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Anti-Dumping Commissioner
Anti-Dumping Commission
Level 35
55 Collins Street
Melbourne Victoria 3000

Received 22 January 2021

Attention: Mr Gavin Crooks
Assistant Director, Investigations 3

Dear Mr Crooks,

***RE: Dumping investigations – exports of certain aluminium extrusions from Malaysia –
Investigations Nos 540 and 541 – Press Metal – Statements of Essential Facts – Dumping Margin
Calculations***

I refer to SEFs Nos 540, 541 and 544 and, in particular, the calculation of the dumping margins for Press Metal Berhad (**PMB**).

Specifically, a number of adjustments are required to the normal value determination, namely, an adjustment for differences in 'sales prices' as opposed to 'net profit margins', no adjustment for purported differences between domestic and export packing and no adjustment for stillage costs for the reasons set out in Attachment A.

In addition, it is submitted that the Commission has erred in its calculation of a 'unit normal value' of the goods exported from Malaysia to Australia for the reasons set out in Attachment B.

If you have any questions, please let me know.

Yours sincerely,

Paul Ingram
Managing Director

**Attachment A
SEFs 540 & 541 & 544
Adjustments to Normal value**

1. LoT Level of Trade adjustment

The Anti-Dumping Commission (ADC) should have reduced the particular domestic sales by the **sales price** difference rather than the *net profit margins* as explained by the ADC below:.

PMB Exporter Verification Report	Page	<i>Confidential Appendix 4</i> Profit % reduction in sales price of particular PMB domestic sales		ADC comment
540	24	[REDACTED] [REDACTED] sales to [REDACTED] [REDACTED] [REDACTED] Sales to [REDACTED] [REDACTED]		<i>...worked out by identifying the difference between the net profit margins on domestic sales at different levels of trade and applying the variance to domestic sales that did not correspond to the level of trade relevant to PMB's Australian customers</i> <i>Obliquely referencing ADC Manual Costs arising from different functions method</i>
541	27	[REDACTED] [REDACTED] sales to [REDACTED] [REDACTED] [REDACTED] sales to [REDACTED] [REDACTED]		<i>Add/deduct amounts relevant to differences in price brought about by sales at a noncompatible level of trade</i>
SEF				
540	44			<i>Add/deduct amounts relevant to differences in price brought about by sales at a noncompatible level of trade</i>
541	45			<i>Add/deduct amounts relevant to differences in price brought about by sales at a non comparable level of trade</i>

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Even though detailed in only the PMB Exporter Verification Report for Investigation No 540, the ADC reduced particular domestic sales by only the net profit margin difference rather than the sale price difference.

In the case of the [REDACTED] division sales that **sale price** difference comes out to the higher [REDACTED]% deduction rather than the ADC applied lower [REDACTED]% & [REDACTED]%. Similarly, ADC should have applied a lower **sale price** difference for *Sales to related parties distribution customers* rather than the higher *net profit margins* difference.

The following reasons prefer to sale price difference rather than net profit margins difference should have been applied:

- ADC set a precedent in *Continuation 517 Deep Drawn Stainless Steel Sinks, Primy Corporation Verification Report*, at both Table 14 and 9.3 *Level of trade differences*:

*The weighted average **price** variance was applied to domestic sales which were not sold at a level of trade comparable to the level at which the goods were exported.*

- ADC Nov 2018 Dumping and Subsidy Manual p 70-74
 - Permits using **sale price** difference rather than *net profit margins* difference:

The Commission will consider other information concerning claims for level adjustments.

- Founded on and spread throughout with **price differences** emphasis in the SEF:

*... due allowance be made for differences which affect “**price** comparability*

*An adjustment for trade level will only be made when these difference in levels of trade are shown to have affected **price***

- No legal basis is given for preferring *costs arising from different functions method* for which *priority is given*
- No legal basis was given in Investigations 540 & 541 for applying *costs arising from different functions method* rather than the fairer ‘**sale price**’ difference.
- The ADC determined PMB’s *normal value* under s 269TAC (1) as:

...price paid for like goods sold in the ordinary course of trade (PMB domestic sales all passed OCOT ordinary course of trade test) ... in the country of export (Malaysia)

rather than any alternative *normal value* base such as cost to make and sell.

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- The WTO Anti-Dumping Agreement Article 2.4 requires a **fair** comparison and this requires the abovementioned adjustment based on the ‘sales price’ difference.

2. Domestic v export packing adjustment

No adjustment should have been made in relation to packing because there was no difference and, consequently, no reasonable basis to determine any such difference

SEF 540 at p44 and 541 at p45.

PMB *Exporter Verification Report* 540 at p23 & p25 and 541 at p24 & p27.

Export packing in Confidential *Appendix 1 - Export Sales, (d) Direct Export Expenses* 4th tab, columns BI & BJ *Packing* shows an amount higher than that corresponding in columns AN & AO Confidential *Appendix 3 - Domestic Sales, (a) Domestic Sales* 1st tab

The reasons why ADC should have made no adjustment nor allocate a higher amount to PMB’s exports to Australia for packing are:

- In PMB mill on-site verification in prior *Investigation 362*, ADC officers physically inspected and compared domestic v export to Australia extrusions packing and determined no material difference and this was reflected in the finding in *Investigation No 362* that there was no packing difference. This constitutes the best evidence, being verified evidence, rather than unverified information unsupported by evidence in *Investigations Nos 540 & 541* in which verification was conducted off-site without physical inspection/verification.
- The verification costing figures delivered and explained to ADC in *Investigations Nos 540 and 541* clearly show identical domestic and export packing costs. For example—confidential:

540_541 PMB WP GP6-N Expenses Detail Q4 2019.xlsx

which the ADC was taken-through during the 25 June 2020 video conference that included ADC officer/s and PMB Malaysia responsible accounts officer.

Summary (final) tab cells AM61 (*Local Cost/MT*) & AM63 (*PMAA Cost/MT*) show identical amounts.

Attached to this submission is confidential pdf extract from that sheet showing highlighted final identical domestic sales and exports to Australia packing costs.

- ADC included in export to Australia packing costs charges that PMB had correctly allocated to domestic packing for a substantial volume of timber boxes labelled in PMB expense records to the effect of *PMAA boxes*. Their description as *PMAA boxes* refers to only the design rather than their use because PMB use that *PMAA* design type when ordering and when allocating to domestic sales costing new boxes even when used for domestic sales, export sales to Australia or exports to elsewhere.

3. Stillage return costs

ADC should have determined *export prices* without deducting or otherwise making an adjustment for stillage costs.

At containerisation, the exporter (i.e., PMB) places wooden boxed aluminium extrusions onto steel frame stillages that PMB owns. Over time PMAA the importer accumulates at its Australian warehouses these stillages and returns them in containers to PMB in Malaysia at PMB's cost.

In calculating FOB export prices, the ADC reduced the PMB to PMAA gross invoice value by this stillage return charge—Confidential *Appendix 1 - Export Sales (a) Export Sales* 1st tab, column BK *Stillage Return Costs*. ADC silent in each PMB *Exporter Verification Report* and SEF on this deduction/adjustment

Customs Act 1901 s269TAB(1)(a) sets the *export price* as:

Act	Why no stillage return costs deduction
<ul style="list-style-type: none">• <i>the price paid or payable for</i>	This post export cost the exporter PMB pays can never form a price component
<ul style="list-style-type: none">• <i>the goods</i>	<i>goods</i> means the aluminium extrusions rather than the stillages
<ul style="list-style-type: none">• <i>by the importer</i>	Met by the exporter PMB rather than PMAA the importer
<ul style="list-style-type: none">• <i>other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation</i>	<p>Arises after—more often many months later</p> <p>This (<i>other than</i>) exception restates that as these stillage return post export charges never even enter the price, no basis exists to reduce the PMB to PMAA <i>Gross invoice value</i> to determine the FOB <i>export price</i></p>

Hence, the ADC has no basis to:

- Deduct these stillage costs from either *export price* or from PMB to PMAA invoice sale price in calculating *export price* or
- Adjust for it under s 269TAC (8) or otherwise or
- Add to domestic selling price in calculating the *normal value*

Attachment B
Dumping Margin Calculation
Extended Normal Value & Sufficient Information

1. Extended Normal Value

This submission is made in relation to the ADC's erroneous preliminary finding of the dumping margins applying to certain aluminium extrusions exported from Malaysia by PMB.

There is no issue with the ADC calculating a single product margin, although query whether a transaction-by-transaction margin is more appropriate in the circumstances. Rather, it is the erroneous methodology applied by the ADC in calculating the single product margin with which issue is taken.

The error stems from the ADC's erroneous practice, as outlined in the ADC's Dumping and Subsidy Manual at Chapter 21, of conducting an 'additional weighting exercise' where it deems to calculate a 'unit normal value' of the exported goods.

Refer *Dumping and Subsidy Manual, Chapter 21. Determination of Dumping, 21.3 Practice - Product Margin, pg. 125*):

"The export volumes in this additional weighting exercise are used because it is the "normal value" of the goods being exported to Australia that is being established, and the unit normal value of the exported goods and the unit export price show the unit margin of dumping."

This practice has no legal basis under the WTO Anti-Dumping Agreement or Australia's anti-dumping legislation.

The ADC's practice has moved away, for whatever reason, from the fundamental concept of calculating a dumping margin, that is, when expressed in simple mathematical terms, $DM = NV - EP$ or if expressed as a percentage, $DM = (NV - EP)/EP$.

As a general rule, the NV (Normal Value) is the price of good under investigation sold in the ordinary course of trade in the domestic market of the exporting country and the EP (Export Price) is the transaction price at which the exporter sells the good under investigation to an importer in the importing country.

The product dumping margin should be calculated, in this instance, on the basis of a comparison of the weighted average of all export prices with a weighted average of all corresponding normal values over the investigation period.

In the calculation of dumping margins, the Commission has made the following calculation:

- unit normal value (MYR/kg) x sum of quantity of exports to Australia (kg) = extended normal value

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The reason for this calculation is unclear or what an 'extended normal value' actually is? It appears the only purpose is to create an artificial product 'Export Unit Normal Value'. The individual product normal values used in the calculation of a dumping margin for the individual products has been calculated using the appropriate domestic volumes and values over the relevant periods. The relevant 'product normal value' also should be calculated in a correct and consistent method using the appropriate domestic volumes and values over the whole investigation period.

The Commission's 'Dumping and Subsidy Manual' at page 123 states the reason for this calculation:

"Where there are different types or models, the fair comparison requirement leads to the determination of 'margins of dumping' for each type or model. Depending on the number of types or models it is possible that there could be many such type 'margins'. Assessing whether there is dumping at the product level requires that regard be given to the export volumes. ...

Therefore an additional calculation will be undertaken in determining the product margin. It is a method of aggregation across the various types in order to determine a single product margin for the exporter. The export volumes in this additional weighting exercise are used because it is the "normal value" of the goods being exported to Australia that is being established, and the unit normal value of the exported goods and the unit export price show the unit margin of dumping. In aggregating the Commission does not zero any negative 'margins' for a particular model."

While it is or may be appropriate in calculating a 'product margin' to undertake a calculation that recognises there are different dumping margins for different models, including negative dumping margins, the quantity of the product exported to Australia is not relevant for this calculation.

To undertake the above calculation using as part of the formula the quantity of the 'product' exported to Australia is misconceived. The weighted average product margin is to be calculated by reference to the quantity of the product supplied to the domestic market. It is that quantity that is relevant for this purpose, not the quantity exported to Australia.

The reference in the above extract from the Manual that this calculation is required "because it is the 'normal value' of the goods being exported to Australia that is being established" is correct but has been misconceived or, at least, misinterpreted. Just as the unit normal value for a model is determined by reference to, amongst other things, the quantity of that model supplied to the domestic market, so also it is the quantity of the 'product' supplied to the domestic market that is relevant for determining a 'product' normal value, not the quantity exported to Australia. It is that 'product normal value' that is the 'normal value for determining whether the product exported to Australia has been at a 'dumped' export price.

The error lies, as indicated in the above extract, in using the 'export volumes' in this calculation of a 'product' normal value. The 'export volumes' are not relevant to determining a 'product' normal value or any other normal value. A normal value' is

the 'price' at which the product in question enters the domestic market in the country of export in whatever volumes.

If the volume of models sold into the domestic market is different for each model, such volume differences presumably would be taken into account in determining the unit normal value for each model and the weighted average normal value for the 'product' taking into account the different volumes for each model. This 'product' normal value would then be compared with the weighted average export price of the product exported to Australia, which weighted average export price presumably would take into account the volume of each model exported to Australia.

If differences in volumes in export and domestic sales affect prices, then an appropriate adjustment must be made under s.269TAC(8) of the Customs Act 1901 to ensure a 'fair comparison'. That is where differences in volumes affecting prices are to be taken into account. To do otherwise is misconceived.

The application of the legally correct methodology is likely to produce a unit normal value which when multiplied by the export volumes does not produce a neat mathematical reconciliation with the sum of the individual product 'extended normal values' divided by the total export volumes for the very reason of the function of the total relevant domestic sales volumes and the proportions that the product and volume mix represents. The use of the total relevant domestic sales volumes and values is the legally correct way to determine the product unit normal value to be multiplied by the export volumes to determine a product dumping margin.

We request that the ADC recalculate the product dumping margin for PMB in Investigations 540 and 541 using the correct and consistent methodology for establishing a normal value based on all relevant domestic sales volumes and values.

Whether the same re-calculation should be made for PMBA in Review 544 depends on whether the ADC perseveres with that calculation despite not having the legal authority to do so or sufficient information and evidence consistent with ADC policy and practice to do so as separately submitted and discussed below.

2. Investigation Period - Review 544

A further issue exists and that is in relation to the calculation of a dumping margin for PMBA in Review 544. The period used is inappropriately short, no doubt due to the circumstances in which the information used for that calculation was obtained.

The information related to 'exports' by allegedly PMBA during a period of approximately 6 weeks of domestic sales and 6 days of export sales.

While acknowledging that Section 269T of the Customs Act defines the investigation period as a period specified by the Commissioner, the use of such a short period is contrary to the ADC's policy as set out in its Dumping and Subsidy Manual at Chapter 3, Investigation Period, 3.2 Policy:

'The investigation period is generally the 12 months preceding the initiation date and ending on the most recently completed quarter or month.'

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The investigation period may cover a longer period than 12 months in certain circumstances to properly assess the causal link between dumping and claimed injury.

The investigation period may cover a longer period:

- *to ensure that a full financial accounting period is included;*
- *if there is long lead time between order and delivery, particularly when a tender process is involved;*
- *to ensure that the date of sale and the export of the goods occur within the investigation period.'*

Not only is the use information over an unreasonably short and unrepresentative period' contrary to the ADC's policy and practice it:

1. does not afford PMBA the opportunity to present its actual trading pattern in the goods under investigation on either its domestic market or Australian export market; and
2. results in an unreasonable finding of dumping against PMBA.
3. If sales are at a loss, it precludes determining whether such losses will be recoverable within a reasonable period of time, as required under the WTO Anti-Dumping Agreement and Australia's anti-dumping legislation.

In short, due to the extremely short period to which the information relates, it has no probative value as to PMBA's actual trading pattern and, in particular, as to whether the products it is exporting are at allegedly 'dumped' export prices.

As has been separately submitted, this calculation of a dumping margin for PMBA should be withdrawn as beyond the lawful scope of the review of variable factors in the Review and PMBA be given the option to apply for an accelerated review, as is its right, for the determination of a separate dumping margin for it.