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25 March 2025

Director
Investigations 2
Anti-Dumping Commission
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Dear Director,

Public File

Review of Measures Investigation No. 640 – Statement of Essential Facts

I. Introduction

Capral Limited (**Capral**) refers to the recently published *Statement of Essential Facts* (**SEF 640**) for the above-noted review,[1] and makes the following comments.

II. Arm's length considerations

A key and contested aspect of this review inquiry has been the Commission's assessment of export sales transactions between Press Metal Berhad Aluminium Sdn Bhd (**PMBA**), via the intermediary Press Metal Berhad (**PMB**) to the Australian customer Press Metal Aluminium (Australia) Pty Ltd (**PMAA**).

In SEF 640, the Commission references its findings from the PMBA exporter verification report (**EVR**) that …*sales from PMBA via the intermediary PMB to the Australian customer, PMAA, during the review period were non 'arms length' as defined under section 269TAA.*[2] To recall from the EVR itself:[3]

> *The commission therefore found that a commercial or other relationship may have influenced the price. Hence, the commission is not satisfied that the exports of the goods by PMBA via the intermediary PMB are arms length transactions.*

Taking the comments from either the SEF or EVR, the Commission's reasoning for the above finding has been detailed as follows:[4]

> *…the commission found that during the review period PMAA held long-term borrowings from PMB that are not interest bearing. The commission notes the following about the borrowings and how these impact the arms length assessment:*
>
> - *The borrowings are aged accounts payables that the parties at some stage agreed to convert to a long-term loan, and the loan balance has reduced since 2017.*
> - *The commission has analysed PMAA's rate of repayment of the loan and found that PMAA makes larger repayments some years, and smaller or even no repayments other years depending on their access to cash.*

[1] As published on 19 March 2025, EPR folio no. 19.
[2] SEF 640, p. 23, para. 4.3.4.
[3] PMBA EVR, p. 10, para 2.3.6.
[4] Ibid, p. 9, or refer SEF 640 at p. 23, para. 4.3.4.

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- *The borrowings are not interest bearing. The commission has therefore calculated commercial interest on the loan amount and added to the SGA to these imports that were supplied through PMB for the purpose of profitability calculations and found that the interest in itself made a small increase to the SGA that adjustment did not impact the profitability to PMAA's imports.*
- *The commission then turned its mind to the structure of the loan arrangement and the quantum and timing of the repayments. The commission consider that the non-commercial nature of this arrangement, the absence of regular amortisations and 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.*

The commission therefore found that a commercial or other relationship may have influenced the price. Hence, the commission is not satisfied that the exports of the goods by PMBA via the intermediary PMB are arms length transactions.[5]

For export sales made from PMBA via PMB to PMAA, the Commission's EVR recommendation was that the export price be set under section 269TAB(1)(c) having regard to all circumstances of the exportation.[6]

At the time, Capral concurred with the Commission's arm's length assessment relating to the long-term borrowings. PMAA, however, argued that due consideration had not been given to the purpose of the borrowings, and that the use to which the funds were put and how they have been repaid qualifies the debt between the parties to be arm's length.

In SEF 640, the Commission has assessed interested party views on the matter but has regrettably deviated from its position in PMBA's EVR. The Commission doesn't explicitly side with any particular argument but has now taken a neutral stance, concluding benignly that:[7]

> *The commission notes that the goods were not purchased directly by the importer from the exporter. Therefore, the export price for these transactions cannot be determined under sections 269TAB(1)(a) nor (b) and the export price should be determined under section 269TAB(1)(c) as the price that the Minister determines having regards to all circumstances of the exportation. As the export price is determined under section 269TAB(1)(c),* ***the commission considers it is not necessary to make a finding as to whether the transactions were 'arms length'.***
>
> *In determining the export price under section 269TAB(1)(c) with regard to all the circumstances of the exportation, the commission considers the export price methodology applied in the verification report to be appropriate, as the methodology had regard to all the circumstances of the exportation, including the borrowing arrangements between the related parties and the slightly increased SG&A expenses. As these transactions were found to be profitable, they have been included in the calculations to determine the export price under section 269TAB(1)(c).* [**emphasis** added].

Respectfully, the Commission has now elected to take a non-committal position over what is of substantial precedential relevance. While Capral fully appreciates that the particulars of section 269TAB(1)(c) cover situations where the importer has not purchased directly from the exporter, thereby removing the Commission from (at least in the strictest sense), arm's length considerations under section 269TAB(1)(b), the above arrangements are clearly not arm's length, to which the Commission has already formed an affirmative view. Capral therefore submits that the Commission should maintain its original view on this.

The precedential relevance is also such that any future organisational/administrative/corporate structure-type changes within the broader Press Metal group may require the Commission to consider anew the above borrowing

[5] Ibid, p. 9-10.
[6] PMBA EVR, p. 6, section 2.3.1.
[7] SEF 640, p. 26, para. 4.3.4.

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arrangements vis-à-vis arms length. Establishing the non-arms-length opinion in the final report to this review will avoid this.

III. Level of trade normal value adjustment

In SEF 640, the Commission has made the following section 269TAC(8) adjustments to PMBA's normal value:

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic inland transport	Deduct an amount for domestic inland transport
Domestic packing expenses	Deduct an amount for domestic packing expenses
Domestic level of trade	Deduct an amount for domestic level of trade
Export packaging	Add an amount for export packaging
Export inland transport	Add an amount for export inland transport
Export port handling charges	Add an amount for export port handling charges
Exported stillage transportation expenses	Add an amount to reflect the expenses incurred to transport re-usable stillages from Australia to Malaysia.
Export credit terms	Add an amount for export credit terms
Specification	Add or deduct an amount for specification differences.
Timing	Add or deduct an amount for timing adjustment

Table 1 SEF 640 – Summary of PMBA normal value adjustments

The derived normal value, when compared to PMBA's export price, has resulted in a preliminary dumping margin of negative 4.4 percent.

At issue here, as was also the case in Capral's response to PMBA's EVR, is the deduction for domestic level of trade differences. Capral had previously submitted that the Commission's CON 591 level of trade assessment was the leading precedent, and that a downwards normal value adjustment wasn't required in the current review. This position has been refuted in SEF 640, with the Commission stating that it has assessed the information and evidence available to it and has decided on that basis.[8]

The SEF 640 approach has been to consider both the *Costs arising from different functions method* (**the first method**) and the *Level discount method* (**the second method**) to calculate a trade level adjustment. To recall from the *Dumping and Subsidy Manual* (**the Manual**) on these different approaches, strict priority in their application is given to the first method.[9]

On the first method, the Commission assessed in SEF 640 that:[10]

> *The available information also confirmed that when PMBA sold like goods to its related distribution entities who were at the distribution level of trade, they on sold the goods at a significant mark up over the price they paid PMBA for their inventory. Notwithstanding the JB Division was not a separate legal entity, it appeared to be conducting business at the distribution level of trade and marked up the price of sales to downstream unrelated customers in the same manner as PMBA's related distribution subsidiaries.*
>
> *As the mark up on the price of sales by the JB Division was significantly greater than the incremental cost of performing its function, as was also the case for PMBA's other subsidiaries,* ***the commission considered the 'costs arising from different functions' method was not appropriate, even though the information was***

[8] SEF 640, p. 40, para. 4.4.1.1.
[9] Dumping and Subsidy Manual, December 2021, p. 56.
[10] SEF 640, p. 39, para. 4.4.1.1.

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> ***available to apply it***. *Using this approach would not account for the full effect on price arising from the level of trade* differences. [**emphasis** added].

On the second method, the Commission assessed in SEF 640 that:

> *In the alternative, the commission considered the Level Discount Method preferable. PMBA made sales to both related and unrelated customers at different levels of trade. PMBA's customers at the distribution level of trade received a discount on the price paid by customers at other levels engaged in businesses involving downstream distribution, window and door fabrication, other general fabrication and general manufacturing.*
>
> …
>
> *The commission considered it appropriate to adjust the price of the transactions achieved by the JB Division. This should be based on the discount that occurs on sales to PMBA's subsidiary distribution customers when compared to the price achieved by the JB Division to customers at a downstream level of trade.*

Capral submits that the Commission's adoption of the second method in this inquiry directly contravenes the Manual's stipulation to adopt the first method. In relevant part, from the Manual:[11]

> *Level discount method*
>
> *The Commission* ***uses the level discount method <u>only where</u> there is an absence of information pertaining to costs and expenses referred to in the first method****. This order of priority is preferred because the first method uses the exporter's own cost and sales data for the like goods.* [**<u>emphasis</u>** added].

In this case, there <u>isn't</u> an absence of information pertaining to costs and expenses. As detailed in the SEF, the Commission has full cost details by virtue of its trade level assessment under the first method. In Capral's view, this then precludes the Commission from moving to the second method. Capral therefore requests that the Commission reassess the trade level adjustment under the first method only. This approach is also consistent with the Commission's earlier duty assessment calculations.[12]

If you have any questions concerning this submission, please don't hesitate to contact me on [redacted] or Capral's representative Mr Chad Uphill on 0412 377 603.

Yours sincerely

[redacted]

[11] The Manual, p. 56.
[12] See SEF 640 at p. 38.