

Australian Government Department of Industry, Science, Energy and Resources

Anti-Dumping Commission

Continuation Inquiry 591

Report of John Temple-Cole

29 April 2022

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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). 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 Chartered Accountants Australia and New Zealand ('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. Over twenty-five 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 Continuation Inquiry 591 ('**Continuation Inquiry**') regarding the exports of aluminium extrusions from Malaysia. The parties to the Continuation Inquiry are, amongst others:
- a. Anti-Dumping Commission (the '**Commission**'); and
 - b. Press Metal group of companies, namely:
 - i. Press Metal Aluminium Australia Pty Ltd ('PMAA');

- ii. Press Metal Berhad ('PMB'); and
- iii. PMB Aluminium Sdn Bhd ('PMBA').¹

1.1.5 I am instructed by Corrs Chambers Westgarth who act for the Press Metal group of companies. My instructions are set out in a letter dated 29 April 2022 ('My Letter of Instruction'), a copy of which is at Appendix C.

1.1.6 In this report, I have adopted the glossary of terms set out in Appendix B.

Background facts

1.1.7 I am instructed that the following is the relevant background to this matter.²

General

1.1.8 "On 15 September 2021 the Anti-Dumping Commissioner [(**Commissioner**)] announced the initiation of [the Continuation Inquiry]" (**Document A**³).

1.1.9 "The [C]ontinuation [I]nquiry is 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".

1.1.10 "The primary consideration for whether the 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 a recurrence of dumping and the material injury that the anti-dumping measures are intended to prevent".

1.1.11 "As noted above, the anti-dumping measures were imposed on 27 June 2017 following a dumping and subsidy investigation, Investigation 362, 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".

1.1.12 "The imposition of the anti-dumping measures followed the conduct of a dumping and subsidy investigation [by the Commissioner] into exports of aluminium extrusions exported to Australia from Malaysia and Vietnam...and the provision by the Commissioner of his report and recommendations to the Assistant Minister [(**Report 362**)]".

1.1.13 "Several years after the imposition of the anti-dumping measures, 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 [(**Minister**)] with his report and recommendations following that review on 29 April 2021 ([591_-023-pmba_-exporter_verification])⁴. The Minister accepted the Commissioner's recommendations arising from the Review 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)".

¹ My Letter of Instruction.

² My Letter of Instruction.

³ All references to Documents A to J are those listed in Appendix D to this report.

⁴ Document J.

- 1.1.14 “The Commissioner found in Review 544 that PMB had been replaced by PMBA, following a corporate reorganization 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 [(‘**Report 544**’)] 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)”.
- 1.1.15 “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 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”.
- 1.1.16 “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)”.
- 1.1.17 “While exports by PMB were found by the Commissioner, in those investigations, to have been at dumped export prices, the Commissioner found that PMB had been superseded by PMBA as the exporter of aluminium extrusions from Malaysia and, therefore, [PMB] was unlikely to export aluminium extrusions from Malaysia at dumped export prices in the future (Reports 540 and 541). For this reason, [PMB’s] exports were exempted (i.e., not included) in the imposition of the anti-dumping measures referred to in paragraph [1.1.16 above]”.
- 1.1.18 “Prior to the outcomes of Review 544 and Investigations 540 and 541, PMBA applied for an accelerated review on 2 February 2021 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 dumping⁵. The accelerated review (‘**Accelerated Review 577**’) was initiated on 17 February 2021 (Anti-Dumping Notice No 2021/023)”.
- 1.1.19 “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)”.

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- 1.1.20 “Following the initiation of the Continuation Inquiry, 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”.

⁵ Per paragraph 18 of My Letter of Instruction: “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”.

- 1.1.22 “On 3 March 2022, the Commission provided a copy of its draft report and associated calculations to PMBA for review as to the accuracy of information contained in the draft verification report and associated calculations” (**Documents C to F**).
- 1.1.23 “On 11 March 2022, PMBA provided its comments on the draft verification report, including as to matters requiring correction” (**Documents G and H**).
- 1.1.24 “On 17 March 2022, the Commission published the final PMBA verification report on its electronic public file” (**Document B**).

Issues arising from verification report in [the Continuation Inquiry]

- 1.1.25 “To determine whether an exporter’s exports 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 preliminary dumping margin calculations for PMBA in [the Continuation Inquiry] are at **Documents C to F**”.
- 1.1.26 “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 26TAC(8) of the Customs Act 1901 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 26TAC(8) of the Customs Act 1901 have been extracted at Section D [of My Letter of Instruction]”.
- 1.1.27 “In connection with such adjustments, at Section 8.2 of the verification report in [the Continuation Inquiry] (**Document B**) 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 [i.e., Model Control Code (‘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”.

- 1.1.28 “The price comparisons made by the Commission provided to PMBA with the draft verification report are contained in **Document E**”.
- 1.1.29 “In light of these findings, 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”.

- 1.1.30 *"PMBA claimed that the level of trade adjustment was required because sales by ['JB'], a Division of PMBA, were at the retail level of trade, whereas export sales by PMBA to PMAA were at the distributor level of trade as PMAA is a distributor of aluminium extrusions in the Australian market. This difference in level of trade between domestic sales, on which the normal value is based, and export sales affects (modifies) prices differently and this is reflected in the differences in the weighted averages of such prices".*
- 1.1.31 *"PMBA also contends that the extent of the price differences is not a relevant consideration. That is, 'materiality' is not a relevant consideration, all that is relevant is that there is a difference. Further, if relevant, PMBA has confirmed to the Commission that all sales by JB are at the retail level of trade as reflected in Tab (a) 'Domestic Sales' of **Document E**".*
- 1.1.32 *"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 JB. 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 (which did not involve any sampling) can be seen in the extracts from Reports 540 and 541 in **Attachment A** [to my Letter of Instruction]".*
- 1.1.33 *"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 (which again did not involve any sampling) can be seen in Report 577 (at Section 5.6) (extracted in **Attachment A**) [to my Letter of Instruction]⁶".*
- 1.1.34 *"The accepted basis for the claimed adjustment was that PMBA's sales through its JB division were direct to end-users and not to resellers, whereas PMBA's other domestic sales were to customers at a distributor level of trade, such as to wholesalers which would on-sell the product to end-users. PMBA's export sales to PMAA, on the other hand, were at a distributor level of trade. PMBA sells at lower prices to domestic customers which are, for example, wholesalers, so those customers in turn can add on a margin and sell to the end user at prices similar to JB's sales to end-users. The necessity for an adjustment to account for that difference is reflected in the following statement extracted from Report 577:*

"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.

....

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. (Source: Table 9 Assessment of adjustments, Report 577)".

⁶ *"The level of trade adjustment made by the Commission in the Accelerated Review was undertaken by reference to a percentage calculated by dividing the difference between weighted average OCOT unit prices of domestic retail and domestic distributor sales by the weighted average OCOT unit price of domestic retail sales. PMBA considers that the correct approach would have been to divide that difference instead by the OCOT unit price of domestic distributor sales, which would have resulted in a greater percentage adjustment, and in turn a lower normal value, and lower dumping margin. However, for the purposes of this exercise only, in the interests of time, PMBA has elected to accept the approach taken by the Commission on this point."*

1.1.35 *"In [the Continuation Inquiry], the Commission concluded that there was no 'material' difference in prices between sales in the domestic market by PMBA through JB (i.e., retail sales) and other domestic sales by PMBA to distributors and, hence, there was no need for a level of trade adjustment [(the 'Level of Trade Adjustment')]* when comparing the normal value (i.e., weighted average of all domestic sales) with the weighted average export price to PMAA. It said, in the verification report:

"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.

....

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." (Source: Section 8.2 of PMBA Verification Report)

and:

Level of trade

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.

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. (Source: Extract from Table 11 in Section 9.1 of PMBA Verification Report)"".

1.1.36 *"Thus, to the extent that the amount of the normal value was affected by differences between retail sales by PMBA through JB and distributor sales by PMBA to other domestic customers, 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".*

1.1.37 *"PMBA contends that the Commission should not have conducted a sampling exercise [in the Continuation Inquiry] in assessing price differences in the levels of trade or, alternatively, that the sampling exercise it undertook was not representative. Instead, as it appears to have done in the previous investigations and the Accelerated Review, the Commission should have assessed the difference in pricing for the different levels of trade by reviewing information relating to all domestic sales during the investigation period. That is, it should have calculated a weighted average price for all customers at each of the levels of trade to identify whether there was a price difference and, if so, quantify that price difference. That analysis should have been undertaken by reference to sales occurring in the Ordinary Course of Trade (OCOT). PMBA considers such a calculation would provide a more accurate assessment of the price difference and would be consistent with the method of calculating weighed average export prices and normal value".*

1.1.38 *"PMBA believes that if the Commission had done so that it would have identified a difference in pricing which then should have been taken into account in the Commission's 'proper comparison' of normal values and export prices. PMBA argues that if the Commission had done so that it would have found that PMBA had not engaged in dumping, that is that its exports during the investigation period were not at dumped export prices".*

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

1.2 The assignment

1.2.1 I am instructed to respond to the following questions by having regard to **Documents B to J**⁷:

*'Question 1'*⁸

Was there a difference in price between aluminium extrusions sold domestically at different levels of trade by PMBA, that is, between sales to retail customers ('**Retail**') as compared with sales to distribution customers ('**Distribution**') and, if so, to what extent?

*'Question 2'*⁹

In calculating the weighted average selling price of aluminium extrusions at each of the two levels of trade¹⁰ that are sold in the ordinary course of trade ('**OCOT**'), that is, profitable sales, is that weighted average price affected by:

- a. a selection of a limited number of customers to whom sales were made;
- b. a selection of a limited number of customers within each MCC category to whom sales were made,

based on volume of sales to customers or otherwise and, if so, to what extent?

'Question 3'

- c. Please assume that the methodology employed by the Commission [which included a level of trade adjustment] in Accelerated Review 577 and Investigations 540 and 541 to calculate weighted average prices for each of the two levels of trade at which PMBA sold aluminium extrusions did not involve only a sample of sales, and was restricted to sales occurring in the OCOT. What would the outcome have been in [the Continuation Inquiry] if the Commission had employed that same methodology again?¹¹
- d. If in [the Continuation Inquiry] the Commission had completed its assessment of the differences in prices between the levels of trade, what would that price difference have been as quantified, including when expressed as a percentage of sales?¹²

1.3 Assumptions

1.3.1 I have been instructed to make the following assumptions:

- a. The Continuation Inquiry related to the period 1 July 2020 to 30 June 2021;
- b. The Commissioner has verified the underlying data and the underlying data set out in Documents C to F, H and J is correct;
- c. The mathematical calculations prepared by the Commissioner in Documents C to F and J are correct;
- d. Customer groups referred to in the Commissioner's calculations as "Inter-Co", "Local" and "Subsidiary" relate to the "Distribution" level of sales to customers;
- e. Customer group "JB" relates to the "Retail" level of sales to customers;
- f. The data set out in tab "(a) Domestic sales" of Document E is consistent with the data set out in tab "(a) Domestic sales" of Document J, except for the following columns:

⁷ My Letter of Instruction.

⁸ Question a of My Letter of Instruction.

⁹ Question b of My Letter of Instruction.

¹⁰ Being 'Retail' and 'Distribution'.

¹¹ Question c of My Letter of Instruction.

¹² Question d of My Letter of Instruction.

- i. “LoT Adj (JB Sales Only)” (column BN) in Document J which has a calculation formula containing a “#REF” error. I am instructed this is supposed to be calculated as a function of: if column B (Customer Group) = JB, then multiply column AG (entitled “Unit Net invoice value”) by the Level of Trade Adjustment (percentage); and
- ii. “Invoice price at EXW Cash (MYR/kg)” (column BQ) in Document J is calculated by taking the “Unit Net Invoice Value” (column AG), and deducting from this the amounts for “dom credit terms” (column BM), “LoT Adj (JB Sales Only)” (column BN), “inland transport” (column BO) and “domestic packaging” (column BP);
- g. Rows 18 to 27 of the tab entitled “(a) NV Summary” of Document H refer to the methodology employed by the Commission to calculate normal value in the Continuation Inquiry;
- h. **Document K**, entitled “577 JB Level of Trade adjustment” is how the Commission calculated the Level of Trade Adjustment in Accelerated Review 577; and
- i. Documents C to F and J were prepared by the Commission.

1.3.2 I have made the following further assumptions:

- a. Based on Section 8.3 of Document B, sales should be considered to be sales made in the OCOT for each MCC if more than 20% of sales (measured by volume) of that MCC are profitable. I have made this assumption based on the following from Section 8.3 of Document B:

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.¹³*

The [Commission’s] verification team tested profitability by comparing the net invoice price against the relevant cost for each domestic sales transaction.

The team then tested whether the unprofitable sales were in substantial quantities (not less than 20%) 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 net invoice price against the relevant weighted average cost over the period for each domestic sales transaction.

1.3.3 Additional assumptions are set out in the body of the report.

1.3.4 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 D 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 presents a true and fair view in accordance with applicable accounting standards and accordingly, no such opinion is expressed.

¹³ Footnote 7 in Section 8.3 of Document B states: “In general, the commission will consider ‘extended period’ and ‘reasonable period’ to be the investigation, review or inquiry period.”

- 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.

Document limitations

- 1.4.4 I have only been provided with underlying source information regarding the Continuation Inquiry. I have not been provided with the source information used to calculate any level of trade adjustments or dumping margins for the Accelerated Review 577 and Investigations 540 and 541.
- 1.4.5 Therefore, when answering part 1 of Question 3, I have relied on:
- a. The documents listed in Section C of My Letter of Instruction; and
 - b. The extracts of the Commission's Reports referred to in Attachment A of My Letter of Instruction.

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 Sections 3 to 5, I set out my responses to Questions 1 to 3.
- 1.5.4 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 be read in conjunction with the full report.

2.2 Question 1

2.2.1 The price of aluminium extrusions sold to Retail customers was, on average, 'MYR'¹⁴ /kg ()% more than the aluminium extrusions sold to Distribution customers.¹⁵

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

Distribution			Retail			Difference (MYR/kg)
Quantity (kg)	Net invoice value (MYR)	Weighted average price (MYR/kg)	Quantity (kg)	Net invoice value (MYR)	Weighted average price (MYR/kg)	
Total						

Source: Section 3 and Appendix E.

2.2.2 This analysis is not on an OCOT basis.

2.3 Question 2

2.3.1 In Section 4 below, I discuss my analysis of and opinion on Question 2. In summary, I have performed the following three analyses:

- My alternative analysis of the weighted average (OCOT) price of all transactions which is not restricted to sales of the "most popular MCCs", or to "customers with substantial quantities" ('My Analysis A');
- My analysis of the Commission's Limited Customer Analysis 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 ('My Analysis B'); and
- My analysis of the Commission's Limited MCC and Customer Analysis (updated to include the Retail and Distribution levels of trade and only OCOT sales) to assess 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 ('My Analysis C').

Commission's Limited Customer Analysis (My Analysis B)

2.3.2 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.

¹⁴ Malaysian ringgit.

¹⁵ Not on an OCOT basis.

Table 2: Comparison of weighted average (OCOT) net invoice price analyses (MYR/kg)

	Distribution	Retail	Difference
My Analysis A ¹⁶	■	■	■
My Analysis B ¹⁷	■	■	■
Difference	■	■	

Source: Section 4 and Appendix E.

Commission's Limited MCC and Customer Analysis (My Analysis C)

- 2.3.3 The weighted average (OCOT) price for all 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.

Table 3: Difference in weighted average net invoice price between My Analyses A and C (MYR/kg)

	My Analysis C		My Analysis A		Difference	
	Distribution	Retail	Distribution	Retail	Distribution	Retail
M-6A-T1	■	■	■	■	■	■
NA-6A-T1	■	■	■	■	■	■
CA-6A-T1	■	■	■	■	■	■
PC-6A-T1	■	■	■	■	■	■

Source: Section 4.

2.4 Question 3

Methodology

Commission's methodologies

- 2.4.1 I have been instructed to assume that the methodology employed by the Commission, which included a level of trade adjustment, in Accelerated Review 577 and Investigations 540 and 541 to calculate weighted average prices for each of the two levels of trade at which PMBA sold aluminium extrusions did not involve only a sample of sales, and was also undertaken in relation to sales occurring in the OCOT.¹⁸
- 2.4.2 Based on my review of the extracts in Attachment A of My Letter of Instruction, there was a Level of Trade Adjustment made in each of Accelerated Review 577 and in Investigations 540 and 541.¹⁹

Dumping margin methodology

- 2.4.3 I have not been provided with the spreadsheets and calculations for Investigations 540 and 541 and Accelerated Review 577, so I have relied on the Anti-Dumping Commission's Reports and Exporter Verification Reports. I am therefore only able to comment on the concluded outcome regarding the dumping margin, not the normal value outcomes for each MCC.
- 2.4.4 The dumping margins calculated, and methodologies adopted by the Commission for Investigations 540 and 541, Accelerated Review 577 and the Continuation Inquiry are as follows:

¹⁶ Refer to paragraph 4.4.2.

¹⁷ Refer to paragraph 4.4.7.

¹⁸ Refer paragraph 1.2.1.

¹⁹ Refer Attachment A of My Letter of Instruction: table on page 13 under 5.6.2 (Accelerated Review 577); table on page 10 under 6.6.7 (Investigation 540); and table on page 11 under 6.6.7 (Investigation 541).

Table 4: Dumping margin

	Investigation 540	Investigation 541	Accelerated Review 577	Continuation Inquiry
Dumping margin	3.3% ²⁰	6.9% ²¹	2.6% ²²	6.7% ²³
OCOT adjustment	Yes ²⁴	Yes ²⁵	Yes ²⁶	Yes ²⁷
Methodology	Level of Trade Adjustment	Level of Trade Adjustment	Level of Trade Adjustment	No Level of Trade Adjustment

Source: Attachment A of My Letter of Instruction, Exporter Verification Reports and Anti-Dumping Notice No. 2021/062.

Level of Trade Adjustment

2.4.5 If, in the Continuation Inquiry, the Commission completed its assessment of the differences in unit EXW prices for all sales and MCCs, between the two levels of trade (Retail and Distribution), the unit EXW price difference would have been MYR [REDACTED]/kg, or [REDACTED]% expressed as a percentage of the weighted average Retail unit EXW price.

2.4.6 I set out the calculation of the Level of Trade adjustment in Table 5 below.

Table 5: Level of Trade Adjustment percentage

	Distribution	Retail	Difference	
Quantity (kg)	[REDACTED]	[REDACTED]		A
Extended EXW Value (MYR)	[REDACTED]	[REDACTED]		B
Unit EXW Price (weighted average) (MYR/kg)	[REDACTED]	[REDACTED]	[REDACTED]	B - A
Level of Trade Adjustment			[REDACTED]	[REDACTED]

Source: Section 5.3 and Appendix E.

Outcome

2.4.7 If the Commission applied the Level of Trade Adjustment of [REDACTED]% above, the Updated Dumping Margin using the Updated Normal Value calculations would have been 0.5%. This compares to the dumping margin calculated by the Commission for the Continuation Inquiry of 6.7%²⁸.

2.4.8 Based on this analysis, in my opinion, applying a Level of Trade Adjustment would lead to a difference (reduction) in the dumping margin of 6.2%.

²⁰ Refer page 28 of 540_-_037_-_verification_report_-_exporter_-_press_metal_berhad.pdf (industry.gov.au).

²¹ Refer page 29 of 541_-_042_-_verification_report_-_exporter_-_press_metal_berhad.pdf (industry.gov.au).

²² Refer page 1 of 577_-_004_-_notice_adn_-_adn_2021-062_-_findings_in_relation_to_an_accelerated_review.pdf (industry.gov.au).

²³ Refer page 28 of 591_-_023_-_pmba_-_exporter_verification_report.pdf (industry.gov.au).

²⁴ Refer Attachment A of My Letter of Instruction: page 12, paragraph 6.6.8, "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."

²⁵ Refer Attachment A of My Letter of Instruction: page 11, paragraph 6.6.8, "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."

²⁶ As recorded in Document K. I note that Attachment A does not specifically state anything about OCOT and I do not have the source document calculations.

²⁷ Refer filter in cell B49, tab "(g) TAC1 Spec adj" in the Commission's Document E. This is filtered to "Y" which means it is filtered to be OCOT.

²⁸ Refer page 28 of 591_-_023_-_pmba_-_exporter_verification_report.pdf (industry.gov.au).

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:

“Was there a difference in price between aluminium extrusions sold domestically at different levels of trade by PMBA, that is, between sales to retail customers as compared with sales to distribution customers and, if so, to what extent?”

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. Adopted the information relating to sales set out in the Commission’s Document E, worksheet “(a) Domestic Sales”;
- b. Added a column to separate the customer groups (i.e. Inter-Co, JB, Local and Subsidiary) into the two levels of trade, being Retail or Distribution (or Distributor).²⁹ In undertaking this calculation:
 - i. I have assumed JB is a Retail customer because, when reviewing the Commission’s Document E and sorting column D entitled “Level of trade” to “Retailer”, JB is the only customer shown in column B entitled “Customer group, JB retail or other”; and
 - ii. I have therefore assumed that Inter-Co, Local and Subsidiary are Distribution customers;
- c. Calculated a weighted average net invoice price for each MCC³⁰ based on the:
 - i. Net invoice price;³¹ and
 - ii. Quantity sold;³²
 for both Retail and Distribution customers³³; and
- d. Calculated the difference between the net invoice price for Retail and Distribution customers.

3.2.2 This analysis is not on an OCOT basis. My calculation is set out below:

²⁹ Refer my Appendix E (tab entitled “(a) Domestic sales”, column C entitled “KM – Retail vs Distribution”).

³⁰ Document E, worksheet “(a) Domestic Sales”, column “ADC MCC final”.

³¹ Document E, worksheet “(a) Domestic Sales”, column “Net Invoice Value”.

³² Document E, worksheet “(a) Domestic Sales”, column “Quantity (kg)”.

³³ Document E, worksheet “(a) Domestic Sales”, column “Customer group, JB retail or other”.

Table 6: Weighted Average net invoice price difference in sales to Retail and Distribution customers (MYR)

MCC	Distribution			Retail			Difference (MYR/kg)
	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	F - C
CA-6A-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: Appendix E.

3.2.3 As set out above:

- For the MCCs where there are both Retail and Distribution sales, the weighted average net invoice price for Distribution sales was lower than for Retail sales;
- In total, the weighted average net invoice price of PMBA's sales to Distribution customers was MYR /kg; and
- In total, the weighted average net invoice price of PMBA's sales to Retail customers was MYR /kg.

3.3 Conclusion

- As set out above, the price of aluminium extrusions sold by PMBA to Retail customers (MYR /kg) was, on average, MYR /kg (% of the distribution price) more than the aluminium extrusions sold to Distribution customers (MYR /kg).
- For the MCCs where there are both Retail and Distribution sales, the weighted average net invoice price for Distribution sales was lower than for Retail sales.

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:

“In calculating the weighted average selling price of aluminium extrusions at each of the two levels of trade that are sold in the ordinary course of trade (OCOT), that is, profitable sales, is that weighted average price affected by:

- a selection of a limited number of customers to whom sales were made (‘Commission’s Limited Customer Analysis’);*
- a selection of a limited number of customers within each MCC category to whom sales were made (‘Commission’s Limited MCC and Customer Analysis’),*

based on volume of sales to customers or otherwise and, if so, to what extent?”

4.2 Overview

4.2.1 In Table 7 below, I set out a summary explaining the basis of each of the calculations discussed in this Section.

Table 7: Summary of calculations for Question 2

	Commission’s analysis	All Retail and Distribution Customers	Commission’s Limited Customer Analysis	Commission’s Limited MCC and Customer Analysis
<i>My short description</i>	<i>Commission’s analysis</i>	<i>My Analysis A</i>	<i>My Analysis B</i>	<i>My Analysis C</i>
Level of trade	3 customers/ groups	Retail and Distribution	Retail and Distribution	Retail and Distribution
OCOT	No	Yes	Yes	Yes
# of MCCs	4	All	All MCCs purchased by the 7 customers	4
# of customers	7	All	7	7

Source: KordaMentha analysis and Document J.

4.3 The Commission’s analysis

4.3.1 Based on my instructions and my analysis as described further below, in my opinion, the Commission’s analysis is incorrect in three respects:

- 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;
- The Commission’s analysis does not include an adjustment for the unprofitable MCCs. That is, the Commission’s analysis which I review below is not based on the weighted average net invoice price of aluminium extrusions sold in the ordinary course of trade (OCOT)³⁴; and
- The Commission’s analysis is limited, or undertaken only on a sample basis, only focusing on four MCCs and seven customers.

4.3.2 As can be seen from Table 8 to 11 below, the Commission’s analysis was limited to:

³⁴ Refer tab “Price by cust-Lot-MCC” of Document J. This does not have a filter for “Use in NV”.

- a. 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'³⁵ MCCs based on quantity of kilograms sold. This analysis however, excluded the third 'most popular' MCC () due to there being a limited quantity of sales of this MCC to Retail customers³⁶. The Commission's analysis therefore analysed the first, second, fourth and fifth 'top' MCCs:
 - i. ;
 - ii. ;
 - iii. ; and
 - iv. .
- b. A sample of seven customers in total for sales of the four MCCs referred to above, rather than all customers, being those described by the Commission as the "customers with substantial quantities"³⁷:
 - i. ;
 - ii. ;
 - iii. ;
 - iv. ;
 - v. ;
 - vi. ; and
 - vii. ; and
- c. 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:
 - i. JB (Retail);
 - ii. Local (Distribution);
 - iii. Subsidiary (Distribution); and
 - iv. Together with a "Grand Total".

4.3.3 In Document J, 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 pivot table by dividing:

- a. Net invoice value (MYR); by
- b. Quantity (kg).³⁸

4.3.4 I set out a summary of the Commission's analysis for their sample of four MCCs (across seven customers) in Table 8 to Table 11 below. This analysis is not on an OCOT basis³⁹.

³⁵ Refer row 5 of tab 'Price by cust-LoT-MCC' of Document J: "Price comparison considering most popular MCC and customers with substantial quantities".

³⁶ 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".

³⁷ Refer row 5 of tab 'Price by cust-LoT-MCC' of Document J: "Price comparison considering most popular MCC and customers with substantial quantities".

³⁸ 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 J'. I have used this same formula in my calculations of weighted average net invoice price in Sections 3 and 4.

³⁹ Refer tab "Price by cust-LoT-MCC" of Document J. This does not have a filter for "Use in NV".

Table 8: M-6A-T1 weighted average net invoice price (MYR/kg)

Customer	JB (Retail)	Local (Distribution)	Subsidiary (Distribution)	Grand Total
OCOT?	No	No	No	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Weighted average net invoice price	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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

Table 9: NA-6A-T1 weighted average net invoice price (MYR/kg)

Customer	JB (Retail)	Local (Distribution)	Subsidiary (Distribution)	Grand Total
OCOT?	No	No	No	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Weighted average net invoice price	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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

Table 10: CA-6A-T1 weighted average net invoice price (MYR/kg)

Customer	JB (Retail)	Local (Distribution)	Subsidiary (Distribution)	Grand Total
OCOT?	No	No	No	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Weighted average net invoice price	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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

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

Customer	JB (Retail)	Local (Distribution)	Subsidiary (Distribution)	Grand Total
OCOT?	No	No	No	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Weighted average net invoice price	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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

- 4.3.5 Given the Commission's analysis (as set out in Table 8 to Table 11 above), the basis for the conclusion drawn by the Commission is unclear.

4.4 My analysis

All Retail and Distribution Customers (My Analysis A)

- 4.4.1 I have undertaken an alternative analysis which is not restricted to sales of the “most popular MCCs”, or to “customers with substantial quantities”. This analysis includes:
- Distribution and Retail levels of trade;
 - OCOT sales; and
 - All MCCs and customers.
- 4.4.2 Table 12 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 transactions sold to all customers in the OCOT. For the purpose of this analysis, I have only presented below the weighted average net invoice prices. The detail for all sales included in this analysis can be found in Appendix E. The result of my analysis (as shown in the table below) is then compared to the weighted average net invoice prices as set out in My Analyses B and C.

Table 12: Weighted average (OCOT) net invoice price for My Analysis A (MYR/kg)

MCC	Distribution	Retail	Difference	
	MYR	MYR	MYR	% ⁴⁰
OCOT?	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	████	████	████	████
Total	████	████	████	████

Source: Appendix E.

- 4.4.3 As can be seen from Table 12 above, based on this analysis:
- The weighted average (OCOT) net invoice price for Distribution customers ranged from a low of MYR █████/kg (████) to a high of MYR █████/kg (████), with an average of MYR █████/kg;
 - The weighted average (OCOT) net invoice price for Retail customers ranged from a low of MYR █████/kg (████) to a high of MYR █████/kg (████), with an average of MYR █████/kg; and
 - For the █████ 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 between MYR █████/kg and MYR █████/kg.

⁴⁰ % difference is calculated by expressing the “difference” as a percentage of the “Retail” price.

- 4.4.4 In this analysis, which includes all transactions in the OCOT, the total overall difference between the weighted average net invoice price as between Retail and Distribution was MYR [REDACTED]/kg ([REDACTED]%).

Commission's Limited Customer Analysis (My Analysis B)

- 4.4.5 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:
- 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
 - Compared the results of this analysis to the weighted average (OCOT) net invoice price for All Retail and Distribution Customers (My Analysis A) calculated by me in table 12 in paragraph 4.4.2 above.
- 4.4.6 My calculations for these two steps are set out below. This analysis includes:
- Distribution and Retail levels of trade;
 - OCOT sales;
 - Seven customers; and
 - All transactions recorded for sales of all MCCs to the seven customers, and does not exclude any MCCs.
- 4.4.7 Table 13 below sets out my calculation of the weighted average (OCOT) net invoice price for the seven customers relied on in the Commission's analysis (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 can be found in Appendix E.

Table 13: Weighted average (OCOT) net invoice price for My Analysis B (MYR/kg)

Customer	Distribution	Retail	Difference	% ⁴¹
[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]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Appendix E.

- 4.4.8 As can be seen from Table 13 above, based on this analysis:
- The weighted average (OCOT) net invoice price for Distribution customers ranged from a low of MYR [REDACTED]/kg ([REDACTED]) to a high of MYR [REDACTED]/kg ([REDACTED]), with an average of MYR [REDACTED]/kg; and

⁴¹ % difference is calculated by expressing the "difference" as a percentage of the "Retail" price.

- b. 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]), with an average of MYR [REDACTED]/kg.

4.4.9 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 ([REDACTED]%).

Comparison of My Analysis A to My Analysis B

4.4.10 In Table 14 below, I compare:

- My Analysis A: the weighted average (OCOT) net invoice price for all Retail and Distribution customers (calculated by me in table 12 in paragraph 4.4.2 above), to
- My Analysis B: the weighted average (OCOT) net invoice price for the seven customers relied on in the Commission's analysis (calculated by me in table 13 at paragraph 4.4.7 above).

Table 14: Comparison of weighted average (OCOT) net invoice price analyses (MYR/kg)

	Distribution	Retail	Difference
My Analysis A ⁴²	[REDACTED]	[REDACTED]	[REDACTED]
My Analysis B ⁴³	[REDACTED]	[REDACTED]	[REDACTED]
Difference	[REDACTED]	[REDACTED]	

Source: Appendix E.

4.4.11 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 results in a price difference of MYR [REDACTED]/kg for My Analysis A, compared to the MYR [REDACTED]/kg difference calculated in My Analysis B.

Commission's Limited MCC and Customer Analysis (My Analysis C)

4.4.12 In order to respond to Question 2, I needed to update the Commission's analysis to include the Retail and Distribution levels of trade and only OCOT sales ('**Updated Commission's Analysis**' or '**My Analysis C**'). The purpose of this analysis is:

- Firstly, to compare the Commission's analysis (which was not undertaken on an OCOT basis) to My Analysis C.
- Then to compare My Analysis C to My Analysis A, calculated by me in table 12 in paragraph 4.4.2 above.

4.4.13 My Analysis C differs from My Analysis B for the following reasons:

- My Analysis B calculates the weighted average (OCOT) net invoice price for each sample customer selected by the Commission (for all MCCs purchased by that customer); and
- My Analysis C does not include a total weighted average net invoice price by MCC for that selected customer (only for the specific MCC analysed by the Commission).

Commission's Analysis (Retail & Distribution)

4.4.14 As discussed in paragraph 4.3.1, the Commission's analysis:

- Does not show the weighted average net invoice price in the ordinary course of trade (OCOT); and

⁴² Refer to paragraph 4.4.2.

⁴³ Refer to paragraph 4.4.7.

- 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.

4.4.15 I am instructed to provide my analysis of the 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 in Table 15 to 18 below as '**Commission's Analysis (Retail & Distribution)**'.

My Analysis C

4.4.16 In order to answer Question 2, I needed to update the Commission's Analysis (Retail and Distribution) to include only sales in the OCOT (i.e. by excluding loss making sales). I refer to this analysis as '**My Analysis C**'.

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

4.4.17 The Commission's Analysis (Retail & Distribution) and My Analysis C, along with the difference between the two, are set out in Table 15 to Table 18 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 can be found in Appendix E.

Table 15: M-6A-T1 weighted average net invoice price (MYR/kg)

	Commission's Analysis (Retail & Distribution)		My Analysis C		Difference	
	No	No	Yes	Yes		
OCOT?						
Customer	Distribution	Retail	Distribution	Retail	Distribution	Retail
[REDACTED]						
[REDACTED]						
[REDACTED]						
Weighted average net invoice price						

Source: Appendix E.

Table 16: NA-6A-T1 weighted average net invoice price (MYR/kg)

	Commission's Analysis (Retail & Distribution)		My Analysis C		Difference	
	No	No	Yes	Yes		
OCOT?						
Customer	Distribution	Retail	Distribution	Retail	Distribution	Retail
[REDACTED]						
[REDACTED]						
[REDACTED]						
Weighted average net invoice price					-	-

Source: Appendix E.

Table 17: CA-6A-T1 weighted average net invoice price (MYR/kg)

OCOT?	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]
Weighted average net invoice price	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Appendix E.

Table 18: PC-6A-T1 weighted average net invoice price (MYR/kg)

OCOT?	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]
Weighted average net invoice price	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Appendix E.

- 4.4.18 As can be seen from Table 15 to Table 18 above, there was a difference between the Commission's Analysis (Retail & Distribution), before OCOT adjustment, and My Analysis C for two of the four MCCs analysed by the Commission ([REDACTED]).

Conclusion

- 4.4.19 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 and My Analysis A, as shown below:

Table 19: Difference in weighted average net invoice price between My Analyses A and C

	My Analysis C		My Analysis A		Difference	
	Distribution	Retail	Distribution	Retail	Distribution	Retail
M-6A-T1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]0
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: KordaMentha analysis.

- 4.4.20 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.

5. Question 3

5.1 Introduction

5.1.1 In this Section, I set out my analysis of and opinions on Question 3.

5.1.2 Because the question labelled c in My Instruction Letter contains two parts, and because this is also related to the question labelled d, I have addressed them in the following order:

*“Please assume that the methodology employed by the Commission [which included a level of trade adjustment] in Accelerated Review 577 and Investigations 540 and 541 to calculate weighted average prices for each of the two levels of trade at which PMBA sold aluminium extrusions did not involve only a sample of sales, and was restricted to sales occurring in the OCOT. (**Methodology**)”.*

*If in [the Continuation Inquiry] the Commission had completed its assessment of the differences in prices between the levels of trade, what would that price difference have been as quantified, including when expressed as a percentage of sales? (**Level of Trade Adjustment**)”*

*What would the outcome have been in [the Continuation Inquiry] if the Commission had employed that same methodology again? (**Outcome**)”.*

5.2 Methodology

The Commission’s calculation of weighted average price (normal value)

5.2.1 I note the following about Documents E, F and H:

- a. Document H appears to be a copy of Document F, with Document H having an additional tab entitled “LoT Adj” and other various adjustments;
- b. The tables in tab (a) of Document H are hardcoded:
 - i. I am therefore not able to see how the numbers in the first table (rows 6 to 15) were calculated; and
 - ii. I can tie the numbers in the second table (rows 18 to 27) to tab (h) of Document E;
- c. Tab (a) of Document H references a source as “Appendix 3, worksheet (h)”, which is Document E;
- d. “Appendix 3, worksheet (h)” (Document E) sets out a calculation of the weighted average normal value (OCOT) summarised by quarter, for the quarters ended September 2020, December 2020, March 2021 and June 2021;
- e. This tab (h) is linked to the conclusion for the weighted average normal value for each MCC set out in tab (g)⁴⁴ of Document E; and
- f. Since Document F appears to be the same as Document H (without adjustments) and the tables in tab (a) of Document H are hardcoded, I have relied on Document F for my analysis. The weighted average normal values derived in tab (a) of Document F are set out in Table 20 below.⁴⁵

⁴⁴ Entitled “(g) TAC1 Spec adj”.

⁴⁵ I note these numbers are the same as the table in rows 18 to 27 of tab (a) of Document H.

5.2.2 In Document E, the Commission calculated the weighted average normal value, or what it referred to as the “sum of wa normal value (MYR/kg)”, in a pivot table by dividing:

- a. Extended normal value (MYR); by
- b. Quantity (kg).⁴⁶

Table 20: Weighted average normal value calculated by the Commission (MYR/kg)

Export MCC	Sep-20	Dec-20	Mar-21	Jun-21
CA-6A-T1				
CA-6B-T1				
M-6A-T1				
M-6B-T1				
M-6D-T1 ⁴⁷				
NA-6A-T1				
PBS-6D-T1 ⁴⁸				
PC-6A-T1				
PC-6B-T1 ⁴⁹				

Source: Doc F - 591 – PMBA – Appendix 4 – Dumping margin.

Methodology adopted in Accelerated Review 577 and Investigations 540 and 541

5.2.3 I have been instructed to assume that the methodology employed by the Commission, which included a level of trade adjustment, in Accelerated Review 577 and Investigations 540 and 541 to calculate weighted average prices for each of the two levels of trade at which PMBA sold aluminium extrusions did not involve only a sample of sales, and was also undertaken in relation to sales occurring in the OCOT.⁵⁰

5.2.4 Based on my review of the extracts in Attachment A of My Letter of Instruction, this appears to be consistent since there was a Level of Trade Adjustment made in each of Accelerated Review 577 and in Investigations 540 and 541.⁵¹ I can see from these reports that the Commission agreed in each of these that a Level of Trade Adjustment was required for a fair comparison of export prices and normal values.

5.2.5 In the sections below, I summarise the Level of Trade Adjustment information available regarding those reports.

Accelerated Review 577

5.2.6 I have been provided with the following documents for the Accelerated Review 577:

- a. Attachment A of My Letter of Instruction;
- b. Document K;

⁴⁶ Refer to calculated field for “sum of wa normal value (MYR/kg)” in pivot table in rows 49 to 61 of tab ‘(g) TAC1 Spec adj’ of Document E. I have used this same formula in my calculations of normal value in Section 5, except when adjusting for what the Commission referred to as “Specification adjustments”.

⁴⁷ Commission’s “Specification adjustments”.

⁴⁸ Commission’s “Specification adjustments”.

⁴⁹ Commission’s “Specification adjustments”.

⁵⁰ Refer paragraph 1.2.1.

⁵¹ Refer Attachment A of My Letter of Instruction: table on page 13 under 5.6.2 (Accelerated Review 577); table on page 10 under 6.6.7 (Investigation 540); and table on page 11 under 6.6.7 (Investigation 541).

- c. Anti-Dumping Notice No. 2021/023, Application for an [Accelerated Review 577] of a dumping duty and countervailing notice, Submitted by [PMBA], applying to certain aluminium extrusions exported to Australia from Malaysia⁵²; and
- d. Anti-Dumping Notice No. 2021/062, Aluminium Extrusions, Exported to Australia from Malaysia, Findings in relation to [Accelerated Review 577]⁵³.

5.2.7 Table 21 below sets out the “Rationale and Method” for the Level of Trade Adjustment in Accelerated Review 577:

Table 21: 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	<p><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.</i></p> <p><i>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></p>	<p><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></p>	Yes	Yes

Source: Refer paragraph 5.6, page 13 of Attachment A of My Letter of Instruction.

5.2.8 Based on the commentary summarised above, there was a Level of Trade Adjustment applied for Accelerated Review 577. As discussed below, this adjustment was calculated based on sales occurring in the OCOT.⁵⁴

⁵² Refer 577_-_002_-_notice_adn_-_adn_2021-023_-_initiation_of_an_accelerated_review.pdf (industry.gov.au).

⁵³ Refer 577_-_004_-_notice_adn_-_adn_2021-062_-_findings_in_relation_to_an_accelerated_review.pdf (industry.gov.au).

⁵⁴ Refer Table 24.

Investigations 540 and 541

- 5.2.9 I have been provided with the Exporter Verification Reports for Investigations 540 and 541. Table 22 below sets out the “Rationale and Method” for the Level of Trade Adjustment in each:

Table 22: 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).

- 5.2.10 Based on the commentary summarised above, there was a Level of Trade Adjustment applied for each of the Investigations 540 and 541. As discussed below, this adjustment was calculated based on sales occurring in the OCOT.⁵⁵

⁵⁵ Refer Table 24.

The Continuation Inquiry

- 5.2.11 I have been provided with the Exporter Verification Report for the Continuation Inquiry.⁵⁶ In Section 8.2 and 9 of this Exporter Verification Report, there is discussion about the Level of Trade Adjustment, and whether or not it should be applied.

Table 23: Rationale and method for Level of Trade Adjustment

Adjustment type	Assessment for adjustment	Calculation method and evidence	Claimed in REQ?	Adjustment required?
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

Source: Refer page 25 of 591_-023-_pmba_-_exporter_verification_report.pdf (industry.gov.au).

- 5.2.12 In this report, the Commission it concludes that "...the verification team is not satisfied that it should make a level of trade adjustment for the normal value in relation to domestic sales"⁵⁷.

Dumping margin methodology

- 5.2.13 I have not been provided with the spreadsheets and calculations for Investigations 540 and 541 and Accelerated Review 577, so I have relied on the Anti-Dumping Commissions Reports and Exporter Verification Reports. I am therefore only able to comment on the concluded outcome regarding the dumping margin, not the normal value outcomes for each MCC.
- 5.2.14 Based on my review of the Exporter Verification Reports for Investigations 540 and 541 and the Continuation Inquiry, the Commission used two different methodologies to calculate the dumping margin.
- 5.2.15 The dumping margins calculated, and methodologies adopted by the Commission for Investigations 540 and 541, Accelerated Review 577 and the Continuation Inquiry are as follows:

Table 24: Dumping margin

	Investigation 540	Investigation 541	Accelerated Review 577	Continuation Inquiry
Dumping margin	3.3% ⁵⁸	6.9% ⁵⁹	2.6% ⁶⁰	6.7% ⁶¹
OCOT adjustment	Yes ⁶²	Yes ⁶³	Yes ⁶⁴	Yes ⁶⁵

⁵⁶ Refer 591_-023-_pmba_-_exporter_verification_report.pdf (industry.gov.au).

⁵⁷ Refer page 23 of 591_-023-_pmba_-_exporter_verification_report.pdf (industry.gov.au).

⁵⁸ Refer page 28 of 540_-037-_verification_report_-_exporter_-_press_metal_berhad.pdf (industry.gov.au).

⁵⁹ Refer page 29 of 541_-042-_verification_report_-_exporter_-_press_metal_berhad.pdf (industry.gov.au).

⁶⁰ Refer page 1 of 577_-004-_notice_adn_-_adn_2021-062_-_findings_in_relation_to_an_accelerated_review.pdf (industry.gov.au).

⁶¹ Refer page 28 of 591_-023-_pmba_-_exporter_verification_report.pdf (industry.gov.au).

⁶² Refer Attachment A of My Letter of Instruction: page 12, paragraph 6.6.8, "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."

⁶³ Refer Attachment A of My Letter of Instruction: page 11, paragraph 6.6.8, "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."

⁶⁴ As recorded in Document K. I note that Attachment A does not specifically state anything about OCOT and I do not have the source document calculations.

⁶⁵ Refer filter in cell B49, tab "(g) TAC1 Spec adj" in the Commission's Document E. This is filtered to "Y" which means it is filtered to be OCOT.

	Investigation 540	Investigation 541	Accelerated Review 577	Continuation Inquiry
Methodology	Level of Trade Adjustment	Level of Trade Adjustment	Level of Trade Adjustment	No Level of Trade Adjustment

Source: Attachment A of My Letter of Instruction, Exporter Verification Reports and Anti-Dumping Notice No. 2021/062.

5.3 My calculation of Level of Trade Adjustment

- 5.3.1 As set out in Section 4, I have calculated that there was a weighted average net invoice price difference of MYR [REDACTED]/kg⁶⁶ between Retail and Distribution customers, applying OCOT, for sales to all Retail and Distribution customers and across all MCCs.
- 5.3.2 I have been provided with a screenshot⁶⁷ which I am instructed is the Commission's calculation for the Level of Trade Adjustment in Accelerated Review 577.
- 5.3.3 This screenshot sets out a calculation of the Level of Trade Adjustment using the following approach:
- Taking the "Unit EXW Price" for Retail customers (i.e., JB);
 - Subtracting from the value in a above, the "Unit EXW Price" for Distribution customers (i.e., called "Factory" in this document);
 - In order to calculate the Level of Trade Adjustment in percentage terms, dividing the difference (a-b) by the "Unit EXW Price" for Retail customers.
- 5.3.4 Therefore, if, in the Continuation Inquiry, the Commission completed its assessment of the differences in unit EXW prices for all sales and MCC, between the two levels of trade (Retail and Distribution), the unit EXW price difference would have been MYR [REDACTED]/kg, or [REDACTED]% (expressed as a percentage of the weighted average Retail unit EXW price). This is the reduction from the weighted average Retail unit EXW sales price to the weighted average Distribution unit EXW sales price. This does not exactly tie to the difference calculated in paragraph 4.4.2 above since that calculation relied on a weighted average net invoice price, while this analysis relies on a weighted average unit EXW price.
- 5.3.5 I set out the calculation of the Level of Trade adjustment in Table 25 below.

Table 25: Level of Trade Adjustment percentage

	Distribution	Retail	Difference	Method
Quantity (kg)	[REDACTED]	[REDACTED]		A
Extended EXW value (MYR)	[REDACTED]	[REDACTED]		B
Unit EXW price (weighted average) (MYR/kg)	[REDACTED]	[REDACTED]	[REDACTED]	B - A
Level of Trade Adjustment			[REDACTED]	[REDACTED]

Source: Appendix E.

5.4 Outcome

- 5.4.1 If the Continuation Inquiry had made a Level of Trade Adjustment, the following would have occurred:

⁶⁶ Refer table 12 in paragraph 4.4.2.

⁶⁷ "577 JB Level of Trade adjustment".

- a. The normal values would have decreased (refer Table 26 in paragraph 5.4.4 below); and
- b. The dumping margin would have decreased.

5.4.2 My analysis of these changes is set out below.

Updated Normal Value

5.4.3 In order to update the normal values in the Commission's analysis for the Level of Trade Adjustment, I did the following ('Updated Normal Value' or 'Updated NV'):

- a. Commission's Document E, tab entitled "(a) Domestic sales":
 - i. Added a column to separate the customer groups (i.e., Inter-Co, JB, Local and Subsidiary) into the two levels of trade, being Retail or Distribution (or Distributor). Refer to my Appendix E (tab entitled "(a) Domestic sales", column C entitled "KM – Retail vs Distribution").
 - ii. Added a column to calculate the Level of Trade Adjustment for Retail customers. Refer to my Appendix E (tab entitled "(a) Domestic sales", column BO entitled "KM LoT Adjustment").
 - iii. Updated the formula in the column entitled "Invoice price at EXW Cash (MYR/kg)" to include, and therefore subtract⁶⁸, the Level of Trade Adjustment in column BO. Refer to my Appendix E (tab entitled "(a) Domestic sales", column BR).
- b. The Commission calculated normal value in Document E, tabs entitled "(g) TAC1 Spec adj" and "(h) NV Summary" (which is linked via a formula to the tab entitled "(g) TAC1 Spec adj"). To prepare my Updated Normal Value Calculations, in the tab entitled "(g) TAC1 Spec adj", I⁶⁹:
 - i. Prepared a pivot (summary) table which calculated the weighted average normal value (MYR/kg) for each MCC. This information summarised, by quarter, the weighted average normal value from the tab entitled "(a) Domestic sales". Refer to my Appendix E (tab entitled "KM Normal Value").
 - ii. Prepared a table which showed and was linked to my Updated Normal Value calculations from the "KM Normal Value" tab. Refer to my Appendix E (tab entitled "(g) TAC1 Spec adj", columns J to N, rows 75 to 84).
 - iii. Updated the Commission's table, which summarised normal values calculated by the Commission, to be linked to my Updated Normal Value calculations from the table described in ii above. I did not adjust the following MCCs for which the Commission had "specification adjustments". These (Domestic) MCCs were: [REDACTED] and [REDACTED].
 - iv. The tab entitled "(h) NV Summary" automatically updated with the Updated Normal Value calculations since it is linked to the tab entitled "(g) TAC1 Spec adj".

5.4.4 In Table 26 to Table 29 below, I set out the Commission's normal values, comparing them to my Updated Normal Value by quarter:

Table 26: Difference in normal value (September 2020 quarter) (MYR/kg)

MCC	Commission	Updated NV	Difference
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

⁶⁸ There are now four adjustments subtracted from "Unit Net invoice value" in column AH.

⁶⁹ Refer my Appendix E.

MCC	Commission	Updated NV	Difference

Source: Commission: Document E, tab "(h) NV Summary"; Updated Normal Value: Appendix E, tab entitled "(h) NV Summary"; Difference: KordaMentha calculations.

Table 27: Difference in normal value (December 2020 quarter) (MYR/kg)

MCC	Commission	Updated NV	Difference

Source: Commission: Document E, tab "(h) NV Summary"; Updated Normal Value: Appendix E, tab entitled "(h) NV Summary"; Difference: KordaMentha calculations.

Table 28: Difference in normal value (March 2021 quarter) (MYR/kg)

MCC	Commission	Updated NV	Difference

Source: Commission: Document E, tab "(h) NV Summary"; Updated Normal Value: Appendix E, tab entitled "(h) NV Summary"; Difference: KordaMentha calculations.

Table 29: Difference in normal value (June 2021 quarter) (MYR/kg)

MCC	Commission	Updated NV	Difference



MCC	Commission	Updated NV	Difference
████	████	████	████
████	████	████	█
████	████	████	████
████	████	████	█

Source: Commission: Document E, tab "(h) NV Summary"; Updated Normal Value: Appendix E, tab entitled "(h) NV Summary"; Difference: KordaMentha calculations.

- 5.4.5 As can be seen from Table 26 to Table 29 above, where it differed, the Commission's normal value ranged from █████ MYR/kg (excluding the 0.01 difference) to █████ MYR/kg higher than the Updated Normal Value (which I calculated including a Level of Trade Adjustment).

Dumping Margin

- 5.4.6 The Commission calculated the dumping margin in its Document F. In order to calculate the dumping margin using the Updated Normal Value calculations ('**Updated Dumping Margin**')⁷⁰:
- I linked the tab in Document F entitled "(a) NV Summary" to the tab from Document E entitled "(h) NV Summary". These tabs show the same information; they were however contained in different documents in the Commission's analysis.
 - The dumping margin tabs ("(b) Dumping Margin 1" and "(c) Dumping Margin 2") were automatically updated after updating the tab entitled "(a) NV Summary" in Document F.
- 5.4.7 Using this approach:
- The Updated Dumping Margin calculated by me using the Updated Normal Value calculations was 0.5%;
 - This compares to the dumping margin calculated by the Commission of 6.7%.
- 5.4.8 Based on this analysis, in my opinion, applying a Level of Trade Adjustment would lead to a difference (reduction) in the dumping margin of 6.2%.

⁷⁰ Refer my Appendix E.

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. 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 Federal Court

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 ('**the 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; and
- 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 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 in a Report or, in certain circumstances, orally”.

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 tables are used in subsequent calculations. Accordingly, minor variances may exist in table totals when recalculated manually.



John Temple-Cole
Partner

29 April 2022

Appendix A My curriculum vitae





John Temple-Cole

Partner | Forensic

Sydney

“It’s the variety of challenges we face in our assignments that motivates and continues to engage me each day.”

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Experience

John is a CA Forensic Accounting Specialist (designated by Chartered Accountants Australia and New Zealand) and expert witness with over 25 years' experience. He leads the KordaMentha Sydney forensic practice. John specialises in large scale and complex financial investigations and disputes relating to quantification, loss of profit/damages, and accounting irregularities. He has gained extensive experience through his involvement in many of Australia's highest-profile and most complex investigation and dispute assignments.

John's professional career began in the London office of Coopers & Lybrand (later PricewaterhouseCoopers), providing audit related services to major listed and private companies. He then transferred to their Sydney office. He was a Forensic accounting Partner of Ferrier Hodgson before joining KordaMentha as a partner in 2010. John leads our Sydney forensic team.

He is a Fellow of Chartered Accountants Australia and New Zealand (CAANZ) and a Fellow of the Institute of Chartered Accountants in England and Wales (ICAEW).

John has undertaken expert witness roles, consulting expert roles, investigations and special reviews.

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.

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.
- Quantification of loss and damage, including for breach of contract, negligence or insurance purposes.



Areas of specialisation (cont.)

- 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. Our 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.

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]

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.

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.

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.

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]

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.

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.

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.

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.

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.

Detailed list of engagements

Claims and disputes

- 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
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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 Chinese investors into Australian based property development ventures said to be qualifying investments for the purposes of Significant Investment Visas.
 - 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
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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 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.
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- 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.
 - 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.
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- 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.
 - 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.
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- 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 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.
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- 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.
- 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.
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- 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.

Qualifications

CA Forensic Accounting Specialist

BSc (Hons) Management Sciences, Loughborough University, England

Certified Fraud Examiner (CFE)

Financial Analysis Certificate using Microsoft Excel

Certificate IV in Fraud Control (Investigations)

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)

Publications

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.

Awards

Who's Who Legal listings:

- Who's Who Legal / Global Investigations Review - Thought Leaders, 2020
- Who's Who Legal National Leader Australia – Investigations -Forensic Accountants, 2020
- Who's Who Legal Global Leader Investigations - Forensic Accountants, 2020
- Who's Who Legal Global Leader Consulting Experts - Forensic Accountants, 2020

Appendix B Glossary of terms

Term	Definition
Accelerated Review 577	Accelerated Review initiated on 17 February 2021 regarding a determination of whether PMBA's exports of aluminium extrusions from Malaysia to Australia were at dumped export prices and, if so, the margin of dumping.
Assistant Minister	Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
Commission	Anti-Dumping Commission
Commission's Analysis (Retail & Distribution)	I am instructed to provide my analysis of the 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 in my report as 'Commission's Analysis (Retail & Distribution)'.
Commission's Limited Customer Analysis or My Analysis B	In calculating the weighted average selling price of aluminium extrusions at each of the two levels of trade that are sold in the OCOT, that is, profitable sales, is that weighted average price affected by: <ol style="list-style-type: none"> a selection of a limited number of customers to whom sales were made; based on volume of sales to customers or otherwise and, if so, to what extent?
Commission's Limited MCC and Customer Analysis or My Analysis C	In calculating the weighted average selling price of aluminium extrusions at each of the two levels of trade that are sold in the OCOT, that is, profitable sales, is that weighted average price affected by: <ol style="list-style-type: none"> a selection of a limited number of customers within each MCC category to whom sales were made, based on volume of sales to customers or otherwise and, if so, to what extent?
Commissioner	Anti-Dumping Commissioner
Continuation Inquiry	Continuation Inquiry 591
CTMS	Cost to make and sell
Distribution	Distribution customers
Investigations 540 and 541	Investigations initiated into exports of aluminium extrusions exported to Australia from Malaysia by exporters who had been exempted from the anti-dumping measures imposed on 27 June 2017
JB	A division of PMBA to whom retail sales were made
Level of Trade Adjustment	A comparison of the Normal Value (i.e., weighted average of all domestic sales) with the weighted average export price. and Sub-section 5.3 of this report responding to question d of My Letter of Instruction: If in [the Continuation Inquiry] the Commission had completed its assessment of the differences in prices between the levels of trade, what would that price difference have been as quantified, including when expressed as a percentage of sales?
MCC	Mode Control Code
Methodology	Sub-section 5.2 of this report which sets out my analysis confirming the assumption I am instructed to make for the first part of question c of My Letter of Instruction: Please assume that the methodology employed by the Commission [which included a level of trade adjustment] in Accelerated Review 577 and Investigations 540 and 541 to calculate weighted average prices for each of the two levels of trade at which PMBA sold aluminium extrusions did not involve only a sample of sales, and was restricted to sales occurring in the OCOT.
Minister	Minister for Industry, Science and Technology
My Analysis A	I have undertaken an alternative analysis which is not restricted to sales of the "most popular MCCs", or to "customers with substantial quantities". This analysis includes: <ol style="list-style-type: none"> Distribution and Retail levels of trade; OCOT sales; and All MCCs and customers.

Term	Definition
My Analysis B	My analysis of the Commission's Limited Customer Analysis 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.
My Analysis C	My analysis of the Commission's Limited MCC and Customer Analysis (updated to include the Retail and Distribution levels of trade and only OCOT sales) to assess whether the weighted average selling price for (OCOT) sales for 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.
My Letter of Instruction	Instruction letter from Corrs Chambers Westgarth dated 29 April 2022
MYR	Malaysian ringgit
Normal Value	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.
OCOT	Ordinary course of trade
Outcome	Sub-section 5.4 of this report responding to the second part question c of My Letter of Instruction: What would the outcome have been in [the Continuation Inquiry] if the Commission had employed that same methodology again?
PMAA	Press Metal Aluminium Australia Pty Ltd
PMB	Press Metal Berhad
PMBA	PMB Aluminium Sdn Bhd
Practice Note	<i>Expert Evidence Practice Note (GPN-EXPT)</i>
Question 1	Was there a difference in price between aluminium extrusions sold domestically at different levels of trade by PMBA, that is, between sales to Retail customers as compared with sales to Distribution customers and, if so, to what extent?
Question 2	<p>In calculating the weighted average selling price of aluminium extrusions at each of the two levels of trade that are sold in the OCOT, that is, profitable sales, is that weighted average price affected by:</p> <ol style="list-style-type: none"> a selection of a limited number of customers to whom sales were made; a selection of a limited number of customers within each MCC category to whom sales were made, <p>based on volume of sales to customers or otherwise and, if so, to what extent?</p>
Question 3	<ol style="list-style-type: none"> Please assume that the methodology employed by the Commission [which included a level of trade adjustment] in Accelerated Review 577 and Investigations 540 and 541 to calculate weighted average prices for each of the two levels of trade at which PMBA sold aluminium extrusions did not involve only a sample of sales, and was restricted to sales occurring in the OCOT. What would the outcome have been in [the Continuation Inquiry] if the Commission had employed that same methodology again? If in [the Continuation Inquiry] the Commission had completed its assessment of the differences in prices between the levels of trade, what would that price difference have been as quantified, including when expressed as a percentage of sales?
Report 362	Report by the Commissioner regarding the imposition of the anti-dumping measures followed the conduct of a dumping and subsidy investigation into exports of aluminium extrusions exported to Australia from Malaysia and Vietnam
Report 544	Report relating to Review 544
Report 577	Report regarding Accelerated Review 577
Reports 540 and 541	Reports relating to Investigations 540 and 541
Retail	Retail customers
Review 544	Review of the imposition of anti-dumping measures, initiated on 24 February 2020
the Code	The Harmonised Expert Witness Code of Conduct of the Federal Court of Australia

Term	Definition
Updated Dumping Margin	My calculation of the updated dumping margin using the Updated Normal Value calculations.
Updated Normal Value or Updated NV	My calculation to update the Commission's normal value calculation.



Appendix C My Letter of Instruction



Instructions

John Temple-Cole
KordaMentha

By email: jtemplecole@kordamentha.com

Dear John,

Continuation Inquiry 591 – Exports of aluminium extrusions from Malaysia – proper comparison of normal value with export prices¹

We act for the Press Metal group of companies, namely:

- Press Metal Aluminium Australia Pty Ltd (**PMAA**);
- Press Metal Berhad (**PMB**); and
- PMB Aluminium Sdn Bhd (**PMBA**).

Our clients are currently participating in an inquiry (**Continuation Inquiry 591**) by the Anti-Dumping Commission (**Commission**) as to whether anti-dumping measures imposed on aluminium extrusions exported from Malaysia should be continued for a further five (5) years from their due expiry date of 27 June 2022. We wish to retain you to provide a report that our clients may rely on in the course of that inquiry.

A. Background

General

1. On 15 September 2021 the Anti-Dumping Commissioner (**Commissioner**) announced the initiation of Continuation Inquiry 591 (**Document A**).
2. The continuation inquiry is 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.
3. The primary consideration for whether the 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 a recurrence of dumping and the material injury that the anti-dumping measures are intended to prevent.
4. As noted above, the anti-dumping measures were imposed on 27 June 2017 following a dumping and subsidy investigation, Investigation 362, 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

¹ Note: copies of Reports, Anti-Dumping Notices and Verification Reports can be accessed at the weblinks in Attachment B.

Parliamentary Secretary to the Minister for Industry, Innovation and Science (**Assistant Minister**) under sections 269TG and 269TJ of the *Customs Act 1901*.

5. The imposition of the anti-dumping measures followed the conduct of a dumping and subsidy investigation into exports of aluminium extrusions exported to Australia from Malaysia and Vietnam by the Commissioner and the provision by the Commissioner of his report and recommendations to the Assistant Minister (Report 362).
6. Several years after the imposition of the anti-dumping measures, 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 (**Minister**) with his report and recommendations following that review on 29 April 2021 (Report 544). The Minister accepted the Commissioner's recommendations arising from the Review 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).
7. The Commissioner found in Review 544 that PMB had been replaced by PMBA, following a corporate reorganization 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 (Report 544) 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).
8. 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 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.
9. 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).
10. While exports by PMB were found by the Commissioner, in those investigations, to have been at dumped export prices, the Commissioner found that PMB had been superseded by PMBA as the exporter of aluminium extrusions from Malaysia and, therefore, it was unlikely to export aluminium extrusions from Malaysia at dumped export prices in the future (Reports 540 and 541). For this reason its exports were exempted (i.e., not included) in the imposition of the anti-dumping measures referred to in paragraph 9 above.
11. Prior to the outcomes of Review 544 and Investigations 540 and 541, PMBA applied for an accelerated review on 2 February 2021 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).
12. 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

13. Following the initiation of Continuation Inquiry 591, on 22 October 2021, PMBA filed with the Anti-Dumping Commission (**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.
14. 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.
15. On 3 March 2022 the Commission provided a copy of its draft report and associated calculations to PMBA for review as to the accuracy of information contained in the draft verification report and associated calculations (**Documents C to F**).
16. On 11 March 2022 PMBA provided its comments on the draft verification report, including as to matters requiring correction. (**Documents G and H**)
17. On 17 March 2022 the Commission published the final PMBA verification report on its electronic public file (**Document B**).

B. Issues arising from verification report in Continuation Inquiry 591

18. To determine whether an exporter's exports 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 preliminary dumping margin calculations for PMBA in Continuation Inquiry 591 are at **Documents C to F**.
19. 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 26TAC(8) of the *Customs Act 1901* 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 26TAC(8) of the *Customs Act 1901* have been extracted at **Section D** below.
20. In connection with such adjustments, at Section 8.2 of the verification report in Continuation Inquiry 591 (**Document B**) 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.”

21. The price comparisons made by the Commission provided to PMBA with the draft verification report are contained in **Document E**.
22. In light of these findings, the Commission did not make the level of trade adjustment to the normal value claimed by PMBA for purposes of the ‘proper comparison’ of the normal value with export prices.
23. PMBA claimed that the level of trade adjustment was required because sales by JB, a Division of PMBA, were at the retail level of trade, whereas export sales by PMBA to PMAA were at the distributor level of trade as PMAA is a distributor of aluminium extrusions in the Australian market. This difference in level of trade between domestic sales, on which the normal value is based, and export sales affects (modifies) prices differently and this is reflected in the differences in the weighted averages of such prices.
24. PMBA also contends that the extent of the price differences is not a relevant consideration. That is, ‘materiality’ is not a relevant consideration, all that is relevant is that there is a difference. Further, if relevant, PMBA has confirmed to the Commission that all sales by JB are at the retail level of trade as reflected in Tab (a) ‘Domestic Sales’ of **Document E**.
25. 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 JB. 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 (which did not involve any sampling) can be seen in the extracts from Reports 540 and 541 in **Attachment A**.
26. 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 (which again did not involve any sampling) can be seen in Report 577 (at Section 5.6) (extracted in **Attachment A**).²

² The level of trade adjustment made by the Commission in the Accelerated Review was undertaken by reference to a percentage calculated by dividing the difference between weighted average OCOT unit prices of domestic retail and domestic distributor sales by the weighted average OCOT unit price of domestic **retail** sales. PMBA considers that the correct approach would have been to divide that difference instead by the OCOT unit price of domestic **distributor** sales, which would have resulted in a greater percentage adjustment, and in turn a lower normal value, and lower dumping margin.

27. The accepted basis for the claimed adjustment was that PMBA's sales through its JB division were direct to end-users and not to resellers, whereas PMBA's other domestic sales were to customers at a distributor level of trade, such as to wholesalers which would on-sell the product to end-users. PMBA's export sales to PMAA, on the other hand, were at a distributor level of trade. PMBA sells at lower prices to domestic customers which are, for example, wholesalers, so those customers in turn can add on a margin and sell to the end user at prices similar to JB's sales to end-users. The necessity for an adjustment to account for that difference is reflected in the following statement extracted from Report 577:

"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.

....

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." (Source: Table 9 Assessment of adjustments, Report 577)

28. In Continuation Inquiry 591 the Commission concluded that there was no 'material' difference in prices between sales in the domestic market by PMBA through JB (i.e., retail sales) and other domestic sales by PMBA to distributors and, hence, there was no need for a level of trade adjustment when comparing the normal value (i.e., weighted average of all domestic sales) with the weighted average export price to PMAA. It said, in the verification report:

"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.

....

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." (Source: Section 8.2 of PMBA Verification Report)

and:

"Level of trade

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.

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." (Source: Extract from Table 11 in Section 9.1 of PMBA Verification Report)

However, for the purposes of this exercise only, in the interests of time, PMBA has elected to accept the approach taken by the Commission on this point.

29. Thus, to the extent that the amount of the normal value was affected by differences between retail sales by PMBA through JB and distributor sales by PMBA to other domestic customers, 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.
30. PMBA contends that the Commission should not have conducted a sampling exercise in assessing price differences in the levels of trade or, alternatively, that the sampling exercise it undertook was not representative. Instead, as it appears to have done in the previous investigations and the Accelerated Review, the Commission should have assessed the difference in pricing for the different levels of trade by reviewing information relating to all domestic sales during the investigation period. That is, it should have calculated a weighted average price for all customers at each of the levels of trade to identify whether there was a price difference and, if so, quantify that price difference. That analysis should have been undertaken by reference to sales occurring in the Ordinary Course of Trade (OCOT). PMBA considers such a calculation would provide a more accurate assessment of the price difference and would be consistent with the method of calculating weighted average export prices and normal value.
31. PMBA believes that if the Commission had done so that it would have identified a difference in pricing which then should have been taken into account in the Commission's 'proper comparison' of normal values and export prices. PMBA argues that if the Commission had done so that it would have found that PMBA had not engaged in dumping, that is that its exports during the investigation period were not at dumped export prices.

C. Questions to be answered

32. Having regard to the information contained in **Documents B to J** regarding domestic sales by PMBA to retail and distributor customers during the investigation period, would you please provide your responses to the following questions, providing reasons for your responses:
 - (a) Was there a difference in price between aluminium extrusions sold domestically at different levels of trade by PMBA, that is, between sales to retail customers as compared with sales to distribution customers and, if so, to what extent?
 - (b) In calculating the weighted average selling price of aluminium extrusions at each of the two levels of trade that are sold in the OCOT, that is, profitable sales, is that weighted average price affected by:
 - (i) a selection of a limited number of customers to whom sales were made;
 - (ii) a selection of a limited number of customers within each MCC category to whom sales were made,

based on volume of sales to customers or otherwise and, if so, to what extent?
 - (c) Please assume that the methodology employed by the Commission in Accelerated Review 577 and Investigations 540 and 541, to calculate weighted average prices for each of the two levels of trade at which PMBA sold aluminium extrusions did not involve only a sample of sales, and was restricted to sales occurring in the OCOT. . What would the outcome have been in Continuation Inquiry 591 if the Commission had employed that same methodology again?

- (d) If in Continuation Inquiry 591 the Commission had completed its assessment of the differences in prices between the levels of trade, what would that price difference have been as quantified, including when expressed as a percentage of sales?

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

- The Continuation Inquiry related to an investigation period of 1 July 2020 to 30 June 2021;
- The Commissioner has verified the underlying data and the underlying data set out in Documents C to F, H and J is correct;
- The mathematical calculations prepared by the Commissioner in Documents C to F, and J are correct;
- Customer groups referred to in the Commissioner's calculations as "Inter-Co", "Local" and "Subsidiary" relate to the "Distribution" level of sales to customers;
- Customer group "JB" relates to the "Retail" level of sales to customers;
- The data set out in tab "(a) Domestic sales" of Document E is consistent with the data set out in tab "(a) Domestic sales" of Document J, except for the following columns:
 - "LoT Adj (JB Sales Only)" (column BN) in Document J which has a calculation formula containing a "#REF" error. I am instructed this is supposed to be calculated as a function of: if column B (Customer Group) = JB, then multiply column AG (entitled "Unit Net invoice value") by the Level of Trade Adjustment (percentage); and
 - "Invoice price at EXW Cash (MYR/kg)" (column BQ) in Document J is calculated by taking the "Unit Net Invoice Value" (column AG), and deducting from this the amounts for "dom credit terms" (column BM), "LoT Adj (JB Sales Only)" (column BN), "inland transport" (column BO) and "domestic packaging" (column BP);
- Rows 18 to 27 of the tab entitled "(a) NV Summary" of Document H refer to the methodology employed by the Commission to calculate normal value in the Continuation Inquiry;
- Document K, entitled "577 JB Level of Trade adjustment" is an extract showing how the Commission calculated the Level of Trade Adjustment in the Accelerated Review 577; and
- Documents C to F, and J were prepared by the Commission.

D. Legal provisions

34. Australia's anti-dumping legislation is contained in Part XVB of the *Customs Act 1901*. 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 1901*, 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.”

35. 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)

E. Documents Provided

36. You have been briefed with the following documents:

Annexure	Document
A	Anti-Dumping Notice 2021/119 – 15 September 2021
B	PMBA Verification Report published 17 March 2022
C	Confidential Appendix 1 Export Price to Verification Report
D	Confidential Appendix 2 CTMS to Verification Report
E	Confidential Appendix 3 Normal Value to Verification Report
F	Confidential Appendix 4 Dumping Margin to Verification Report
G	PMBA Response to verification report, published 18 March 2022
H	Appendix 4 Dumping margin – WtAvLotForPOI Final
I	Dumping and Subsidy Manual
J	591 – PMBA – Appendix 3 – GP7-C-Level of trade analysis for domestic sales
K	Extract entitled “577 JB Level of Trade adjustment”

37. In addition, **Attachment A** to this brief contains weblinks to documents referred to in the brief.

F. Requirements of your report

38. Although our clients do not presently intend to rely on your report in litigation, they do wish you to prepare it 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 (**Code of**

Conduct), copies of which are provided. Please review the Practice Note and Guideline, and comply with them in the preparation of your report.

Corrs Chambers Westgarth

29 April 2022

Attachment A

Extracts from Reports 577, 544, 540 & 541 on Level of Trade Adjustments, Verification Reports and Weblinks to Documents

A. Extracts from Reports 577, 544, 540 & 541 on Level of Trade 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.

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)]

....

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 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.⁸²

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]

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.

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)]

....

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 544

"4.7 PMBA

....

4.7.5 Export prices

Pursuant to section 269TACAB(1), the Commission has determined an export price pursuant to section 269TAB(3), having regard to all relevant information. Specifically, the Commission has used the lowest of export prices of those that were established for cooperating exporters in the investigation period.

4.7.6 Normal values

Pursuant to section 269TACAB(1), the Commission determined the normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information. Specifically, the Commission used the highest of normal values of those that were established for the cooperating exporters in the investigation period."

Report 577

‘5. NORMAL VALUE

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).

Adjustment type	Rationale for adjustment	Calculation method and evidence	Claimed in REQ?	Adjustment required?
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

[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)]

B. Extracts from Verification Reports

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

Adjustment type	Rationale for adjustment	Calculation method and evidence	Claimed in REQ?	Adjustment required?
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

[Source” Extract from Table 10 Assessment of adjustments]

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
Level of trade	Deduct an amount arising from the differences in level of trade in domestic sales

[Source: Extract from Table 11 Summary of Adjustments (PMBA)]

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 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

[Source: Extract from Table 10 Assessment of adjustments]

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
Level of trade	Deduct an amount arising from the differences in level of trade in domestic sales

[Source: Extract from Table 11 Summary of Adjustments (PMBA)]

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

C. Weblinks to Documents - Reports, Notices and Verification Reports

Copies of Reports are available from the Anti-Dumping Commission's electronic public file on its website as follows:

Report	Weblink
Report 362	089 - report - final report - rep 362.pdf (industry.gov.au)
Report 540	540 Attachment A - Anti-Dumping Commission Report 540 (industry.gov.au)
Report 541	Attachment A - Anti-Dumping Commission Report 541 (industry.gov.au)
Report 544	544 Attachment A - Anti-Dumping Commission Report 544 (industry.gov.au)
Report 577	577 PMBA Attachment A to Brief - Anti-Dumping Commission Report No. 577 (industry.gov.au)

Copies of Anti-Dumping Notices (ADNs) are available from the Anti-Dumping Commission's electronic public file on its website as follows:

ADN	Inv/Inquiry	Weblink
2017/72	362	090 - notice - adn 2017-72 findings in relation to a dumping investigation.pdf (industry.gov.au)
2017/73	362	092 - notice - adn 2017-73 findings in relation to a subsidy investigation.pdf (industry.gov.au)
2021/033	540	540 - 066 - notice adn - adn 2021-033 - findings in relation to a dumping investigation.pdf (industry.gov.au)
2021/35	541	Attachment B to Brief - Notice under 269TG(1) and TG(2) (industry.gov.au)
2021/037	544	544 - 033 - notice adn - adn 2021-037 - findings in relation to a review of measures.pdf (industry.gov.au)
2021/023	577	577 - 002 - notice adn - adn 2021-023 - initiation of an accelerated review.pdf (industry.gov.au)
2021/062	577	577 - 004 - notice adn - adn 2021-062 - findings in relation to an accelerated review.pdf (industry.gov.au)

Copies of Verification Reports are available from the Anti-Dumping Commission's electronic public file on its website as follows:

Verification Report	Weblink
540	540 - 037 - verification report - exporter - _press metal berhad.pdf (industry.gov.au)
541	541 - 042 - verification report - exporter - _press metal berhad.pdf (industry.gov.au)
591	591 - 023- pmba - exporter verification report.pdf (industry.gov.au)

Appendix D Documents that I have been instructed to consider

Document	Description
Document A	Anti-Dumping Notice 2021/119 – 15 September 2021
Document B	PMBA Verification Report published 17 March 2022
Document C	Confidential Appendix 1 Export Price to Verification Report
Document D	Confidential Appendix 2 CTMS to Verification Report
Document E	Confidential Appendix 3 Normal Value to Verification Report
Document F	Confidential Appendix 4 Dumping Margin to Verification Report
Document G	PMBA Response to verification report, published 18 March 2022
Document H	Appendix 4 Dumping margin – WtAvLotForPOI Final
Document I	Dumping and Subsidy Manual
Document J	591 – PMBA – Appendix 3 – GP7-C-Level of trade analysis for domestic sales
Document K	Extract entitled “577 JB Level of Trade adjustment”

Appendix E My analysis

Provided in native (Excel) format.

