PUBLIC RECORD

Australian Government
Department of Industry, Science and Resources

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS

NO. 640

REVIEW OF ANTI-DUMPING MEASURES APPLYING TO ALUMINIUM EXTRUSIONS

EXPORTED FROM MALAYSIA BY PMB ALUMINIUM SDN BHD

March 2025

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ABBREVIATIONS

$	Australian dollars
ABF	Australian Border Force
The Act	Customs Act 1901
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
AEP	Ascertained export price
ANV	Ascertained normal value
ATO	Australian Tax Office
Capral	Capral Limited
CIF	Cost, insurance & freight
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 543	Continuation inquiry 543
CON 591	Continuation inquiry 591
CON 609	Continuation inquiry 609
DDP	Delivered duty paid
EPR	Electronic public record
EXW	Ex-Works
FOB	Free On Board
the goods	Certain aluminium extrusions, the goods the subject of the application (also referred to as the goods under consideration or GUC)
The Guidelines	Application of Forms of Dumping Duty November 2013
ICD	Interim countervailing duties
IDD	Interim dumping duties
INV 540	Investigation 540
INV 541	Investigation 541
JB	Johor Bahru
LME	London Metal Exchange
The Manual	The Dumping and Subsidy Manual
MCC	Model control code
the Minister	the Minister for Industry and Science
MYR	Malaysian Ringgit
NIP	Non-injurious Price
OCOT	Ordinary course of trade
PMAA or the applicant	Press Metal Aluminium (Australia) Pty Ltd
PMB	Press Metal Berhad
PMBA	PMB Aluminium Sdn Bhd

The Regulation	*Customs Tariff (Anti-Dumping) Regulation 2013*
REP 362	*Anti-Dumping Commission Report No. 362*
REP 540	*Anti-Dumping Commission Report No. 540*
REP 541	*Anti-Dumping Commission Report No. 541*
REP 591	*Anti-Dumping Commission Report No. 591*
REP 577	*Anti-Dumping Commission Report No.577*
REQ	Response to exporter questionnaire
The review period	1 January 2023 to 31 December 2023
RIQ	Response to importer questionnaire
SEF	Statement of Essential Facts
SG&A	Selling, general & administration
USP	Unsuppressed Selling Price
Vietnam	Socialist Republic of Vietnam

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This statement of essential facts (SEF) concerns a review of the anti-dumping measures (the measures) currently applying to certain aluminium extrusions exported to Australia from Malaysia by PMB Aluminium Sdn Bhd (PMBA).

This SEF sets out the facts upon which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base their recommendations to the Minister for Industry and Science (the Minister).[1] The Commissioner's final recommendations to the Minister will be contained in a report due by 02 June 2025.

Interested parties should note that the SEF may not represent the final views of the Commissioner. The Commissioner invites interested parties to make submissions in response to the SEF (see Chapter 1.5).

1.2 Legislative background

Division 5 of Part XVB of the Customs Act 1901 (the Act)[2] sets out, among other things, the procedures to be followed by the Commissioner when undertaking a review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject the application, he is required to publish a notice indicating that he is proposing to review the anti-dumping measures covered by the application.

The Commissioner must, within 110 days after the publication of the notice or such longer period as the Minister allows, place on the public record a SEF.

1.3 Current measures on the goods

Anti-dumping measures currently apply to aluminium extrusions exported to Australia from the People's Republic of China (China), Malaysia and the Socialist Republic of Vietnam (Vietnam).[3] The table below provides a high-level summary of the anti-dumping measures.[4]

[1] For the purposes of this review, the Minister for Industry and Science is the decision maker.
[2] All references in this report are to the *Customs Act 1901*, unless otherwise specified.
[3] Certain entities from Thailand and Taiwan are subject to anti-dumping measures following the completion of Anti-circumvention inquiry 447.
[4] Refer to the Dumping Commodity Register for more detailed information on the measures.

Country	Measure	Effective duty rates	Date Measures Imposed	Date Measures Expire	Last Anti-Dumping Notice	Current or Pending Inquiries
China	IDD & ICD	0.0% - 42.9%	28 October 2010	28 October 2025	2020/103	Continuation Inquiry 657 is currently in progress
Malaysia (mill finish)	IDD	4.9% - 13.2%	2 June 2021	2 June 2026	2021/033	Expiry notices will be issued in April 2025.
Malaysia (surface finish)	IDD	2.6% - 18.5%	2 June 2021	2 June 2026	2021/035	
Malaysia	IDD	0.0% - 27%	27 June 2017	27 June 2027	ADRP Review	Expiry notice will be issued in April 2026.
Vietnam	IDD	5.2% - 9%	27 June 2017	27 June 2027	ADRP Review	

Table 1: Summary of current measures

1.4 Proposed findings and recommendations

The Commissioner's preliminary findings and conclusions in this SEF rely on the information available at this stage of the review, including the application, submissions received (including questionnaire responses) and other information collected (including information collected in the conduct of verification visits). The paragraphs below provide a summary of these findings, and further detail is given throughout this SEF.

The Commissioner preliminarily finds that the variable factors, export price, normal value and non-injurious price (NIP), have changed since Continuation Inquiry 591 (CON 591). The Commissioner proposes to recommend to the Minister that the notice has effect as if different variable factors had been ascertained. The revised variable factors have resulted in a different dumping margin relevant to the imposition of Interim dumping duties (IDD). The preliminary dumping margin for the review period as it relates to PMBA's exports from Malaysia to Australia is negative 4.4%. This means that it was found that PMBA has been preliminarily found to have not dumped the goods exported to Australia from Malaysia during the review period (1 January to 31 December 2023).

Measures	Effective date	Dumping Duty		
		Method	Ad valorem	Floor price
Current	27 June 2022[5]	Combination	6.7%	Equal to ascertained export price
Proposed	Minister's decision date in this review	Floor price	N/A	Equal to ascertained normal value

Table 22: Summary of current and preliminarily recommended measures

1.4.1 Variable factors – Export price and normal value (chapter 4)

The Commissioner has preliminarily found that the variable factors of export price and normal value have changed in relation to PMBA's exports of the goods. The commission calculated a dumping margin of **negative 4.4%**. Currently, dumping duties are taken

[5] The decision made in CON 591 was made on 24 June 2022 to allow the measures to expire on 27 June 2022. However, this decision was overturned on 14 December 2023 by ADRP Report 155. The decision was retrospectively effective to the original expiry date of 27 June 2022.

based on a dumping margin of 6.7% that was determined in CON 591 as amended following Anti-Dumping Review Panel (ADRP) report 155.

1.4.2 Variable factor – non-injurious price (chapter 5)

The Commissioner has preliminarily found that the NIP has changed since last ascertained. The Commissioner proposes to recommend to the Minister that the NIP be set as equal to the normal value calculated in this review.

1.4.3 Duty method (chapter 6)

The Commissioner proposes to recommend that PMBA's exports be subject to a floor price only. The exports are currently subject to the combination method of duties of *ad valorem* duties of 6.7% and a floor price (set according to the ascertained export price (AEP) determined in CON 591).

1.5 Responding to this SEF

The SEF may not represent the Commissioner's final views. The commission invites interested parties to make written submissions in response to the SEF for the Commissioner's consideration. Interested parties who wish to make written submissions in response to the SEF must do so no later than 8 April 2025, which is within 20 days after the SEF being placed on the electronic public record (EPR). [6]

The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister. Interested parties may lodge submissions by email to Investigations1@adcommission.gov.au or by postal mail to:

Director Investigations 1
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked 'OFFICIAL: Sensitive'. A non-confidential version of the submission marked 'PUBLIC RECORD' is required for the EPR. The EPR contains non-confidential submissions by interested parties, the non-confidential versions of the commission's verification reports and other publicly available documents. Interested parties should be read this SEF in conjunction with other documents on the EPR.

1.6 Final report to the Minister

The Commissioner must report to the Minister no later than 2 June 2025. The final report will contain the Commissioner's final recommendations about this review.

[6] Section 269ZDA(3)(a)(iv)

2 BACKGROUND

2.1 Legislative framework

The procedures to be followed by the Commissioner in an application for a review of measures are set out in Division 5 of Part XVB.

2.1.1 The SEF

Section 269ZD(1) requires the Commissioner to publish a SEF on which they propose to base their recommendations to the Minister about the review of the measures.

Section ZD(2) requires the Commissioner, in formulating the SEF, to have regard to:

- the application
- any submissions relating generally to the review received within 37 days of the initiation of the review
- any submissions relating generally to the review that would not prevent the timely placement of SEF on the public record.

The Commissioner may also have regard to any other matters they consider relevant.

2.1.2 Final report

Section 269ZDA(1) requires the Commissioner, after conducting a review, to give the Minister a report which recommends that the relevant notice:

- remain unaltered
- cease to apply to a particular exporter or to a particular kind of goods
- have effect in relation to a particular exporter or to exporters generally as if different variable factors have been ascertained, or
- expire on the specified expiry day.

2.2 Application and initiation

On 30 January 2024, Press Metal Aluminium (Australia) Pty Ltd (PMAA) lodged an application under section 269ZA(1) requesting a review of the variable factors relevant to its imports from exporter PMBA. PMAA specified that the variable factors to include in the review are the export price, normal value, and non-injurious price.

Following an assessment of PMAA's application, the then Commissioner decided to not reject the application and initiated this review on 22 February 2024. The Commissioner established a review period of 1 January 2023 to 31 December 2023 for the purpose of assessing whether the notice should remain unaltered or apply to PMBA as if different variable factors had been ascertained.

2.2.1 Submission received in response to the initiation

The commission received a submission from Capral Ltd (Capral) in response to the initiation of this review.[7] Capral submitted that the commission should not have initiated this review because the current measures had not been operative for 12 months. Capral noted that: "*the measures were re-imposed on 14 December 2023 following the ADRP review of the Minister's decision not to continue the anti-dumping measures on goods exported from Malaysia and Vietnam. The ADN Notice 2024/010 states that the measures re-imposed were on the basis of revised variable factors determined in Report 591. The revised measures, however, were not applied until 14 December 2023*."

Capral relies on the following provisions of section 269ZA(2) of the Act that states:

> *"An application for review of anti-dumping measures must not be made:*
> *(a) If the measures involve the publication of a dumping duty notice or a countervailing duty notice – earlier than 12 months after:*
> *(i) The publication of the notice; or*
> *(ii) The publication of a notice declaring the outcome of the last review of the notice."*

The commission has considered Capral's submission and notes that section 269ZA(2) is not applicable for this situation. Section 269ZA(2)(a) precludes the applicant from applying for a review of measures for 12 months after measures have been imposed following the publication of a notice as a result of a dumping investigation or following the outcome of a review of the notice. As noted in the commission's consideration assessment pertaining to this review[8] PMAA submitted its application on 30 January 2024 which is more than 12 months from the date of publication of a notice declaring the outcome of the last Division 5 review, Review No. 544, which was published on 2 June 2021. Therefore PMAA's application meets the requirement under section 269ZA(2). The outcome of the CON 591 and subsequent reinvestigation does not affect this assessment.

2.2.2 The current anti-dumping measures – CON 591

The anti-dumping measures, in the form of a dumping duty notice, currently applying to the goods exported to Australia from Malaysia by PMBA, were last varied by public notice on 15 December 2023[9] following a recommendation from ADRP that related to CON 591.

On 15 September 2021, following an application lodged by Capral, the commission initiated a continuation inquiry into whether the anti-dumping and countervailing measures applying to the goods exported to Australia from Malaysia and Vietnam should be continued. PMBA cooperated with this inquiry.

Anti-Dumping Commission Report No. 591 (REP 591) found that subsidisation had not occurred during the inquiry period but dumping by Malaysian and Vietnamese exporters[10] had occurred during the inquiry period, including by PMBA, and that dumping was likely to continue. The commission found, however, that dumping had little, if any, impact on

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[7] EPR 640, document no. 5
[8] EPR 640, document no. 3
[9] 2022/155 Notice under section 269ZZM(4), dated 14 December 2023
[10] Except by Alumac Industries Sdn Bhd

Australian industry in the inquiry period and therefore recommended to the Minister that all measures should expire. On 24 June 2022, the Minister declared by public notice[11] his intention to let all measures expire on 27 June 2022.

On 12 July 2022, Capral made an application to ADRP to review the Minister's decision. The ADRP subsequently directed the commission to reinvestigate certain findings of REP 591. The commission found in *Anti-Dumping Commission Reinvestigation Report for the Anti-Dumping Review Panel* for CON591 that the expiration of the 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.

At the conclusion of its review, the ADRP recommended in its finding[12] that the reviewable decision be revoked and substituted with a new specified decision that the Minister secure the continuation of the dumping duty notice applying to aluminium extrusions exported from Malaysia and Vietnam, but as if different variable factors had been fixed in accordance with REP 591. There was no change to the expiry of the countervailing notice.

2.3 History of the measures

The commission has conducted numerous cases in relation to aluminium extrusions exported to Australia from Malaysia and other countries. Refer to the commission website for a comprehensive list of cases and related documentation. Key cases that concern the Press Metal Group's exports from Malaysia are listed in the table below. The table provides a timeline that is expanded on in more detail in subsections 2.2 to 2.5

Date of ADN	Case Number	Exporter	Outcomes as relates to Press Metal entities	Reference in this SEF
27 June 2017 2017/72 (dumping) and 2017/73 (subsidisation)	Investigation 362 (Dumping and subsidisation)	PMB	Measures imposed on uncooperating and non-cooperating exporters from Malaysia. PMB was found not to be dumping or in receipt of countervailable subsidy and therefore exempt from the measures.	Section 2.2.1
02 June 2021 2021/33	Investigation 540 – Mill finish (Dumping)	PMB	No measures applied to PMB as PMB considered unlikely to dump in the future as Press Metal group had started exporting through PMBA, and measures therefore be set in Review 544.	Section 2.2.2
02 June 2021 2021/35	Investigation 541 – surface finish (Dumping)	PMB		
02 June 2021 2021/37	Review of measures 544 (Dumping and subsidisation)	PMBA	This review was conducted concurrently with INV 540 and 541. Measures imposed on PMBA's exports at an effective rate of duty of 10.7%.	Section 2.2.3
10 June 2021 2021/62	Accelerated review 577 (Dumping and subsidisation)	PMBA	Measures revised to an effective rate of duty of 2.6%.	Section 2.2.4

[11] ADN No. 2022/042
[12] ADRP Report No. 155

Date of ADN	Case Number	Exporter	Outcomes as relates to Press Metal entities	Reference in this SEF
24 June 2022 2022/42	Continuation Inquiry 591	PMBA	The Commissioner recommended that the measures applying to the goods exported from Malaysia and Vietnam expire.	Section 2.2.5
14 December 2023 ADRP Public Notice 2022/155	Reinvestigation ADRP report 155 (Re: CON 591)	PMBA	Measures secured against exports from Malaysia and Vietnam. PMBA's exports are subject to an effective rate of dumping duty of 6.7% and a floor price set at the ascertained export price. The countervailing notice, as it related to PMBA, expired.	Section 2.2.5

Table 33: Summary of previous findings impacting PMB and PMBA

2.3.1 The original investigation

Anti-dumping measures, in the form of a dumping duty notice and a countervailing duty notice, applying to aluminium extrusions exported from Malaysia and Vietnam were first imposed on 27 June 2017, following the recommendations of *Anti-Dumping Commission Report No. 362* (REP 362), also referred to as the original investigation. The commission notes that PMBA was not an exporter during the original investigation. Related party entity, PMB, however cooperated with the investigation and was found not to be dumping or in receipt of countervailable subsidies. As a result, PMB, along with some other Malaysian exporters, were found to be exempt from the measures.

2.3.2 Investigation 540 and Investigation 541

On 24 February 2020, following an application from Capral, the commission initiated two separate dumping investigations relating to aluminium extrusions exported from Malaysia by the exporters that were found exempt from the measures following the original investigation. Investigation 540 (INV 540) concerns aluminium extrusions of mill finish and investigation 541 (INV 541) relates to aluminium extrusions with surface finish. PMB cooperated with both these investigations.

For each of these investigations the commission found that PMB dumped the goods during the investigation period. However, measures were not applied to PMB as PMB was unlikely to export in the future due to Press Metal Group having changed its trading arrangements exporting directly from manufacturer PMBA. The commission found in *Anti-Dumping Report No. 540* (REP 540) and *Anti-Dumping Report No. 541* (REP 541) that the measures that would have applied to goods exported by PMB would be applied to goods exported by PMBA as part of the Review of Measures 544 (REV 544), which examined PMBA concurrently.

2.3.3 Review of measures 544

On 24 February 2020, the commission initiated a review of the measures imposed on aluminium extrusions exported from Malaysia and Vietnam following the original investigation. This review of measures, that was conducted concurrently with INV 540 and INV 541, was commenced in response to a request by the then Minister. The review concerned whether the relevant variable factors had changed.

Having assessed the response to the exporter questionnaire (REQ) submitted by PMB for INV 540 and INV 541, the selling arrangements between PMB and PMBA, and the roles and function of the entities, the commission found that, from 22 November 2019, PMBA produced and sold the goods which were exported to Australia. The commission also considered that PMBA satisfied the definition of a new exporter pursuant to section 269T, and its exports as such were subject to review 544. However, since the Press Metal Group did not consent to the commission utilising the PMB data pertaining to INV 540 and INV 541 for the purpose of ascertaining variable factors for PMBA, and PMBA having not submitted an REQ in its own name, the commission considered PMBA an uncooperative exporter and calculated PMBA's export price and normal value under sections 269TAB3 and 269TAC6 respectively, resulting in the uncooperative rate of dumping. The dumping duty notice to this effect was published on 2 June 2021.[13]

2.3.4 Accelerated review 577

On the 17 February 2021 the commission commenced an accelerated review of the anti-dumping measures insofar as they related to a new exporter being PMBA, the applicant of the review. The commissioner set a review period as 1 January 2020 to 31 December 2020.

On 8 June 2021, having considered the recommendations of *Anti-Dumping Report No. 577* (REP 577), the Minister decided to vary the variable factors relevant to the determination of duty as they relate to PMBA.[14]

2.3.5 Continuation inquiry 591

On 15 September 2021, following an application lodged by Capral, the commission initiated an inquiry into whether the anti-dumping and countervailing measures applying to goods exported to Australia from Malaysia and Vietnam should be continued. PMBA cooperated with this inquiry.

REP 591 found that subsidisation had not occurred during the inquiry period but dumping by Malaysian and Vietnamese exporters[15] had occurred during the inquiry period, including by PMBA, and that dumping was likely to continue. The commission found, however, that dumping had little, if any, impact on Australian industry in the inquiry period and therefore recommended the Minister to discontinue the measures. On 24 June 2022 the Minister declared by public notice[16] his intention to let the measures expire on 27 June 2022.

On 12 July 2022 Capral made an application to ADRP to review the Minister's decision. The ADRP subsequently directed the commission to reinvestigate certain findings of REP 591. The commission found in *Anti-Dumping Commission Reinvestigation Report for the Anti-Dumping Review Panel* that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the anti-

[13] ADN No. 2021/037
[14] ADN No. 2021/062
[15] Except by Alumac Industries Sdn Bhd
[16] ADN No. 2022/042

dumping measures are intended to prevent. There was no change in relation to the subsidisation findings.

2.4 Exporter questionnaire and verification

The commission sent an exporter questionnaire to PMBA for completion. PMBA provided a REQ. The non-confidential version of the REQ is available on the EPR.[17] A verification team of the commission conducted an on-site verification of the data contained in the REQ. The exporter verification report is available on the EPR.[18]

2.4.1 Submission received in response to the REQ

The commission received a submission from Capral upon publication of PMBA's REQ.[19] Below is a summary of the key points raised by Capral and the commission's assessment.

Exporter

Capral highlighted that PMBA in its REQ nominated 2 business names for the exporter – PMBA and PMB – and in its REQ stated that both these entities had exported to Australia in the period. It is Capral's understanding that the application for review refers to PMBA only.

Exports to Australia

Capral stated that *"the exporter has redacted all information between the exported goods and goods sold by PMBA on the domestic market in China"* (sic).[20] Capral considered the full redaction to be unreasonable. Capral further raised that it is well understood that additional packaging is required for exported goods and urges the commission to separately identify PMBA's packing costs for domestic and export sales *"so that normal values accurately reflect actual costs incurred"*.

Export sales at CIF terms of trade

In its submission Capral draws the attention to the findings of CON 591 where the commission found that the intermediary PMB reimbursed the importer PMAA for "certain costs" in relation to Cost Insurance and Freight Incoterms (CIF) sales. Capral stated:

"There is a reimbursement that forms part of the export sales transactions and therefore the Commission considers the sales were not at arms-length."

Capral urged the commission to revisit export sales by PMBA facilitated by PMB to ascertain whether PMBA has continued selling at CIF and whether the reimbursement by PMB has continued. Capral contended that the export price by PMBA would, in that case, be 'non-arms length' transactions.

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[17] EPR 640, document no. 4
[18] EPR 640, document no. 15
[19] EPR 640, document no. 6
[20] The commission interprets this sentence to be a typo on Capral's behalf and should read: ''… domestic market in Malaysia."

The commission's assessment

The commission has assessed Capral's submission and notes the following:

- This review concerns the goods exported to Australia by PMBA. The exporter verification confirmed that PMBA was the exporter of the goods. The exporter verification also confirmed that during the review period some of PMBA's exports were transacted via intermediary PMB. The commission is, however, satisfied that PMBA was the exporter also for the goods that were transacted through PMB.
- The commission refers to the exporter verification report for a comprehensive table of adjustments claimed by PMBA and adjustments applied by the commission in comparing the export price and normal value.[21] In relation to packaging costs, the commission found that the weighted average cost of export packaging was higher than domestic packaging and adjusted the normal value accordingly.
- The commission notes that PMBA did not record export sales at CIF terms of trade during the review period.

2.5 Importer questionnaire and verification

The commission sent an importer questionnaire to applicant PMAA to complete. PMAA provided a response to the importer questionnaire (RIQ). A verification team of the commission verified the data contained in the RIQ. The importer verification report is available on the EPR.[22]

2.6 Submissions received in relation to this review

The commission received the following submissions before publishing this SEF. The non-confidential versions of these submissions are available on the EPR.

EPR No.	Interested party	Date received	Issues raised	Chapter reference
5	Capral	15 April 2024	Concerning initiation of this review	Chapter 2
6	Capral	19 April 2024	Concerns on REQ submitted by PMBA and 'arms length'	Chapter 2 and Chapter 4
9	Percival Legal for Press Metal Group[23]	23 May 2024	Change in trading terms	Chapter 4
10	Percival Legal for Press Metal Group	27 May 2024	Level of trade adjustment	Chapter 4
11	Capral	9 July 2024	PMBA's level of trade adjustments	Chapter 4
16	PMAA	30 January 2025	'Arms length'	Chapter 4
17	Capral	31 January 2025	PMBA's level of trade adjustments	Chapter 4
18	Capral	14 February 2025	'Arms length'	Chapter 4

[21] EPR 640, document no. 15 pages 32-36
[22] EPR 640, document no. 14
[23] Andrew Percival of Percival Legal represents the Press Metal Group of companies for this review.

Table 44: List of submissions

The Commissioner has had regard to these submissions in making the preliminary findings outlined in this SEF. Key points of the submissions are addressed directly in the report.

3 THE GOODS AND LIKE GOODS

3.1 The goods subject to the anti-dumping measures

The goods the subject of the application are:

Full description of the goods

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, anodised 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.

Further information

The goods include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. 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 product 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.

3.2 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs tariff Act 1995*.

Tariff Subheading	Statistical Code	Description
7604.10.00	06	non alloyed aluminium bars, rods and profiles
7604.21.00	07	aluminium alloy hollow angles and other shapes
7604.21.00	08	aluminium alloy hollow profiles
7604.29.00	09	aluminium alloy non hollow angles and other shapes
7604.29.00	10	aluminium alloy non hollow profiles
7608.10.00	09	non alloyed aluminium tubes and pipes
7608.20.00	10	aluminium alloy tubes and pipes
7610.10.00	12	doors, windows and their frames and thresholds for doors
7610.90.00	13	Other

Table 55: Tariff codes

3.3 Model control codes on initiation

The table below outlines the commission's proposed MCC structure for this review.

Category	Sub-category		Sales data	Cost data
Finish	**A**	Anodise	Mandatory	Mandatory
	BD	Bright dip		
	M	Mill		
	PC	Powder coating		
Alloy code	**6A**	6060, 6063	Mandatory	Optional
	6B	6106		
	6C	6101, 1350, 6082, 6351, 6061		
	6D	6005A		
	O	Other*		
Temper code	**T1**	T1, T4, T5, T6	Optional	Optional
	T50	T591, T595, T52		
	O	Other*		
Anodising microns	**0**	Not anodised	Optional	Optional
	1	<20µm		
	2	=>20µm		

Table 66: Proposed MCC structure on initiation

3.4 The commission's changes to MCC categories following verification

Following the verification of PMBA's sales and cost data the commission made some amendments to the MCC structure as outlined below:

3.4.1 Removal of the category for anodising microns

Having considered the findings of the exporter verification[24], the commission removed the category for anodising microns on the basis that PMBA had failed to report microns specification in the domestic sales listing. The commission noted that many domestic sales transactions identified as anodised surface finish were not accompanied with the requisite anodising microns data and PMBA was not able to correct for this issue by supplying a revised sales listing. The absence of adequate data pertaining to anodising microns means it cannot be relied on for inclusion in the MCC structure.

3.4.2 Amending the sub-category for anodised goods

After considering the findings of the exporter verification, the commission removed the sub-category for anodised finish and replaced with separate sub-categories for natural anodised finish and colour anodised finish. This reflects the consistently higher price point at which the colour anodised extrusions are sold to customers.

[24] EPR 640, document no. 15 and its confidential attachment 1

3.4.3 Adding a sub-category for chromated goods

The commission identified that extrusions that were denoted as mill finish in the REQ were in fact undergoing a priming process resulting in a chromated finish specification. Pricing for chromated surface finish extrusions was separately identified in price lists provided by PMBA. The price difference of chromated surface finish over basic mill finish warrants separate recognition for chromated finish in the MCC category for finish.

The revised MCC structure is detailed below:

Category	Sub-category		Sales data	Cost data
Finish	NA	Natural anodised	Mandatory	Mandatory
	CA	Colour anodised		
	CHR	Chromated		
	M	Mill		
	PC	Powder coating		
Alloy code	6A	6060, 6063	Mandatory	Optional
	6B	6106		
	6C	6101, 1350, 6082, 6351, 6061		
	6D	6005A		
	O	Other*		
Temper code	T1	T1, T4, T5, T6	Optional	Optional
	T50	T591, T5965, T52		
	O	Other*		

Table 77: Revised MCC structure

3.5 Like goods

Section 269T(1) of the Act defines like goods as:

"…goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration".

The definition of like goods is relevant in determining the variable factors in relation to goods exported to Australia. The commission's framework for assessing like goods is outlined in Chapter 2 of the commission's Dumping and Subsidy Manual (the Manual). [25]

The commission is satisfied that the goods that PMBA produced and sold for the domestic market are like goods to the Australian export goods. In more detail, the commission found:

[25] Available on the commission's website via www.adcommission.gov.au

3.5.1 Physical likeness

PMBA does not distinguish between domestic like goods and the Australian export goods during production (production is the same for the exported goods and goods sold in the domestic market, subject to individual customer specifications, and the costs of production for models sold domestically and for export are the same).

3.5.2 Production likeness

PMBA produced all goods at the same facilities, using the same raw material inputs and production processes.

3.5.3 Commercial likeness

All goods compete in the same market sector, are interchangeable and use similar distribution channels.

3.5.4 Functional likeness

All goods are functionally alike, as they have similar end uses.

4 EXPORT PRICE AND NORMAL VALUE

4.1 Preliminary finding

The Commissioner preliminarily finds that the variable factors export price and normal value have changed since CON 591. The Commissioner proposes to recommend to the Minister that the notice have effect as if different variable factors (export price and normal value) had been ascertained. The revised export price and normal value have resulted in different dumping margins relevant to the imposition of IDD. The preliminary dumping margin for the review period as it relates to PMBA's exports is **negative 4.4%**.

4.2 Legislative framework

Dumping occurs when a product from one country is exported to another country at a price less than its normal value.

- **Export price** is determined under section 269TAB.
- **Normal value** is determined under section 269TAC.
- **Dumping margins** are worked out under section 269TACB.

4.3 Export price

Section 269TAB(1)(a) provides that where*:*

i. the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation) and

ii. the purchase of the goods by the importer was an arms length transaction;[26]

[the export price] is the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

Section 269TAB(1)(b) provides the export price methodology for purchases between the exporter and the importer where the purchase was not an 'arms length' transaction.

Section 269TAB(1)(c) provides that the Minister will determine the export price having regard to all the circumstances of the exportation in any other case (including where the importer has not purchased directly from the exporter).

During the review period, the commission observed three types of export transactions made by PMBA:

1. sales from PMBA to unrelated parties (importers)
2. sales from PMBA to PMAA (a related party importer)
3. sales from PMBA to PMB (a related party intermediary) that on-sold the goods to PMAA (an importer related to both PMB and PMBA).

[26] 'Arms length' transaction is defined in section 269TAA of the Act.

The commission has preliminarily found that PMBA sales made directly to importers (related and unrelated parties) were 'arms length' sales and therefore determined export prices under section 269TAB(1)(a).

For the sales that PMBA made to PMAA via the intermediary, the commission has preliminarily determined the export price under section 269TAB(1)(c).

4.3.1 Who is the exporter?

The commission generally identifies an exporter as a company, located in the country of export, who is a principal company involved in an Australian export goods transaction. At least one of the following generally also applies for a company to be an exporter:

- the company knowingly transferred the goods to its own vehicle, or to a freight company, to deliver the goods to Australia
- at the time the goods shipped, the company owned or previously owned the goods.

To identify the exporter, the commission typically relies on information about Australian export transactions from stakeholders and Australian Border Force (ABF).

In this case, the commission has preliminarily found PMBA is the exporter of the goods to Australia for all sales (per 4.3 above) because during the review period, PMBA:

- was the manufacturer of the goods
- was named as the supplier of the goods on the commercial invoice provided to the intermediary in the case of export sales made via an intermediary (these goods were then supplied to the Australian importer)
- was named as the supplier of the goods to the Australian importer (where sales were made directly to the Australian importer without the involvement of an intermediary)
- arranged and paid for the inland transport to the port of export (when the terms of the export sales required PMBA to pay these expenses).
- arranged and paid for the port handling charges at the port of export (when the terms of the export sales required PMBA to pay these charges).

4.3.2 Who is the importer?

The commission generally identifies an importer as the beneficial owner of goods at the time of import. The beneficial owner may differ from the listed or nominal owner of the goods. For example, a parent company can have direct control over a subsidiary company's assets and decisions. If that parent company lists its subsidiary company as the owner of goods at the time of import, the commission would find that parent company is the importer because it beneficially owns the goods.

To identify the importer, the commission typically relies on information about Australian import transactions provided by stakeholders and ABF. In this review, the commission relied on data extracted from ABF import database and verified information provided by PMBA and its related party importer, PMAA.

For all transactions, the commission has preliminarily found that PMBA's Australian customers (both PMAA and unrelated customers based in Australia) are the importers of the goods. In other words, PMBA's Australian customers beneficially owned the

Australian export goods at the time of import into Australia. For each transaction, the importer:

- was named as the consignee on bills of lading
- was named as the importer on import declarations to ABF.

4.3.3 For the sales made directly between PMBA and the importer, were the sales transacted at 'arms length'?

As stated in section 4.3 above, during the review period, the commission observed three types of export transactions made by PMBA:

1. sales from PMBA to unrelated parties (importers)
2. sales from PMBA to PMAA (a related party importer)
3. sales from PMBA to PMB (a related party intermediary) that on sold the goods to PMAA (an importer related to both PMB and PMBA).

This section discusses the sales from PMBA directly to related and unrelated customers in Australia. The sales from PMBA via PMB to PMAA are discussed in section 4.3.4 below.

In this SEF, the commission has preliminarily found that all sales by PMBA to customers in Australia (both related and unrelated) were sold at 'arms length'.

4.3.3.1 Sales to unrelated customers in Australia

For all unrelated customer transactions, the commission found that PMBA sold the Australian export goods at 'arms length' as defined under section 269TAA. For these transactions, the commission does not find that:

- there was consideration for the goods other than price.
- a relationship between a buyer, a seller or their associates appeared to influence the price.
- a buyer or buyer's associate directly or indirectly received compensation, reimbursement or another benefit for, or relating to, any part of the price.

For these transactions, the commission noted that PMBA:

- sold goods at similar prices to all unrelated customers
- referred to a market price index when setting the Australian market price for unrelated customers.

4.3.3.2 Sales to the related customer in Australia

For some related customer transactions, the commission found that PMBA sold the Australian export goods at 'arms length' as defined under section 269TAA. Specifically, the importer verification of PMBA's related party Australian importer PMAA found that transactions made directly by PMBA to PMAA were at 'arms length'.

For these transactions, the commission did not find that:

- there was consideration for the goods other than price
- a relationship between a buyer, a seller or their associates appeared to influence the price

- a buyer or buyer's associate directly or indirectly received compensation, reimbursement or another benefit for, or relating to, any part of the price.

For these transactions, the commission noted that PMBA:

- sold goods at similar prices to related and unrelated customers
- referred to a market price index when setting the Australian market price for related customers.

4.3.4 Sales to the related Australian customer transacted via the intermediary PMB

The commission stated in the exporter verification report that sales from PMBA via the intermediary PMB to the Australian customer, PMAA, during the review period were non 'arms length' as defined under section 269TAA.

For these transactions, the verification report noted that PMBA:

- sold goods at similar prices to related and unrelated customers
- referred to a market price index when setting the Australian market price for related customers.

However, the verification report also noted that:

- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; and
- the buyer, or an associate of the buyer, was directly or indirectly, reimbursed, compensated or otherwise received a benefit for, or in respect of, whole or any part

Specifically, the verification report noted that during the review period, PMAA held long-term borrowings from PMB that were not interest bearing. The commission noted the following about the borrowings:

- The borrowings were aged accounts payables that the parties at some stage agreed to convert to a long-term loan, and the loan balance had reduced since 2017.
- PMAA makes larger repayments some years, and smaller or even no repayments other years depending on their access to cash.
- The borrowings were not interest bearing. The commission calculated an amount equivalent to commercial interest on the loan and added the amount to the SG&A for the transactions via PMB for the purpose of assessing profitability and found that, even though the interest increased the SG&A slightly, the sales to PMAA via PMB were profitable.
- The borrowing arrangement appeared to be non-commercial in nature due to the absence of regular amortisations and the scope for PMAA to schedule its repayments based on cash flow. This appeared to be a strong indication that the buyer received a benefit for, or in respect of, whole or any part of the price.[27]

The verification report stated that the relationship appeared to be one that would influence the price and therefore, having regard to sections 269TAA(1)(b) and 269TAA(1)(c) the

[27] EPR 640, document no. 15.

commission was not satisfied that the imports of the goods by PMAA from the intermediary PMB were 'arms length' transactions.

4.3.4.1 Submissions received in relation to 'non-arms length' finding

PMAA submissions

PMAA lodged a submission in response to the exporter verification report that the transactions between PMBA and PMAA via PMB were not at 'arms length'.[28] Capral subsequently provided a submission to comment on the commission's finding and PMAA's submission.[29]

PMAA contested the finding that the transactions between PMBA and PMAA were not at 'arms length'. PMAA also contested that its borrowings from PMB were not made on a commercial basis.

In its submission PMAA claimed that the loan was granted to PMAA by PMB in 2001 for the purpose of assisting PMAA to set up a distribution network across Australia. PMAA elaborated:

"Specifically, the loan was to provide PMAA's business with sufficient funds to enable it to setup distribution centres in a number of states in Australia. The loan was applied for that purpose. The increased business expected to be generated by PMAA's enhanced supply ability through the distribution centres, as well as the other efficiencies the setup would generate, not only benefited PMAA commercially but also PMB and PMBA through increased supply of their products. That is, the investment in the property by PMAA would be commercially advantageous for not only PMAA but also PMB and PMBA."

PMAA disagreed with the verification report finding that *"the scope for PMAA to schedule its repayments based on cash flow considerations"* should be indicative of the non-commercial nature of the loan. PMAA contended that *"scheduling payments on a loan according to one's cash flow is not an uncommon practice. It would be unusual not to do so and is a principle reason for negotiations between borrowers and their financiers. It is also an accepted practice by the Australian Taxation Office and by Australian Border Force amongst other government agencies in the payment of debts due to the Crown by instalments. It is also a common practice in the repayment of residential home loan mortgages, especially with the recent high interest rates."*

PMAA also disagreed with the view that PMAA was the recipient of a benefit in respect of the price it pays for the purchase of aluminium extrusion products from PMBA via PMB.

PMAA contended that:

"Interest-free loans can have a commercial basis, whether between related or unrelated parties. Even banks and other financial institutions provide interest-free loans, as well as offer bank accounts that earn negative interest on deposits – a not uncommon practice in recent years. In other words, there is no rational reason that a commercial loan is confined to loans that earn interest and there is no evidence that the loan here in question

[28] EPR 640, document no. 16.
[29] EPR 640, document no. 18.

did not have a commercial basis. Indeed, in a number of cultures earning interest on loans is prohibited as constituting usury".

PMAA further disagreed with the finding in the exporter verification report that *"the scope for PMAA to schedule its repayments based on cash flow considerations is a strong indication that the buyer received a benefit for, or in respect of, whole or any part of the price".* PMAA states that "*the commission has not identified what 'benefit' or the extent of that 'benefit' the buyer (i.e., PMAA) is considered to receive in respect of the price, especially when the verification team found, on verified information, that PMBA's prices to related and unrelated customers were the same or similar and were based on a market price index, that is, they reflected market prices*".

PMAA also referred to the exporter verification report's finding that *"when interest on the loan as calculated by the verification team was added to PMAA's SG&A for the relevant imports transacted through PMB, the effect on PMAA's SG&A was negligible and, further, it did not affect the profitability of PMAA"* and concludes that it is therefore not apparent what PMAA was receiving or whether such benefit was material.

Capral submissions

Capral submitted that *"the Commission has appropriately considered the loan arrangements in question, arriving at the conclusion that they are non-arm's length and making the appropriate adjustments to the export price. Interest free loans are not common, nor do lenders commonly agree to remittance on uncertain terms".*

In its submission, Capral contests PMAA's claims that scheduling payment on a loan according to one's cash flow is not an uncommon practice.

Capral referred to data pertaining to home loan mortgages and stated that "*available data suggests that a relatively small proportion of Australian mortgages are currently experiencing repayment difficulties. This calls into question PMAA's '…common practice…' assertion. In any case, home loan mortgages are largely as between banks and individual lenders buying personal real estate, they are not directly comparable to commercial loans and should not be used as an example of what is "common place" for commercial loans or related company lending practices".*

Capral also referred to PMAA's claim that government agencies, such as the ATO, allow for negotiated payment plans where payments are scheduled in instalments. Capral submitted that such payment plans make up an immaterial proportion of the total debt owed to the ATO by the Australian taxpayers, and also states that the ATO charges interest on unpaid tax debt through the General Interest Charge (GIC) and the Shortfall Interest Charge (SIC), thereby making the point *that "while PMAA's loan might not have been interest bearing, most debts are"*.

The commission's assessment

The commission has considered the submissions made by PMAA and by Capral. The commission has also further considered the sales from PMBA to PMAA via its intermediary PMB.

The commission notes that the goods were not purchased directly by the importer from the exporter. Therefore, the export price for these transactions cannot be determined under sections 269TAB(1)(a) nor (b) and the export price should be determined under section 269TAB(1)(c) as the price that the Minister determines having regards to all circumstances of the exportation. As the export price is determined under section 269TAB(1)(c), the commission considers it is not necessary to make a finding as to whether the transactions were 'arms length'.

In determining the export price under section 269TAB(1)(c) with regard to all the circumstances of the exportation, the commission considers the export price methodology applied in the verification report to be appropriate, as the methodology had regard to all the circumstances of the exportation, including the borrowing arrangements between the related parties and the slightly increased SG&A expenses. As these transactions were found to be profitable, they have been included in the calculations to determine the export price under section 269TAB(1)(c).

4.3.5 Delivery terms

PMBA changed its delivery terms in relation to the goods exported to Australia during the review period. PMBA sold the goods at free on board (FOB) terms up to April 2023 inclusive. From May 2023 onwards, PMBA and PMAA changed terms and PMBA sold at ex-works (EXW). The change impacted transactions that had been placed at FOB but not yet delivered at the time of the transition, and for these transactions PMBA issued credit notes to PMAA. The commission verified the calculations and source data of the transition.

4.3.5.1 Submissions on delivery terms

Capral notes in its submission of 19 April 2024[30] that the commission in REP 591 determined that PMBA had exported goods at CIF terms via PMB and that PMAA had reimbursed PMB for "certain costs" in relation to these transactions. Capral stated that the commission in REP 591 had determined that the sales were not at 'arms length' as the reimbursement formed part of the export sales transactions. Capral urged the commission to revisit the transactions between PMB and PMAA to assess if sales were made at CIF.

At the request of the exporter verification team, PMBA lodged a submission outlining the rationale behind the change of delivery terms between PMBA and PMAA and how the transition took place.

In its submission, PMBA stated that the reason for changing delivery terms was to provide PMBA and PMAA greater certainty and transparency in pricing. By changing from FOB to EXW delivery terms PMAA would obtain increased control and certainty in relation to the costs of getting the goods to Australia, and PMBA would obtain greater certainty in relation to its costs and profitability. [31] PMBA stated that this was a continuation of a process that started in 2020, when the parties changed the trading terms from delivered duty paid (DDP) to FOB.

In more detail PMBA stated:

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[30] EPR 640, document no. 6
[31] EPR 640, document no. 9

"By moving to EXW trading terms, PMAA obtains transparency and certainty in the cost of inland freight in Malaysia, as well as a degree of control of those costs through being able to negotiate the amount for inland freight directly with the shipping company. This provides it not only with greater certainty as to costs but, ultimately, increased control and, therefore, certainty in its profits. For PMBA it has a similar consequence. Because it is no longer is exposed to setting prices based in part on estimates of inland freight costs, PMBA obtains greater control over its costs, sales revenues and, ultimately, profits."

4.3.5.2 The commission's assessment

The commission has considered Capral's submission and notes that PMBA made no sales at CIF level of trade to PMAA via PMB in the way Capral referred to in their submission.

In relation to PMBA's submission, the commission confirmed that the process in respect of delivery terms was discussed in detail during verification. The commission verified the credit notes applied in the process including the calculations of the amounts and was satisfied that the reimbursements were measurable, transparent and made at 'arms length'.

4.3.6 Importer (PMAA) profitability

The commission also had regard to the profitability of PMAA's sales of the goods on the Australian market.

The commission was not able to identify the customers, and by extension, the price paid for each of the 12 sample shipments[32] examined in Part B of the RIQ. The reason for this is that PMAA is a distributor that keeps warehouses in multiple locations, and goods imported in one shipment may be onsold to multiple customers over an extended time. The commission therefore assessed PMAA's profitability based on PMAA's verified sales listing provided in Part C of the RIQ.

The commission determined the profitability of PMAA's sales pursuant to section 269TAA(3) having regard to:

- The quarterly weighted average purchase price for each MCC sub-category paid by PMAA to PMBA or its intermediary PMB[33].
- The quarterly weighted average selling price for each MCC sub-category paid by PMAA's Australian customers.
- Direct selling expenses in relation to the goods incurred by PMAA.
- Allocated SG&A relating to PMAA.

[32] The commission found that Shipment No.1 entered Australia in the review period but was shipped and invoiced outside the review period. The commission considered PMAA's role as a distributor and PMAA's inventory turnover rate to conclude that the goods of Shipment 1 were likely sold to Australian customers in the review period and therefore included in the profitability calculation.

[33] The commission notes that of 12 sample shipments 2 were facilitated by PMB.

The commission has found that PMAA's sales in the review period were profitable based on assessment made using verified data.[34].

4.3.7 Calculation of export price

As outlined above PMBA exported the goods to Australia in varying circumstances during the review period and these circumstances informed the commission's calculations of the export price.

Sales from the exporter to the importer (whether related or unrelated, not via an intermediary)

For all transactions, the commission calculated export prices under section 269TAB(1)(a), being the price paid or payable for the goods by the importer to PMBA. Where transactions were made at EXW, the commission added an amount for inland freight and port handling to determine an FOB export price.

Sales from the exporter to the importer via the intermediary

For all transactions, the commission calculated export prices under section 269TAB(1)(c), having regard to all circumstances of the exportation.

As the commission found that PMAA (the importer) on sold the goods to unrelated customers in profitable transactions the commission recommends that PMBA's export price be established as the price paid or payable for the goods by the intermediary to PMBA. Where transactions were made at EXW, the commission added an amount for inland freight and port handling to work out an FOB export price.

The commission's export price calculations are at **Confidential attachment 1**.

4.4 Normal value

Section 269TAC(1) states that the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade (OCOT) for home consumption in the country of export in sales that are 'arms length' transactions by the exporter, or, if like goods are not so sold by the exporter, by other sellers of like goods.

The commission has calculated PMBA's normal value using prices of like goods under section 269TAC(1). The commission has made adjustments under section 269TAC(8) to adjust the prices of these like goods.

The commission finds that there is a sufficient sales volume of domestic like goods, sold at 'arms length' and in the OCOT to calculate a normal value under section 269TAC(1).

The commission has also adjusted the normal value under section 269TAC(8) to properly compare the normal value to the export price when calculating the dumping margin.

[34] PMAA Importer verification report at EPR 640, document no. 14 refers.

4.4.1 Are the domestic sales transactions at 'arms length'?

For the domestic like goods sold during the review period, the commission finds that PMBA:

- sold at 'arms length' to unrelated customers
- sold at 'arms length' to related customers

Further details – unrelated customers

For all unrelated customer transactions, the commission found that PMBA sold the domestic like goods at 'arms length' as defined under section 269TAA.

For these transactions, the commission did not find that:

- there was consideration for the goods other than price
- a relationship between a buyer, a seller or their associates appeared to influence the price
- a buyer or buyer's associate directly or indirectly received compensation, reimbursement or another benefit for, or relating to, any part of the price.

For these transactions, the commission noted that PMBA:

- sold goods at similar prices to all unrelated customers
- referred to a market price index when setting the domestic market price for unrelated customers.

Further details – related customers

For all related customer transactions, the commission found that PMBA sold the domestic like goods at 'arms length' as defined under section 269TAA.

For these transactions, the commission did not find that:

- there was consideration for the goods other than price
- a relationship between a buyer, a seller or their associates appeared to influence the price
- a buyer or buyer's associate directly or indirectly received compensation, reimbursement or another benefit for, or relating to, any part of the price.

For these transactions, the commission noted that PMBA:

- sold goods at similar prices to related and unrelated customers
- referred to a market price index when setting the domestic market price for related customers.

4.4.2 Are the domestic sales in the OCOT?

Section 269TAAD sets out which sales are in the OCOT. Under this provision, a domestic like goods sale is not in the OCOT if the following conditions apply to the transaction:

- The sale is unprofitable in substantial quantities over an extended period

- The sale is unlikely to be recoverable within a reasonable period.

The commission typically uses this method to assess each step of identifying a sale not in the OCOT.

1. A sale is unprofitable if its unit price is less than the corresponding unit cost to make and sell in the sales month or sales quarter.
2. All sales for a model are unprofitable in substantial quantities if the volume of unprofitable sales is 20% or more of the total volume of sales.
3. A sale is unlikely to be recoverable if its unit price is less than the corresponding unit cost to make and sell for the entire reasonable period.

The commission typically sets both the 'extended period' and 'reasonable period' under section 269TAAD as the inquiry, investigation or review period for a case – whichever applies to that case.

Table 8 summarises the information the commission has used to assess if PMBA's domestic sales are in the OCOT.

Component	Details
Extended unprofitability period	The review period
Reasonable recoverability period	The review period
Price	Net invoice price
Cost	Quarterly cost to make and sell the goods, including direct selling expenses for each transaction.
Weighted average cost	Weighted average cost to make and sell the goods over the review period, including direct selling expenses for each transaction.
Date of sale: Australian exports	Invoice date
Date of sale: domestic	Invoice date

Table 88: Ordinary course of trade assessment details

The commission noted PMBA claimed the order date as the date of sale in the REQ. However, the commission could not verify this claim and PMBA agreed to use the invoice date as the date of sale for Australian sales and domestic sales.

4.4.3 Are there sufficient volumes of domestic sales in the OCOT?

To assess if there is a large enough volume of domestic sales to set a normal value under section 269TAC(1), the commission must compare the domestic and Australian export sales volumes for an exporter. If the domestic sales volume is less than 5% of the Australian export sales volume, the commission must also assess if the domestic sales volume is still large enough to use in a normal value that properly compares to the export price. Section 269TAC(14) sets this sufficiency test for dumping investigation cases. The commission also uses this sufficiency test when setting a normal value in other case types.

The commission found that PMBA's domestic like goods sales volume was at least 5% of its Australian export goods sales volume and is therefore a sufficient volume for use in a normal value set under section 269TAC(1).

Table 9 details the commission's findings about domestic sales volumes for each corresponding Australian export sales model.

Export MCC	Is the MCC's domestic sales volume 5% or greater the export sales volume?	Treatment of normal value
CA-6A-T1	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
CA-6D-T1	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
CHR-6A-T1	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
M-6A-O	No	No domestic sales of M-6A-O. Surrogate model M-6A-T1 used, with specification adjustment under section TAC(8).
M-6A-T1	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
M-6A-T50	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
M-6C-T1	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
M-6D-T1	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
NA-6A-T1	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
NA-6A-T50	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
NA-6D-T1	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
PC-6A-T1	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
PC-6A-T50	No	No domestic sales of PC-6A-T50. Surrogate model PC-6A-T1 used, with specification adjustment under section TAC(8).
PC-6C-T1	No	No domestic sales of PC-6C-T1. Surrogate model PC-6A-T1 used, with specification adjustment under section TAC(8).
PC-6D-T1	No	Low domestic sales of PC-6D-T1. The commission considers however that the domestic sales of same MCC permits a proper comparison to exported goods.

Table 99: Export models compared to domestic models by volume

4.4.4 Adjustments to the normal value

The commission made adjustments to PMBA's normal value to properly compare the export price to the corresponding normal value. Table 10 provides a summary of the commission's adjustments.

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic inland transport	Deduct an amount for domestic inland transport
Domestic packing expenses	Deduct an amount for domestic packing expenses
Domestic level of trade	Deduct an amount for domestic level of trade

Adjustment Type	Deduction/addition
Export packaging	Add an amount for export packaging
Export inland transport	Add an amount for export inland transport
Export port handling charges	Add an amount for export port handling charges
Exported stillage transportation expenses	Add an amount to reflect the expenses incurred to transport re-usable stillages from Australia to Malaysia.
Export credit terms	Add an amount for export credit terms
Specification	Add or deduct an amount for specification differences.
Timing	Add or deduct an amount for timing adjustment

Table 1010: **Summary of adjustments**

The commission assessed all potential adjustments to properly compare the export price and normal value. The assessment is shown in table 11.

Adjustment type	Adjustment assessment	Evidence and calculation method	Did the exporter claim this adjustment?	Did the commission apply this adjustment?
Domestic credit terms	Based on an examination of PMBA's sales documentation, bank statements and accounts receivable ledger it was ascertained that customers were afforded varying terms to settle payment for goods purchased. The period in which PMB's domestic customers were allowed to pay was materially different when compared to the period relevant to PMB's Australian sales.	Due the nature in which PMBA's domestic customers are allowed to pay, the payment terms were calculated using the accounts receivable turnover ratio method. The period determined was based on the opening and closing accounts receivable balances for all domestic customers and applied universally to all domestic sales transactions (GP16-A refers).	Yes	Yes
Domestic inland transport	Domestic selling prices included delivery, which was found to be at a different level of cost compared to export delivery expenses to the port of export.	Having regard to the data in PMBA's accounts and its reported sales volume, a weighted average unit cost per quarter was determined.	Yes	Yes
Domestic packaging	Domestic packaging costs were included in the price and were found to be less than export packaging costs.	Having regard to the data in PMBA's accounts, a quarterly weighted average unit packing cost was determined and applied.	Yes	Yes

Adjustment type	Adjustment assessment	Evidence and calculation method	Did the exporter claim this adjustment?	Did the commission apply this adjustment?
Level of trade.	A material proportion of PMB's domestic sales were at a level of trade that was not equivalent to the level of trade applicable to its Australian customers.	The value of the adjustment was worked out by identifying the discount applicable between domestic sales at different levels of trade and applying the variance to PMBA's domestic sales that did not correspond to the level of trade relevant to PMBA's Australian sales.[35] [36]	Yes	Yes
Domestic powder coating	At E-5 in PMBA's REQ it is claimed that the powder coating for domestic extrusions attracts a higher price and has a higher cost when compared to powder coated extrusions exported to Australia. PMBA's claim is based on differences in the way the powder coating surcharge is determined for domestic and Australian sales.	Analysis of powder coating cost information and prices of powder coated extrusions was performed. This found the cost of powder coating used for domestic market sales was generally comparable with Australian exports. The existence of higher cost powders relevant to domestic market sales did not translate to higher extrusion prices when expressed on a per kilogram price basis.	Yes	No
Domestic other direct selling expenses	PMBA reported other selling expenses in its domestic sales listing but did not claim these in D-5 or E-4.3 of its REQ.	It could not be satisfied that PMBA's reported 'other selling expenses' were necessarily incurred due to a sale. They have been recategorized as an 'indirect' SG&A expense.	Yes	No
Export packaging	Packaging costs for Australian exported goods were included in the price and were found to be higher than the cost of packing for domestic sales.	Having regard to the data in PMBA's accounts, a quarterly weighted average unit packing cost was determined and applied.	Yes	Yes

[35] The Manual refers to this as the Level Discount Method.

[36] The commission is satisfied that a proportion of the domestic sales is made at a different level of trade than the goods relevant to PMBA's Australian sales, and that a level of trade adjustment was warranted. The commission formed its conclusion having examined the customer profiles and the profitability of the relevant sales and compared to those sales made by PMBA's distribution subsidiaries.

Adjustment type	Adjustment assessment	Evidence and calculation method	Did the exporter claim this adjustment?	Did the commission apply this adjustment?
Export inland transport	Where the relevant sales process was applicable, Australian export prices included delivery to the port of export. The cost was found to be at a different level compared to cost of delivery incurred by PMBA on its domestic sales.	Having regard to logistics company invoices, a weighted average unit cost was determined for the relevant exports.	Yes	Yes
Export port handling charges	Where the relevant sales process was applicable, Australian export prices included port of export handling charges. PMBA does not incur this expense for its domestic sales.	Having regard to logistics company invoices, a weighted average unit cost was determined for the relevant exports.	Yes	Yes
Export stillage transport costs	PMBA utilises re-useable stillages that aid in the packing and unpacking of containers. These are shipped to Australia with the goods and returned to Malaysia for re-use. PMBA covers the cost. Domestic sales do not incur a similar expense. It is reasonable that the export price would also need to recover the cost of re-usable stillage transportation.	PMBA provided data concerning the cost of transporting stillages from Australia to Malaysia and the number of containers required to ship the goods during the review period. The unit cost of stillage transportation was applied to the total number of containers to determine a unit cost per kilogram.	No	Yes
Export credit terms	Based on an examination of PMBA's sales documentation, bank statements and accounts receivable ledger it was ascertained that customers were afforded varying terms to settle payment for goods purchased. The period in which Australian customers were allowed to pay was materially different when compared to the period relevant to PMBA's domestic sales.	Due to the nature in which PMBA's Australian customers are allowed to pay, the payment terms were calculated using the accounts receivable turnover ratio method. The period determined was based on the opening and closing accounts receivable balance for all Australian customers and applied universally to all Australian sales transactions.	Yes	Yes
Export other direct selling expenses	PMBA reported other selling expenses in its Australian sales listing but did not claim these in B-5 or E-4.4 of its REQ.	It could not be satisfied that PMBA's reported 'other selling expenses' were necessarily incurred due to a sale. They have been recategorized as an 'indirect' SG&A expense.	Yes	No

Adjustment type	Adjustment assessment	Evidence and calculation method	Did the exporter claim this adjustment?	Did the commission apply this adjustment?
Specification adjustments	Price list information examined during verification identified that price differences existed in relation to a range of product specifications. Due to there being no domestic sales in relation to certain models exported to Australia, surrogate normal values have been used and adjusted to account for physical differences that affect price. The surrogate model is identified in brackets. • M-6A-O (M-6A-T1) • PC-6A-T50 (PC-6A-T1) • PC-6C-T1 (PC-6A-T1)	Price lists were not utilised as the export models relevant to the adjustment were not sold on the exporter's domestic market. A suitable alternative was a cost of production approach which recognised the incremental cost difference between the relevant export MCCs quarterly cost to make (CTM) and equivalent domestic SG&A costs plus the profit margin (expressed as a percent of cost [CTM + SG&A]) earned on domestic sales of like goods in OCOT.	No	Yes
Timing adjustment	For certain MCCs exported to Australia there was an absence of domestic sales in the corresponding quarter. The following models were subject to a timing adjustment: • M-6A-T50 • NA-6D-T1 • PC-6D-T1	The timing adjustment was based on the change in quarterly normal value for the closest resembling MCC between the two quarters either preceding or following the quarter in which a normal value was required.	No	Yes
Powder coating	In E-5 of PMBA's REQ it is claimed that the powder coating for domestic extrusions attracts a higher price and has a higher cost when compared to powder coated extrusions exported to Australia.	Examination of the available information did not support the claim that higher cost powders used for domestic market sales led to higher prices. The unit price of powders consumed for domestic market sales was comparable to the price of powders used for Australian sales. PMBA accepted the commission's analysis.	Yes	No
Exchange rate fluctuations	In E-5 of its REQ, PMBA claims differences arising due to exchange rates for the Australian dollar and Malaysian Ringgit.	PMBA acknowledged this claim was contained in its REQ but advised at the visit that it wished to have it withdrawn.	Yes	No

Table 1111: Assessment of adjustments

4.4.4.1 Submissions on level of trade adjustments

Requirement for level of trade adjustment

The commission received several submissions in relation to the level of trade adjustments.

PMBA submissions

At the commission's request after the exporter verification, PMBA provided a submission[37] outlining the claims PMBA had made to the commission during the verification, and the reasoning behind these claims. PMBA contended that a level of trade adjustment is required, and that the adjustment be calculated based on differences in selling prices.

The submission stated that PMBA supplied aluminium extrusions in its domestic market through 5 regional distribution centres:

- PMB Northern –which distributes PMBA products in the north of Malaysia
- PMB Eastern – which distributes PMBA products in the east of Malaysia
- PMB Central – which distributes PMBA products in central Malaysia
- PMBA Sabah – which distributes PMBA products in Northern Borneo; and
- PMB Johor Bahru (JB Division) – which retails PMBA products in the south of Malaysia.

The submission detailed how the PMB Northern, PMB Eastern, PMB Central and PMBA Sabah operate as separate legal entities that are subsidiaries of PMBA while the JB Division is a distribution centre that operates as a division of PMBA. PMBA submitted that *"JB has been set up within PMBA as if it were a separate legal entity notwithstanding that it is a division within PMBA. That is, it has its own separate financial and management records and accounts and generally operates as a separate entity to PMBA, including as a separate financial entity, notwithstanding that it is a division within PMBA and, therefore, not a separate legal entity."*

The submission stated that PMBA's sales to the four subsidiaries are at distributor level of trade and the four subsidiaries sell to customers that are retailers in the respective regions. PMBA stated that in the case of JB Division, PMBA's sales via JB Division are to retailers and therefore at the retail level of trade. PMBA states this is reflected in the pricing to those customers which is different from PMBA's pricing to the 4 subsidiaries. The submission also claimed that neither the 4 subsidiaries, nor JB Division were constrained to source aluminium extrusions from PMBA and therefore PMBA's pricing must be competitive.

The submission contended that whereas PMBA's sales to the 4 subsidiaries are at the same level of trade as PMBA's export sales to PMAA, given that PMAA is a distributor of PMBA products in the Australian market, sales by PMBA through JB Division to retailers

[37] EPR 640, document no. 10

are at a different level of trade. PMBA therefore contended that an adjustment for level of trade is required and referred to a previous duty assessment where the commission made this adjustment.[38]

Capral's submissions

Capral provided a response to comment on PMBA's submission.[39] Capral referred to the commission's assessment of PMBA's claim for level of trade adjustment in CON 591. Capral noted that on this occasion the commission was not satisfied it should make a level of trade adjustment for the normal value in relation to domestic sales and that this was based on finding immaterial price differences between the claimed levels of trade. Capral noted that PMBA referred to duty assessments where the commission has made level of trade assessments, however, Capral stated that they were not clear when these took place and submitted that nonetheless the commission's assessment in REP 591 should be the leading precedent.

After the publication of the exporter verification report, Capral lodged a further submission in relation to level of trade adjustments.[40] Capral noted that the commission has made a downwards adjustment to the normal value for level of trade and contended that the commission has not made a *"similar CON 591-like assessment of the matter"*. Capral requested the commission disclose whether it made its decision to make the adjustment based on a consideration of PMBA's Malaysian sales of aluminium extrusions or whether the decision was made based on previous duty assessment.

The commission's assessment

The commission assessed PMBA's claim for a level of trade adjustment during the verification visit. The commission assessed the claim based on information provided by PMBA in its REQ and further information provided during the visit. For transparency, the commission encouraged PMBA to outline their claim in a submission that could be placed on the EPR, which is referenced above.

In assessing PMBA's claim, the commission analysed PMBA's domestic sales data by MCC and level of trade and is satisfied there is a consistent difference in the prices achieved between the different levels of trade. Specifically, the commission found that all MCCs that PMBA sell to subsidiaries and through its JB Division achieve a substantially higher price when sold through the JB Division than those sold to the other subsidiaries. The commission's price analysis is at **Confidential attachment 2a.**

The commission noted that this sales data analysis would correspond to what Capral refers to as *"similar CON 591-like assessment of the matter"* in its submission.

The commission assessed PMBA's claim that JB Division operates as a distribution centre similar to the subsidiaries that are separate entities to PMBA. The commission therefore requested income statements for the subsidiaries and the JB Division and compared key economic indicators for the review period. The commission's comparison is

[38] Duty assessments are confidential, and these reports are hence not published on the EPR.
[39] EPR 640, document no. 11
[40] EPR 640, document no. 17

at **Confidential attachment 2b**. The commission is satisfied that the JB Division's financial indicators – including gross profit - were comparable to those of the subsidiaries.

The commission also reviewed PMBA's pricing process in relation to the JB Division and found that the process was such as if JB Division had been a subsidiary. This was demonstrated by how the JB Division set its prices by having regard to the price information PMBA published for its subsidiaries. Transfers of inventory from the factory to the JB Division were valued at a level that was comparable to the price paid by PMBA's distribution subsidiaries.

The commission also reviewed the customer list for sales via the JB Division and found that customers who purchased like goods via the JB Division appeared to be engaged in a wide range of enterprises such as metals distribution, window and door fabricating, component manufacturing and hardware distribution. This finding supports that JB Division customers are either not at a distribution level of trade or sit at the 2nd tier distribution level of trade. This contrasts with PMAA who conducts business at the 1st tier level of trade and on-sells to customers who are engaged in distribution or manufacturing.

Amount of the level of trade adjustment

PMBA's submission

PMBA submitted that the level of trade adjustments be made based on difference in selling prices "as differences in prices arising from sales at different levels of trade may and is likely to reflect more than simply differences in costs incurred at different levels of trade". PMBA references a confidential ADRP report relating to a duty assessment where ADRP made the finding that:

"The adjustment should be made to the JB division selling prices to the extent of the difference between such prices and the level of the intra-company transfers between PMBA and the JB division."

PMBA also referred to another duty assessment where the commission made an adjustment for level of trade. The commission on this occasion made the adjustment based on differences in costs, in particular warehousing costs. PMBA contended that this adjustment was misconceived as this is a difference in cost, not in price, and will not fully reflect the difference in price at different levels of trade. PMBA stated*:*

"This is not to contend that differences in 'costs' may not affect 'prices'. Clearly they can. However, that is not the reason for the adjustment. A difference in 'costs' is not the same as a difference in 'prices'. Further, a difference in 'costs' arising from differences in levels of trade may or may not be reflected or be fully reflected in differences in 'prices' in sales at the different levels of trade.

Importantly, differences in prices arising from sales at different levels of trade may and is likely to reflect more than simply differences in costs incurred at different levels of trade. Whatever the reasons for the differences in prices in sales at different levels of trade, those differences in 'prices' must be quantified and the requisite adjustment made to ensure price comparability.

Here the adjustment is for differences in 'prices' resulting from sales being at different levels of trade, not for differences in 'costs' incurred at different levels of trade that are reflected in differences in prices. The latter would be captured in the former, but the former would not be captured in the latter."

Commission's assessment

When considering the methodology to apply when calculating the amount of level of trade adjustment, the commission considered the available information and noted that a previous duty assessment utilised the 'costs arising from different functions' method outlined in the Manual because the evidence supported the use of this method in that assessment.

In terms of available information, the evidence obtained for this review would also permit using the method applied in that duty assessment. However, further analysis demonstrated that the higher price achieved by the JB Division was not necessarily a function of the additional operating costs incurred.

The available information also confirmed that when PMBA sold like goods to its related distribution entities who were at the distribution level of trade, they on sold the goods at a significant mark up over the price they paid PMBA for their inventory. Notwithstanding the JB Division was not a separate legal entity, it appeared to be conducting business at the distribution level of trade and marked up the price of sales to downstream unrelated customers in the same manner as PMBA's related distribution subsidiaries.

As the mark up on the price of sales by the JB Division was significantly greater than the incremental cost of performing its function, as was also the case for PMBA's other subsidiaries, the commission considered the 'costs arising from different functions' method was not appropriate, even though the information was available to apply it. Using this approach would not account for the full effect on price arising from the level of trade differences.

In the alternative, the commission considered the Level Discount Method preferable. PMBA made sales to both related and unrelated customers at different levels of trade. PMBA's customers at the distribution level of trade received a discount on the price paid by customers at other levels engaged in businesses involving downstream distribution, window and door fabrication, other general fabrication and general manufacturing.

Since JB Division sales went directly to customers that were downstream from the distribution level of trade, its prices were higher and the level of trade relevant to its customers was not the same as the level of trade for PMBA's Australian sales. Therefore it would not be appropriate to use a normal value based on price achieved by the JB Division.

The commission considered it appropriate to adjust the price of the transactions achieved by the JB Division. This should be based on the discount that occurs on sales to PMBA's subsidiary distribution customers when compared to the price achieved by the JB Division to customers at a downstream level of trade.

The commission's analysis is contained in **Confidential Attachment 3**.

The commission noted the submissions received referencing the commission's assessment of level of trade in CON 591 and various duty assessments. In this review, the commission assessed the information and evidence available and made an assessment on the facts before the commission during this review.

4.4.5 Calculation of normal value

The Commissioner has preliminarily found that PMBA made domestic sales of like goods in the OCOT for home consumption in 'arms length' transactions. Accordingly, the commission has calculated PMBA's normal value under section 269TAC(1). The commission made adjustments to the normal value under section 269TAC(8). The commission's calculation of PMBA's normal value is in **Confidential Attachment 4.**

4.5 Calculation of dumping margin

The commission has calculated PMBA's dumping margin by comparing weighted average export prices to the corresponding weighted average normal values for the review period. The commission has calculated a dumping margin of negative 4.4%. The commission's calculation of PMBA's dumping margin is in **Confidential Attachment 5.**

5 NON-INJURIOUS PRICE

5.1 Preliminary assessment of the non-injurious price (NIP)

The Commissioner has preliminarily found that the NIP relevant to the taking of anti-dumping measures has changed. The Commissioner recommends that the NIP be set as equal to the normal value in relation to PMBA's exports from Malaysia. As a result, the Commissioner considers the Minister is not required to have regard to the desirability of applying the lesser duty in relation to imports of the goods exported by PMBA from Malaysia because the ascertained NIP is not less than the ascertained normal value.

5.2 Legislative and policy framework - NIP methodology

The NIP is defined in section 269TACA as *"the minimum price necessary to prevent the injury, or a recurrence of the injury"* caused by the dumped or subsidised goods the subject of a dumping duty notice or a countervailing duty notice.

The method of calculating a NIP is not prescribed in the legislation, however there are several methods outlined in the Manual. The commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). The commission's preferred methods for establishing the USP are set out in the Manual according to the following hierarchy:

- industry selling prices at a time unaffected by dumping (Method 1)
- constructed industry prices: industry cost to make and sell plus profit (Method 2); or
- selling prices of undumped imports (Method 3).

According to the Manual, when establishing the USP/NIP in reviews under Division 5 of Part XVB of the Act, the commission will generally not depart from the approach taken in the original investigation or a previous review, unless there has been a change in circumstances that either makes the earlier approach unreasonable, or less preferred amongst the other available options.

5.3 Discussion – NIP methodology

5.3.1 PMAA claims in relation to the NIP methodology

In its application for this review, PMAA claimed that the NIP should be varied because the cost to make aluminium products has changed since the NIP was last ascertained in CON 591. PMAA stated that the NIP was "*calculated in Continuation Inquiry 591*" and "*that non-injurious price, as is the Commission's practice, was based on an unsuppressed selling price (USP), being the Australian industry's cost to make and sell aluminium extrusion products plus an amount for profit*" [41] (i.e. corresponding to Method 2 above).

[41] EPR 640, document no. 2

The commission noted however that PMAA's claim was not an accurate description of the approach taken to calculate the NIP in CON 591.

5.3.2 NIP methodology adopted in the original investigation

In the original investigation, REP 362, the Commissioner considered that, in a market unaffected by goods from Malaysia at dumped and subsidised prices and from Vietnam at dumped prices, it is reasonable to expect that the Australian industry would be able to achieve, as a minimum, selling prices that reflected undumped and unsubsidised import prices from Malaysia and undumped import prices from Vietnam (Method 3). In REP 362, the NIP for each exporter was set as being equal to the normal value, as representative of undumped and unsubsidised prices for each exporter.

The commission made this determination after considering that it was not suitable to rely on industry selling prices (Method 1) since the year immediately preceding the investigation period, 1 July 2014 to 30 June 2015, was affected by Chinese dumped and subsidised exports and was a period in which the Australian industry was unprofitable.

Injury analysis conducted for REP 362 also demonstrated that measures on exports from China had consistently remained in place since they were first imposed following the recommendations of *Anti-Dumping Commission Report No.148* in 2010 after dumping and subsidisation was found in 2009. It was therefore not appropriate to use Australian industry selling prices (Method 1) or Australian industry CTMS plus profit achieved by Australian industry (Method 2) when prior periods were found to be affected by dumping and subsidisation.

The commission noted that in the subsequent two reviews affecting PMBA, being REV 544 and Accelerated Review 577 as well as CON 591, the commission continued to consider that, in a market unaffected by goods from Malaysia at dumped and subsidised prices, it would be reasonable to expect that the Australian industry would be able to achieve, as a minimum, selling prices that reflected undumped and unsubsidised import prices from Malaysia and undumped import prices from Vietnam.

5.3.3 The commission's assessment of NIP methodology

The commission considered whether a change in circumstances has occurred since the original investigation that would make the current methodology unreasonable, or less preferred and found insufficient evidence to justify a change in methodology.

During the periods prior to the current review period (1 January 2023 – 31 December 2023), the Australian industry producing like goods was likely affected by dumped and subsidised exports from China, Malaysia and Vietnam, as per the commission's previous findings:

- China:
    - CON 543 (inquiry period: 1 January 2019 to 31 December 2019): Exporters were found to be dumping at rates of up to 71.9%.
    - CON 609 (Inquiry period: 2021-22): Exporters were found to be dumping at rates of up to 37.1%.
- Malaysia and Vietnam:

- CON 591 (Inquiry period: 1 July 2020 to 30 June 2021): Exporters were found to be dumping at rates of up to 27% and ADRP report 155 found that the dumping was likely to continue.

Therefore, the key circumstances relevant to determining which method should be used to calculate the NIP have not changed since the original investigation, i.e. the Australian industry is still operating in a market affected by dumping and subsidisation. Therefore, the commission preliminarily found that there has not been a change in circumstances sufficient to justify a change in the commission's methodology in setting the NIP and therefore recommends the NIP be determined in accordance with Method 3, based on selling prices of undumped imports, and in applying this method, the NIP be determined as being equal to the normal value.

5.4 Legislative framework - Lesser duty rule

Where the Minister is required to determine IDD, section 8(5B) of the Customs Tariff (Anti-Dumping) Act 1975 (Dumping Duty Act) applies. Section 8(5B) of the Dumping Duty Act requires that if the ascertained non-injurious price of the goods is less than the normal value of the goods, then the Minister must have regard to the desirability of specifying a method such that the sum of the ascertained export price and the interim dumping duty payable does not exceed the NIP.

5.5 The commission's assessment

As noted in section 5.3.3, the commission ascertained a NIP for PMBA based on the NIP being equal to PMBA's normal value. Therefore, the Minister is not required to have regard to specifying a lower rate of duty.

6 DUTY METHOD

6.1 Preliminary findings and recommendations

The Commissioner has preliminarily found that the IDD payable on aluminium extrusions exported from Malaysia by PMBA should be calculated using the floor price duty method.

6.2 Legislative framework

The *Customs Tariff (Anti-Dumping) Regulation 2013* (the Regulation) prescribes the methods available to the Minister for working out IDD payable. The methods are:

- fixed duty method ($X per tonne)
- floor price duty method
- combination duty method
- *ad valorem* duty method (a percentage of the export price).

More detail on the nature and operation of the various methods are contained in the *Guidelines on the Application of Forms of Dumping Duty November 2013*[42] (the Guidelines).

6.3 Duty method and effective rates of duty

Currently, PMBA's exports are calculated using the combination method of duties, that is, a combination of *ad valorem* duties (6.7%) with a floor price set at the AEP last ascertained in CON 591.

PMBA has been found to have not dumped during the review period. Therefore, any *ad valorem* duty set following this review would be 0%.

In these circumstances, the commission has preliminarily found that the floor price method is the most suitable method because:

- Maintaining a combination duty method would not be appropriate because the *ad valorem* component of the measures (0%) would have no effect. The effective component of the duties would be the floor price. The combination method is most often used when the *ad valorem* rate is not equal to zero, which is not the case in this review. Further, the application of the combination method would result in the floor price being set as equal to the export price (which is not the lesser duty when compared to the floor price method which sets the floor price according to the NIP or the normal value).

- Changing to an *ad valorem* duty method would not be suitable in these circumstances because the practical effect of applying a 0% *ad valorem* rate would be that no duties are collected, regardless of changes in PMBA's export price. According to the Guidelines, the *ad valorem* method is not appropriate in cases

[42] Anti-Dumping Commission website

where the importer and the exporter are related parties and are therefore able to change their internal pricing policies to change the export price.

- Changing the form of duties to the floor price method is the most appropriate in these circumstances. According to the Guidelines, when applying the floor price method, the floor price should be set according to the ascertained normal value (ANV) or the NIP. In this case, the ANV and the NIP are the same and lower than the export price. According to the Guidelines, floor price is the most appropriate duty method where the exporter and the importer are related parties. Further, the market is currently rising (see analysis of a rising market below) and in a rising market (if the exporter continues to not dump) then the actual export price would remain above the floor price and no duties would be payable. If the market changed to a falling market, the importer would be entitled to apply for a duty assessment. Changing to a floor price where the *ad valorem* duty would be zero is consistent with recent similar cases, including:
    - Review 494 – Aluminium extrusions from Malaysia [43]
    - Continuation 590 - Hollow structural sections from China, Korea, Malaysia, Taiwan [44]
    - Continuation 611 – Zinc coated (galvanised) steel from China, Korea, Taiwan [45]

6.3.1 **Analysis of a rising market**

In considering the duty method, the commission assessed whether the market for aluminium extrusions is rising. The commission has reviewed the London Metal Exchange (LME) data and found that the LME has risen since the review period which coincides with calendar year 2023, according to Figure 1 below.

[43] Report 494, page 33.
[44] Report 590, page 148.
[45] Report 611, page 98.

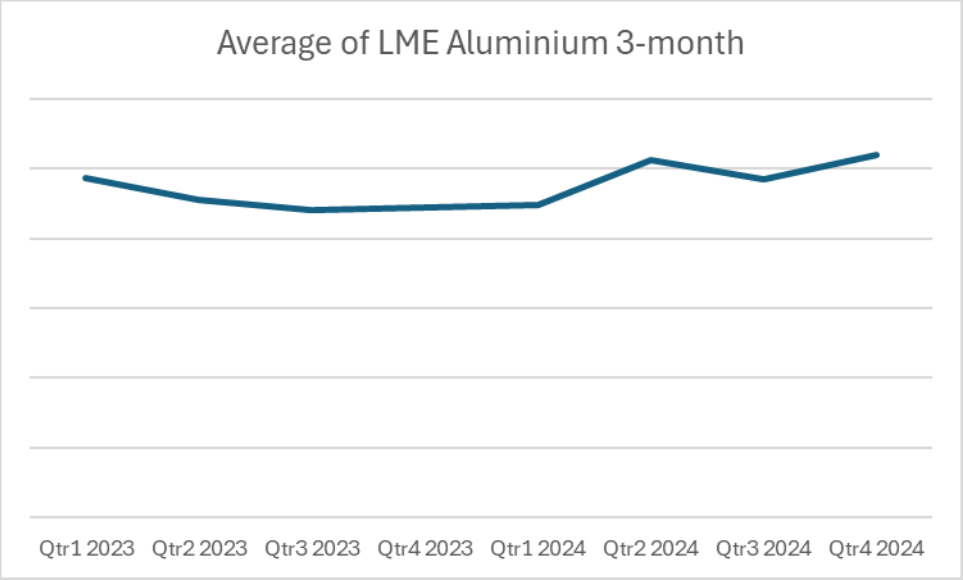

Figure 1: Average LME 3-month

The commission notes that the LME rose in all quarters during the period from the end of the review period until the end of 2024, with the exception of a small drop in Q3 of 2024.[46]

Resources and Energy Quarterly: December 2024 states that *"high alumina prices are expected to push the London Metal Exchange (LME) primary aluminium spot price above US$2,500 a tonne in 2025 and 2026"* due to reduced supply of alumina and bauxite from Guinea and Australia.

The commission preliminarily finds that the floor price duty method is the most suitable in the circumstances and, in accordance with the Regulation, sets the floor price to equal to the normal value, as ascertained in this review.

[46] Analysis of LME data

7 ATTACHMENTS

Confidential Attachment 1	Export price
Confidential Attachment 2a	Level of trade - Price analysis of domestic sales
Confidential Attachment 2b	Level of trade – Analysis of the financial performance of JB division
Confidential Attachment 3	Exporter verification work program
Confidential Attachment 4	Normal value
Confidential Attachment 5	Dumping margin