



**Australian Government**  
**Department of Industry, Science,  
Energy and Resources**

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XV B*

# **FINAL REPORT NO. 577**

**ACCELERATED REVIEW**

**OF THE DUMPING DUTY NOTICE AND  
COUNTERVAILING DUTY NOTICE APPLYING TO**

**CERTAIN ALUMINIUM EXTRUSIONS  
EXPORTED TO AUSTRALIA FROM MALAYSIA**

**BY**

**PMB ALUMINIUM SDN. BHD.**

**13 May 2021**

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### ABBREVIATIONS

the accelerated review period	1 January 2020 to 31 December 2020
the Act	<i>Customs Act 1901</i> (Cth)
ADN	Anti-Dumping Notice
aluminium extrusions	certain aluminium extrusions (also referred to as the goods)
CIF	cost, insurance and freight
the Commission	Anti-Dumping Commission
the Commissioner	Commissioner of the Anti-Dumping Commission
CTM	cost to make
Customs Tariff Regulation	<i>Customs Tariff (Anti-Dumping) Regulation 2013</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i> (Cth)
EPR	electronic public record
FOB	free on board
the goods	the goods the subject of the accelerated review (also referred to as the goods under consideration)
ICD	interim countervailing duty
IDD	interim dumping duty
LME	London Metal Exchange
MCC	Model Control Code
the Manual	Dumping and Subsidy Manual, November 2018. Available on the Commission's website at <a href="http://www.adcommission.gov.au">www.adcommission.gov.au</a> .
the Minister	Minister for Industry, Science and Technology
NIP	non-injurious price
the notices	the dumping duty notice and countervailing duty notice
OCOT	ordinary course of trade
PMAA	Press Metal Aluminium (Australia) Pty Ltd
PMB	Press Metal Berhad
PMBA	PMB Aluminium Sdn Bhd
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 362	<i>Anti-Dumping Commission Report No. 362</i>
REQ	response to the exporter questionnaire
RIQ	response to the importer questionnaire
SEF 544	<i>Statement of Essential Facts No. 544</i>
SG&A	selling, general and administrative costs
USP	unsuppressed selling price

## 1 SUMMARY AND RECOMMENDATION

### 1.1 Background

On 2 February 2021, PMB Aluminium Sdn. Bhd. (PMBA) made an application to the Commissioner of the Anti-Dumping Commission (the Commissioner), seeking an accelerated review of the dumping duty notice and countervailing duty notice (the notices) applying to certain aluminium extrusions (aluminium extrusions, or the goods) exported to Australia from Malaysia.<sup>1</sup>

PMBA's application sought an accelerated review on the basis that the notices are inappropriate because it is currently subject to the combined rate of interim dumping duty (IDD) and interim countervailing duty (ICD) of 16.2 per cent. This rate reflects the combined rate for 'All other exporters' as determined by the Minister after consideration of the findings and recommendations in *Anti-Dumping Commission Report No. 362* (REP 362).

PMBA did not export the goods to Australia during the period subject to the original investigation<sup>2</sup> (Investigation No. 362) and is therefore a 'new exporter' as defined in section 269T(1) of the *Customs Act 1901* (the Act).<sup>3</sup>

PMBA's application follows its November 2019 acquisition of the aluminium extrusion business of related party Press Metal Berhad (PMB). PMB is an exporter whose exports are not subject to the notices as a result of the original investigation being terminated in relation to exports by PMB. As PMBA is related to PMB, one of the conditions for the Commissioner to reject PMBA's application were present. However, due to the circumstances relevant to each of the parties, the Commissioner did not reject PMBA's application.<sup>4</sup>

This report sets out the facts on which the Commissioner is basing his recommendations to the Minister for Industry, Science and Technology (the Minister).

### 1.2 Application of law to facts

Division 6 of Part XVB of the Act allows eligible parties to apply for an accelerated review of anti-dumping measures. This Division, among other matters:

- sets out the procedures to be followed and the matters to be considered by the Commissioner when conducting accelerated reviews for the purpose of making a report to the Minister; and
- enables the Minister, after consideration of such reports, to leave the notices unchanged or to modify them as appropriate.

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<sup>1</sup> Electronic Public Record (EPR) 577, Item No. 001.

<sup>2</sup> 1 July 2015 to 30 June 2016.

<sup>3</sup> All legislative references in this report are to the *Customs Act 1901* unless otherwise specified.

<sup>4</sup> Anti-Dumping Notice (ADN) No. 2021/023 at EPR 577, Item No. 002 outlines the Commissioner's consideration of the application.

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## 1.3 Findings

Based on all relevant and available information, the Commissioner, in relation to the variable factors for PMBA's exports of the goods to Australia, considers that:

- the export price should be determined under section 269TAB(1)(c), having regard to all the circumstances of the exportation;
- the normal value should be determined pursuant to section 269TAC(1);
- the non-injurious price (NIP) should be equal to PMBA's normal value plus the amount of countervailable subsidy received; and
- the amount of countervailable subsidy received should be determined under section 269TACD.

As a consequence of the above, the variable factors relevant to PMBA's exports of the goods have changed.

## 1.4 Recommendation

Based on the above findings and because of section 269ZG(1)(b), the Commissioner recommends that the Minister alter the notices, so as to apply to PMBA, as if different variable factors had been fixed.

Further, the Commissioner recommends, in relation to PMBA's exports of the goods to Australia:

- the IDD be worked out in accordance with the combination of fixed and variable duty method at a rate of **2.6 per cent** pursuant to section 5(4) of the *Customs Tariff (Anti-Dumping) Regulation 2013* (Customs Tariff Regulation);
- the ICD is **zero per cent**; and
- the Minister is not required to apply the lesser duty rule.

If accepted by the Minister, the individual IDD and ICD rates applicable to PMBA will take effect retrospectively from 2 February 2021 (the date the application was lodged).

## **2 BACKGROUND**

### **2.1 The goods**

#### **2.1.1 Description**

The goods subject to the notices are described in the table below.

<b>Full description of the goods the subject of the application</b>
<p>Aluminium extrusions that:</p> <ul style="list-style-type: none"> <li>• are produced by an extrusion process;</li> <li>• are of alloys having metallic elements falling within the alloy designations published by The Aluminium Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents);</li> <li>• have finishes being:                             <ul style="list-style-type: none"> <li>○ as extruded (mill);</li> <li>○ mechanically worked;</li> <li>○ anodized; or</li> <li>○ painted or otherwise coated, whether or not worked;</li> </ul> </li> <li>• have a wall thickness or diameter greater than 0.5 mm;</li> <li>• have a maximum weight per metre of 27 kilograms; and</li> <li>• have a profile or cross-section fitting within a circle having a diameter of 421 mm.</li> </ul>
<b>Further information</b>
<p>The goods under consideration include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. For example, aluminium extrusion products that have been painted, anodised, or otherwise coated, or worked (e.g. precision cut, machined, punched or drilled) fall within the scope of the goods.</p> <p>The goods under consideration do not extend to intermediate or finished product that are processed or fabricated to such an extent that they no longer possess the nature and physical characteristics of an aluminium extrusion, but have become a different product.</p>

**Table 1: The goods description**

Further details on the goods and existing measures is available on the Dumping Commodity Register on the Anti-Dumping Commission's (the Commission) website (accessible via [www.adcommission.gov.au](http://www.adcommission.gov.au)).

#### **2.1.2 Tariff classification**

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995* (Cth):<sup>5</sup>

<b>Tariff subheading</b>	<b>Statistical code</b>	<b>Description</b>
7604.10.00	06	Non alloyed aluminium bars, rods and profiles

<sup>5</sup> These tariff classifications and statistical codes may include goods that are both subject and not subject to the anti-dumping measures. The listing of these tariff classifications and statistical codes is for convenience and reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to the anti-dumping measures.

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Tariff subheading	Statistical code	Description
7604.21.00	07	Aluminium alloy hollow angles and other shapes
7604.21.00	08	Aluminium alloy hollow profiles
7604.29.00	09	Aluminium alloy non hollow angles and other shapes
7604.29.00	10	Aluminium alloy non hollow profiles
7608.10.00	09	Non alloyed aluminium tubes and pipes
7608.20.00	10	Aluminium alloy tubes and pipes
7610.10.00	12	Doors, windows and their frames and thresholds for doors
7610.90.00	13	Other

**Table 2: Tariff classifications of the goods**

### 2.2 Accelerated reviews

The legislative framework that underpins the making of, and the consideration of, an application for accelerated review of dumping and countervailing duty notices is contained in Divisions 1 and 6 of Part XVB of the Act.

If the Commissioner does not reject an application, or terminate an accelerated review, the Commissioner must, no later than 100 days after the application is lodged, provide the Minister a report recommending:<sup>6</sup>

- (a) that the dumping duty notice and countervailing duty notice the subject of the application, remain unaltered;<sup>7</sup> or
- (b) that the dumping duty notice and countervailing duty notice the subject of the application be altered, so as to apply to the applicant as if different variable factors had been fixed;<sup>8</sup>

and set out the reasons for so recommending.<sup>9</sup>

Following the Minister's decision, a notice is published on the Commission's website advising of the decision.<sup>10</sup>

### 2.3 Existing measures

On 27 June 2017, the Minister published the notices which imposed anti-dumping measures on the goods exported to Australia by certain Malaysian exporters following REP 362.<sup>11</sup>

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<sup>6</sup> Section 269ZG(2).

<sup>7</sup> Section 269ZG(1)(a).

<sup>8</sup> Section 269ZG(1)(b).

<sup>9</sup> Section 269ZG(1).

<sup>10</sup> Section 269ZG(3).

<sup>11</sup> The anti-dumping measures applied to all exporters from Malaysia except Press Metal Berhad, LB Aluminium Berhad, Superb Aluminium Industries Sdn Bhd, Kamco Aluminium Sdn Bhd, Milleon Extruder Sdn Bhd and Genesis Aluminium Industries Sdn Bhd. These exporters were the subject of Investigation Nos. 540 and 541 which were initiated on 29 April 2020. The Commissioner's report in relation to the investigations was provided to the Minister on 29 April 2021. At the time of providing this report to the Minister, the Minister has not yet made a decision regarding the Commissioner's findings and recommendations for these investigations. In addition, the countervailing duty notice no longer



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The tables below outlined the measures in place on exporters of the goods from Malaysia at the time this report was provided to the Minister on 13 May 2021.

Country	Exporter	Fixed interim dumping duty (IDD) (%)	Duty method
Malaysia	Everpress Aluminium Industries Sdn Bhd	0	Floor Price.
	Premium Aluminium (M) Sdn Bhd	0	
	Alumac Industries Sdn Bhd	0	
	All other exporters	13.0	Combination of fixed and variable.

**Table 1 Current rates of IDD**

Country	Exporter	Interim countervailing duty (ICD) (%)	Duty method
Malaysia	Premium Aluminium (M) Sdn Bhd	0	Proportion of export price.
	All other exporters	3.2	

**Table 2 Current rates of ICD**

On 29 April 2021, the Commissioner provided a report to the Minister relating to a review (Review No. 544) of the anti-dumping measures applying to the goods exported to Australia from Malaysia and Vietnam. Review 544 was initiated on 24 February 2020.<sup>12</sup> At the time of providing this report to the Minister, the Minister had not yet made a decision regarding the Commissioner's findings and recommendations for Review 544.

At the time of providing this report to the Minister, the variable factors relevant to PMBA are the variable factors relevant to Tables 1 and 2. As a result, PMBA is currently subject to a combined fixed rate of ICD and IDD of 16.2 per cent. An additional amount of IDD is payable where PMBA's actual export price is below the ascertained export price.

### 2.4 Notification and participation

On 2 February 2021, PMBA lodged an application for an accelerated review of the notices applying to the goods exported to Australia from Malaysia in so far as the notices affect PMBA.

The Commissioner considered the application to determine if it was made in accordance with sections 269ZE and 269ZF. The Commissioner did not reject the application because:

- the circumstances in which an accelerated review can be sought under section 269ZE(1) have been satisfied;
- there are no grounds to reject the application under section 269ZE(2)(a);

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applies to Alumac Industries Sdn and Everpress Aluminium Industries Sdn Bhd, following Review Nos. 490 and 509.

<sup>12</sup> EPR 544, Item No. 001.

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- one of the conditions for rejection under section 269ZE(2)(b) applies, however due to the unique circumstances of this case the Commissioner exercised his discretion to not reject the application; and
- the application satisfies the requirements of section 269ZF.

The commencement of this accelerated review was notified in ADN No. 2021/023. This notice was published on 17 February 2021 on the public record on the Commission's website, and provides more information about the decision not to reject PMBA's application.

ADN No. 2021/023 advised that the Commissioner's recommendation will be made in a report on, or before, **13 May 2021**.

For the purposes of the accelerated review, the period examined is 1 January 2020 to 31 December 2020 (the accelerated review period).

### 2.5 Information gathered

#### 2.5.1 Exporter questionnaire

Upon the commencement of the accelerated review, the Commission sent an exporter questionnaire to PMBA for completion.

On 22 February 2021, the Commission received a completed response to the exporter questionnaire (REQ) from PMBA.

PMBA cooperated with the accelerated review and provided financial data in its REQ within the required timeframe.

#### 2.5.2 Verification of exporter questionnaire

The Commission verified PMBA's REQ in April 2021. During verification, the Commission examined data relating to PMBA's sales and production of the goods and like goods.

The Commission also examined PMBA's response to questions regarding the receipt of any countervailable subsidies. The Commission's findings in relation to specific matters is outlined further in this report.

Following the verification of PMBA's REQ, the Commission was satisfied, with the exception of certain information that was disregarded as set out in section 4.5.2, that the information provided by PMBA was relevant, complete and accurate and therefore suitable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

PMBA's exporter verification work program at **Confidential Attachment 1** details the Commission's findings and conclusions regarding the verification of PMBA's data.

#### 2.5.3 Importer verification

Upon the commencement of the accelerated review, the Commission sent an importer questionnaire to PMBA's related party Australian customer, Press Metal Aluminium (Australia) Pty Ltd (PMAA).

The Commission verified PMAA's response to the importer questionnaire (RIQ) to examine amongst other things, the circumstances relating to its imports of the goods from PMBA and PMAA's sales of the goods into the Australian market.

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The data relevant to PMAA's import and sale of the goods was generally found to be reliable. However, one material exception was found in relation to how PMAA described its Australian sales, particularly with regard to product specifications and model control codes (MCCs).<sup>13</sup>

PMAA's Australian sales listing reported sales of 6A alloy and T1 temper MCC sub-categories. In comparison however, as outlined in section 3.5, PMBA's export sales listing reported sales of the goods in the 6A, 6B and 6D alloy sub-categories and the T1 and O temper sub-categories.

In addition, the information on PMAA's commercial invoices for its sales of the goods into the Australian market were sufficient to the extent that it permitted verification of finish type. As the format of PMAA's invoices would not have permitted verification of any other MMC categories, the provision of a revised Australian sales listing to reflect PMAA imports was not requested. PMAA's Australian sales were therefore mapped to the MCC category for finish only.

PMAA's importer verification work program at **Confidential Attachment 2** details the findings and conclusions relating to the Commission's examination of the data contained in PMAA's response.

### 2.6 Public record

There is no legislative requirement for the Commissioner to maintain a public record for accelerated reviews. However, in the interests of ensuring this process is conducted in an open and transparent manner, a public record for this accelerated review has been maintained and is accessible on the Commission's website via [www.adcommission.gov.au](http://www.adcommission.gov.au).

### 2.7 Submission received

With the exception of the questionnaire responses, no additional submissions were received during the conduct of this accelerated review.

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<sup>13</sup> GP6 in Confidential Attachment 2, p.29 refers.

### **3 THE GOODS AND LIKE GOODS**

#### **3.1 Production Process**

- **Raw Materials:** The aluminium billets used by PMBA to produce its extrusions are sourced directly from external billet suppliers or produced in its own billet casting facility. For billets produced in its own facility PMBA relies on a combination of primary aluminium ingots sourced from external suppliers and scrap aluminium products which are sourced externally or as a by-product from its own production processes.
- **Extrusions Production Process:** All aluminium extrusions originate from the extrusion press process. The extrusion process involves heating billets and forcing this material under hydraulic pressure through a die to create the profile. Following extrusion the product is stretched to achieve straightness and subject to heat treating in kilns/ovens to achieve the desired material temper.

Following the tempering stage the extrusions are cut to the required length. At this point the material’s surface properties resemble the raw aluminium billets that were initially put through the extrusion press. This type of finish is classed as “mill finish”. If the product does not require any further finishing, such as powder coating or anodising, it may go straight to packing or routed through a fabrication process to undergo minor working and then packed.

- **Scrap:** The production of aluminium extrusions primarily generates scrap as a result of two instances, one being the ‘butt’ of the billet that cannot be processed through the extrusion press, the second being the result of production failures that could occur at any stage.
- **Packaging:** Due to the nature of the use of extrusions, prevention of damage to the surface finish attributes and profile shape of the relatively fragile extrusions is to be maintained.

#### **3.2 Model Control Codes (MCCs)**

##### **3.2.1 Exporter questionnaire**

In its REQ, PMBA provided sales and cost data in accordance with the mandatory categories and sub-categories in the proposed in the MCC structure detailed in the questionnaire issued to PMBA and below in Table 3.

Category	Sub-category		Sales data	Cost data
Finish	<b>A</b>	Anodise	Mandatory	Mandatory
	<b>BD</b>	Bright dip		
	<b>M</b>	Mill		
	<b>PC</b>	Powder coating		
	<b>MC</b>	Mechanical		
Alloy code	<b>6A</b>	6060, 6063	Mandatory	Optional
	<b>6B</b>	6106		
	<b>6C</b>	6101, 1350, 6082, 6351, 6061		

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Category	Sub-category		Sales data	Cost data
	<b>6D</b>	6005A		
	<b>O</b>	Other*		
Temper code	<b>T1</b>	T1, T4, T5, T6	Optional	Optional
	<b>T50</b>	T591, T595, T52		
	<b>O</b>	Other*		
Anodising microns	<b>0</b>	Not anodised	Optional	Optional
	<b>1</b>	<20µm		
	<b>2</b>	>20µm		

**Table 3 Proposed MCC structure**

PMBA provided its sales and cost data by finish, alloy code, temper code and anodising microns.

### 3.2.2 Amendments to MCCs

PMBA proposed changes to the MCC structure. The Commission analysed the sales data and supporting evidence provided with PMBA's REQ.

Based on analysis of the price comparability of the goods, the Commission considers it necessary to make amendments to the MCC structure.

No.	Exception	Resolution
1	There is an evident difference in selling price between natural anodized and coloured anodized goods and therefore, these should not be included under the same MCC category.	The MCC sub-categories for finish be altered as follows: <ul style="list-style-type: none"> <li>Replacing the current bright dip (BD) surface finish sub-category with a Polish Bright Silver finish (PBS) sub-category;</li> <li>Delete the mechanical (MC) finish sub-category;</li> <li>Replacing the anodised finish sub-category with two new sub-categories, NA (natural anodised) and CA (colour anodised).</li> </ul>
2	Price lists provided by PMBA support that the proposed alloy sub-categories were not an appropriate reflection of the goods sold by PMBA.	The MCC sub-categories for alloy be altered as follows: <ul style="list-style-type: none"> <li>sub-category A, to cover alloy 6060 and 6063 and 6005;</li> <li>sub-category B, re-designated to cover alloy 6061 only;</li> <li>sub-category C, re-designated to cover alloy 6082 only;</li> <li>sub-category D, re-designated to cover alloy 6463 only.</li> </ul>
3	Price lists provided by PMBA support that the proposed temper sub-categories were not an appropriate reflection of the goods sold by PMBA.	The MCC sub-categories for temper be altered a follows; <ul style="list-style-type: none"> <li>sub-category T50 be removed and consolidated with the Other designation.</li> </ul>
4	PMBA's domestic and export sales were within the less than or equal to 20 microns sub-category and the actual microns were of a similar level.	An additional category for anodising microns is redundant. The category for anodising microns has been removed.

**Table 4 Amendments to the MCCs<sup>14</sup>**

<sup>14</sup> Section GP2 refers.

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Category	Sub-category		Sales data	Cost data
Finish	NA	Natural anodise	Mandatory	Mandatory
	CA	Colour anodise		
	PBS	Polish Bright Silver		
	M	Mill		
	PC	Powder coating		
Alloy code	6A	6005, 6060, 6063	Mandatory	Optional
	6B	6061		
	6C	6082		
	6D	6463		
	O	Other		
Temper code	T1	T1, T4, T5, T6	Optional	Optional
	O	Other		

**Table 5 Revised MCC Structure for PMBA**

### 3.2.3 Verification of MCCs

Table 6 below provides detail on how the MCC structure was verified to source documents.

Category	Determination of the sub-category
Finish	<p>Based on price lists, PMBA recognises finish as a price driver. The finish type is captured in PMBA's accounting system, and commercial documents such as sales contracts, invoices and packing lists.</p> <p>The Commission verified the finishes for each transaction in the domestic and export sales listings to commercial documents and the relevant transactions narrations in PMBA's accounting system.</p>
Alloy code	<p>Based on price lists, PMBA recognises alloy as a price driver. The Commission verified the metal alloy for each transaction in the domestic and export sales listings to commercial documents and the relevant transaction narrations in PMBA's accounting system.</p>
Temper	<p>Price information for temper was present on domestic price lists only. The price lists referred to temper T5 as the base price, all other tempers were priced the same. The Commission verified the temper for each transaction in the domestic and export sales listings to commercial documents. As noted above the only sub-categories relevant to PMBA sales is either T1 or all others.</p>
Anodising microns	<p>Based on price lists, PMBA recognises the level of anodising as a price driver. However, the combination of anodisation depth and colour was only present on price lists for Australian sales. Domestic sales price lists differentiated anodising price by colour only.</p> <p>The Commission verified the anodising colour for each transaction in the domestic and export sales listings to commercial documents and narrations from PMBA's accounting system, however presentation of the anodisation depth was infrequent.</p> <p>Notwithstanding, when it was reported, the actual goods sold on either market were predominantly 10 or 15 microns, which satisfied the Commission that export sales and domestic sales could be properly compared.</p>

**Table 6 MCC sub-category determination**

### **3.3 The goods exported to Australia**

The Commission is satisfied that PMBA produced and exported the goods to Australia. PMBA exported the goods to Australia with the following MCCs during the accelerated review period:

- CA-6A-T1
- CA-6B-T1
- M-6A-O
- M-6A-T1
- M-6B-T1
- M-6D-T1
- NA-6A-T1
- PBS-6D-T1
- PC-6A-O
- PC-6A-T1
- PC-6B-T

### **3.4 Like goods sold on the domestic market**

The Commission is satisfied that PMBA sold like goods on the domestic market.

The Commission considers that the like goods manufactured for domestic consumption are identical to, or have characteristics closely resembling, the goods exported to Australia, as they:

- are physically alike - in that the exported goods and goods sold on the domestic market are produced in the same way, look alike (noting that different dies are required for individual customer specifications), and the costs of production are the same;
- share a production likeness - in that the exported goods and goods sold on the domestic market are produced at the same facilities, using the same raw material inputs and manufacturing processes;
- are commercially alike - in that the exported goods and goods sold on the domestic market to similar market sectors, are interchangeable and use similar distribution channels; and
- are functionally alike – in that the exported goods and goods sold domestically have similar end uses.

PMBA sold like goods on the domestic market with the following MCCs during the review period:

- CA-6A-T1
- CA-6B-T1
- M-6A-O
- M-6A-T1
- M-6B-T1
- M-6C-T1
- M-O-O
- M-O-T1
- NA-6A-O
- NA-6A-T1
- NA-6B-T1
- PC-6A-T1

### **3.5 Like goods – assessment**

The Commission considers that the goods produced by PMBA for domestic sale have characteristics closely resembling those of the goods exported to Australia and are therefore 'like goods' in accordance with section 269T(1).

## 4 EXPORT PRICE

### 4.1 Finding

The export price for PMBA is different to that currently applicable to ‘all other exporters’ and should be determined under section 269TAB(1)(c), having regard to all the circumstances of the exportation.

### 4.2 The importer

Section 269T(1) defines the *importer* and sets out that the importer is the beneficial owner of the goods at the time of their arrival within the limits of the port in Australia at which they landed.

PMBA sold the goods through a related entity, PMB. PMB on sold the goods to its related Australian customer PMAA. In relation to the exports to Australia, the Commission found that PMAA:

- is named on the commercial invoice issued by its supplier, PMB;
- is named as the consignee on the bill of lading;
- was identified as the owner on Australian import declarations lodged by PMAA;
- pays for all the importation charges (which are subsequently credited back to PMAA by PMB); and
- arranges delivery from the Australian port of arrival.

Having regard to this information, the Commission is satisfied that PMAA was the beneficial owner of the goods at the time of importation into Australia, and therefore the importer of the goods.<sup>15</sup>

### 4.3 The exporter

The Commission will generally identify the exporter as:<sup>16</sup>

- a principal in the transaction located in the country of export from where the goods were shipped who gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped.

In its application, PMBA stated;

*“The applicant will become an exporter of the GUC [goods under consideration] to Australia in early 2021 following satisfaction of certain regulatory requirements in Malaysia.”*

PMBA also outlines its disagreement with the preliminary findings in *Statement of Essential Facts No. 544* (SEF 544) published on 9 December 2020 in relation to Review of Measures 544. In SEF 544 the Commission identified PMBA as the exporter of the goods from 22 November 2019.

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<sup>15</sup> Section GP6 in Confidential Attachment 1 and Section GP11 in Confidential Attachment 2 refer.

<sup>16</sup> Refer to page 29 of the Manual.



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In SEF 544, the Commission ascertained that from 22 November 2019, PMBA produced and sold the goods which were exported to Australia with related party PMB facilitating those transactions as an intermediary.<sup>17</sup>

PMBA's production and sale of the goods followed its acquisition of PMB's aluminium extrusion business on 22 November 2019. Production and sale of the goods by PMBA continued in the same location that PMB previously controlled and operated. PMBA produced and sold the goods without any temporary suspension of trading or production whilst the aluminium extrusion business purchase from PMB was being finalised.

The finding in SEF 544 that PMBA was the exporter of the goods relied on an examination of sales and financial records pertaining to a sample of consignments of goods produced by PMBA and exported to Australia via PMB in December 2019 and August 2020. Based on the information obtained for SEF 544, PMBA's sales process was a standing arrangement in the period from December 2019 through to at least August 2020.

The Commission's examination of an August 2020 consignment sample in SEF 544 identified PMBA (by its previous name, PMB Klang Sdn Bhd) as;

- the supplier on Australian import declarations lodged by PMAA;
- the customer on commercial invoices issued by PMBA's Malaysian logistics vendor; and
- the consignor on invoices issued to PMAA by its Australian logistics vendor.

Having regard to the information obtained in this review, the sales process identified in SEF 544 has remained in place for all exports by PMBA in the accelerated review period, i.e. 1 January 2020 to 31 December 2020. In relation to exports to Australia in the accelerated review period, the Commission has again confirmed that PMBA exported the goods through related entity, PMB as an intermediary. The Commission's examination of the relevant sales and shipping documentation identified that PMB:

- purchased the goods from PMBA before the goods were exported to Australia;
- was named on the commercial invoice as the supplier to the Australian customer; and
- was identified as shipper/exporter (consignor) on the bill of lading and the Malaysian logistic vendor's commercial invoice however the stated address of PMB is the location of PMBA and its production facility.

The Commission's examination of the available evidence identified that PMBA:

- was the manufacturer of the goods;
- was named on the commercial invoice for the sale of the goods to PMB;
- arranged and paid for the inland transport to the port of export;
- arranged and paid for the port handling charges at the port of export;
- arranged and paid for the ocean freight and marine insurance;
- was identified as the supplier on Australian import declarations lodged by PMAA;
- was identified the consignor on invoices issues to PMAA by its Australian logistics vendor; and
- identified the Australian customer of the goods on its invoices.

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<sup>17</sup> Section 4.7 in SEF 544 refers.

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Accordingly, the Commission considers PMBA to be the principal (the manufacturer of the goods) who placed the goods in the hands of a related entity for delivery to Australia. PMBA is, therefore, the exporter of the goods.<sup>18</sup>

### 4.4 Arms length assessment

#### 4.4.1 Related party customers

At question B-1.4 of its REQ, PMBA reported that its only customer for the goods exported to Australia, PMAA, is related.

In previous cases (Investigation Nos. 362, 540 and 541), to the extent that PMB was the exporter of the goods, the Commission found that exports of the goods by PMB to PMAA, were arms length transactions. The Commission's assessment in the previous cases took into account an established trading practice whereby PMB invoiced PMAA at cost, insurance and freight (CIF) terms, and that certain importation costs incurred by PMAA were reimbursed by PMB. In those investigations, the Commission was able to calculate the appropriate export price at free on board (FOB) terms. The nature of the arrangements were transparent and the Commission did not treat PMB's crediting of importing costs to PMAA as a reimbursement that would render the transactions as non-arms length for the purposes of section 269TAA(1)(c), taking into account the matters outlined in section 269TAA(1A).

However, in the accelerated review period, the circumstances changed, with the Commission now considering PMBA to be the exporter and PMB playing a role as an intermediary between PMBA and PMAA. PMBA and PMAA both disclosed certain transactions and agreements<sup>19</sup> which the Commission considers are relevant to sections 269TAA(1)(b) and (c). Accordingly, the Commission has revisited the arms length assessment.

PMBA's and PMAA's disclosures introduce a purported retrospective change to the original price paid by PMAA (the importer) to PMB for goods exported by PMBA during the accelerated review period. The retrospective change to the original price was affected by way of two separate transactions, both dated in November 2020. The first transaction involved a downwards price adjustment via a credit note and the second involved an invoice issued by PMB to PMAA for payment of certain exportation charges and importation costs. The Commission's consideration of both transactions is outlined below.

#### Downward price adjustment

PMBA disclosed a downward price adjustment involving PMB (the intermediary in the export sales by PMBA) and PMAA in November 2020. The Commission made relevant enquiries about the nature of the downwards price adjustment.

The downwards price adjustment was affected through a credit note issued by PMB to PMAA in November 2020.

When queried by the Commission on how the value of the credit note was determined, PMBA and PMAA advised that there were no supporting calculations which informed how the underlying figures were constructed.

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<sup>18</sup> Section GP6 in Confidential Attachment 1 and Section GP11 in Confidential Attachment 2 refer.

<sup>19</sup> Section GP3 and GP6 in Confidential Attachment 1 and Section GP3 in Confidential Attachment 2 refer.

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The information provided by PMBA was also unclear as to how the downwards price adjustment specifically related to the price of the goods as stated on each of PMB's commercial invoices to PMAA and if the corresponding transactions between PMB (as intermediary) and PMBA (the exporter) were also subject to a similar downwards price adjustment.

During the verification process, the Commission's enquiries with PMBA established that unlike PMB, PMBA did not recognise the downwards price adjustment in its records.

Further, the Commission found that the downwards price adjustment was not an established trading practice between the parties, because it was a one off transaction. The documents relevant to the downwards price adjustment<sup>20</sup> indicated that it at least covered transactions between PMB and PMAA in the period December 2019 to November 2020. However, it is unclear whether all transactions occurring after November 2020 are also covered by the downwards price adjustment, or will be subject to a similar downwards price adjustment in the future.<sup>21</sup>

The Commission also considers that a degree of uncertainty exists as to whether the downwards price reduction was a genuine change in obligations between the related parties since the price change involved a credit note and no transfer of cash amounts appears to have occurred. The issuing of a credit note by PMB to PMAA is inconsistent with PMAA's established method of payment whereby PMAA paid cash amounts to PMB, via an electronic funds transfer, equal to the value of the goods on PMB's commercial invoices. The credit note in its current form was recognised in the accounts of PMB and PMAA during verification in April 2021. However, being related entities, PMB and PMAA could at a later date reverse the transactions with relative ease.

Having analysed the available information, the Commission is of the opinion that the downwards price reduction is a reimbursement or form of compensation from PMB to PMAA. Accordingly, the Commission is of the opinion that the buyer (PMAA) is, subsequent to the purchase of goods from PMB, directly or indirectly, reimbursed, or has otherwise received a benefit, in respect of, the whole or part of the price pursuant to section 269TAA(1)(c).

The Commission has had regard to the matters outlined in section 269TAA(1A). The Commission does not consider the reimbursement to be an established trading practice (noting that it is potentially a one-off arrangement) and the reimbursement was not quantifiable at the time of the sale. Accordingly, the Commission recommends that the downwards price adjustment be a basis for the Minister to treat PMBA's exports of the goods as non-arms length transactions.

### Change to INCOTERMS

PMBA presented information that related to a post-sale re-allocation of certain exportation and importation expenses between PMBA, PMB and PMAA.

The Commission considers that the re-allocation of such expenses is relevant to the arms length assessment in section 269TAA(1)(b).

PMBA outlined that the re-allocation of such expenses resulted from an agreement following an internal review between PMBA, PMB and PMAA in early 2020. PMBA

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<sup>20</sup> Attachment GP3-C to Confidential Attachment 2 refers.

<sup>21</sup> It is noted that, based on dates referenced in relevant documents, one export transaction occurring in December 2020 does not appear to be covered by the downwards price adjustment.

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claims that the re-allocation of such expenses changes the terms of its exports from CIF to FOB and this applies to all exports backdated to 1 December 2019.

PMBA described the agreement as follows:

- PMAA would retrospectively accept liability for ocean freight and marine insurance charges previously originally borne by PMBA at the time the goods were exported;
- PMAA would refund PMB for importation expenses that PMB had previously credited PMAA; and
- the INCOTERMS of PMBA's export prices for goods exported in the period commencing 1 December 2019 would be altered to FOB from the CIF terms stated on shipping documents relevant to the date of sale.

PMAA further advised that whilst the agreement was in place during the accelerated review period, the agreement was not documented or reflected in commercial documents relevant to the date of sale of the goods.<sup>22</sup>

To effect the intent of the agreement, PMB issued an invoice to PMAA in November 2020 for payment of ocean freight charges and importation expenses<sup>23</sup> that had previously been incurred on goods exported to Australia by PMBA in the period December 2019 to November 2020.

The Commission's verification of financial records provided by PMBA, PMB and PMAA established the following:

- the agreement, as characterised by PMBA, was not operational or being complied with during the accelerated review period;
- the agreement was not reflected in any commercial documentation relevant to the export and sale of the goods at their time of sale;
- the November 2020 invoice was recognised in the accounts of PMB and PMAA however not in the accounts of PMBA; and
- at the time of being verified in April 2021, PMAA had not paid the invoice however it did claim it was planning to do so on 7 May 2021.

In addition to the above, the Commission identified the following issues:

- PMB's November 2020 invoice to PMAA demands payment of exportation expenses that were never actually incurred by PMB, rather, ocean freight and marine insurance expenses were incurred by PMBA, as evidenced on source documentation obtained for sales in the accelerated review period;
- the available information did not support that PMBA would be the recipient of any funds paid by PMAA to PMB in relation to ocean freight and marine insurance;
- as PMAA already paid cash for importation expenses at the date of importation, the Commission is unclear why PMAA has agreed to pay PMB's November 2020 invoice in cash rather than simply reverse the credit transactions initially recognised in the accounts of both entities;
- notwithstanding that PMBA's claimed change in INCOTERMS rests on a re-allocation of certain exportation and importation expenses, it did not change the CIF based invoice values reported in relation to its Australian sales; and

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<sup>22</sup> Section GP3 and GP6 in Confidential Attachment 1 and Section GP3 in Confidential Attachment 2 refer.

<sup>23</sup> Attachment GP3-E to Confidential Attachment 2 refers.

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- net of the obligation on PMAA to pay certain exportation and importation expenses and the above discussed downward price adjustment, the final price of the goods cannot be reliably determined based on PMBA's description of the arrangements, as the available documentation could not be traced and verified to any particular export transactions that occurred during the accelerated review period.

In effect, the November 2020 invoice issued to PMAA by PMB represents a reversal of the actual trading practices observed to be in place during the accelerated review period where the exporter (PMBA) paid the ocean freight and marine insurance and PMAA was periodically credited for importation expenses by PMB (the intermediary).

The particular way that the parties have re-allocated exportation costs, with one party incurring a cost but another party seeking recovery of those exportation costs and separately seeking cash payment for importation expenses rather than reversing prior credits, leads the Commission to be of a view that what PMBA considers to be the price appears to be affected by a relationship between the buyer, PMAA, and the seller, PMBA, and an associate of the seller, PMB. The effect of a relationship of this kind is that PMBA's sale of the goods to PMAA through PMB should not be treated as an arms length transaction, pursuant to section 269TAA(1)(b).

The Commission considers that the post-sale alteration of the export price which PMBA and its related parties have introduced, points to a situation where the price of the goods would not be reliable given the appearance that that price is affected by a relationship between PMAA, and the seller, PMBA, and an associate of the seller, PMB. For this reason, the Commission is satisfied that pursuant to section 269TAA(1)(b), PMBA's sale of the goods exported to Australia should not be treated as arms length transactions.

### 4.4.2 Importer profitability assessment

The Commission's arms length assessment also had regard to the profitability of sales by the Australian importer of the goods, PMAA into the Australian market.

PMAA's customers for the goods in the sample shipments examined in Part B to its RIQ could not be readily identified using the available financial information provided by PMAA.

In the alternative, the Commission assessed PMAA's profitability based on its verified Australian sales listing provided for Part C of its RIQ.

Pursuant to section 269TAA(3), the profitability of PMAA's Australian sales listing was undertaken having regard to the following;

- the monthly weighted average purchase price for each finish MCC sub-category paid by PMAA to the intermediary in the sale of the goods (PMB);
- the selling prices reported by PMAA at the transactional level, for each finish MCC sub-category; and
- SG&A costs, inclusive of relevant direct selling expenses, (as identified in its 2020 financial year audited accounts) expressed as a proportion of selling price.

Applying the approach outlined above, the Commission found that PMAA's sales of the goods sourced from PMBA were profitable.

In reaching this finding, the Commission notes that PMAA did not sell to related parties and its Australian sales listing was verified by tracing a sample of sales to source documentation and the overall values to financial records, which included audited

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accounts.<sup>24</sup> The finding that PMAA's sales of the goods into the Australian market does not alter the above findings that the export transactions were not arms length.

### 4.5 PMBA's sales process and shipping terms

In their questionnaire responses to this accelerated review, both PMBA (the exporter) and PMAA (related party importer) contend that PMBA exported the goods to Australia on FOB terms.

#### 4.5.1 Finding in previous cases involving PMB

During verification of PMAA and PMB for the purpose of Investigations Nos. 362, 540 and 541, the Commission ascertained that PMBA's predecessor, PMB, paid ocean freight and marine insurance expenses and reimbursed the related party importer, PMAA, for the Australian importation expenses it incurred at the time of importation.

Documentation obtained in Investigations 362, 540 and 541 demonstrated the nature of the arrangement. The available information at the time also confirmed that the INCOTERMS relevant to PMB's exports of the goods were CIF.

In Investigations 362, 540 and 541, due to a reimbursement of Australian importation costs to PMAA, via a credit in PMAA's accounts payable and a corresponding transaction in PMB's accounts, the Commission worked out PMB's export price by deducting post exportation charges, i.e. ocean freight and marine insurance, and Australian importation expenses from the amount shown on PMB's commercial invoices to PMAA.

The Commission's examination of payment information, such as bank statements and accounts payable records, found that PMB's practice of reimbursing PMAA for importation costs did not offset any amounts payable for the goods by PMAA.

#### 4.5.2 The information considered for this review

##### Background

In verifying the data relating to PMBA and PMAA for this accelerated review, the Commission ascertained that the trading practices identified in prior cases, as outlined in section 4.5.1, were generally still in place in the accelerated review period. In summary the trading practices observed in relation to the accelerated review period involved the following;

- the exporter, PMBA, produced and sold the goods and arranged for the goods to be exported to Australia by paying all costs to the CIF level;
- PMB, as the intermediary, purchased the goods from PMBA before selling those goods the Australian importer; and,
- PMB continued crediting the importer, PMAA, for importation costs throughout the accelerated review period.

In contrast to the above, PMBA and PMAA have contended that exports of the goods were actually on FOB terms, back dated to 1 December 2019. This contention is on the basis of an agreement between PMBA, PMB and PMAA resulting from an internal review in early 2020. PMBA claimed the agreement stipulates that PMAA would accept liability for ocean freight and marine insurance expenses and Australian importation costs.

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<sup>24</sup> GP11 in Confidential Attachment 2 refers.

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### Information disregarded

The Commission considers that the information and arguments put forward by PMBA in support of its claimed change in INCOTERMS had probative value for the arms length assessment above at section 4.4.1. The issues identified in relation to this information highlighted numerous ambiguities and inconsistencies that rendered PMBA's information unreliable for an export price calculation. The Commission considers that within the context of determining an export price, the Minister should disregard certain information pursuant to section 269TAB(4).

Specifically, the Minister should disregard;

- the November 2020 credit note issued to PMAA by PMB for an unspecified downwards price reduction;
- PMB's November 2020 invoice to PMAA seeking re-allocation of exportation costs and importation expenses; and
- information from the accounts of PMB and PMAA detailing recognition of the credit note and invoice.

### Relevant circumstances of exportation

Having disregarded the information above, the Commission is satisfied that the commercial arrangements in place at the time of the sale of the goods reflected prices which were unaffected by the association between the parties and were sold in a manner consistent with established trading practices.

The Commission is further satisfied that the available and reliable information about PMBA's exports at the time of their exportation to Australia indicates that;

- the exports of the goods by PMBA were on CIF terms, as indicated on shipping company documents and Australian import declarations;
- PMBA covered the cost of exportation to the port of arrival in Australia;
- PMBA arranged for the goods to be shipped out of the country of origin and is therefore the entity who caused the removal of the goods from Malaysia;
- PMB purchased the goods from PMBA before PMB on sold those goods to the Australian importer, PMAA;
- PMB (as the intermediary) paid PMBA (the exporter) an amount for the goods that reflected the value stated on PMBA's commercial invoices;
- the importer (PMAA) paid the intermediary (PMB) for the goods an amount that reflected the value of the goods on PMB's commercial invoices; and
- PMB's established practice of crediting PMAA for importation expenses was validly operating during the accelerated review period.

## **4.6 Export price determination**

In relation to the goods exported to Australia during the accelerated review period by PMBA, the goods were not purchased by the importer (PMAA) from the exporter (PMBA). Instead, sales occurred between PMBA (the exporter) and its related entity, PMB, and separately, PMB on sold the goods to PMAA (the importer). As a result of this arrangement, the export price cannot be determined under section 269TAB(1)(a) or 269TAB(1)(b). Furthermore, the Commission considers that the export sales are not arms length for the reasons outlined in section 4.4.

Sufficient information exists to determine the export price under section 269TAB(1)(c), having regard to all the circumstances of the exportation. The relevant circumstances of exportation are described above at section 4.5.2.

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The Commission therefore recommends that PMBA's export price be the price paid by the importer PMAA to PMB (as stated on the intermediary's commercial invoices), less the part of that price that represents a charge in respect of the transport of the goods after exportation, i.e. the sum of importation costs, marine insurance and ocean freight. This price disregards information considered unreliable as outlined at section 4.5.2.

The data relating to the assessment of PMBA's export price is at **Confidential Appendix 1**



## **5 NORMAL VALUE**

### **5.1 Finding**

The Commission found that there were sufficient domestic sales that were arms length transactions and sold at prices that are in the ordinary course of trade (OCOT). Accordingly, the Commission has ascertained the normal value in accordance with section 269TAC(1). The normal value for PMBA is different to that currently applicable to 'all other exporters'.

### **5.2 Assessment of domestic sales**

Section 269TAC(1) provides the general rule for calculating normal value. For 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 OCOT.

### **5.3 Arms length assessment**

PMBA was found to make sales to both related and unrelated customers in the Malaysian domestic market during the accelerated review period. Accordingly, the Commission undertook an examination of PMBA's domestic prices to evaluate whether those prices had the appearance of being influenced due to the relationship between the parties to the transaction.

PMBA's prices for the like goods were assessed having regard to an examination of the following information;

- the LME market price trends;
- the prices paid by unrelated parties;
- the manner in which PMBA's domestic customers paid for the goods; and
- the established trading practices between PMBA and its related party customers.

In respect of PMBA's domestic sales of like goods to its related customers during the period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than their price; or
- the price appeared to be influenced by a commercial or other relationship between the buyer (or an associate of the buyer) and the seller (or an associate of the seller); or
- the buyer (or an associate of the buyer) was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.<sup>25</sup>

The Commission therefore considers that all domestic sales made by PMBA to its related customers during the period were arms length transactions.

In respect of PMBA's domestic sales of like goods to its unrelated customers during the period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than their price; or

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<sup>25</sup> Section 269TAA refers.

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

The Commission further considers that all domestic sales made by PMBA to its unrelated domestic customers during the period were arms length transactions.

### 5.4 Ordinary course of trade

Section 269TAAD states that domestic sales of like goods are not in the OCOT if arms length transactions are:

- unprofitable in substantial quantities over an extended period; and
- unlikely to be recoverable within a reasonable period.<sup>26</sup>

The Commission tested profitability by comparing the price at ex-works against the relevant cost for each domestic sales transaction.

The Commission then tested whether the unprofitable sales were in substantial quantities (not less than 20 per cent) by comparing the volume of unprofitable sales to the total sales volume, for each MCC over the period.

The team tested recoverability by comparing the price at ex-works against the relevant weighted average cost over the period for each domestic sales transaction.

The following table sets out further detail:

OCOT particulars	Details
Price	Net invoice price, excluding direct selling expenses
Cost	Quarterly cost to make and sell, excluding direct selling expenses <sup>27</sup>
Weighted average cost	Weighted average cost to make and sell, excluding direct selling expenses, over the period.

Table 7 OCOT details

### 5.5 Volume of relevant sales

Section 269TAC(2) provides alternative methods for calculating the normal value of goods exported to Australia where there is an absence, or low volume, of relevant sales of like goods in the market of the country of export.

An exporter's domestic sales of like goods are taken to be in a low volume under section 269TAC(14) where the total volume of sales of like goods for home consumption in the country of export by the exporter is less than five per cent of the total volume of the goods under consideration that are exported to Australia by the exporter (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison for the purposes of assessing a dumping margin).

<sup>26</sup> In general, the Commission will consider 'extended period' and 'reasonable period' to be the investigation, review or inquiry period.

<sup>27</sup> Confidential Appendix 2 refers.

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The Commission has assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of domestic sales was five per cent or greater and therefore was not a low volume.

When calculating a normal value under section 269TAC(1), in order to ensure a proper comparison between the goods exported to Australia and the goods sold on the domestic market, the Commission considers the volume of sales of each exported MCC on the domestic market. Where the volume of domestic sales of an exported model is less than five per cent of the volume exported, the Commission will consider whether a proper comparison can be made at the MCC level. In these situations, the Commission may consider whether a surrogate domestic model should be used to calculate normal value for the exported model.

This analysis is detailed in the table below.

Export MCC	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
CA-6A-T1	Y	Domestic sales of CA-6A-T1
CA-6B-T1	Y	Domestic sales of CA-6B-T1
M-6A-O	Y	Domestic sales M-6A-O
M-6A-T1	Y	Domestic sales M-6A-T1
M-6B-T1	Y	Domestic sales of M-6B-T1
M-6D-T1	N	No domestic sales of M-6D-T1. Surrogate model M-6B-T1 with adjustment for specification differences under section 269TAC(8).
NA-6A-T1	Y	Domestic sales of NA-6A-T1
PBS-6D-T1	N	No domestic sales of PBS-6D-T1. Surrogate model M-6A-T1 with adjustment for specification differences under section 269TAC(8).
PC-6A-O	N	No domestic sales of PC-6A-O. Surrogate model PC-6A-T1 with adjustment for specification differences under section 269TAC(8).
PC-6A-T1	Y	Domestic sales of PC-6A-T1
PC-6B-T1	N	No domestic sales of PC-6B-T1. Surrogate model PC-6A-T1 with adjustment for specification differences under section 269TAC(8).

**Table 8 Assessment of Domestic volumes**

### 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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### 5.6.1 Rationale and Method

Adjustment type	Rationale for adjustment	Calculation method and evidence	Claimed in REQ?	Adjustment required?
Domestic credit terms	Payment terms differ between domestic and export transactions.	PMBA did not provide a short term interest rate. The Commission has calculated the interest rate based on an average 3 month borrowing rate from the Central Bank of Malaysia and combined this with the domestic payment terms listed in the sales spreadsheet to calculate the credit adjustment.	No	Yes
Domestic inland transport	Domestic inland transport costs are lower than export inland transport costs.	Worked out a weighted average domestic inland transport cost per kilogram on an annual basis.	Yes	Yes
Domestic packaging	Domestic packaging cost is higher than export packaging cost due to additional materials required for export packaging.	Worked out a weighted average domestic packaging cost per kilogram on an annual basis.	Yes	Yes
Export packaging	Domestic packaging cost is higher than export packaging cost due to additional materials required for export packaging.	Worked out a weighted average export packaging cost per kilogram on an annual basis.	Yes	Yes
Export inland transport and port charges	Domestic inland transport costs are lower than export inland transport costs. Export inland transport costs also include port charges.	Worked out a weighted average export inland transport cost per kilogram on an annual basis.	Yes	Yes
Export credit terms	Payment terms differ between domestic and export transactions.	PMBA did not provide a short term interest rate. The Commission has calculated the interest rate based on an average 3 month borrowing rate from the Central Bank of Malaysia and combined this with the average export payment terms listed in the sales spreadsheet to calculate the credit adjustment.	No	Yes

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Adjustment type	Rationale for adjustment	Calculation method and evidence	Claimed in REQ?	Adjustment required?
Domestic and export other costs	PMBA claimed other costs as "direct selling costs".	Evidence was not provided to directly link the costs to the specific sales of the goods under consideration. These are indirect selling expenses and have instead been added to SG&A.	Yes	No
Export stillage return fee	All exports are shipped on stillages which are then shipped back to Malaysia after shipment.	Use cost to return each stillage to work out weighted average cost per kilogram using a sample of shipments	No	Yes
Level of trade	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.	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.	Yes	Yes
Specification Adjustments	As outlined in Table 8, there were no domestic sales of certain models that were exported to Australia.  Information examined during verification identified that price and cost of production differences existed in relation to a range of product specifications. Due to the use of a surrogate model upon which the normal value for certain like goods listed Table 8 were based, adjustments to account for physical differences that affect price are required.	Calculated the difference between the export CTM of the relevant models and domestic CTM of a surrogate model. An OCOT profit was then added to this amount and added to the normal value of the surrogate model.	No	Yes
Specification adjustment (unit of measure)	PMBA claimed that powder coated goods should be adjusted due to selling price reflecting kg per square metre as the unit of measure rather than kilograms.	No evidence provided to show difference in selling price between domestic and export sales. Unit of measure used for all MCCs is kilograms.	No	No

**Table 9 Assessment of adjustments<sup>28</sup>**

<sup>28</sup> Section GP17 in Confidential Attachment 2 refers.

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## 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
Domestic credit terms	Deduct an amount for domestic credit
Domestic inland transport	Deduct an amount for domestic inland transport
Domestic packaging	Deduct an amount for domestic packaging
Export packaging	Add an amount for export packaging
Export inland transport (including port and handling charges)	Add an amount for export inland transport
Export credit terms	Add an amount for export credit terms
Export stillage expense	Add an amount for export stillage return fee
Level of trade	Deduct an amount arising from the differences in level of trade in domestic sales
Specification adjustments	Add/deduct amounts arising from differences in specification due to the application of the surrogate normal values outlined in Table 8.

**Table 10 Summary of Adjustments (PMBA)**

## 5.7 Conclusion

The Commission found that there were sufficient volumes of sales of like goods sold for home consumption in the country of export that were arms length transactions and at prices that were within the OCOT. The Commission is therefore not satisfied that there is an absence, or low volume, of sales relevant for the purpose of determining a price under section 269TAC(1).

The Commission has therefore determined a normal value under section 269TAC(1).

In using domestic sales as a basis for normal value, the Commission considers that certain adjustments, in accordance with section 269TAC(8), are necessary to ensure an accurate comparison of domestic prices with export prices.

The data relating to the assessment of PMBA's domestic sales and relevant adjustments to normal value is at **Confidential Appendix 3** and further detailed in the PMBA Verification Work Program at **Confidential Attachment 1**.

## **6 COUNTERAVAILABLE SUBSIDIES**

### **6.1 Findings**

The Commission has found that PMBA did not receive a benefit from countervailable subsidies during the accelerated review period. Therefore, the amount of countervailable subsidy has changed and the countervailing margin is determined to be **zero per cent**.

### **6.2 Legislative requirement for countervailable subsidies**

A countervailable subsidy is defined at section 269TAAC. Further, sections 269TACC and 269TACD relate to determinations by the Minister as to whether a benefit has been conferred by a financial contribution or price support, and the amount of this benefit. Generally, the existence of a benefit is determined by comparison of costs with a benchmarked market price for the respective cost. For example, if the alleged benefit relates to tax revenue foregone, the existence of a benefit is determined by comparing the actual tax rate applied to the tax rates of the country in question.

### **6.3 Programs reviewed**

In REP 362, the Commission examined the following programs in respect of aluminium extrusions exported to Australia from Malaysia:

Program number	Program name	Program type
1	Income Tax Reductions	Tax
2	Investment Tax Allowance	Tax
3	Double Deduction for Export Credit Insurance	Tax
4	Double deductions for freight charges relating to goods originating from Sabah and Sarawak	Tax
5	Double deductions for insurance premiums paid by exporters and importers	Tax
6	Reinvestment Allowance	Tax

**Table 11 Countervailable subsidy programs <sup>29</sup>**

### **6.4 Preferential income tax programs**

In its REQ, PMBA claimed that it had not received a benefit from any of the preferential income tax programs outlined above in Table 11. The Commission examined PMBA's income tax records and other income accounts and was satisfied with the response by PMBA in its REQ.

### **6.5 Other grants and preferential policies**

In addition to the programs identified in Table 11, PMBA's REQ did not disclose information relating to any other or new subsidy programs. The Commission's examination of PMBA's accounting records supported PMBA's REQ, i.e. that it had not

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<sup>29</sup> For additional information on the countervailable subsidy programs refer to REP 362.

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benefited from any other grants or preferential policies that would be considered to be a countervailable subsidy.

### **6.6 Amount of countervailable subsidy received**

The Commission has found that PMBA did not receive countervailable subsidies during the accelerated review period and, as such, the countervailing margin is determined to be **zero per cent**.

The assessment of countervailable subsidies received by PMBA is detailed in the work program at **Confidential Attachment 1**.<sup>30</sup>

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<sup>30</sup> Section GP18 refers.



## 7 NON-INJURIOUS PRICE

### 7.1 Finding

The Commissioner recommends that the NIP in relation to exports by PMBA be equal to PMBA's normal value and the amount of countervailable subsidy received in relation to its exports.

As the approach to calculating the NIP means that the application of the lesser duty rule will have no practical effect, the Commissioner recommends that the Minister is not required to have regard to applying the lesser duty in relation to importers of the goods from PMBA.

### 7.2 Legislative framework

Where a dumping duty notice and countervailing duty notice apply to the same goods, and the notices were published at the same time, the Minister must have regard to the desirability of specifying a method such that the sum of the ascertained export price, the IDD payable and the ICD payable do not exceed the NIP.<sup>31</sup>

However, The Minister need not have regard to the desirability of fixing a lesser amount of duty in certain circumstances set out in the Dumping Duty Act (the exceptions).<sup>32</sup> The exceptions include:

- where there is a situation in the market that makes domestic selling prices unsuitable for the purpose of determining normal value under section 269TAC(1);
- there is an Australian industry in respect of the goods consisting of at least two small to medium sized enterprises (as defined in the *Customs (Definition of "small-medium enterprise") Determination 2013*); or
- the country in relation to which the subsidy has been provided, has not complied with Article 25 of the *Agreement on Subsidies and Countervailing Measures*<sup>33</sup> for the compliance period.

The Commission has found in relation to the review period that none of the circumstances outlined above apply. As such, the Minister is required to have regard to the desirability of fixing a lesser amount of duty.

### 7.3 The Commission's assessment

When establishing the unsuppressed selling price (USP) and NIP as part of a review, the Commission will generally not depart from the approach taken in the original investigation or previous review, unless there has been a change in circumstances that either makes the earlier USP approach unreasonable, or less preferred amongst other available options.

The last review undertaken in relation to exports of the goods the subject of the notices was Review 544 which examined the period 1 January 2019 to

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<sup>31</sup> Sections 8(5BA) and 10(3D) of the Dumping Duty Act.

<sup>32</sup> The exceptions are set out in section 8(5BAA) and 10(3DA) of the Dumping Duty Act.

<sup>33</sup> *Marrakesh Agreement Establishing the World Trade Organization*, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A ('Agreement on Subsidies and Countervailing Measures').

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31 December 2019. The Commission's consideration regarding whether a change in circumstances has occurred since this review is outlined as follows.

As outlined in SEF 544, which examined exports of the goods in the period 1 January 2019 to 31 December 2019, the Commission has found that the goods exported to Australia from Malaysia and Vietnam were dumped however in relation to Malaysia the subsidy margin was zero.

In SEF 544, the Commission also considered that, in a market unaffected by goods from Malaysia at dumped and subsidised prices and from Vietnam at dumped prices, it is reasonable to expect that the Australian industry would be able to achieve as a minimum, selling prices that reflected un-dumped and un-subsidised import prices from Malaysia and un-dumped import prices from Vietnam. On this basis the Commissioner recommended that in relation to those exporters that are the subject of the notices, the NIP be set to be equal to the sum of the normal value and amount of countervailable subsidy received.

The Commission's assessment of PMBA's exports of the goods in the review period, i.e. 1 January 2020 to 31 December 2020, found that those goods were dumped, with the level of dumping being 2.6 per cent. The volume of goods exported by PMBA was also observed to represent a substantial proportion in comparison to all other exports of the goods from Malaysia during the review period.

The Commission therefore considers it appropriate to follow the same methodology used to calculate the NIP in Review 544 on the basis that the market conditions identified in the period examined in Review 544 also appear to be present in the period the subject of this review.

In respect of the goods exported to Australia by PMBA, the Commission has calculated the NIP to be equal to the sum of PMBA's normal value and the amount of countervailable subsidy received in relation to its exports.

The Commissioner recommends that the Minister have regard to the lesser duty rule for exports of the goods from PMBA, as required by section 8(5BA) of the Dumping Duty Act. However, as the sum of the ascertained export price of the goods and of the amounts of interim dumping and countervailing duty to be imposed, do not exceed the NIP, there is no basis to apply a lesser rate of duty, as the NIP is not the operative measure.

## **8 FORM OF MEASURES**

### **8.1 Current form of measures**

PMBA's is currently subject to a fixed rate of 16.2 per cent of IDD and ICD, as well as variable IDD, reflecting the duties applicable to 'all other exporters' from Malaysia.<sup>34</sup>

In respect of any IDD that may become payable, duty is collected using the combination of fixed and variable duty method. In respect of any ICD that may become payable, duties are calculated as a proportion of the export price of the goods.

### **8.2 Recommended form of measures**

The Commissioner recommends to the Minister that duties on imports of the goods from PMBA be calculated:

- in respect of any IDD that may become payable, using the combination of fixed and variable duty method; and
- in respect of any ICD that may become payable, as a proportion of the export price of the goods (ad valorem method). It is noted however, that the amount of countervailable subsidy determined in chapter 6 is zero, therefore the ICD is set at a rate of zero per cent.

The combined fixed rate of IDD and ICD is the sum of:

- the dumping rate calculated as 2.6 per cent; and
- a zero per cent subsidy rate.

In this case the combined fixed rate of IDD and ICD is 2.6 per cent. In addition, a variable rate of IDD will be payable where the actual export price is below the ascertained export price for this review.

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<sup>34</sup> As determined in REP 362.

## 9 EFFECT OF THE ACCELERATED REVIEW

If the Minister accepts the recommendations in this report, in respect of the goods exported by PMBA to Australia from Malaysia:

- the notices will be altered so as to apply to PMBA as if different variable factors had been fixed;
- IDD will be worked out using the combination of fixed and variable duty method, with the fixed component set at a rate of **2.6 per cent**<sup>35</sup>; and
- ICD will be payable for the exported goods, as a proportion of the export price at a rate of **zero per cent**.

If the Minister accepts the recommendations in this report, these changes will take effect retrospectively from 2 February 2021 (being the date the application was lodged).

The Commission notes that if the Minister declares that the Act and Dumping Duty Act have effect as if the notices had applied to PMBA, but the Minister had fixed specified different variable factors relevant to the determination of duty, pursuant to section 269ZG(3)(b), PMBA will not be eligible to seek another accelerated review.<sup>36</sup>

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<sup>35</sup> Confidential Appendix 4 refers.

<sup>36</sup> See section 269ZE(1)

## 10 RECOMMENDATIONS

The Commissioner found that, in relation to the goods exported to Australia from Malaysia by PMBA, the:

- ascertained export price should be altered;
- ascertained normal value should be altered;
- ascertained NIP should be altered; and
- amount of countervailable subsidy received should be altered.

The Commissioner recommends that the Minister consider this report and declare:

- under section 269ZG(3)(b) that, with effect from 2 February 2021, relevant to the determination of duty for the purposes of the Act and the Dumping Duty Act, the dumping duty notice and countervailing duty notice in relation to the goods exported to Australia from Malaysia by PMBA is taken to have effect as if different variable factors had been fixed relevant to the determination of duty.

The Commissioner recommends the Minister be satisfied that:

- in accordance with section 269TACD(1), countervailable subsidies have not been received by PMBA in respect to the goods.

The Commissioner recommends that the Minister determine:

- the export price of the goods exported to Australia from Malaysia by PMBA under section 269TAB(1)(c), having regard to all the circumstances of the exportation;
- the normal value of the goods exported to Australia from Malaysia by PMBA under section 269TAC(1) is the price paid or payable for like goods sold in the OCOT for home consumption in the country of export in sales that are arms length transactions by the exporter, as adjusted in accordance with section 269TAC(8);
- having applied section 269TACB(2) and in accordance with sections 269TACB(1) and (4), that the goods exported to Australia from Malaysia by PMBA are taken to have been dumped, and the dumping margins for those exporters in respect of those goods is the difference between the weighted average export prices of the goods over the investigation period and the weighted average of corresponding normal values over that period; and
- pursuant to section 8(5) of the Dumping Duty Act, the IDD on the goods exported to Australia from Malaysia by PMBA is an amount worked out in accordance with the combination of fixed and variable duty method at a rate of **2.6 per cent**, as set out in section 5(4) of the *Customs Tariff Regulation*, with effect from 2 February 2021.

The Commissioner recommends that the Minister direct that:

- in accordance with section 269TAC(8), adjustments, as listed in Table 10, are necessary to ensure a fair comparison of normal values and export prices for the goods exported to Australia from Malaysia by PMBA;

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- pursuant to section 10(3B) of the Dumping Duty Act, that the amount of ICD payable on the goods, the subject of the countervailing notice, be ascertained as a proportion of the export price of the goods. The rate of countervailing duty applying to PMBA's exports of aluminium extrusions shall be **zero per cent**.

The Commissioner recommends that the Minister have the opinion that:

- in accordance with section 269TAA(1)(c), in relation to the goods exported to Australia from Malaysia by PMBA, the buyer, will, subsequent to the purchase be reimbursed, compensated or otherwise receive a benefit in respect of the whole or a part of the price; and
- in accordance with section 269TAB(4), specific information as set out in section 4.5.2 is unreliable and therefore the Minister disregards that information.

The Commissioner recommends that the Minister not treat:

- in accordance with section 269TAA(1), the purchase of the goods by PMAA from PMB following the export by PMBA as being arms length transactions, due to:
  - pursuant to section 269TAA(1)(b) the price appearing to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; and
  - pursuant to section 269TAA(1)(c) the Minister being of the opinion that the buyer, or an associate of the buyer, will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

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### 11 APPENDICES

<b>Confidential Appendix 1</b>	Export Price
<b>Confidential Appendix 2</b>	Cost to Make and Sell
<b>Confidential Appendix 3</b>	Normal Value
<b>Confidential Appendix 4</b>	Dumping Margin Calculation
<b>Confidential Attachment 1</b>	PMBA Exporter Verification Work Program
<b>Confidential Attachment 2</b>	PMAA Importer Verification Work Program