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Comments on SEF of Press Metal

Dumping Calculations

Case AD0012

Investigation into alleged dumping of aluminium extrusions from the People's Republic of China

On behalf of

Press Metal International Ltd.

Press Metal International Technology Ltd.

Press Metal UK Limited

Dentons China LLP

20 June 2022

1. INTRODUCTION

[1] On 21 June 2021, the Trade Remedies Authority (TRA) published a notice of initiation of investigation into alleged dumping of aluminium extrusions from the People's Republic of China.

[2] On 20 May 2022, the TRA published "AD0012-Aluminium Extrusions-Statement of Essential Facts", in which the TRA is inviting interested party to make comments and submission on the disclosure of dumping calculation.

[3] The present document is submitted on behalf of Press Metal International Ltd. and its related companies ("Press Metal Group"). Press Metal International Ltd. (PMI) and Press Metal International Technology Ltd. (PMIT) are the Chinese producers of the Goods Concerned and Press Metal UK Limited is the related UK importer.

2. REMARKS ON THE DETERMINATION OF A PMS IN ALUMINIUM INPUTS

[4] In the SEF, the TRA determined that there was the existence of a "Particular Market Situation" (PMS) in relation to aluminium input prices due to that the aluminium input costs were artificially low in para. 140. PMI identified, however, the aluminium input costs, especially the aluminium ingot price used as the reference price for Chinese aluminium producers for the purchase of aluminium ingots, were not below the LME primary aluminium price during the period of investigation.

[5] The table below compares the LME primary aluminium monthly price with SHFE price, Nanhai Lingtong Price and South Reserve price, exclusive of VAT, during the period of investigation (POI), the latter two of which are the prevailing reference price for producers like PMI that are located in southern part of China to refer to when purchasing the aluminium ingots, and turns out that all the prices on the SHFE, Nanhai Lington and South Reserve are continuously higher than the LME price during the POI.

				South China prevailing price*	
Year	**Month**	**LME Primary Aluminium**	**SHFE (VAT 13% excl.)**	**Nanhai Lingtong Price (VAT 13% excl.)**	**South reserve Price (VAT excl.)**
2020	Jun-20	11,076	12,239	12,515	12,263

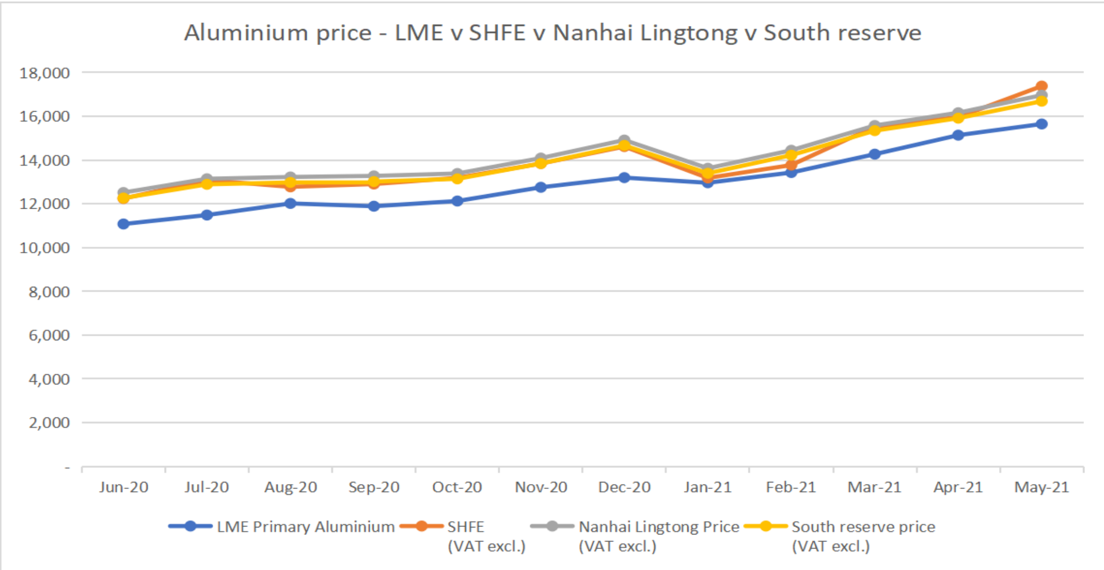
	Jul-20	11,485	13,084	13,144	12,889
	Aug-20	12,017	12,774	13,226	12,976
	Sep-20	11,889	12,903	13,275	13,016
	Oct-20	12,127	13,186	13,386	13,139
	Nov-20	12,754	13,841	14,090	13,842
	Dec-20	13,196	14,615	14,913	14,668
2021	Jan-21	12,961	13,181	13,625	13,394
	Feb-21	13,428	13,770	14,447	14,222
	Mar-21	14,269	15,527	15,578	15,344
	Apr-21	15,136	15,960	16,162	15,914
	May-21	15,648	17,381	16,965	16,690

Information Source:

SHFE Monthly Price Report: http://www.shfe.com.cn/en/MarketData/dataview.html?paramid=month, please see Exhibit 1 for the original data of SHFE Monthly Price Report.

Nanhai Lingtong Price & South Reserve Price: http://www.worldal.com/market, please see Exhibit 2 for the original data for the Daily and Monthly aluminium price of Nanhai Lingtong Price & South Reserve Price.

[6] For a better demonstration of the price comparison, a line graph is also attached below:



[7] According to Article 7(4) of The Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (Regulation 2019), it is stated that:

"For the purpose of paragraph (2)(b), a "particular market situation" includes situations

where -

(a) prices are artificially low;

(b) there is significant barter trade;

(c) prices reflect non-commercial factors."

[8] From both the table and the line graph above, The primary aluminium price in Chinese domestic market is not lower, not to mention artificially low, than the LME price during the POI. Therefore, the primary aluminium price in China is not in compliance with the situations illustrated in Article 7(4) of the Regulation 2019. It is undisputable that such continuous higher price trend during the POI can't support the conclusion of PMS in Chinese aluminium market.

[9] In conclusion, PMI believes that the reference prices used by the Chinese producers are reflection of commercial factors subjective to and under the influence of market supply and demand in China, and without any artificial interference that would lead to an intentional undercut in the price of aluminium ingots. The determination of a PMS in aluminium input costs by the TRA based on the assumption that the aluminium input prices were artificiality lowered by non-commercial factors is by no means justified.

3. REMARKS ON THE BENCHMARK SELECTION RELATED TO THE REGIONAL PREMIUM

[10] In the SEF, the TRA believed that a PMS was found in relation to aluminium input costs and therefore constructed an aluminium billet cost by adding up benchmark costs for aluminium ingots, a regional premium and a billet premium. Especially, the TRA determined Brazil DDP premium sourced from S&P Global Platts to be the regional premium benchmark, and the reasons and methodology for choosing Brazil as a suitable third country explained by the TRA in para. 157-158, 149 were that Brazil had a similar level of economic development to the PRC, a similar level of employment in industry, evidence of an aluminium industry and production of aluminium extrusions and available relevant information.

[11] Without prejudice to our argument above, namely no PMS exists in Chinese aluminium industry, PMI disagrees with the selection of Brazil DDP premium as the regional premium benchmark and suggests, if the TRA insists on its position on PMS, the TRA to consider <u>CIF Japan premium</u> also accessibly sourced from S&P Global Platts to be a more suitable benchmark.

[12] In justification of this claim, it needs to firstly clarify what is the regional premium. The TRA in the SEF defined the regional premium in para. 154 as all the costs associated with acquiring and transporting the goods from the country of export to the destination and elaborated the costs for the acquiring of goods in para. 158 as transport, insurance, freight, and any relevant import duties. An article by LME Insight in 2018 stated that when negotiating the price for the physically-settled contract, buyers and sellers would usually start by referencing the LME price and then negotiate premiums or discounts based on the factors affecting delivery as well as the type of underlying metal and the factors affecting the pricing of regional premiums included cost, insurance and freight, based on the location the metal is being shipped to[1]. Therefore, PMI believes the regional premium should be the inclusive costs associated with transporting the goods from the country of export to the destination port.

[13] What needs to be further discussed and PMI disagrees are the methodology used by the TRA in determining Brazil as a representative country in terms of the premium benchmark. The TRA used Brazil DDP Premium as the benchmark based on the facts that Brazil had a similar level of economic development to the PRC, a similar level of employment in industry, evidence of an aluminium industry and etc. However, as what have been discussed above, the regional premium is determined by factors related to the delivery of the goods from the country of export to the destination port, NOT the economic development of a certain country. So PMI reckons that the methodology used by the TRA to choose Brazil as a representative country in determining the regional premium is non-professional and unreasonable, and PMI strongly suggests the TRA to take into consideration the factors that actually affect the premium pricing, i.e. the insurance and freight, and construct the benchmark on that basis.

[14] Therefore, it is within our standpoint that the regional premium should be the inclusive costs of transporting the goods from the exporting countries to Japanese ports which are geographically close to Chinese ports and the transporting costs should be more comparable than the transporting costs to Brazil as decided by the TRA. Please see Exhibit 3 for the monthly CIF Japan Premium.

4. REMARKS ON THE COST CALCULATION OF PMI'S ALUMINIUM BILLET COSTS

[15] PMI noticed that in the spreadsheet named *CNV Adjustment* in *Final-Dumping-PMI-*

[1] LME Insight: https://www.lme.com/en/Education/Online-resources/LME-insight/The-role-of-premiums-and-discounts-in-pricing-of-industrial-metals-contracts (Accessed: 16/06/2021)

Verified-Data-SEF, the TRA made adjustments to the raw material costs by uplifting 10-20% of the cost of aluminium billets, which PMI reckons is improper due to the facts that this uplifting ratio is calculated based on Aluminium Input Benchmark price which is mainly composed of the LME Primary Aluminium price, but in PMI, the major inputs for the production of aluminium billets are not only aluminium ingots, but almost 30-50% of the inputs are scrap aluminium recycled from all production stages.

[16] During the period of investigation, PMI produced 60,000-80,000 mt of aluminium billets with total aluminium inputs consumed by 60,000-80,000 mt, among which the aluminium ingots were consumed by 40,000-60,000 mt and the scrap aluminium by 20,000-40,000 mt, accounting for 50-70% and 30-50% of the total consumption respectively. See attached Exhibit 4 for the detailed information.

[17] When the TRA adjusted the aluminium billet costs and applied a 10-20% uplifting ratio directly to the PMI's aluminium billet costs, the costs of scrap aluminium included in the aluminium billets costs were actually adjusted to the price of LME Primary Aluminium, which is irrational as the TRA paid no attention to the fact the unit price of scrap aluminium in the market was obviously below the unit price of aluminium ingots, usually 20% lower than the price of aluminium ingots. Therefore the methodology used by the TRA to adjust PMI's aluminium billet costs artificially raised the aluminium billet costs in an non-objective way, resulting in serious distortion in the final cost data.

[18] Therefore, PMI suggests that the TRA should only adjust the aluminium ingot cost in PMI's aluminium billet costs and make no adjustment to the scrap aluminium cost according to the benchmark and that the TRA can calculate a more proper and objective aluminium cost in the spreadsheet *CNV Adjustment* by using the formula: **[confidential]** based on what have been discussed above that aluminium ingot consumption accounted for 50-70% and the scarp aluminium consumption 30-50% of the total aluminium consumption in PMI during the period of investigation.

5. REMARKS ON THE REASONABLE LEVEL OF PROFIT

[19] Paragraph 214 of the SEF stated the choice of profit margin when constructing normal value for PMI:

> *Due to the economic impact of COVID-19, the POI was not considered suitable year to establish a reasonable level of profit, TRA used the average profit achieved by two sampled overseas exporters in the Injury Period 1 June 2017 to 31 May*

2018 and 1 June 2018 to 31 May 2019. The profit margin was used to mark-up cost of production and AS&G costs.

We disagree with TRA's approach for the following reasons:

[20] According to Article 2.2.2 of WTO Anti-Dumping agreement (ADA), the reasonable amount for profits shall be based on actual data related to production and sales in the ordinary course of trade of like products by the producer under investigation.

1) We noticed that TRA, when constructing normal value, has taken the average profit margin of PMI and the other sampled producer in the Injury Period 1 June 2017 to 31 May 2018 and 1 June 2018 to 31 May 2019 instead of accepting the profit margin in 1 June 2019 to 31 May 2020 and the POI, which was in violation of the purpose of Article 2.2 of ADA.

2) In *Morocco – Definitive AD Measures on Exercise Books (Tunisia)*, The Panel summarised the relevant provisions of Articles 2.2 and 2.2.2 of the Anti-Dumping Agreement as follows:

> *"The relevant provisions of Articles 2.2 and 2.2.2 of the Anti-Dumping Agreement stipulate that when an investigating authority constructs the normal value of the like product, it does so based on the 'cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits'. In turn, the reasonable amount for profits must be 'based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation' (emphasis added).*
>
> *The obligation to 'base' the amount used for the profits on 'actual data' unquestionably rests with the investigating authority: that obligation is not limited to gathering data from businesses, but also implies that the authority must (emphasis added) use the data correctly to determine the amount for profits on that basis. In this case, MIICEN did gather the relevant data, but failed to establish the actual profit from the sale of exercise books.*

3) In the case mentioned above, MIICEN (the investigation authority) was considered failed to establish "actual profit" due to the improper use of relevant data, which justified that the reasonable amount of profit shall be related to and could properly reflect the actual sales and production data of the company investigated.

4) In PMI's case, the profit margin from June 2017 to May 2019 was irrelevant to the actual data and business operations during POI. Therefore, the method to determine the amount for profit taken by TRA was in violation of Article 2.2 and 2.2.2 of the ADA.

[21] TRA shall provide adequate explanation and evidence for not accepting the profit margin for POI.

1) As mentioned above, the TRA stated that the disregarding the profit in POI is due to the economic impact of COVID-19 without any further explanation.

2) The paragraph 6 in Annex II of ADA states that:

> *If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefor and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations.*

3) Thus, your disclosure on not accepting information without providing any detailed explanation or giving an opportunity to supplement the requested information within a reasonable period of time, is obviously inconsistent with the obligation under paragraph 6 of Annex II of ADA in resorting to facts available.

4) In fact, the impact of the COVID-19 on China's economy and the aluminum industry will be long-term and relatively stable. The profit margins of POI could better reflect the actual production and operation situation and the future trends of the company.

[22] Even if the TRA insist on using the profit margin of Injury Period, the profit margin in June 2019 to May 2020 shall not be disregarded since the substantive impact that COVID-19 has had on the world's economy and the Aluminium industry was after May, 2020.

1) Instead of choosing the profit margin of POI and POI-1 (June 2019 to May 2020), the TRA has taken the profit margin of two period farther from now, which shows great arbitrariness of TRA when resorting to 'facts available'.

2) In *Korea – Stainless Steel Bars*, in considering whether the KIA (the investigating Authority) had recourse to the "facts available" in the manner alleged by Japan, the Panel recalled that "Article 6.8 pertains only to "necessary information". This term refers to information that is missing from the record and is possessed by an interested party, and that has therefore been requested by the authorities. This term also relates to information that the authorities require in order to make determinations, as, when the applicable conditions are satisfied, the authorities are permitted under Article 6.8 to make "determinations, affirmative or negative … on the basis of the facts available:

> *We begin by considering the initial matter of whether the KIA had recourse to the facts available on this point, before turning to the substance of the parties' arguments and rebuttals under Articles 6.8 and 11.4 and paragraphs 3 and 7 of Annex II if necessary. From our understanding, it is uncontested between the parties that Article 6.8 pertains <u>only to information that satisfies certain criteria</u> (emphasis added). In particular, it pertains only to 'necessary information'. We understand 'necessary information' to mean information that is missing from the record and is possessed by an interested party, and that has been therefore requested by the authorities. This is because Article 6.8 applies (inter alia) '[i]n cases in which any interested party refuses access to, or otherwise does not provide, necessary information'. Moreover, <u>we understand that 'necessary information' relates to information that the authorities require in order to make such determinations</u> (emphasis added). This is because, when the applicable conditions are satisfied, the authorities*

> *are permitted under Article 6.8 to make determinations, affirmative or negative ... on the basis of the facts available. (excerpt from Panel Report, Korea - Stainless Steel Bars)*

3) The TRA already obtained and satisfied with the accurate and complete accounting data from PMI in the questionnaire responses. In light of the fact that the information on cost data of PMI was not 'refuses access to, or otherwise does not provide' under Article 6.8, the TRA is unjustified to resort to facts available on such data. TRA's expansion on facts available for the profit margin is abusive and arbitrary.

4) For China, it would be in the second half of 2020 when the pandemic had caused substantial impact on the economy while the impact reflected in the financial data of companies, despite the fact that the pandemic started at the end of 2019 and the measures such as large-scale quarantine and city closure have actually reached from February to March 2020.

5) Even if the TRA insists on adopting facts available, which we don't agree with, there shall be no reason to arbitrarily disregard the profit margins for POI-1, that is June 2019 to May 2020.

6. CONCLUSION

[23] PMI reiterates that the aluminium input price is not artificially lowered by the comparison of LME primary aluminium price and the Chinese aluminum reference prices of the SHEF price Nanhai Lingtong Price and South Reserve Price during the POI and the determination of a PMS by the TRA is not in compliance with the Article 7(4) of the Regulation 2019.

[24] PMI claims that, even if there was the existence of a PMS determined by the TRA, it is not reasonable by the TRA to select Brazil DDP premium as the benchmark and keenly recommends that the CIF Japan premium which can also be sourced from the S&P Global Platts should be applied to calculate the regional premium.

[25] In addition, when adjusting the raw material costs in the worksheet *CNV Adjustment,* the TRA should take the scarp aluminium input into account for the production of aluminium billets and only make adjustments to the aluminium ingot costs by using the formula **[confidential]** that the PMI believes is more proper.

[26] The last one point that PMI asserts is that the actual POI profits of PMI should be used by the TRA to construct the normal value since the profit used by the TRA to calculate the normal value is neither in conformity with the Regulation 2019 nor the WTO Anti-Dumping Agreement. Even if the TRA is likely to decide to replace the actual POI profits of PMI, it is strongly believed that the profits of POI-1in PMI should be used since these are the profits that are not affect by the COVID-19 pandemic and the most relevant to refer to rather than profits arbitrarily selected by the TRA.

[27] PMI reserves its legal rights to make additional comments on the follow-up notes.