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Date: 8th April 2025

Non-Confidential

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

Dear Ms Levin,

RE: Review 640 –review of anti-dumping measures applying to exports of aluminium extrusions products from Malaysia by PMBA – Statement of Essential Facts

I refer to the recently published Statement of Essential Facts (**SEF**) in the abovementioned review, Review 640, in which it is proposed that the Anti-Dumping Commissioner (**Commissioner**) recommend to the Minister, for the reasons given in the SEF, that:

- the variable factors applying to exports by PMB Aluminium Sdn. Bhd (**PMBA**) be altered; and
- interim dumping duties be calculated using the floor price duty method.

However, no mention is made of the proposed recommendation by the Commissioner to the Minister of when his or her decision is to take effect. That is, whether the Minister's decisions is to take effect on and from the date of publication of the decision or, alternatively, on the date of initiation of the review, namely, 22 February 2024, or some other date.

It is submitted that, for the reasons set out below, the appropriate date for the Minister's decision to take effect is the date of initiation of the review, namely, 22 February 2024.

That this is the appropriate date for the Minister's decision to take effect is appropriate for a number of reasons as set out below.

As the anti-dumping measures are based on the variable factors of an exporter's exports, those variable factors should be updated (i.e., altered) at the earliest opportunity to ensure that the level of protection being afforded by the measures to the domestic industry is

based on current variable factors. That earliest opportunity here is the date on which the review was initiated, namely, 22 February 2024.

Altering the variable factors on and from that date will not reduce the level of protection afforded to the Australian industry by the anti-dumping measures from dumping of PMBA's exports will not be reduced. This is because, if the floor price duty method is to be used, then any exports by PMBA whose export prices fall below the floor price will be liable for interim dumping duty, with the amount of duty properly payable and retained being the amount by which the export prices are less than the floor price. In other words, although backdated to the date of initiation of this review, the level of protection from injurious dumping afforded on and from that date will be based on the most current findings on the variable factors comprised in the anti-dumping measures applying to PMBA's exports.

Hence setting the date on which the Minster's decision is to take effect as the date on which the review was initiated does not and cannot diminish the level of protection from dumping to which the Australian industry is entitled. To do otherwise provides a level of protection to which the domestic industry is arguably not entitled and which it has already received.

Rather, setting the date on which the Minster's decision is to take effect as the date on which the review was initiated simply avoids unnecessary dumping duty assessments. Such assessments are unnecessary. This is because not only has the Commission preliminary found that dumping was not occurring in 2023 but also information provided to the Commission in Revocation Review 667 indicates that PMBA's exports continued not to be dumped and that that this will continue to whenever the Minister makes his/her decision.

It seems incongruous for there to be a gap between the period when the Commission has preliminary found that PMBA's exports are not being dumped and when the variable factors are altered to reflect that finding. It provides the domestic industry with a level of protection for which it arguably is not entitled during that intervening period.

Accordingly, it is submitted and respectfully requested that the Commissioner recommend to the Minister that the date on which the Minister's decision take effect is the date of the initiation of Review 640, being 22 February 2024.

It also must be noted that this review has considerably exceeded the 155-day statutory time within which reviews should ordinarily be completed to now over 300 days. This has not been due to any lack of cooperation by either PMBA or PMAA, both of whom have been fully cooperative throughout the review. Rather, as I understand it, it is due to resource constraints within the Commission, although I note the Minister's office assured me that the Commission is a well-resourced government agency.

Nevertheless, as has been pointed out on several occasions, the protracted review has needlessly resulted in PMAA incurring significant costs in its business that it would not

otherwise have incurred and resultant losses and damage through no fault by it and in circumstances where it is not dumping.

For these reasons as well, it is respectfully submitted, the date of initiation of this review should be the date on which the Minister's decision takes effect.

Additional submissions in response to Capral Limited's submissions

Capral Limited (**Capral**) has made several submissions in this review with the last being on 25 March 2025 in response the Commission's preliminary findings in the SEF.

The 25 March submission challenges two preliminary findings of the Commission, namely:

- the arm's length nature of the transactions between PMBA and Press Metal Aluminium (Australia) Pty Limited (**PMAA**), which had also been the subject of an earlier submission by Capral; and
- level of trade adjustments made to the normal value of PMBA's exports.

Capral's submissions have no merit.

Arm's length nature of transactions between PMBA and PMAA

The issue of the arm's length nature of transactions between PMBA and PMAA was the subject of a submission made by Capral prior to the publication of the SEF and, no doubt, was taken into account by the Commission when making its preliminary findings in the SEF.

Capral's recent submission raised no new issues in this regard. Rather, it takes exception to the Commission not making any finding concerning whether the transactions between PMBA and PMAA were at arm's length on '*procedural*' grounds. Capral contends that the Commission should continue to find such transactions to not be at arm's length notwithstanding that has no relevance to the determination of export price.

Rather, Capral considers it to be relevant so as to avoid having to consider in determining in some future review, inquiry or investigation whether export sales transactions between PMBA and PMAA are at arm's length that the particular borrowing arrangement in question renders those transactions as not being at arm's length, that is, how they would or could affect prices I those transactions. Also, precisely how current findings would bind future findings consistent with administrative law principles was not explained by Capral.

In addition, aside from administrative law principles, Capral does not explain factually how a borrowing arrangement that was entered into the past, which is being repaid, affects the arm's length nature of export sales transactions at some indefinite point in the future and specifically prices in those transactions. Nor does it address why the Commission in reserving its position in effect for future consideration if and when necessary is not the correct approach.

However, Capral does acknowledge that its contentions on this matter has no relevance to current review. For this reason alone, it should be disregarded.

Finally, for the record, on Capral's contention that the borrowing in question was not on a commercial basis, I disagree and reiterate the contentions put forward in my submission of 22 January 2025 on this issue which remain unchanged.

Level of trade adjustment to the normal value

Regarding the level of trade adjustment, Capral takes no issue with the necessity for a level of trade adjustment. The requirement for such an adjustment is acknowledged.

Rather, it takes issue with the method by which that adjustment was made. Capral contends that the method used was inconsistent with the policy in the Dumping & Subsidy Manual.

Where a level of trade adjustment is required, as is acknowledged by all to be the case here, the then issue is, in the circumstances, what method is best (i.e., most accurately) quantifies the adjustment to be made? That is not a policy issue, but a factual one. As I understand it, the position being advocated by Capral would impose an unlawful fetter on the discretion on how best to quantify the adjustment by adopting an inflexible policy.

Regardless of that, the issue of the appropriate methodology for the level of trade adjustment has been extensively addressed in dumping duty assessments including by the Anti-Dumping Review Panel (**Review Panel**). The adjustment, as was affirmed by the Review Panel, is to the domestic selling price, in this case JB Division's domestic selling price to its retail customers with the quantification of the amount of the adjustment being the difference between JB Division's selling price to its retail price and PMBA's selling price to its subsidiary distributors.

The alternate method contended by Capral that should have been used was rejected because '*costs arising from different functions*' did not and would not, as a factual matter, fully account for the amount by which the level of trade difference affected JB Division's prices to its retail customers. Dumping is, of course, about '*prices*', not '*costs*', and a level of trade adjustment is to account for differences in '*prices*' due to the difference in level of trade when comparing export prices with their normal value: refer Section 269TAC(8) of the *Customs Act 1901*.

As a question of fact supported by evidence, I concur that the amount by which JB Division's prices to its retail customers was adjusted was accurately quantified. That amount was the difference in JB Division's prices to its retail customers as compared with PMBA's prices to its distributor subsidiaries. Hence it was the appropriate level of trade adjustment to be made to those prices in the normal value determination.

If you have any questions, please contact me.

Yours faithfully,

Paul Ingram

Paul Ingram
Managing Director