

13 April 2022

Mr Ben Merlin  
Assistant Director  
Investigations 1  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601

Dear Mr Merlin

**Public File**

**Investigation No. 591 – Aluminium extrusions exported from Malaysia and Vietnam – Submissions by interested parties in response to Statement of Essential Facts**

I. Recommendation

Capral Limited (“Capral”) detailed in its 7 April 2022 submission that it had provided the Commissioner with additional evidence confirming lost sales and price impacts caused by exports of aluminium extrusions from Malaysia and Vietnam during the investigation period in Investigation No. 591 (“Invest 591”).

The new evidence supports a recommendation by the Commissioner to the Minister for Industry, Energy and Emissions Reduction (“the Minister”) to secure the continuation of anti-dumping measures on exports of aluminium extrusions from Malaysia and Vietnam for a further five year period.

Capral also notes that another Australian industry member has provided evidence in support of the continuation of measures (refer EPR Document No. 027). The available evidence confirms that the Australian industry is likely to experience a recurrence of material injury from the dumping of exports from Malaysia and Vietnam should the measures be allowed to expire.

The submissions made in response to Statement of Essential Facts No. 591 (“SEF 591”) by interested parties involved with the exportation of the goods from Malaysia and Vietnam do not demonstrate that the dumping and injury from the subject exports will cease in the immediate future.

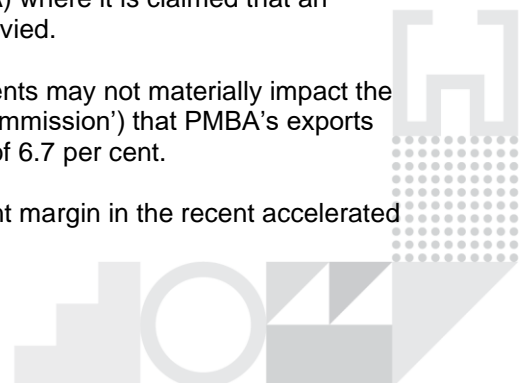
Capral reiterates its recommendation that the Commissioner request the Minister to take steps to secure the continuation of the anti-dumping on exports from Malaysia and Vietnam and the countervailing measures on exports from Malaysia.

II. PMB, PMBA and PMA

The initial submission (EPR Document 029) on behalf of Press Metal Berhad (“PMB”), Press Metal Berhad Aluminium (“PMBA”) and Press Metal Australia Pty Ltd (“PMA”) addresses the determination of the normal values and export prices for the exporter PMBA as outlined in the exporter verification report. The exporter appears to be dissatisfied with the Commissioner’s adjustments (including the absence of a level of trade adjustment) and earlier findings in Invest 577 (accelerated review form PMBA) where it is claimed that an overseas freight adjustment in excess of the freight expended by PMA was levied.

We note that the commentary on behalf of PMBA concedes that the adjustments may not materially impact the outcome – where it was assessed by the Anti-Dumping Commission (“the Commission”) that PMBA’s exports during the investigation period were at a weighted-average dumping margin of 6.7 per cent.

The assessed dumping margin was an increase on the calculated 2.6 per cent margin in the recent accelerated review inquiry No. 577.



Capral does not consider that the representations made on behalf of PMBA would alter the determination of the dumping margin for PMBA in SEF 591. It would appear that PMBA has not provided any information confirming the Commission has made an error in its assessment.

The second submission on behalf of the PMBA associated companies (EPR Document No. 031) seeks to address the findings in SEF 591. The PMBA submission sets out to address whether material injury is likely to occur. In its commentary, PMBA criticises the Commission that its price undercutting analysis is “not completely clear”, although it is Capral’s view that the Commission has made it clear that it assessed price undercutting at two levels – the level at which importers paid exporters for the subject goods, and the second at the level at which “imported goods were sold by importers onto the Australian market”.

The PMBA submission seeks to absolve PMBA and its associates of any price undercutting as verified by the Commission. This is not the case. We note that the PMBA submission focuses its attention on exonerating PMAA from undercutting Capral’s prices only – it has conveniently overlooked the price undercutting experienced by G James and INEX by PMAA.

The Commission’s findings confirmed that PMAA had undercut members of the Australian industry for powder coated and anodised product, as well as undercutting G James’ selling prices for mill finished product.

The Commission’s findings confirm that in the event PMBA’s export prices were not at dumped levels it is likely that PMAA’s selling prices would not undercut the selling prices of any of the Australian industry members. The analysis also reinforces Capral’s long-held view that the anti-dumping measures are required to maintain a discipline on exporters in Malaysia and Vietnam not to export at dumped and injurious prices.

Capral therefore does not support PMBA’s interpretation that “*even if you [the Commissioner] were minded to recommend the continuation of the anti-dumping measures, **there would be no basis to do so in respect of exports by PMBA***” (emphasis added). Capral does not consider that the Commissioner’s findings in SEF 591 can be interpreted in such a careless manner as interpreted by PMBA. The facts confirm that PMAA’s selling prices did undercut one or more members of the Australian industry during the investigation period in all three forms of aluminium extrusion – mill finish, powder coated and anodised finishes.

Capral also finds it difficult to understand how PMBA can interpret the price undercutting analysis as follows<sup>1</sup>:

*“Any price undercutting by PMAA of Capral’s could not be attributed to dumping. Rather, it is simply due to competitive pricing in a competitive market for commodity products.”*

This conclusion cannot be made when PMBA’s exports to Australia were determined as having been at a weighted-average dumping margin of 6.7 per cent. The dumping enables PMAA to sell at injurious prices to undercut or suppress Australian industry selling prices.

SEF 591 confirms that the Malaysian exporters had excess capacity during the investigation period to increase supply to the Australian market at approximately 6.7 per cent of sales. It is not clear to Capral how the Commission could assess this level given the absence of participation of a number of Malaysian exporters. This figure is likely to be extremely conservative at best and more likely to be significantly higher. The Commission further states that PMBA had the opportunity to increase export sales to Australia during the investigation period but did not choose to do so. It can be recalled that the exporters the subject of measures in China that account for approximately 20 per cent of the Australian market, have measures based upon variable factors applicable in the investigation period of 1 January 2019 to 31 December 2019, whereas the measures applicable to PMBA (from Investigation No. 577) were based upon the 1 January 2020 to 31 December 2020 period. PMBA therefore was meeting competition from the larger source Chinese exports and would need to export at significantly higher margins of dumping than the 6.7 per cent in order to increase market share in Australia.

<sup>1</sup> EPR Document No. 031, Paragraph 2.1.35, P. 10.



PMBA would be unlikely to increase export volumes to Australia if it meant that in order to do so it would increase the dumping margin on those exports.

It is Capral's view that should the measures be allowed expire an increase in export volumes from Malaysian exporters the subject of the measures is likely (as exporters reduce export prices to compete with Chinese exporters for a share of the Australian market).

Capral notes that the PMBA submission embarks on a number of theories concerning trends in Capral's earnings and pricing structures. The Commission is well versed on the cause(s) of injury to the Australian industry manufacturing aluminium extrusions. The industry has minimal barriers to entry for importers and data concerning import volumes and prices is readily available from the Australian Bureau of Statistics ("ABS"). Imports hold a significant share of the Australian market and have a subsequent impact on market prices. When dumping occurs in an open and transparent market the impacts of the dumping are felt by all market participants.

We consider it is important that the Commissioner take full account of the available evidence that it has received in response to SEF 591 from members of the Australian industry. That is, relevant information that confirms the Australian industry has been impacted – through lost sales volumes and price effects – from the dumping by the Malaysian and Vietnam exporters during the investigation period. In the event the measures are allowed to expire, the relevant evidence confirms that the Australian industry will likely experience a recurrence of the material injury from the dumping (and countervailing from Malaysia) that the measures on exports from Malaysia and Vietnam are intended to prevent.

### III. East Asia Aluminium

In its submission in response to SEF 591, East Asia Aluminium ("EAA") references the decision of the Federal Court in *Siam Polyethylene Co Ltd v Minister for Home Affairs (No.2)*, where the Court held that the word '*likely*' in section 269ZHF(2) of the Act was taken to mean "*more probable than not*".

In the present circumstances is the recurrence of material injury more probable than not?

In SEF 591, the Commissioner is satisfied that future exports of aluminium extrusions to Australia from Malaysia and Vietnam are likely and that the exports will also likely be at dumped prices. This assessment is considered to reflect a more probable than not scenario as the exporters have well-established distribution links into the Australian market often with related party Australian importers (as is the case for PMA and EAA's affiliated StarAlum) that will continue to supply aluminium extrusions into the Australian market.

In light of the positive finding concerning the dumping of future exports from both sources, it is difficult to not conclude that in light of the relevant information (refer Capral's submission in response to SEF 591 identifying price impacts of the dumped exports into Australia) concerning the Australian importers of the Malaysian and Vietnamese exports that injury from the dumping is more probable than not. The Commissioner has evidenced price undercutting that has occurred during the investigation period from both Malaysia and Vietnam (the undercutting does not have to be on every instance) and it has been demonstrated that sales that would otherwise be supplied by the Australian industry have been supplied from exports from Malaysia and Vietnam.

it is therefore considered more probable than not that future material injury from the dumping of exports from Malaysia and Vietnam is *likely*. This conclusion is not based upon mere speculation but evidence linking the injury to the subject exporters in Malaysia and Vietnam. It must be recalled that obtaining information about the pricing of the dumped exports is difficult in a trade measures investigation. This is particularly more so in the context of a continuation of measures investigation.



IV. Conclusion

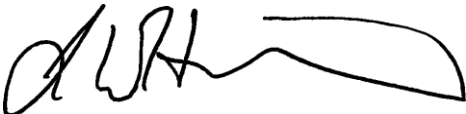
Capral does not consider that the PMBA submissions and that of EAA demonstrate that future exports of aluminium extrusions by either exporter will not be at dumped and injurious prices.

In response to SEF 591 Australian industry members have responded to the request of the Commissioner to provide evidence that sales volumes and prices have been impacted by the dumped exports from Malaysia and Vietnam. The relevant information provided supports Capral's position that future injury from the dumping of exports from Malaysia and Vietnam is likely.

Capral reiterates its request to the Commissioner that he reconsider his recommendation identified in SEF 591 and recommend that the Minister take steps to ensure the anti-dumping measures on aluminium extrusions exported from Malaysia and Vietnam do not expire on 27 June 2022 so that the measures are continued for a further five-year period.

If you have any questions concerning this submission please do not hesitate to contact me on (02) 8222 0113 or Capral's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely



Luke Hawkins  
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