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Dear Mr Hawke

### Public File

## Review of Measures Investigation No. 609 – Press Metal International Ltd submission

### I. Inquiry period

Press Metal International Ltd (“PMI”) has provided submissions dated 28 June and 5 July 2023 in response to Statement of Essential Facts No. 609 (“SEF 609”) concerning the review of anti-dumping measures on aluminium extrusions exported from China to Australia.

The anti-dumping measures were last reviewed in Continuation of Measures Investigation No. 543 (refer REP 543 published on 14 September 2020) for the 1 January 2019 to 31 December 2019 investigation period. The investigation period in Invest No. 609 was 1 July 2021 to 30 June 2022.

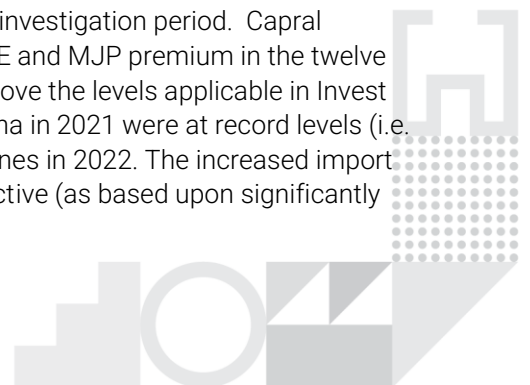
There is a full two-and-a-half year period from the end of the inquiry period in Invest 543 and that in Invest 609. Anti-dumping measures are applied on the basis of a five-year duration – it is therefore not surprising for the measures to be reviewed midway through that five-year period to ensure that the applicable measures are effective in addressing injury from dumping.

Capral Limited’s (“Capral”) application demonstrated that input aluminium used in the manufacture of aluminium extrusions had increased by more than 60 per cent (based upon London Metal Exchange Prices) and that this would translate to an increase in normal values of between 30 and 40 per cent<sup>1</sup>. This significant increase following the imposition of measures in October 2020 and the likely resolution date of Invest 609 of October 2023 confirms that the applicable measures have understated normal values by almost three years since imposed.

To ensure anti-dumping measures are effective and able to address injurious dumping it is reasonable for the Australian industry to seek a review of those measures as input prices escalate.

PMI contends that the LME and MJP premiums have fallen subsequent to the investigation period. Capral highlights with the Anti-Dumping Commission (“the Commission”) that the LME and MJP premium in the twelve months following the investigation period in Invest 609 remains 30 per cent above the levels applicable in Invest 543. Additionally, Capral notes that imports of aluminium extrusions from China in 2021 were at record levels (i.e. 51,302 tonnes) since measures were imposed in 2010, and were at 47,746 tonnes in 2022. The increased import volumes from China confirm Capral’s concerns that the measures were ineffective (as based upon significantly

<sup>1</sup> Refer Capral Limited Application for Review of Measures, P.8.



lower variable factors).

## II. Kam Kiu dumping margin

PMI asserts that the sole cooperating exporter with a dumping margin that is "+40%" below other exporters is not "credible" and must be considered an "aberration".

Capral notes that the Commission identified four cooperative Chinese exporters, namely:

- Goomax Metal Co., Ltd Fujian ("Goomax");
- Guangdong Jinxicheng Al Manufacturing Co., Ltd ("Jinxicheng");
- Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd ("Kam Kiu");
- Guangdong Xingfa Aluminium Co., Ltd ("Xingfa").

Kam Kiu's export prices were considered by the Commission as not being at arm's length and at a loss (unlike the remaining three cooperative exporters). Contrary to PMI's assertion the Commission's finding provides a comprehensive explanation as to the reasons for the difference in assessed dumping margins between the cooperative exporters.

## III. Post investigation period adjustments to normal values and export prices

Capral refutes all assertions of PMI concerning alleged use of alleged substantial market power by Capral to reduce competition in the local aluminium extrusions industry. PMI's assertions are vexatious, and are made without any basis and not supported in any manner whatsoever.

Capral monitors imports of aluminium extrusions into Australia from all sources. The single largest source of supply – for both imports and supply from Australian producers – is China. Additionally, total imports of aluminium extrusions into Australia account for approximately 40 per cent of the total market in Australia. PMI's assertions concerning alleged substantial market power by the Australian aluminium extrusions industry members is entirely unsupported.

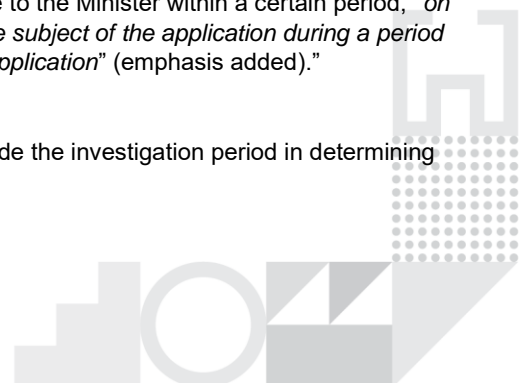
It is further noted that PMI is seeking the Commission to "update the LME prices and MJP premiums used in the calculation of the constructed normal values so as to reflect current levels of such prices and premiums given that they have returned to their more typical levels.<sup>2</sup>" Capral refers the Commission to the ADRP member's findings (as reported in ADRP Report No. 61) and commentary on this issue:

- "37. It should be noted that the process of determining whether dumping has occurred and levels of dumping is set out in s.269TACB of the Act, with specific reference to the "investigation period", or in specified cases, "parts of the investigation period." This determination is one of the preconditions to the decision of the Minister under s.269TG(1) and (2) of the Act to declare that s.8 of the Customs Tariff (Anti-Dumping) Act 1975 ("Dumping Duty Act") applies. The "investigation period" is defined in s.269T(1), "in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period specified by the Commissioner in a notice under subsection 269TC(4) to be the investigation period in relation to the application." Section 269TC(4) in turn sets out what must be contained in the public notice to indicate, among other, that a report will be made to the Minister within a certain period, "on the basis of an examination of exportations to Australia of goods the subject of the application during a period specified in the notice as the investigation period in relation to the application" (emphasis added)."

Further,

- "38 .....the Minister is not required to have regard to information outside the investigation period in determining whether dumping occurred in the past."

<sup>2</sup> Press Metal international submission (EPR Document No. 0031), 5 July 2023, P.3.



Additionally, in *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth [2013] FCA 870* (Panasia) in which Justice Nicholls (in a judgement dated 30 August 2013) states:

“When s.269TG is read as a whole, it is apparent that subs (3) refers to the goods the subject of a declaration under subs (1) or (2). In particular, the references in subs (3)(c) of s 269TG to “the goods to which the declaration relates” and in subs (3) (d) and (e) to “those goods” indicate that the goods referred to are the same goods as those the subject of the declaration made under subs (1) or (2). In respect of goods then subs (3) requires that, along with the relevant declaration, the public notice set out details of the ascertained variable factors that led to the declaration. The ascertained normal values and export prices will each be the same single figure (usually expressed as a percentage) referable to a particular exporter that was used to determine, in accordance with the requirements of s 269TACB, whether dumping occurred and, if so, at what margin.

140 Further, where in Part XVB of the Act the Minister is conferred with a discretion as to how he or she will go about determining a dumping margin, the relevant provisions usually make this quite clear. There is nothing in s269TG to suggest that there was any intention to confer upon the Minister a discretion that would enable him or her to determine variable factors different to those utilised for the purpose of determining whether dumping occurred and, if so, at what margin.” (emphasis added)<sup>3</sup>.”

The ADRP Member then stated<sup>4</sup>:

“The above analysis would appear to indicate that the variable factors for the purpose of the dumping duty notice are to be those used to determine whether or not there was dumping and different variable factors cannot be used for the purpose of s. 269TG(3). Therefore it does not appear to be open to the Minister to ascertain different variable factors to those utilised for the purpose of determining whether dumping occurred.”

PMI’s request for the variable factors to be adjusted for changes in the normal values and export prices post the investigation period must therefore be rejected.

#### IV. Conclusion

The matters raised by PMI in its submission do not accurately represent the significant changes in variable factors that have influenced pricing in the aluminium extrusions industry post Invest 543.

The increases in each of the variable factors alters the impact of the anti-dumping measures and, where the variable factors represent out-dated prices, result in injurious prices from imported goods the subject of the measures.

PMI’s request for the Commissioner to reflect further changes in variable factors following the investigation period in Invest 609 cannot be accommodated due to the findings of the Federal Court in PanAsia.

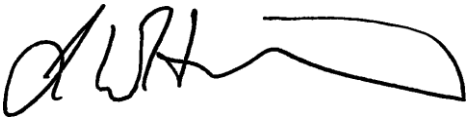
<sup>3</sup> Panasia, Paragraph 140.

<sup>4</sup> ADRP Report No. 61, Paragraphs 139-141.



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

Yours sincerely



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