



ADRP Report No. 155

Aluminium Extrusions exported from Malaysia and the Socialist Republic of Vietnam

September 2023

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Abbreviations

Term	Meaning
Act	<i>Customs Act 1901</i>
ABF	Australian Border Force
ADA	World Trade Organization (WTO) Anti-Dumping Agreement: Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice
Alumac	Alumac Industries Sdn Bhd, an exporter from Malaysia
Aus Star	Aus Star Holdings International P/L, an importer from Vietnam
AUD	Australian Dollar
Capral	Capral Limited, the applicant and Australian manufacturer of the goods
China	The People's Republic of China
CTM	Cost to Make
CTMS	Cost to Make and Sell
Commissioner	Commissioner of the Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EAA	East Asia Aluminium Company Limited, an exporter from Vietnam
FIS	Free into Store
FOB	Free on Board
FY	Financial year 1 July to 30 June
GAAP	Generally accepted accounting principles
Goods	Certain Aluminium Extrusions as described in the report at paragraph 19

G. James	G. James Extrusions Co. Pty Ltd, an Australian manufacturer of the goods
INEX	Independent Extrusions Ltd, an Australian manufacturer of the goods
Inquiry period	1 July 2020 to 30 June 2021
Investigation period for the original inquiry for REP 362	1 July 2015 to 30 June 2016
LDPIS	Landed duty paid into store
LME	London Metal Exchange
Manual	Dumping and Subsidy Manual December 2021
Material Injury Direction	Ministerial Direction on Material Injury 27 April 2012
MCC	Model Control Code
MJP	Major Japanese ports
MT	Metric tonnes
Minister	Minister for Industry and Science
NIP	Non-injurious price
Pandemic	COVID 19 Pandemic
PMAA	Press Metal Aluminium (Australia) Pty Ltd, an importer from Malaysia
PMAH	Press Metal Aluminium Holdings Berhad
PMB	Press Metal Berhad
PMBA	PMB Aluminium Sdn Bhd, an exporter from Malaysia
PRR	Preliminary Reinvestigation Report 591 dated 26 June 2023
RIQ	Response to Importer Questionnaire
REQ	Response to Exporter Questionnaire

REP 362	The report published by the ADC in relation to the alleged dumping and subsidisation of certain aluminium extrusions exported to Australia from Malaysia and the Socialist Republic of Vietnam. The original investigation in relation to exports from Malaysia and Vietnam.
REP 591	The report published by the ADC in relation to Inquiry into the continuation of anti-dumping measures applying to certain aluminium extrusions exported to Australia from Malaysia and the Socialist Republic of Vietnam and dated 13 May 2022.
Review Panel	Anti-Dumping Review Panel
Reviewable Decision	The decision of the Minister on 24 June 2022 under section 269ZHG(1)(a) of the Act to not secure the continuation of anti-dumping measures currently applying to aluminium extrusions exported to Australia from Malaysia and Vietnam.
RR 591	Reinvestigation report 591 dated 21 August 2023.
SEF 591	Statement of Essential Facts
SCM	World Trade Organization (WTO) Subsidies and Countervailing Measures Agreement.
SG&A	Selling, general and administration expenses
Ullrich	Ullrich Aluminium Pty Ltd, an Australian manufacturer
USP	Unsuppressed selling price
Vietnam	The Socialist Republic of Vietnam
WTO	The World Trade Organization

Summary

1. This is a review of the decision of the Minister for Industry and Science (the Minister) not to secure the continuation of anti-dumping measures in respect of aluminium extrusions (the goods) exported from Malaysia and the Socialist Republic of Vietnam (Vietnam) (the Reviewable Decision). The applicant for the review was Capral Limited (Capral), an Australian manufacturer.
2. The Anti-Dumping Review Panel (Review Panel) accepted three grounds of review regarding the Reviewable Decision. These grounds relate to the impact of dumped exports on Australian industry prices and whether material injury is likely to continue or recur in the absence of anti-dumping measures. Capral's application indicates that it considers for each of its grounds, that the correct or preferable decision is that the dumped exports will lead or would be likely to lead to a continuation or recurrence of the material injury the anti-dumping measures are intended to prevent and the measures should be continued.
3. The Review Panel required a reinvestigation of certain findings in Report 591 (REP 591)¹ pursuant to s.269ZZL of the *Customs Act 1901* (the Act). The Commissioner reached different findings in the reinvestigation report to the findings in REP 591.
4. The Review Panel considers, for the reasons outlined in this report and following consideration of the reviewable grounds, that Capral has established the Reviewable Decision was not correct or preferable as material injury is likely to continue or recur in the absence of dumping measures. This report recommends a new decision that is materially different to the Reviewable Decision as it secures the continuation of dumping duty measures on exports from Malaysia and Vietnam.
5. For the reasons set out in this report, I recommend that the Minister, pursuant to s.269ZZM(1)(b) of the Act, revoke the Reviewable Decision and substitute a new decision. Details of the recommendations are at paragraphs 103-104 of this report.

¹ REP 591: The report published by the ADC in relation to Inquiry into the continuation of anti-dumping measures applying to certain aluminium extrusions exported to Australia from Malaysia and the Socialist Republic of Vietnam and dated 13 May 2022.

Introduction

6. The applicant applied under s.269ZZC of the Act for a review of the Reviewable Decision.
7. The application was accepted and notice of the proposed review, as required by s.269ZZI, was published on 17 August 2022.
8. Pursuant to s.269ZZK of the Act, a report must be provided no later than 60 days beginning on the day of the publication of the notice of review, unless a reinvestigation report is required under s.269ZZL(1) of the Act.² A reinvestigation was required, and a report was provided to the Review Panel on 21 August 2023.³
9. On 18 July 2022, the Senior Panel Member had directed, in accordance with s.269ZYA of the Act, that Mr Frank Schoneveld constitute the Review Panel for this review. On 16 August 2022, the Senior Panel Member, pursuant to s.269ZYB(2) of the Act, directed that the Review Panel be constituted by me, as Mr Schoneveld was no longer available to conduct the review.

Background

10. The original anti-dumping measures (dumping and countervailing duties) were imposed by public notice on 27 June 2017 following consideration of Anti-Dumping Commission (ADC) Report No 362 (REP 362)⁴ by the then Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science. Exports of aluminium extrusions during the original investigation period (1 July 2015 to 30 June 2016) were found to be dumped and subsidised. The original measures were in the form of a dumping duty notice on exports from Malaysia and Vietnam and a countervailing duty notice on exports from Malaysia. The anti-dumping measures were due to expire after 27 June 2022.
11. On 15 September 2021, the ADC initiated a continuation inquiry of anti-dumping measures in relation to aluminium extrusions exported from Malaysia and Vietnam

² Pursuant to s.269ZZK(3).

³ The original reinvestigation report was to be provided by 10 February 2023. The Commissioner sought and was granted two extensions.

⁴ Anti-Dumping Notices (ADN) 2017/72 and 73 respectively refer.

following an application from Capral, the original applicant for measures and a member of the Australian industry.⁵ The period of inquiry was stated as 1 July 2020 to 30 June 2021 (inquiry period).

12. REP 591 indicated that there were a number of exporters from Malaysia that were excluded from the measures the subject of the continuation inquiry.⁶
13. A Statement of Essential Facts (SEF 591) was published on 18 March 2022. The Commissioner provided a report (REP 591) to the Minister recommending not to secure the continuation of anti-dumping measures and that the notices applying to the goods be allowed to expire. This report was dated 13 May 2022.
14. The Commissioner's findings in REP 591 indicate that:
 - *... there is sufficient evidence to support a finding that exports for aluminium extrusions exported from Malaysia and Vietnam are likely to continue in the absence of anti-dumping measures, and that future exports (except for exports by Alumac) are likely to be dumped;*
 - *... it is unlikely there will be a continuation or recurrence of the subsidisation, in relation to exports from Malaysia...;*
 - *While the Commissioner considers dumping will continue (except by Alumac), the Commissioner does not consider that material injury to the Australian industry, that the measures are intended to prevent, is likely to continue or recur in the absence of the measures. This is because there is no demonstrable connection between:*
 - *The price advantage that dumping gives to exporters from Malaysia and Vietnam, and*

⁵ The original countervailing notice imposed following REP 362 applied only to non-cooperating exporters from Malaysia. The countervailing notice was revoked for Alumac following REP 490 and for Everpress in REP 590. In REP 591, PMBA was found not to be in receipt of a countervailing subsidy.

⁶ REP 591 page 7.

- *The economic condition of the Australian industry, specifically in terms of how it sets its prices, which is distinct from the influence of other sources of the goods.*
- *Two Australian industry members presented evidence of sales that appeared to have been lost to imports from Malaysia and/or Vietnam. It considered these examples related to very small volumes in the context of the overall market. It noted that while there was evidence presented in the original inquiry (in REP 362) that demonstrated that prices were impacted by the presence of the dumped goods, this was not apparent in the Australian market during the continuation inquiry.*
- *The volume of goods from Malaysia and Vietnam subject to the notices has remained a relatively small proportion of the Australian market over the last five years. While some exports have undercut the Australian industry's prices at different points during the inquiry period, the evidence does not demonstrate that this had any practical impact on the performance of the Australian industry. The imposition of measures appears to have prompted little change in the market. Taken together, this causes the commission to conclude that, in the absence of the measures, there would likely be little change to pricing behaviours by exporters and importers. In this context, there is little likelihood of a recurrence of material injury to the Australian industry that, in the absence of the measures, would be caused by dumped aluminium extrusions from Malaysia and Vietnam.⁷*

15. The Minister advised in Anti-Dumping Notice (ADN) 2022/042 that he had decided to accept the recommendations in REP 591.
16. Current anti-dumping measures applying to exports from Malaysia and Vietnam and the dumping margins found in REP 591, noting that no subsidy margin was identified, are shown in the following table:

Country	Exporter	Dumping margin	Subsidy margin	Effective rate as published	Dumping margin assessed in REP 591 in

⁷ REP 591, Section 1.2 pages 8-9.

				in ADN 2021/37	the inquiry period
Malaysia	Alumac Industries Sdn Bhd (Alumac)	0%	NA	0%	-2.3%
Malaysia	Premium Aluminium	0%	0%	0%	***
Malaysia	PMB Aluminium Sdn Bhd (PMBA)	2.6%	0%	2.6%	6.7%
Malaysia	Everpress Aluminium	10.7%	NA	10.7%	***
Malaysia	All other exporters	10.7%	0%	10.7%	27%
Vietnam	East Asia Aluminium Company Limited (EAA)	1.9%	NA	1.9%	5.2%
Vietnam	All other exporters	1.9%	NA	1.9%	9.0%

*** did not cooperate with the continuation inquiry, therefore all other exporters rate applies.

17. The ADC noted that, with the exception of two exporters, there are also anti-dumping measures that apply to all imports from the People's Republic of China (China). These measures range from 0 to 77.4 per cent.⁸
18. There have been a number of reviews of measures as well as accelerated reviews relating to aluminium extrusions. Attachment One lists the inquiries relating to

⁸ ADN 2020/103 dated 12 October 2020 provided the then Minister's decision to continue anti-dumping measures on exports from China following REP 543 (the inquiry period of 1/1/2019 to 31/12/19).

aluminium extrusions, excluding the exemption matters, undertaken by the ADC (in chronological order) since 2012.

19. The goods to which this application relates are:

Aluminium extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by The Aluminium Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness or diameter greater than 0.5 mm, with a maximum weight per metre of 27 kilograms and a profile or cross-section which fits within a circle having a diameter of 421 mm.

The goods under consideration include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. For example, aluminium extrusion products that have been painted, anodised or otherwise coated, or worked (e.g., precision cut, machined, punched or drilled) fall within the scope of the goods.

The goods do not extend to intermediate or finished products that are processed or fabricated to such an extent that they no longer possess the nature and physical characteristics of an aluminium extrusion but have become a different product.

Conduct of the Review

20. In accordance with s.269ZZK(1) of the Act, the Review Panel must recommend that the Minister either affirm the Reviewable Decision or revoke it and substitute a new specified decision. In addition, s.269ZZK(1A) of the Act requires that, if the Review Panel is recommending a new specified decision, it must be materially different from the Reviewable Decision.
21. In undertaking the review, s.269ZZ(1) of the Act requires the Review Panel to determine a matter required to be determined by the Minister, in like manner as if it were the Minister, and having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.

22. Subject to certain exceptions,⁹ the Review Panel is not to have regard to any information other than relevant information pursuant to s.269ZZK, i.e. information to which the ADC had regard or ought to have had regard when making its findings and recommendations to the Minister.
23. Australia's anti-dumping and countervailing system implements the following World Trade Organization (WTO) agreements to which Australia is a party:
- a) Anti-Dumping Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (ADA) – which prescribes rules for the conduct of anti-dumping investigations and the application of measures to address dumping, including how member countries may: initiate cases, calculate dumping margins, determine injury, enforce remedial measures and review past determinations; and
 - b) Agreement on Subsidies and Countervailing Measures (SCM Agreement) – which regulates measures designed to remedy material injury caused by subsidised imports, along similar lines to the ADA.
24. The Act and the *Customs Tariff (Anti-Dumping) Act 1975* are the principal legislation relating to anti-dumping measures in Australia. The Review Panel will interpret and apply the legislation, as far as its language permits, so that it is in conformity, and not in conflict, with Australia's international obligations. In practice, this means where the legislation is ambiguous, the Review Panel will favour a construction that is consistent with the ADA and the SCM Agreements and the obligations which they impose (see *Pilkington (Australia) Ltd v Minister of State for Justice & Customs* [2002] FCAFC 423 at [25]–[27]).
25. It was stated in *Yara AB v Minister for Industry, Science and Technology*:¹⁰

[182] [The] Review Panel's conduct of the review, including its consideration of whether the Minister's decision was the correct or preferable decision, is confined and constrained in certain respects. In particular, the Review Panel must conduct the review in relation to the reviewable grounds and no other grounds. It must also only have regard to certain information, that information essentially being the information that the Commission had regard to, or was

⁹ See s.269ZZK(4).

¹⁰ *Yara AB* [2022] FCA 847 52 [182 – 183].

required to have regard to, as well as any reinvestigation report. The Review Panel cannot conduct its own investigations or obtain and use further information.

[183] The fact that the Review Panel is required to conduct the review only in relation to the reviewable grounds is particularly significant, especially given that the criterion for determining whether a ground is a “reviewable ground” is whether it is a “reasonable ground for the reviewable decision not being the correct or preferable decision”. What that must mean is that the nature of the review undertaken by the Review Panel is to essentially determine whether the reviewable decision is not the correct or preferable decision for any of the reasons articulated in the reviewable grounds. It is only to that extent, and on those terms, that the Review Panel is required to consider and determine whether the reviewable decision is the correct or preferable decision.

26. The Review Panel received the following submissions from interested parties pursuant to s.269ZZJ of the Act:

- Press Metal Aluminium Australia Pty Ltd (PMAA) and PMB Aluminium Sdn Bhd (PMBA) submission dated 26 August 2022 indicating that it did not consider Capral’s application was valid and questioning whether Capral’s application had articulated what the correct or preferable decision should be, amongst other things. The Review Panel responded indicating that it was satisfied that Capral had supplied sufficient information in its application to indicate it was seeking a review of the Minister’s decision to not secure the continuation of measures. The Notice published pursuant to s.269ZZI of the Act advises that the Reviewable Decision is the Minister’s decision to not secure the continuation of anti-dumping measures applying to certain aluminium extrusions exported from Malaysia and Vietnam. A copy of this correspondence was placed on the public file.
- PMAA and PMBA submission dated 15 September 2022 indicating that it agreed with the Minister’s decision not to secure the continuation of anti-dumping measures from Malaysia and Vietnam. It proposed that the Minister’s decision in relation to dumping by PMBA is incorrect as the normal value finding was not correct. The Review Panel notes, pursuant to s.269ZZG(5) of the Act, that the Review Panel must be satisfied that the

applicant's ground/s are reasonable grounds for the Reviewable Decision not being correct or preferable. Such grounds are considered 'reviewable grounds' for the purpose of the review. The review must only be conducted in relation to reviewable grounds. Those grounds are published in the notice made pursuant to s.269ZZI of the Act. On this basis, to the extent that this submission deals with matters that are not related to the reviewable grounds, the submission on these aspects has not been further considered.

- PMAA/PMBA's submission dated 16 September 2022 indicated that it agreed with the Minister's decision not to secure the continuation of anti-dumping measures exported from Malaysia and Vietnam. It commented as follows. PMAA/PMBA:
 - reserved its rights as to whether Capral's application was valid,
 - outlined its concerns regarding the insufficient evidence provided by Capral regarding material injury following the SEF 591,
 - does not consider that material injury has been caused or is likely to be caused to the Australian industry by exports by PMBA,
 - does not consider there is evidence of price, volume or other injury criterion has been identified in relation to Capral or other Australian industry members,
 - refers to the improved economic performance of Capral and other Australian industry members. It suggests that injury to Capral may be caused by other factors such as its business model and over reliance on the Australian construction industry, which is known to be cyclical in nature,
 - challenges the dumping finding of exports by PMBA (see also submission dated 15 September 2022),¹¹

¹¹ See earlier dot point in paragraph 26 regarding the Review Panel being required to consider the reviewable grounds and the *Yara AB* judgment referred to in paragraph 25.

- suggests that the price undercutting could relate to competition between Australian industry members rather than from imported aluminium extrusions.
27. On 27 September 2022, PMAA advised by letter that it currently has two duty assessments underway with the ADC relating to exports during the inquiry period. It provided this information in response to information obtained at the conference from the ADC on 7 September 2022 that indicated that no duty assessments relating to PMAA were apparent during the inquiry period. I noted this clarification.
 28. On 1 September 2023, PMAA wrote to the Review Panel. The Review Panel advised PMAA on 1 September 2023 that, in making recommendations in its report to the Minister, s.269ZZK(4) of the Act provides, subject to certain exceptions, the information that the Review Panel can have regard to in making recommendations to the Minister. The information in this letter does not meet the definition of information to which the Review Panel can have regard. On this basis, the Review Panel has not had regard to this letter and has not placed a copy on the public file.
 29. If a conference is held under s.269ZZHA of the Act, the Review Panel may have regard to further information obtained at the conference to the extent that it relates to relevant information, and to conclusions reached at the conference based on that relevant information. A list of the conferences held during the course of this review is available at Appendix A. A non-confidential summary of the information obtained at the conferences was made publicly available in accordance with s.269ZZX(1) of the Act.
 30. At the conferences held with the ADC on 7 and 14 September 2022, other parties were not included due to confidentiality concerns related to the further information being sought in relation to pricing information. At the conference held with the ADC on 17 October 2022, following the letter requiring a reinvestigation, other parties were not included due to confidentiality concerns regarding the pricing analysis.
 31. On 5 October 2022, pursuant to s.269ZZL of the Act, I required the Commissioner to conduct a reinvestigation in relation to specific findings that formed the basis of the Reviewable Decision. Two extensions were sought and approved by the Review

Panel.¹² A Reinvestigation Report (RR 591) was provided on 21 August 2023. A copy of the RR 591 is at Confidential Attachment Two. A public version of RR 591 will be available following your decision on this report.

32. In conducting this review, I have had regard to:

- The review application and documents submitted with the application;
- Submissions received pursuant to s.269ZZJ of the Act insofar as they contained conclusions based on relevant information or related to the reviewable grounds. Submissions are listed at paragraph 26 above;
- REP 591, its confidential attachments, information referenced in the report, information created during the investigation, and submissions considered in Investigation 591, insofar as they related to the reviewable grounds;
- Information from REP 362, REP 540, REP 541, REP 543 and REP 544.
- Relevant information obtained at conferences; and
- RR 591 provided on 21 August 2023.

Grounds of Review

33. Capral considers the correct or preferred decision should have been that the anti-dumping measures applying to exports from Malaysia and Vietnam be continued, rather than allowed to expire, in order to prevent the recurrence of material injury. The grounds of review relied upon by Capral, which the Review Panel accepted, are as follows:

- Ground 1: There is absence of a 'demonstrable connection' between the price advantage that dumping gives to exporters from Malaysia and Vietnam, is not the correct or preferred decision.
- Ground 2: There is no evidence to demonstrate a connection between 'the economic condition of the industry, specifically in terms of how it sets its

¹² The ADC requested and was granted two extensions for the provision of the reinvestigation report. This correspondence is available on the Review Panel website.

prices which is distinct from the influence of other sources of the goods', is not the correct or preferred decision.

- Ground 3: In the absence of the measures, it is likely that the Australian industry would experience a recurrence of the material injury that the measures are intended to prevent.

34. All three grounds relate to the Commissioner's findings regarding whether material injury is likely to continue or recur if the measures expire and will be dealt with jointly. Grounds 1 and 2 relate to the Commissioner's findings in REP 591 regarding injury caused by price, that is, the prices of the dumped exports from Malaysia and Vietnam and the effect of such exports on how Capral sets its prices.¹³ Ground 3 deals with the findings related to whether there would be a recurrence of material injury if the measures expired.
35. Capral's application does not raise any grounds in relation to the Minister's decision relating to the findings of the level of dumping of exports from Malaysia or from Vietnam. Nor does it raise any grounds relating to the ADC's findings regarding whether subsidisation of exports from Malaysia has continued or is likely to continue.
36. While Capral's application refers to anti-dumping measures, reflecting the terms used in the s.269ZHG, the language used in each of the grounds refers only to dumped exports from Malaysia and Vietnam and the impact of the prices of the dumped exports on material injury, should the measures expire. It does not raise any aspect in relation to the Reviewable Decision regarding subsidisation and countervailing duties and the impact on prices.
37. As referred to in paragraph 25, the Review Panel may only deal with the Reviewable Decision to the extent of the grounds accepted as reviewable grounds. Capral's grounds do not raise any claim regarding the impact of countervailable subsidies on prices. No countervailable subsidies were found to apply to the exports during the inquiry period in REP 591. Accordingly, the Minister's decision in relation to subsidies and the impact on prices and material injury is not under consideration in this review.

¹³ REP 591 Section 1.2 Findings and Recommendations, page 9.

Relevant Legislation and Case Law

38. Section 269ZHF Report on application for continuation of anti-dumping measures:

*(2) The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures **unless the Commissioner is 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.*** (my emphasis)

39. Section 269ZHG(1) Powers of the Minister in relation to continuation of anti-dumping measures:

(1) After considering the report of the Commissioner and any other information that the Minister considers relevant, the Minister must by notice published in accordance with subsection (2):

(a) declare that the Minister has decided not to secure the continuation of the anti-dumping measures concerned; or

(b) declare that the Minister has decided to secure the continuation of the anti-dumping measures concerned.

Note: Subsection (3) deals with the end of the anti-dumping measures and subsection (4) deals with the continuation of the anti-dumping measures.

40. The most relevant case law that relates to continuation matters is *Siam Polyethylene Co Ltd*.¹⁴ I note that his Honour's decision was overturned on appeal. However, the Full Court of the Federal Court of Australia did not appear to have disagreed with the extracts of the judgment shown below:

Thus, a review under Div 6A of Part XVB is not intended as a complete replication of the process under Div 3 involved in the initial imposition of anti-dumping measures. But the continuation review under Div 6A is still directed to the purpose of preventing material injury or the threat of such an injury

¹⁴ *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No.2)* [2009] FCA 838.

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caused by dumping. So, in exercising his or her discretion under s.269ZHG(1), I am of the opinion that the Minister must consider whether the existing measures are appropriate and adapted to achieve the purpose served by the measures identified in s.269ZHF(2) if they are to be continued.¹⁵

... Thus s.269ZHF(2) addresses a number of possible scenarios including whether that expiration actually **would lead, or alternatively would be likely to lead, to a continuation or recurrence of both the dumping and the material injury that the measures were intended to prevent.**¹⁶ (my emphasis)

... The **scenarios** adverted to in s.269ZHF(2) involve **a consideration of future events** based on an evaluation of the present position. When s.269ZHF(2) refers to the question of whether the expiration of the measures would lead to a continuation or recurrence, it is addressing the issue that arises **where current dumping would in fact cause material injury were it not for the operation of the measures that are in place at the time. Ordinarily, this will involve the CEO, or then the Minister, considering whether the removal of the dumping duty would cause the Australian industry material injury. Ordinarily, this will be because the price of the imported goods would be sufficiently below that of its Australian competitor to cause or be likely to cause it material injury.**¹⁷ (my emphasis)

¹⁵ Paragraph 41 of FCA 838.

¹⁶ Paragraph 42 of FCA 838.

¹⁷ Paragraph 46 of FCA 838.

Consideration of Grounds

Price and threat of material injury should measures expire

Claims

41. The applicant, Capral, claims that the ADC has not fully understood the impact of pricing by imports and the Australian industry during the inquiry period nor the price injury caused by dumped exports from Malaysia and Vietnam to the Australian industry and considers this has affected its consideration as to whether material injury is likely to continue or recur if the measures expire. Capral makes the following claims:

- Prices from Malaysian and Vietnamese exporters are influenced by the ‘level of measures and the relativity of the cost of aluminium on the London Metal Exchange (LME)’.¹⁸ It proposes that as the LME price increased, the floor price of the measures determined on the combination method became outdated and volumes increased.¹⁹
- The ADC has not understood the full impact of the time lag between changes in the LME cost of aluminium and the changes in export prices in its price analysis.
- In the context of the increased volumes from Malaysia and Vietnam between 2020 and 2021, the lower prices of such exports and the significant dumping margins by PMBA and EAA (6.7 per cent and 5.2 per cent respectively) during the inquiry period, the ADC has not recognised the impact of these exports on the Australian industry’s prices.
- The ADC has not recognised the impact of the lost sales volumes on the Australian industry and the price impact from the dumped exports from

¹⁸ In REP 591, the ADC indicates that aluminium extrusions manufacturers base prices on a formula that reflects the LME primary aluminium base price, plus a premium, plus a conversion or processing fee plus finish extras. It notes that the industry refers to the ‘spread’ as the difference between the combined sum of the LME price and premiums, and the selling price – see page 25 of REP 591.

¹⁹ Capral’s application, Attachment A page 3.

Malaysia and Vietnam. It proposes that customers are reluctant to supply information on selling prices from Malaysian and Vietnamese sources as this would limit access to the cheaper (dumped) exports.

- The ADC has been dismissive of the evidence of lost sales supplied by Capral following SEF 591 and in particular the likelihood of the recurrence of material injury if the measures expire. It proposes that, with no measures in place, Australia will be attractive for Malaysian and Vietnamese exporters who have continued to sell at dumped prices during the inquiry period. It claims that this will lead to a continuation and recurrence of material injury to the Australian industry.
- The ADC found evidence of price undercutting during the inquiry period (with dumping measures in place) but has not considered the full extent of the price undercutting.
- While there were other separate influences affecting prices in the Australian market, such as the larger volumes of exports from China and volumes from other sources, there was sufficient evidence of the direct loss of sales to Capral customers from exports from both Malaysia and Vietnam that demonstrates there is a connection between the dumped prices from Malaysia and Vietnamese exports and the economic condition of the Australian industry.
- The ADC, in REP 591, discounted the impact of the smaller volumes from Malaysia and Vietnam given there were imports with greater market shares. It considers this is erroneous, as it is well established that export volumes with small market shares can significantly influence prices and cause material injury.
- The ADC failed to undertake appropriate analysis of the price impacts of exports from Malaysia and Vietnam and the injurious effects of such exports if the measures were removed. It suggests that the approach adopted by the ADC does not correctly deal with the issue of whether the dumped exports from Malaysia and Vietnam would continue, or cause, a recurrence of material injury, if the measures were allowed to expire.

A snapshot of the ADC findings in REP 591

42. At paragraphs 49-51, there is an outline of the reasons for seeking a reinvestigation of particular findings that formed the basis of the Reviewable Decision. This relates to the price analysis undertaken in REP 591, and the significance of this analysis in the reasons provided to the Minister in the recommendation to not secure the continuation of measures. In RR 591, the ADC modified its findings in relation to its price analysis. This led to the Commissioner revising the finding as to whether the expiration of measures would likely lead to a continuation or recurrence of the material injury that the measures are intended to prevent.
43. In these circumstances, while a snapshot of the findings in REP 591 is outlined below, it does not reference the price analysis in any detail. This price analysis has been superseded by the Commissioner's findings in RR 591 to which the Review Panel has had regard.
44. Export volumes and prices and market share of exports from Malaysia and Vietnam since the imposition of measures and during the inquiry period:
- The three exporters who co-operated with the inquiry (Alumac, EAA and PMBA) comprise 95 per cent of the volume of exports subject to the notices from Malaysia and Vietnam.²⁰
 - Dumping margins in operation (from previous review of measures REP 544 and REP 577 for exports by PMBA) during the inquiry period ranged between 0 to 10.7 per cent.
 - In REP 591, the dumping margins in the inquiry period:
 - for Malaysia ranged from negative 2.3 per cent for Alumac, 6.7 per cent for PMBA and 27 per cent for uncooperative and all other exporters; and
 - for Vietnam, 5.2 per cent for EAA and 9 per cent for uncooperative and all other exporters.

²⁰ PMBA (Malaysia), Alumac (Malaysia), and EAA (Vietnam) REP 591 page 15.

- There was no evidence of countervailable subsidies in relation to exports by PMBA and to 'other exporters' from Malaysia. Alumac was not subject to the countervailing notices.

Malaysia:

- The market share of imports from Malaysia remained largely consistent since FY 2017. Imports from Malaysia subject to measures accounted for approximately 21 per cent in FY 2017, 6 per cent in FY 2019 but 50 per cent of all imports from Malaysia in FY 2021.
- PMBA: export prices had remained steady and then increased during the inquiry period. The ADC noted that this increase was while the LME prices increased and its profits on export sales remained at a similar level. Export volumes decreased in FY 2020 but increased in FY 2021.²¹
- Alumac: had increased both its export volumes and prices since the measures were imposed and had negative margins in all subsequent reviews of measures and in the inquiry period. It had increased its prices in the inquiry period at a similar rate to the LME price increase.²² Alumac has a relatively small volume of Malaysian exports subject to the notice. It has been found not to be dumping for some time.

Vietnam:

- The share of imports from Vietnam increased from FY 2017 but from a low base. In FY 2021, its market share was lower than in FY 2020 but higher than in FY 2017.
 - EAA had increased export sales volumes since the measures were imposed, had maintained relatively stable prices since the measures were imposed but had decreased its selling prices in the inquiry period (FY 2021) notwithstanding that there had been increases in the LME primary aluminium prices.²³

²¹ Rep 591 page 69.

²² Rep 591 page 72.

²³ Rep 591 pages 70 to 71.

The ADC considered that dumped exports from Malaysia (except by Alumac) and from Vietnam were likely to continue if the measures expired.

45. China and other sources of imports since imposition of measures and during the inquiry period:

- China's exports comprise the major source of imports into Australia and while subject to measures, not all exports are dumped.²⁴ The measures in place for exports from China have margins ranging from 0 to 77 per cent as identified in the continuation inquiry REP 543.²⁵ While its market share declined in FY 2020 and FY 2021, it remained the largest source of imports.
- 'Other sources' increased in both FY 2020 and FY 2021. While it is not contained in the body of REP 591, Confidential Attachment 1 reveals that the three largest sources within 'other sources' were [REDACTED]. While [REDACTED] volumes remained relatively stable since FY 2017, between FY 2019 and 2021 [REDACTED].
- In REP 362, the ADC indicated that '... apart from China, Malaysia and Vietnam, the next largest volumes of imports were from Indonesia, New Zealand and Thailand...' noting these were relatively low volumes.²⁶

46. Australian market and economic condition of the Australian industry in the inquiry period:

- The Australian market size increased slightly between FY 2017 to FY 2019 but showed a large increase in FY 2020 with a further marked increase in FY 2021 (expansion of more than 15 per cent). Capral considers that the residential and commercial construction made up the majority of the market, with industrial being the other segment.
- Capral sold directly to end users as well as through its distribution centres.

²⁴ REP 591 page 29 to 30.

²⁵ Minister's decision published on 15 October 2020.

²⁶ REP 362 page 93.

- There had been an improvement in the economic conditions for the Australian industry in FY 2020 and FY 2021 with the Australian industry being able to maintain steady prices. The Australian industry market share declined in FY 2018 and 2019 but increased in FY 2020 and FY 2021. The Australian industry (which includes Capral) increased its market share in FY 2021.
- Capral's profits and profitability improved during the inquiry period as did its revenue.
- The ADC noted that supply chain disruptions were experienced in both FY 2020 and FY 2021 including limited shipping availability as well as increasing costs of international freight. The ADC considered that the lower prices of exports from Malaysia and Vietnam were relevant factors influencing the economic condition of the Australian industry.²⁷

47. Future focus: The ADC made the following findings:

- It considered that, should the measures expire, exports from both Malaysia and Vietnam are likely to continue and that such exports from Malaysia (except from Alumac) and Vietnam are likely to be dumped. It did not consider that, should the measures expire, there was evidence that future exports from Malaysia would benefit from countervailable subsidies.²⁸
- It did not consider that the '... evidence is sufficient to support a finding that material injury to the Australian industry is likely to continue or recur as a result of future exports of the goods at dumped prices in the absence of measures'.²⁹
- It commented on the relatively small volumes of exports from Malaysia and Vietnam subject to the notices in the Australian market and did not consider there was evidence that such volumes would change in the absence of measures. It did not consider it likely that there would be any change in pricing behaviours by exporters and importers.

²⁷ REP 591 page 79.

²⁸ REP 591 page 67.

²⁹ REP 591 page 62.

- It did not consider that, in the immediate future and in the context of Capral's improved economic position and market share, Capral is as susceptible to the effects of the small volume of dumped exports from Malaysia and Vietnam. Accordingly, it does not consider Capral is likely to experience a recurrence of material injury.
- In REP 362, the ADC indicated that dumped goods (and subsidised goods as specified) from Malaysia and Vietnam would cause material injury. This was based on its finding that the Australian industry, in the absence of dumping (and subsidisation), would have been able to increase prices by 20 cents per kg which would have increased profits by 3.6 per cent. It considers this approach is based on the '... relationship between price offers from the exporters subject to the measures and the prices achieved by the Australian industry.'³⁰
- In REP 591, it did not consider that this relationship has been demonstrated, given the volumes from Malaysia and Vietnam, and in the context of market share held by other sources as well as the Australian industry (64 per cent). It suggests that the main source of price pressure would be from other sources with greater market share.
- It stated:
 - The commission's analysis in the preceding sections sets out that despite the presence of the dumped goods in the market in the inquiry period, there is no link to any current injury, likelihood of a recurrent of injury, or likely material impact on the Australian industry's prices, volumes or any other injury criterion.³¹

Submissions

48. PMAA/PMBA made a number of submissions which are outlined in paragraph 26. In its submission dated 16 September 2022, it made the following comments relevant to the reviewable grounds. PMAA/PMBA:³²

³⁰ REP 591 page 87.

³¹ REP 591 page 88.

³² Other comments are shown at paragraph 26.

- outlined its concerns regarding the insufficient evidence provided by Capral regarding material injury following the SEF 591,
- does not consider that material injury has been caused or is likely to be caused to the Australian industry by exports by PMBA,
- does not consider there is evidence of price, volume or other injury criterion has been identified in relation to Capral or other Australian industry members,
- refers to the improved economic performance of Capral and other Australian industry members. It suggests that injury to Capral may be caused by other factors such as its business model and over reliance on the Australian construction industry, which is known to be cyclical in nature,
- suggests that the price undercutting could relate to competition between Australian industry members rather than from imported aluminium extrusions.

The Reasons for the Reinvestigation:

49. In REP 591, the ADC relied on the analysis of price impacts, the economic condition of the Australian industry during the inquiry period and how it sets its prices in its finding that material injury to the Australian industry was not likely to continue or recur in the absence of measures. Following a conference with the ADC, it became apparent that the price undercutting analysis had an error which impacted the price analysis of the exports from Malaysia and Vietnam.³³ The ADC was unable to provide a view as to the extent of the impact on the price undercutting analysis for each of the levels of trade because of this comparison.³⁴
50. The price undercutting analysis also had implications for other aspects of the price analysis, given:
- the related findings regarding the price sensitivity of the market,

³³ Non-confidential conference summaries dated 7 and 14 September 2023 outline the confidential price undercutting information referred to this regard.

³⁴ Conference with the ADC on 14 September 2022.

- the assessment of the impact of ‘non-dumped prices’,
- comments regarding the downward pressure on prices being exerted by dumped exports,
- the lack of evidence regarding pricing behaviour of importers, noting the assessment of the pricing behaviour of exporters and that only one importer’s information was verified,³⁵
- the limited analysis of the unsuppressed selling price (USP) and the non-injurious price (NIP) in REP 591 and what this analysis might reveal in terms of injurious price levels,
- the unusual circumstances in the inquiry period linked to the COVID-19 pandemic (pandemic),
- the high reliance on the inquiry period with limited assessment of likely scenarios if the dumping measures expire, and
- what impact this would have on prices of the Australian industry in the future if the measures expired, noting the provisions of the legislation require an assessment of the material injury the measures are intended to prevent.

51. Given the reliance placed by the ADC in REP 591 on price impacts in its consideration of future injury, the Review Panel considered that certain ADC findings required reinvestigation.

RR 591 Findings

52. The ADC published a preliminary reinvestigation report (PRR) on 26 June 2023 and invited interested parties to make submissions by 10 July 2023. The ADC advised that it received six submissions prior to the publication of the PRR and seven submissions following its publication. Section 2.2 of RR 591 outlines the ADC’s approach to the submissions received. I note that many of the claims made by PMBA/PMAA in its submissions to the Review Panel were also raised in its submissions to the ADC in regard to the reinvestigation.

³⁵ REP 591, the ADC sent importer questionnaires to 12 importers and received responses from two importers - one of these importer’s was verified, the other provided partial information only.

53. The Commissioner stated that, following the reinvestigation, it considered the expiration of dumping measures would lead or would be likely to lead to a continuation or a recurrence of the material injury that the anti-dumping measures are intended to prevent. The reinvestigation report noted that this is a different finding to that of REP 591. The further analysis undertaken in RR 591 outlined the following:³⁶

- The Australian market for the goods is competitive and price sensitive, with examples of price undercutting, high degrees of price transparency and supplier competition, including with import supply from Malaysia and Vietnam. It noted that customers obtain supply from multiple sources and switch supply sources. It stated that there was a greater degree and more consistent pattern of price undercutting than identified in its original report (REP 591).
- It considered that the imports from Malaysia and Vietnam are likely influencing how the Australian industry sets its prices, noting that there is a large penetration (in terms of volume) of these imports across the Australian industry's customer base. It noted that imports from other sources, including from China, are also having an impact, but this does not detract from its finding in relation to Malaysian and Vietnamese exports.
- The pandemic impacted the Australian market during the inquiry period, notably through supply constraints, increased shipping costs and government pandemic stimulus programs. It considered this favoured the Australian industry to a certain extent. It also affected the relationship between the import-sourced prices and the Australian industry's prices, such that any price advantage of the dumped products was diminished during the inquiry period. It noted that such dumped-priced goods were still undercutting Australian industry prices.
- It considers that, as the effects of the pandemic diminish, export supply will be more cost effective and timely, and that import prices will become more competitive. It considers this will likely lead to more price competition in the Australian market.

³⁶ RR 591 pages 5 – 6.

- It considers that if the dumping measures expire, dumped prices (absent the dumping duty previously paid) will enable more competitive pricing strategies by exporters and importers and will impact future purchasing decisions of customers.
- It notes that in the context of looking to the future and given the nature of the competitive and price sensitive market, absent the favourable impacts of the pandemic, the Australian industry would be more susceptible to the effects of the dumped exports from Malaysia and Vietnam. It considers the Australian industry would likely have to reduce or suppress its prices in the absence of dumping duties to remain competitive. It considers this is the material injury that the measures are intended to prevent. On this basis, it considers that material injury would be likely to continue or recur in the absence of dumping duties.

54. The ADC also advised that it did not conduct a NIP-based comparative analysis as it did not consider this would assist in the analysis of the ‘...the future-oriented task of assessing the likelihood for a continuation or recurrence of injury’.³⁷ It noted that the inquiry period had anomalous market conditions and the NIP would have provided limited value to the price analysis. The Review Panel notes the reasons provided by the Commissioner as to why the analysis of the USP and NIP was not seen as valuable in the assessment of whether material injury would be likely to continue or recur in the future in the absence of measures.

Analysis

55. The basis of the Minister’s decision, pursuant to s.269ZHG(1) arises from the Commissioner’s recommendation to the Minister pursuant to s.269ZHF(2).³⁸ The recommendation from the Commissioner in REP 591 indicates that while dumping is likely to continue or recur, it did not consider that material injury was likely to continue or recur. The Commissioner recommended that the dumping and countervailing measures be allowed to expire.

³⁷ RR 591 section 3.5 page 24.

³⁸ Section 269ZHG enables the Minister to also consider other relevant information. In this matter, no other relevant information was outlined in the Minister’s Reasons other than those already referred to in this report.

56. There are two conditions that must be met for the Commissioner to recommend to the Minister that the measures be secured.³⁹ First, if the measures expire, whether dumping or subsidisation is likely to continue or recur, and second, whether it is likely that material injury will continue or recur in the absence of the measures intended to prevent such injury. The section therefore imposes a 'likelihood' test with respect to each of the two conditions. The 'likelihood' test has been accepted to mean that the occurrence of each condition is 'probable' or 'more probable than not'.⁴⁰ If these are not met then the Commissioner must recommend that the measures be allowed to expire.
57. It is apparent that the aluminium extrusions market in Australia is complex and dynamic, as evidenced by:
- The Australian market and distribution channels being quite intricate: see RR 591 page 17 for a representation of the market, which includes key participants, the Australian industry members, distributors and importers, end users, fabricators and manufacturers.
 - Aluminium extrusion prices being strongly influenced by changes in the price of LME primary aluminium as referenced in REP 591.
 - The number of inquiries associated with aluminium extrusion exports, including the continuation inquiry related to exports from China (REP 543) and the recent reviews of measures applying to exports from Malaysia, Vietnam and China. These are listed at Attachment One.

This complexity contributes to the challenges in assessing the inquiry period particularly given the impact of the pandemic and the supply chain disruptions identified by the ADC in FY 2020 and FY 2021 (see also the description in paragraph 53). This adds to the difficulty in analysing probable scenarios of what is likely to happen to Malaysia and Vietnam exports in the future in the absence of dumping duties.

58. As noted above, the pandemic created unusual circumstances during the inquiry period. There is evidence that Capral's economic performance improved in the

³⁹ Pursuant to s.269ZHF(2) of the Act.

⁴⁰ *Siam Polyethylene Co Ltd v Minister for Home Affairs (No.2)* [2009] FCA 838 at paragraph [48]; see paragraph 40.

inquiry period. In REP 591, the ADC did not appear to give sufficient consideration as to whether these factors would change after the inquiry period or how this might impact the likelihood of material injury that the measures are intended to prevent when the measures expired. It focused primarily on the Australian industry and market during the inquiry period.

59. In REP 591, the ADC found that it was likely that dumping would continue from Malaysian exporters (except by Alumac) and from Vietnamese exporters based on the pattern of continued dumping since the measures had been imposed and during the inquiry period. There was no evidence that countervailable subsidies had been received during the inquiry period. Its findings with respect to the likelihood of future material injury were based on 'no demonstrable connection' between the 'price advantage' of the dumped exports and the 'economic condition of the Australian industry'.⁴¹
60. REP 591 provides analysis of price and volume effects as well as the economic condition of the Australian industry during the inquiry period. The essence of the ADC's findings in REP 591 in relation to the Reviewable Decision is based on its price analysis and whether material injury is likely to recur in the absence of dumping measures.
61. The ADC also sought to differentiate its findings in REP 591 from the material injury findings in Report 362 (REP 362). It did not consider the same price relationship was established in REP 591 as that found in REP 362 for injury purposes. It proposed that the Australian industry was subject to very different economic conditions in the inquiry period in REP 591 as compared to the original investigation period.⁴²
62. Capral claims that the anti-dumping measures are a form of restraint on prices and volumes and have prevented exports from Malaysia and Vietnam further lowering prices. Capral also disagrees with the ADC's findings in REP 591 related to the lack of a demonstrable connection between the dumped prices and the impact this is having on its prices. It claims there was widespread price undercutting occurring during the inquiry period. Capral's grounds relate to whether the ADC's findings related to price are correct and substantiate the findings regarding whether material

⁴¹ REP 591 page 9.

⁴² Conference with the ADC dated 7 September 2022, question 6.

injury is likely to continue or recur in the absence of measures. RR 591 dealt with these claims in its analysis of price and volume effects.

63. I had issues with the findings in REP 591 regarding the material injury assessment during the inquiry period as:

- the pandemic created an unusual set of circumstances for both Australian industry and importers to contend with.
- the price analysis was impacted by the undercutting issues referred to above.
- there appeared to be contradictory statements in REP 591 regarding whether the prices of Malaysian and Vietnamese exports were impacting the market.

On this basis it was, in my opinion, difficult to draw conclusions on i) whether the price relationship was impacting Australian industry prices; and ii) the correct assessment of what would be likely to occur in the future in relation to prices.

64. Therefore, I required certain findings in REP 591 to be reinvestigated.

65. The reinvestigation report dealt with certain findings in REP 591. As summarised in paragraph 53, the Commissioner modified his findings to those in REP 591. It is the findings in RR 591, with reference to information in REP 591 that will now be further considered in terms of whether the Reviewable Decision was correct or preferable.

66. The analysis in RR 591 dealt with the findings in the following manner:

- Price analysis (including price undercutting),
- Price behaviour of importers in the absence of measures,
- The influence of other import sources,
- Australian market conditions during the inquiry period and its impact on the price relationship, and
- Whether material injury is likely to continue or recur.

67. The ADC also provided an opportunity for interested parties to consider the findings in PRR 591 and provide submissions. The ADC considered the submissions received and, in reaching its findings, provided an explanation of its approach to these submissions. The submissions to the ADC by PMBA/PMAA were similar to those raised with the Review Panel.

Price analysis

68. In relation to the price undercutting calculations, I reviewed these in some detail and considered the underlying assumptions used and the conclusions drawn by the ADC in RR 591. I find no error in this analysis. It is apparent from this analysis that during the inquiry period there is evidence of consistent price undercutting and close competition on price between the Australian industry and the exports from Malaysia and Vietnam. I further note that through the enhanced analysis of pricing arrangements for common customers, it is apparent that there is supplier switching and price transparency (of customers) in the Australian market.
69. Capral's claim regarding the price undercutting being more extensive than what the ADC found in REP 591 is substantiated in RR 591. There is also evidence that supplier switching and close competition occurred during the inquiry period, again consistent with Capral's claims of lost sales.
70. PMBA/PMAA raised several issues with the ADC's findings in relation to the price undercutting in the PRR. I considered each of these issues and agree with the ADC comments in RR 591.
71. I agree with the ADC conclusions regarding price being a key factor in the purchasing decisions of importers and customers, notwithstanding there may also be alternate reasons why a customer may choose to retain multiple supply sources. I further agree with the ADC's finding that there is evidence that the Australian industry's prices were impacted by the prices of exports from Malaysia and Vietnam during the inquiry period. I agree and adopt the findings in relation to price undercutting outlined in RR 591. It is evident that the aluminium extrusions market is highly competitive with respect to price.

Pricing behaviour of importers in the absence of measures

72. In RR 591, the ADC considered that in the absence of measures, import costs for aluminium extrusions would be lower. It considered the significance of this in the context of the sensitivity of prices in the Australian market, noting that its price undercutting analysis, had revealed:

- Consistent price undercutting of prices by Malaysian and Vietnamese exports during the inquiry period, noting these exports were subject to dumping duties during the inquiry period,
- High levels of common customers between the Australian industry and importers, with close price competition and supplier switching,
- A high degree of price transparency with customers maintaining multiple supply sources.

It concluded that in the absence of measures, importers could use the dumped import prices to adopt more competitive pricing strategies, which could include further undercutting the Australian industry's prices. It also identified that for end users who import directly from Malaysia and Vietnam, import costs would be lower. In both scenarios, lower costs would be relevant to their purchasing decisions.⁴³

73. Capral's claims indicate that it considered the removal of measures from exporters, who are already undercutting prices with dumped exports in the Australian market, would make the Australian market even more attractive. It considered this would cause the Australian industry material injury.

74. PMBA/PMAA disagreed with the ADC findings as it claimed that the expiry of measures would be unlikely to lead to exporters and importers lowering their prices. It considered there would be no commercial reason to do so and outlined other reasons why this would be unlikely to occur. I am not persuaded by the reasons submitted by PMBA/PMAA. The analysis undertaken by the ADC reveals that it is a highly competitive market with a strong focus on price. During the inquiry period with dumping duties in operation, price undercutting was consistent from Malaysian and Vietnamese exports. It is not apparent to me that if measures are removed, competitive pricing strategies would not continue given the nature of the market.

⁴³ RR 591 page 30.

Accordingly, I do not accept PMBA/PMAA claims that exporters and importers would be unlikely to lower prices in the absence of measures.

75. I have reviewed the analysis of the Malaysian and Vietnamese pricing undertaken in RR 591. I agree with the ADC's analysis that the importers of goods from Malaysia and Vietnam have largely reflected the cost of anti-dumping duties and costs in its pricing.⁴⁴ I further agree, in the context of the findings related to:

- consistent price undercutting,
- close price competition,
- common customers and supplier switching, and
- the responsiveness to changes in the LME prices and the transparency of price drivers,⁴⁵

that the absence of measures will likely impact importers' behaviour. On this basis, in a highly price sensitive market, it is more likely than not that in the absence of the dumping duties, end users (who are importing) would make purchasing decisions related to lower cost goods and importers who on-sell, would adopt more competitive pricing strategies.

76. I agree and adopt the Commissioner's findings in relation to the likely pricing behaviour of importers in the absence of measures.

The influence of other import sources

77. In RR 591, the ADC indicated that, based on its price undercutting analysis associated with common customers, the significant degree of price competition and supply switching, it considered that the Malaysian and Vietnamese imports were likely influencing Australian industry prices. It noted that the fact that imports from other sources, including China are also likely to be impacting pricing does not 'detract from this finding'.⁴⁶

⁴⁴ RR 591 pages 34 to 36.

⁴⁵ RR 591 page 38.

⁴⁶ RR 591 page 40.

78. The reinvestigation undertook additional analysis of prices from other sources including the examination of Chinese exports given it was the largest exporter of aluminium extrusions to Australia during the inquiry period with many of its exports also being subject to dumping duties. It compared the prices of Malaysian and Vietnamese exports with those from China in 2019. It used this period as it was not impacted by the pandemic. Furthermore, the ADC had verified and comparable price data for the highest volume mill finished, powder coated and anodised MCCs for this period from these export sources.
79. The ADC found that Malaysian direct prices were the cheapest in the market for all the highest volume MCCs, with Vietnam and Chinese direct prices showing some interchangeability as next lowest for power coated and anodised MCCs. The Australian industry's prices were higher than the other three sources for powder coated and anodised MCCs but were below the Chinese direct prices for the highest volume mill finish for three of the four quarters. This suggested to the ADC that there was a similar price relationship apparent to that found in the original inquiry in Investigation 362, the original inquiry relating to exports from Malaysia and Vietnam.
80. RR 591 also included analysis of Chinese, Vietnamese and Malaysian landed import prices based on Australian Border Force (ABF) information since FY 2016 through to FY 2021. The ADC noted that this information does not provide the information at the finish type or actual mix of types and so has some limitations. However, it did show broad consistency with the 2019 price comparison, the information in Investigation 362 and the inquiry period.
81. PMBA/PMAA claimed that the impact of exports from Indonesia and Thailand had not been recognised by the ADC in the PRR.
82. Additional analysis on other export sources included ABF information on prices from Indonesia and Thailand. The ADC indicated that the pricing from these sources was broadly consistent with prices from Malaysia and Vietnam. It advised that import volumes from Thailand were less than volumes from both Malaysia and Vietnam. Import volumes from Indonesia had increased in the FY 2021 and 2022 and there were instances of importers switching to sourcing product from Indonesia.

83. The ADC concluded that, in the context of a price sensitive market with the degree of penetration of the Malaysian and Vietnamese exports, the prices of such exports were influencing Australian industry prices. It indicated that other sources may also be impacting prices, but this did not detract from the influence of the Malaysian and Vietnamese exports.
84. I have reviewed the analysis of impact of other export sources as well as the pricing of exports from Malaysia and Vietnam. It is evident from the confidential material contained in RR 591 that there are high levels of price competition as evidenced by price undercutting and supplier switching based on the Malaysian and Vietnamese exports. It is also evident that while Malaysian and Vietnamese exports are small in volume compared with exports from China, the pricing of these sources is significant and of influence of Australian industry prices in the market.
85. Based on the additional analysis undertaken, I agree with the ADC's findings in RR 591 in regard to the close price relationship between Australian industry prices with the prices from the Malaysian and Vietnamese exports, notwithstanding that there are prices from other sources also available in the market that may also impact prices. I agree with the Commissioner's finding that the prices of Malaysian and Vietnamese exports are impacting Australian industry prices and that while other sources may also be impacting prices, this does not mean that the exports from Malaysia and Vietnam are not also having an impact.

Australian market conditions during inquiry period and its impact on the price relationship

86. The further analysis of the economic conditions during the inquiry period conducted in RR 591, revealed that the impact of the pandemic created circumstances that were unusual and to a certain degree favoured the Australian industry such that it '...diminished the price advantage of dumped exports'.⁴⁷
87. The ADC indicated that '... the supply constraints and increased shipping costs observed during the inquiry period are now returning to pre-pandemic conditions.... these reduced supply constraints and shipping costs are likely to be reflected in importers' Australian pricing. End users directly importing from Malaysia or Vietnam will also face reduced costs... In particular, absent the effects of the pandemic,

⁴⁷ RR 591 page 46.

prices of imports will likely become more competitive, increasing the degree of price competition in the Australian market.¹⁴⁸

88. PMBA/PMAA raised a number of issues with the ADC's assessment of the market in RR 591. It considered:

- it would be unlikely for conditions to revert to pre-pandemic conditions,
- that the Australian industry had insufficient production capacity to accommodate the increased market demand during the inquiry period,
- there was insufficient evidence to support the ADC's assumption that price would remain static while freight costs adjusted,
- and it did not consider there was a price advantage from increased freight costs during the inquiry period.

The ADC addressed each of these issues in RR 591 in its consideration.

89. I have reviewed the ADC's analysis in RR 591 and agree with its findings regarding the economic conditions during the inquiry period being impacted by the pandemic. I have reviewed the assessment of what the ADC considers is likely to occur as the effects of the Government's support to industry, the supply chain disruptions and global freight costs change. I agree that while the market may not return to pre-pandemic levels, it is likely that the market size will not remain at the level seen during the inquiry period.

90. The evidence also supports the Commissioner's finding that 'the commission considers that the observed price relationship between the Australian industry and import sources of aluminium extrusions is likely to return to conditions that are more consistent with those observed during the pre-pandemic period of 2019 and the original investigation period, removing any temporary advantage between the Australian industry enjoyed during the inquiry period.'¹⁴⁹ RR 591 provides information from other sources regarding the reduction in freight rates since the pandemic and the reduction in supply chain disruption.

⁴⁸ RR 591 page 46.

⁴⁹ RR 591 page 46.

91. While it is difficult to forecast what might occur in the future, I agree that the pandemic impacted the inquiry period, and this presented additional challenges in looking to the future. However, the additional analysis undertaken in RR 591 provides a sufficient fact-based scenario of what is likely to occur with respect to the market in relation to the dumped imports from Malaysia and Vietnam and the Australian industry. That is ‘... export supply will likely be more effective and timely... and the prices of imports will likely become more competitive...’⁵⁰ I agree and adopt the Commissioner’s findings in this regard.

Whether material injury is likely to continue or recur in the absence of measures

92. The approach adopted in RR 591 was forward-looking and provided additional explanation of what was more probable to occur in the absence of measures in respect to prices of imported aluminium extrusions from Malaysia and Vietnam. It considered that prices of imported aluminium extrusions from Malaysia and Vietnam were likely to be more competitive once measures were removed, given the close price competition and price undercutting evident during the inquiry period and the existing price relationships were likely to impact the Australian industry prices.
93. The ADC based its finding on the assessment of what it considered likely in importers’ pricing behaviour in the absence of measures. In this context, it considered that it was likely that the Australian industry would need to adjust by either decreasing or suppressing its prices to retain sales. A summary of the price analysis is shown in Section 7.3.1 of RR 591. It refers to the aspects of price analysis already referred to in earlier sections of this report.
94. The ADC also considered the impact on export volumes from Malaysia and Vietnam if measures expired. It considered, in the context of i) well-established distribution networks in Australia; ii) the pricing advantage of removal of dumping duties; and iii) the level of competition in the market, that the Australian industry would likely lose market share to these exports if it did not reduce its prices. In this scenario, export volumes from these sources could increase.
95. I have also reviewed the submissions from EAA and PMBA/PMAA referred to by the ADC in response to the PRR 591, as both exporters disagreed that material injury was likely to occur if the measures were removed. Both referred to the level of price

⁵⁰ RR 591 page 54.

undercutting and the level of the dumping margins. They also suggested that no link had been established between the imports and the economic performance of the Australian industry. I have reviewed the ADC's comments relating to these claims and do not disagree with its analysis.

96. I agree with the ADC's comments in this regard that 'dumping provides a price advantage to imports from Malaysia and Vietnam, whether or not the amount of dumping aligns with the degree of price undercutting. The commission further notes that the question is whether the expiry of the measures would lead to a continuation or recurrence of the material injury that the measures are intended to prevent'.⁵¹
97. In my view, the ADC applied the correct statutory test in its analysis. That is, s.269ZHF(2) of the Act requires a forward-looking view on whether material injury, that the measures are intended to prevent, would be likely to continue or recur if the measures expired. The ADC examined the possible scenarios based on its assessment of the price competition apparent in the market and the likely pricing behaviour in the absence of dumping duties. It also assessed the likely impact on volumes and market share in this regard by reference to the material injury:
- in the original inquiry,
 - the pricing behaviour since the original measures were introduced, and
 - the situation in the inquiry period in considering what is likely to occur in the future.

The analysis in RR 591 is comprehensive in this regard.

98. The Review Panel has considered RR 591, including the confidential appendices and attachments, that support the Commissioner's revised finding and agrees and adopts these findings. That is, '... the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the anti-dumping measures are intended to prevent.'
99. RR 591 provides a comprehensive analysis of the pricing relationship of the Malaysian and Vietnamese exports with the Australian industry's prices and has dealt with each of the issues raised by Capral's claims and my letter to the

⁵¹ RR 591 page 61.

Commissioner regarding the reinvestigation. I have reviewed the report, including each of its confidential appendices and spreadsheets which contain the detailed information that supports the findings and agree with its analysis and findings. Accordingly, I adopt the key findings as described in the reinvestigation report.

Conclusions

100. Having reviewed the findings in REP 591 as well as RR 591 in the context of Capral's grounds, regarding whether:

- there is a demonstrable connection of the Australian industry's price with the prices of the dumped exports,
- there is evidence to demonstrate a connection between the economic condition of the industry and how it sets its prices (including consideration of the influence of other sources), and
- in the absence of measures that it is likely, or more probable than not, that in the absence of measures there would be a recurrence of the material injury that the measures are intended to prevent is established.

I agree with the Commissioner's reinvestigation findings that there is sufficient evidence that, should the measures expire, there would be additional pricing pressure on the Australian industry to either depress or suppress its prices from the Malaysian and Vietnamese exports. Furthermore, it is more probable than not, that this price effect would lead or be likely to lead to a continuation or recurrence of the material injury that the measures are intended to prevent.

101. On this basis, and as outlined earlier, I agree and adopt the Commissioner's findings as outlined in RR 591. Accordingly, Capral's grounds have established that the Reviewable Decision was not correct or preferable. In other words, the dumping duties should be continued rather than allowed to expire.

102. I accept each of the grounds of review in Capral's application as it has been established that the Reviewable Decision was not correct or preferable.

Recommendations

103. Pursuant to s.269ZZK(1) of the Act and for the reasons given above, I consider that the Reviewable Decision was not the correct or preferable decision. The recommended new decision is materially different to the Reviewable Decision as it secures the continuation of dumping duty measures on exports from Malaysia and Vietnam.

104. For the reasons set out in this report, I recommend that the Minister pursuant to s.269ZZM(1)(b) of the Act revoke the Reviewable Decision and substitute a new decision as follows:

- (a) that the Minister declare that the Minister has decided to secure the continuation of the dumping duty notice applying to exports of aluminium extrusions from Malaysia and Vietnam in accordance with s.269ZHG(1)(b).⁵² I recommend that the Minister's decision take effect from the date of publication of the Minister's decision.
- (b) that pursuant to s.269ZZM(3)(d) of the Act, the Minister declare that the dumping duty notice as in force on 27 June 2022 be reinstated with effect from the date of the publication of the Minister's decision.
- (c) with respect to PMB Aluminium Sdn Bhd: that the Minister has decided to secure the continuation of the dumping duty notice relating to goods exported to Australia from Malaysia by PMB Aluminium Sdn Bhd with effect from the date of publication of the Minister's decision but that under s.269ZHG(4)(iii) the dumping duty notice continues in force as if the Minister had fixed different specified variable factors, relevant to the determination of duty.
- (d) with respect to Alumac Industries Sdn Bhd: that the Minister has decided to secure the continuation of the measures relating to goods exported to Australia from Malaysia by Alumac Industries Sdn Bhd with effect from the date of publication of the Minister's decision but that under

⁵² Paragraph 12 of this report notes that a number of exporters were not subject to the dumping duty notices the subject of continuation inquiry 591. These exporters remain exempt from the dumping duty notice the subject of continuation inquiry 591 should the Minister agree with the recommendations in this report.

s.269ZHG(4)(iii) the dumping duty notice continues in force as if the Minister had fixed different specified variable factors relevant to the determination of duty.

- (e) with respect to all other exporters from Malaysia: that the Minister has decided to secure the continuation of the measures relating to goods exported to Australia from Malaysia by all other exporters with effect from the date of publication of the Minister's decision but that under s.269ZHG(4)(iii) the dumping duty notice continues in force as if the Minister had fixed different specified variable factors relevant to the determination of duty.
- (f) with respect to East Asia Aluminium Company Ltd: that the Minister has decided to secure the continuation of the measures relating to goods exported to Australia from Vietnam by to East Asia Aluminium Company Ltd with effect from the date of publication of the Minister's decision but that under s.269ZHG(4)(iii) the dumping duty notice continues in force as if the Minister had fixed different specified variable factors relevant to the determination of duty.
- (g) with respect to all other exporters from Vietnam: that the Minister has decided to secure the continuation of the measures relating to goods exported to Australia from Vietnam by all other exporters with effect from the date of publication of the Minister's decision but that under s.269ZHG(4)(iii) the dumping duty notice continues in force as if the Minister had fixed different specified variable factors relevant to the determination of duty.

105. The Review Panel has not considered the specified variable factors as these were not part of Capral's application and were not 'reviewable grounds' for the purposes of this report. For convenience, Confidential Attachment Three provides the specified variable factors for exporters from Malaysia and Vietnam as determined previously by the Minister in REP 591.



Jaclyne Fisher
A/g Senior Panel Member
Anti-Dumping Review Panel
19 September 2023

Conference/s

Date of conference	Participants	Purpose of conference
7 September 2022	ADC representatives	To obtain further information in relation to material injury findings outlined in REP 591 and in particular the confidential price undercutting analysis as well as information on the USP and NIP and clarify some comments in REP 591 relating to pricing impact.
14 September 2022	ADC representatives	To obtain further information in relation to the confidential price undercutting analysis in relation to the FIS comparison and clarification regarding the Capral work program information and whether certain other data sets information was available.
17 October 2022	ADC representatives	To clarify the price analysis outlined in the letter to the Commissioner requiring a reinvestigation.

Attachment One

List of ADC reports relating to Aluminium Extrusions (excluding exemptions) since 2012

Date	EPR	Countries	Type
21/11/12	186	China	Review
14/1/13	194	China	Accelerated Review
10/4/13	205	China	Accelerated Review
18/12/13	214	China	Accelerated Review
8/5/14	229	China	Review
19/2/13	241	China	Anti-Circumvention
10/9/15	248	China	Review
12/12/14	259	China	Accelerated Review
24/11/14	265	China	Accelerated Review
20/10/15	287	China	Continuation
9/2/16	304	China	Review
22/1/16	313	China	Accelerated Review
15/7/16	347	China	Accelerated Review
27/6/16	362	Malaysia/Vietnam	Investigation
28/4/17	387	China	Accelerated Review
12/5/17	391	China	Accelerated Review
10/11/17	392	China	Review
10/7/17	399	China	Accelerated Review
14/7/17	415	China	Accelerated Review
24/7/18	442	China/Thailand	Investigation
27/10/18	447	China	Anti-Circumvention
23/5/18	460	China	Accelerated Review
18/6/18	475	China	Accelerated Review
9/5/19	482	China	Review
6/8/18	485	China	Accelerated Review
31/5/19	490	Malaysia	Revocation/Review
31/5/19	494	Malaysia	Review

16/12/19	497	China	Review
9/1/19	498	Malaysia	Accelerated Review
14/2/20	509	Malaysia	Review
20/6/19	510	Malaysia	Accelerated Review
24/9/19	514	China	Accelerated Review
15/11/19	525	Malaysia	Accelerated Review
12/2/20	530	China	Accelerated Review
24/12/19	531	China	Accelerated Review
31/3/20	534	Malaysia	Accelerated Review
10/3/20	537	China	Accelerated Review
15/10/20	543	China	Continuation
2/6/21	544	Malaysia/Vietnam	Review
24/5/21	576	China	Accelerated Review
10/6/21	577	Malaysia	Accelerated Review
22/7/21	581	China	Accelerated Review
24/6/22	591	Malaysia/Vietnam	Continuation