



# **Press Metal Aluminium (Australia) Pty Ltd & Anor v Minister for Industry and Science & Ors**

Federal Court of Australia

**NSD67/2024**

Report of John Temple-Cole

26 July 2024

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## 1. Introduction

### 1.1 Background

#### My study, training and experience

- 1.1.1 My Curriculum Vitae is at Appendix A. My address is Level 5, Chifley Tower, 2 Chifley Square, Sydney NSW 2000. I am a partner at KordaMentha, specialising in Forensic Accounting.
- 1.1.2 My specialised knowledge based on my study, training and experience which is of relevance to this engagement is as follows:
- a. I am a Forensic Accounting Specialist (as designated by Chartered Accountants Australia and New Zealand ('CAANZ')). I provide forensic accounting and financial investigation services.
  - b. My education, training and experience include the following:
    - i. A Bachelor degree (with Honours) in Management Sciences, which included the study of accounting, management and management information systems;
    - ii. Qualification as a Chartered Accountant. I am a Fellow of CAANZ ('FCA'), and a Fellow of the Institute of Chartered Accountants in England & Wales ('FCA, UK'); and
    - iii. Qualification as a certified fraud examiner ('ACFE').
  - c. Twenty-nine years of accounting experience, including:
    - i. Experience in the provision of audit services to major listed and private companies in the London and Sydney offices of Coopers & Lybrand (later PricewaterhouseCoopers). This included reviews and assessments of accounting records and financial statements prepared by audit clients;
    - ii. Providing forensic accounting services since 2000. During that time, I have undertaken forensic accounting, accounting investigation, tax avoidance investigation, regulatory review, asset tracing and economic loss and damage assignments. Many of these engagements were undertaken in the context of contractual disputes, alleged fraud, accounting irregularities, cost allocation/regulatory reviews, tax avoidance and the misappropriation of funds;
    - iii. These assignments required me to review and/or reconstruct Financial Statements and Financial Records, undertake calculations, and provide opinions on the loss suffered under various heads of loss, assess the level of revenues and costs attributable to specified activities, and to provide opinions on the manner in which transactions were recorded; and
    - iv. Many of those assignments have required me to act in the capacity of Expert Witness, and to provide expert evidence in civil or criminal trials, arbitrations and tribunal hearings.
- 1.1.3 Details of these assignments are included in my Curriculum Vitae.

#### Purpose

- 1.1.4 This report is prepared in respect of matter number NSD67/2024 in the Federal Court of Australia ('the Proceedings'). The parties to the Proceedings are:
- a. Press Metal Aluminium (Australia) Pty Ltd ('PMAA');
  - b. PMB Aluminium Sdn Bhd ('PMBA'); and

c. Minister for Industry & Science ('Minister') and others.

- 1.1.5 I am instructed by Corrs Chambers Westgarth who act for PMAA and PMBA. My instructions are set out in a letter dated 25 July 2024 ('My Letter of Instruction'), a copy of which is at Appendix B.
- 1.1.6 I previously prepared a report dated 29 April 2022 ('My First Report') in relation to an inquiry ('Continuation Inquiry 591') by the Anti-Dumping Commission ('Commission') as to whether anti-dumping measures imposed on aluminium extrusions exported from Malaysia and Vietnam should be continued.
- 1.1.7 I am instructed that PMAA and PMBA have now commenced proceedings in the Federal Court of Australia seeking judicial review of a decision of the Minister to secure the continuation of the anti-dumping measures imposed on aluminium extrusions exported from Malaysia and Vietnam ('Decision'). I am instructed to provide a report that may be relied on in the course of those proceedings, considering issues including those which I was asked to consider in My First Report, but taking into account materials that were not available to me at the time that report was prepared<sup>1</sup>.
- 1.1.8 I have read, understood, complied with and agree to be bound by the *Expert Evidence Practice Note* (GPN-EXPT) ('Practice Note') and the *Harmonised Expert Witness Code of Conduct* ('Code') of the Federal Court of Australia. I set out the conduct of this assignment in Section 6 of this report.

#### Background facts

- 1.1.9 I have been provided with the background matters set out in My Letter of Instruction. I assume these are accurate. For completeness, these background matters are set out in full below, without exclusion.<sup>2</sup>

#### General

- 1.1.10 Anti-dumping measures were imposed on exports of aluminium extrusions from Malaysia and Vietnam on 27 June 2017 by the publication of a dumping duty notice and countervailing duty notice for Malaysian exports and dumping duty notice for Vietnamese exports (Anti-Dumping Notices Nos 2017/72 and 2017/73). The notices were published by the then Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science ('Assistant Minister') under sections 269TG and 269TJ of the *Customs Act 1901* (Cth) ('Customs Act').
- 1.1.11 The imposition of the anti-dumping measures followed the conduct of a dumping and subsidy investigation ('Investigation 362') into exports of aluminium extrusions exported to Australia from Malaysia and Vietnam by the Anti-Dumping Commissioner ('Commissioner') and the provision by the Commissioner of his report and recommendations to the Assistant Minister ('Report 362'). Although the investigation extended to exports by a related entity of PMBA ('PMB'), the anti-dumping measures were not recommended to, and did not, apply to exports by PMB.
- 1.1.12 On 24 February 2020, a review of those measures ('Review 544') was initiated. The Commissioner reported to the then Minister for Industry, Science and Technology with his report and recommendations following that review on 29 April 2021 ('Report 544'). The Minister for Industry, Science and Technology accepted the Commissioner's recommendations arising from Review 544 and by a notice published on 2 June 2021 altered the variable factors (i.e., export prices, normal value) and, consequently, the dumping margin applying to aluminium extrusions exported to Australia from Malaysia and Vietnam (Anti-Dumping Notice No. 2021/037).

<sup>1</sup> My Letter of Instruction, paragraphs 3 to 4.

<sup>2</sup> My Letter of Instruction, paragraphs 5 to 47.

- 1.1.13 The Commissioner found in Review 544 that PMB had been replaced by PMBA, following a corporate reorganisation within the Press Metal group, as the exporter of aluminium extrusions from Malaysia. Accordingly, the Commissioner determined an individual dumping margin for PMBA based on best available information as part of his review of the anti-dumping measures and recommended to the Minister that the anti-dumping measures be varied to impose dumping duty at that rate on exports by PMBA. That recommendation was accepted by the Minister (Anti-Dumping Notice No. 2021/037).
- 1.1.14 At the same time as Review 544, dumping investigations ('**Investigations 540 and 541**') were initiated into exports of aluminium extrusions exported to Australia from Malaysia by exporters (including PMB) who had been exempted from the anti-dumping measures imposed on 27 June 2017 due to their exports being determined not to have been at dumped export prices in the original investigation, Investigation 362.
- 1.1.15 The Commissioner reported to the Minister with his reports and recommendations in Investigations 540 and 541 on 29 April 2021 ('**Reports 540 and 541**'). The Minister accepted the Commissioner's recommendations in those reports and made his decision to impose anti-dumping measures on exports from Malaysia on 2 June 2021 (Anti-Dumping Notice Nos 2021/033 and 2021/035).
- 1.1.16 While exports by PMB were found by the Commissioner, in those investigations, to have been at dumped export prices, the Commissioner found (consistently with Review 544) that PMB had been superseded by PMBA as the exporter of aluminium extrusions from Malaysia and so PMB was unlikely to export aluminium extrusions from Malaysia at dumped export prices in the future. For this reason, its exports were exempted (i.e., not included) from the imposition of the anti-dumping measures referred to in paragraph 1.1.15 above.
- 1.1.17 On 2 February 2021, prior to the publication of the outcomes of Review 544 and Investigations 540 and 541, PMBA applied for an accelerated review for a separate determination of whether its exports of aluminium extrusions from Malaysia to Australia were at dumped export prices and, if so, the margin of dumping. The accelerated review ('**Accelerated Review 577**') was initiated on 17 February 2021 (Anti-Dumping Notice No. 2021/023).
- 1.1.18 The Commissioner reported his findings and recommendations in Accelerated Review 577 to the Minister on 13 May 2021 ('**Report 577**') and the Minister accepted the Commissioner's recommendations and published his decision on 10 June 2021 (Anti-Dumping Notice No. 2021/062).

*Continuation Inquiry 591*

- 1.1.19 On 15 September 2021, the Commissioner announced the initiation of Continuation Inquiry 591 (Anti-Dumping Notice 2021/119). Continuation Inquiry 591 was an inquiry into whether the anti-dumping measures imposed on exports of aluminium extrusions from Malaysia and Vietnam on 27 June 2017 should be allowed to expire on their due date of expiry of 27 June 2022 or be continued for a further five years from that date. The primary consideration for whether anti-dumping measures should be allowed to expire or be continued for a further period of five years is whether the expiry of the anti-dumping measures would lead to, or be likely to lead to, the continuation or recurrence of dumping and the material injury that the anti-dumping measures are intended to prevent.
- 1.1.20 On 22 October 2021, PMBA filed with the Commission a duly completed Exporter Questionnaire in connection with that inquiry. That response to the Exporter Questionnaire provided information concerning PMBA's export sales to Australia and its domestic sales in Malaysia, as well as its cost to make and sell ('**CTMS**') aluminium extrusions for such sales, during the investigation period of 1 July 2020 to 30 June 2021. It did so to enable the Commission to determine whether its exports during this period were at dumped export prices and, if so, to what extent.

- 1.1.21 On 22 November 2021, the Commission commenced its verification of the accuracy and completeness of information contained in the response to the Exporter Questionnaire to enable it to make the determinations referred to above, which verification was completed on 8 December 2021.
- 1.1.22 On or about 3 March 2022, the Commission provided a copy of its exporter verification report in respect of PMBA (**'PMBA Verification Report 591'**) and associated appendices to PMBA. In addition to the report, the documents provided included relevantly:
- a. Confidential Appendix 1 (Export Price) to draft verification report;
  - b. Confidential Appendix 3 (Normal Value) to draft verification report; and
  - c. Confidential Appendix 4 (Dumping Margin) to draft verification report.
- 1.1.23 On or about 7 March 2022 the Commission also provided to PMBA a spreadsheet titled "591 – PMBA – Appendix 3 – GP7-C-Level of trade analysis for domestic sales" (**'Document 23'**) that it had used in connection with the preparation of PMBA Verification Report 591.
- 1.1.24 On 11 March 2022, PMBA provided its comments on the verification report, including as to matters it submitted required correction. The comments are recorded in PMBA's submission published on the Commission's electronic public record (**'EPR'**) for Continuation Inquiry 591 as document number '24' and a spreadsheet that was attached to that submission.
- 1.1.25 On 17 March 2022, the Commission published PMBA Verification Report 591 on the EPR.
- 1.1.26 On 18 March 2022, the Commission published Statement of Essential Facts 591 (**'SEF 591'**).
- 1.1.27 On 7 April 2022, PMBA made a submission to the Commission, responding to PMBA Verification Report 591 and SEF 591, including by expanding on the matters it submitted required correction. This submission was published on the EPR for Continuation Inquiry 591 as document number '29'.
- 1.1.28 Corrs Chambers Westgarth's clients made a number of other submissions to the Commission in the course of Continuation Inquiry 591, one of which included My First Report.
- 1.1.29 At the conclusion of Continuation Inquiry 591, the Commission issued Report 591 dated 13 May 2022 (**'Report 591'**) in which it found that while dumping from Malaysia and Vietnam was likely to continue, this was not likely to lead to a continuation or recurrence of material injury to the Australian industry in the absence of the anti-dumping measures. Accordingly, the Commission recommended to the Minister that the anti-dumping measures applying to aluminium extrusions exported to Australia from Malaysia and Vietnam be allowed to expire on 27 June 2022.
- 1.1.30 Notwithstanding that recommendation, the Commission also recommended that the Minister make findings that:
- a. The export price of aluminium extrusions exported from Malaysia to Australia by PMBA is as set out in Confidential Attachment 3 (PMBA Export Price) to Report 591;
  - b. The normal value of aluminium extrusions exported from Malaysia to Australia by PMBA is as set out in Confidential Attachment 5 (PMBA Normal Value) to Report 591.
- 1.1.31 The Commission's recommendations were accepted by the Minister on 24 June 2022, as recorded in Anti-Dumping Notice No. 2022/042 (**'Original Decision'**).
- Review 155 and Reinvestigation*
- 1.1.32 On 17 August 2022, the Anti-Dumping Review Panel (**'Panel'**) published a notice of its intention to conduct a review of the Minister's Original Decision (**'Review 155'**).
- 1.1.33 On 21 October 2022, the Panel requested the Commission to reinvestigate the finding in Report 591 (**'Reinvestigation'**), that material injury to the Australian industry was not likely to continue or recur in the absence of anti-dumping measures.

- 1.1.34 Corrs Chambers Westgarth’s clients made submissions to the Reinvestigation, part of which requested the Commission to reconsider, in light of My First Report, its findings that exports by PMBA had been at dumped prices.
- 1.1.35 At the conclusion of the Reinvestigation, the Commission issued to the Panel its Reinvestigation Report dated 21 August 2023 (**‘Reinvestigation Report’**) in which it found, contrary to its findings in Report 591, that the expiration of the anti-dumping measures would lead, or be likely to lead, to a continuation or recurrence of the material injury that the anti-dumping measures were intended to prevent. The Commission did not consider the question of the likelihood of *dumping* continuing or recurring, on the basis that this was outside the scope of the Panel’s reinvestigation request.
- 1.1.36 On 19 September 2023, the Panel issued Report 155 (**‘Report 155’**), in which it recorded its finding that the Original Decision was not the correct and preferable decision. The Panel recommended that the Minister revoke the Original Decision and substitute a new decision to secure the continuation of the anti-dumping measures applying to exports of aluminium extrusions from Malaysia and Vietnam.
- 1.1.37 On 14 December 2023, the Minister accepted the Panel’s recommendations and reinstated the anti-dumping measures from that date, but as if different variable factors had been fixed in accordance with Report 591. This Decision, as well as Report 155 and Report 591, are the subject of the current judicial review proceedings.

*Duty assessments*

- 1.1.38 On 27 June 2022, PMAA applied to the Commission for a final duty assessment in respect of imports of aluminium extrusions from PMBA during the period 27 June 2021 to 26 December 2021, on which PMAA had paid interim duty (**‘DA0243’**). The Commission issued its report in April 2023 (**‘Report DA0243’**) in which it provided a negative preliminary determination. That is, the Commission found that, based on an assessment of whether the relevant goods were exported at dumped prices, the interim dumping duty paid by PMAA during that period was less than the duty it should have paid.
- 1.1.39 In response, PMAA applied to the Panel for a review of the Commission’s negative preliminary determination. In ADRP Decision No. 167 dated 31 July 2023 (**‘Decision 167’**), the Panel revoked the Commission’s negative preliminary determination and recommended that the Minister order a repayment of the amount of the interim duty that was overpaid by PMAA. This was on the basis that that the normal values had been incorrectly determined by the Commission.
- 1.1.40 On 28 December 2022, PMAA applied to the Commission for a further duty assessment in relation to imports of aluminium extrusions from PMBA in the period 27 December 2021 to 28 June 2022, on which PMAA had paid interim duty (**‘DA0254’**). In its report issued in December 2023 (**‘Report DA0254’**), the Commission recommended that, based on the variable factors determined, the full amount of the interim duty paid by PMAA be refunded.

*Issues arising from Continuation Inquiry 591*

- 1.1.41 To determine whether an exporter’s goods have been sold into Australia at dumped export prices, the Commission, using the verified information provided by the exporter, calculates a weighted average export price for the exports to Australia during the relevant review period that is then compared to the weighted average ‘normal value’ of such exports. The ‘normal value’ is the domestic selling price of like goods to those exported to Australia sold in the exporting country during the same review period and is calculated as a weighted average of such prices over the same period. To the extent that the weighted average export price is less than the normal value (i.e., weighted average domestic sales prices), the export prices are dumped export prices with the difference being the dumping margin. The final dumping margin calculations for PMBA in Continuation Inquiry 591 are recorded in:



- a. Confidential Attachment 3 (PMBA Export Price) to Report 591;
- b. Confidential Attachment 5 (PMBA Normal Value) to Report 591; and
- c. Confidential Attachment 6 (PMBA Dumping Margin) to Report 591.

1.1.42 In comparing the export prices with the normal value, it is a requirement under Article 2.4 of the *WTO Anti-Dumping Agreement* and section 269TAC(8) of the Customs Act that it be a 'proper comparison', also known as a 'fair comparison'. That is, the normal value is to be adjusted to eliminate differences that may affect its comparability with the export prices, such as, physical differences, differences in the terms and conditions of sale, etc. Article 2.4 of the *WTO Anti-Dumping Agreement* and section 269TAC(8) of the Customs Act have been extracted at Section D of My Letter of Instruction.

1.1.43 In connection with such adjustments, at Section 8.2 of PMBA Verification Report 591, the Commission made the following statements regarding the determination of a normal value:

*PMBA claimed that the verification team should make a level of trade adjustment for domestic sales made via PMBA's claimed retail sales division.*

*The verification team conducted price comparisons in relation to PMBA's claimed level of trade classifications, MCC and customer. The team compared weighted average prices for different MCCs and examined sales volume, and customers grouped according to PMBA's different levels of trade.*

*The verification team's analysis found immaterial price differences between claimed levels of trade.*

*Further, the verification team notes that PMBA has not provided sufficient information for the verification team to be satisfied that the claimed retail division of PMBA sells to customers representing one level of trade only.*

*Given the above, the verification team is not satisfied that it should make a level of trade adjustment for the normal value in relation to domestic sales.*

1.1.44 The Commission later stated at Section 6.3.10 of Report 591:

*PMBA claims that a level of trade adjustment is required to reflect and take account of alleged differences in levels of trade in respect of domestic sales for the purpose of comparison with export sales prices to Australia.*

*The commission was not satisfied that it should make a level of trade adjustment for the normal value in relation to domestic sales. This was based on finding immaterial price differences between the claimed levels of trade. The analysis was conducted down to specific MCCs. PMBA has disputed this finding.*

*The commission is not satisfied that the claimed retail division of PMBA only sells to customers representing one level of trade only. From the evidence and data provided, it appears that the sales are from a different location other than PMBA's main distribution site, and not necessarily confined to an actually distinguishable level of trade (i.e. the sales need not be exclusively retail sales, for example).*

*As stated in the Manual, 'The evidence must demonstrate that the sales being compared were made at different levels of trade. An adjustment for trade level will only be made when these differences in levels of trade are shown to have affected price.' Further, when the commission considers that sales are at different levels, it will consider two main issues: the selling activities carried out at the different marketing stages, and the price differences between sales in the domestic market.*

*The commission was unable to distinguish the difference in selling activities between the claimed levels of trade. It appears that there are a mix of customers sold to through each sales route. The same sales team manages sales directly from PMBA and sales made through the retail division. Further, the commission was not provided with any information about the sales functions of the customer, which is an important indicia for assessing whether the sales were made at a different level of trade.*

*The Manual further states that 'there must be consistent and distinct differences in sale prices in order to establish a real difference in level of sales... The Commission will examine the pricing structure in order to determine whether all of the sales should remain in the normal value calculation. If there are no real differences in pricing between the nominated levels the domestic sales to all levels will be considered for normal value purposes.'*

*While not being able to distinguish if different levels of trade even exist based on selling activities, the commission still examined whether there were price differences between the claimed levels of trade. While PMBA has submitted that there is a difference, its calculations are based on a weighted average difference across all models. This approach introduces other variations (e.g. by finish type) which would lead to price differences which are unrelated to the level of trade, and so is not a relevant comparison.*

*Instead, the commission takes the same approach to model matching, using the MCCs to compare normal values to export prices for the most comparable products, to examine whether there is a difference in pricing for levels of trade. For the largest volume MCCs, the commission found that there were no consistent or distinct differences in sales prices that would establish a real difference in the level of sales.*

*Based on the evidence provided by PMBA, verified data and further analysis, the commission does not agree that a level of trade adjustment is warranted.*

...

*As a result, an adjustment to the normal value is not required as domestic sales were already comparable to export sales.*

- 1.1.45 The price comparisons made in respect of PMBA by the Commission for the purpose of its assessment, in PMBA Verification Report 591, of whether a level of trade adjustment should be made are recorded in the spreadsheet titled "591-PMBA-Appendix 3-GP7-C-Level of trade analysis for domestic sales". The Commission relied on the same analysis when making its findings in Report 591.
- 1.1.46 In light of the findings quoted above, the Commission did not make the level of trade adjustment to the normal value claimed by PMBA for the purposes of the 'proper comparison' of the normal value with export prices.
- 1.1.47 PMBA claimed that the level of trade adjustment was required because sales by its Johor Bahru ('JB') division were to retail customers, whereas export sales by PMBA were to PMAA which is a distributor of aluminium extrusions in the Australian market.
- 1.1.48 PMBA also contended that its sales through its JB division are at the retail level of trade as reflected in Tab (a) 'Domestic Sales' of Confidential Attachment 5 (PMBA Normal Value) to Report 591.
- 1.1.49 PMB had similarly claimed, in each of Investigations 540 and 541, that an adjustment should be made to reflect sales to the retail level of trade by the JB division. The Commission agreed, in each of those investigations, that such an adjustment was appropriate. The Commission's conclusions with respect to that adjustment, and the manner in which the Commission calculated the adjustment, can be seen in the following documents:



- a. Extracts from Reports 540 and 541, and from the PMB Exporter Verification Reports in Investigations 540 and 541, in Attachment A to My Letter of Instruction;
- b. For the Commission's calculations in Investigation 540:
  - i. Confidential Attachment 4 (PMB Sales) to Report 540;
  - ii. Confidential Attachment 5 (PMB Normal Value) to Report 540; and
  - iii. Confidential Attachment 6 (PMB Dumping Margin) to Report 540;
- c. For the Commission's calculations in Investigation 541:
  - i. Confidential Attachment 4 (PMB Sales) to Report 541;
  - ii. Confidential Attachment 5 (PMB Normal Value) to Report 541; and
  - iii. Confidential Attachment 6 (PMB Dumping Margin) to Report 541.

1.1.50 An adjustment of the same nature was also claimed by PMBA in Accelerated Review 577 and accepted by the Commission. The Commission's conclusions with respect to that adjustment, and the manner in which the Commission calculated the adjustment, can be seen in the following documents:

- a. Report 577 (at Section 5.6) (extracted in Attachment A to My Letter of Instruction);
- b. Confidential Appendix 3 (Normal Value) to Report 577; and
- c. Confidential Appendix 4 (Dumping Margin) to Report 577.

1.1.51 PMAA also claimed a level of trade adjustment in duty assessments DA0243 and DA0254 to account for the sales at the retail level by the JB division. In both of those duty assessments, the Commission agreed that such an adjustment was warranted (though the Commission's adjustment method in DA0243 was found to be incorrect on review by the Panel). The Commission's conclusions with respect to that adjustment, and the manner in which the adjustment was calculated, can be seen in the following documents:

- a. Extracts from Report DA0243, Decision 167 and Report DA0254 in Attachment A to My Letter of Instruction;
- b. For the Commission's calculations in DA0243:
  - i. Confidential Appendix 3 (Normal Value) to Report DA0243; and
  - ii. Confidential Appendix 4 (Dumping margin) to Report DA0243;
- c. For the Panel's revised calculations in Decision 167:
  - i. Confidential Attachment Three (DA0243 – PMBA – Appendix 3 Normal Value with LME timing adjustment % spreadsheet) to Decision 167; and
  - ii. Confidential Attachment Four (DA0243 – PMBA – Appendix 4 Dumping Margin with LME timing adjustment spreadsheet) to Decision 167;
- d. For the Commission's calculations in DA0254:
  - i. Confidential Appendix 3 (Normal value summary table) to Report DA0254; and
  - ii. Confidential Appendix 4 (Dumping Margin) to Report DA0254.

1.1.52 In Continuation Inquiry 591, to the extent that the amount of the normal value was affected by differences between retail sales by PMBA through the JB division and sales by PMBA to domestic customers which were distributors, those differences were not taken into account by the Commission in comparing the normal value with export prices in export sales by PMBA to PMAA. While determining that the price differences in the level of trade were not material, the Commission did not ultimately quantify that price difference in its calculations.



*Legal provisions*

1.1.53 Australia's anti-dumping legislation is contained in Part XVB of the Customs Act. The relevant statutory provision regarding adjustments for the comparison of a normal value with export prices is set out in section 269TAC(8)(c) of the Customs Act, which provides:

(8) *Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:*

...

(c) *are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;*

*that price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.*

1.1.54 This provision gives effect to Article 2.4 of the WTO Anti-Dumping Agreement, which relevantly provides:

*2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties. (footnote omitted)*

1.1.55 I have assumed that these matters are accurate for the purposes of preparing my report.

## **1.2 My Questions**

1.2.1 I am instructed to respond to the following questions<sup>3</sup>.

**'Question 1'**

1.2.2 Was there a difference in price both:

- a. within each model control code ('MCC'); and
- b. across all MCCs,

between aluminium extrusions sold domestically at different levels of trade by PMBA, that is, between sales by the JB division to its customers, as compared with sales to other customers and, if so, what were those prices, and to what extent did they differ?

<sup>3</sup> My Letter of Instruction, paragraph 48.



**'Question 2'**

- 1.2.3 If my answers to Question 1 above differ from the relevant conclusions reached by the Commission in Report 591 (that there were "*immaterial price differences between the claimed levels of trade*", and "[f]or the largest volume MCCs ... there were no consistent or distinct differences in sales prices"):

**'Question 2A'**

- a. what methodology was employed by the Commission to reach its conclusions in Report 591 on the difference in price and how did that methodology differ from my methodology in answering Question 1 above?

**'Question 2B'**

- b. was the Commission's conclusion affected (and if so, to what extent) by:
- i. the selection by the Commission of a limited number of customers to whom sales were made;
  - ii. the selection by the Commission of a limited number of customers within each MCC category to whom sales were made; and/or
  - iii. inclusion by the Commission of sales that were not made in the ordinary course of trade ('OCOT') (that is, unprofitable sales)?

**'Question 3'**

- 1.2.4 Having regard to the methodology (or methodologies) employed by the Commission in Accelerated Review 577, Investigations 540 and 541 and Duty Assessments DA0243 (as corrected by the Panel) and DA0254 to assess whether, and to what extent, a level of trade adjustment was required with respect to sales by the JB division:

**'Question 3A'**

- a. please explain how that methodology (or methodologies) differs from the methodology used by the Commission to make the same assessment in Report 591; and

**'Question 3B'**

- b. please explain what the outcome would have been (in terms of level of trade adjustment, and dumping margin, for PMBA) in Continuation Inquiry 591 if the Commission had:
- i. employed the methodology I used to identify any price differences in my answers to Question 1 above;
  - ii. employed the methodology (or methodologies) used by the Commission in Accelerated Review 577, Investigations 540 and 541 and Duty Assessments DA0243 (as corrected by the Panel) and DA0254 to reach their conclusion;
  - iii. excluded sales that were not made in the OCOT but otherwise adopted the same methodology the subject of my answer to Question 2A above;
  - iv. included sales by all customers across all MCCs but otherwise adopted the same methodology the subject of my answer to Question 2A above (i.e., including sales that were not made in the OCOT, if applicable); or
  - v. included sales by all customers within each MCC but otherwise adopted the same methodology the subject of my answer to Question 2A above (i.e., including sales that were not made in the OCOT, if applicable)?

### 1.3 Assumptions

- 1.3.1 In answering My Questions, I have been instructed to make the following assumptions<sup>4</sup>:
- a. The Continuation Inquiry 591 related to an investigation period of 1 July 2020 to 30 June 2021;
  - b. The Commissioner has verified that the underlying data concerning PMBA's domestic and export sales set out in the confidential appendices and attachments to the Report 540, Report 541, Report 577, PMBA Verification Report 591, Report 591, Report DA0243, Decision 167, and Report DA0254 are correct;
  - c. The mathematical calculations prepared by the Commissioner / Panel in those confidential appendices and attachments are correct; and
  - d. In the Commissioner's calculations in those confidential appendices and attachments for Continuation Inquiry 591, customer groups referred to as "Inter-Co", "Local" and "Subsidiary" relate to the "Distribution"<sup>5</sup> level of sales to customers, and customer group "JB" relates to the "Retail"<sup>6</sup> level of sales to customers.
- 1.3.2 Additional assumptions are set out in the body of this report.
- 1.3.3 Should any of these assumptions change, my opinions may alter.

### 1.4 Documents and information

- 1.4.1 The documents and information that I have been instructed to consider are listed in Appendix C and attached as Exhibit 1.
- 1.4.2 My work did not include the procedures necessary to conduct an audit or to enable me to express an opinion as to whether the financial information contained in this report present a true and fair view in accordance with applicable accounting standards and accordingly, no such opinion is expressed.
- 1.4.3 I have assumed that the information supplied to me is accurately stated and complete. Neither KordaMentha, nor I warrant the accuracy or reliability of any of the information supplied to me. The opinions set out in this report may alter if there are any changes to the information supplied to me.
- 1.4.4 I have not been provided with all of the underlying calculations of the reports I am instructed to consider in answering my Questions. If I am provided with this information and it differs to my assumptions and conclusions set out in this report, my opinion may change. The information missing is:
- a. The underlying calculations in Microsoft Excel format, for specific amounts recorded in document "1. PMB Verification Report 540" ('**PMB Verification Report 540**'); and
  - b. The underlying calculations, in Microsoft Excel format, for specific amounts recorded in document "7. PMB Verification Report 541" ('**PMB Verification Report 541**').

### 1.5 Structure of this report

- 1.5.1 The structure of the remainder of this report is as follows.
- 1.5.2 In Section 2, I set out a summary of my opinions.
- 1.5.3 In Section 3, I set out my response to Question 1.
- 1.5.4 In Section 4, I set out my response to Question 2.

<sup>4</sup> My Letter of Instruction, paragraph 49.

<sup>5</sup> In this report, I refer to these customers as 'Distribution' customers.

<sup>6</sup> In this report, I refer to these customers as 'Retail' customers.

- 1.5.5 In Section 5, I set out my response to Question 3.
- 1.5.6 In Section 6, I set out other matters relevant to this report, including reference to relevant Court and professional guidelines.



## 2. Summary of my opinions

### 2.1 Introduction

2.1.1 In this Section, I summarise the opinions expressed elsewhere in this report. Because it is a summary, this section does not include all bases for those opinions and should therefore, be read in conjunction with the full report.

### 2.2 Question 1

2.2.1 For convenience, Question 1 is set out below:

*Was there a difference in price both:*

*within each model control code ('MCC'); and*

*across all MCCs,*

*between aluminium extrusions sold domestically at different levels of trade by PMBA, that is, between sales by the JB division to its customers, as compared with sales to other customers and, if so, what were those prices, and to what extent did they differ?*

2.2.2 The price of aluminium extrusions sold by PMBA to Distribution customers (██████████) was, on average, ██████████/kg (████%) less than the aluminium extrusions sold to Retail customers (MYR ██████████/kg).

2.2.3 For the five MCCs where there are sales to both Retail and Distribution customers, the weighted average net invoice price for Distribution customers was lower than for Retail customers. This difference ranged between negative █████% (for the PC-6A-T1 MCC) and negative █████% (for the M-6B-T1 MCC). The MCC with the largest quantity and value of sales (M-6A-T1<sup>7</sup>) recorded a difference of negative █████%, and the MCC with the second largest quantity and value of sales (NA-6A-T1<sup>8</sup>) recorded a difference of negative █████%.

Table 1: Summary of difference in sales to Retail and Distribution customers (MYR)

MCC	Distribution			Retail			Difference (MYR/kg)	Difference (% Distribution of Retail)
	Quantity (kg)	Net invoice value (MYR)	Weighted average price (MYR/kg)	Quantity (kg)	Net invoice value (MYR)	Weighted average price (MYR/kg)		
	A	B	C = B/A	D	E	F = E/D	G = F - C	H = C/F - 1
CA-6A-T1	██████████	██████████	██████████	██████████	██████████	██████████	██████████	██████████
CA-6B-T1	██████████	██████████	██████████	██████████	██████████	██████████	██████████	██████████
M-6A-T1	██████████	██████████	██████████	██████████	██████████	██████████	██████████	██████████
M-6B-T1	██████████	██████████	██████████	██████████	██████████	██████████	██████████	██████████
M-6C-T1	██████████	██████████	██████████	██████████	██████████	██████████	██████████	██████████
M-O-O	██████████	██████████	██████████	██████████	██████████	██████████	██████████	██████████
M-O-T1	██████████	██████████	██████████	██████████	██████████	██████████	██████████	██████████
NA-6A-T1	██████████	██████████	██████████	██████████	██████████	██████████	██████████	██████████
NA-6B-T1	██████████	██████████	██████████	██████████	██████████	██████████	██████████	██████████
PC-6A-T1	██████████	██████████	██████████	██████████	██████████	██████████	██████████	██████████
Total	██████████	██████████	██████████	██████████	██████████	██████████	██████████	██████████

Source: Section 3 and Appendix D.

<sup>7</sup> Being a combined Retailer and Distribution quantity of 7.1 million and value of sales of \$80.3 million.

<sup>8</sup> Being a combined Retailer and Distribution quantity of 5.2 million and value of sales of \$69.2 million.

2.2.4 This analysis is not on an OCOT<sup>9</sup> basis (i.e. it includes some unprofitable sales based on the approach adopted by the Commission).

## 2.3 Question 2

2.3.1 In Section 4 below, I discuss my analysis of, and opinion on Question 2.

2.3.2 My answers to Question 1 do differ from the relevant conclusions reached by the Commission in Report 591. I therefore respond to Question 2 as follows.

### Question 2A

2.3.3 I am asked to identify “*what methodology was employed by the Commission to reach its conclusions in Report 591 on the difference in price and how did that methodology differ from [my] methodology in answering [Question 1] above?*” (which I refer to in this report as Question 2A)

2.3.4 The difference between the methodology I have adopted in answering my Question 1, and the Commission’s analysis (as applied in Document 23) is summarised in the table below.

Table 2: Methodology comparison between my Question 1 and the Commission’s Document 23

Aspect	My Question 1	The Commission’s Analysis
Level of trade	Retail and Distribution	“JB”, “Local” and Subsidiary”
OCOT	No <sup>10</sup>	No <sup>11</sup>
# of MCCs	All (10)	4
# of customers	All (321) <sup>12</sup>	7

Source: KordaMentha Analysis.

2.3.5 Given the outcomes of the Commission’s analysis (limited, in my opinion, in the ways illustrated in Table 2), and as set out in Table 11 to Table 14 below which shows price differences between “JB”, “Local” and “Subsidiary” for the MCCs and customers examined, in my opinion the basis for the conclusion drawn by the Commission that “*there is no consistent or distinct differences in sales prices*” is unclear.

### Question 2B

2.3.6 I am asked to consider:

...

(ii) was the Commission’s conclusion affected (and if so, to what extent) by:

(A) the selection by the Commission of a limited number of customers to whom sales were made;

(B) the selection by the Commission of a limited number of customers within each MCC category to whom sales were made, and/or

i. (C) inclusion by the Commission of sales that were not made in the ordinary course of trade (OCOT) (that is, unprofitable sales)? (which I refer to in this report as Question 2B) I have performed three analyses in considering Question 2B.

<sup>9</sup> See Appendix D, tab “Question 1”, where the pivot tables do not include a filter for “Use in NV”.

<sup>10</sup> See Appendix D, tab “Question 1”, where the pivot tables do not include a filter for “Use in NV”.

<sup>11</sup> See Document 23, tab “Price by cust-LoT-MCC”, where the pivot tables do not include a filter for “Use in NV”.

<sup>12</sup> 321 customers represents the number of unique customers in Document 30, tab “(a) Domestic sales” under the column labelled “Customer name”.

*My Analysis A – All Retail and Distribution Customers*

- 2.3.7 I have undertaken an alternative analysis which is not restricted to sales of the “most popular MCCs”, or to “customers with substantial quantities” (as referred to in the analysis by the Commission in Document 23).
- 2.3.8 Instead, My Analysis A, the results of which are shown in Table 3 below, is undertaken on the basis of net invoice prices for sales of all MCCs (not a sample of MCCs as used by the Commission), and for sales to all 321 customers (not the sample of 7 customers used in the Commission’s analysis). Further, it calculates the quantities and weighted average net invoice price of all sales transactions to all customers made in the OCOT<sup>13</sup> (i.e. loss making sales are not included, in contrast to the Commission’s analysis).
- 2.3.9 For the purpose of this analysis, in the table below, I have only presented the weighted average net invoice prices in total for each MCC. The detail for all sales included in this analysis is set out in Appendix D.

**Table 3: Weighted average (OCOT) net invoice price for My Analysis A (MYR/kg)**

	Distribution	Retail	Difference (MYR/kg)	% Difference of Distribution to Retail <sup>14</sup>
CA-6A-T1	████	████	████	████
CA-6B-T1	████	████	████	████
M-6A-T1	████	████	████	████
M-6B-T1	████	████	████	████
M-6C-T1	████	████	████	████
M-O-T1	████	████	████	████
NA-6A-T1	████	████	████	████
NA-6B-T1	████	████	████	████
PC-6A-T1	████	████	████	████
<b>Total</b>	████	████	████	████

Source: Appendix D, tab “Question 2B”.

- 2.3.10 In My Analysis A, which includes all transactions in the OCOT<sup>15</sup> to all customers and MCCs, the total overall difference between the weighted average net invoice price as between Retail and Distribution customers was MYR █████/kg (with Distribution being █████% lower than Retail).
- 2.3.11 The result of My Analysis A is then compared to the weighted average net invoice prices as set out in My Analyses B and C below.

*My Analysis B – Commission’s Limited Customer Analysis*

- 2.3.12 I have compared:
- My Analysis A: the weighted average (OCOT<sup>16</sup>) net invoice price for all Retail and Distribution customers, to
  - My Analysis B: the weighted average (OCOT<sup>17</sup>) net invoice price for the seven customers relied on in the Commission’s analysis.

<sup>13</sup> See Appendix D, tab “Question 2B”, rows 7 to 22, where the pivot tables include a filter for “Use in NV”.

<sup>14</sup> % difference is calculated by expressing the “difference” as the percentage that the weighted average price for Distribution is lower than Retail.

<sup>15</sup> See Appendix D, tab “Question 2B”, rows 7 to 22, where the pivot tables include a filter for “Use in NV”.

<sup>16</sup> See Appendix D, tab “Question 2B”, rows 7 to 22, where the pivot tables include a filter for “Use in NV”.

<sup>17</sup> See Appendix D, tab “Question 2B”, rows 26 to 38, where the pivot tables include a filter for “Use in NV”.



Table 4: Comparison of weighted average (OCOT) net invoice price analyses (MYR/kg) for My Analysis A and My Analysis B

		Distribution	Retail	Difference	% difference of Distribution to Retail
My Analysis A <sup>18</sup>	All Retail and Distribution Customers	████	████	████	████
My Analysis B <sup>19</sup>	Commission's Limited Customer Analysis	████	████	████	████
<b>Difference</b>		████	████		

Source: Section 4 and Appendix D, tab "Question 2B"

- 2.3.13 Based on this analysis, in my opinion the weighted average (OCOT<sup>20</sup>) net invoice price for Retail and Distribution customers is affected by a selection (by the Commission) of a limited number of customers to whom sales were made. Specifically, My Analysis A results in a price difference of MYR █████/kg (with Distribution being █████% lower than Retail), compared to the MYR 0.76/kg difference (with Distribution being █████% lower than Retail) calculated in My Analysis B (the Commission's Limited Customer Analysis).

*My Analysis C – Commission's Limited MCC and Customer Analysis*

- 2.3.14 My Analysis C is prepared on the basis of identifying price differences for sales conducted in the OCOT<sup>21</sup>, utilising the Commission's limited selection of MCCs and customers, but separated into Retail and Distribution levels of trade.
- 2.3.15 The table below sets out a summary which compares the difference in the weighted average prices by MCC between My Analysis C (Commission's Limited MCC and Customer Analysis) and My Analysis A (All Retail and Distribution customers).

Table 5: Difference in weighted average net invoice price between My Analyses A and C (MYR/kg)

MCC	My Analysis C (Commission's Limited MCC and Customer Analysis)		My Analysis A (All Retail and Distribution Customers)		Difference	
	Distribution	Retail	Distribution	Retail	Distribution	Retail
M-6A-T1	████	████	████	████	████	████
NA-6A-T1	████	████	████	████	████	████
CA-6A-T1	████	████	████	████	████	████
PC-6A-T1	████	████	████	████	████	████

Source: Appendix D, tab "Question 2B" rows 170 – 176 and tab "Report Tables"

- 2.3.16 Based on this analysis, in my opinion the weighted average (OCOT<sup>22</sup>) price for Retail and Distribution customers is affected by a selection (by the Commission) of a limited number of customers within each MCC category to whom sales were made. The difference in weighted average prices is larger for Retail customers.

*My overall conclusion on Question 2B*

- 2.3.17 Based on my instructions and my analysis as described above, in my opinion, the Commission's analysis is limited in three respects:

<sup>18</sup> Refer to paragraph 4.3.44.3.3.

<sup>19</sup> Refer to paragraph 4.3.10.

<sup>20</sup> See Appendix D, tab "Question 2B", rows 7 to 38, where the pivot tables include a filter for "Use in NV".

<sup>21</sup> See Appendix D, tab "Question 2B, rows 85 to 130, where the pivot tables include a filter for "Use in NV".

<sup>22</sup> See Appendix D, tab "Question 2B, rows 7 to 22 and 85 to 130, where the pivot tables include a filter for "Use in NV".

- a. The Commission's analysis does not calculate the weighted average net invoice price at each of the two levels of trade, being Retail and Distribution;
- b. The Commission's analysis does not include an adjustment for the unprofitable MCCs. That is, the Commission's analysis is not based on the weighted average net invoice price of aluminium extrusions sold in the ordinary course of trade (OCOT)<sup>23</sup>; and
- c. The Commission's analysis is limited, or undertaken only on a sample basis, only focusing on four MCCs and seven customers.

2.3.18 In my opinion, it is self-evident that absent these limitations or without adopting these approaches, the Commission would have produced different price difference results. Specifically, in response to my Question 2B, the Commission's conclusion was affected by:

- a. The selection by the Commission of a limited number of customers to whom sales were made.
  - i. In my opinion the weighted average (OCOT) net invoice price for Retail and Distribution customers is affected by a selection (by the Commission) of a limited number of customers to whom sales were made.
  - ii. As identified in Table 19 below, when comparing My Analysis A (All Retail and Distribution Customers) to My Analysis B (Commission's Limited Customer Analysis), there is a difference between the weighted average net invoice price. Specifically, My Analysis A results in a price difference of MYR █████/kg (with Distribution being █████% lower than Retail), compared to the MYR █████/kg difference (with Distribution being █████% lower than Retail) calculated in My Analysis B (the Commission's Limited Customer Analysis).
  - iii. Both of these analyses are prepared in the OCOT<sup>24</sup>.
- b. The selection by the Commission of a limited number of customers within each MCC category to whom sales were made.
  - i. As identified in Table 24 below, when comparing My Analysis A (All Retail and Distribution Customers) to My Analysis C (Commission's Limited MCC and Customer Analysis), there is a difference in the weighted average net invoice price for both Distribution and Retail customers.
  - ii. The weighted average net invoice price for Retail customers in My Analysis A is higher for each of the MCCs (ranging from MYR █████/kg to MYR █████/kg higher, by comparison to the average prices arrived at under the Commission's Limited MCC and Customer Analysis). The weighted average net invoice price for Distribution customers in My Analysis A is higher for three out of four of the MCCs (ranging from MYR █████/kg to MYR █████/kg).
  - iii. Both of these analyses are prepared in the OCOT<sup>25</sup>.
- c. The inclusion by the Commission of sales that were not made in the ordinary course of trade (OCOT<sup>26</sup>) (that is, unprofitable sales).
  - i. Each of My Analyses A to C include an adjustment for OCOT<sup>27</sup>. After the inclusion of this adjustment, where applicable, there is a difference between the weighted average net invoice price for Distribution and Retail customers.
  - ii. This is evident from my analysis in Table 20 to Table 23 below.

<sup>23</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV".

<sup>24</sup> See Appendix D, tab "Question 2B", rows 7 to 38, where the pivot tables include a filter for "Use in NV".

<sup>25</sup> See Appendix D, tab "Question 2B, rows 7 to 22 and 85 to 130, where the pivot tables include a filter for "Use in NV".

<sup>26</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV".

<sup>27</sup> See Appendix D, tab "Question 2B, rows 7 to 38 and 85 to 130, where the pivot tables include a filter for "Use in NV".



## 2.4 Question 3

2.4.1 In Section 5 below, I discuss my analysis of, and opinion on Question 3. I have responded to Question 3 as follows.

### Question 3A

#### *Commission's methodologies*

2.4.2 I have reviewed and listed each of the methodologies adopted by the Commission in Continuation Inquiry 591, Accelerated Review 577, Investigations 540 and 541, Report DA0243, Decision 167 and Report DA0254 in relation to level of trade adjustments at paragraphs 5.2.1 to 5.2.30 below. A summary comparison of each of these methodologies can be found in Table 6 and Table 37 below.

### Question 3B

#### *The Commission's dumping margin methodologies and outcomes*

2.4.3 I have been instructed to opine on what the level of trade adjustment and dumping margin outcome would have been in Continuation Inquiry 591 under various scenarios, including by adopting the same methodologies as the Commission used in Accelerated Review 577, Investigations 540 and 541, Report DA0243, Decision 167 and Report DA0254.

2.4.4 The various methodologies and dumping margin outcomes adopted by the Commission are summarised in the table below.

**Table 6: The Commission's dumping margin calculations**

Report	Date range	Dumping margin	OCOT?	Methodology	Para. of this report
PMB Verification Report 540	1-Jan-19 to 31-Dec-19	3.30%	Yes	Level of trade adjustment	5.2.5 to 5.2.8
Report 540	1-Jan-19 to 31-Dec-19	3.30%	Yes	Level of trade adjustment	5.2.9 to 5.2.12
PMB Verification Report 541	1-Jan-19 to 31-Dec-19	6.90%	Yes	Level of trade adjustment	5.2.5 to 5.2.8
Report 541	1-Jan-19 to 31-Dec-19	8.60%	Yes	Level of trade adjustment	5.2.9 to 5.2.12
Accelerated Review 577	1-Jan-20 to 31-Dec-20	2.60%	Yes	Level of trade adjustment	5.2.13 to 5.2.17
PMBA Verification Report 591	1-Jul-20 to 30-Jun-21	6.7%	Yes	No level of trade adjustment	5.2.1 to 5.2.4
Report 591	1-Jul-20 to 30-Jun-21	6.7%	Yes	No level of trade adjustment	5.2.1 to 5.2.4
Report DA0243	27-Jun-21 to 26-Dec-21	4.7%	Yes	Level of trade adjustment (Remove "JB")	5.2.18 to 5.2.21
Decision 167	27-Jun-21 to 26-Dec-21	1.1%	Yes	Level of trade adjustment (Remove "JB")	5.2.22 to 5.2.25
Report DA0254	27-Dec-21 to 26-Jun-22	(4.3%)	Yes	Level of trade adjustment (SG&A Difference)	5.2.27 to 5.2.30

Source: See footnotes for Table 37 below.

*Dumping margin calculation*

2.4.5 I set out a detailed explanation of each of My Scenarios and level of trade adjustments made at paragraphs 5.3.3 to 5.3.7 below. In the table below I set out a summary description of the Commission’s Analysis and each of My Scenarios.

Table 7: Summary of Commission’s Analysis and My Scenarios

Scenario	Description	Level of trade adjustment	Excludes Retail sales?	OCOT?
Commission’s Analysis	The Commission’s dumping margin calculation as per Documents 30, Document 31 and in Report 591.	No	No	Yes
My Scenario 1	The Commission’s dumping margin calculation adjusted to account for a level of trade adjustment, not calculated in OCOT.	(████)%	No	No
My Scenario 2	The Commission’s dumping margin calculation adjusted to account for level of trade adjustment, conducted in OCOT as per Accelerated Review 577, Investigation 540 and Investigation 541.	(████)%	No	Yes
My Scenario 3	The Commission’s dumping margin calculation adjusted to exclude all Retail (“JB”) sales as per Report DA0243 and Decision 167.	Exclude all Retail (“JB”) sales	Yes	Yes
My Scenario 4	The Commission’s dumping margin calculation adjusted by reducing JB sales prices by an “SG&A” percentage, as per Report DA0254.	████%	No	Yes

Source: Appendix D, tab “Question 3B – Scenarios”, refer to footnotes at Table 40 below.

2.4.6 In Table 8 below, I set out a summary of the dumping margins as calculated in the Commission’s Analysis and each of My Scenarios described above for each MCC and in total for all MCCs.

Table 8: All Scenarios – dumping margin calculation

Export MCC	Commission’s Analysis	My Scenario 1	My Scenario 2	My Scenario 3	My Scenario 4
CA-6A-T1	████	████	████	████	████
CA-6B-T1	████	████	████	████	████
M-6A-T1	████	████	████	████	████
M-6B-T1	████	████	████	████	████
M-6D-T1	████	████	████	████	████
NA-6A-T1	████	████	████	████	████
PBS-6D-T1	████	████	████	████	████
PC-6A-T1	████	████	████	████	████
PC-6B-T1	████	████	████	████	████
All MCCs total	████	████	████	████	████

Source: Appendix D, tab “Report Tables” and Appendix E.

2.4.7 I observe that the dumping margin in all of My Scenarios at an MCC level is lower than (or equal to, except for in one instance) the assessed dumping margin in the Commission’s Analysis. The total dumping margin for all MCCs is lower than the assessed dumping margin in the Commission’s analysis, with the total dumping margin being negative in My Scenario 1.



### 3. Question 1

#### 3.1 Introduction

3.1.1 In this Section, I set out my analysis of, and opinion on, Question 1. For ease of reference, Question 1 is as follows:

*Having regard to the information concerning PMBA's sales during the investigation period for Continuation Inquiry 591, please provide [my] responses to the following questions, including reasons for [my] responses:*

(a) *Was there a difference in price both:*

- (i) *within each model control code (MCC); and*
- (ii) *across all MCCs,*

*between aluminium extrusions sold domestically at different levels of trade by PMBA, that is, between sales by the JB division to its customers, as compared with sales to other customers and, if so, what were those prices, and to what extent did they differ?*

3.1.2 I have been provided with Report 591 and the corresponding documents that I am instructed<sup>28</sup> record the final dumping margin calculations for PMBA, being Confidential Attachments 3, 5 and 6 to Report 591:

- a. "29. REP 591 - Conf Att. 3 - PMBA Export price" (which I refer to in this report as 'Document 29');
- b. "30. REP 591 - Conf Att. 5 - PMBA Normal value" (which I refer to in this report as 'Document 30'); and
- c. "31. REP 591 - Conf Att. 6 - PMBA Dumping margin" (which I refer to in this report as 'Document 31').

#### 3.2 My analysis

3.2.1 I have performed the following steps to assess whether there was a difference between prices of aluminium extrusions sold to Retail customers as compared to Distribution customers:

- a. I adopted the information relating to domestic sales set out in Document 30, worksheet "(a) Domestic Sales".
- b. I copied the entirety of the information recorded in worksheet "(a) Domestic Sales" of Document 30 into my Appendix D, where I performed my own calculations. For ease of reference, the name of the worksheet in my Appendix D is also "(a) Domestic Sales".
- c. The column of information labelled in the Commissioner's calculations (Document 30) as "Customer group, JB retail or other" assigns one of the following designations to each customer name:
  - i. "Inter-Co";
  - ii. "Local";
  - iii. "Subsidiary"; or
  - iv. JB.

<sup>28</sup> See "28. Report 591", page 91 and My Letter of Instruction, paragraph 36.

- d. I then added a column in the worksheet titled "(a) Domestic Sales" of my Appendix D which I have labelled "KM - Retail v Distribution" to distinguish the above four designations into two levels of trade, "Retail" or "Distribution". This was done on the basis of my instruction to assume that customer groups referred to as "Inter-Co", "Local" and "Subsidiary" relate to the "Distribution" level of sales to customers, and customer group "JB" relates to the "Retail" level of sales to customers<sup>29</sup>.
- e. For both Retail and Distribution customers, as described in sub-paragraph d above, I calculated a weighted average net invoice price for each MCC<sup>30</sup> based on the:
  - i. Net invoice price;<sup>31</sup> divided by
  - ii. Quantity sold<sup>32</sup>.
- f. My weighted average net invoice price calculations for each MCC are set out in the "Question 1" worksheet of Appendix D, on the basis of the sum total of the "net invoice value" for those sales, divided by the sum total of the quantity of sales, with separate calculations for sales to customers designated as "Retail" and "Distribution".
- g. I then calculated the difference between the net invoice price for Retail and Distribution customers<sup>33</sup>.

3.2.2 This analysis is not on an OCOT<sup>34</sup> basis (i.e. it includes some unprofitable sales based on the approach adopted by the Commission). My calculation is set out in the table below.

**Table 9: Weighted Average net invoice price difference in sales to Retail and Distribution customers (MYR)**

MCC	Distribution			Retail			Difference	
	Quantity (kg)	Net invoice value (MYR)	Weighted average price (MYR/kg)	Quantity (kg)	Net invoice value (MYR)	Weighted average price (MYR/kg)	MYR/kg	% difference of Distribution to Retail
	A	B	C = B/A	D	E	F = E/D	G = F - C	H = C/F - 1
CA-6A-T1	████████	████████	████	████████	████████	████	████	████
CA-6B-T1	████████	████████	████	████████	████████	████	████	████
M-6A-T1	████████	████████	████	████████	████████	████	████	████
M-6B-T1	████████	████████	████	████████	████████	████	████	████
M-6C-T1	████████	████████	████	████████	████████	████	████	████
M-O-O	████	████	████	████	████	████	████	████
M-O-T1	-	-	████	████	████	████	████	████
NA-6A-T1	████████	████████	████	████████	████████	████	████	████
NA-6B-T1	████████	████████	████	████████	████████	████	████	████
PC-6A-T1	████████	████████	████	████████	████████	████	████	████
<b>Total</b>	████████	████████	████	████████	████████	████	████	████

Source: Appendix D

3.2.3 As set out in Table 9 above:

<sup>29</sup> See My Letter of Instruction, paragraph 49(d) which states "[i]n the Commissioner's calculations in those confidential appendices and attachments for Continuation Inquiry 591, customer groups referred to as "Inter-Co", "Local" and "Subsidiary" relate to the "Distribution" level of sales to customers, and customer group "JB" relates to the "Retail" level of sales to customers".

<sup>30</sup> Recorded in Document 30, worksheet "(a) Domestic Sales", column "ADC MCC final", and in my Appendix D, also in column "ADC MCC final".

<sup>31</sup> Recorded in Document 30, worksheet "(a) Domestic Sales", column "Net invoice value", and in my Appendix D, also in column "Net invoice value".

<sup>32</sup> Document 30, worksheet "(a) Domestic Sales", column "Quantity (kg)", and in my Appendix D, also in column "Quantity (Kg)".

<sup>33</sup> Recorded in my Appendix D, in the column "Weighted Average difference between Retailer & Distributor".

<sup>34</sup> See Appendix D, tab "Question 1", where the pivot tables do not include a filter for "Use in NV".

- a. For the five MCCs where there is either only Retail or Distribution sales information available, a comparison was unable to be made. These are shown as “n/a” in the “Difference” columns;
- b. For the five MCCs where there are both Retail and Distribution sales, the weighted average net invoice price for Distribution sales was lower than for Retail sales (ranging from negative [REDACTED] % for the PC-6A-T1 MCC to negative [REDACTED] % for the M-6B-T1 MCC). The MCC with the largest quantity and value of sales (M-6A-T1<sup>35</sup>) recorded a difference of negative [REDACTED] %, and the MCC with the second largest quantity and value of sales (NA-6A-T1<sup>36</sup>) recorded a difference of negative [REDACTED] %;
- c. In total, the weighted average net invoice price of PMBA’s sales to Distribution customers was MYR [REDACTED]/kg;
- d. In total, the weighted average net invoice price of PMBA’s sales to Retail customers was MYR [REDACTED]/kg; and
- e. The total weighted average net invoice price of PMBA’s sales for Distribution customers was [REDACTED] % lower than to Retail customers.

### 3.3 Conclusion

- 3.3.1 The price of aluminium extrusions sold by PMBA to Distribution customers (MYR [REDACTED]/kg) was, on average, MYR [REDACTED]/kg ([REDACTED].0%) less than the aluminium extrusions sold to Retail customers (MYR [REDACTED]/kg).
- 3.3.2 For the five MCCs where there are sales to both Retail and Distribution customers, the weighted average net invoice price for Distribution sales was lower than for Retail sales (ranging from negative [REDACTED] % for the PC-6A-T1 MCC to negative [REDACTED] % for the M-6B-T1 MCC). The MCC with the largest quantity and value of sales (M-6A-T1) recorded a difference of negative [REDACTED] %, and the MCC with the second largest quantity and value of sales (NA-6A-T1) recorded a difference of negative [REDACTED] %.

<sup>35</sup> Being a combined Retailer and Distribution quantity of 7.1 million and value of sales of \$ [REDACTED] million.

<sup>36</sup> Being a combined Retailer and Distribution quantity of 5.2 million and value of sales of \$ [REDACTED] million



## 4. Question 2

### 4.1 Introduction

4.1.1 In this Section, I set out my analysis of, and opinion on, Question 2. For ease of reference, Question 2 is as follows<sup>37</sup>:

*If [my] answers to [Question 1] above differ from the relevant conclusions reached by the Commission in Report 591 (that there were “immaterial price differences between the claimed levels of trade”, and “[f]or the largest volume MCCs ... there were no consistent or distinct differences in sales prices”):*

*(i) what methodology was employed by the Commission to reach its conclusions in Report 591 on the difference in price and how did that methodology differ from [my] methodology in answering [Question 1] above? [(which I refer to in this report as Question 2A)]*

*(ii) was the Commission’s conclusion affected (and if so, to what extent) by:*

- (A) the selection by the Commission of a limited number of customers to whom sales were made;*
- (B) the selection by the Commission of a limited number of customers within each MCC category to whom sales were made, and/or*
- (C) inclusion by the Commission of sales that were not made in the ordinary course of trade (OCOT) (that is, unprofitable sales)? [(which I refer to in this report as Question 2B)]*

4.1.2 I have been provided with PMBA Verification Report 591 published 17 March 2022 and the corresponding documents that I am instructed<sup>38</sup> were provided in conjunction with the report, being Confidential Appendices 1, 3 and 4:

- a. “20. Confidential Appendix 1 Export Price to Verification Report” (which I refer to in this report as ‘**Document 20**’);
- b. “21. Confidential Appendix 3 Normal Value to Verification Report” (which I refer to in this report as ‘**Document 21**’); and
- c. “22. Confidential Appendix 4 Dumping Margin to Verification Report” (which I refer to in this report as ‘**Document 22**’).

4.1.3 I have also been provided with a document labelled “23. 591 - PMBA - GP7-C - Level of trade analysis for domestic sales” (which I refer to in this report as ‘**Document 23**’), which I am instructed was provided to PMBA as an attachment relevant to the preparation of PMBA Verification Report 591 around 7 March 2022<sup>39</sup>. I am also instructed that “[t]he price comparisons made in respect of PMBA by the Commission for the purpose of its assessment, in PMBA Verification Report 591, of whether a level of trade adjustment should be made are recorded in [Document 23]. The Commission relied on the same analysis when making its findings in Report 591”<sup>40</sup>.

<sup>37</sup> See My Letter of Instruction, paragraph 48(b).

<sup>38</sup> See My Letter of Instruction, paragraph 17.

<sup>39</sup> See My Letter of Instruction, paragraph 18.

<sup>40</sup> See My Letter of Instruction, paragraph 40.

## 4.2 The Commission's analysis (Question 2A)

### Reliance on Document 23 for the Commission's analysis of price difference

- 4.2.1 In PMBA Verification Report 591, the Commission described the methodology to determine a requirement for a level of trade adjustment as follows: “[t]he verification team compared weighted average prices based on levels of trade, customer and MCC. Based on these price comparisons, and the nature of the sales channels, the verification team did not find it appropriate to make a level of trade adjustment”<sup>41</sup> and the dumping margin was calculated to be 6.7%<sup>42</sup>.
- 4.2.2 In Report 591, the Commission also reached a finding of a dumping margin of 6.7%<sup>43</sup> and made reference to the methodology in determining whether a level of trade adjustment was required as “[t]he analysis was conducted down to specific MCCs” and “the commission takes the same approach to model matching, using the MCCs to compare normal values to export prices for the most comparable products, to examine whether there is a difference in pricing for levels of trade. For the largest volume MCCs, the commission found that there were no consistent or distinct differences in sales prices that would establish a real difference in the level of sales”<sup>44</sup>.
- 4.2.3 Based on my instructions as stated at paragraph 4.1.3 above and the methodologies described in PMBA Verification Report 591 and Report 591 that resulted in the same dumping margin calculation finding of 6.7%, I have relied upon Document 23 for the purpose of analysing the Commission's methodology in arriving at that finding, and the prices which were examined as part of that methodology.

### The Commission's analysis

- 4.2.4 As identified in Table 11 to Table 14 below, the Commission's analysis was limited, in my opinion, in the following ways:
- a. By examining sales within a sample of MCCs, rather than all MCCs. This is evident from the fact that the Commission's analysis is of the top four 'most popular'<sup>45</sup> MCCs based on quantity of kilograms sold. This analysis, however, excluded the third 'most popular' MCC (M-6B-T1) due to there being a limited quantity of sales of this MCC to Retail customers<sup>46</sup>. The Commission's analysis therefore analysed the first, second, fourth and fifth 'top' MCCs, being:
    - i. M-6A-T1;
    - ii. NA-6A-T1;
    - iii. CA-6A-T1; and
    - iv. PC-6A-T1.
  - b. By examining sales to a sample of seven customers in total across the four MCCs referred to above, rather than to all customers. I have identified the Commission's chosen MCCs and customers in Table 10 below:

<sup>41</sup> See PMBA Verification Report 591, page 25.

<sup>42</sup> See PMBA Verification Report 591, page 28.

<sup>43</sup> See Report 591, page 48.

<sup>44</sup> See Report 591, page 47.

<sup>45</sup> Refer row 5 of tab 'Price by cust-LoT-MCC' of Document J: "Price comparison considering most popular MCC and customers with substantial quantities".

<sup>46</sup> Refer row 33 of tab 'Price by cust-LoT-MCC' of Document J: "...third most popular MCC not assessed as there is a relatively low quantity of JB sales for this MCC".

Table 10: The Commission's four chosen MCCs and seven customers based on Quantity (Kg)

Item	Calculation	M-6A-T1	NA-6A-T1	CA-6A-T1	PC-6A-T1	Total
Quantity (Kg)						
Quantity of 4 selected MCCs	A	██████	██████	██████	██████	██████
Total quantity of all MCCs	B	██████	██████	██████	██████	██████
Proportion of selected MCC quantity to all MCCs quantity	C = A / B	██████	██████	██████	██████	██████
Top customers per MCC						
████████████████████	█	██████	██████	██████	██████	██████
████████████████████	█	██████	██████	██████	██████	██████
████████████████████	█	██████	█	█	█	██████
████████████████████	█	█	██████	█	█	██████
████████████████████	█	█	█	██████	█	██████
████████████████████	█	█	█	█	██████	██████
████████████████████	█	█	█	█	██████	██████
████████████████████	██████	██████	██████	██████	██████	██████
████████████████████	█	██████	██████	██████	██████	██████
████████████████████	██████	██████	██████	██████	██████	██████
████████████████████	██████	██████	██████	██████	██████	██████

Source: Appendix D, tab "Question 2A" and "Report Tables"

4.2.5 I observe the following from Table 10 above:

- a. Total sales quantity in the four MCCs selected by the Commission were Kg █████ million, with these MCCs making up approximately █████% of the total quantity of sales (Kg █████ million) for all MCCs. Hence, sales for the remaining MCCs, which were not considered at all by the Commission, account for approximately █████% of total sales;
- b. The quantity of sales in each of the Commission's selected MCCs represents between █████% to █████% of the total quantity of sales for all of the MCCs. For example, sales in MCC M-6A-T1 represent █████% of total sales for all MCCs, and sales in PC-6A-T1 represent █████% of total sales for all MCCs;

<sup>47</sup> Sum of four MCCs.

<sup>48</sup> Customers may purchase more than one MCC, see Document 30, tab "(a) Domestic sales". The number of customers in the table above represents the number of unique customers in tab "(a) Domestic sales" under the column labelled "Customer name" for each specific MCC.



- c. The top three customers selected by the Commission for each MCC are representative of the single top customer based on quantity (Kg) in each of the three category fields used by the Commission, being "JB", "Local" and "Subsidiary"<sup>49</sup>. This explains why the "top three" customers were examined in the selected MCCs. However, because there is overlap in the customers considered by the Commission across the four MCCs examined, there were only seven unique customers examined in the Commission's analysis;
- d. The Commission's selected top three customers within each MCC account for between [REDACTED] % to [REDACTED] % of the total quantity of sales within the respective MCC. For example, sales to the three customers selected by the Commission in MCC NA-6A-T1 represent [REDACTED] % of sales to all customers in that MCC;
- e. There is a total of 836<sup>50</sup> customers (noting again that there is overlap in these customers across the MCCs, and there are 321 unique customers) within the Commission's four selected MCCs and the seven customers selected by the Commission are those described as the "customers with substantial quantities"<sup>51</sup>; and
- f. The seven selected customers combined account for approximately [REDACTED] % of the total quantity of sales across the Commission's four selected MCCs, but only [REDACTED] % of total sales for all MCCs.

4.2.6 Rather than setting out an analysis by "Retail" and "Distribution" customers, the Commission's analysis separated the weighted average net invoice value (MYR/kg) into three categories, being:

- a. JB (Retail);
- b. Local (Distribution);
- c. Subsidiary (Distribution); together with
- d. Grand Total.

4.2.7 In Document 23, the Commission calculated the weighted average net invoice price, or what it referred to as the "Sum of WA net invoice value (MYR/kg)", in a spreadsheet summary (pivot) table by dividing:

- a. Net invoice value (MYR); by
- b. Quantity (kg).<sup>52</sup>

4.2.8 I set out a summary of the Commission's analysis for their sample of four MCCs (across seven customers) in Table 11 to Table 14 below. This analysis is not on an OCOT basis<sup>53</sup> (i.e., it includes some unprofitable sales based on the approach adopted by the Commission).

<sup>49</sup> See Appendix D, tab "Question 2A" and Document 23, tab "Price by cust-LoT-MCC".

<sup>50</sup> Based on the "Customer name" column of the "(a) Domestic sales" of Document 30, which has been confirmed to be identical to the "(a) Domestic sales" of Document 23.

<sup>51</sup> Refer row 5 of tab "Price by cust-LoT-MCC" of Document 23: "Price comparison considering most popular MCC and customers with substantial quantities".

<sup>52</sup> Refer to calculated field titled "WA net invoice value (MYR/kg)" within M-6A-T1 table in rows 8 to 15 of tab 'Price by cust-LoT-MCC' of Document 23. I have used this same formula in my calculations of weighted average net invoice price in Sections 3 and 4.

<sup>53</sup> Refer tab 'Price by cust-LoT-MCC' of Document 23. This does not have a filter for "Use in NV".

Table 11: M-6A-T1 weighted average net invoice price (MYR/kg)

Customer	JB (Retail)	Local (Distribution)	Subsidiary (Distribution)	Grand Total
OCOT? <sup>54</sup>	No	No	No	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Refer tab "Price by cust-LoT-MCC" of Document 23.

Table 12: NA-6A-T1 weighted average net invoice price (MYR/kg)

Customer	JB (Retail)	Local (Distribution)	Subsidiary (Distribution)	Grand Total
OCOT? <sup>55</sup>	No	No	No	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Refer tab "Price by cust-LoT-MCC" of Document 23.

Table 13: CA-6A-T1 weighted average net invoice price (MYR/kg)

Customer	JB (Retail)	Local (Distribution)	Subsidiary (Distribution)	Grand Total
OCOT? <sup>56</sup>	No	No	No	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Refer tab "Price by cust-LoT-MCC" of Document 23.

Table 14: PC-6A-T1 weighted average net invoice price (MYR/kg)

Customer	JB (Retail)	Local (Distribution)	Subsidiary (Distribution)	Grand Total
OCOT? <sup>57</sup>	No	No	No	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Refer tab "Price by cust-LoT-MCC" of Document 23.

<sup>54</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV".  
<sup>55</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV".  
<sup>56</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV".  
<sup>57</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV".



**My conclusion on Question 2A**

4.2.9 The difference between the methodology I have adopted in answering my Question 1 (see Section 3 above) and the Commission’s analysis as applied in Document 23 is summarised in the table below:

Table 15: Methodology comparison between my Question 1 and the Commission’s Document 23

Aspect	My Question 1	The Commission’s Analysis
Level of trade	Retail and Distribution	“JB”, “Local” and Subsidiary”
OCOT	No <sup>58</sup>	No <sup>59</sup>
# of MCCs	All (10)	4
# of customers	All (321) <sup>60</sup>	7

Source: KordaMentha Analysis.

4.2.10 Given the outcomes of the Commission’s analysis (which is limited in the ways described above) as set out in Table 11 to Table 14 above, and the price differences between “JB”, “Local” and “Subsidiary” across the MCCs and customers examined, in my opinion the basis for the conclusion drawn by the Commission that “*there is no consistent or distinct differences in sales prices*” is unclear.

**4.3 My analysis of the Commission’s methodology (Question 2B)**

**Overview**

4.3.1 In the following section, I set out my analysis and response to the second part of Question 2 (being Question 2B). For ease of reference, Question 2B is as follows:

*If [my] answers to [Question 1] above differ from the relevant conclusions reached by the Commission in Report 591 (that there were “immaterial price differences between the claimed levels of trade”, and “[f]or the largest volume MCCs ... there were no consistent or distinct differences in sales prices”):*

...

*(ii) was the Commission’s conclusion affected (and if so, to what extent) by:*

- (A) the selection by the Commission of a limited number of customers to whom sales were made;*
- (B) the selection by the Commission of a limited number of customers within each MCC category to whom sales were made, and/or*
- (C) inclusion by the Commission of sales that were not made in the ordinary course of trade (OCOT) (that is, unprofitable sales)? (which I refer to in this report as Question 2B)*

4.3.2 In Table 16 below, I set out a summary explaining the basis of each of the calculations which I have undertaken in this Section for the purposes of responding to Question 2B.

<sup>58</sup> See Appendix D, tab “Question 1”, where the pivot tables do not include a filter for “Use in NV”.

<sup>59</sup> See Document 23, tab “Price by cust-LoT-MCC”, where the pivot tables do not include a filter for “Use in NV”.

<sup>60</sup> 321 customers represents the number of unique customers in Document 30, tab “(a) Domestic sales” under the column labelled “Customer name”.



Table 16: Summary of analyses for Question 2B

	Commission's analysis	My Analysis A – All Retail and Distribution Customers	My Analysis B – Commission's Limited Customer Analysis	My Analysis C – Commission's Limited MCC and Customer Analysis
<b>My short description</b>	Commission's price difference analysis, not conducted in the OCOT and utilising a limited selection of MCCs and customers separated between 3 customer groups.	My price difference analysis, conducted in the OCOT, utilising all MCCs and all customers, separated into Retail and Distribution levels of trade.	My price difference analysis, conducted in the OCOT, utilising a limited selection of customers and all MCCs purchased by those customers, separated into Retail and Distribution levels of trade.	My price difference analysis, conducted in the OCOT, utilising a limited selection of MCCs and customers separated into Retail and Distribution levels of trade.
<b>Level of trade</b>	3 customers/groups ("JB", "Local" and Subsidiary").	Retail and Distribution	Retail and Distribution	Retail and Distribution
<b>OCOT</b>	No <sup>61</sup>	Yes <sup>62</sup>	Yes <sup>63</sup>	Yes <sup>64</sup>
<b># of MCCs</b>	4	All (10)	All MCCs purchased by the 7 customers	4
<b># of customers</b>	7	All (321) <sup>65</sup>	7	7

Source: KordaMentha analysis and Document 23.

#### My Analysis A – All Retail and Distribution Customers

- 4.3.3 I have undertaken an alternative analysis which is not restricted to sales of the "most popular MCCs", or to "customers with substantial quantities"<sup>66</sup>. This analysis has been prepared on the basis of:
- Both Distribution and Retail levels of trade;
  - OCOT<sup>67</sup> sales; and
  - All MCCs and customers.
- 4.3.4 Table 17 below is a summary of net invoice prices for sales of all MCCs (not a sample of MCCs), which sets out the quantities and weighted average net invoice price of all sales transactions to all customers in the OCOT<sup>68</sup>. For the purpose of this analysis, I have only presented the weighted average net invoice prices. The detail for all sales included in this analysis is set out in Appendix D.

<sup>61</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV".

<sup>62</sup> See Appendix D, tab "Question 2B", rows 7 to 22, where the pivot tables include a filter for "Use in NV".

<sup>63</sup> See Appendix D, tab "Question 2B", rows 27 to 38, where the pivot tables include a filter for "Use in NV".

<sup>64</sup> See Appendix D, tab "Question 2B", rows 85 to 130, where the pivot tables include a filter for "Use in NV".

<sup>65</sup> 321 customers represent the number of unique customers in Document 30, tab "(a) Domestic sales" under the column labelled "Customer name".

<sup>66</sup> See Document 23, tab "Price by cust-LoT-MCC", row 5, where it states "[p]rice comparison considering most popular MCC and customers with substantial quantities".

<sup>67</sup> See Appendix D, tab "Question 2B", rows 7 to 22, where the pivot tables include a filter for "Use in NV".

<sup>68</sup> See Appendix D, tab "Question 2B", rows 7 to 22, where the pivot tables include a filter for "Use in NV".

Table 17: Weighted average (OCOT) net invoice price for My Analysis A (MYR/kg)

OCOT? <sup>70</sup>	Distribution	Retail	Difference (MYR/kg)	% Difference of Distribution to Retail <sup>69</sup>
	Yes	Yes		
CA-6A-T1	████	████	████	████
CA-6B-T1	████	█	████	████
M-6A-T1	████	████	████	████
M-6B-T1	████	████	████	████
M-6C-T1	████	█	████	████
M-O-T1		████	████	████
NA-6A-T1	████	████	████	████
NA-6B-T1	████	█	████	████
PC-6A-T1	████	████	████	████
<b>Total</b>	████	████	████	████

Source: Appendix D, tab "Question 2B".

4.3.5 As identified in Table 17 above, based on this analysis:

- When only considering sales in the OCOT<sup>71</sup>, the number of MCCs reduces to 9 (from the 10 identified in Table 9 above) as the M-O-O MCC is excluded<sup>72</sup>;
- The weighted average (OCOT) net invoice price for Distribution customers ranged from a low of MYR █████/kg (M-6B-T1) to a high of MYR █████/kg (CA-6B-T1), with an average of MYR █████/kg;
- The weighted average (OCOT) net invoice price for Retail customers ranged from a low of MYR █████/kg (M-6A-T1) to a high of MYR █████/kg (PC-6A-T1), with an average of MYR █████/kg;
- For the four MCCs where there is either only Retail or Distribution sales information available, a comparison was unable to be made. These are shown as "n/a" in the "Difference" columns; and
- For the five MCCs where there are both Retail and Distribution sales, the weighted average net invoice price for Distribution sales was lower than for Retail sales, that difference ranging from MYR █████/kg to MYR █████/kg.

4.3.6 In this analysis, which includes all transactions in the OCOT<sup>73</sup>, the total overall difference between the weighted average net invoice price as between Retail and Distribution was MYR █████/kg (with Distribution being █████% lower than Retail).

4.3.7 The result of My Analysis A is then compared to the weighted average net invoice prices as set out in My Analyses B and C below.

<sup>69</sup> % difference is calculated by expressing the "difference" as the percentage that the weighted average price for Distribution is lower than Retail.

<sup>70</sup> See Appendix D, tab "Question 2B", rows 7 to 22, where the pivot tables include a filter for "Use in NV".

<sup>71</sup> See Appendix D, tab "Question 2B", rows 7 to 22, where the pivot tables include a filter for "Use in NV".

<sup>72</sup> MCC M-O-O appears to account for a single sale to customer RIBE POWER MALAYSIA SDN BHD. See Appendix D, tab "(a) Domestic sales", filtering column labelled "ADC MCC final" to "M-O-O".

<sup>73</sup> See Appendix D, tab "Question 2B", rows 7 to 22, where the pivot tables include a filter for "Use in NV".



**My Analysis B – Commission’s Limited Customer Analysis**

- 4.3.8 I have performed the following steps to assess whether the weighted average (OCOT) price for Retail and Distribution customers is affected by a selection (by the Commission) of a limited number of customers to whom sales were made:
- a. For the seven customers which the Commission’s analysis relied on, I calculated the weighted average (OCOT) net invoice price for sales to those seven customers; and then
  - b. Compared the results of this analysis to the weighted average (OCOT) net invoice price for All Retail and Distribution Customers (My Analysis A in Table 17, paragraph 4.3.4 above).
- 4.3.9 My calculations for these two steps are set out below. This analysis is on the basis of:
- a. Distribution and Retail levels of trade;
  - b. OCOT<sup>74</sup> sales;
  - c. Seven customers (as selected by the Commission); and
  - d. All transactions recorded for sales of MCCs to the seven customers.
- 4.3.10 Table 18 below sets out my calculation of the weighted average (OCOT) net invoice price for My Analysis B. For the purpose of this analysis, I have only presented below the weighted average net invoice price for each customer. The detail for this analysis is set out in Appendix D.

**Table 18: Weighted average (OCOT) net invoice price for My Analysis B (MYR/kg)**

Customer	Distribution	Retail	Difference	% Difference of Distribution to Retail <sup>75</sup>
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Appendix D, tab “Question 2B”

- 4.3.11 As identified in Table 18 above, based on this analysis:
- a. A comparison was unable to be made for each individual customer as sales information is only made available at either the Distribution or Retail level of trade;
  - b. The weighted average (OCOT) net invoice price for Distribution customers ranged from a low of MYR [REDACTED]/kg (PMB CENTRAL SDN BHD) to a high of MYR [REDACTED]/kg [REDACTED], with an average of MYR [REDACTED]/kg; and
  - c. The weighted average (OCOT) net invoice price for Retail customers ranged from a low of MYR [REDACTED]/kg [REDACTED] to a high of MYR [REDACTED]/kg [REDACTED] (M SDN BHD), with an average of MYR [REDACTED]/kg.

<sup>74</sup> See Appendix D, tab “Question 2B”, rows 27 to 30, where the pivot tables include a filter for “Use in NV”.

<sup>75</sup> % difference is calculated by expressing the “difference” as the percentage that the weighted average price for Distribution is lower than Retail.

4.3.12 In this analysis, which includes only transactions for the seven customers relied on in the Commission’s analysis, the difference between the weighted average net invoice price as between Retail and Distribution was MYR [REDACTED]/kg (with Distribution being [REDACTED] % lower than Retail).

*Comparison of My Analysis A to My Analysis B*

4.3.13 In Table 19 below, I compare:

- a. My Analysis A: the weighted average (OCOT<sup>76</sup>) net invoice price for all Retail and Distribution customers (per Table 17, paragraph 4.3.4 above), to
- b. My Analysis B: the weighted average (OCOT<sup>77</sup>) net invoice price for the seven customers relied on in the Commission’s analysis (per Table 18, paragraph 4.3.10 above).

**Table 19: Comparison of weighted average (OCOT) net invoice price analyses (MYR/kg) for My Analysis A and My Analysis B**

	Distribution	Retail	Difference	% Difference of Distribution to Retail
My Analysis A <sup>78</sup> All Retail and Distribution Customers	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
My Analysis B <sup>79</sup> Commission’s Limited Customer Analysis	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Difference</b>	[REDACTED]	[REDACTED]		

Source: Appendix D, tab “Question 2B”

4.3.14 Based on this analysis, in my opinion the weighted average (OCOT) net invoice price for Retail and Distribution customers is affected by a selection (by the Commission) of a limited number of customers to whom sales were made. Specifically, My Analysis A results in a price difference of MYR [REDACTED]/kg (with Distribution being [REDACTED] % lower than Retail), compared to the MYR [REDACTED]/kg difference (with Distribution being [REDACTED] % lower than Retail) calculated in My Analysis B (the Commission’s Limited Customer Analysis).

**My Analysis C – Commission’s Limited MCC and Customer Analysis**

4.3.15 In order to respond to Question 2B, I needed to update the Commission’s analysis to include the Retail and Distribution levels of trade and only OCOT<sup>80</sup> sales (“**My Analysis C**”). The purpose of this analysis is:

- a. To first compare the Commission’s analysis (which was not undertaken on an OCOT basis<sup>81</sup>) to My Analysis C; then
- b. To compare My Analysis C to My Analysis A (per Table 17, paragraph 4.3.4 above).

4.3.16 I have performed the following steps in undertaking My Analysis C:

- a. I adopted the information relating to sales set out in Document 30, worksheet “(a) Domestic Sales”, which I copied over in its entirety to my Appendix D<sup>82</sup> and then altered this to categorise sales into either Retail or Distribution levels of trade (see methodology applied in responding to Question 1 at paragraph 3.2.1a. and d. above);

<sup>76</sup> See Appendix D, tab “Question 2B”, rows 7 to 22, where the pivot tables include a filter for “Use in NV”.

<sup>77</sup> See Appendix D, tab “Question 2B”, rows 27 to 30, where the pivot tables include a filter for “Use in NV”.

<sup>78</sup> Refer to paragraph 4.3.4.

<sup>79</sup> Refer to paragraph 4.3.10.

<sup>80</sup> See Appendix D, tab “Question 2B”, rows 85 to 130, where the pivot tables include a filter for “Use in NV”.

<sup>81</sup> See Document 23, tab “Price by cust-LoT-MCC”. The tables do not have a filter for “Use in NV”.

<sup>82</sup> I have relied on the information in tab “(a) Domestic sales” of Document 30 instead of the identically labelled tab in Document 23 due to errors within the formulas of the version of Document 23 I was provided with. As the tab labelled “(a) Domestic sales” in both Document 30 and Document 23 have the same number of rows of data, total “Quantity (kg)” and total “Net invoice value”, I have assumed that the data within these two tabs are otherwise identical.



- b. I replicated and adjusted the Commission's analysis as calculated in Document 23 (which was calculated not in the OCOT<sup>83</sup>), by:
  - i. Replicating the Commission's selection of four MCCs;
  - ii. Replicating the Commission's selection of the top three customers within each MCC, for a total of seven customers;
  - iii. Adjusting the weighted average calculation of each customer to the Retail and Distribution levels of trade (as opposed to the commission's use of "JB", "Local" and "Subsidiary") utilising the column labelled "KM - Retail vs Distribution" in tab "(a) Domestic sales" of Appendix D.
- c. I created a version of the Commission's analysis that only includes sales conducted in the OCOT by<sup>84</sup>:
  - i. Replicating the steps described in paragraph b. above; and
  - ii. Applying the filter labelled "Use in NV" to only show those sales that were marked as "Y" (being those made in the OCOT<sup>85</sup>).
- d. I compared the weighted average prices of the replicated Commission analysis as per paragraph b. above to the weighted average prices of the adjustments made to the Commission's analysis (My Analysis C) as per paragraph c. above.

*Commission's Analysis (Retail & Distribution)*

4.3.17 The Commission's analysis<sup>86</sup>:

- a. Does not show the weighted average net invoice price in the ordinary course of trade (OCOT<sup>87</sup>); and
- b. Does not calculate the weighted average net invoice price at each of the two levels of trade, being Retail and Distribution. It calculates the price based on three customer groups, being JB, Local and Subsidiary.

4.3.18 I am instructed to provide my analysis of two levels of trade, being Retail and Distribution. I have therefore combined the Local and Subsidiary customer groups to be the Distribution customer group. I refer to this updated Commission's analysis in Table 20 to Table 23 below as '**Commission's Analysis (Retail & Distribution)**'.

*Difference between the Commission's Analysis (Retail & Distribution) and My Analysis C*

4.3.19 The Commission's Analysis (Retail & Distribution) and My Analysis C, along with the differences between the two, are set out in Table 20 to Table 23 below for each of the four MCCs (across seven customers) which were the subject of the Commission's calculations. For the purpose of this analysis, I have only included the weighted average net invoice price. The detail for this analysis for all sales is set out in Appendix D.

<sup>83</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV".

<sup>84</sup> See Appendix D, tab "Question 2B", rows 85 to 130 for the full analysis.

<sup>85</sup> See Appendix D, tab "Question 2B", rows 85 to 130, where the pivot tables include a filter for "Use in NV".

<sup>86</sup> See Table 16 at paragraph 4.3.2 above.

<sup>87</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV".

Table 20: M-6A-T1 weighted average net invoice price (MYR/kg)

	Commission's Analysis (Retail & Distribution)		My Analysis C		Difference	
	No	No	Yes	Yes		
OCOT? <sup>88</sup>						
Customer	Distribution	Retail	Distribution	Retail	Distribution	Retail
[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]
[REDACTED]	[REDACTED]		[REDACTED]		[REDACTED]	
[REDACTED]	[REDACTED]		[REDACTED]		[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Appendix D, tabs "Question 2B", rows 135 – 141 and tab "Report Tables"

Table 21: NA-6A-T1 weighted average net invoice price (MYR/kg)

	Commission's Analysis (Retail & Distribution)		My Analysis C		Difference	
	No	No	Yes	Yes		
OCOT? <sup>89</sup>						
Customer	Distribution	Retail	Distribution	Retail	Distribution	Retail
[REDACTED]		[REDACTED]		[REDACTED]		
[REDACTED]	[REDACTED]		[REDACTED]			
[REDACTED]	[REDACTED]		[REDACTED]			
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	-	-

Source: Appendix D, "Question 2B", rows 143 – 150 and tab "Report Tables"

Table 22: CA-6A-T1 weighted average net invoice price (MYR/kg)

	Commission's Analysis (Retail & Distribution)		My Analysis C		Difference	
	No	No	Yes	Yes		
OCOT? <sup>90</sup>						
Customer	Distribution	Retail	Distribution	Retail	Distribution	Retail
[REDACTED]	[REDACTED]		[REDACTED]			
[REDACTED]	[REDACTED]		[REDACTED]			
[REDACTED]		[REDACTED]		[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	-	-

Source: Appendix D, tab "Question 2B", rows 152 – 159 and tab "Report Tables"

<sup>88</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV" for "Commission's Analysis (Retail & Distribution)" and see Appendix D, tab "Question 2B", rows 85 to 130 for My Analysis C, where the pivot tables include a filter for "Use in NV".

<sup>89</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV" for "Commission's Analysis (Retail & Distribution)" and see Appendix D, tab "Question 2B", rows 85 to 130 for My Analysis C, where the pivot tables include a filter for "Use in NV".

<sup>90</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV" for "Commission's Analysis (Retail & Distribution)" and see Appendix D, tab "Question 2B", rows 85 to 130 for My Analysis C, where the pivot tables include a filter for "Use in NV".

Table 23: PC-6A-T1 weighted average net invoice price (MYR/kg)

OCOT? <sup>91</sup>	Commission's Analysis (Retail & Distribution)		My Analysis C		Difference	
	No	No	Yes	Yes		
Customer	Distribution	Retail	Distribution	Retail	Distribution	Retail
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Appendix D, tab "Question 2B", rows 161 – 168 and tab "Report Tables"

4.3.20 As identified in Table 20 to Table 23 above, there was a difference between the Commission's Analysis (Retail & Distribution), before OCOT adjustment<sup>92</sup>, and My Analysis C for two of the four MCCs analysed by the Commission (M-6A-T1 and PC-6A-T1).

*Conclusion*

4.3.21 I am instructed to opine on whether the weighted average selling price for (OCOT) sales for Retail and Distribution customers is affected by a selection of a limited number of customers within each MCC category to whom sales were made based on volume of sales to customers. To answer that question, I have prepared a summary which compares the difference in the weighted average prices by MCC between My Analysis C (Commission's Limited MCC and Customer Analysis) and My Analysis A (All Retail and Distribution Customers), as shown below:

Table 24: Difference in weighted average net invoice price between My Analyses A and C (MYR/kg)

MCC	My Analysis C (Commission's Limited MCC and Customer Analysis)		My Analysis A (All Retail and Distribution Customers)		Difference	
	Distribution	Retail	Distribution	Retail	Distribution	Retail
M-6A-T1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NA-6A-T1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CA-6A-T1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PC-6A-T1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Appendix D, tab "Question 2B" rows 170 – 176 and tab "Report Tables"

4.3.22 Based on this analysis, in my opinion the weighted average (OCOT) price for Retail and Distribution customers is affected by a selection (by the Commission) of a limited number of customers within each MCC category to whom sales were made. The difference in weighted average prices is larger for Retail customers.

**My overall conclusion on Question 2B**

4.3.23 Based on my instructions and my analysis as described above, in my opinion, the Commission's analysis is limited in three respects:

- a. The Commission's analysis does not calculate the weighted average net invoice price at each of the two levels of trade, being Retail and Distribution;

<sup>91</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV" for "Commission's Analysis (Retail & Distribution)" and see Appendix D, tab "Question 2B", rows 85 to 130 for My Analysis C, where the pivot tables include a filter for "Use in NV".

<sup>92</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV".



- b. The Commission's analysis does not include an adjustment for the unprofitable MCCs. That is, the Commission's analysis is not based on the weighted average net invoice price of aluminium extrusions sold in the ordinary course of trade (OCOT)<sup>93</sup>; and
- c. The Commission's analysis is limited, or undertaken only on a sample basis, only focusing on four MCCs and seven customers.

4.3.24 In my opinion, it is self-evident that absent these limitations or without adopting these approaches, the Commission would have produced different price difference results. Specifically, in response to my Question 2B, the Commission's conclusion was affected by:

- a. The selection by the Commission of a limited number of customers to whom sales were made.
  - i. In my opinion the weighted average (OCOT) net invoice price for Retail and Distribution customers is affected by a selection (by the Commission) of a limited number of customers to whom sales were made.
  - ii. As identified in Table 19 above, when comparing My Analysis A (All Retail and Distribution Customers) to My Analysis B (Commission's Limited Customer Analysis), there is a difference between the weighted average net invoice price. Specifically, My Analysis A results in a price difference of MYR [REDACTED]/kg (with Distribution being [REDACTED]% lower than Retail), compared to the MYR [REDACTED]/kg difference (with Distribution being [REDACTED]% lower than Retail) calculated in My Analysis B (the Commission's Limited Customer Analysis).
  - iii. Both of these analyses are prepared in the OCOT<sup>94</sup>.
- b. The selection by the Commission of a limited number of customers within each MCC category to whom sales were made.
  - i. As identified in Table 24 above, when comparing to My Analysis A (All Retail and Distribution Customers) to My Analysis C (Commission's Limited MCC and Customer Analysis), there is a difference in the weighted average net invoice price for both Distribution and Retail customers.
  - ii. The weighted average net invoice price for Retail customers in My Analysis A is higher for each of the MCCs (ranging from MYR [REDACTED]/kg to MYR [REDACTED]/kg higher, by comparison to the average prices arrived at under the Commission's Limited MCC and Customer Analysis). The weighted average net invoice price for Distribution customers in My Analysis A is higher for three out of four of the MCCs (ranging from MYR [REDACTED]/kg to MYR [REDACTED]/kg).
  - iii. Both of these analyses are prepared in the OCOT<sup>95</sup>.
- c. The inclusion by the Commission of sales that were not made in the ordinary course of trade (OCOT<sup>96</sup>) (that is, unprofitable sales).
  - i. Each of My Analyses A to C include an adjustment for OCOT<sup>97</sup>. After the inclusion of this adjustment, where applicable, there is a difference between the weighted average net invoice price for Distribution and Retail customers.
  - ii. This is evident from my analysis in Table 20 to Table 23.

<sup>93</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV".

<sup>94</sup> See Appendix D, tab "Question 2B", rows 7 to 38, where the pivot tables include a filter for "Use in NV".

<sup>95</sup> See Appendix D, tab "Question 2B, rows 7 to 22 and 85 to 130, where the pivot tables include a filter for "Use in NV".

<sup>96</sup> See Document 23, tab "Price by cust-LoT-MCC", where the pivot tables do not include a filter for "Use in NV".

<sup>97</sup> See Appendix D, tab "Question 2B, rows 7 to 38 and 85 to 130, where the pivot tables include a filter for "Use in NV".

## 5. Question 3

### 5.1 Introduction

5.1.1 In this Section, I set out my analysis of, and opinions on Question 3. For ease of reference, Question 3 is as follows<sup>98</sup>:

*Having regard to the methodology (or methodologies) employed by the Commission in Accelerated Review 577, Investigations 540 and 541 and Duty Assessments DA0243 (as corrected by the Panel) and DA0254 to assess whether, and to what extent, a level of trade adjustment was required with respect to sales by the JB division:*

*(i) please explain how that methodology (or methodologies) differs from the methodology used by the Commission to make the same assessment in Report 591 (which I refer to in this report as Question 3A)*

*(ii) please explain what the outcome would have been (in terms of level of trade adjustment, and dumping margin, for PMBA) in Continuation Inquiry 591 if the Commission had:*

*A. employed the methodology [I] used to identify any price differences in [my] answers to [Question 1] above;*

*B. employed the methodology (or methodologies) used by the Commission in Accelerated Review 577, Investigations 540 and 541 and Duty Assessments DA0243 (as corrected by the Panel) and DA0254 to reach their conclusion;*

*C. excluded sales that were not made in the OCOT but otherwise adopted the same methodology the subject of [my] answer to [Question 2A] above;*

*D. included sales by all customers across all MCCs but otherwise adopted the same methodology the subject of [my] answer to [Question 2A] above (i.e., including sales that were not made in the OCOT, if applicable); or*

*E. included sales by all customers within each MCC but otherwise adopted the same methodology the subject of [my] answer to [Question 2A] above (i.e., including sales that were not made in the OCOT, if applicable)? (which I refer to in this report as Question 3B)*

### 5.2 Commission's level of trade adjustment methodology (Question 3A)

#### Report 591 methodology – The Continuation Inquiry

5.2.1 I have been provided with Report 591 and the PMBA Verification Report 591 and the corresponding attachments as stated in paragraphs 3.1.2 and 4.1.2 above respectively. For ease of reference, these documents include:

- a. Attachment A to My Letter of Instruction;
- b. Report 591 dated 13 May 2022, with corresponding attachments:
  - i. Document 29;
  - ii. Document 30;
  - iii. Document 31;
- c. PMBA Verification Report 591, published 17 March 2022, with corresponding attachments:
  - i. Document 20;

<sup>98</sup> See My Letter of Instruction, paragraph 48(c).

- ii. Document 21; and
- iii. Document 22.

5.2.2 In relation to the methodology adopted in determining whether a level of trade adjustment is required, I refer to Question 2 above at paragraphs 4.2.1 to 4.2.3, where I have identified that the methodology in Report 591 is consistent with the methodology adopted in PMBA Verification Report 591, utilising Document 23 Table 25 summarises the approach in these two reports:

Table 25: Report 591 – Adjustments<sup>99</sup>

PMBA Verification Report 591					Report 591
Adjustment type	Assessment for adjustment	Calculation method and evidence	Claimed in REQ?	Adjustment required?	Commission’s assessment <sup>100</sup>
Level of trade	<i>PMBA claimed that a material proportion of PMBA’s domestic sales were at a retail level of trade that was not equivalent to the level of trade of its Australian customer.</i>	<i>The verification team compared weighted average prices based on levels of trade, customer and MCC. Based on these price comparisons, and the nature of the sales channels, the verification team did not find it appropriate to make a level of trade adjustment.</i>	Yes	No	<i>“The commission was not satisfied that it should make a level of trade adjustment for the normal value in relation to domestic sales. This was based on finding immaterial price differences between the claimed levels of trade. The analysis was conducted down to specific MCCs...” and “...the commission takes the same approach to model matching, using the MCCs to compare normal values to export prices for the most comparable products, to examine whether there is a difference in pricing for levels of trade. For the largest volume MCCs, the commission found that there were no consistent or distinct differences in sales prices that would establish a real difference in the level of sales”.</i>

Source: Report 591

5.2.3 I refer to Table 15 at paragraph 4.2.9 above for Question 2B, where I have summarised the approach taken by the Commission in Document 23 to determine whether a level of trade adjustment was required in Report 591. This approach is set out in the table below.

Table 26: Report 591 –Level of trade adjustment

	Commission’s analysis
My short description	Commission’s price difference analysis, not conducted in the OCOT and utilising a limited selection of MCCs and customers separated between 3 customer groups.
Level of trade	3 customers/groups (“JB”, “Local” and Subsidiary”).
OCOT	No <sup>101</sup>
# of MCCs	4 MCCs being: <ul style="list-style-type: none"> <li>• M-6A-T1</li> <li>• NA-6A-T1</li> <li>• CA-6A-T1</li> <li>• PC-6A-T1</li> </ul>

<sup>99</sup> See 19. PMBA Verification Report 591, page 25, and Report 591, page 47

<sup>100</sup> Extract only. See Report 591, page 47 for full explanation.

<sup>101</sup> See Document 23, tab “Price by cust-LoT-MCC”, where the pivot tables do not include a filter for “Use in NV”.

Commission's analysis	
# of customers	7 customers being:
	• [REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]

Source: Document 23 and KordaMentha Analysis

5.2.4 Table 11 to Table 14 above set out a summary of the outcomes of the Commission's analysis regarding the calculation of price differences to determine if a level of trade adjustment was required.

#### Investigation 540 and Investigation 541 methodology

5.2.5 I have been provided with the following documents and the corresponding attachments that I am instructed<sup>102</sup> were relevant to Investigation 540, being:

- a. Attachment A to My letter of instruction;
- b. PMB Verification Report 540;
- c. Report 540, dated 29 April 2021 and corresponding attachments:
  - i. "3. REP 540 - Confidential Attachment 4 - PMB Domestic Sales" (which I refer to in this report as 'Document 3');
  - ii. "4. REP 540 - Confidential Attachment 5 - PMB Normal Value" (which I refer to in this report as 'Document 4'); and
  - iii. "5. REP 540 - Confidential Attachment 6 - PMB Dumping Margin" (which I refer to in this report as 'Document 5').

5.2.6 I have also been provided with the following documents and the corresponding attachments that I am instructed<sup>103</sup> were relevant to Investigation 541, being:

- a. Attachment A to my letter of instruction;
- b. PMB Verification Report 541;
- c. Report 541 dated 29 April 2021 and corresponding attachments:
  - i. "9. REP 541 - Confidential Attachment 4 - PMB Domestic Sales" (which I refer to in this report as 'Document 9');
  - ii. "10. REP 541 - Confidential Attachment 5 - PMB Normal Value" (which I refer to in this report as 'Document 10'); and
  - iii. "11. REP 541 - Confidential Attachment 6 - PMB Dumping Margin" (which I refer to in this report as 'Document 11').

<sup>102</sup> My Letter of Instruction, paragraph 44(b).

<sup>103</sup> My Letter of Instruction, paragraph 44(c).



*PMB Verification Report 540 and PMB Verification Report 541*

5.2.7 Table 27 below sets out the methodology for the level of trade adjustment in PMB Verification Report 540 and PMB Verification Report 541:

**Table 27: PMB Verification Report 540 and PMB Verification Report 541 rationale and method for level of trade adjustment**

Investigation	Adjustment type	Rationale for adjustment	Calculation method and evidence	Claimed in REQ?	Adjustment required?
540	Level of trade	<i>A material proportion of PMB's domestic sales were at a level of trade that was not equivalent to the level of trade of its Australian customers. An examination of price differences and customer profiles aided in establishing the existence of material differences in price due to level of trade.</i>	<i>The value of the adjustment was worked out by identifying the difference between the net profit margins on domestic sales at different levels of trade and applying the variance to domestic sales that did not correspond to the level of trade relevant to PMB's Australian customers</i>	<i>Claimed during verification.</i>	<i>Yes – only on certain sales</i>
541	Level of trade	<i>A material proportion of PMB's domestic sales were at a level of trade that was not equivalent to the level of trade of its Australian customers. An examination of price differences and customer profiles aided in establishing the existence of material differences in price due to level of trade.</i>	<i>The value of the adjustment was worked out by identifying the difference between the net profit margins on domestic sales at different levels of trade and applying the variance to domestic sales that did not correspond to the level of trade relevant to PMB's Australian customers</i>	<i>Claimed during verification.</i>	<i>Yes – only on certain sales</i>

Source: Refer page 24 of *540\_-\_037\_-\_verification\_report\_-\_exporter\_-\_press\_metal\_berhad.pdf (industry.gov.au)* and page 25 of *541\_-\_042\_-\_verification\_report\_-\_exporter\_-\_press\_metal\_berhad.pdf (industry.gov.au)*. And Attachment A to My Letter of Instruction.

5.2.8 I have not been provided with the underlying attachments relevant to PMB Verification Report 540 or PMB Verification Report 541, and therefore rely upon the description provided within the reports in determining the methodology as to the level of trade adjustment.

*Report 540 and 541*

5.2.9 Table 28 below sets out the methodology for the level of trade adjustment in Report 540 and 541, both dated 29 April 2021.

**Table 28: Report 540 and 541 level of trade adjustment methodology**

Report	Adjustment Type	Deduction/addition
Report 540	<i>Domestic level of trade</i>	<i>Add/deduct amounts relevant to differences in price brought about by sales at a non-comparable level of trade.</i>
Report 541	<i>Domestic level of trade</i>	<i>Add/deduct amounts relevant to differences in price brought about by sales at a non-comparable level of trade</i>

Source: *Report 540, page 52, Report 541, page 56 and Attachment A to My Letter of Instruction.*



5.2.10 In addition to the summary of adjustments above, both Report 540 and 541 further discuss the methodology adopted in section 6.6.8, under the heading "Level of trade adjustment"<sup>104</sup>. Both Report 540 and 541 state<sup>105</sup>:

...[t]he price based level of trade adjustment has been worked out by observing the difference in the weighted average OCOT selling prices of like goods at EXW terms sold by the JB Branch and sales by PMB to all other customers, i.e. not through the JB Branch.

5.2.11 I have been provided with and have reviewed the underlying calculations undertaken by the Commission in determining the dumping margin and level of trade adjustment in Reports 540 and 541 as stated in paragraphs 5.2.5 and 5.2.6 above. In Table 29 and Table 30 below I demonstrate the calculation employed in the corresponding attachments to Report 540 and 541, respectively.

Table 29: Report 540 level of trade adjustment calculation (OCOT<sup>106</sup>)

	PMB Kapar (Distribution)	JB Unit (Retail)	Difference	Method
Quantity (kg)	████████	████████		
Extended EXW value (MYR)	████████	████████		
	A	B		
Unit EXW price (weighted average) (MYR/kg)	████████	████████	████████	C = A - B
Level of trade adjustment <sup>107</sup>			████████%	D = (1.31) / 12.34

Source(s): Appendix D, tab "Question 3A", Document 3, tab "LoT Adj" and Document 4, tab "LoT Adj".

Table 30: Report 541 level of trade adjustment calculation (OCOT<sup>108</sup>)

	PMB Kapar (Distribution)	JB Unit (Retail)	Difference	Method
Quantity (kg)	████████	████████		
EXW value (MYR)	████████	████████		
	A	B		
Unit EXW price (weighted average) (MYR/kg)	████████	████████	████████	C = A - B
Level of trade adjustment <sup>109</sup>			████████%	D = ██████ / ██████

Source(s): Appendix D, tab "Question 3A", Document 9, tab "LoT Adj" and Document 10, tab "LoT Adj".

5.2.12 I observe the following about Table 29 and Table 30 above:

a. The level of trade adjustment was made in the OCOT<sup>110</sup>:

<sup>104</sup> See Report 540 page 54, Report 541 page 58 and My Letter of Instruction, Attachment A.

<sup>105</sup> See Report 540 page 55 and Report 541 page 59 and My Letter of Instruction, Attachment A.

<sup>106</sup> See Document 3, tab "LoT Adj" and Document 4, tab "LoT Adj", where the level of trade adjustment calculation is filtered "Y" for "OCOT?".

<sup>107</sup> Based on my review of the documents received, the level of trade adjustment is an adjustment applied to reduce the calculation of normal value. In the attachment to Report 540, the level of trade adjustment is portrayed as a negative. In my analysis of the dumping margin, I adopt the absolute value of the percentage.

<sup>108</sup> See Document 9, tab "LoT Adj" and Document 10, tab "LoT Adj", where the level of trade adjustment calculation is filtered "Y" for "OCOT?".

<sup>109</sup> Based on my review of the documents received, the level of trade adjustment is an adjustment applied to reduce the calculation of normal value. In the attachment to Report 541, the level of trade adjustment is portrayed as a negative. In my analysis of the dumping margin, I adopt the absolute value of the percentage.

<sup>110</sup> See Document 3, tab "LoT Adj", and Document 9 tab, "LoT Adj" where the pivot tables have been filtered to only include sales marked as "Y" under the column "OCOT?".

- b. “JB Unit” is equivalent to “Retail” and “PMB Kapur” is equivalent to “Distribution” and the calculation of the level of trade adjustments are applied only to the “Sales Entity” marked as “JB Unit”<sup>111</sup>; and
- c. The level of trade adjustment is calculated as the difference between the weighted average unit price (MYR/kg) divided by the Retail weighted average unit EXW price (MYR/kg).

**Accelerated Review 577 methodology**

5.2.13 I have been provided with, and have relied upon the following documents and the corresponding attachments that I am instructed<sup>112</sup> were relevant to Accelerated Review 577, being:

- a. Attachment A of My Letter of Instruction;
- b. “14. Report 577” (‘**Accelerated Review 577**’) dated 13 May 2021 and corresponding attachments:
  - i. “15. REP 577 Confidential Appendix 3 - PMBA Normal Value” (which I refer to in this report as ‘**Document 15**’); and
  - ii. “16. REP 577 Confidential Appendix 4 - PMBA Dumping Margin” (which I refer to in this report as ‘**Document 17**’).

5.2.14 Table 31 and Table 32 below set out a summary of the methodology applied for the level of trade adjustment in Accelerated Review 577.

**Table 31: Accelerated Review 577 rationale and method for level of trade adjustment**

Accelerated Review	Adjustment type	Rationale for adjustment	Calculation method and evidence	Claimed in REQ?	Adjustment required?
577	Level of Trade	<i>A material proportion of PMBA’s domestic sales were at a level of trade that was not equivalent to the level of trade of its Australian customers. An examination of price differences and customer profiles aided in establishing the existence of material differences in price on the domestic market due to level of trade.</i>	<i>The value of the adjustment was worked out by identifying the difference between domestic selling prices between the different levels of trade. The percentage difference in selling prices between these levels of trade was then applied to correspond to the level of trade relevant to PMBA’s Australian customers.</i>	Yes	Yes

Source: Accelerate Review 577, page 29 and Attachment A to My Letter of Instruction

**Table 32: Accelerated Review 577 summary of adjustments**

Accelerated Review	Adjustment type	Deduction/addition
577	Level of trade	<i>Deduct an amount arising from the differences in level of trade in domestic sales</i>

Source: Accelerate Review 577, page 30 and Attachment A to My Letter of Instruction

5.2.15 As identified in Table 31 and Table 32, the Commission applied a level of trade adjustment in their calculation of a dumping margin in Accelerated Review 577.

<sup>111</sup> See Document 4, tab “(a) Domestic Sales”, column “LoT Adjustment (JB Sales only)” and Document 10, tab “(a) Domestic Sales”, column “LoT Adj (JB Unit Sales Only)”.

<sup>112</sup> My Letter of Instruction, paragraph 45.



5.2.16 I have been provided with and have reviewed the underlying calculations undertaken by the Commission in determining the dumping margin and level of trade adjustment as calculated in Accelerated Review 577 (as stated at paragraph 5.2.13 above). In Table 33 below, I demonstrate the level of trade adjustment calculation employed in Accelerated Review 577.

Table 33: Accelerated Review 577 level of trade adjustment calculation (OCOT<sup>113</sup>)

	Factory (Distribution)	JB (Retail)	Difference	Method
Quantity (kg)	██████████	██████████		
Extended EXW value (MYR)	██████████	██████████		
	A	B		
Unit EXW price (weighted average) (MYR/kg)	██████████	██████████	██████████	C = - (A - B)
Level of trade adjustment <sup>114</sup>			██████████ %	D = ██████████

Source(s): Appendix D, tab "Question 3A", Document 15, tab "LoT Adj".

5.2.17 I observe the following about Table 33 above:

- The level of trade adjustment was made in the OCOT<sup>115</sup>;
- "JB" is equivalent to "Retail" and "Factory" is equivalent to "Distribution" and the calculation of the level of trade adjustments are applied only to "JB" sales<sup>116</sup>;
- As the difference between Distribution and Retail results in a negative amount of (2.10 MYR/kg), the absolute value of 2.10 was utilised by the Commission in the calculation of the level of trade adjustment<sup>117</sup>; and
- The level of trade adjustment is calculated as the difference between the weighted average unit price (MYR/kg) divided by the Retail weighted average unit EXW price (MYR/kg).

#### Report DA0243 and Decision 167 methodology

##### Report DA0243

5.2.18 I have been provided with, and have relied upon the following documents and the corresponding attachments that I am instructed<sup>118</sup> were relevant to Report DA0243, being:

- Attachment A of My Letter of Instruction;
- "38. ADC Duty Assessment Report DA0243" ('**Report DA0243**') dated April 2023 and corresponding attachments:
  - "39. DA0243 - PMBA - App. 3 - Normal value" (which I refer to in this report as '**Document 39**'); and
  - "40. DA0243 - PMBA - App. 4 - Dumping Margin" (which I refer to in this report as '**Document 40**');
- "41. Decision 167" ('**Decision 167**') dated July 2023 and corresponding attachments:

<sup>113</sup> See Document 15, tab "LoT Adj", where the level of trade adjustment calculation is filtered "Y" for "OCOT".

<sup>114</sup> Based on my review of the documents received, the level of trade adjustment is an adjustment applied to reduce the calculation of normal value. In the attachment to Accelerated Review 577, the level of trade adjustment is portrayed as a positive. In my analysis of the dumping margin, I adopt the absolute value of the percentage.

<sup>115</sup> See Document 15, tab "LoT Adj", where the level of trade adjustment calculation is filtered "Y" for "OCOT".

<sup>116</sup> See Document 15, tab "(a) Domestic Sales", column "LoT Adjustment (JB Sales only)" and Document 10, tab "(a) Domestic Sales", column "LoT Adj (JB Unit Sales Only)".

<sup>117</sup> See Document 15, tab "LoT Adj", cell B27.

<sup>118</sup> My Letter of Instruction, paragraph 46(b) and 46(c).



- i. “42. Confidential Attachment 3 - DA0243 - PMBA - Appendix 3 - Normal value (with LME timing adjustment)” (which I refer to in this report as ‘**Document 42**’); and
- ii. “43. Confidential Attachment 4 - DA0243 - PMBA - Appendix 4 - Dumping Margin (with LME timing adjustment)” (which I refer to in this report as ‘**Document 43**’).

5.2.19 Table 34 below sets out the methodology for the level of trade adjustment in Report DA0243:

Table 34: Report DA0243 rationale and method for level of trade adjustment

Report DA0243 – Table 1			Report DA0243 – Paragraph 5.3.5 level of trade
Report	Adjustment type	Deduction/addition	Level of trade commentary <sup>119</sup>
DA0243	Level of trade	Excluding sales made through PMBA’s Johor Bahru division (‘JB’), which were made on significantly different terms and at a different level of trade.	“...[t]he commission has therefore excluded the JB sales and the resulting normal value only uses domestic sales at a comparable level of trade to the export sales to Australia.”

Source: Report DA0243, pages 10, 13 -14 and Attachment A to My Letter of Instruction.

5.2.20 I have been provided with and reviewed the attachments to Report DA0243, which do not include a specific level of trade calculation, however in relation to Document 39, Document 40 and Table 34 above, I observe:

- a. Tab “(a) Domestic sales” of Document 39 does not appear to contain any data relating to “JB sales” as the column labelled “JB retailer”<sup>120</sup> does not contain any values. Therefore, as per the description in Report DA0243, the level of trade adjustment was made by removing all sales that were in relation to “JB”; and
- b. “Unit Normal value (MYR/Kg)” was calculated by excluding any “JB Retailer” sales in Document 39<sup>121</sup>, which are then utilised in Document 40 for the calculation of the dumping margin of ██████%<sup>122</sup>.

5.2.21 The methodology adopted by the Commission in Report DA0243 differs to all of the other methodologies employed by the Commission in PMB Verification Reports 540 and 541, Report 540 and 541 and Accelerated Review 577. This methodology was adjusted in Decision 167 as I describe in the following section.

*Decision 167*

5.2.22 I am instructed that:

“...[t]he Commission issued its report in April 2023 (Report DA0243) in which it provided a negative preliminary determination. That is, the Commission found that, based on an assessment of whether the relevant goods were exported at dumped prices, the interim dumping duty paid by PMAA during that period was less than the duty it should have paid”<sup>123</sup> and “[i]n response, PMAA applied to the Panel for a review of the Commission’s negative preliminary determination. In ADRP Decision No. 167 dated 31 July 2023 (Decision 167), the Panel revoked the Commission’s negative preliminary determination and recommended that the Minister order a repayment of the amount of the interim duty that was overpaid by PMAA. This was on the basis that that the normal values had been incorrectly determined by the Commission.”<sup>124</sup>

<sup>119</sup> Extract only. See Report DA0243, page 13 and 14 for full explanation.

<sup>120</sup> See Document 39, tab “(a) Domestic sales”, column D (“Level of trade”).

<sup>121</sup> See Document 39, tab “(a) Domestic sales”, column BL (“Unit Normal value (MYR/Kg)”), and tab “(h) Normal value”.

<sup>122</sup> See Document 40, tba “(a) Normal value” and tab “(b) Dumping Margin 1” column AY (“Unit normal value (MYR/Kg)”.

<sup>123</sup> See My Letter of Instruction paragraph 33 and paragraph 1.1.38 above.

<sup>124</sup> See My Letter of Instruction at paragraph 34 and paragraph 1.1.39 above.



5.2.23 A summary of the outcomes of Decision 167 in relation to a level of trade adjustment are displayed in Table 35 below.

Table 35: Decision 167 rationale and method for level of trade adjustment<sup>125</sup>

Decision 167, paragraph number	Decision 167 – adjustments under Ground 1
42.	<i>I agree with the applicant and my former colleague (refer paragraph 28), that there is no legal authority to exclude certain sales from s.269TAC(1) of the Act unless there is legislative authority for such exclusion. In this case, the ADC has not expressed a legislative authority for such an exclusion of the JB division sales: that is, the sales were considered arms length and were in the ordinary course of trade (OCOT) and there is no suggestion that any of the criteria of s.269TAC(2)(a) or (b) applies. Accordingly, the sales by PMBA through its JB division should have been included in the cohort of selling prices for normal value determination and a level of trade adjustment applied to such sales to enable their comparison with the export prices.</i>
44.	<i>There is also insufficient information available to the Review Panel to determine a normal value under s.269TAC(2)(c) or (d) based on cost to make and sell the goods or sales by the exporter to third countries. Recognising that the Review Panel is required to rely on information that was before the Commissioner when the Commissioner made the Reviewable Decision, the Review Panel considers that the normal value should be determined pursuant to s.269TAC(6) based on all relevant information.</i>
45.	<i>Accordingly, the Review Panel considers that the normal values should be determined pursuant to s.269TAC(6) of the Act. The amounts of the normal values should be based on PMBA's domestic selling prices excluding the sales made through JB division together with the adjustments referred to in Table 1: Adjustments, except for the adjustment referred to as a level of trade adjustment. [footnote omitted] ...</i>
48.	<i>I accept this ground of review has established that the Reviewable Decision was not correct or preferable on the basis that there was not legislative authority pursuant to s.269TAC(8) to exclude certain sales from normal value consideration under s.269TAC(1) of the Act. I recommend that the normal value be determined pursuant to s.269TAC(6) of the Act in the manner outlined in paragraph 45.</i>

Source: Decision 167, paragraphs 42 – 48 and Attachment A to My Letter of Instruction

5.2.24 I have been provided with and reviewed the underlying calculations undertaken by the Commission in determining the dumping margin and level of trade adjustment as calculated in Decision 167 (as stated at paragraph 5.2.18 above). I observe the following about Document 42 in tab "(a) Domestic sales":

- a. The sales data in the spreadsheet appears to be the same as Document 39 to Report DA0243<sup>126</sup>;
- b. There appears to be no Retail ("JB") level of sales, as the column labelled "JB retailer" contains no values, consistent with Document 39 to Report DA0243<sup>127</sup>;
- c. There is a percentage amount of negative 3.6% hardcoded in cell BC2 which is stated to be sourced from "Source: LME Adjustment". Since this is a hardcoded number, I have not been able to identify the underlying source or calculation basis of this number;
- d. A column has been added labelled "Deduct: LME Timing Difference % (MYR/kg)"; and
- e. The negative [REDACTED] % as stated in paragraph c above is used to reduce the calculated "Unit Normal value (MYR/Kg)" of all sales in the spreadsheet.

5.2.25 Decision 167 and Report DA0243 conduct the same level of trade adjustment by removing all sales that were in relation to "JB".

<sup>125</sup> Extract only. Refer to Decision 167, pages 10 to 18 for full explanation.

<sup>126</sup> See Document 39 and Document 42, tab "(a) Domestic sales", column "Net Invoice value (MYR)", where the net invoice value in both documents is \$ [REDACTED] and the total number of rows containing sales data in both documents is 16,137.

<sup>127</sup> See Document 39, tab "(a) Domestic sales", column "JB retailer".

5.2.26 I observe that the only change to the underlying calculation in Document 42 of Decision 167 is the addition of an “LME Adjustment”, which is stated by the Panel to be necessary to “...reflect the differences in timing between the lag between order and delivery of domestic and export sales as insufficient information was available to undertake the ‘matching’ of the export sales at order date with the normal values at invoice date”<sup>128</sup>. Question 3 instructs me to consider the level of trade adjustment only; therefore, I have not had regard to the “LME Adjustment” in my calculation of the dumping margin in my response to Question 3B below.

#### Report DA0254 methodology

5.2.27 I have been provided with, and have relied upon the following documents and the corresponding attachments that I am instructed<sup>129</sup> were relevant to Report DA0254, being:

- a. Attachment A of My Letter of Instruction;
- b. “44. ADC Duty Assessment Report DA0254” (**‘Report DA0254’**) dated December 2023 and corresponding attachments:
  - i. “45. DA0254 - PMBA - App. 3 - Normal value” (which I refer to in this report as **‘Document 45’**); and
  - ii. “46. DA0254 - PMBA - App. 4 - Dumping margin” (which I refer to in this report as **‘Document 46’**).

5.2.28 Table 36 below sets out the methodology applied for the level of trade adjustment in Report DA0254.

Table 36: Report DA0254 rationale and method for level of trade adjustment

Report	Adjustment type	Assessment for adjustment	Calculation method and evidence
Report DA0254	Level of trade	PMBA claimed that a material proportion of PMBA’s domestic sales were at a retail level of trade (JB sales) that was not equivalent to the level of trade of its Australian customer.	The VT found that PMBA’s JB arm sells at a materially higher price compared to other domestic sales channels. The VT notes that PMBA’s JB arm sales incur warehousing costs, whereas all other domestic and Australian sales do not. The VT therefore applied a normal value adjustment by reducing JB sales prices by an SG&A percentage representing the extra SG&A expenses incurred for JB sales.

Source: Report DA0254, page 14 and Attachment A to My Letter of Instruction

5.2.29 In addition to the summary of adjustments set out in the table above, Report DA0254 discusses the methodology adopted to apply the level of trade adjustment as<sup>130</sup>:

*The commission noted that PMBA reports warehousing costs as part of SG&A expenses. Based on the information provided during verification, the commission could quantify the SG&A expense relating to JB sales, and separately, the SG&A expense relating to non-JB PMBA sales. Accordingly, the commission found that it had sufficient information to make a level of trade adjustment based on the “costs arising from different functions” method from the Dumping and Subsidy Manual (the Manual).*

5.2.30 I have been provided with, and have reviewed the underlying calculations undertaken by the Commission to determine the dumping margin and level of trade adjustments discussed in paragraph 5.2.27 above. I observe the following about Document 45 in tab “(a) Domestic sales”:

<sup>128</sup> See Decision 167, page 31, paragraph 104.

<sup>129</sup> My Letter of Instruction, paragraph 46(d).

<sup>130</sup> See Report DA0254, pages 14 – 15.

- a. There is a percentage amount of [REDACTED] % hardcoded in cell BG6 above the column labelled "Deduct Level of trade (MYR/kg)". Since this is a hardcoded number, I have not been able to identify the underlying source or calculation of the number<sup>131</sup>; and
- b. The [REDACTED] % discussed in paragraph a above is being used to reduce the calculated "Unit normal value (MYR/kg)" to all Retail ("JB") sales.

### 5.3 My dumping margin scenario analysis (Question 3B)

5.3.1 In the following section, I set out my analysis and response to the second part of Question 3 (being Question 3B). For ease of reference, Question 3B is as follows:

*Having regard to the methodology (or methodologies) employed by the Commission in Accelerated Review 577, Investigations 540 and 541 and Duty Assessments DA0243 (as corrected by the Panel) and DA0254 to assess whether, and to what extent, a level of trade adjustment was required with respect to sales by the JB division:*

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*(ii) please explain what the outcome would have been (in terms of level of trade adjustment, and dumping margin, for PMBA) in Continuation Inquiry 591 if the Commission had:*

*A. employed the methodology [I] used to identify any price differences in [my] answers to [Question 1] above;*

*B. employed the methodology (or methodologies) used by the Commission in Accelerated Review 577, Investigations 540 and 541 and Duty Assessments DA0243 (as corrected by the Panel) and DA0254 to reach their conclusion;*

*C. excluded sales that were not made in the OCOT but otherwise adopted the same methodology the subject of [my] answer to [Question 2A] above;*

*D. included sales by all customers across all MCCs but otherwise adopted the same methodology the subject of [my] answer to [Question 2A] above (i.e., including sales that were not made in the OCOT, if applicable); or*

*E. included sales by all customers within each MCC but otherwise adopted the same methodology the subject of [my] answer to [Question 2A] above (i.e., including sales that were not made in the OCOT, if applicable)? (which I refer to in this report as Question 3B)*

5.3.2 In the table below, I have summarised each report's methodology with respect to making a level of trade adjustment and the dumping margin calculation. I observe that each of these reports were prepared in the OCOT<sup>132</sup>. For the reports that did not specifically set out if the calculation was prepared in the OCOT, I have made the following assumptions:

- a. PMB Verification Report 540: I have not been provided with the underlying calculations for PMB Verification Report 540. As the dumping margin calculation outcome is the same as that in Report 540, I have assumed that the calculation was also conducted in the OCOT.

<sup>131</sup> See Document 45, tab "(a) Domestic sales", cell BG6. The value of [REDACTED] % is hardcoded and a comment has been left in this cell which states "Source: Appendix 2, worksheet (a) Dom SG&A calculation, cells C10 less B10. This is the SG&A difference between JB SG&A and non-JB SG&A."

<sup>132</sup> See footnotes as per Table 37 below.

- b. PMB Verification Report 541: I have not been provided with the underlying calculations for PMB Verification Report 541. At page 21 of the report, it states “...[f]or sales to be relevant for the purpose of section 269TAC(1), they must be sales of like goods sold in the exporter’s domestic market for home consumption that are at arms length and in the ordinary course of trade (OCOT)”. I have therefore assumed that the calculation of the dumping margin by the Commission was completed in the OCOT.



Table 37: The Commission's dumping margin calculations

Report	Date range	Dumping margin	OCOT?	Methodology	Para. of this report
PMB Verification Report 540	1-Jan-19 to 31-Dec-19 <sup>133</sup>	3.30% <sup>134</sup>	Yes	Level of trade adjustment	5.2.5 to 5.2.8
Report 540	1-Jan-19 to 31-Dec-19 <sup>135</sup>	3.30% <sup>136</sup>	Yes <sup>137</sup>	Level of trade adjustment	5.2.9 to 5.2.12
PMB Verification Report 541	1-Jan-19 to 31-Dec-19 <sup>138</sup>	6.90% <sup>139</sup>	Yes	Level of trade adjustment	5.2.5 to 5.2.8
Report 541	1-Jan-19 to 31-Dec-19 <sup>140</sup>	8.60% <sup>141</sup>	Yes <sup>142</sup>	Level of trade adjustment	5.2.9 to 5.2.12
Accelerated Review 577	1-Jan-20 to 31-Dec-20 <sup>143</sup>	2.60% <sup>144</sup>	Yes <sup>145</sup>	Level of trade adjustment	5.2.13 to 5.2.17
PMBA Verification Report 591	1-Jul-20 to 30-Jun-21 <sup>146</sup>	6.7% <sup>147</sup>	Yes <sup>148</sup>	No level of trade adjustment	5.2.1 to 5.2.4
Report 591	1-Jul-20 to 30-Jun-21 <sup>149</sup>	6.7% <sup>150</sup>	Yes <sup>151</sup>	No level of trade adjustment	5.2.1 to 5.2.4
Report DA0243	27-Jun-21 to 26-Dec-21 <sup>152</sup>	4.7% <sup>153</sup>	Yes <sup>154</sup>	Level of trade adjustment (Remove "JB")	5.2.18 to 5.2.21
Decision 167	27-Jun-21 to 26-Dec-21 <sup>155</sup>	1.1% <sup>156</sup>	Yes <sup>157</sup>	Level of trade adjustment (Remove "JB") <sup>158</sup>	5.2.22 to 5.2.25
Report DA0254	27-Dec-21 to 26-Jun-22 <sup>159</sup>	(4.3%) <sup>160</sup>	Yes <sup>161</sup>	Level of trade adjustment (SG&A Difference)	5.2.27 to 5.2.30

Source: See footnotes.

<sup>133</sup> See PMB Verification Report 540, page 1.

<sup>134</sup> See PMB Verification Report 540, page 28.

<sup>135</sup> See Report 540, page 11.

<sup>136</sup> See Report 540, page 57 and Document 5, tab "(a) DM1", cell CQ3.

<sup>137</sup> See Document 4, tab "(b) NV Summary", where the normal value calculations have been filtered to only include OCOT.

<sup>138</sup> See PMB Verification Report 541, page 1.

<sup>139</sup> See PMB Verification Report 541, page 29.

<sup>140</sup> See Report 541, page 11.

<sup>141</sup> See Report 541, page 61 and Document 11, tab "(a) DM1", cell CQ3. As I have not been provided with the underlying calculations to PMB Verification Report 540, I am unable to identify the change in calculation inputs that resulted in a change in dumping margin.

<sup>142</sup> See Document 10, tab "(a) TAC(1) Normal Values", where the normal value calculations have been filtered to only include OCOT.

<sup>143</sup> See Accelerated Review 577, page 4.

<sup>144</sup> See Document 16, tab "(b) Export sales", cell CD2.

<sup>145</sup> See Document 15, tab "(h) NV Summary", where the normal value calculations have been filtered to only include OCOT.

<sup>146</sup> See PMBA Verification Report 591, page 1.

<sup>147</sup> See PMBA Verification Report 591, page 28 and Document 22, tab "(b) Dumping Margin 1", cell CM2.

<sup>148</sup> See Document 21, tab "(g) TAC1 Spec adj", rows 49 to 61 where the normal value calculations have been filtered to only include OCOT.

<sup>149</sup> See Report 591, page 5.

<sup>150</sup> See Report 591, page 48 and Document 31, tab "(b) Dumping Margin 1", cell CM2.

<sup>151</sup> See Document 30, tab "(g) TAC1 Spec adj", rows 49 to 61 where the normal value calculations have been filtered to only include OCOT.

<sup>152</sup> See Report DA0243, page 3, "importation period".

<sup>153</sup> See Document 40, tab "(b) Dumping Margin 1", cell BC2.

<sup>154</sup> See Document 39, tab "(h) Normal value", where the normal value calculations have been filtered to only include OCOT.

<sup>155</sup> See Decision 167, page 3, "importation period".

<sup>156</sup> See Document 43, tab "(b) Dumping Margin 1", cell BC2.

<sup>157</sup> See Document 42, tab "(h) Normal value", where the normal value calculations have been filtered to only include OCOT.

<sup>158</sup> See paragraph 5.2.26 above. I have not included the "LME Adjustment" conducted in Decision 167.

<sup>159</sup> See Report DA0254, page 3, "importation period".

<sup>160</sup> See Document 46, tab "(c) Dumping margin", cell I48.

<sup>161</sup> See Document 45, tab "(h) Normal value", where the normal value calculations have been filtered to only include OCOT.

**My dumping margin calculation scenarios**

5.3.3 In response to Question 3B, I have calculated the dumping margin under multiple scenarios utilising the data that was relied upon by the Commission in Continuation Inquiry 591 (being Document 30 and Document 31) for the period 1 July 2020 to 30 June 2021. I describe these scenarios as:

- a. The Commission’s dumping margin calculation as per Document 30, Document 31 and in Report 591 (**‘Commission’s Analysis’**);
- b. The Commission’s dumping margin calculation adjusted to account for a level of trade adjustment, not calculated in the OCOT (**‘My Scenario 1’**);
- c. The Commission’s dumping margin calculation adjusted to account for level of trade adjustment as per Accelerated Review 577, Investigation 540 and Investigation 541, conducted in the OCOT (**‘My Scenario 2’**);
- d. The Commission’s dumping margin calculation adjusted to exclude all Retail (“JB”) sales as per Report DA0243 and Decision 167<sup>162</sup>, conducted in the OCOT (**‘My Scenario 3’**); and
- e. The Commission’s dumping margin calculation adjusted by reducing JB sales prices by an “SG&A” percentage as per Report DA0254, conducted in the OCOT (**‘My Scenario 4’**).

5.3.4 I have made a level of trade adjustment to the Commission’s calculation in each of My Scenarios 1 to 4 described above. The calculation for the level of trade adjustments for My Scenario 1 and My Scenario 2 are set out in Table 38 and Table 39 below.

**Table 38: My Scenario 1 - Level of trade adjustment calculation (not in OCOT)**

	Distribution	Retail	Difference	Method
Quantity (kg)	██████████	██████████		
Extended EXW value (MYR)	██████████	██████████		
	A	B		
Unit EXW price (weighted average) (MYR/kg)	██████████	██████████	██████████	C = A - B
Level of trade adjustment <sup>163</sup>			██████████ %	D = ██████████ / ██████████

Source: Appendix D, tab “Report tables”

**Table 39: My Scenario 2 - Level of trade adjustment calculation (OCOT)**

	Distribution	Retail	Difference	Method
Quantity (kg)	██████████	██████████		
Extended EXW value (MYR)	██████████	██████████		
	A	B		
Unit EXW price (weighted average) (MYR/kg)	██████████	██████████	██████████	C = A - B
Level of trade adjustment <sup>164</sup>			██████████ %	D = ██████████ / ██████████

Source: Appendix D, tab “Report tables”

<sup>162</sup> See paragraph 5.2.26 above. I have not included the “LME Adjustment” conducted in Decision 167.

<sup>163</sup> Based on my review of the documents received, the level of trade adjustment is an adjustment applied to reduce the calculation of normal value. In my analysis of the dumping margin, I adopt the absolute value of the percentage.

<sup>164</sup> Based on my review of the documents received, the level of trade adjustment is an adjustment applied to reduce the calculation of normal value. In my analysis of the dumping margin, I adopt the absolute value of the percentage.



5.3.5 In relation to Table 38 and Table 39 above:

- a. I have maintained the methodology employed by the Commission to calculate a level of trade adjustment as is identified in Investigation 540, Investigation 541 and Accelerated Review 577<sup>165</sup>. That is, I have:
  - i. Calculated the total "Quantity (kg)" separated into Retail and Distribution levels of trade;
  - ii. Calculated the total "Extended EXW value (MYR)" separated into Retail and Distribution levels of trade;
  - iii. Calculated the weighted average "Unit EXW price" (MYR/kg) by dividing the total "Extended EXW value (MYR)" by the total "Quantity (kg)" for each level of trade;
  - iv. Calculated the difference between the weighted average "Unit EXW price" between the Retail and Distribution levels of trade; and
  - v. Divided the calculated difference in paragraph iv above by the Retail weighted average "Unit EXW price" (MYR/kg);
- b. Table 38 is not calculated in the OCOT; and
- c. Table 39 is calculated in the OCOT.

5.3.6 The level of trade adjustment adopted in My Scenario 3 and My Scenario 4 are summarised as follows:

- a. My Scenario 3: All "JB" level sales are excluded from the calculation of normal value, as per Report DA0243 and Decision 167<sup>166</sup>;
- b. My Scenario 4: A level of trade adjustment of 3.68%<sup>167</sup> has been applied to Retail sales only, which is stated to be calculated as ... "[t]he VT therefore applied a normal value adjustment by reducing JB sales prices by an SG&A percentage representing the extra SG&A expenses incurred for JB sales"<sup>168</sup>.

5.3.7 I have summarised the methodology adopted the Commission's analysis and each of My Scenarios in Table 40 below.

Table 40: Summary of Commission's Analysis and My Scenarios

Scenario	Description	Level of trade adjustment	Excludes Retail sales?	OCOT?
Commission's Analysis	The Commission's dumping margin calculation as per Documents 30, Document 31 and in Report 591.	No	No	Yes
My Scenario 1	The Commission's dumping margin calculation adjusted to account for a level of trade adjustment, not calculated in OCOT. <sup>169</sup>	(16.0%) <sup>170</sup>	No	No

<sup>165</sup> See Table 29, Table 30 and Table 33 above.

<sup>166</sup> See Document 39, tab "(a) Domestic sales" and Document 42, tab "(a) Domestic sales", column "JB retailer" where there are no values marked as being "JB". I have not included the "LME Adjustment" conducted in Decision 167 as per paragraph 5.2.26 above.

<sup>167</sup> See Document 45, tab "(a) Domestic sales", cell BG6. The value of 3.68% is hardcoded and a comment has been left in this cell which states "Source: Appendix 2, worksheet (a) Dom SG&A calculation, cells C10 less B10. This is the SG&A difference between JB SG&A and non-JB SG&A." I have not been provided with this underlying calculation.

<sup>168</sup> See Report DA0254, page 14.

<sup>169</sup> This scenario responds to my Question 3B.i.

<sup>170</sup> Based on my review of the documents received, the level of trade adjustment is an adjustment applied to reduce the calculation of normal value. In the attachments to Report 540, Report 541 and Accelerated Review 577 the level of trade adjustment is portrayed as a negative. In my analysis of the dumping margin, I adopt the absolute value of the percentage.

Scenario	Description	Level of trade adjustment	Excludes Retail sales?	OCOT?
My Scenario 2	The Commission's dumping margin calculation adjusted to account for level of trade adjustment, conducted in OCOT as per Accelerated Review 577, Investigation 540 and Investigation 541. <sup>171</sup>	(15.3%) <sup>172</sup>	No	Yes
My Scenario 3	The Commission's dumping margin calculation adjusted to exclude all Retail ("JB") sales as per Report DA0243 and Decision 167. <sup>173</sup>	Exclude all Retail ("JB") sales	Yes	Yes
My Scenario 4	The Commission's dumping margin calculation adjusted by reducing JB sales prices by an "SG&A" percentage, as per Report DA0254. <sup>174</sup>	3.7% <sup>175</sup>	No	Yes

Source: Appendix D, tab "Question 3B – Scenarios".

### Dumping margin outcomes: Commission's Analysis and My Scenarios

5.3.8 In Table 41 below, I set out a summary of the dumping margins as calculated in the Commission's Analysis and each of My Scenarios described above for each MCC and in total for all MCCs.<sup>176</sup> The detailed calculations for this table are set out in Appendix D. In response to my Question 3B.v, the only export customer is Press Metal Berhad.

Table 41: Commission's Analysis and My Scenarios – dumping margin calculation<sup>177</sup>

Export MCC	Commission's Analysis	My Scenario 1 <sup>178</sup>	My Scenario 2	My Scenario 3	My Scenario 4
CA-6A-T1	████	████	████	████	████
CA-6B-T1	████	████	████	████	████
M-6A-T1	████	████	████	████	████
M-6B-T1	████	████	████	████	████
M-6D-T1	████	████	████	████	████
NA-6A-T1	████	████	████	████	████
PBS-6D-T1	████	████	████	████	████
PC-6A-T1	████	████	████	████	████
PC-6B-T1	████	████	████	████	████
All MCCs total	████	████	████	████	████

Source: Appendix D, tab "Report Tables" and Appendix E.

<sup>171</sup> This scenario responds to my Question 3B.ii for Accelerated Review 577, Investigation 540 and Investigation 541 and 3B.iii.

<sup>172</sup> Based on my review of the documents received, the level of trade adjustment is an adjustment applied to reduce the calculation of normal value. In the attachments to Report 540, Report 541 and Accelerated Review 577 the level of trade adjustment is portrayed as a negative. In my analysis of the dumping margin, I adopt the absolute value of the percentage.

<sup>173</sup> This scenario responds to my Question 3B.ii for Report DA0243 and Decision 167.

<sup>174</sup> This scenario responds to my Question 3B.ii for Report DA0254.

<sup>175</sup> Hardcoded number.

<sup>176</sup> I observe that, in order to calculate an updated dumping margin, the normal value has changed. In assessing an updated normal value, I have adopted the "Specification adjustments" made by the Commission for the respective MCCs as per Document 30, tab "(g) TAC1 Spec adj".

<sup>177</sup> Based on my review, the Commission's calculation of dumping margin at tab "(b) Dumping Margin 1" of Document 31 has excluded "Extended Dumping Margin (MYR)" at row 6. In my calculation of the dumping margin, I have included the full amount of "Extended Dumping Margin (MYR)".

<sup>178</sup> This scenario responds to my Question 3B.iv and 3B.v. There has not been an OCOT adjustment applied.



- 5.3.9 I observe that the dumping margin in all of My Scenarios at an MCC level is lower than (or equal to, except for in one instance) the assessed dumping margin in the Commission's Analysis. The total dumping margin for all MCCs is lower than the assessed dumping margin in the Commission's analysis, with the total dumping margin being negative in My Scenario 1 (negative [REDACTED]%).



## 6. Other Matters

### 6.1 Introduction

6.1.1 In this Section, I address other matters relevant to the preparation of this report.

### 6.2 Pre-existing relationships

6.2.1 Neither KordaMentha nor I identified any prior or existing relationships with any of the parties involved in this matter which in our opinion are relevant to our decision to accept this engagement.

### 6.3 Reliance on this report

6.3.1 This report has been prepared, and may be relied on, solely for the purposes of the proceedings. This report, or any part of it, may only be published or distributed:

- a. For the purpose specified in paragraph 1.1.4;
- b. In accordance with any law or by order of a court of competent jurisdiction; or
- c. As reasonably required for the purpose of the proceedings.

6.3.2 The express written consent of KordaMentha must be obtained prior to relying upon, publishing or distributing this report, or part of it, for some other purpose. Neither KordaMentha, nor I accept responsibility to anyone if they use this report for some other purpose.

### 6.4 Assistance by colleagues

6.4.1 In order to arrive at my opinions in this matter, I have selected colleagues to assist me. My colleagues carried out the work that I decided they should perform. I have reviewed their work and original documents to the extent I considered necessary to form my opinions and am satisfied with the accuracy of that work. The opinions expressed in this report are mine.

### 6.5 Fees for this assignment

6.5.1 The fees received or receivable in relation to this assignment are based upon agreed hourly rates for time incurred.

### 6.6 Conduct of this assignment

#### Court guidelines

6.6.1 In accordance with the *Expert Evidence Practice Note* (GPN-EXPT) (**'Practice Note'**) and the *Harmonised Expert Witness Code of Conduct* (**'Code'**) of the Federal Court of Australia, I state that:

- a. I have read, understood, complied with and agree to be bound by the Practice Note and the Code.
- b. To the best of my knowledge, each of the opinions which I express in this report is wholly or substantially based upon my specialised knowledge arising from my training, study or experience.
- c. I have made all the inquiries which I believe are desirable and appropriate. No matters of significance that I regard as relevant to my opinion have, to my knowledge, been withheld from the Court.

6.6.2 As an expert witness, I have the following general duties to the Court:

- a. I have a paramount duty to the Court which overrides any duty to any party to the proceedings including my client;

- b. I have an overriding duty to assist the Court impartially on matters relevant to my area of expertise;
- c. I have a duty not to be an advocate to any party to the proceedings including my client, even when giving testimony that is necessarily evaluative rather than inferential; and
- d. I have a duty to make it clear to the Court when a particular question or issue falls outside my area of expertise.

#### Professional guidelines

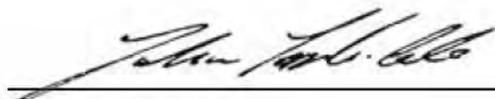
- 6.6.3 I have complied with the requirements of APES 215 – *Forensic Accounting Services* the professional code of practice of CPA Australia and Chartered Accountants Australia and New Zealand.
- 6.6.4 In accordance with APES 215, and in consideration of my instructions, I have conducted this assignment, and prepared this report as an *Expert Witness Service* engagement. APES 215 defines an *Expert Witness Service* as “a Professional Activity provided in the context of Proceedings to give expert evidence, whether orally or in the form of a Report or both”.

#### 6.7 Rounding

- 6.7.1 Some calculations in this report and Appendices have been rounded to the nearest dollar. Any resulting differences are considered immaterial and in no way affect the conclusions reached in this report.
- 6.7.2 Although amounts are generally presented on a rounded basis, in most cases the unrounded figures are used in subsequent calculations. Accordingly, minor variances may exist in table totals when recalculated manually.

#### 6.8 References to years

- 6.8.1 Except where indicated to the contrary, references in this report to a year (e.g. 2017) are references to the financial year ended 30 June.



John Temple-Cole  
Partner

26 July 2024

## Appendix A My curriculum vitae





## John Temple-Cole

Partner | Forensic

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### Experience

John is a CA Forensic Accounting Specialist, with over 28 years' experience in leading complex disputes and financial & accounting investigations, including:

- expert opinions on loss and damages in commercial disputes, international arbitration and class actions
- financial investigations and 'Forensic audit' engagements
- investigation of accounting irregularities
- quantification of loss, costs or profits in major project disputes
- opinions concerning the basis of accounting disclosures in financial statements
- fraud and tax avoidance investigations
- flow of funds and asset tracing.

John is also a Director of the Public Interest Advocacy Centre (PIAC), a not-for-profit which aims to change laws and practices that cause injustice and inequality. He is also a member of the Users Council of the Australian Centre for International Commercial Arbitration (ACICA).

John is recognised by Who's Who Legal as a leading Forensic Accountant, Arbitration expert witness and consulting expert.

John is a Fellow of Chartered Accountants Australia and New Zealand (FCA) and a Fellow Institute of Chartered Accountants in England and Wales (FCA, UK).

He has prepared expert's reports and given evidence (including concurrent evidence) for proceedings in the Supreme Court of New South Wales, the Federal Court of Australia, the Supreme Court of Western Australia, the High Court of the Republic of Singapore, the District Court of New South Wales, the Administrative Appeals Tribunal, commercial arbitration proceedings, and ICC International Arbitration proceedings. He has acted as Court appointed Referee.

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### Areas of specialisation

As a CA Forensic Accounting Specialist, John has been called upon to apply clear and critical analysis to a range of accounting, financial, fraud, taxation and regulatory disputes and investigations. His Forensic accounting engagements have included the need to provide both factual and opinion analysis and evidence on issues including:

- The investigation of, and opinions concerning accounting irregularities and accounting fraud.



## Areas of specialisation (cont.)

- Quantification of loss and damage, including for breach of contract, negligence or insurance purposes.
- Accounting opinions and investigations concerning taxation disputes, including anti-avoidance and transfer pricing.
- Regulatory investigations and governance reviews.
- Special reviews and 'Forensic audit' reviews.
- Funds flow and asset tracing.
- Investigations of potential breaches and claims arising from corporate collapses.

## Languages

John has a working level of proficiency in both spoken and written Chinese (Mandarin) and has undertaken a number of engagements involving documentation in that language. His study included:

- 1992-1995: Chinese (Mandarin) study at the National Taiwan Normal University Mandarin Training Centre, Taipei. Recipient of study scholarships from the Taiwan Ministry of Education.
- 2014-2017: Advanced level conversational Chinese, Confucius Institute at the University of Sydney.

## Key engagements (selected) *Dick Smith*

Preparation of expert's reports in proceedings in the Supreme Court of New South Wales. Engaged by solicitors acting for the audit firm against which various claims and cross-claims were brought following the collapse of well-known home electronics retail chain Dick Smith. John's reports responded to a series of expert reports quantifying alleged accounting irregularities and understatements in the audited accounts of Dick Smith, in particular relating to the carrying value of inventory, and provisions related to these.

### *Acciona Australia v Transport for New South Wales*

Engaged to prepare an expert's report in Supreme Court of New South Wales proceedings alleging misleading and deceptive conduct on the part of Transport for New South Wales during pre-contract negotiations for the Design and Construct contract relating to the \$1.5 billion Sydney Light Rail project.

### *Aircraft manufacture licensing dispute (international arbitration)*

Preparation of expert's reports and the provision of oral testimony at the (virtual) ICC hearing in proceedings relating to a contract dispute. The dispute arose from the termination of a manufacturing license between a European aircraft manufacturer, and its Chinese licensed manufacturing partner, leading to a significant claim for loss of profits in perpetuity.

### *Sydney Metro arbitration*

Preparation of expert's reports in a major construction project dispute in ACICA arbitration proceedings. The dispute arose from alleged defective construction work undertaken, and involved the analysis and assessment of the financial and accounting evidence pertaining to certain costs claimed.

### *Integrated Transit Solutions Limited & ERG Limited v Public Transport Ticketing Corporation (Supreme Court of New South Wales)*

Preparation of expert's reports and a joint expert report for proceedings in the Supreme Court of New South Wales concerning a claim for damages in excess of \$100 million arising from breach of contract. The contract was awarded by the

NSW Government for the design and installation of an integrated smartcard-based ticketing and fare payment system for public transport in the greater Sydney area.

#### *Ewok Pty Ltd v Wellard Limited*

Expert accounting evidence for the plaintiff group in a shareholder class action alleging breaches of continuous disclosure obligations, and the alleged publication of a misleading profit forecast, and associated accounting treatments.

#### *R v Edward Obeid, Moses Obeid and Ian MacDonald*

KordaMentha was engaged by the NSW DPP to provide independent expert evidence in relation to a high-profile criminal conspiracy matter which proceeded to trial. This required us to review large volumes of information (including financial statements, bank statements, accounting ledgers, trust deeds and property documentation), and set out our findings in an expert report for use as evidence in Court. As part of our report, we were also required to prepare a series of visual aids to assist the Court. Our report provided an independent and detailed account of the events in question and was tendered in evidence for trial. John Temple-Cole was required to attend Court to provide expert evidence, however, was not called. We received feedback from the NSW DPP and Counsel that our report clearly and concisely set out several complex issues, supported by visual aids, and was ultimately not challenged by the defendant's lawyers. The accused were each found guilty. The accused were found guilty, and sentenced to between three and nine years in jail. [R v Macdonald; R v Edward Obeid; R v Moses Obeid (No 17) [2021] NSWSC 858]

#### *Consumer products, China master franchise international arbitration*

Preparation of expert's reports and a Joint Expert Statement, in a matter referred to the International Chamber of Commerce (ICC). The dispute arose from the termination of a Master Franchise contract awarded by an Australian entity to a Chinese entity covering most major territories in China, in the consumer products industry. My reports responded to the claimant's expert report setting out an assessment of damages. I provided oral evidence at the hearing in London, before the three-member Arbitration Panel.

#### *Commonwealth Financial Planning Limited and Financial Wisdom Limited (ASIC compliance expert)*

Co-signatory of public reports pursuant to an appointment as Compliance Expert by the Australian Securities and Investments Commission, concerning licence conditions imposed upon two financial planning subsidiaries of the Commonwealth Bank of Australia. The licence conditions were imposed by ASIC following a series of allegations concerning the provision of inappropriate financial advice.

#### *Chung-Yi Pty Limited v Justin Chih-Yang Chang*

Preparation of expert reports and a joint expert report setting out an analysis of payments between multiple bank accounts operated by family members involved in a family property investment business. Claims were made by a number of siblings against another sibling for breach of directors' duties in his administration of company funds. The matter proceeded to trial in the Supreme Court of New South Wales. [Chung-Yi Pty Limited v Justin Chih-Yang Chang (No 2) [2018] NSWSC 1112]

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*Clasul & Ors v The Commonwealth (Federal Court of Australia)*

Preparation of expert's reports and joint expert reports for proceedings in the Federal Court of Australia to assess and respond to claims for loss of profits made by two representative plaintiffs in a Class Action against the Commonwealth of Australia. The plaintiffs operated Thoroughbred and Standardbred horse breeding businesses, and claimed loss of a profits as a result of the alleged mishandling of the outbreak of Equine Influenza in 2007 by agencies of the Commonwealth, leading to standstills in affected areas and alleged business losses.

*Radhika and Pankaj Oswal v Commissioner of Taxation (Federal Court of Australia and AAT)*

Preparation of expert's reports on behalf of the Commissioner of Taxation in response to expert reports provided by the Applicant's expert. The dispute related to a CGT event concerning the sale of shares in Burrup Fertilisers Pty Ltd, and the costs allegedly incurred in the construction of that entity's major asset, being an ammonia plant on the Burrup Peninsula, Western Australia.

*Emirates Park Pty Ltd v Rajesh Chimanlal Upadhyaya & Yashraj Pty Ltd (District Court of New South Wales)*

Undertaking an investigation into an alleged invoicing fraud carried out by a Director of a thoroughbred horse breeding operation, and preparing an expert's report to identify and quantify misappropriated funds for proceedings in the Supreme Court of New South Wales.

The report was also relied on by the NSW DPP, requiring the provision of oral evidence at the Criminal trial over three days. The accused was found guilty on all 14 charges, covering approximately four years and \$13 million. He was sentenced to a maximum of 12 years in prison with a non-parole period of 7 years and 9 months.

*NBN Co. Strategic Review (special review)*

Partner leading the 'Forensic audit' work stream of the strategic and financial review of Australia's largest ever infrastructure and construction project (NBN Co.) on behalf of the Australian Federal Government.

*Hwa Wang bank v Commissioner of Taxation (Federal Court of Australia)*

Preparation of an expert's report in an anti-avoidance proceeding in the Federal Court of Australia on behalf of the Commissioner of Taxation. The matter required the identification of the corporate structure of a group of entities across Australia and multiple Asia-pacific jurisdictions, and the analysis of the flow of funds between those entities. The matter concerned whether certain of those entities were resident, and had their central management and control in Australia.

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**Detailed list of engagements** *Claims and disputes*

- Appointment by the Federal Court of Australia as Court-appointed Referee to assist in resolution of the accounting evidence put forward by parties in the snack foods industry in a dispute arising under a fidelity insurance policy, covering employee fraud and dishonesty.
- Preparation of expert reports concerning damages arising from the alleged repudiation of a contract between a develop of flight simulation software and party tendering for a defence industry contract. The matter required the provision of expert testimony in the Federal Court of Australia.

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- Preparation of expert reports, and the assessment of claims for damages, in a South Australian dispute between two property development joint venture partners. The dispute arose as a result of claims by the Australian based partner of failure to provide the agreed amount of funding, and counter-claims by the other China based partner of the misuse and inappropriate expenditure of investment funds.
  - Preparation of expert reports and a joint expert report setting out an analysis of payments between multiple bank accounts operated by family members involved in a family property investment business. Claims were made by a number of siblings against another sibling for breach of directors' duties in his administration of company funds. The matter proceeded to trial in the Supreme Court of New South Wales.
  - Preparation of independent expert accounting reports in a domestic arbitration. The arbitration commenced following unsuccessful attempts to negotiate the renewal of an access agreement to various railway routes in the network. Our role included reviewing the financial support for the rail provider's costs, profit, third party funding and return on capital, for the purposes of determining the access price.
  - Preparation of an expert's report, and the provision of oral evidence in the Federal Court of Australia. The report set out the quantification of damages arising from copyright infringement, trade mark infringement, misleading and deceptive conduct and passing off in relation to a counterfeit skin care product. [Geneva Laboratories Limited v Prestige Premium Deals Pty Ltd (No 5) [2017] FCA 63]
  - Preparation of expert's reports and a joint expert report, and the provision of evidence (concurrent evidence) in the High Court of the Republic of Singapore. The matter concerned a contractual and breach of fiduciary dispute which arose between the two former partners of a cosmetic surgery clinic, and required the quantification of loss and analysis of patients said to have been diverted to a new competing clinic.
  - Accounting expert appointed pursuant to orders of the Federal Court of Australia to undertake an 'audit and inspection' of the financial records of Australian entities who had been appointed as distributors of psychometric testing products by the Applicants. The inspection was undertaken for the purposes of determining whether these entities had failed to account for royalties due to the Applicants, in breach of the agreements between the parties.
  - Preparation of expert's reports and a joint expert report, and the provision of evidence (concurrent evidence) in the Supreme Court of New South Wales. The engagement related to a dispute which arose between parties involved in operating insurance costs reduction advisory businesses, and required the estimate of losses, including various contracted fees, and the loss of value from the ownership of shares following the termination of various agreements and contracts between the parties.
  - Preparation of expert's reports for proceedings in the Supreme Court of New South Wales to assess the business interruption losses claimed by tenants of a Sydney retail outlet centre, following the outbreak of a fire which led to the closure of the centre.
  - Undertaking forensic accounting investigations and providing reports on behalf of two separate Chinese investors into Australian based property development ventures said to be qualifying investments for the purposes of Significant Investment Visas. The dispute arose in relation to the alleged misuse of investment funds, sales at under-value to related parties, and the failure to maintain accounting financial records.
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- Preparation of a series of expert's reports for a commercial arbitration relating to a contractual pricing dispute involving WA's major gas distributor. Provision of expert evidence in the Arbitrator's hearing.
  - Preparation of an expert's report and a joint expert report in relation to proceedings in the Supreme Court of New South Wales. The dispute related to the quantum of commissions due to a debt collection agency, following the termination of a contract between the agency and a major credit card provider.
  - Preparation of a series of expert's reports in a post-acquisition dispute which arose following the acquisition by a Private Equity fund of a minority interest in a listed Australian childcare services provider. Provision of expert evidence in the hearing in this matter in the Supreme Court of New South Wales, dealing with information provided concerning the earnings of the target entity and the use made of that information during due diligence for the purposes of assessing the acquisition.
  - Preparation of an expert's report for proceedings in the Supreme Court of Victoria to assess the quantum of payments which may have been made from monies held on trust (trust account defence). The dispute arose pursuant to a preference claim in excess of \$100 million, following the liquidation of a payments system provider, with the provider of prepaid telecommunications cards and vouchers which had been resold by the payments system provider.
  - Preparation of expert's reports and joint expert report, and the provision of evidence (concurrent evidence) in the Supreme Court of New South Wales. The dispute related to the alleged falsification of a company's accounts, and whether those accounts were misleading and prepared in accordance with accounting standards. The case related to the publication of a defamatory newspaper article which referred to the falsification of the accounts and their failure to comply with accounting standards.
  - Preparation of an expert's report for proceedings in the Federal Court of Australia to provide an assessment of losses claimed by a facilities management company, in a dispute with the operator of a Queensland mining accommodation village. The losses were claimed following the alleged improper termination of a services contract between the parties.
  - Preparation of an expert's report for proceedings in the Supreme Court of Victoria to assess the quantum of payments which may have been made from monies held on trust. The dispute arose pursuant to a preference claim in excess of \$100 million, following the liquidation of a payments system provider, with the provider of prepaid telecommunications cards and vouchers which had been resold by the payments system provider.
  - Preparation of an expert's report for proceedings in the Supreme Court of New South Wales to assess the losses claimed by a medical imaging company, in a dispute with another medical imaging company. The losses were claimed following the alleged improper termination of a sub-contract between the parties.
  - Preparation of expert's reports to quantify the gaming losses incurred by an individual. Provision of expert evidence in the Administrative Appeals Tribunal hearing in this matter.
  - Preparation of expert's reports for proceedings in the Supreme Court of Western Australia concerning damages suffered by a video rental Franchisor following termination of the franchise agreement by the operator of a WA franchise. The reports were to quantify damages, including loss of franchise and other fees pursuant to the Franchise Agreement, and reply to other expert's reports concerning both damages and the financial position of the
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defendants. Preparation of Joint Experts' memorandum, and the provision of evidence (concurrent evidence) in the hearing.

- Preparation of an expert's report for proceedings in the Supreme Court of New South Wales to quantify damages, including loss of franchise and other fees pursuant to the Franchise Agreement, suffered by a video rental Franchisor, following termination of the Franchise Agreement by the operator of a New South Wales franchise. Provision of expert evidence in the Supreme Court of New South Wales hearing in this matter.
- Preparation of an expert's report for proceedings in the Supreme Court of New South Wales relating to a claim for lost profits following the termination of a contract for the purchase of grapes.
- Preparation of an expert's report for proceedings in the Federal Court of Australia to quantify the income and expenditure of a company employee who brought unfair dismissal proceedings against his employer.
- Preparation of an expert's report for proceedings in the NSW Civil & Administrative Tribunal, to assess the loss claimed by the purchaser of an item of laser beauty treatment equipment, who claimed that the supplier of the device had not provided proper training, therefore leading to a loss of profits.
- Preparation of an expert's report for proceedings in the NSW Civil & Administrative Tribunal, to assess the loss claimed by the purchaser of an item of laser beauty treatment equipment, who claimed that the supplier of the device had not provided proper training, therefore leading to a loss of profits.
- Preparation of an expert's report quantifying damages relating to a contractual dispute between a law firm, and an associated business organisation.
- Preparation of a report to quantify loss for the purposes of an insurance claim, following the misappropriation of in excess of \$3 million of inventory from a meat wholesaler.
- Preparation of an expert's report for proceedings in the Supreme Court of New South Wales relating to the failure by an entity supplying industrial floor coverings to return a payment received in error from its customer. The report required analysis and identification of the manner in which the funds had been dispersed.
- Preparation of an expert's report for proceedings in the Supreme Court of New South Wales relating to a claim for damages arising from breach of contract between a health services organisation, and a contracted doctor.
- Providing Forensic accounting consulting services to a listed company and its legal advisors in their consideration of possible legal proceedings against the vendor of a business which the listed company had acquired.
- Preparation of an expert's report for proceedings in the Federal Court of Australia (Victoria Registry) to quantify amounts payable under a dealership agreement, in a dispute between a national telephony services provider and one of its major dealers. This involved the analysis and quantification of large amounts of billing system data.
- Preparation of affidavits relating to the quantification of loss arising from a billing and 'clawback' dispute between a mobile telephony services provider and a reseller, following the liquidation of the reseller.
- Preparation of an expert's report for proceedings in the Supreme Court of New South Wales to quantify a wasted expenditure claim. The dispute arose as a result of the approval, and subsequent withdrawal, of a Development Application by a local Council for the construction of a bulky goods outlet.

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- Preparation of an expert's report for proceedings in the District Court of New South Wales on behalf of a major national food retailer relating to the quantification of loss arising from equipment failure at a shopping centre.
  - Quantification of amounts payable under a mining maintenance agreement in the context of a dispute between a mining equipment supplier and a company operating a gold mine.
  - Preparation of an expert's report for proceedings in the District Court of New South Wales on behalf of a national directory business to assess loss of profits as a result of an alleged incorrectly worded advertisement.
  - Provision of expert assistance in relation to valuation issues arising from a dispute between a major retail bank and a property development business following claims that payments had been made from a bank account without proper authority.
  - Assisting with the preparation of an expert's report relating to quantification of loss arising from the reliance on an allegedly deficient investment prospectus.
  - Claim for loss of profits as a result of the alleged termination of a contract for supply of produce.
  - Assisting with the preparation of an expert's report relating to a claim for damages arising out of the alleged contamination of premises at a fuel retailer.
  - Assisting with the preparation of an expert's report on behalf of a mobile telephony service provider, arising out of the alleged termination of a mobile phone dealership agreement.
  - Assisting with the preparation of an expert's report dealing with the quantification of economic loss in respect of a dispute between two telephony service providers under s.46 of the Trade Practices Act.
  - Assisting with the preparation of an expert's report quantifying economic loss in a dispute between two telephony service providers in respect of a claim for unpaid calls and services.
  - Assisting with the preparation of an expert's report setting out an account of profits in respect of a damages claim arising from alleged breach of software copyright. This required the identification of all infringing product sales and profits.

#### *Accounting and fraud investigations and special reviews*

- Engaged to provide consulting expert advice to the husband (a High Net Worth individual) in divorce proceedings to analyse and quantify funds withdrawn from his Australian businesses which had been left under management of the wife for many years. Our client was concerned that his wife and individuals related to her had been using company funds on non-business or personal expenditures.
- Partner leading the 'Forensic audit' work stream of the strategic and financial review of Australia's largest ever infrastructure and construction project (NBN Co.) on behalf of the Australian Federal Government.
- Co-signatory of reports pursuant to an appointment as Compliance Expert by the Australian Securities and Investments Commission, concerning licence conditions imposed upon two financial planning subsidiaries of the Commonwealth Bank of Australia.
- Undertaking an investigation into the accounting and financial records of a business operating in the bus industry following the acquisition of that business by a U.K. based bus operator. A post-acquisition dispute arose following the discovery of financial irregularities, including the accuracy of warranties provided, which had a direct impact on the acquisition price paid.

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- Undertaking an investigation into the accounts of a group of related agricultural enterprises for the purposes of assisting in the resolution of a dispute between family members over the value of a deceased estate.
  - Undertaking an investigation into accounting irregularities concerning distributions from family trusts, and whether the financial statements of the trusts accurately reflected property and other transactions, in a dispute in the Supreme Court of New South Wales.
  - The investigation of fraudulent activity at an insolvent national automotive business, including the consideration of possible legal proceedings, assisting with the conduct of public examinations of Directors and auditors, review of the appropriateness and adequacy of audit services performed and issues relating to alleged criminal conduct. The assignment included review and quantification of alleged preference payments and amounts allegedly defrauded by a senior executive.
  - Assisting the Receivers of a listed financial services company in investigating transactions, including uncommercial transactions, and possible legal claims.
  - The review of the margin lending business of a major financial institution following suspected breaches of internal controls by employees. Included extensive interviews of executives and directors.
  - Investigation on behalf of a margin lending business into suspicious transactions undertaken by a stock broker relating to client margin loan accounts.
  - Working on an assignment to verify transactions administered and processed by an international Custodian bank following the occurrence of a \$150 million fraud on a superannuation fund.
  - Report on the effectiveness of controls, and the verification of transactions administered and processed by an international Custodian bank following the occurrence of a \$150 million fraud on a superannuation fund.
  - Investigation of alleged inappropriate purchasing activities by a director of a listed national retailer, including interviews of executives and directors.
  - Investigation on behalf of a regulator into the affairs of a property developer, including potential actions for mis-selling and fraud.
  - Undertaking an investigation to review accounting entries and the flow of investment funds following the discovery of a \$50 million fraud at a benevolent aged care provider. The assignment included a review of operations and risk.
  - Preparation of two affidavits for proceedings in the Federal Court of Australia (Brisbane Registry) on behalf of a national retailer in relation to alleged fraudulent transactions, and quantification of loss, by operators of franchised businesses.
  - Working on an assignment on behalf of a retail bank involving the quantification of loss arising from fraudulent credit card transactions.
  - Preparation of an affidavit setting out issues relating to the recording of transactions in the financial records of a mortgage business.
  - Part of an investigation team working for ASIC to investigate the circumstances around the collapse of a major insurance company.
  - Part of an investigation team working for ASIC to investigate false accounting in relation to a transport business.

*Forensic accounting matters relating to taxation disputes*

- Preparation of an expert's report in an anti-avoidance proceeding in the Federal Court of Australia on behalf of the Commissioner of Taxation. The

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matter required the identification of the corporate structure of a group of entities across Australia and multiple Asia-pacific jurisdictions, and the analysis of the flow of funds between those entities. The matter concerned whether certain of those entities were resident, and had their central management and control in Australia.

- Preparation of an expert's report in a Land tax dispute, for proceedings in the Administrative Decisions Tribunal New South Wales. The report concerned the profitability and commerciality of various activities, including primary production activities (horse breeding, cattle, bees, goats) on three plots of land in the Central Coast of New South Wales.
- Preparation of a report and analysis on behalf of the Commissioner of Taxation in relation to alleged transfer pricing irregularities at a major Global pharmaceutical business in an Administrative Appeals Tribunal proceeding.
- Preparation of an expert's report for proceedings in the Administrative appeals Tribunal in a dispute between a satellite television broadcaster and the Commissioner of Taxation. The matter concerned whether the broadcaster was profitable and in a cash flow positive position at the time at which it took out loans from, and paid loan interest to related parties.
- Preparation of an expert's report to analyse and quantify interest payable pursuant to a series of alleged loans taken out by a finance company, in anti-avoidance proceedings between that company and the Commissioner of Taxation. Provision of expert evidence in the Administrative Appeals Tribunal hearing in this matter. The decision was overturned on appeal to the Federal Court of Australia.
- Preparation of an expert's report to consider the application of accounting standards in a Federal Court of Australia proceeding involving the Commissioner of Taxation, and a multi-national group of companies in relation to transfer pricing matters.
- Preparation of an expert's report to consider the valuation of a 'promise to pay' and accounting recognition issues in a Federal Court of Australia proceeding involving the Commissioner of Taxation, and a multi-national group of companies in relation to transfer pricing matters.
- Preparation of an expert's report on behalf of the Commissioner of Taxation to consider the accounting and operations of a group of entities involved in horse breeding schemes, including consideration of the commerciality of various bonds and other financial arrangements.
- Review of valuation issues arising from a dispute between a clothing importer and the Australian Taxation Office. The issues in question related to the value attributed to goodwill and other intangibles within the context of a claim for a small business 50% reduction in CGT.
- John has also been retained in a number of confidential matters concerning Anti-avoidance proceedings.

#### *Regulatory disputes*

- Preparation of expert's reports (co-signed) in a dispute between a government-owned water utility and a service provider, following termination of the services agreement after a contract period of some 15 years. Termination of the agreement led to disputes concerning significant lump sum and fixed charge amounts payable pursuant to the terms of that agreement. The reports were prepared under an expert determination process, as submissions in response to the reports prepared by the appointed expert.

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- Undertaking reviews of the methodologies used in the pricing of broadband and other telephony services by a telecommunications provider in disputes with the ACCC, including:
    - Preparation of an expert's report for proceedings in the Federal Court of Australia to review an economic imputation model used in the assessment of pricing for the rollout of various ADSL services.
    - Preparation of an expert's report to review an economic imputation model used in the assessment of the pricing implications of the introduction of various special offers for subscribers.
    - Preparation of an analysis of the economic imputation model used in the pricing of telecommunications services for the purpose of assessing the implication of the rollout of HighSpeed Broadband and ADSL2+ services.
    - Assisting with the preparation of an expert's report in respect of an ADSL pricing dispute between a telephony services provider and the ACCC.
    - Assisting with the preparation of an expert's report on an assignment in relation to a trade practices dispute concerning the pricing calculations for PSTN services.

#### *Valuations and shareholder oppression cases*

- Preparation of an expert's report for proceedings in the Supreme Court of New South Wales to assess the valuation indicators considered, and valuation methodology adopted by the valuer of a consulting business engaged in the provision of investment banking services.
- Valuation of the shares and business regarding two smash repair operations. The valuation was undertaken on behalf of a major insurer following the alleged professional negligence of an accountant.
- Preparation of expert reports for proceedings in the Supreme Court of New South Wales to value the equity of a company operating a commercial laundry business. An action for oppressive conduct was brought by a shareholder and Director of the business, against fellow shareholders and directors.
- Valuation of equity for the purposes of assisting in the resolution of a dispute between shareholders of a motor dealership.
- Assisting in the preparation of a valuation of a chain of radio stations.
- Valuation of a motor repair business for the purposes of assisting in divorce proceedings.

#### *Experience in the provision of audit related services*

- John's experience in providing audit related services whilst employed by PricewaterhouseCoopers included businesses in the following industries:
  - Telecommunications and data services.
  - Pharmaceuticals.
  - Construction.
  - Manufacturing, including chemicals, industrial gasses and food products.
  - Financial services, including credit rating agencies, credit reporting and information services.
  - Retail, including fashion, stationery and food retailing.

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**Qualifications** CA Forensic Accounting Specialist

BSc (Hons) Management Sciences, Loughborough University, England

Certified Fraud Examiner (CFE)

Financial Analysis Certificate using Microsoft Excel

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Certificate IV in Fraud Control (Investigations)

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### Memberships

Fellow of Chartered Accountants Australia and New Zealand (FCA)

Fellow of the Institute of Chartered Accountants in England & Wales (FCA, UK)

Associate of the Financial Services Institute of Australasia (A Fin)

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### Publications

*The expert evidence iceberg*, Jointly-authored editorial in the 2023 Evidence in International Arbitration Report issued by the Australian Centre for International Commercial Arbitration (ICACA).

*Under par, how a game of golf jeopardised an expert's independence*.  
KordaMentha publication August 2021. Co-author with Madison Maurer.

*Experts Should be Under Control when Providing Evidence in Arbitration*. April 2018 Edition of Asian Disputes Review.

*Some like it hot! Expert views on judicial orders to hear expert evidence concurrently*. Hearsay, the Journal of the Bar Association of Queensland, Issue 59, Feb 2013. Co-author with Samantha Farthing.

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### Awards and other appointments

Committee Member, Australian Centre for International Commercial Arbitration (ACICA) Users' Council

Who's Who Legal listings:

- National Leader Forensic Accountants: Australia & New Zealand 2023
  - National Leader Arbitration Expert Witnesses: Australia & New Zealand 2023
  - Global Leader Investigations - Forensic Accountants, 2023
  - Global Leader Consulting Experts - Forensic Accountants, 2022
  - Who's Who Legal / Global Investigations Review - Thought Leaders, 2021
- 



## Appendix B My Letter of Instruction



Our reference  
AHK/JW/PRES29059-9162338

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Port Moresby

25 July 2024

By email: [jtemplecole@kordamentha.com](mailto:jtemplecole@kordamentha.com)  
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James Wood (02) 9210 6221  
Email: [james.wood@corrs.com.au](mailto:james.wood@corrs.com.au)

Partner  
Andrew Korbel

**Confidential and privileged**

Dear Mr Temple-Cole

**Federal Court of Australia proceeding NSD67/2024—  
Press Metal Aluminium (Australia) Pty Ltd ACN 085 370 010 &  
Anor v Minister for Industry and Science & Ors**

- 1 We act in the above proceedings for:
  - (a) Press Metal Aluminium (Australia) Pty Ltd (**PMAA**); and
  - (b) PMB Aluminium Sdn Bhd (**PMBA**).
- 2 We refer to your report dated 29 April 2022 (**Your First Report**) in relation to an inquiry (**Continuation Inquiry 591**) by the Anti-Dumping Commission (**Commission**) as to whether anti-dumping measures imposed on aluminium extrusions exported from Malaysia and Vietnam should be continued.
- 3 PMAA and PMBA have now commenced proceedings in the Federal Court of Australia seeking judicial review of a decision of the Minister for Industry and Science (**Minister**) to secure the continuation of the anti-dumping measures imposed on aluminium extrusions exported from Malaysia and Vietnam (**Decision**).
- 4 We wish to retain you to provide a report that our clients may rely on in the course of those proceedings, considering issues including those which you were asked to consider in Your First Report, but taking into account materials that were not available to you at the time that report was prepared.

**Federal Court of Australia proceeding NSD67/2024—  
Press Metal Aluminium (Australia) Pty Ltd ACN 085 370 010  
& Anor v Minister for Industry and Science & Ors**

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**A Background**

***General***

- 5 Anti-dumping measures were imposed on exports of aluminium extrusions from Malaysia and Vietnam on 27 June 2017 by the publication of a dumping duty notice and countervailing duty notice for Malaysian exports and dumping duty notice for Vietnamese exports (**Anti-Dumping Notices Nos 2017/72 and 2017/73**). The notices were published by the then Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (**Assistant Minister**) under sections 269TG and 269TJ of the *Customs Act 1901* (Cth) (**Customs Act**).
- 6 The imposition of the anti-dumping measures followed the conduct of a dumping and subsidy investigation (**Investigation 362**) into exports of aluminium extrusions exported to Australia from Malaysia and Vietnam by the Anti-Dumping Commissioner (**Commissioner**) and the provision by the Commissioner of his report and recommendations to the Assistant Minister (**Report 362**). Although the investigation extended to exports by a related entity of PMBA (**PMB**), the anti-dumping measures were not recommended to, and did not, apply to exports by PMB.
- 7 On 24 February 2020, a review of those measures (**Review 544**) was initiated. The Commissioner reported to the then Minister for Industry, Science and Technology with his report and recommendations following that review on 29 April 2021 (**Report 544**). The Minister for Industry, Science and Technology accepted the Commissioner's recommendations arising from Review 544 and by a notice published on 2 June 2021 altered the variable factors (i.e., export prices, normal value) and, consequently, the dumping margin applying to aluminium extrusions exported to Australia from Malaysia and Vietnam (**Anti-Dumping Notice No. 2021/037**).
- 8 The Commissioner found in Review 544 that PMB had been replaced by PMBA, following a corporate reorganisation within the Press Metal group, as the exporter of aluminium extrusions from Malaysia. Accordingly, the Commissioner determined an individual dumping margin for PMBA based on best available information as part of his review of the anti-dumping measures and recommended to the Minister that the anti-dumping measures be varied to impose dumping duty at that rate on exports by PMBA. That recommendation was accepted by the Minister (**Anti-Dumping Notice No. 2021/037**).
- 9 At the same time as Review 544, dumping investigations (**Investigations 540 and 541**) were initiated into exports of aluminium extrusions exported to Australia from Malaysia by exporters (including PMB) who had been exempted from the anti-dumping measures imposed on 27 June 2017 due to their exports being determined not to have been at dumped export prices in the original investigation, Investigation 362.

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& Anor v Minister for Industry and Science & Ors**

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- 10 The Commissioner reported to the Minister with his reports and recommendations in Investigations 540 and 541 on 29 April 2021 (**Reports 540** and **541**). The Minister accepted the Commissioner's recommendations in those reports and made his decision to impose anti-dumping measures on exports from Malaysia on 2 June 2021 (Anti-Dumping Notice Nos 2021/033 and 2021/035).
- 11 While exports by PMB were found by the Commissioner, in those investigations, to have been at dumped export prices, the Commissioner found (consistently with Review 544) that PMB had been superseded by PMBA as the exporter of aluminium extrusions from Malaysia and so PMB was unlikely to export aluminium extrusions from Malaysia at dumped export prices in the future. For this reason, its exports were exempted (i.e., not included) from the imposition of the anti-dumping measures referred to in paragraph 10 above.
- 12 On 2 February 2021, prior to the publication of the outcomes of Review 544 and Investigations 540 and 541, PMBA applied for an accelerated review for a separate determination of whether its exports of aluminium extrusions from Malaysia to Australia were at dumped export prices and, if so, the margin of dumping. The accelerated review (**Accelerated Review 577**) was initiated on 17 February 2021 (Anti-Dumping Notice No. 2021/023).
- 13 The Commissioner reported his findings and recommendations in Accelerated Review 577 to the Minister on 13 May 2021 (**Report 577**) and the Minister accepted the Commissioner's recommendations and published his decision on 10 June 2021 (Anti-Dumping Notice No. 2021/062).
- Continuation Inquiry 591***
- 14 On 15 September 2021, the Commissioner announced the initiation of Continuation Inquiry 591 (Anti-Dumping Notice 2021/119). Continuation Inquiry 591 was an inquiry into whether the anti-dumping measures imposed on exports of aluminium extrusions from Malaysia and Vietnam on 27 June 2017 should be allowed to expire on their due date of expiry of 27 June 2022 or be continued for a further five years from that date. The primary consideration for whether anti-dumping measures should be allowed to expire or be continued for a further period of five years is whether the expiry of the anti-dumping measures would lead to, or be likely to lead to, the continuation or recurrence of dumping and the material injury that the anti-dumping measures are intended to prevent.
- 15 On 22 October 2021, PMBA filed with the Commission a duly completed Exporter Questionnaire in connection with that inquiry. That response to the Exporter Questionnaire provided information concerning PMBA's export sales to Australia and its domestic sales in Malaysia, as well as its cost to make and sell (**CTMS**) aluminium extrusions for such sales, during the investigation period of 1 July 2020 to 30 June 2021. It did so to enable the Commission to determine whether its exports during this period were at dumped export prices and, if so, to what extent.
- 16 On 22 November 2021, the Commission commenced its verification of the accuracy and completeness of information contained in the response to the

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- Exporter Questionnaire to enable it to make the determinations referred to above, which verification was completed on 8 December 2021.
- 17 On or about 3 March 2022, the Commission provided a copy of its exporter verification report in respect of PMBA (**PMBA Verification Report 591**) and associated appendices to PMBA. In addition to the report, the documents provided included relevantly:
- (a) Confidential Appendix 1 (Export Price) to draft verification report;
  - (b) Confidential Appendix 3 (Normal Value) to draft verification report;
  - (c) Confidential Appendix 4 (Dumping Margin) to draft verification report.
- 18 On or about 7 March 2022 the Commission also provided to PMBA a spreadsheet titled “591 – PMBA – Appendix 3 – GP7-C-Level of trade analysis for domestic sales” that it had used in connection with the preparation of PMBA Verification Report 591.
- 19 On 11 March 2022, PMBA provided its comments on the verification report, including as to matters it submitted required correction. The comments are recorded in PMBA’s submission published on the Commission’s electronic public record (**EPR**) for Continuation Inquiry 591 as document number ‘24’ and a spreadsheet that was attached to that submission.
- 20 On 17 March 2022, the Commission published PMBA Verification Report 591 on the EPR.
- 21 On 18 March 2022, the Commission published Statement of Essential Facts 591 (**SEF 591**).
- 22 On 7 April 2022, PMBA made a submission to the Commission, responding to PMBA Verification Report 591 and SEF 591, including by expanding on the matters it submitted required correction. This submission was published on the EPR for Continuation Inquiry 591 as document number ‘29’.
- 23 Our clients made a number of other submissions to the Commission in the course of Continuation Inquiry 591, one of which included Your First Report.
- 24 At the conclusion of Continuation Inquiry 591, the Commission issued Report 591 dated 13 May 2022 (**Report 591**) in which it found that while dumping from Malaysia and Vietnam was likely to continue, this was not likely to lead to a continuation or recurrence of material injury to the Australian industry in the absence of the anti-dumping measures. Accordingly, the Commission recommended to the Minister that the anti-dumping measures applying to aluminium extrusions exported to Australia from Malaysia and Vietnam be allowed to expire on 27 June 2022.

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& Anor v Minister for Industry and Science & Ors**

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- 25 Notwithstanding that recommendation, the Commission also recommended that the Minister make findings that:
- (a) the export price of aluminium extrusions exported from Malaysia to Australia by PMBA is as set out in Confidential Attachment 3 (PMBA Export Price) to Report 591; and
  - (b) the normal value of aluminium extrusions exported from Malaysia to Australia by PMBA is as set out in Confidential Attachment 5 (PMBA Normal Value) to Report 591.
- 26 The Commission's recommendations were accepted by the Minister on 24 June 2022, as recorded in Anti-Dumping Notice No. 2022/042 (**Original Decision**).
- Review 155 and Reinvestigation**
- 27 On 17 August 2022, the Anti-Dumping Review Panel (**Panel**) published a notice of its intention to conduct a review of the Minister's Original Decision (**Review 155**).
- 28 On 21 October 2022, the Panel requested the Commission to reinvestigate the finding in Report 591 (**Reinvestigation**), that material injury to the Australian industry was not likely to continue or recur in the absence of anti-dumping measures.
- 29 Our clients made submissions to the Reinvestigation, part of which requested the Commission to reconsider, in light of Your First Report, its findings that exports by PMBA had been at dumped prices.
- 30 At the conclusion of the Reinvestigation, the Commission issued to the Panel its Reinvestigation Report dated 21 August 2023 (**Reinvestigation Report**) in which it found, contrary to its findings in Report 591, that the expiration of the anti-dumping measures would lead, or be likely to lead, to a continuation or recurrence of the material injury that the anti-dumping measures were intended to prevent. The Commission did not consider the question of the likelihood of *dumping* continuing or recurring, on the basis that this was outside the scope of the Panel's reinvestigation request.
- 31 On 19 September 2023, the Panel issued Report 155 (**Report 155**), in which it recorded its finding that the Original Decision was not the correct and preferable decision. The Panel recommended that the Minister revoke the Original Decision and substitute a new decision to secure the continuation of the anti-dumping measures applying to exports of aluminium extrusions from Malaysia and Vietnam.
- 32 On 14 December 2023, the Minister accepted the Panel's recommendations and reinstated the anti-dumping measures from that date, but as if different variable factors had been fixed in accordance with Report 591. This Decision, as well as Report 155 and Report 591, are the subject of the current judicial review proceedings.

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***Duty assessments***

- 33 On 27 June 2022, PMAA applied to the Commission for a final duty assessment in respect of imports of aluminium extrusions from PMBA during the period 27 June 2021 to 26 December 2021, on which PMAA had paid interim duty (**DA0243**). The Commission issued its report in April 2023 (**Report DA0243**) in which it provided a negative preliminary determination. That is, the Commission found that, based on an assessment of whether the relevant goods were exported at dumped prices, the interim dumping duty paid by PMAA during that period was less than the duty it should have paid.
- 34 In response, PMAA applied to the Panel for a review of the Commission's negative preliminary determination. In ADRP Decision No. 167 dated 31 July 2023 (**Decision 167**), the Panel revoked the Commission's negative preliminary determination and recommended that the Minister order a repayment of the amount of the interim duty that was overpaid by PMAA. This was on the basis that the normal values had been incorrectly determined by the Commission.
- 35 On 28 December 2022, PMAA applied to the Commission for a further duty assessment in relation to imports of aluminium extrusions from PMBA in the period 27 December 2021 to 28 June 2022, on which PMAA had paid interim duty (**DA0254**). In its report issued in December 2023 (**Report DA0254**), the Commission recommended that, based on the variable factors determined, the full amount of the interim duty paid by PMAA be refunded.

**B Issues arising from Continuation Inquiry 591**

- 36 To determine whether an exporter's goods have been sold into Australia at dumped export prices, the Commission, using the verified information provided by the exporter, calculates a weighted average export price for the exports to Australia during the relevant review period that is then compared to the weighted average 'normal value' of such exports. The 'normal value' is the domestic selling price of like goods to those exported to Australia sold in the exporting country during the same review period and is calculated as a weighted average of such prices over the same period. To the extent that the weighted average export price is less than the normal value (i.e., weighted average domestic sales prices), the export prices are dumped export prices with the difference being the dumping margin. The final dumping margin calculations for PMBA in Continuation Inquiry 591 are recorded in:
- (a) Confidential Attachment 3 (PMBA Export Price) to Report 591;
  - (b) Confidential Attachment 5 (PMBA Normal Value) to Report 591; and
  - (c) Confidential Attachment 6 (PMBA Dumping Margin) to Report 591.
- 37 In comparing the export prices with the normal value, it is a requirement under Article 2.4 of the *WTO Anti-Dumping Agreement* and section 269TAC(8) of the Customs Act that it be a 'proper comparison', also known as a 'fair comparison'. That is, the normal value is to be adjusted to eliminate differences that may affect

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Press Metal Aluminium (Australia) Pty Ltd ACN 085 370 010  
& Anor v Minister for Industry and Science & Ors**

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its comparability with the export prices, such as, physical differences, differences in the terms and conditions of sale, etc. Article 2.4 of the *WTO Anti-Dumping Agreement* and section 269TAC(8) of the Customs Act have been extracted at **Section D** below.

- 38 In connection with such adjustments, at Section 8.2 of PMBA Verification Report 591, the Commission made the following statements regarding the determination of a normal value:

*“PMBA claimed that the verification team should make a level of trade adjustment for domestic sales made via PMBA’s claimed retail sales division.*

*The verification team conducted price comparisons in relation to PMBA’s claimed level of trade classifications, MCC and customer. The team compared weighted average prices for different MCCs and examined sales volume, and customers grouped according to PMBA’s different levels of trade.*

*The verification team’s analysis found immaterial price differences between claimed levels of trade.*

*Further, the verification team notes that PMBA has not provided sufficient information for the verification team to be satisfied that the claimed retail division of PMBA sells to customers representing one level of trade only.*

*Given the above, the verification team is not satisfied that it should make a level of trade adjustment for the normal value in relation to domestic sales.”*

- 39 The Commission later stated at Section 6.3.10 of Report 591:

*“PMBA claims that a level of trade adjustment is required to reflect and take account of alleged differences in levels of trade in respect of domestic sales for the purpose of comparison with export sales prices to Australia.*

*The commission was not satisfied that it should make a level of trade adjustment for the normal value in relation to domestic sales. This was based on finding immaterial price differences between the claimed levels of trade. The analysis was conducted down to specific MCCs. PMBA has disputed this finding.*

*The commission is not satisfied that the claimed retail division of PMBA only sells to customers representing one level of trade only. From the evidence and data provided, it appears that the sales are from a different location other than PMBA’s main distribution site, and not necessarily confined to an actually distinguishable level of trade (i.e. the sales need not be exclusively retail sales, for example).*

*As stated in the Manual, ‘The evidence must demonstrate that the sales being compared were made at different levels of trade. An adjustment for trade level will only be made when these differences in levels of trade are shown to have affected price.’ Further, when the commission considers that sales are at different levels, it will consider two main issues: the selling activities carried out at the different marketing stages, and the price differences between sales in the domestic market.*

*The commission was unable to distinguish the difference in selling activities between the claimed levels of trade. It appears that there are a mix of customers sold to through each sales route. The same sales team manages*

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*sales directly from PMBA and sales made through the retail division. Further, the commission was not provided with any information about the sales functions of the customer, which is an important indicia for assessing whether the sales were made at a different level of trade.*

*The Manual further states that ‘there must be consistent and distinct differences in sale prices in order to establish a real difference in level of sales... The Commission will examine the pricing structure in order to determine whether all of the sales should remain in the normal value calculation. If there are no real differences in pricing between the nominated levels the domestic sales to all levels will be considered for normal value purposes.’*

*While not being able to distinguish if different levels of trade even exist based on selling activities, the commission still examined whether there were price differences between the claimed levels of trade. While PMBA has submitted that there is a difference, its calculations are based on a weighted average difference across all models. This approach introduces other variations (e.g. by finish type) which would lead to price differences which are unrelated to the level of trade, and so is not a relevant comparison.*

*Instead, the commission takes the same approach to model matching, using the MCCs to compare normal values to export prices for the most comparable products, to examine whether there is a difference in pricing for levels of trade. For the largest volume MCCs, the commission found that there were no consistent or distinct differences in sales prices that would establish a real difference in the level of sales.*

*Based on the evidence provided by PMBA, verified data and further analysis, the commission does not agree that a level of trade adjustment is warranted.*

...

*As a result, an adjustment to the normal value is not required as domestic sales were already comparable to export sales.”*

- 40 The price comparisons made in respect of PMBA by the Commission for the purpose of its assessment, in PMBA Verification Report 591, of whether a level of trade adjustment should be made are recorded in the spreadsheet titled “591-PMBA-GP7-C-Level of trade analysis for domestic sales”. The Commission relied on the same analysis when making its findings in Report 591.
- 41 In light of the findings quoted above, the Commission did not make the level of trade adjustment to the normal value claimed by PMBA for the purposes of the ‘proper comparison’ of the normal value with export prices.
- 42 PMBA claimed that the level of trade adjustment was required because sales by its Johor Bahru (**JB**) division were to retail customers, whereas export sales by PMBA were to PMAA which is a distributor of aluminium extrusions in the Australian market.
- 43 PMBA also contended that its sales through its JB division are at the retail level of trade as reflected in Tab (a) ‘Domestic Sales’ of Confidential Attachment 5 (PMBA Normal Value) to Report 591.

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- 44 PMB had similarly claimed, in each of Investigations 540 and 541, that an adjustment should be made to reflect sales to the retail level of trade by the JB division. The Commission agreed, in each of those investigations, that such an adjustment was appropriate. The Commission's conclusions with respect to that adjustment, and the manner in which the Commission calculated the adjustment, can be seen in the following documents:
- (a) extracts from Reports 540 and 541, and from the PMB Exporter Verification Reports in Investigations 540 and 541, in **Attachment A**;
  - (b) for the Commission's calculations in Investigation 540:
    - (i) Confidential Attachment 4 (PMB Sales) to Report 540;
    - (ii) Confidential Attachment 5 (PMB Normal Value) to Report 540; and
    - (iii) Confidential Attachment 6 (PMB Dumping Margin) to Report 540;
  - (c) for the Commission's calculations in Investigation 541:
    - (i) Confidential Attachment 4 (PMB Sales) to Report 541;
    - (ii) Confidential Attachment 5 (PMB Normal Value) to Report 541; and
    - (iii) Confidential Attachment 6 (PMB Dumping Margin) to Report 541.
- 45 An adjustment of the same nature was also claimed by PMBA in Accelerated Review 577 and accepted by the Commission. The Commission's conclusions with respect to that adjustment, and the manner in which the Commission calculated the adjustment, can be seen in the following documents:
- (a) Report 577 (at Section 5.6) (extracted in **Attachment A**);
  - (b) Confidential Appendix 3 (Normal Value) to Report 577; and
  - (c) Confidential Appendix 4 (Dumping Margin) to Report 577.
- 46 PMAA also claimed a level of trade adjustment in duty assessments DA0243 and DA0254 to account for the sales at the retail level by the JB division. In both of those duty assessments, the Commission agreed that such an adjustment was warranted (though the Commission's adjustment method in DA0243 was found to be incorrect on review by the Panel). The Commission's conclusions with respect to that adjustment, and the manner in which the adjustment was calculated, can be seen in the following documents:
- (a) extracts from Report DA0243, Decision 167 and Report DA0254 in **Attachment A**;

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- (b) for the Commission’s calculations in DA0243:
  - (i) Confidential Appendix 3 (Normal Value) to Report DA0243; and
  - (ii) Confidential Appendix 4 (Dumping margin) to Report DA0243;
- (c) for the Panel’s revised calculations in Decision 167:
  - (i) Confidential Attachment Three (DA0243 – PMBA – Appendix 3 Normal Value with LME timing adjustment % spreadsheet) to Decision 167; and
  - (ii) Confidential Attachment Four (DA0243 – PMBA – Appendix 4 Dumping Margin with LME timing adjustment spreadsheet) to Decision 167;
- (d) for the Commissions calculations in DA0254:
  - (i) Confidential Appendix 3 (Normal value summary table) to Report DA0254; and
  - (ii) Confidential Appendix 4 (Dumping Margin) to Report DA0254.

47 In Continuation Inquiry 591, to the extent that the amount of the normal value was affected by differences between retail sales by PMBA through the JB division and sales by PMBA to domestic customers which were distributors, those differences were not taken into account by the Commission in comparing the normal value with export prices in export sales by PMBA to PMAA. While determining that the price differences in the level of trade were not material, the Commission did not ultimately quantify that price difference in its calculations.

**C Questions to be answered**

48 Having regard to the information concerning PMBA’s sales during the investigation period for Continuation Inquiry 591, please provide your responses to the following questions, including reasons for your responses:

- (a) Was there a difference in price both:
  - (i) within each model control code (**MCC**); and
  - (ii) across all MCCs,between aluminium extrusions sold domestically at different levels of trade by PMBA, that is, between sales by the JB division to its customers, as compared with sales to other customers and, if so, what were those prices, and to what extent did they differ?
- (b) If your answers to (a) above differ from the relevant conclusions reached by the Commission in Report 591 (that there were “*immaterial price differences between the claimed levels of trade*”, and “[f]or the largest

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*volume MCCs ... there were no consistent or distinct differences in sales prices”):*

- (i) what methodology was employed by the Commission to reach its conclusions in Report 591 on the difference in price and how did that methodology differ from your methodology in answering (a) above?
- (ii) was the Commission’s conclusion affected (and if so, to what extent) by:
  - (A) the selection by the Commission of a limited number of customers to whom sales were made;
  - (B) the selection by the Commission of a limited number of customers within each MCC category to whom sales were made, and/or
  - (C) inclusion by the Commission of sales that were not made in the ordinary course of trade (**OCOT**) (that is, unprofitable sales)?
- (c) Having regard to the methodology (or methodologies) employed by the Commission in Accelerated Review 577, Investigations 540 and 541 and Duty Assessments DA0243 (as corrected by the Panel) and DA0254 to assess whether, and to what extent, a level of trade adjustment was required with respect to sales by the JB division:
  - (i) please explain how that methodology (or methodologies) differs from the methodology used by the Commission to make the same assessment in Report 591; and
  - (ii) please explain what the outcome would have been (in terms of level of trade adjustment, and dumping margin, for PMBA) in Continuation Inquiry 591 if the Commission had:
    - (A) employed the methodology you used to identify any price differences in your answers to (a) above;
    - (B) employed the methodology (or methodologies) used by the Commission in Accelerated Review 577, Investigations 540 and 541 and Duty Assessments DA0243 (as corrected by the Panel) and DA0254 to reach their conclusion;
    - (C) excluded sales that were not made in the OCOT but otherwise adopted the same methodology the subject of your answer to (b)(i) above;
    - (D) included sales by all customers across all MCCs but otherwise adopted the same methodology the subject

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of your answer to (b)(i) above (i.e., including sales that were not made in the OCOT, if applicable); or

- (E) included sales by all customers within each MCC but otherwise adopted the same methodology the subject of your answer to (b)(i) above (i.e., including sales that were not made in the OCOT, if applicable)?

49 In answering those questions, you are instructed to make the following assumptions:

- (a) Continuation Inquiry 591 related to an investigation period of 1 July 2020 to 30 June 2021;
- (b) the Commissioner has verified that the underlying data concerning PMBA's domestic and export sales set out in the confidential appendices and attachments to the Report 540, Report 541, Report 577, PMBA Verification Report 591, Report 591, Report DA0243, Decision 167, and Report DA0254 are correct;
- (c) the mathematical calculations prepared by the Commissioner / Panel in those confidential appendices and attachments are correct; and
- (d) in the Commissioner's calculations in those confidential appendices and attachments for Continuation Inquiry 591, customer groups referred to as "Inter-Co", "Local" and "Subsidiary" relate to the "Distribution" level of sales to customers, and customer group "JB" relates to the "Retail" level of sales to customers.

**D Legal provisions**

50 Australia's anti-dumping legislation is contained in Part XVB of the Customs Act. The relevant statutory provision regarding adjustments for the comparison of a normal value with export prices is set out in section 269TAC(8)(c) of the Customs Act, which provides:

*"(8) Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:*

*...*

*(c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;*

*that price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price."*

51 This provision gives effect to Article 2.4 of the WTO Anti-Dumping Agreement, which relevantly provides:

*"2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade,*

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*normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.” (footnote omitted)*

**E Documents Provided**

52 You have been briefed with the following documents (where the documents are available online, we have also included links to the Commission’s EPR or the relevant website):

#	Document
<b>Investigation 540</b>	
1.	PMB Verification Report 540 ( <a href="#">EPR no. 37</a> )
2.	Report 540 ( <a href="#">EPR no. 65</a> )
3.	Confidential Attachment 4 (PMB Sales) to Report 540
4.	Confidential Attachment 5 (PMB Normal Value) to Report 540
5.	Confidential Attachment 6 (PMB Dumping Margin) to Report 540
6.	Anti-Dumping Notice No. 2021/033 ( <a href="#">EPR no. 66</a> )
<b>Investigation 541</b>	
7.	PMB Verification Report 541 ( <a href="#">EPR no. 42</a> )
8.	Report 541 ( <a href="#">EPR no. 76</a> )
9.	Confidential Attachment 4 (PMB Sales) to Report 541
10.	Confidential Attachment 5 (PMB Normal Value) to Report 541
11.	Confidential Attachment 6 (PMB Dumping Margin) to Report 541
12.	Anti-Dumping Notice No. 2021/035 ( <a href="#">EPR no. 77</a> )
<b>Accelerated Review 577</b>	
13.	Anti-Dumping Notice No. 2021/023 ( <a href="#">EPR no. 2</a> )
14.	Report 577 ( <a href="#">EPR no. 3</a> )
15.	Confidential Appendix 3 (Normal Value) to Report 577

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16.	Confidential Appendix 4 (Dumping Margin) to Report 577
17.	Anti-Dumping Notice No. 2021/062 ( <a href="#">EPR no. 4</a> )
<b>Continuation Inquiry 591</b>	
18.	Anti-Dumping Notice No. 2021/119 ( <a href="#">EPR no. 2</a> )
19.	PMBA Verification Report 591 ( <a href="#">EPR no. 23</a> )
20.	Confidential Appendix 1 (Export Price) to PMBA Verification Report
21.	Confidential Appendix 3 (Normal Value) to PMBA Verification Report
22.	Confidential Appendix 4 (Dumping Margin) to PMBA Verification Report
23.	591 – PMBA –GP7-C-Level of trade analysis for domestic sales
23A	591 – PMBA – Exporter Work Program
24.	PMBA submission to Commission in response to draft verification report ( <a href="#">EPR no. 24</a> )
25.	Statement of Essential Facts 591 ( <a href="#">EPR no. 25</a> )
26.	PMBA submission to Commission in response to Verification Report and SEF ( <a href="#">EPR no. 29</a> )
27.	Confidential Attachment B to EPR 29
28.	Report 591 ( <a href="#">EPR no. 38</a> )
29.	Confidential Attachment 3 (PMBA Export Price) to Report 591
30.	Confidential Attachment 5 (PMBA Normal Value) to Report 591
31.	Confidential Attachment 6 (PMBA Dumping Margin) to Report 591
32.	Anti-Dumping Notice No. 2022/042 ( <a href="#">EPR no. 37</a> )
<b>Review 155</b>	
33.	Public Notice – Intention to Conduct a Review ( <a href="#">weblink</a> )
34.	Letter to Commissioner – Request for Reinvestigation ( <a href="#">weblink</a> )
35.	ADC Reinvestigation Report ( <a href="#">weblink</a> )
36.	Report No. 155 ( <a href="#">weblink</a> )
37.	Public Notice – Minister’s Decision ( <a href="#">weblink</a> )
<b>DA0243</b>	
38.	Report DA0243
39.	Confidential Appendix 3 (Normal Value) to Report DA0243
40.	Confidential Appendix 4 (Dumping margin) to Report DA0243
41.	Decision 167

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42.	Confidential Attachment Three (DA0243 – PMBA – Appendix 3 Normal Value with LME timing adjustment % spreadsheet) to Decision 167
43.	Confidential Attachment Four (DA0243 – PMBA – Appendix 4 Dumping Margin with LME timing adjustment spreadsheet) to Decision 167
<b>DA0254</b>	
44.	Report DA0254
45.	Confidential Appendix 3 (Normal value summary table) to Report DA0254
46.	Confidential Appendix 4 (Dumping Margin) to Report DA0254
<b>Other documents</b>	
47.	Anti-Dumping Commission’s Dumping and Subsidy Manual ( <a href="#">weblink</a> )
48.	Federal Court of Australia’s Expert Evidence Practice Note (GPN-EXPT) ( <a href="#">weblink</a> )
49.	Annexure A to Practice Note (Harmonised Expert Witness Code of Conduct) ( <a href="#">weblink</a> )
50.	Annexure B to Practice Note (Concurrent Expert Evidence Guidelines) ( <a href="#">weblink</a> )

**F Requirements of your report**

53 You are requested to prepare your report as an independent expert, in accordance with the Federal Court of Australia’s Expert Evidence Practice Note (GPN-EXPT) (**Practice Note**), and the annexures to it, including the Harmonised Expert Witness Code of Conduct, copies of which are included in your brief. Please review the Practice Note, and comply with it and its annexures in the preparation of your report.

54 For purposes of this report, we request that you have regard only to the information provided to you in this letter and the documents listed in **Section E**. However, to the extent that any analysis or other work product you produced for the purposes of Your First Report are relevant to this report, you may rely upon your previous analysis and work product. You must, however, identify and explain:

- (a) where this is the case;
- (b) what analysis or work product that were previously created by you are now being relied upon in this report;
- (c) what information you relied upon, and processes you undertook, in preparing the previous analysis or work product; and
- (d) whether it is the same information and materials provided to you for purposes of this report that are the subject of, or otherwise affected by, the previous analysis or work product that you also rely upon in this

25 July 2024  
KordaMentha

CORRS  
CHAMBERS  
WESTGARTH

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report or, if not, what other information that has not been provided to you for the purposes of this report is included in, or otherwise affected by, any previous analysis or work product that you have relied upon in this report.

Yours faithfully  
**Corrs Chambers Westgarth**



**Andrew Korbel**  
Partner

## Attachment A

### Extracts from Commission and Panel Reports (540, 541, 577, DA0243, Decision 167 and DA0254) on Level of Trade Adjustments

#### PMB Exporter Verification Report – Investigation 540

##### “9 Adjustments

To ensure the normal value is comparable to the export price of goods exported to Australia at FOB terms, the verification team has considered the following adjustments in accordance with section 269TAC(8).

##### 9.1 Rationale and Method

Adjustment type	Rationale for adjustment	Calculation method and evidence	Claimed in REQ?	Adjustment required?
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 of its Australian customers. An examination of price differences and customer profiles aided in establishing the existence of material differences in price due to level of trade.	The value of the adjustment was worked out by identifying the difference between the net profit margins on domestic sales at different levels of trade and applying the variance to domestic sales that did not correspond to the level of trade relevant to PMB’s Australian customers	Claimed during verification	Yes – only on certain sales

[Source: Extract from Table 10 Assessment of adjustments]

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### 9.3 Adjustments

The verification team considers the following adjustments under section 269TAC(8) are necessary to ensure that the normal value so ascertained is properly compared with the export price of those goods.”

Adjustment Type	Deduction/addition
Domestic level of trade	Add/deduct amounts relevant to differences in price brought about by sales at a non-comparable level of trade.

[Source: Extract from Table 11 Summary of Adjustments]

### Report 540

#### “6.6 PMB

.....

#### 6.6.7 Adjustments

The Commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The Commission considers these adjustments to be necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Domestic level of trade	Add/deduct amounts relevant to differences in price brought about by sales at a non-comparable level of trade.

[Source: Extract from Table 8 Summary of Adjustments (PMB)]

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#### 6.6.8 Submissions received in response to SEF 540 regarding PMB’s variable factors

##### Level of trade adjustment

During verification of PMB’s financial records, it was determined that internal transactions from PMB to its Johor Bahru branch (JB Branch) were not sales, as the internal transactions involved a transfer of goods between business units within the PMB company. PMB confirmed with the Commission during verification that the JB Branch was not a legal entity in its own right.

The Commission obtained a full sale listing of like goods sold by the JB Branch to unrelated customers. PMB advised that the JB Branch sales to unrelated customers were not at the same level of trade as its Australian sales and that the price to JB Branch’s unrelated customers required an adjustment. After considering the available information, the Commission agreed and made an adjustment which is reflected in the normal value determined for PMB in SEF 540.

At D-1.4 of PMB’s REQ, it indicated that its prices did not vary according to distribution channel. After examining the sales data initially provided in PMB’s REQ (excluding the non-relevant JB Branch data), the Commission did not consider level of trade differences existed and the

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comparison between the price to PMB's domestic customers and its Australian export customer was unaffected. As a result, PMB's REQ response at D-1.4 appeared to be accurate. Sales via the JB Branch to unrelated customers, however, were not considered to be at the same level of trade.

In light of PMB's submission regarding level of trade adjustments, the Commission has reviewed the approach to PMB's normal value in SEF 540 and taken into account the approach outlined in the Manual regarding price as the basis for level of trade adjustments and the approach cited by PMB in Continuation Inquiry Report No.517 (REP 517).

The price based level of trade adjustment has been worked out by observing the difference in the weighted average OCOT selling prices of like goods at EXW terms sold by the JB Branch and sales by PMB to all other customers, i.e. not through the JB Branch.

The approach outlined above is consistent with PMB's response to its REQ and the Commission's own examination that prices for like goods, other than those sold by the JB branch, were not affected by differences in level of trade. The changes also reflect the method which was adopted in REP 517 and brings the calculation into conformity with the price based method outlined in section 15.3 of the Manual.

PMB's dumping margin at 6.6.9 has been updated to reflect the change in the method to account for level of trade price differences."

[footnote omitted]

### **PMB Exporter Verification Report – Investigation 541**

#### **"9 Adjustments**

To ensure the normal value is comparable to the export price of goods exported to Australia at FOB terms, the verification team has considered the following adjustments in accordance with section 269TAC(8).

##### **9.1 Rationale and Method**

<b>Adjustment type</b>	<b>Rationale for adjustment</b>	<b>Calculation method and evidence</b>	<b>Claimed in REQ?</b>	<b>Adjustment required?</b>
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 of its Australian customers.	The value of the adjustment was worked out by identifying the difference between the net profit margins on domestic sales at different levels of trade and applying the variance to domestic sales that	Claimed during verification.	Yes – only on certain sales

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	An examination of price differences and customer profiles aided in establishing the existence of material differences in price due to level of trade.	did not correspond to the level of trade relevant to PMB's Australian customers		
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[Source: Extract from Table 10 Assessment of adjustments]

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### 9.3 Adjustments

The verification team considers the following adjustments under section 269TAC(8) are necessary to ensure that the normal value so ascertained is properly compared with the export price of those goods.”

Adjustment Type	Deduction/addition
Domestic level of trade	Add/deduct amounts relevant to differences in price brought about by sales at a non-comparable level of trade.

[Source: Extract from Table 11 Summary of Adjustments]

Note: there was no verification report for Accelerated Review 577 as it was contained in Report 577.

## Report 541

### “6.6 PMB

....

#### 6.6.7 Adjustments

The Commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The Commission considers these adjustments to be necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Domestic level of trade	Add/deduct amounts relevant to differences in price brought about by sales at a non-comparable level of trade.

[Source: Extract from Table 9 Summary of Adjustments (PMB)]

....

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**6.6.8 Submissions received in response to SEF 541 regarding PMB’s variable factors**

Level of trade adjustment

During verification of PMB’s financial records, it was identified that sales to its Johor Bahru branch (JB Branch) were not found to be valid sales, as the transactions involved a transfer of goods between business units within the PMB company. PMB confirmed with the Commission during verification that the JB Branch was not a legal entity in its own right.

In response to the above observation, the Commission obtained a full sales listing of like goods sold by the JB Branch. PMB advised that the JB Branch sales were not at the same level of trade as its Australian sales and the price to JB Branch customers required an adjustment. After considering the available information the Commission agreed and made the adjustment which is reflected in the normal value determined for PMB in SEF 541.

At D-1.4 of PMB’s REQ, it indicated that its prices did not vary according to distribution channel. After examining the sales data initially provided in PMB’s REQ (excluding the non-relevant JB Branch data), the Commission did not consider level of trade differences existed and the comparison between the price to PMB’s domestic customers and its Australian export customer was unaffected. As a result, PMB’s REQ response at D-1.4 appeared to be accurate. Sales via the JB Branch, however, were not considered to be at the same level of trade.

In light of PMB’s submission regarding level of trade adjustments, the Commission has reviewed the approach to PMB’s normal value in SEF 541 and taken into account the approach outlined in the Manual regarding price as the basis for level of trade adjustments and the approach cited by PMB in Continuation Inquiry Report No.517 (REP 517).

The price based level of trade adjustment has been worked out by observing the difference in the weighted average OCOT selling prices of like goods sold by the JB Branch and sales by PMB to all other customers, i.e. not through the JB Branch.

The approach outlined above is consistent with PMB’s response to its REQ and the Commission’s own examination that price for like goods other than those sold by the JB branch were not affected by differences in level of trade. This approach also reflects that which was adopted in REP 517.

PMB’s dumping margin at 6.6.9 reflects the change in method to account for level of trade price differences.”

[footnote omitted]

**Report 577**

**‘5. NORMAL VALUE**

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**5.6 Adjustments to normal value**

To ensure the normal value is comparable to the export price of goods exported to Australia at FOB terms, the Commission has considered the following adjustments in accordance with section 269TAC(8).

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Adjustment type	Rationale for adjustment	Calculation method and evidence	Claimed in REQ?	Adjustment required?
Level of trade	<p>A material proportion of PMBA's domestic sales were at a level of trade that was not equivalent to the level of trade of its Australian customers.</p> <p>An examination of price differences and customer profiles aided in establishing the existence of material differences in price on the domestic market due to level of trade.</p>	<p>The value of the adjustment was worked out by identifying the difference between domestic selling prices between the different levels of trade. The percentage difference in selling prices between these levels of trade was then applied to correspond to the level of trade relevant to PMBA's Australian customers.</p>	Yes	Yes

[Source: Extract from Table 9 Assessment of adjustments]

### 5.6.2 Adjustments

Having regard to the findings outlined above in Table 9, the Commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The Commission considers these adjustments to be necessary to ensure a fair comparison of normal values and export prices.”

Adjustment Type	Deduction/addition
Level of trade	Deduct an amount arising from the differences in level of trade in domestic sales

[Source: Extract from Table 10 Summary of Adjustments (PMBA)]

### Report DA0243

#### “5.2 Normal value

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### 5.2.3 Adjustments

To ensure the comparability of normal values to export prices, the commission made the following adjustments to PMBA's normal values pursuant to section 269TAC(8):

Adjustment Type	Adjustment method
Level of trade	Excluding sales made through PMBA's Johor Bahru division ('JB'), which were made on significantly different terms and at a different level of trade.

[Source: Extract from Table 1: Adjustments]

...

### 5.3 Submissions

...

#### 5.3.5 Level of trade

Press Metal Australia questioned the exclusion of domestic sales through JB from the normal value calculation. It then claims that:

*As was submitted in Continuation Inquiry 591 [...] an adjustment to the normal value was required to take account of the difference in the level of trade in domestic sales by PMBA through its business unit 'JB' to unrelated retailers as compared with export sales to PMAA [Press Metal Australia] and its effect on prices in such sales respectively. This remains the position of PMAA and PMBA.*

In REP 591 the commission did not accept PMBA's claim for a level of trade adjustment in relation to the JB sales. One reason for not accepting PMBA's claim in REP 591 is that the commission observed immaterial price differences between the claimed levels of trade. As explained in the Manual, '[a]n adjustment for trade level will only be made when these differences in levels of trade are shown to have affected price.' However in this duty assessment the commission has accepted Press Metal Australia's claim. Based on the evidence before the commission in this duty assessment, the commission found that the JB sales had significantly different terms to the rest of PMBA's domestic sales and were at a different level of trade, and that these differences appear to have affected price during period covered by the duty assessment.

The methodology for making such a level of trade 'adjustment' is to exclude those sales from the normal value calculation, as set out in the Manual:

*An example of a difference in the level of trade is where an exporter sells on its domestic market to levels A (a distributor) and B (a retailer). The export sales to Australia are at level A. In this circumstance the Commission examines whether it is possible to determine a normal value using only comparable domestic sales to level A. This normal value would be based upon those sales that are at the same trade level as the export sales and not the total population of sales. A normal value using*

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*comparable domestic sales would not require an adjustment to take account of level of trade.*

The circumstances in this case fit the above scenario, where the JB sales are at level B, and PMBA's other domestic sales and export sales to Australia are at level A. The commission has therefore excluded the JB sales and the resulting normal value only uses domestic sales at a comparable level of trade to the export sales to Australia."

[footnotes omitted]

### **Decision No. 167**

#### **"Ground 1**

...

#### **Analysis**

27. The applicant claims that, pursuant to s.269TAC(1) of the Act, it is incorrect to exclude a cohort of selling prices on the basis that they were to a different level of trade. It suggests that the normal values should have been based on all domestic sales by PMBA that were considered arms length and in the OCOT and determined appropriate adjustments, pursuant to s.269TAC(8) of the Act, to ensure such adjusted selling prices were comparable to the export prices.
- ...
29. In DA0243, the ADC agreed with the applicant that PMBA's retail selling prices, through the JB division, were to a different level of trade and had other significant differences to that of the export sales to the importer, Press Metal Australia, who distributes the goods. It claimed this impacted their comparability.
30. The ADC gave effect to the level of trade adjustment by excluding such sales from normal value consideration. It stated in the Table of s.269TAC(8) adjustments that it had made the adjustment by: 'excluding sales made through PMBAs Johor Bahru division (JB) which were made on significantly different terms and at a different level of trade'.
31. I acknowledge there is some attraction to the concept of excluding certain sales to a certain level of trade in order to avoid the need to calculate an adjustment to the normal value to exclude the effects of such sales on the normal value to enable a 'fair comparison'. However, in my opinion, s.269TAC(1) and (8) do not allow such an exclusion. The ADC's proposal of claiming that the exclusion of a cohort of 'different' domestic selling prices through an adjustment under s.269TAC(8) of the Act is flawed in my opinion.
- ...
43. In the circumstances relating to Ground One, given:
- the limited information provided by the applicant in the review application regarding the proposed level of trade adjustment, and
  - that the ADC is unable to calculate the normal value in accordance with the methodology proposed by the Review Panel to reinstate and include 'adjusted selling prices' by JB division to reflect sales to the same level of trade as the exported sales,

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the Review Panel considers there is insufficient information available to assess a normal value based on domestic selling prices under s.269TAC(1) of the Act.

44. There is also insufficient information available to the Review Panel to determine a normal value under s.269TAC(2)(c) or (d) based on cost to make and sell the goods or sales by the exporter to third countries. Recognising that the Review Panel is required to rely on information that was before the Commissioner when the Commissioner made the Reviewable Decision, the Review Panel considers that the normal value should be determined pursuant to s.269TAC(6) based on all relevant information.
45. Accordingly, the Review Panel considers that the normal values should be determined pursuant to s.269TAC(6) of the Act. The amounts of the normal values should be based on PMBA's domestic selling prices excluding the sales made through JB division together with the adjustments referred to in Table 1: Adjustments, except for the adjustment referred to as a level of trade adjustment. A further recommendation is made in Ground Three in relation to the normal values which will further adjust these amounts.

...

**Conclusion**

48. I accept this ground of review has established that the Reviewable Decision was not correct or preferable on the basis that there was not legislative authority pursuant to s.269TAC(8) to exclude certain sales from normal value consideration under s.269TAC(1) of the Act. I recommend that the normal value be determined pursuant to s.269TAC(6) of the Act in the manner outlined in paragraph 45."

[footnotes omitted]

**Report DA0254**

**4.2 Normal value**

...

**4.2.3 Adjustments**

To ensure the comparability of normal values to export prices, the commission made the following adjustments to PMBA's normal values pursuant to section 269TAC(8):

Adjustment Type	Assessment for adjustment	Calculation method / evidence
Level of trade	PMBA claimed that a material proportion of PMBA's domestic sales were at a retail level of trade (JB sales) that was not equivalent to the level of trade of its Australian customer.	The VT found that PMBA's JB arm sells at a materially higher price compared to other domestic sales channels. The VT notes that PMBA's JB arm sales incur warehousing costs, whereas all other domestic and Australian sales do not. The VT therefore applied a

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		normal value adjustment by reducing JB sales prices by an SG&A percentage representing the extra SG&A expenses incurred for JB sales.
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[Source: Extract from Table 2: Adjustments]

...

#### **4.3 Submissions**

...

##### **4.3.1 Level of trade**

As explained in 4.2.3 above, a level of trade adjustment to the normal value has been made. For this duty assessment, the commission noted that it made this adjustment based on the fact that it is satisfied that JB is an arm of PMBA, whereby sales that PMBA made through this sales channel were not at the same level as sales made through other channels. The commission further noted that the JB sales incurred warehousing costs, whereas the sales through all other channels did not.

The commission noted that PMBA reports warehousing costs as part of SG&A expenses. Based on the information provided during verification, the commission could quantify the SG&A expense relating to JB sales, and separately, the SG&A expense relating to non-JB PMBA sales. Accordingly, the commission found that it had sufficient information to make a level of trade adjustment based on the “costs arising from different functions” method from the Dumping and Subsidy Manual (the Manual).

PMAA submitted that the commission should instead use the “level discount” method from the Manual, for the level of trade adjustment. PMAA provided the following reasons:

- PMAA incurs warehousing costs
- The difference between JB warehousing costs versus PMAA Australian warehousing costs could have been quantified and
- The commission gave no reason for departing from the approach to the level of trade adjustment in accelerated review 577.

The commission notes that the importer, being PMAA, incurring warehousing costs is not relevant to the level of trade adjustment and methodology. This is because the “costs arising from different functions” level of trade adjustment is to attain a normal value that is comparable to a FOB export price. Accordingly, the level of trade adjustment concerns the existence of PMBA’s warehousing costs in Malaysia only, being the country of export. PMAA’s warehousing costs are costs relating to warehousing in Australia.

Therefore, quantifying the difference between warehousing costs would not have had an effect on the level of trade adjustment.

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PMAA stated that the commission gave no reason for departing from its previous approach to the level of trade adjustment methodology taken in accelerated review 577.

The Manual notes that the *“the Commission uses the level discount method only where there is an absence of information pertaining to costs and expenses referred to in the first method”*. The first method is the “costs arising from different functions” method outlined above. As the commission is satisfied that there is relevant information regarding the costs approach, this approach has been taken.”

[footnotes omitted]

## **Appendix C Documents that I have been instructed to consider**

C.1.1 The documents I have been instructed to consider are set out in Section E of My Letter of Instruction. The documents I have utilised in this report are identified in the body of the report.



## Appendix D My analysis

D.1.1 My analysis is provided in native (Excel spreadsheet) format.



## Appendix E Dumping margin calculation outcomes

E.1.1 In Table 42 to Table 46 below, I set out the calculation of the dumping margin as assessed in the commission's Analysis and each of My Scenarios described above for each MCC and in total for all MCCs. The details of this analysis are set out in Appendix D.

**Table 42: Commission's Analysis: dumping margin calculation**

Export MCC	Extended dumping margin (MYR)	ADC FOB export price MYR	Dumping margin
<i>Calculation</i>	A	B	$C = A/B$
CA-6A-T1	[REDACTED]	[REDACTED]	(1.3%)
CA-6B-T1	[REDACTED]	[REDACTED]	(6.0%)
M-6A-T1	[REDACTED]	[REDACTED]	5.8%
M-68-Ti	[REDACTED]	[REDACTED]	(18.6%)
M-6D-T1	[REDACTED]	[REDACTED]	71.1%
NA-6A-T1	[REDACTED]	[REDACTED]	8.7%
PBS-6D-T1	[REDACTED]	[REDACTED]	5.7%
PC-6A-T1	[REDACTED]	[REDACTED]	8.8%
PC-6B-T1	[REDACTED]	[REDACTED]	(2.3%)
<b>All MCCs total</b>	[REDACTED]	[REDACTED]	<b>6.7%</b>

Source: Appendix D, tab "Report Tables".

**Table 43: My Scenario 1: dumping margin calculation**

Export MCC	Extended dumping margin (MYR)	ADC FOB export price MYR	Dumping margin
<i>Calculation</i>	A	B	$C = A/B$
CA-6A-T1	[REDACTED]	[REDACTED]	(9.4%)
CA-68-Ti	[REDACTED]	[REDACTED]	(6.0%)
M-6A-T1	[REDACTED]	[REDACTED]	(1.0%)
M-6B-T1	[REDACTED]	[REDACTED]	(18.6%)
M-6D-T1	[REDACTED]	[REDACTED]	71.1%
NA-6A-T1	[REDACTED]	[REDACTED]	(1.3%)
PBS-6D-T1	[REDACTED]	[REDACTED]	(3.3%)
PC-6A-T1	[REDACTED]	[REDACTED]	(4.0%)
PC-6B-T1	[REDACTED]	[REDACTED]	(14.1%)
<b>All MCCs total</b>	[REDACTED]	[REDACTED]	<b>(2.4%)</b>

Source: Appendix D, tab "Report Tables".

Table 44: My Scenario 2: dumping margin calculation

Export MCC	Extended dumping margin (MYR)	ADC FOB export price MYR	Dumping margin
<i>Calculation</i>	A	B	C = A / B
CA-6A-T1			(9.1%)
CA-6B-T1			(6.0%)
M-6A-T1			1.7%
M-6B-T1			(18.6%)
M-6D-T1			71.1%
NA-6A-T1			(0.9%)
PBS-6D-T1			(0.9%)
PC-6A-T1			(0.5%)
PC-6B-T1			(11.7%)
<b>All MCCs total</b>			<b>0.3%</b>

Source: Appendix D, tab "Report Tables".

Table 45: My Scenario 3: dumping margin calculation

Export MCC	Extended dumping margin (MYR)	ADC FOB export price MYR	Dumping margin
<i>Calculation</i>	A	B	C = A / B
CA-6A-T1			(7.1%)
CA-6B-T1			(6.0%)
M-6A-T1	1		4.0%
M-6B-T1			(18.7%)
M-6D-T1			71.1%
NA-6A-T1			2.0%
PBS-6D-T1			2.3%
PC-6A-T1			4.0%
PC-6B-T1			(6.8%)
<b>All MCCs total</b>			<b>3.4%</b>

Source: Appendix D, tab "Report Tables".

Table 46: My Scenario 4: dumping margin calculation

Export MCC	Extended dumping margin (MYR)	ADC FOB export price MYR	Dumping margin
<i>Calculation</i>	A	B	$C = A / B$
CA-6A-T1			(3.1%)
CA-6B-T1			(6.0%)
M-6A-T1			4.8%
M-6B-T1			(18.6%)
M-6D-T1			71.1%
NA-6A-T1			6.4%
PBS-6D-T1			4.1%
PC-6A-T1			6.5%
PC-6B-T1			(4.6%)
<b>All MCCs total</b>			<b>5.1%</b>

Source: Appendix D, tab "Report Tables".

