

15 April 2024

Director
Investigations 2
Anti-Dumping Commission
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Canberra ACT 2601

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Dear Director

Public File

Review of Measures Investigation No. 640 – Press Metal berhad Aluminium Sdn Bhd

I. Background

We refer to Anti-Dumping Notice No. 2024/010 concerning the commencement of a review of variable factors investigation in respect of aluminium extrusions exported to Australia by Press Metal Berhad Aluminium Sdn Bhd (“PMBA”).

The Acting Commissioner has commenced a review of the anti-dumping measures (i.e. variable factors) applicable to PMB’s exports to Australia from Malaysia.

The anti-dumping measures were initially imposed on exports from Malaysia on 27 June 2017¹. The measures imposed comprised two notices: a dumping duty notice and a countervailing duty notice (ADNs 2017/72 and 2017/73). The notices state that the measures are applicable to all exporters from Malaysia and the Socialist Republic of Vietnam (“Vietnam”) with exceptions for Press Metal Berhad², Superb Aluminium Industries Sdn Bhd, LB Aluminium Berhad, Milleon Extruder Sdn Bhd, Genesis Aluminium Industries Sdn Bhd and Kamco Aluminium Sdn Bhd.

A review of the measures was completed on 20 February 2020 with new variable factors applicable in revised dumping and countervailing duty notices (Report 544).

On 10 June 2021 following an accelerated review of measures applicable to exports by PMBA of Malaysia, the Minister applied new variable factors to exports from Malaysia to Australia by PMBA.

The Anti-Dumping Commission (“the Commission”) conducted a continuation of measures investigation (Invest 591) and recommended to the Minister that the measures be allowed to expire on 27 June 2022. Following a review by the Anti-Dumping Review Panel, on 14 December 2023 the Minister revoked the decision not to secure the continuation of the dumping duty notice applying to aluminium extrusions exported from Malaysia and

¹ Refer Report No. 362.

² This is a separate entity to PMB Aluminium Sdn Bhd.



Vietnam, *but as if different variable factors had been fixed in accordance with REP 591* (ADRP Report No. 155) (emphasis added).

The ADRP Review did not affect the Minister's decision not to secure the continuation of the countervailing duty notice – the countervailing duty notice expired on 27 June 2022.

PMBA's application commenced by the Commission is seeking a review of the variable factors applicable to PMBA as re-imposed by the Minister on 14 December 2023.

II. Grounds for review

Capral Limited ("Capral") notes that ADN 2024/010 states that the Minister reimposed the anti-dumping measures applicable to exports from Malaysia and Vietnam on 14 December 2023 "*as if different variable factors had been fixed in accordance with REP 591*".

Section 269ZA(2) of the Customs Act states:

"(2) An application for review of anti-dumping measures must not be made:

- (a) If the measures involve the publication of a dumping duty notice or a countervailing duty notice – earlier than 12 months after:
 - (i) The publication of the notice; or
 - (ii) The publication of a notice declaring the outcome of the last review of the notice (whether that last review was undertaken at the applicant's request or not);...."

Section 269ZA(2) makes it clear that a twelve month period must expire before the applicant can make a request for the review of the measures.

The measures were re-imposed on 14 December 2023 following the ADRP review of the Minister's decision not to continue the anti-dumping measures on goods exported from Malaysia and Vietnam. The ADN Notice 2024/010 states that the measures re-imposed were on the basis of revised variable factors determine din Report 591. The revised measures, however, were not applied until 14 December 2023.

It is Capral's contention that the measures have not been operative for a period of twelve months and the applicant is prevented from seeking an application for the review of the variable factors until 14 December 2024 (unless section 269ZA(3)³ applies).

The key consideration is when the anti-dumping notice applying the revised variable factors was published. It is evident from ADN 2024/010 that the variable factors as reviewed in Invest 591 were not applied until the Minister's decision of 14 December 2023.

In Capral's view the review of anti-dumping measures Investigation No. 640 is void and should be terminated.

III. Conclusion

³ Section 269ZA(3) involves a Minister directed review of the anti-dumping measures.



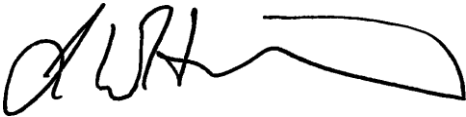
The current variable factors applicable to exports by PMBA to Australia were applied by the Minister by notice published on 14 December 2023 and reflect variable factors reviewed in Invest 591 (Report 591 refers).

A period of twelve months from the date of the notice (i.e. 14 December 2023) has not expired and hence PMBA is prevented by section 269ZA(2) from seeking a review of the anti-dumping measures within twelve months of publication of the notice published on 14 December 2023.

Capral therefore requests that the current review of measures Investigation No. 640 commenced on 19 February 2024 be terminated.

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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General Manager – Supply and Industrial Solutions

