comprised in the CPI 'basket' of goods and/or services it is not known what the inflation rate is actually measuring. The inclusion or exclusion of certain goods and/or services can materially affect the inflation rate being measured by the CPI. The same or similar issues exist with weighted average prices of MCCs – what precisely is being measured?

No competition between products but competition between 'models of products'

Also, of importance in this regard is the fact each product listed within an MCC does not compete with another product listed within the same MCC whether on price or otherwise. Similarly as regards the 'models' of each individual product. As noted earlier, they are not substitutable one for the other.

Rather, to the extent that there is competition on price, it would be between:

- a ‘model’ of a product with the same ‘model’ of another supplier with the same finish; and/or
- a ‘model’ of a product with an identical or similar ‘model’ of that supplier or another supplier with the same finish or with a different finish.

That is, a particular ‘model’ of an angle with a mill finish, for example, could compete on price with the identical ‘model’ of that angle but with powder or anodised finish assuming, of course, that ‘models’ with different finishes are substitutable for one another. This may not be possible for all ‘models’ of all products.

However, given the magnitude of difference between the prices for an angle with a mill finish and the identical angle with an anodised or powder coat finish, that is, price differences of up to and possibly over a quarter of the price, query the extent of any competition on price even for ‘models’ of the same product. That is, would customers be willing to pay a premium for powder or anodised finishes or, if in the market for a product with an anodised or powder coated finish for a particular application, would they switch to a lower priced mill finish of that product?

To ascertain whether purchasers would be willing to do so would require a price elasticity of demand analysis between the different ‘models’ of a product with different finishes. This, of course, has not been undertaken. Hence it is not known whether there is any price elasticity of demand between ‘models’ of the same product but with different finishes.

If there is competition between the same ‘model’ of a product but with, for example, different finishes, then query the relevance in a price undercutting analysis of weighted average prices between MCCs comprising products of the same finish and not of different finishes? Again, precisely what is being sought to be measured?

Meaning of a weighted average price of an MCC

On examination of price lists for aluminium extrusion products, it is evident that the principal price determinant of product is its ‘finish’, with the less frequent second determinant being the aluminium alloy. No doubt the Commission can readily confirm this from copies of such price lists it would have been provided with by exporters, importers and members of the Australian industry.

However, given the range of products within an MCC and the range of variations to each such product and that a different price per piece is fixed for each such individual variation to the product, it is not evident what a weighted average price of the products sold over a period of time comprised in an MCC actually represents.

Specifically, as the weighted average will be influenced by and reflect:

- the number of products of a supplier comprised within the MCC; and
- the number of variations (e.g., length, thickness, etc) to each such product within the MCC depending upon the particular product; and

- the price per piece of each 'model' of each product comprised in the MCC; and
- the sales volume of each 'model' of each product comprised in the MCC over the relevant period.

Hence a greater sales volume of particular 'model' or 'models' of a particular product comprised in the MCC, perhaps as reflecting the particular market segment that the supplier is servicing, will influence (skew) the weighted average price towards the price(s) of that particular 'model' or 'models' of that product. This, of course, will also depend upon the sales volumes and prices of the other variations of products comprised within the MCC sold by the supplier during the relevant period.

Without having access to the sales volumes and prices of the 'models' of each of the products sold during the relevant period, it is not possible to determine what a weighted average price for an MCC actually represents, let alone what a comparison of weighted average prices between suppliers for the same MCC represents or measures.

That is, it will represent the weighted average price of all products comprised in the MCC sold by the supplier over the relevant period, but what products were actually sold in what volumes and at what prices is not known, nor whether the weighted average price is skewed in favour of some products and, if so, why? Again, what is it measuring?

Relevance of price undercutting by MCC

The question then is what does a price undercutting analysis consisting of a comparison of weighted average prices between suppliers based on MCCs actually measure?

This is not explained in the Report. Hence the matters raised in the Submission concerning the lack of a methodology being set out in the Report that would provide guidance and transparency to the methodology used in this reinvestigation.

A comparison of weighted average prices between different suppliers based on MCCs is used here apparently to compare price differences due primarily to the finish of the products comprised within the MCC. The distinguishing characteristic in the classification of products to one of the four MCCs used in the price undercutting analysis in the Report was the finish of a product, given that the aluminium alloy and temper were the same for three of the MCCs.

Thus, to compare the weighted average price of suppliers for the same MCC would seem to be to compare the difference in the suppliers' 'spread' for a particular finish.

However, this is not correct. As discussed earlier above, a weighted average price for products comprised with an MCC sold by a supplier over the relevant period will be influenced and reflect a variety of factors – that is, by the sales volumes and prices of each 'model' of each product comprised within the MCC sold over the relevant period. Hence differences in weighted average prices does not reflect differences in the price of products

with a particular finish but, rather, the sales volumes and prices of each 'model' of each product comprised within the MCC sold over the relevant period having the relevant finish.

Thus it reflects not only the difference in the weighted average price of the finish of the products sold over the period but also the range of such products and the 'models' of each of those products sold over the period and the volumes of each so sold.

Whether that 'product mix' is the same for each weighted average price for each supplier is not known but it will be different. Accordingly, in order to make a proper (fair) comparison of the weighted average prices between suppliers based on an MCC, appropriate adjustments will need to be made to the weighted average prices to ensure a like-for-like comparison. That is, to take into account the different products and different 'models' of products comprised within the weighted average prices of the MCCs being compared and the sales volumes of each over the period to take account of those differences as they affect the weighted average prices.

This is not dissimilar to the adjustments required by section 269TAC(8)(c) of the *Customs Act 1901* when comparing export prices with normal values. The principle is the same.

Further issues concerning the price undercutting analysis

Given the discussion above, the problems with the price undercutting analysis in the Report are:

- (i) MCCs do not compete with one another in a market – they are not products, nor 'models' of products. As they are not products, they do not compete with one another, nor do they reflect products that compete with one another but simply are a mix of products based on three physical characteristics. Hence a weighted average price of an MCC is not a 'price' with which that MCC competes with other MCCs, whether on 'price' or otherwise and regardless of whether the 'other MCCs' are the same or different MCCs.;
- (ii) the weighted average price of an MCC is not the 'price' at which products or 'models' of products comprised within the MCC compete with similar products (i.e., like goods), nor indicative of competition between products and/or 'models' of products of suppliers on price because:
 - (a) a product (e.g., an angle) does not compete with other products that may be included in the same MCC (e.g., rods, tubes, etc.) – they are different products despite being included in the same MCC;
 - (b) a product (e.g., angle) with specific dimensions may not compete with the same product but with different dimensions because its dimensions determine its particular end use;

- (iii) a comparison of the weighted average price of the same MCC between suppliers not only fails to take account of the mix of products within each MCC and account for those differences as they affect the weighted average prices but also fails to take account the volume of sales and prices of particular products and/or individual 'models' of products that may skew the weighted average price;
- (iv) the comparison of the weighted average prices in the price undercutting analysis fails to take account into account the abovementioned differences between the MCCs whose weighted average prices are being compared to account for those differences as they affect the weighted average prices to ensure a like-for-like, that is, a fair comparison;
- (v) even if such adjustments were made, it is not apparent what the weighted average prices are in fact measuring given that different aluminium extrusion products and different 'models' of each aluminium extrusion products do not compete with one another on price or otherwise as they are not substitutable.

Because of these and other matters, a comparison of weighted average prices between suppliers (e.g., exporters and members of the Australian industry) based MCCs is not and cannot be a measure of competition between the exported products and the domestically produced products on price – that is, whether the exported products undercut the domestic produced products on price .

It is simply a comparison of the weighted average price of a 'baskets' of products according to one distinguishing characteristic (i.e., finish) and ignoring all of the other factors affecting and influencing the calculation of the weighted average prices being compared.

Such a comparison cannot determine whether one supplier is undercutting the prices of the other supplier because:

- the difference in the mix of products in each MCC is not known, nor the prices and sales volume of each such product in each MCC, and
- consequently, it is not a like-for-like comparison, and
- converting the unit prices at which the products are actually bought and sold to per kilogram prices does not overcome the differences in the prices and sales volumes of the different products and different 'models' of products in each MCC.

For example, the Australian aluminium extrusion products market is estimated to be about [REDACTED] tpa and the Australian industry's production capacity is estimated to be around [REDACTED] tpa. Obviously the production shortfall can only be met by imports.

Both before, during and after the pandemic, demand for aluminium extrusion products increased significantly for a variety of reasons and to such an extent that supply times by the major Australian producers were 6 months or longer at times.

To address such long lead times and the significant increase in demand, members of the Australian industry, Capral among them, switched their supply patterns by supplying higher

value and therefore more profitable aluminium extrusions products from domestic production and lower, less profitable aluminium extrusions products from imports, Hence the surge in imports from Indonesia.

Obviously, during the pandemic imports were adversely affected not only by the unprecedented overseas freight rates but also by lockdowns that closed factories throughout the region including Malaysia, China and Indonesia.

To overcome this, an appropriate adjustment would need to be made to the weighted average prices to overcome the differences affecting the weighted average prices of the MCCs in different ways. But even then, it is not apparent what the weighted average prices are in fact measuring given that different aluminium extrusion products and different 'models' of each aluminium extrusion products do not compete with one another on price or otherwise as they are not substitutable.

Australian industry

It is understood the price undercutting analysis was based on the 'prices' of Capral as representing the Australian industry with, possibly, some limited aggregated data from G James and INEX. The use of such information was, apparently, because it is considered that Capral, as the or a major producer of aluminium extrusion products, either itself or with G James and IINEX represented the Australian industry as a whole.

This contention is not correct and is not supported by the evidence. This is addressed in Footnote 3 in the body of this submission.

Specifically, in ADRP Report Nos 135 & 137, the ADRP misconceived 'production' with 'sales' – that is a number of members of the domestic industry could represent the Australian industry for certain purposes based on their production capacity but it does not follow that are equally able to represent the Australian industry for other purposes such as the economic performance of members of the industry and the industry as a whole regarding 'sales' into the Australian market. Whether certain members, namely, those representing the major proportion of domestic production, could represent the domestic industry's economic performance in the domestic market is unrelated to their production capacity. That would depend upon a range of other factors including their respective business models.

As the Commission is aware, the audited financial statements of members of the Australian industry filed with ASIC demonstrate, their economic performance is different from those purporting or held to represent the whole of the Australian industry. They do not represent the economic performance of the Australian industry as a whole as a question of fact, is supported by evidence filed with the Commission. Unfortunately the ADRP Panel Member in ADRP Reviews Nos 135 & 137 apparently was unaware of financial reporting obligations of

entities under the *Corporations Act 2001 (Cth)* and did not take them into account⁷. Nor was it drawn to the attention of the Panel Member that both the Commissioner and the Minister were in possession of such financial statements of members of the Australian industry before the Minister making the reviewable decision, presumably on the basis that it was not information that the Panel Member was entitled to take into account.

In any event, the economic performance of the major producers, namely, Capral, G James and INEX, neither individually nor collectively, represents the economic performance of the Australian industry as a question of fact supported by evidence. This, presumably, would be further confirmed by benchmarking the various members of the Australian industry's cost to make and sell and prices, that is, their business models, against one another, including those claimed to represent the industry as a whole.

In addition, there is no assessment as to whether producers/exporters in Malaysia and Vietnam, or in any other country, possess a comparative competitive advantage over their Australian counterparts in terms of the cost to make and sell aluminium extrusion products? No benchmarking has been undertaken of members of the Australian industry, perhaps as represented by Capral as the major Australian producer, of their cost to make and sell aluminium extrusion products in Australia as compared with those of producers in Malaysia and Vietnam or even perhaps Thailand, Indonesia, and China as well.

Obviously the cost of the major raw material, aluminium alloys, will be similar being based on LME aluminium prices, but other costs to make and sell will be different, as represented in the 'spreads' and, therefore, presumably be reflected in different prices in their respective markets. Benchmarking the Australian industry's cost to make and sell and prices against those of its counterparts in Malaysia and Vietnam, as well as in other exporting countries, will indicate who possesses a comparative competitive advantage over whom.

Conclusion

Whatever benefit the MCCs may have in a dumping context, they are not a proper basis to undertake a price undercutting analysis. They do not measure differences in the prices of the same products and 'models' of products between suppliers. Hence whatever the price undercutting analysis purports to measure it does not measure and, because of its methodology, cannot measure any price undercutting by exports of aluminium extrusion products by the subject exporters of the prices of 'like goods' produced by members of the Australian industry.

⁷ Chapter 2M of the *Corporations Act 2001* sets out companies obligations regarding financial statements and audits. Sections 286, 292, 295 to 300 of the *Corporations Act 2001* are relevant for present purposes including paragraph 299(1)(c) of the *Corporations Act 2001* that requires the directors' report to "state the entity's principal activities during the year and any significant changes in the nature of those activities during the year".