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Date: 5 November 2021

## By Email

Dr Bradley Armstrong PSM  
Anti-Dumping Commissioner  
Anti-Dumping Commission  
Melbourne VIC 3000

Dear Commissioner,

### ***RE: Continuation Inquiry No 591 – Exports of Aluminium Extrusions from Malaysia and Vietnam – Submission on Capral Application***

I act for Press Metal Aluminium Australia Pty Limited (**PMAA**) and for its related bodies corporate in relation to this continuation inquiry, namely, Continuation Inquiry 591 (**Inquiry**).

I refer to Anti-Dumping Notice (ADN) No, 2021/119 of 15 September 2021 notifying the initiation of the Inquiry (**Notice**) and, in particular, Capral Limited's (**Capral**) application for the continuation of the anti-dumping measures the subject of the Inquiry (**Application**).

This submission is made in relation to the Application.

#### **1. Scope of continuation inquiry**

The nature and purpose of a continuation inquiry is to ascertain whether existing antidumping measures due to expire, in this case, on 27 June 2022, should be continued for a further five (5) years.

As noted in the Notice, the test to be satisfied in accepting the Application is, amongst other matters, as to:

*“whether 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”. (s.269ZHD(2) of the Customs Act 1901)*

Similarly, you are expressly prohibited from recommending to the Minister for Industry, Science and Technology (**Minister**) the continuation of the measures unless you are satisfied that:

*“the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent”.* (s.269ZHF(2) of the *Customs Act 1901*)

However, for the reasons set out below, the Application did not provide ‘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’.

## **2. Deficiencies in the Application**

The Application is deficient in the following respects: -

### **2.1 Deficiencies in the template application form for continuation of anti-dumping measures**

Strangely, the template application form, presumably approved under section 269ZHC(1)(b) of the *Customs Act 1901* by your predecessor, does not explicitly address matters directly relevant to whether the anti-dumping measures in question should be allowed to expire or not. Rather, it mostly addresses matters tangential to the issues and which may or may not be relevant depending upon the particular circumstances.

Consequently, compliance with the form by an applicant, which is required by section 269ZHD(2)(a) of the *Customs Act 1901*, of itself does not satisfy the statutory test specified in section 269ZHD(2) of the *Customs Act 1901*. This is the principal reason why the Application was deficient and should have been rejected.

### **2.2 Will dumping continue?**

In relation to this question, Capral referred to the findings in Review 544, namely:

*“The Anti-Dumping Commission (“the Commission”) determined in Investigation 544 the following margins of dumping for the subject exporters:*

<b>Country</b>	<b>Exporter</b>	<b>Margin</b>
<i>Malaysia</i>	<i>Alumac Industries Sdn Bhd</i>	<i>Negative 1.0 per cent</i>
	<i>Premium Aluminium (M) Sdn Bhd</i>	<i>0 per cent</i>
	<i>PMB Aluminium Sdn Bhd</i>	<i>10.7 per cent</i>
	<i>EverPress Aluminium Industries Sdn Bhd</i>	<i>10.7 per cent</i>
	<i>All other Malaysian exporters</i>	<i>10.7 per cent</i>
<i>Vietnam</i>	<i>East Asia Aluminium Company Ltd</i>	<i>1.9 per cent</i>

	<i>All other Vietnam exporters</i>	<i>1.9 per cent</i>
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*The Commission further determined that the subsidy rate applicable to all subject exporters in Malaysia was zero per cent.”*

The only dumping and subsidisation found in Review 544, as set out in the extracted Table above, was in relation to PMB Aluminium Sdn Bhd (**PMBA**), EverPress Aluminium Industries Sdn Bhd (**EverPress**) and ‘All other Malaysian exporters’ (**Other Exporters**) and that was at a margin of 10.7%. Consequently, these were the only ‘exporters’ whose ‘exports’ to Australia could continue to be at ‘dumped’ export prices if the anti-dumping measures were allowed to expire.

However:

- (i) the dumping margin for PMBA was based on information provided by cooperating exporters<sup>1</sup>, and, therefore, was not representative of exports by PMBA, if any, by any measure. In any event, that margin of 10.7% has now fallen to 2.6% following Accelerated Review 577 based on verified information;
- (ii) the dumping margin for EverPress was based on the margin determined for PMBA, being the sole cooperating ‘exporter’, because EverPress apparently did not cooperate in the review and was not based on EverPress’s actual export prices details of which were available to the Commission from the Australian Border Force database on imports. Consequently, there is no evidence that EverPress would continue to export to Australia and, were it to do so, whether at ‘dumped’ export prices and at what dumping margin based on the findings in Review 544. In this regard, in Review 509, completed in February 2020, it was determined that EverPress’s exports to Australia were ‘un-dumped’ with a dumping margin of negative 10.1%. As this finding was based on actual, verified information concerning its actual exports to Australia, it provides a more reliable guide as to the likelihood of exports by EverPress being at ‘dumped’ export prices than the information in Review 544 that was not based on its actual exports to Australia; and
- (iii) the dumping margin for Other Exporters was a fiction and merely speculative because there no ‘other exporters’ or ‘exports’ from Malaysia the subject of the measures by non-existent ‘exporters’.<sup>2</sup> No ‘exporters’ falling within this category were identified in Review 544. As such, there were no exports by such ‘exporters’ that were identified that would render material injury to the Australian industry or threat thereof by such exports imminent or reasonably foreseeable and no evidence adduced to the contrary.

<sup>1</sup> Report 544, Sections 4.7.5 and 4.7.6.

<sup>2</sup> Refer page 158 of the Commission’s ‘Dumping and Subsidy Manual’ as to ‘exporters’ comprised within this category.

These facts, as found by you in Reviews 544 and 509, do not provide reasonable grounds that the expiration of the measures would lead or be likely to lead to the continuation of dumping.

They do not even support an assertion that exports from those exporters who do exist are likely to continue to export, let alone at dumped prices.

Further, if, as Capral seemingly contends, normal values and export prices are based on 'London Metal Exchange (**LME**) prices for aluminium ingot on a monthly basis, adjusted for the Major Japanese Port (**MJP**) premium, a billet premium, plus amounts for conversion, packaging, selling and general administration, and profit' as is the industry practice, including by the Australian industry, as you would be aware, how and why would export prices be 'dumped'. This Capral does not explain in the Application, let alone why it would continue or recur, particularly in the current economic environment.

2.3 *Will dumping and/or subsidisation recur?*

No grounds were provided in the Application by Capral to support the assertion that dumping and/or subsidisation would 'recur' or be likely to 'recur' if the anti-dumping measures were allowed to expire.

2.4 *Will the material injury that the measures were intended to prevent continue or recur or be likely to do so?*

To answer this question:

- (i) it first must be identified precisely what material injury the anti-dumping measures were intended to prevent; and
- (ii) then whether that material injury would continue or recur or be likely to do so if the measures were allowed to expire.

This necessarily requires investigation into whether the anti-dumping measures did in fact prevent the material injury that they were intended to prevent and

- (a) if so, how; and
- (b) if not, why?

The Application does not specify the material injury that the anti-dumping measures were originally intended to prevent, nor whether or to what extent they were effective in doing so or, if not so effective, why not and to what extent they were ineffective.

In addition:

- (i) in relation to PMBA's exports, it did not commence to export, if at all, until late 2019 and, consequently, the measures could not have been intended to prevent material injury caused by its exports as there were none at the time of imposition of the measures and none were imminent or reasonably foreseeable at that time;

- (ii) further, with a dumping margin of 2.6% following the accelerated review, the difference between a 'dumped' export price and an 'un-dumped' export price of less than 1% cannot conceivably cause material injury that the measures were intended to prevent whether in their own right or cumulated with other exports; and
- (iii) in relation to exports by Other Exporters, as there are no such 'other exporters' and, consequently, no exports by such non-existent 'exporters', they cannot conceivably cause or threaten to cause material injury that the measures were intended to prevent.

This leaves EverPress. It must, therefore, be determined that its exports would be or likely to be in such volume at 'dumped' export prices following the expiration of the measures to of themselves cause material injury. This would be because all other exports found to have been exported at dumped prices and subject to anti-dumping measures would not be entering into the commerce of Australia at 'dumped' export prices due to the anti-dumping measures imposed on such exports requiring the payment of interim dumping duty on importation before entering into the commerce of Australia. Consequently, there could be no accumulation of 'dumped' exports from all sources. As such, its exports, if any, could not be likely to cause the continuation or recurrence of the material injury that the measures are intended to prevent if allowed to expire.

These matters were not addressed in the Application.

Capral contends in the Application that:

*“Capral (and other Australian industry members) have incurred increased LME and MJP costs during 2020/21 and have continued to compete with the likely dumped export prices from exporters in Malaysia and Vietnam. Capral has experienced continued injury from the dumping by the subject exporters during 2020/21, although the injury sustained is less than would likely have been the case in the absence of the impacts from the Covid 19 pandemic”*. (at page 6)

Capral's claim that it continues to experience injury during 2020/21 is not borne out by its half year financial results for 2021. Rather Capral's sales volumes are up 33% to \$261 million as opposed to \$196 million for the half year in 2020, with a net profit of \$15.7 million as compared with \$4.8 for the half year in 2020: see **attached** Capral Half Year Results for 2021. It also is evident from those results that Capral's significant and material turnaround has been due solely to the increase in residential and commercial construction in Australia.

Further, it also must be noted that contrary to Capral's claims the audited financial statements for a number of members of the Australian Industry, as well as those of Capral, were provided to you and the Minister prior to the Minister making his decision in Review 544 published on 2 June 2021, copies of which financial statements are **attached** and form part of this submission do not disclose material injury being incurred. Rather, they disclose the opposite.

These financial statements for the financial years 2018 and 2019 were filed, as you were aware, with the Australian Securities and Investments Commission (**ASIC**) in compliance with the statutory requirements under the *Corporations Act 2001*. Further, these financial statements were and are publicly available from ASIC.

They disclose that members of the Australian industry, whose principal business is stated to be aluminium extrusions, are and have been profitable. Further, they also disclose that those members of the Australian industry whose financial performance has been less than optimal was due to cost structures within their respective business models that depended upon sufficient sales volumes to cover fixed and variable costs, failing which diminished profitability and even losses inevitably would occur.

This is evident, for example in the profit and loss statement for FY2019 and FY2020 for G James Extrusions Pty Limited. Further and informatively, given the standard industry pricing formula set out by Capral in the Application (e.g. LME/MJP prices plus SG&A plus profit) and that prices for aluminium extrusions are similar for all due to extrusions are commodity products, then the sub-optimal economic performance of those members of the Australian industry with the significant production and sales volumes can only be attributed to the cost structures of their respective business models.

As this is what occurred in the Australian aluminium market with the contraction in the market since 2016 to 2020 in the usual 'ebb and flow of business', as acknowledged by Capral itself in publicly available documents, the consequences for some in the Australian industry with, arguably, a flawed business model were inevitable. Unprofitability where sales volumes were paramount, but not otherwise. Nothing to do with import competition, whether at dumped prices or otherwise, as evidenced by those members of the Australian industry whose financial performance was not sub-optimal during this period, as well as those whose performance was sub-optimal.

Such financial statement were, of course, relevant information to be taken into account pursuant to section 269ZHD(2)(b) of the *Customs Act 1901* in assessing the Application. It does not seem to have been, nor the business models, including cost structures within such business models, of relevant members of the Australian industry.

Clearly Capral's claims in the Application regarding injury are, therefore, inaccurate.

### **3. Conclusion**

For these reasons the Application was deficient and did not provide reasonable grounds for asserting that the expiration of the measures would lead or be likely to lead to the material injury that the measures are intended to prevent.

Hence, the Application should have been rejected. Further, these matters, of course, need to be fully addressed and appropriate evidence obtained to support the continuation of the

anti-dumping measures, absent which or evidence to the contrary, the measures must be allowed to expire.

This letter and attachments to it may be placed on the Commission's electronic public file for this Inquiry.

If you have any questions, please let me know.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Andrew Percival', with a large, stylized initial 'A'.

Andrew Percival

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