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Our reference
AHK/PRES29059-9162338

Case Manager
Investigations 3, Investigations Branch
Anti-Dumping Commission
Canberra ACT 2601

Dear Case Manager

Revocation Review 667 - Anti-dumping measures applying to exports of certain aluminium extrusion products to Australia from Malaysia by PMB Aluminium Sdn Bhd (PMBA) – Scope of Revocation Review

Along with Percival Legal, we act for Press Metal Aluminium (Australia) Pty Ltd (**PMAA**). We are instructed to send this letter on behalf of PMAA in connection with Revocation Review 667.

We refer to Anti-Dumping Notice 2025/026 dated 28 March 2025 (**Notice**) and to the addendum, dated 4 April 2025, to the Notice (**Addendum**).

The Addendum explains that in Revocation Review 667, in addition to considering whether the anti-dumping measures as they apply to PMBA are no longer warranted, the Commission intends to examine whether the variable factors relevant to the taking of the anti-dumping measures have changed.

The Notice and the Addendum also state that at the conclusion of the review the Commissioner intends to advise the Minister whether, in relation to the dumping duty notice in respect of PMBA, that dumping duty notice will:

(a) remain unaltered; or

(b) be revoked, in part or generally; or

(c) have effect in relation to a particular exporter or to exporters generally as if different variable factors had been ascertained.

The Notice and the Addendum refer to section 269ZDA(1)(a) of the *Customs Act 1901* (**Act**) in support of that explanation.

Our client respectfully submits that the Commissioner does not, in the context of Revocation Review 667, have the power to provide to the Minister recommendations regarding alteration of the measures. For the reasons explained below, the Commissioner is limited to making recommendations as to whether or not the measures should be revoked.

Section 269ZDA(1)(a) of the Act sets out a range of matters on which the Commissioner may make recommendations to the Minister upon completion of a review undertaken under Division 5 of Part XVB of the Act. However, the types of recommendations applicable to any such review depend upon the nature or scope of the review to be conducted. This in turn depends upon the application made by an interested party, or a direction given by the Minister.

The Commissioner is not an independent investigating authority empowered to undertake reviews under Division 5 of Part XVB of the Act of a nature or scope of its own choosing. Rather, the Commissioner is confined in both nature and scope to reviews the subject of an application by an interested party or by a Ministerial direction.

It is the application or direction that sets the scope of the review – specifically:

(a) in a review of anti-dumping measures – whether the variable factors comprised in the measures require alteration; or

(b) in a revocation review – whether the anti-dumping measures in question are no longer warranted; or

(c) in a review of anti-dumping measures that includes revocation – whether the variable factors comprised in the measures require alteration and whether the measures are no longer warranted regardless of any change in the variable factors.

In the case of Revocation Review 667, the application requested a review be undertaken by the Commission as to whether the anti-dumping measures applying to PMBA's exports are no longer warranted. This is explicitly stated in the application, which was in the approved form. Nothing further was requested.

The application did not request a review of whether the anti-dumping measures required alteration because the variable factors may have changed since when last reviewed. If that had been sought it would have been reflected in the application, and the Commissioner would have needed to assess whether or not there appeared to be reasonable grounds for the assertion that the variable factors had changed.

There is no lawful basis to unilaterally and arbitrarily extend the nature or scope of the review. The purported extension of the scope of Revocation Review 667 is also completely inconsistent with the Commission's practice. Previous revocation reviews undertaken by the Commission have been confined to inquiring into and recommending to the Minister whether the relevant dumping duty notice:

(a) remain unaltered; or

(b) be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally.

Examples of revocation reviews which were limited in that manner are reviews 256, 258, 317, 464, 490, 508, 567, 622 to 625, and 668. The only exceptions appear to be when the Minister has explicitly directed that the review include a review of the variable factors as well as whether the measures are no longer warranted.

No explanation has been provided as to why the Commission is, in Revocation Review 667, proposing this exceptional departure from past practice, or on what lawful basis such a departure is warranted.

Accordingly, we are instructed to ask that the Commission confirm that:

(a) Revocation Review 667 will only address the question of whether the anti-dumping measures applying to PMBA’s exports from Malaysia are no longer warranted, and

(b) consequently, the recommendation to the Minister at the conclusion of the review will be confined to whether the anti-dumping measures applying to PMBA’s exports are no longer warranted and, if so, that they be revoked.

To the extent that Commission does not provide that confirmation, our client reserves its right to challenge the validity of any purported exercise of power contingent upon a recommendation regarding alteration of the variable factors.

Yours faithfully
Corrs Chambers Westgarth

Andrew Korbel
Partner