# Application for a review of anti-dumping measures

1. Provide details of the name, street and postal address of the applicant seeking the review.

   Press Metal Aluminium (Australia) Pty Limited (**PMAA**)
   1012-1016 Canley Vale Rd,
   Wetherill Park NSW 2164

2. Provide details of the name of a contact person, including their position, telephone number and e-mail address.

   Mr. Paul Ingram,
   Managing Director
   Press Metal Aluminium (Australia) Pty Limited
   Ph: +61 412 160 002
   Email: paul@pmaa.net.au

3 Name other parties supporting this application.

   PMB Aluminium Sdn Bhd **(PMBA**), who is a producer of aluminium extrusion products in Malaysia and an exporter of those aluminium extrusion products to Australia, being the exports by the exporter the subject of this application.

4. Describe your interest as an affected party (e.g. are you concerned with the exportation of the goods, the importation of the goods, or part of the Australian industry, or acting on behalf of the Government of an exporting country).

   PMAA is an importer of the subject goods.

5. Provide details of the current anti-dumping measure(s) the subject of this review application and the goods subject to the measure(s), including:

   - tariff classification
   - the countries and/or companies
   - specified date of publication of the measures

   This application concerns only measures applying to goods exported to Australia from Malaysia by PMBA.

   The anti-dumping measures were initially imposed by Anti-Dumping Notice 2017/72 dated 22 June 2017, a copy of which is **Non-Confidential Attachment A**.

   The Minister for Industry and Science (**Minister**) made a decision on 24 June 2022 to permit the anti-dumping measures to expire on 27 June 2022 (see Anti-Dumping Notice 2022/042, a copy of which is **Non-Confidential Attachment B**). That decision was reversed, on the recommendation of the Anti-Dumping Review Panel (**Review Panel**), by a decision of the Minister made on 14 December 2023. The Minister's decision of 14 December 2023 was published on the Anti-Dumping Review Panel website on 15 December 2023, in a notice under section 269ZZM(4) of the *Customs Act 1901*. A copy of that notice is at **Non-Confidential Attachment C**.

Details of the current anti-dumping measures applying to exports of aluminium extrusion products from Malaysia by PMBA are set out in the 'Dumping Commodity Register' published by the Anti-Dumping Commission (**Commission**), a current copy of which is at **Non-Confidential Attachment D**.

The goods which are the subject of the anti-dumping measures are identified in **Non-Confidential Attachments A** and **D**. They are:

> *Aluminium extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by The Aluminium Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodised or painted or otherwise coated, whether or not worked, having a wall thickness or diameter greater than 0.5 mm, with a maximum weight per metre of 27 kilograms and a profile or cross-section which fits within a circle having a diameter of 421 mm.*

The goods are generally, but not exclusively, classified to the following tariff subheadings of Schedule 3 to the *Customs Tariff Act 1995* (Cth):

| Tariff Subheading | Statistical Code | Description |
|---|---|---|
| 7604.10.00 | 06 | non alloyed aluminium bars, rods and profiles |
| 7604.21.00 | 07 | aluminium alloy hollow angles and other shapes |
| 7604.21.00 | 08 | aluminium alloy hollow profiles |
| 7604.29.00 | 09 | aluminium alloy non hollow angles and other shapes |
| 7604.29.00 | 10 | aluminium alloy non hollow profiles |
| 7608.10.00 | 09 | non alloyed aluminium tubes and pipes |
| 7608.20.00 | 10 | aluminium alloy tubes and pipes |
| 7610.10.00 | 12 | doors, windows and their frames and thresholds for doors |
| 7610.90.00 | 13 | Other |

6. If you are an exporter of the goods the subject of this application please answer the following questions:

- Have you exported the goods to Australia during the review period? (If yes, what was the total quantity and total value of the goods exported to Australia during the review period?)
  Not applicable. PMAA is an importer, not an exporter, of the subject exports to Australia as indicated earlier above.

- Have you previously (prior to the review period) exported the goods to Australia? (If yes, please provide the total quantity and total value of the goods exported to Australia each year during the three years prior to the review period)
  Not applicable. PMAA is an importer, not an exporter, of the subject exports to Australia as indicated earlier above.

- Have you exported like goods to countries other than Australia during the review period? (If yes, please provide the total quantity and total value of exports of the goods to each other country during the review period. Please indicate if any of the

sales are to a related party.)
Not applicable. PMAA is an importer, not an exporter, of the subject exports to Australia as indicated earlier above.

7. Provide the names, addresses and telephone numbers of other parties likely to have an interest in this matter e.g. Australian manufacturers, importers, exporters and/or users.

**Australian producers**

| Company | Address | Phone |
|---|---|---|
| | | |
| Almax Aluminium Pty Ltd | 87 Trade St<br>Lytton QLD 4178 | 07 3906 6000 |
| | | |
| Aluminium Profiles Australia Pty Ltd | 25-31 Licola Crescent<br>Dandenong South VIC 3175 | 03 9768 5000 |
| | | |
| Aluminium Shapemakers Pty Ltd | 7 Warringah Close<br>Somersby Industrial Park<br>Somersby NSW 2250 | 02 4340 4344 |
| | | |
| Capral Limited | 4/60 Phillip St<br>Parramatta NSW 2150 | 02 8222 0113 |
| | | |
| Extrusions Australia Pty Ltd | 25-28 Andretti Court<br>Truganina VIC 3026 | 03 8348 9300 |
| | | |
| G James Extrusion Co Pty Ltd | 1082 Kingsford Smith Dve<br>Eagle Farm QLD 4009 | 07 3877 2833 |
| | | |
| Independent Extrusions Pty Ltd | 33-39 Licola Crescent<br>Dandenong South VIC 3175 | 03 9768 0000 |
| | | |
| Olympic Aluminium Co Pty Ltd | 606 Ballarat Rd<br>Sunshine VIC 3020 | 03 8361 2122 |
| | | |
| Vulcan Ltd | 20 Ron Boyle Crescent<br>Carole Park QLD 4300 | 07 3718 1400 |

8. If you are applying for a revocation review (in box 2 above), provide a detailed statement setting out your reasons, including evidence in support of your view that there are reasonable grounds for asserting that the measures are no longer warranted.

***Summary of grounds that the anti-dumping measures are no longer warranted[1]***

PMAA respectfully submits that the anti-dumping measures applying to PMBA's exports of the subject goods from Malaysia to Australia are no longer warranted (if they ever

[1] In preparing this section of the application, due regard has been had to the Commission's 'Guidelines – Applications for Review or Revocation of Measures' and 'Dumping and Subsidies Manual' (December 2021).

were) because:

(a) dumping of such exports:

(i) has not occurred for an extended period of time (if they ever did), that is, at least not since 27 December 2020[2]; and

(ii) is not currently occurring; and

the absence of the anti-dumping measures will not lead or be likely to lead to the occurrence or recurrence of dumping of those exports; and

(b) in the absence of dumping, such exports cannot be causing or be likely to cause the material injury that the measures are intended to prevent; and

(c) in any event and additionally, the domestic industry producing like goods to the subject exports has not incurred any injury from any source since at least 2019, including from PMBA's exports whether or not dumped, and is unlikely to incur material injury in the foreseeable future, at least not from PMBA's exports.

Accordingly, the anti-dumping measures applying to PMBA's exports of aluminium extrusion products from Malaysia to Australia are no longer warranted.

Detailed reasons why the anti-dumping measures are no longer so warranted are set out below along with supporting evidence.

***Detailed grounds why the measures are no longer warranted and supporting evidence***

***(1)*** **No current or recent dumping**

***(a) No dumping between 27 December 2020 and 26 June 2022***

With a minor exception, the Commission and/or the Review Panel have determined that PMBA's exports were not dumped during the period 27 December 2020 to 26 June 2022. Those determinations were made by the Commission and/or the Review Panel and, which determinations were accepted by the Minister or his delegate, in the three dumping duty assessments DA0225, DA0243 and DA0254 between those dates covering three successive six-month importation periods. The minor exception was that in DA0225, a duty assessment covering the 6 months to 26 June 2022, a negligible volume of PMBA's exports were found to be dumped[3] but at a positive margin of less than 2%, which would otherwise not constitute dumping (refer Section 269TDA(1)(ii) of the *Customs Act 1901)* and approximately 95% of the interim dumping duties paid during the relevant six-month importation period were refunded as not being payable.[4]

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[2] 27 December 2020 was the commencement date of the importation period for the first dumping duty assessment, being Dumping Duty Assessment DA0225 (see later below).

[3] This finding was not challenged by appeal to the Review Panel because the negligible amount of interim dumping duty not refunded did not justify incurring the cost of making such an appeal, notwithstanding that there were ground for such an appeal: please see the following footnote.

[4] The methodology used by the Commission in DA0225 to assess dumping was the same as that employed in Continuation Inquiry 591, including the disallowance of a level of trade adjustment to the normal value, which methodology is disputed by PMAA and is currently the subject of Federal Court proceedings. In particular, in that

**Evidence** of those determinations is contained in:

(a) the Dumping Duty Assessment Reports DA0225, DA0243 and DA0254 with the report for DA0243 being the Review Panel's Report No.167, all of which reports are **confidential**;

(b) the **confidential** Legal Instruments issued in those dumping duty assessments in relation to the interim dumping duties paid being refunded; and

(c) the associated **confidential** dumping margin calculations of the Commission and Review Panel as Confidential Appendix 4 – Dumping to their respective reports.

Copies of those documents are at **Confidential Attachments F-1** to **F-3, G-1** to **G-3** and **H-1** to **H-3** (collectively **Confidential Attachments F-G**).

Accordingly, the Commission and/or Review Panel, in substance, have respectively found no dumping by PMBA in the period 27 December 2020 to 26 June 2022.

***(b) No dumping between 27 June 2022 and 1 January 2023***

Although not necessarily relevant to this application given the Commission's determinations that PMBA's exports prior to 27 June 2022 and after 31 December 2022 were not being dumped, nevertheless, for completeness, PMBA's exports during the period 27 June 2002 to 31 December 2022, being six months of the approximately 18-month period when no anti-dumping measures were applying to PMBA's exports, were not dumped.

27 June 2022 was, of course, the date on which the anti-dumping measures applying to, amongst other exports, PMBA's exports from Malysia to Australia (refer Anti-Dumping Duty Notice No. 2022/024), which measures were not reinstated until 15 December 2023 when the Minister reversed his decision to permit the measures to expire.

As detailed later below, following the expiry of the measures neither did PMBA reduce its export prices to Australia nor did PMAA reduce its prices into the Australian market. This was contrary to the predictions of the Commission and the Review Panel in ADRP Review No. 155 and the Commission's accompanying Reinvestigation Report No. 591.[5] Rather, PMBA's export prices remained consistent with it's immediately prior pricing, which the Commission determined were un-dumped and consistent with pricing into 2023, which the Commission also determined to be un-dumped.

Hence, not only during the period 27 June 2022 to 31 December 2022 but also throughout the period when anti-dumping measures did not apply to PMBA's

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inquiry the Commission did not make a relevant level of trade adjustment, as it had done previously and has done subsequently: refer Dumping Duty Assessment DA0243 appealed to the Review Panel (see: ADRP Report No. 167), Dumping Duty Assessment DA0254, and Accelerated Review 577. Regardless, using that (erroneous) methodology the majority of exports were determined by the Commission as not being dumped and interim dumping duties paid almost refunded in full.

[5] See Section 8(3)(b)(ii) below for further discussion on this prediction by the Review Panel and Commission.

exports following the expiry of the measures on 27 June 2022, PMBA's were not being dumped/

***(c) No dumping in 2023 – being a period in which no anti-dumping measures applied to PMBA's exports until 15 December 2023***

PMBA's export to Australia from Malaysia were not being dumped in 2023. This has been confirmed by the Commission in its preliminary finding in Review 640, namely, that PMBA's exports were not being dumped in 2023.

This is the Commission's preliminary finding in Review 640, being an ongoing review initiated on 22 January 2024 into the anti-dumping measures applicable to PMBA's exports. The period of review in Review 640 is 1 January 2023 to 31 December 2023, which was a period in which, but for the last 17 days, no anti-dumping measures applied to PMBA's exports. The Commission recently verified, and made a preliminary finding, that PMBA's exports were not dumped during that period, with a negative dumping margin of -4.4%.

Specifically, the preliminary finding of a negative dumping margin for PMBA's exports is set out in the Commission's exporter verification report for PMBA published on the Commission's electronic public file on 15 January 2025. That report verified that PMBA's response to the exporter questionnaire filed with the Commission on or about 2 April 2024 as being complete and accurate and hence the preliminary finding of a negative dumping margin was based on information verified as complete and accurate.

> **Evidence** of this preliminary negative dumping margin finding is contained in **Non-Confidential Attachment E-1**, which is the exporter verification report for PMBA in Review 640, and in the Commission's confidential calculations underpinning that report, which are **Confidential Attachment E-2**. The report was published on the Commission's electronic public record on 15 January 2025: 640 - Aluminium extrusions from Malaysia | Department of Industry Science and Resources.

The Commission's preliminary finding in Review 640 is consistent with PMAA's and PMBA's own independent confidential assessments on whether PMBA's exports were being dumped during the review period, which assessments were based upon the information verified by the Commission in Review 640 and used the Commission's methodology, as endorsed by the Review Panel, in the determination of dumping margins for PMBA's exports.

***(d) No dumping in 2024***

Not only have PMBA's export to Australia from Malaysia been un-dumped since at least 27 December 2020 to 31 December 2023 as set out above, but also that PMBA's exports continued to be un-dumped in 2024. Pricing of PMBA's exports and domestic sales has remained consistent with that of prior years taking into account movements in London Metal Exchange (**LME**) aluminium prices, Major Japanese Ports (**MJP**) premiums and exchange rates, all of which are unrelated to dumping as findings of the Commission in dumping investigations, reviews and

inquiries have confirmed[6], with export prices continuing to exceed domestic selling prices by significant margins.

> **Evidence** that PMBA's exports to Australia continue to be at un-dumped export prices, that is, at export prices that are not less than but equal or exceed PMBA's domestic selling prices in Malaysia are in **Confidential Attachment N**. Specifically, that spreadsheet discloses that PMBA's prices to PMAA (on an ExWorks basis) throughout 2024 exceed its domestic selling prices (also on an ExWorks basis) over the same period: refer Tab 1 'Chart', which chart is derived from the pricing information in Tab 2 'Aust buying & Malay sell' in the spreadsheet.
>
> In addition, Tab 3 ''DM & EP' in the spreadsheet contains a dumping margin calculation for the first six months of 2024 and discloses a negative dumping margin of similar but greater magnitude as the Commission's negative dumping margin preliminary finding in Review 640 (i.e. >4.4%). That dumping margin was calculated using the same methodology used in the Dumping Duty Assessments and in Review 640 with adjustments consistent with those made by the Commission and/or the Review Panel.
>
> Given the consistency of pricing information, including spreads, in the chart in Tab 1, and the absence of any material change in the level of such pricing, the negative dumping would likely continue for the remainder of 2024.[7]
>
> Finally, in support of **Confidential Attachment N**, sample source documents (e.g., price lists, invoices, etc.) over 2024 have been included as **Confidential Attachment O**. Such documents are the same as those provided to and accepted by the Commission in its verification of information provided by PMBA in prior reviews and inquiries including Review 640.
>
> It also must be noted that in reviews, inquiries and dumping duty assessments involving PMBA's exports to Australia, PMBA's export sales and domestic sales have recovered the cost to make and sell aluminium extrusion products and have been profitable. Information provided to the Commission in response to questionnaires has been verified as being complete and accurate. Hence there is no reason to consider that the information provided in **Confidential Attachment N** and **Confidential Attachment O** is in any way unreliable.

It, therefore, is reasonable to conclude that PMBA's exports to Australia during 2024 have continued to be un-dumped as they have been from at least December 2020 including during the immediately prior inquiry period of 2023 the subject ot Review 640. That is, based on the above information and evidence, there appear to be reasonable grounds for PMAA asserting that the prices of

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[6] Refer, for example, the Commission's findings in Review 609.

[7] Note: a dumping margin for the second half of 2024 has not been calculated as not all of the requisite information was available at the time of preparation of the application and time required to undertake the calculation (refer Review 640), but it will be available in due course and, in any event, there has been no material change in the level of pricing in domestic and export sales transactions as disclosed in Tab 1 of **Confidential Attachment N**. In other words, there is no evidence that the price of PMBA's exports to Australia for the remainder of 2024 will continue to exceed its domestic selling prices.

PMBA's exports to Australia continued to exceed its domestic selling prices in 2024, namely, that they continued not to be being dumped.

### *(2)* No likelihood of dumping commencing to occur, or recurring

PMAA contends that, based on the history set out in the preceding section (1) of this application, the absence of the anti-dumping measures would not lead to or be likely to lead to dumping of such exports commencing to occur, or recurring.

As noted above, following the expiration of the anti-dumping measures on 27 June 2022, there was an 18-month period during which there were no measures applying to PMBA's exports (i.e., between 27 June 2022 and 15 December 2023), and even then, PMBA's exports were found by the Commission for the majority of that period to not being dumped, as well as prior to that period (i.e., for the period 27 December 2020 to 26 June 2022)[8].

**Evidence** of this is the Commission's findings in dumping duty assessments DA0225, DA0243 and DA0254, including ADRP Report No. 167, as well as its preliminary finding in the exporter verification report published in Review 640, being the most recent finding of the Commission that was published on 15 January 2025 and which records that for the period 1 January 2023 to 31 December 2023 PMBA's exports were not dumped, with a negative dumping margin of -4.4%. For the subsequent period, namely, 2024, evidence consists of the information and documents contained in **Confidential Attachment N** and **Confidential Attachment O**, which discloses that the prices of PMBA's exports to Australia in 2024 continue to exceed its domestic selling prices.

Further, contrary to the Commission's prediction in its Reinvestigation Report 591 and the Review Panel's ADRP Report No. 155, immediately following the expiry of the anti-dumping measures on 27 June 2022, neither PMBA's export prices were dumped, nor were PMAA's selling prices in Australia, reduced – instead, those un-dumped exports by PMBA were on-sold into the Australian market at increased prices: refer **Confidential Attachment J**. This supports the contention that in the six-month period immediately following the expiry of the anti-dumping measures, PMBA's exports continued to be exported to Australia and sold into the Australian market at un-dumped prices. This is consistent with the Commission's findings regarding PMBA's exports both before and after that six-month period and there was no material change in PMBA's pricing in that period.

Accordingly, it can only be concluded, supported by evidence, that during the 18-month period in which no anti-dumping measures applied to PMBA's exports following their expiry on 27 June 2022, PMBA's goods were not exported to Australia and sold into the Australian market at dumped prices.

There is no reason, supported by evidence, to suggest that this has changed or is likely to change in the foreseeable future: *Siam Polyethylene Co Ltd v Minister of*

[8] This was the period covered by the three successive importation periods to which DAO225, DA0243 and DA0254 relate.

*State for Home Affairs* (No 2) [2009] FCA 838.

## (3) No likelihood of the occurrence of material injury caused by the subject exports that the measures are intended to prevent

### (a) no prospect of material injury without dumping

If, as is the case, there has been no recent dumping of PMBA's exports, and there is no likelihood of future dumping of PMBA's exports, then, in the absence of the anti-dumping measures, it must necessarily follow that there can be no prospect of material injury to the Australian industry being caused or threatened by dumping of goods exported by PMBA. Of course, that is the only material injury that the anti-dumping measures imposed on PMBA's exports are intended to prevent and, consequently, the only justification for their imposition or continued imposition.

Absent dumping or likelihood of dumping, there can be no material injury caused or threatened by dumping and hence the imposition of the anti-dumping measures on PMBA's exports is no longer warranted (if ever it was).

### (b) no findings of material injury caused by PMBA's exports

#### (i) No findings have previously been made of material injury caused or threatened by PMBA's exports

The conclusion that dumping of exports by PMBA is unlikely to cause material injury can be more easily made when in no previous dumping investigation, inquiry or review has it been found that PMBA's exports have caused injury, let alone material injury, to the Australian industry.

> **Evidence** supporting that contention is Termination Report 362, Review Report 544, Accelerated Review Report 577, Continuation Inquiry Report 591 and ADRP Report 155 with the associated Reinvestigation Report 591. Copies of those reports are on, respectively, the Commission's public electronic record at Archived cases and the electronic public record (EPR) | Department of Industry Science and Resources and on the Anti-Dumping Review Panel's website at Aluminium Extrusions exported from Malaysia and the Socialist Republic of Vietnam | Department of Industry Science and Resources.

In none of those dumping investigations, reviews or inquiries was it found, as a finding of fact supported by evidence, that PMBA's exports had caused material injury to the Australian industry because of dumping.

Specifically:

(a) in Investigation 362, the dumping investigation was terminated in relation to PMBA's predecessor, Press Metal Bhd (**PMB**), due to its exports not being dumped and, as such, dumping of those exports could not have been causing material injury. In that investigation the only exports from Malaysia found to be being dumped were by '*non-cooperative and all other entities*' and not by

co-operating investigated exporters or by residual exporters; and

(b) in Review 540 and Accelerated Review 577 the issues of material injury and causation were not considered and hence there were no findings on those issues in those reviews; and

(c) in Continuation Inquiry 591, there was no finding that PMBA's exports had caused material injury to the Australian industry because of dumping or that the Australian industry had incurred material injury caused by dumping by any exports from Malaysia and/or Vietnam; and

(d) in ADRP Review 155 there was no finding that the Australian industry had incurred material injury caused by dumping. Rather, the Review Panel found, based on the reinvestigated findings in Continuation Inquiry 591 by the Commission, that exports from the subject countries would likely cause material injury to the Australian industry in the absence of the anti-dumping measures due to dumping. This was because it was contended by the Review Panel and the Commission that, in the absence of the anti-dumping measures, importers would likely reduce their prices into the Australian market and thereby likely cause loss of sales volumes to the Australian industry and/or price suppression and/or price depression to the Australian industry's prices, which finding is addressed in the following sub-section (ii). It was not, however, found that exports from those countries had caused material injury because of dumping during the inquiry period.

In other words, there has been no finding of material injury having been caused by dumping of PMBA's exports - only a finding of the likelihood of it occurring in the future if other events in fact occurred.

**(ii) Findings in ADRP Review 155**

For completeness, regarding the finding by the Review Panel in ADRP Review 155, and the associated reinvestigation of findings by the Commission in its reinvestigation of certain of its findings in Continuation Inquiry 591 that exports from the subject countries would likely cause material injury to the Australian industry in the absence of the anti-dumping measures due to dumping, the following observations are made:

(a) the decision by the Minister, on the recommendation of the Commission, in Continuation Inquiry 591 to permit the anti-dumping measures to expire on 27 June 2022 was reversed on 15 December 2023 following an application to the Review Panel to review the Minister's decision on Continuation Inquiry 591, giving rise to ADRP Review 155;

(b) that reversal was based, following a lengthy and extensive reinvestigation of nine (9) months by the Commission of certain of its findings in the continuation inquiry, primarily on the finding that, in the absence of the anti-dumping measures, importers of the subject goods would reduce their prices into the Australian market, ostensibly to increase sales volumes. This, apparently, would likely cause, in the price sensitive and transparent Australian aluminium extrusion products market, loss of sales volumes by the Australian industry and/or the Australian industry incurring price suppression and/or price depression and, ultimately, material injury to the Australian

industry in the form of reduced revenues and profits[9];

(c) however:

a. as noted above, there was no finding of material injury. Rather, it was determined that material injury would likely occur if the measures were allowed to expire for the reasons postulated by the Commission and the Review Panel in, respectively, Reinvestigation Report 591 and ADRP Report 155, that is, that exports from the subject countries, including those of PMBA, would likely cause material injury to the Australian industry in the absence of the anti-dumping measures due to dumping; and

b. that determination was based on findings that Australian importers were 'cost sensitive' and that when their costs increased due, for example, to the imposition of anti-dumping measures, Australian importers responded by increasing their prices into the Australian market; and

c. the Commission and the Review Panel respectively then contended that pricing behaviour by Australian importers in response to an increase in costs was predictive of their pricing behaviour in response to a decrease in costs such as, here, the removal of a tax (i.e., dumping duties); and

d. hence, it was contended, a decrease in costs, due, for example, to the expiry of the anti-dumping measures, would likely lead to Australian importers lowering their prices to Australian customers with the ostensible aim, it was claimed, to chase increased sales volumes; but

e. no evidence or explanation was advanced, either by the Commission or the Review Panel, as to why pricing behaviour in response to an increase in costs was predictive of pricing behaviour in response to a decrease in costs. No examination or analysis was undertaken by the Commission or the Review Panel as to the effect that an increase in costs would have or did have on an importer's business, nor, conversely, what effect a decrease in costs had or would have on that importer's business; and

f. nor was any evidence adduced by either the Commission or the Review Panel that the pricing behaviour in response to an increase in costs was predictive of pricing behaviour in response to a decrease in costs, nor any evidence adduced that a decrease in costs had resulted in Australian importers of aluminium extrusion products reducing their prices. Of course, the test enunciated by the Federal Court in *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No 2)* [2009] FCA 838 required such evidence when making such predictions; and

g. while the statutory test requires a hypothesis of what will or is likely to occur upon the expiry of the anti-dumping measures in question, that hypothesis must be based on objective findings of what has occurred in the past supported by evidence: *Siam Polyethylene*. It is not an

[9] Reinvestigation Report 591: Microsoft Word - 591 Reinvestigation Report.

> exercise in what is plausible or possible but, rather, requires that a determination of the likelihood of dumping and the material injury that the measures are intended to prevent recurring be made only if the evidence determines that that occurrence is 'probable' (i.e., more likely to occur than not): *Siam Polyethylene*. In the abovementioned continuation inquiry, including the reinvestigation, the evidence was to the opposite effect that is the recurrence of dumping causing material was improbable, not probable.

For those reasons the Commission's and the Review Panel's prediction (or hypothesis) as to what would likely occur in the absence of the anti-dumping measures was, PMAA respectfully submits, based on deficient analysis and not supported by evidence.

It also did not reflect prudent commercial decision-making. This because there was no certainty that sales revenue and profits foregone by lowering prices into the Australian market could be recovered in increased sales, that is, that there would be a sufficient increase in sales volumes to recover foregone sales revenues and profits as well as increase sales revenues and profits. Rather, the opposite was more likely. That is, in a competitive price sensitive and transparent market, other suppliers would likely also reduce their prices, resulting in the Australian importers foregoing sales revenues and profits that they otherwise would have obtained by maintaining their existing competitive pricing, as well as the windfall profits from the interim dumping duties no longer being payable that were included in their duty inclusive prices in the Australian market.

The question that then necessarily arises is what actually occurred following the expiry of the anti-dumping measures on 27 June 2022 and during the 18-month period prior to the reinstatement of the measures on 15 December 2023?

As far as PMBA's exports are concerned:

(i) there was no material alteration by PMBA in its pricing to PMAA, which prices, in any event, had been found for the majority of the period prior to the expiry of the measures to be un-dumped; and

(ii) PMAA being the importer, raised its prices into the Australian market following the expiration of the anti-dumping measures.

Hence the pricing behavior predicted by the Commission in Reinvestigation Report 591 and by the Review Panel in ADRP Report No.155 did not in fact occur, specifically the pricing behaviour of PMAA, the importer of the subject goods. PMAA did not reduce its prices following the expiry of the anti-dumping measures, but, rather, increased them.

In addition, in making their respective predictions on the likely effect of the expiry of the anti-dumping measures, the Commission and the Review Panel also appear to have ignored one of the Commission's own findings in its reinvestigation. The Commission found in that reinvestigation that PMAA's prices into the Australian market or, at least a significant portion of them, were undercutting the prices of the Australian industry (i.e., undercutting Capral

Limited's (**Capral**) prices)[10]. That price undercutting was occurring even though the prices being charged by PMAA were duty-inclusive.

As it happened, that price undercutting was not found by either the Commission or the Review Panel to be causing the Australian industry (as represented by Capral) loss of sales volumes and/or price suppression and/or price depression, that is, any injury. This was despite the Australian market being a highly price sensitive and transparent market, and despite a finding that Malaysian imports apparently had a substantial influence on prices in the Australian market (despite a market share of less than 4%).

If the Commission and the Review Panel had taken into account the Commission's finding in the Reinvestigation that PMAA's duty-inclusive prices undercut Capral's prices and doing so profitably notwithstanding the payment of interim dumping duties, neither the Commission nor the Review Panel could reasonably have concluded that PMAA would be likely to reduce its prices upon the expiry of the anti-dumping measures. Further, as the evidence has now demonstrated, PMAA did not do so.

## (4) The Australian industry producing like goods has not incurred, and is not likely to incur, any injury

Although not required for the purposes of this application given that the application of the anti-dumping measures to PMBA's exports is no longer warranted (if it ever was) because PMBA's exports have been found not to be dumped and there is no likelihood of dumping occurring or recurring, the fact that the Australian industry has not suffered any material injury from any source let alone from dumped exports and PMBA's exports in particular additionally supports a conclusion that the measures applying to PMBA should be revoked as no longer warranted.

For the following reasons the Australian industry producing like goods to the subject exports has not been and is not incurring, and is unlikely to incur in the foreseeable future, any injury from the subject exports:

### (i) *Preliminary matters – Capral's economic performance as being representative of the Australian industry as a whole*

In assessing the economic performance of the Australian industry and, in particular, whether the Australian industry as a whole has incurred material injury or is likely to incur material injury and, if so, whether that injury has been caused or is likely to be caused by dumping of PMBA's exports for the purposes of this application, such assessment has been based on Capral's economic performance as being representative of the Australian industry as a whole.

This is consistent with the Commission's treatment of Capral's economic performance as being representative of the Australian industry as a whole in dumping investigations and inquiries such as Investigation 362 and Continuation Inquiry 591 including its reinvestigation of certain findings concerning material

[10] Section 3.4.3 of *Reinvestigation Report 591*, pages 22-24: Microsoft Word - 591 Reinvestigation Report

injury in Continuation Inquiry 591 in the ADRP's review No.155. It also is consistent with the position of the Review Panel in ADRP Review No. 155 and, in particular, the Review Panel's findings in ADRP Reports Nos 135 and 137.

It also is consistent with Capral's application for the continuation of anti-dumping measures on exports of aluminium extrusion products from China in Continuation Inquiry 657. In its application in that inquiry, Capral concluded on page 16 of the application that "*Capral is the largest manufacturer of aluminium extrusions in Australia, and is seeking the continuation of the anti-dumping measures with full support from a large cohort of other Australian producers of aluminium extrusions*". Further, the likely effect of exports from China was assessed solely on its effect on Capral: "*Capral's current levels of price suppression are the direct result of the ongoing presence of dumped and subsided Chinese imports*" (at page 15), which statement was apparently supported by a redacted chart, Chart 4, that disclosed '*Capral price suppression assessment*'.

The application or, at least, the application published on the Commission's electronic public file was not supported by evidence from, and contained no reference to supporting evidence from, the other members of the Australian industry to Capral's claims that:

> "*Should the discipline of the measures be removed, subject producers will likely export significant higher volumes of the subject gods (sic) to the Australian market than is already the case. Those unfairly traded imports would likely take further sales from the Australian industry and depress and/or suppress Australian prices. These developments would then likely cause Australian industry's output, sales, market share, profits, productivity, return on investments, and capacity utilisation to further decline. They would also likely have significant further negative effects on other aspects of the industry's performance, such as employment, wages, growth, and investment*." (at page 16 of the application)

No evidence was adduced or referred to that claimed consequences of the anti-dumping measures being allowed to expire would likely have on he other members of the Australian industry. This was reflected in the following claims by Capral in its application:

> "*Capral's performance in 2023/24 has been heavily influenced by the increased presence of aluminium extrusion import volumes from China. The increase in share of imports sourced from China (an increase of approximately [XX] percent since FY2023) to account for more than [XX] percent of total imports (these of which have increased by [XX] percent since FY2023) is of serious concern to Capral.*
>
> *At the same time, Capral experienced a deterioration in sales volumes of approximately [XX] percent. Additionally, Capral has lost sales of [confidential text deleted: quantification of lost sales].36 This trend demonstrates that Capral's [confidential text deleted: quantification of lost sales] has also deteriorated*." (at page 13; footnotes to undisclosed confidential appendices omitted)

Those claims are not only speculative but based solely on the economic performance of Capral as being representative of the Australian industry as a whole. There is no mention of the effect of the exports from China on the other members of the Australian industry, nor reference to supporting evidence from the other members of the Australian industry, nor to evidence establishing that the economic performance of Capral is representative of the Australian industry as a whole.[11]

It is noted that on page 10 of the application, in response to the question of whether material injury will recur and specifically, in respect of the '*Performance of the local industry (profits, price trends, investment and employment)*', Capral stated that "*Capral has provided Confidential Appendix A-6 and Confidential Appendix A-7 as part of this application.*" No non-confidential summaries were provided of the contents of those appendices contrary to Section 269ZJ of *the Customs Act 1901*, but it seems unlikely that it contained detailed financial information of the economic performance of members of the Australian industry other than Capral., especially given the absence of references in the application to the economic performance members of the Australian industry or the Australian industry as a whole. Nor were there references to information and/or evidence provided by members of the Australian industry in support of those confidential appendices, such as references to audited financial statements or other financial statements, records or accounts whether confidential or non-confidential.

In its assessment of Capral's application, that is, in Anti-Dumping Notice No. 2024/085 dated 8 November 2024, the Acting Anti-Dumping Commission, after setting out in summary Capral's claims in it application, relevantly stated for present purposes, at page 5, that:

> "*Financial data provided by Capral in support of its application indicates that **it** has experienced reductions in total sales volumes and values since financial year (FY) 2021.*" (emphasis added)

The notice contains no statements concerning the financial performance of the other members of the Australian industry or the Australian industry as a whole. No mention is made of what other members of the Australian industry may or may not have relevantly experienced. Nor does it refer to information or evidence provided by other members of the Australian industry in support of the claims made in the application that the Australian industry as a whole would incur material injury if the antidumping measures applying to exports from China were allowed to expire.

In other words, it is reasonable to conclude that the only financial data provided

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[11] There also is no mention of, for example, the effect of supply of aluminium extrusions from a number of sources, that is, both domestic and from overseas (e.g., Indonesia, Thailand, Vietnam, Malaysia, etc., as well as China) upon prices when such supply exceeds demand. Regardless of whether or not dumped, imports from all sources would of themselves place downward pressure on prices, that is, where supply exceeds demand. This was not addressed in Capral's application. Nor were the price increases made by the Australian industry in, for example, 2023 and 2024 such as the price increases in similar amounts made by Capral and G James in December 2023 that took effect in early 2024.

in the application was financial data relating to Capral's economic performance and not that of other members of the Australian industry and the decision to initiate the continuation inquiry was based on the economic performance of Capral as being representative of the Australian industry as a whole.

In this context, it is noted that the Anti-Dumping Commissioner, in considering and accepting an application for the continuation of anti-dumping measures, was required to be satisfied that "*there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent*", that is, that is, material injury to the Australian industry producing like goods as a whole that the measures are intended to prevent (Sections 269ZHD(1) and (2) of the *Customs Act 1901*).

Also, with Capral possessing approximately 50% of the established production capacity of the Australian industry and holding approximately 50% of the market share of the Australian aluminium extrusion products market held by the Australian industry[12], it is not unreasonable to conclude that its economic performance would be representative of the Australian industry as a whole. That is with Capral having an established production capacity of 65,000tpa and a 28% market share of the Australian market on sales volumes of 67,800tpa, then the Australian market would be approximately 240,000tpa of which the Australian industry as a whole holds 50% or approximately 120,000tpa half of which is held by Capral. In other words, the dominant domestic producer of aluminium extrusions in Australia or, in Capral's own words on its website "*Australia's largest extruder and distributor of aluminum*": The National Supplier & Distributor Of Aluminium Products | Capral Aluminium Australia | Capral

Further, when regard is had to the economic performance of the other two main Australian producers of aluminium extrusions, being G James Extrusions Pty Ltd (**G James**) and Independent Extrusions Pty Ltd (**INEX**), whose economic performance has largely mirrored that of Capral as found by the Commission in prior dumping investigations and inquiries and reflected in financial statements filed with the Australian Securities and Investments Commission (**ASIC**), most recently for the financial year 2023/24, it is, again, not unreasonable to conclude that Capral's economic performance is representative of the Australian industry as a whole. Indeed, in prior dumping investigations and inquires it has not been contended otherwise by members of the Australian industry, including G James and INEX, nor in their respective letters of support, nor by the Commission. It also is consistent with the position of the Review Panel (refer ADRP Reports Nos 135 and 137).

Hence, for the purposes of this application, it is reasonable to contend that the economic performance of Capral, being the largest producer of aluminium extrusions in Australia by its own admission and acknowledged by the Commission, is representative of the Australian industry as a whole and may be treated as such for the purposes of this application.

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[12] Refer Capral's Annual Reports and Shareholder Presentations at **Non-Confidential Attachment I** & **Non-Confidential Attachment K** for Capral production capacity (65,000t) and market share (26%-28% of whole market).

### (ii) *Preliminary matters – factors affecting Australian market conditions*

In assessing the likely effect of dumped exports on the Australian industry(assuming that dumping is likely to occur), Section 269TAE of the *Customs Act 1901* requires not only the current economic performance of the Australian industry but also requires forward looking likely economic performance of the Australian industry in then likely prevailing market conditions including global factors affecting domestic market conditions. This section of the application addresses global factors that may affect domestic market conditions in Australia, whereas likely future domestic market conditions is addressed in section (iv) later below.

In its application for the continuation of the anti-dumping measures applying to exports of aluminum extrusion products from China that led to the initiation of Continuation Inquiry 657 and its subsequent submission dated 12 November 2024, Capral referred to findings in a number of jurisdictions that exports from China were being dumped including the findings of the USA Department of Commerce in this regard. Such references were to support Capral's contention not only that exports from China were determined by other investigating authorities as being dumped into their respective countries but also that the likelihood of this occurring in respect of exports to Australia.[13]

However, there were a number of omissions from Capral's application and its subsequent submission in Continuation Inquiry 657.

First, references to findings of investigating authorities in dumping investigations in Canada and the European Union into exports from China to those countries, those findings are somewhat dated as they were findings made in 2020. The relevance of findings made in 2020 to exports to Australia from China following the scheduled expiry of the anti-dumping measures in 2025 was not explained by Capral. There was no reference to, nor supporting evidence provided that, those findings having had any effect on exports from China to Australia then or subsequently. Hence, apart from historical interest, the relevance of those findings, if any, is unclear and not explained.

Second, while more recently the Department of Commerce in the USA had found that exports from China, along with exports from a number of other countries, were being dumped, the US International Trade Commission (**USITC**) even more recently in a notice published on 30 October 2024, found that, despite exports of aluminium extrusions from China, Colombia, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates, and Vietnam being dumped, they were not causing material injury to the domestic industry in the USA producing like goods: refer USITC Notice, 30 October 2024 – Aluminum Extrusions From China, Colombia, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, South Korea, Taiwan, Thailand, Turkey,

[13] Refer: documents EPR 1 and EPR 3 on Commission's public file for Continuation Inquiry 657: 657 - Aluminium extrusions from China | Department of Industry Science and Resources

United Arab Emirates, and Vietnam Do Not Injure U.S. Industry, Says USITC | United States International Trade Commission and USITC Report No. 5560 dated November 2024 Aluminum Extrusions from China, Colombia, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates, and Vietnam). This was not mentioned in Capral's submission.

Typically, as the Commission would be aware, USITC's findings follow an extensive investigation that included not only a significant number of domestic producers of aluminium extrusion providing information and evidence relevant as to whether the subject exports were causing material injury because of dumping, but also information and evidence from end-users such as distributors and fabricators as to not only what purchasing decisions were made but also why those purchasing decisions were made by those entities. Information and evidence of such investigative inquiries reflected in UTSIC Report No. 5560, which is supportive of USTIC's findings. Of significance from such investigation and findings is that despite the US Department of Commerce determination that the subject exports were being dumped, it did not inexorably follow that because of that material injury would be being caused to the US domestic industry. While the absence of dumping means that material injury cannot be being caused by dumping, a finding of dumping does not, because of that, material injury must necessarily be being caused. In this case, USITC determined, based on its inquiries and evidence obtained from interested parties, that it was not.

No doubt the absence of anti-dumping measures on exports of aluminium extrusions to the USA from the countries in question, including Malaysia, Indonesia, and China, will materially affect the global trade in aluminium extrusion products. However, it would unlikely lead to excess production in those countries and, ultimately, dumping in Australia, but, rather, it would likely have the opposite effect with increased exports to the USA. Further, no evidence that findings of dumping in other jurisdictions had led to exports to Australia from China or any other country including Malaysia being dumped and no evidence was adduced of this likely to occur.

It also should be noted in this regard that USITC also found that Section 301 customs tariffs imposed on imports of aluminium extrusion products into the USA were reported to USITC by interested parties as not having a material adverse effect on imports: refer USITC Report No. 5560. Thus, not even those tariffs were adversely affecting exports to the USA or the domestic industry.

In this context, the recent announcements of the Government of the USA to impose customs tariffs on imports of aluminium into the USA from all countries with effect on and from 12 March 2025 has led to speculation that this will lead to a surplus of aluminium globally. Assuming that the tariffs are persisted with, which appears to be the case at least as at the date of filing this application, the Office of the Chief Economist at the Department of Industry has disclosed that the major exporters of aluminium are Canada, Netherlands, Russia, Australia and Norway: see **Non-Confidential Attachment P** '*Resources and Energy Quarterly December 2024*'. Although China produces approximately 60% of the global production of aluminium, most of that production is apparently consumed

within China, not exported. It is, therefore, not apparent why the imposition of tariffs on imports of aluminium (as opposed to aluminium extrusions) would lead to an excess of aluminium production globally? Specifically, assuming that it did, why would this necessarily lead to increased production of aluminium extrusions in aluminum exporting countries and such increased production of aluminium extrusions being exported at dumped prices and to markets where higher prices are obtainable and obtained, such as Australia, than in the exporting country?

The more likely outcome of the imposition of tariffs on imports of aluminium into the USA is that prices of aluminium, including aluminium alloy ingots and billets, will decline globally from their current historic high level[14]. Should this occur, it would lessen the effect of the US tariffs, if not negate them. It also would not be relevant to the likelihood of dumping. As the Commission has repeatedly found, including recently in Review 609, prices of aluminium extrusions in all markets rise and fall in parallel with the rise and fall of aluminium prices. That is, the rise and fall in aluminium prices is not relevant to the occurrence of dumping because such changes to the prices of aluminium are reflected in corresponding changes in the prices for aluminum extrusion product. Indeed, the latter are predicated on the former globally, that is, in all aluminium extrusion product markets.

The more salient question is if the price of aluminum alloy ingots and billets fall due to a fall in LME prices, why would producers of products using aluminum alloys as an input to manufacture not source their requirements from low priced sources in such circumstances. Canada, as well as the other principal exporting countries, presumably would or could be a prime source of aluminium alloy ingots and billets in such circumstances. Would not sourcing low-priced aluminium alloy ingots and billets from countries such as Canada where aluminium including alloy ingots and billets presumably may be available at lower prices than in Australia, especially, in the case of Canada with its lower cost hydro-electric energy sources, and thereby enable Australian producers of aluminium extrusion products to reduce their production costs and increase their price competitiveness both domestically and in export markets?

That is, would it not confer on Australian producers of aluminium extrusion products a similar comparative cost advantage and competitive price advantage as Chinese exporters that the Commission identified in Review 609:

> "… *the commission considers that:*
> - *there is a consistency and stability in the domestic pricing by Chinese manufactures which confirms a competitive market where no* ***competitive advantage*** *is derived by any individual manufacturer as the reduced input costs resulting from the situation in the market appears to equally benefit most producers and*
> - *the Australian market is a competitive market. However, the commission considers* ***variability*** *of pricing by Chinese manufacturers in the Australian domestic market builds a* ***competitive advantage enjoyed by Chinese exporters due to the market situation****, which*

[14] Capral's 2024 full year results presentation to shareholders sets out the historic high level of LME aluminium price at US$4,000t: see **Non-Confidential Attachment K**.

> *allows them to engage in pricing strategies in the Australian market that allow them to achieve either:*
> - ***higher margins*** *than the margins attainable on the sale of the same goods on the domestic market*
> - *increased sales volumes by significantly undercutting other participants in the Australian market or*
> - *a combination of* ***higher margins*** *and increased sales volumes resulting from undercutting*" *(emphasis added)* (Section B3.4, Appendix B of Report 609)

It must also be noted that, in addition to finding that exports from China by the majority of exporters were not being dumped notwithstanding the existence of a 'particular market situation' and the use of a constructed normal vlaue to take that into account, the above finding also indicates that exports were able to compete successfully in the Australian market, to charge higher prices than those being obtained in the domestic Chinese market and, consequently, achieve higher profit margins and profits. This, of course, is the opposite of dumping.

However, the question remains as to why the Australian industry would not avail itself of lower-cost inputs to manufacture such as here, lower-priced aluminium alloy ingots and billets that apparently may become available in overseas markets, such as Canada, as a result of the USA's tariffs and with whom Australia has preferential trade agreements so as to reduce production costs and increase price competitiveness, both domestically and globally?

This question would seem likely to become of increasing importance with the cost of energy in Australia likely to significantly increase in the near future, especially as Australia transitions to renewable energy. This, of course, is the reason why the Australian Government is proposing to provide $2 billion in tax subsidies (i.e., the Green Aluminium Production Credit) to the aluminium industry to assist in the cost in transiting to renewable energy:

> Joint media release: Aluminium to forge Australia's manufacturing future | Ministers for the Department of Industry, Science and Resources
>
> Government pledges $2 billion to drive aluminium sector's renewables shift – pv magazine Australia
>
> Helping the switch to green aluminium | energy.gov.au
>
> Aluminium to forge Australia's manufacturing future | Prime Minister of Australia

No doubt such government subsidies, which will confer a benefit and will be specific, will create a 'particular market situation' in the Australian aluminium extrusion products market by artificially lowering the cost to produce such products in Australia. That is, a 'particular market situation' would come into existence in the Australian aluminium extrusion products market due to the Australian Government's intervention (subsidization) of production of aluminium

in Australia, the principal cost in the production of aluminium extrusions.

Similar as to what has been found to occur in China through government intervention in the Chinese aluminium industry, intervention by the Australian Government in the Australian aluminium industry, therefore, will have a similar effect in Australia. It will artificially lower the cost of producing aluminium in Australia, which, in turn, will artificially lower the cost of production aluminium extrusion products in Australia and, ultimately, artificially lower the prices of domestically produced aluminium extrusion products. Absent such government intervention, it would not be unreasonable to expect that the cost of producing aluminium extrusion products from locally sourced aluminium would be significantly higher, resulting in higher prices for the domestically produced aluminium extrusion products.

In such circumstances, the issue will be whether the Australian aluminum extrusion industry should source their requirements for aluminium alloy ingots and billet from alternate, less-expensive sources such as, for example, Canada or other major exporting countries, that are not having to deal with increasing energy costs so as to remain competitive similar to Chinese exporters as outlined in the above extract from the Commission's Report 609. Failure to do so would be to elect to produce products at a comparative cost disadvantage and, consequently, competitive price disadvantage to others regardless of dumping.

Further, if the Green Aluminium Production Credit subsidy is proceeded with by the Australian Government, then, in an assessment of material injury and causation, adjustments would, of course, need to be made to the prices of aluminium extrusions produced by the Australian industry to account for the artificial lowering of such prices from the 'particular market situation' due to the subsidization of the Australian aluminium industry.

Alternatively, if the subsidization of the Australian aluminium industry is not proceeded with, then, the issue will be whether the increase in energy costs in Australia will render the Australian aluminium industry uneconomic, as the government proposed subsidization suggests. If so, then the Australian aluminium extrusion industry may have no option but to source requirements of aluminium alloy ingots and billet from overseas that, presumably, would place it in the same competitive position as Chinese exporters as set out in the extract earlier above from the Commission's Report 609.

It also is noted that in its application for the continuation of the anti-dumping measures applying to exports from China that resulted in the initiation of Continuation Inquiry 657, Capral makes no mention of the prevailing conditions in the Australian market or the conditions that would likely prevail in the period following the due expiry date for the measures, including global as well as domestic factors affecting such market conditions. Rather, Capral stated in its conclusion on page 16 that:

> "*In its continuation assessment, the Commission needs to appropriately consider the period beyond the life of the current measures to determine if it is likely that dumped and injurious aluminium extrusion exports China*

*will recommence. The Commission's recommendations must be based on judgements about future probabilities. Demonstrated commercial behaviours relating to an inquiry period are essential pointers in determining what would be more likely or less likely to happen in that future.*

*The above indicates that the **likely** impact of aluminium extrusion imports from China on the domestic industry would be significant if the measures were discontinued. Should the discipline of the measures be removed, subject producers will **likely** export significant higher volumes of the subject gods to the Australian market than is already the case. Those **unfairly** traded imports would **likely** take further sales from the Australian industry and depress and/or suppress Australian prices. These developments would then **likely** cause Australian industry's output, sales, market share, profits, productivity, return on investments, and capacity utilisation to further decline. They would also **likely** have significant further negative effects on other aspects of the industry's performance, such as employment, wages, growth, and investment."* (emphasis added)

No mention was made of likely demand in Australia for aluminium extrusion products in the application and, in particular, the likely increase in demand due to increase in residential housing construction (see later below), nor of:

- the Australian industry's ability to meet that increased demand from existing domestic production capacity given that it is currently unable to meet existing demand with a shortfall of approximately 50% of current demand; nor
- the effect on prices of supply of aluminium extrusions from all sources (both domestic and imports) exceeding demand or of other conditions affecting the Australian market (both domestically and globally); nor
- the effect on prices in the Australian market by the price undercutting of un-dumped exports from China referred to in the extract earlier above from Review 609; nor
- why exports from China would commence to be exported at dumped prices when, at un-dumped prices, they can successfully compete in the Australian as found by the Commission in Review 609 and obtain higher profit margins and profits than in domestic sales in China; and nor
- why un-dumped exports from China have not "flooded" into the Australian market along with other imports, such as those from Indonesia[15], undercut the Australian industry's prices and increased their sales volumes in the Australian market, while maintaining their profit margins.

In light of such and other omissions, Capral's claims above can only be construed as speculative and unsupported by evidence.

Finally, while the above considerations may be relevant to what conditions will affect the Australian aluminium extrusion products market in the future, the

[15] Trade remedy index (TRINDEX) | Department of Industry Science and Resources

nature and scope of those global factors and, consequently, their effect (if any) on aluminum extrusion products markets is, at best, uncertain. The only seemingly certain factors are that:

- if, as currently appears to be the case, the USA's tariffs on imports of aluminium is likely to only reduce LME aluminium prices, as opposed result in trade diversion of downstream products such as aluminium extrusions and, specifically dumping fo such exports to Australia; and
- electricity prices in Australia will rise as the country transits to renewable and possibly other sources of energy, which, subject to government subsidies, will likely increase the cost of aluminium alloy ingots and billets in Australia and, perhaps, cause domestic producers of aluminium extrusion products to seek alternate sources of that input to manufacture.

Of course, these factors would have relevance only if PMBA's exports were being or likely to be dumped, which, as set out above, has not been, is not and is not likely to be the case.

Of more immediate relevance regarding factors affecting the Australian aluminium extrusion products market are the domestic factors affecting that market either directly of indirectly. In particular, factors affecting the Australian construction industry and, in particular, the Australian residential construction industry due to it being the main driver of demand for aluminium extrusion products and, therefore, the principal determinant of the economic performance of the Australian aluminium extrusion industry as has been acknowledged by the industry itself and by the Commission and the economic performance of the Australian industry (as represented by Capral) over the past five or six years and its likely performance in the reasonably foreseeable future. This is addressed in the sections below.

### *(iii) Likelihood of material injury to the Australian industry occurring or recurring*

The likelihood of the Australian industry incurring injury in the foreseeable future from the subject goods exported by PMBA from Malaysia is unlikely, even if in the equally unlikely event that they were dumped. It is unlikely because, as is well known and accepted by the industry, the economic performance of the Australian industry (as represented by Capral) is largely dependent upon demand for aluminium extrusion products by the Australian construction industry and, specifically, the Australian residential construction industry.

That demand is likely to be driven by actions by Australian governments at all levels to encourage the construction of residential housing, including detached, semi-detached and apartments, throughout Australia. This involves a substantial financial investment by government in such construction that will exceed the sums invested during the COVID pandemic, as well as addressing delays in planning and development approvals. These actions are being taken to address the well-publicised shortage of residential accommodation in Australia – the so-called "housing crisis", that is, the shortfall of the supply of residential housing to meet demand.

**Evidence** of government assistance for the residential construction industry can be found in a variety of policy and other announcements made by Australian governments including here:

Housing – Parliament of Australia

$1 billion increase to the National Housing Infrastructure Facility | Treasury.gov.au

https://treasury.gov.au/consultation/c2024-491046

Build-to-rent tax concessions | Treasury.gov.au

Social & Affordable Housing NHIF | Housing Australia

Housing Australia Future Fund Facility and National Housing Accord Facility | Housing Australia

Funds flowing for new crisis and transitional housing | Treasury Ministers

A Shared Responsibility: The plan to begin addressing the housing crisis in NSW | NSW Government

Data & forecasts | HIA Economics including HIA's 'Housing Australia's Future', refer **Non-Confidential Attachment M.**

It is expected that, notwithstanding such support for residential construction by all levels of Australian government, that the shortage of residential housing is unlikely to be adequately addressed within the next 5 to 10 years or, at least, it will take that long to address the "housing crisis".

In the meantime, demand for aluminium extrusion products by the residential construction industry, as well as other end-users in Australia, will continue to exceed the established production capacity of the Australian industry. That shortfall will need to be and will continue to be met by imports.

Capral itself, in its presentation to shareholder of its full year results for 2024 (see earlier above), is of the view the demand in the residential construction industry in Australia is likely to recover in the second half of 2025 based on Housing Industry of Australia forecasts and that its industrial and commercial are expected to remain firm (refer page 24 of the presentation). There also have been announcements by Ministers of the Federal Government that this may already be occurring with its National Housing policy implementation taking effect.

In this context, it is important to note that despite the Australian aluminium extrusion products market being a highly price sensitive and transparent market in which purchasers can apparently switch to alternate sources for their respective requirements, this has not resulted in Capral (and by proxy the

Australian industry) experiencing:

(i) any material loss of sales volumes to imports or imports at dumped prices;

(ii) sales volumes falling below its established production capacity;

(iii) any material loss of market share to imports; or

(iv) any material price suppression or price depression; or

(v) any material loss of sales revenues or reduced profits or profitability caused by imports or imports at dumped prices.

(refer, for example, to **Non-Confidential Attachment I**)

Given the principles of supply and demand and their effect on prices, with demand in the Australian aluminium extrusion products market exceeding the Australian industry's established production capacity to meet that demand and likely to do so for the foreseeable future, absent import competition it would be reasonable to expect prices for aluminium extrusion products in the Australian market to rise.

However, the ready availability of supply from imports presumably would have the effect of suppressing and depressing such increases in market prices regardless of whether or not the imports are dumped, especially given the volume of un-dumped imports from, amongst other countries, especially Indonesia and China. Of course, in accordance with well-established WTO jurisprudence, price effects due to the operation of the economic principles of supply and demand cannot be attributed to dumping and any effects attributed to dumping must be separately quantified.

While it is, of course, recognised that it is possible for the Australian industry as a whole or members of that industry to experience material injury or be less prosperous due to dumped imports even in times when there is strong demand for aluminium extrusion products, that, however, has not occurred since at least 2019 for the reasons set out above and there is no evidence of it likely occurring in the foreseeable future.

This is especially the case when un-dumped exports are successfully competing profitably in the Australian market such as PMBA's exports and, for that matter, exports from China, whether dumped or un-dumped. Since at least 2019 the Australian industry (as represented by Capral) has exhibited consistent strong economic performance, including increased sales volumes, sales vales and profits. Notwithstanding import competition during the period, including price undercutting by such imports found by the Commission in Continuation Inquiry 591 and in Review 609, no injury was incurred by the Australian industry, including during the period when no anti-dumping measures applied to exports from Malaysia and Vietnam (refer **Non-Confidential Attachments I & K**).

Further, no mention was made by Capral in its application for the continuation of the anti-dumping measures applying to exports from China in Continuation Inquiry 657 that such exports had caused material injury to the Australian

industry because of dumping at any time since 2019. The only diminution of sales volumes, sales values and profits during this period is attributable to the usual 'ebb-and-flow of business', that is, a slight contraction of demand in the residential construction industry in 2024, which demand Capral forecasts as increasing in the latter half of 2025 based on HIA data if such increase in demand has not already commenced.

In conclusion, in all of these circumstances, even if, which is not the case, PMBA's exports were likely to be dumped, it is unlikely that they would or could cause material injury to the Australian industry. Not only is there no evidence that PMBA's exports to Australia in the foreseeable future are likely to be dumped given that the evidence is to the opposite, namely, that PMBA's exports in the foreseeable future are likely to be un-dumped, but also there is no evidence that PMBA's exports would or could cause material injury to the Australian industry because of dumping. For this reason as well, the measures applying to PMBA are not warranted.

**(iv)** ***Australian industry has incurred no injury since at least 2019***

Since at least 2019, the Australian industry (as represented by Capral) has incurred no injury from imports, whether or not dumped, and certainly not from exports by PMBA.

**Evidence** in support of this contention consists of Capral's Annual Reports and Half Year Reports provided to its shareholders and to the Australian Securities Exchange (**ASX**) and published on its website (refer: Reports and Presentations | Capral Aluminium), some relevant elements of which are summarised at **Non-Confidential Attachment I**[16].

Indeed, Capral and, therefore the Australian industry, has been significantly profitable since 2019 with a profit margin of between 5% and 7% (refer **Non-Confidential Attachment I**) and has increased its prices for its products by around 41% since 2018/2019 (refer **Non-Confidential Attachment I**).

In addition, Capral has maintained its sales volume, which has exceeded at times its established production capacity of 65,000 tpa (refer 2024 Half Year Results Presentation, p.18: CAA_Capral_Half_Year_Results_Presentation (2).pdf – see **Non-Confidential Attachment K**), and maintained its market share of between 26% to 29% (refer Capral's Annual Reports between 2018 and 2023 and 2024 Half-Year Presentation: see **Non-Confidential**

[16] Reference to economic performance by reference to, amongst other things, the financial statements of companies that are members of the Australian industry, including Capral whose economic performance is representative of the Australian industry, is appropriate given that dumping concerns price discrimination by exporters manifesting in price undercutting of the prices of the domestically produced products of the industry in the importing country with the consequential sales volume and price effects that, ultimately, affect the economic performance of the domestic industry in the importing country. In addition, the financial statements are also relevant given the required content of such statements and accompanying directors reports: refer Sections 295 and 297 to 299 of the *Corporations Act 2001*, especially Section 299. Of course, companies whose shares are listed on a stock exchange will have the additional reporting obligations contained in the listing rules of the stock exchange.

**Attachments I & K**).

Presumably this is representative of the Australian industry's economic performance as a whole. In this context, it is understood that, in a market of approximately 200,000 tpa, the Australian industry as a whole has continued to supply at or in excess of its established production capacity of around 100,000 tpa, with the shortfall necessarily being met by imports from a wide variety of countries, and has maintained its market share of around 50%.

This demonstrates that there is no evidence of loss of sales volumes by the Australian industry nor loss of market share, or price suppression, price depression, reduced profits or profitability, for at least the last 6 years.

Further, Capral recently updated its profit guidance at "*its half year results release on 28 August 2024 of Underlying EBITDA range $50m to $54m, and NPAT range $23m to $27m"* for the full year ending on 31 December 2024 with *'earnings to be at the top end of that guidance range, or slightly above*': see announcement of 19 December 2024 (**Non-Confidential Attachment L**). That continuing strong economic performance by Capral is, no doubt, being enjoyed by other members of the Australian industry.

Finally, Capral released its final year results for 2024 on 26 February 2025: refer **Non-Confidential Attachment K.** Those results disclose that Capral's strong economic performance continued throughout 2024 and that it will continue its share buy-back program from its profits. In particular, in those results Capral disclosed, amongst other things, that:

- its EBITDA (458.3 million) had declined by 5% and its EBIT ($34.5 million) by 5% but its NPAT ($32.5 million) had increased by 2% over the prior year (or a gross margin of approximately 5%) on a decline in sales volumes of 5%, largely attributable to the decline in the residential construction sector but which sector was expected to revive in the second half of 2025, no doubt due to the financial stimulus from governments at all levels; and
- a positive guidance for 2025 that was expected to be in line with profits for 2024, with continued strong performance in its industrial and commercial building divisions and an improved performance in its residential construction division with forecasted 2025 residential construction starts of 180,800 in 2025 with detached residential housing predicted to be up by 5%, low-rise multi-residential by 8%, high-rise by 17%.

In other words, a continued strong economic performance and one that was forecast by Capral to continue into 2025, with only a passing reference to the situation in the USA at the outset of the presentation.

That the Australian industry has not incurred injury since at least 2019 is reflected not only in Capral's economic performance since 2019 but also in its

share buy-back announced on 3 August 2023. As part of its Capital Allocation Policy, Capral's published policy is to pay dividends of between 40% and 80% of Net Profit After Tax (**NPAT**) to shareholders, which has resulted in full year dividends each financial year of around $0.50 per ordinary share. Under the share buy-back, the Board of Directors of Capral "determined that for the remainder of the 2023 calendar year (i.e., since the announcement on 3 August 2023) around 370,000 shares (~$2.7m), an equivalent of $0.15 per share, would be bought back".

Further, according to its 2024 Half Year Financial Results, Capral's share-buy-back involved:

- in Tranche 1 in the second half of FY23, 364,000 shares being bought back and cancelled at a cost of $3.1m ($8.62 per share);
- in Tranche 2, in the first half of FY24, 340,335 shares being bought back at a cost of $3.2m ($9.30 per share); and
- the share buy-back recommencing on 2 September 2024.

(Refer 2024 Half Year Results Presentation, p.19: CAA_Capral_Half_Year_Results_Presentation (2).pdf – see **Non-Confidential Attachment K**)

In its final year results for 2024, Capral confirmed that the share buy-back would continue into 2025, thereby reflecting confidence in its strong future economic performance.

Clearly Capral has sufficient cash on hand to undertake the share buy-back. It must consider that its shares are undervalued by the market and, given that and the company's economic performance, the share buy-back is a suitable investment in itself, as well as to provide shareholders with a better return on their investment than just the payment of dividends.

Finally, while it is noted that this application refers to financial statements assessing the economic performance and such financial statements may not in certain circumstances provide a complete picture of the economic performance of a company or of an industry as a whole, they nevertheless provide, and are intended to provide, an insight into the company's economic performance. This is especially when regard is also had to the directors' reports that accompany the financial statements, as well as, when provided, statements from the Chairman of the company and its Chief Executive Officer (**CEO**), as well as shareholder presentations.

Typically, the financial statements will provide insight into sales volumes, sales revenues, various costs such as cost of materials, and profits, as well as a variety of other matters, so as to accurately reflect the financial position of the company both in the relevant financial year and over time. Statements by the Chairman and the CEO provide insight into factors affecting the economic performance of the company such as market conditions including conditions likely to prevail in the foreseeable future likely to affect future economic performance. As noted above, in the case of Capral, these can be found in its

Annual Reports and Shareholder Presentations, including its most recent 2024 Full Year Results Presentation and Profit Guidance, copies of which are at **Non-Confidential Attachment I & K** and at Reports and Presentations | Capral Aluminium.

In addition, Sections 295 and 297 to 299 of the *Corporations Act 2001* require the financial statements of companies not only to reflect the financial position and performance of the company but also that the directors' report that accompany the financial statements address a range of matters including a review of operations of the company during the relevant financial year and the results of those operations, as well as refer to likely developments in the company's operations in future financial years and the expected results of those operations.

Hence financial statements .and accompanying documents provide insight not only into the economic performance of the company but also likely developments and events affecting the company's operations in future years and their effect on the company's economic performance. Accordingly, here, the annual reports, half-year reports and shareholder presentations of Capral not only provide insight into its economic performance for the relevant financial year or half-year as compare with prior years, but also developments and events, such as future market conditions, likely to affect its future economic performance. As representative of the Australian industry as a whole, these can be taken to be representative of the Australian industry as a whole.

In summary, in the past six years there has been no injury, let alone material injury, to the Australian industry caused by imports whether or not at dumped prices, and including in the form of reduced sales revenue and loss of profit due to price undercutting causing reduced sales volumes and/or price suppression and/or price depression.

In the absence of injury to the Australian industry from any imports, whether dumped of un-dumped, PMBA's exports to Australia have not caused injury to the Australian industry regardless of whether such exports were dumped or un-dumped.

## Conclusion

In light of all of the foregoing, it is evident that:

(a) dumping of exports by PMBA from Malaysia to Australia:

  (i) has not occurred for an extended period of time (if they ever did); and

  (ii) is not currently occurring; and

  (iii) in the absence of the measures will not lead or be likely to lead to the occurrence or recurrence of dumping of those exports; and

(b) in the absence of dumping, such exports cannot be causing or be likely to cause the material injury that the measures are intended to prevent; and

(c) in any event, the domestic industry producing like goods to the subject exports has not incurred any injury from any source since at least 2019, including from

PMBA's exports, and is unlikely to do so in the foreseeable future, and consequently, the anti-dumping measures applying to PMBA's exports of aluminium extrusion products from Malaysia to Australia are no longer warranted.

In other words, from the foregoing information, it is respectfully submitted, that there appear to be reasonable grounds for PMAA asserting in this application that the anti-dumping measures applying to PMBA's exports of aluminium extrusions from Malaysia to Australia are no longer warranted because such exports:

- have not been dumped over an extended period of time (if they ever were), namely, since 27 December 2020; and
- are not being dumped; and
- there is no evidence that they are likely to be dumped in the foreseeable future even in the absence of anti-dumping measures.

In this context, due to the absence of dumping and the likelihood of dumping occurring, the issue of PMBA's exports causing material injury because of dumping, being the injury the measures are intended to prevent, does not arise.

In addition, while not necessary for asserting that the anti-dumping measures applying to PMBA's exports are no longer warranted, it nevertheless is respectfully submitted, that there also appear to be reasonable grounds for PMAA asserting that the anti-dumping measures applying to PMBA's exports of aluminium extrsuions from Malaysia to Australia are no longer warranted because the Australian industry (as represented by Capral) has not incurred injury, let alone material injury, from any source, including from PMBA's exports, since at least 2019 and there is no evidence of circumstances, such as dumping of PMBA's exports, that would make the incurring of material injury by the Australian industry imminent and foreseeable as required undere Section 269TAE of the *Customs Act 1901*.

# Attachments

**Non-Confidential Attachment A**
**Anti-Dumping Duty Notice (ADN) 2017/72**

090 - notice - adn 2017-72 findings in relation to a dumping investigation.pdf

Copy of notice also attached.

**Non-Confidential Attachment B**
**Anti-Dumping Notice 2022/042**

591 - 037 - adn 2022-042.pdf

Copy of notice also attached.

**Non-Confidential Attachment C**
**Notice under section 269ZZM(4)**

2022_155 - Public Notice of 269ZZM decision

Copy of notice also attached.

**Non-Confidential Attachment D**
**Dumping Commodity Register**

Aluminium extrusions

Copy of Register also attached.

**Attachment E**
**Exporter Verification Report & Calculations – Review 640**

**Non-Confidential Attachment E-1**: EPR 640 - item 15 - PMB Aluminium - Verification Report

**Confidential Attachment E-2**: Commissions dumping margin calculations (copy attached)

A copy of Non-Confidential Attachment E-1 is attached in addition to Confidential Attachment E-2.

**Confidential Attachment F-1**
**Dumping Duty Assessment DA0225**

Copy of Confidential Dumping Duty Assessment Report DA0225 attached, including Confidential Appendix 4 - Dumping

**Confidential Attachment G-1**
**Dumping Duty Assessment DA0243**

Copy of Confidential ADRP Report No.167 in relation to Dumping Duty Assessment DA0243 attached, including Confidential Appendix 4 - Dumping

**Confidential Attachment H-1**
**Dumping Duty Assessment DA0254**

Copy of Confidential Dumping Duty Assessment DA0254 attached, including Confidential Appendix 4 - Dumping

**Confidential Attachments F-2, G-2 & H-2**
**Dumping Duty Assessment Legal Instruments**

Copies of Confidential Legal Instruments regarding refunds of interim dumping duties paid for Dumping Duty Assessments DA0225, DA0243 & DA0254 attached

**Confidential Attachments F-3, G-3 & H-3**
**PMBA Export Prices & PMAA Prices into the Australian Market**

Copies of Confidential Appendi4 – Dumping for Dumping Duty Assessments DA0225, DA0243 & DA0254 attached

**Non-Confidential Attachment I**
**Australian Industry - Capral - Economic Performance**

Table summarizing Australian Industry's economic performance during the period 2018 to 2024 as represented by Capral Limited's economic performance over that period attached

Links to copies of Capral Limited's Annual Reports over the period 2018 to 2023 on which the above Table is based are contained in Attachment I and are also available here: Reports and Presentations | Capral Aluminium

**Confidential Attachment J**
PMBA and PMAA Pricing Post Expiry of Anti-Dumping Measures

Copy of Confidential Attachment J – PMBA Export Prices and PMAA Prices into the Australian market attached.

**Non-Confidential Attachment K**
Capral Limited's 2024 Half Year Results Presentation & 2024 Full Year Results

*2024 Half-Year Results*

Capral-1H24-Results-Presentation-Final.pdf

Copy of 2024 Half Year Results Presentation also attached

*2024 Full-Year Results & Presentation*

2024 Preliminary Full Year Results: 2924-02917405-2A1580609

Copy of 2024 Preliminary Full Year Results also attached,
plus 2024 Full Year Results Presentation attached

**Non-Confidential Attachment L**
Capral Limited – 2024 Full Year Profit Guidance Announcement

Copy of 2024 Full Year Guidance Announcement dated 19 December 2024 attached

See also ASX Announcement of 19 December 2024: Investor Centre, with reference to 2024 Half Year Results presentation at Non-Confidential Attachment K above

**Non-Confidential Attachment M**
Housing Industry Association (**HIA**)

See HIA's 'Housing Australia's Future' at Data & forecasts | HIA Economics, a copy of which is also attached. See also Housing industry insights | HIA Economics | Data &

insights

## Confidential Attachment N
## PMBA Exports & Domestic Sales for 2024

See attached confidential spreadsheet 'PMBA Exports to Australia & Domestic Selling Prices'

## Confidential Attachment O
## Source Documents - PMBA Exports & Domestic Sales for 2024

See attached source documents for PMBA's prices for exports to Australia and domestic sales in Malaysia, which source documents consist of:

(a) PMBA's prices to PMAA for each month in 2024 with relevant ample purchase order(s) and invoice(s); and

(b) PMBA's pricing in sample domestic transactions in each quarter of 2024.

## Non-Confidential Attachment P
## '*Resources and Energy Quarterly December 2024*'
## Office of the Chief Economist, Department of Industry.

See: Resources and energy quarterly: December 2024 | Department of Industry Science and Resources and copy also attached.