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By Email

Mr Neil Braganza
Investigations Officer
Operations 1 , Anti-Dumping Commission
Department of Industry, Science, Energy and Resources
Wurundjeri Country, Level 6, 215 Spring St Melbourne VIC 3000

Dear Neil,

Continuation Inquiry 591 – Draft Verification Report for to PMB Aluminium San Bhd (PMBA)

I refer to your email of 16 March 2022 attaching a draft verification report for PMBA for review as to its completeness and accuracy to identify any corrections that may be required, as well as information confidential to PMBA requiring redaction from the public file version of the report.

As you are aware, PMBA has previously advised following its initial review of the draft verification report that it is deficient in that it contains factual and legal errors requiring correction, which still require rectification.

However, it is my understanding that the Commission proposes to place the verification report on the public file notwithstanding such deficiencies. Presumably this is because the Commission disagrees with such deficiencies.

Nevertheless, unless and until those deficiencies are appropriately rectified, the report and findings contained therein are deficient and, consequently, misleading and unreliable. Also as you are aware, correction of these deficiencies results in the determination that PMBA's exports have not been at dumped export prices, as PMBA has demonstrated.

For example, such deficiencies include adjustments required to be made to enable a proper comparison between the normal value and export prices. Amongst such deficiencies is that relating to an adjustment for differences in prices relating to differences in levels of trade, which adjustment has been made in all prior investigations and reviews by the Commission concerning exports by PMB or PMBA.

In this inquiry, the Commission has adopted a 'materiality' test specifically for this particular adjustment based on a limited selection of sample MCCs and customers , notwithstanding that:

- (i) a test of 'materiality' is not a requirement for adjustments to enable a proper comparison between normal values and export prices under Australia's anti-dumping legislation or WTO rules, as reflected in associated jurisprudence, and, indeed, any difference suffices for this purpose;
- (ii) the criteria for what is or is not 'material' is unspecified either in the draft verification report or in the Commission's Dumping and Subsidy Manual or elsewhere, no doubt due to there being no legal basis for such a test; and
- (iii) which test, if applied consistently by the Commission, would necessarily disallow all adjustments and not only that relating to level of trade. That is, all adjustments would fail to

meet such 'materiality' threshold as apparently here applied, including such adjustments made in other investigations, reviews and inquiries where no 'materiality' test have ever been applied as far as I am aware.

Hence, this adjustment must be made and, if appropriately and consistently applied, of itself would result in a determination that PMBA's exports have not been at dumped export prices. Evidence has been provided to the Commission confirming this. Other corrections reinforce that PMBA's exports are not at dumped export prices.

Because the report also does not note that findings made by the Commission have not been and are not agreed by PMBA, the report is misleading in this regard as well.

A detailed submission will be filed in due course particularising the deficiencies with the report and the required corrections. This has not been possible as yet due to the late provision of the draft report ahead of publication of the Statement of Essential Facts following completion of the verification last year.

This memo is to accompany the PMBA verification report when the latter is placed on the public file.

Yours sincerely,

Paul Ingram

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Managing Director PMAA