



1012-1016 Canley Vale Rd WETHERILL PK NSW 2164
PO Box 6981, WETHERILL PK NSW 2164
T: +612 9756 5555 | F: +617 9756 5499

Anti-Dumping Review Panel Secretariat
adrp@industry.gov.au

**ADC Investigation 362
Certain Aluminium Extrusions Exported to Australia from Malaysia
and the Socialist Republic of Vietnam**

**Press Metal Aluminium Australia Pty Ltd & Press Metal Berhad submission in
response to Capral Limited's ADRP Review Application dated 25 July 2017**

We refer to the Anti-Dumping Review Panel (*ADRP*) notice under section 269ZZI of the *Customs Act 1901 (Customs Act)* dated 18 September 2017 (the *ADRP Notice*), the Minister's notice dated under section 269TDA(15) of the Customs Act dated 24 May 2017 (*Termination Notice*), and the application by Capral Limited (*Capral*) for review of a Ministerial decision under s 269ZZE of the Customs Act dated 25 July 2017.

Press Metal Aluminium Australia Pty Ltd (*PMAA*), on behalf of Press Metal Berhad (*PMB*), makes this submission as an interested party in response to the ADRP Notice, in its capacity as a key player in the aluminium market. PMAA acknowledges that the ADRP's review does not affect PMAA and PMB, as the ADC's dumping investigation was terminated in so far as it related to PMB by the Termination Notice made on 24 May 2017.

Notwithstanding that it is not directly affected, PMAA makes the following submissions for consideration by the ADRP in respect of the following ground of Capral's proposed ground of review:

The Assistant Minister, based on the recommendations of the ADC, failed to take account of relevant information pertinent to the determination of normal values, export prices and non-injurious prices in the period immediately following the investigation period, and erred by not adjusting the variable factors.

In summary, PMAA submits that the Commission and the Assistant Minister made the correct decision by considering the post investigation period information provided by Capral and determining that the variable factors for the investigation period should not be adjusted to take into account this information.

PUBLIC

1 Unlike administrative decisions generally, there is no principle that decisions by the Minister under the anti-dumping regime must take into account contemporary information

PMAA submits that the general administrative law principle stated in *Minister for Aboriginal Affairs v Peko-Wallsend Ltd*¹ does not generally apply in the context of the anti-dumping regime. In the case of *Pilkington (Australia) Ltd v Minister of State for Justice & Customs*,² the Federal Court found that 'it would be subversive of the intended detailed prescription of the investigation in Part XVB ... for the Minister to be required to go outside the investigation period to ascertain whether dumping has occurred in the past'.³

In *Pilkington*, in respect of one exporter, no dumping was found to have occurred within the investigation period. The Federal Court found that where the Minister is satisfied that no dumping has occurred, having regard to the investigation period, there is 'no call to examine the future'.⁴

2 The Commission was correct, in its discretion, to consider the information submitted by Capral and deciding not to take this information into account in its determination of the variable factors

Capral relies on the Hot Rolled Steel Coil Case⁵ to support its submission that the Commission should have taken into account post investigation period LME and MJP prices and adjusted the variable factors to that these prices into account. However, the principle from the Hot Rolled Steel Coil Case is confined to an appropriate case and cannot be broadly applied to constrain the Minister's discretion not to take into account post investigation period information.

In the Hot Rolled Steel Coil Case, TMRO found that, in the context of a rapidly falling market:

An appropriate case could exist where it was apparent that prices after the investigation period would differ from those within the investigation period on a sustained basis so that it was apparent that ignoring the later prices would mean that anti-dumping measures were set at a level that either under- or over-redressed the dumping that has been found to exist historically and likely to continue prospectively. For example, where a major source of a raw material input was unavailable during the investigation period due to, say, a mine being subjected to unusual flood inundation, resulting in a raw material scarcity pushing up finished product prices, but came back on-stream post the investigation period allowing raw material and consequent finished product prices to revert to previous ongoing levels, it may well be appropriate to set ongoing measures by reference to post-investigation period prices.⁶

The Hot Rolled Steel Coil Case sets out four circumstances in which it may be appropriate for the Minister to have regard to contemporary information:

1. where there are extreme circumstances affecting the investigation period;
2. where the difference between the investigation period prices and contemporary prices is sustained and likely to continue;
3. where ignoring contemporary information would lead to anti-dumping measures which either under- or over-redressed the dumping during the investigation period; and
4. where the Commission has undertaken considerable analysis to be satisfied that it should take into account contemporary information.

¹ (1986) 162 CLR 24.

² [2002] FCAFC 423 (*Pilkington*).

³ *Pilkington (Australia) Ltd v Minister of State for Justice & Customs* [2002] FCAFC 423 at [117].

⁴ *Pilkington (Australia) Ltd v Minister of State for Justice & Customs* [2002] FCAFC 423 at [118].

⁵ TMRO, Hot Rolled Coil Steel case (Investigation 188).

⁶ TMRO, Hot Rolled Coil Steel case (Investigation 188) at [79].

PUBLIC

The circumstances of Investigation 362 are not an appropriate case to take into account information following the investigation period to determine the variable factors. For this reason, the Commission was correct to use its discretion to consider the information provided by Capral and determine not to take it into account.

While we submit that the Commission did not use the correct methodology to calculate the LME futures price difference, the Commission was correct in deciding not to take it into account. The Commission found that the LME futures price in February 2017 (post investigation period) was 16% higher than the price in June 2016. The Hot Rolled Steel Coil Case sets out that a point in time comparison is not appropriate when taking into account contemporary data. Instead, the methodology as set out in Attachment A should have been used, yielding the following results:

- Investigation period average: \$US1,553.47/tonne
 - V
 - Year ended 6 months post investigation \$US1,609.01/tonne
period average
- = 3.6%**

In contrast, in the Hot Rolled Coil Steel Case, raw material prices dropped 15-25%⁷ in continuous fashion 6 months following the investigation period and continued dropping.⁸

This insignificant difference in pricing of 3.6% in the present case demonstrates that there are no extreme circumstances of the kind identified by the Hot Rolled Coil Case to support a finding that the Commission should have taken into account the contemporary LME and MJP pricing in respect of the duties imposed on the exporters listed in the Minister's Anti-Dumping Notice No 2017/72 of 22 June 2017.

The Commission did not err in finding that the difference in pricing was not sustained or likely to continue. The Commission took into account the pricing information and found that *'having regard to the long-term trends of MJP and LME prices, there is no evidence to establish that the current raw material prices are sustained or more representative than those verified in the investigation period'*.⁹ This conclusion was open to the Commission and no error was made by the Minister in accepting the Commission's conclusions.

The Commission also correctly identified that, in the circumstances of the case, it should not deviate from the norm of relying on the data from the investigation period as, *'although this practice can lead to some degree of retrospectivity, setting a defined investigation period is transparent, provides certainty to all interested parties about the conduct of the investigation and allows for the verification of data and timely delivery of findings'*¹⁰. PMAA agrees with the Commission's findings and submits that the Minister did not err in relying on the Commission's recommendations.

⁷ Hard coking coal \$US 210/t to \$US180/t & iron ore fines \$US300/t to \$US220/t

⁸ Report 209 – Reinvestigation Into Certain Findings in Report No. 188, Hot Rolled Coil Steel, page 30, Iron Ore and Hard Coking Coal Prices Chart.

⁹ REP 362, pg 107-108.

¹⁰ REP 362, pg 108.

PUBLIC

**Attachment A
Primary aluminium LME \$US/tonne 3 month futures**

Attachment B spreadsheet source:
https://www.quandl.com/data/LME/PR_AL

2015	
Qtr 3	
Jul	1,678.97
Aug	1,569.81
Sep	1,604.49
Qtr 3 total	1,620.17
Qtr 4	
Oct	1,546.52
Nov	1,481.17
Dec	1,495.13
Qtr 4 total	1,508.42
2015 total	1,565.17
2016	
Qtr 1	
Jan	1,477.43
Feb	1,526.74
Mar	1,535.06
Qtr 1 total	1,513.46
Qtr 2	
Apr	1,574.36
May	1,569.00
Jun	1,600.51
Qtr 2 total	1,581.79
IP 1 Jul 15 to 30 Jun 16	1,553.47
Qtr 3	
Jul	1,640.65
Aug	1,652.98
Sep	1,603.81
Qtr 3 total	1,632.35
Qtr 4	
Oct	1,668.99
Nov	1,733.65
Dec	1,722.16
Qtr 4 total	1,708.45
2016 total	1,609.01
2017	
Qtr 1	
Jan	1,786.02
Feb	1,865.53
Qtr 1 total	1,824.80
TMRO 188 HRC <u>rejected</u> points in time ADC	
purported change Feb 17 v Jun 16--REP 362 page 107	
	16.6%
Preferred 188 HRC reinvestigation method--2016	
final 6 IP months + following 6 months	
	1,609.01
Change from IP	3.6%