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Non-Confidential For Public Record

Ms Jenny Levin
A/g Assistant Director, Investigations Team 1
Anti-Dumping Commission
Melbourne VIC 3000

Dear Ms Levin,

RE: Review 640 –review of anti-dumping measures applying to exports of aluminium extrusions products from Malaysia by PMBA – Exporter Verification Report

In the exporter verification report for PMB Aluminium Sdn. Bhd (**PMBA**), it was preliminary determined that transactions between PMBA and Press Metal Aluminium Australia Pty Ltd (**PMAA**) via PMB Aluminium Sdn Bhd (**PMB)** were not at arm's length.

The reasons for that preliminary finding were stated to be because PMAA held a long-term borrowing from PMB that was not interest bearing and, therefore, apparently was not of a commercial nature.

However, no consideration appears to have been given as to the purpose of the long-term loan. That is, to what use the monies so loaned were to be put by PMAA and were actually put. That loan was granted to PMAA by PMB in 2001. The purpose of the loan was to assist PMAA in setting up its business in Australia.

Specifically, the loan was to provide PMAA's business with sufficient funds to enable it to setup distribution centres in a number of states in Australia. The loan was applied for that purpose. The increased business expected to be generated by PMAA's enhanced supply ability through the distribution centres, as well as the other efficiencies the setup would generate, not only benefited PMAA commercially but also PMB and PMBA through increased supply of their products. That is, the investment in the property by PMAA would be commercially advantageous for not only PMAA but also PMB and PMBA.

Further, the loan has since been paid down by PMAA from its cashflow to the extent that, within 3 years, less than 15% of the original loan is currently outstanding, as has been verified.

Hence the loan was a commercially prudent investment by all parties. The commercial benefit has been realised in terms of both sales volumes and consequent sales revenues flowing from PMAA's profitable business to PMAA, PMB and PMBA, as well as dividends declared from PMAA's profits.

The suggestion that "*the scope for PMAA to schedule its repayments based on cash flow considerations*" as being indicative of the non-commercial nature of the loan or that PMAA was somehow the recipient of a benefit in respect of the price it pays for the purchase of aluminium extrusion products from PMBA via PMB is misplaced. Scheduling payments on a loan according to one's cash flow is not an uncommon practice. It would be unusual not to do so and is a principle reason for negotiations between borrowers and their financiers. It is also an accepted practice by the Australian Taxation Office and by Australian Border Force amongst other government agencies in the payment of debts due to the Crown by instalments. It is also a common practice in the repayment of residential home loan mortgages, especially with the recent high interest rates. Why or how is PMAA's loan somehow unique in this regard?

Hence to claim that the loan was of a '*non-commercial nature*' is misconceived. A commercial return on an investment is not to be measured by or confined to interest payments. The commercial return may take a variety of other forms. This is in fact reflected in the frequent claims by the Australian industry, and subsequently acknowledged by the Anti-Dumping Commission, that material injury can be constituted by a sub-optimal return on investment in terms of sales volumes and revenues.

Interest-free loans can have a commercial basis, whether between related or unrelated parties. Even banks and other financial institutions provide interest-free loans, as well as offer bank accounts that earn negative interest on deposits – a not uncommon practice in recent years. In other words, there is no rational reason that a commercial loan is confined to loans that earn interest and there is no evidence that the loan here in question did not have a commercial basis. Indeed, in a number of cultures earning interest on loans is prohibited as constituting usury.

It was also stated in the verification report that "*the scope for PMAA to schedule its repayments based on cash flow considerations is a strong indication that the buyer received a benefit for, or in respect of, whole or any part of the price*". However, it was not identified what '*benefit*' or the extent of that '*benefit*' the buyer (i.e., PMAA) is considered to receive in respect of the price, especially when the verification team found, on verified information, that PMBA's prices to related and unrelated customers were the same or similar and were based on a market price index, that is, they reflected market prices.

As the verification team found, when interest on the loan as calculated by the verification team was added to PMAA's SG&A for the relevant imports transacted through PMB, the effect on PMAA's SG&A was negligible and, further, it did not affect the profitability of

PMAA's imports. It is, therefore, not apparent what '*benefit*' would or could be receiving in such circumstances let alone whether any such '*benefit*' in respect of price was material. The presence or absence of interest on the loan would have no effect on pricing, which was being set at prevailing market levels by not only PMAA but also PMBA and PMB, as again was verified.

Accordingly, PMAA disagrees with the verification team's preliminary finding that transactions between it and PMBA via PMB were not at arm's length.

It, therefore, is respectfully requested that the preliminary finding that transactions between it and PMBA via PMB were not at arm's length be reconsidered.

Yours faithfully,

Paul Ingram

Paul Ingram
Managing Director