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Australian Government
Anti-Dumping Review Panel

Anti-Dumping Review Panel Report No. 155A

Reconsideration of Aluminium Extrusions exported
from Malaysia and the Socialist Republic of Vietnam

April 2026

<https://www.adreviewpanel.gov.au>

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Abbreviations

Term	Meaning
ABF	Australian Border Force
Act	<i>Customs Act 1901</i>
Anti-Dumping Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice
AUD	Australian Dollar
Capral	Capral Limited, the applicant and Australian manufacturer of the goods
CIO Regulation	<i>Customs (International Obligations) Regulation 2015</i>
CTMS	Cost to Make and Sell
Commissioner	Commissioner of the Anti-Dumping Commission
Court Orders	Order No. NSD67/2024 (made by the Federal Court of Australia on 20 November 2025)
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Federal Court	The Federal Court of Australia
Goods	Certain Aluminium Extrusions as described in the report at paragraph 29
IDD	Interim dumping duty
Inquiry period	1 July 2020 to 30 June 2021
Manual	Dumping and Subsidy Manual December 2021
Material Injury Direction	Ministerial Direction on Material Injury 27 April 2012

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Measures	Anti-dumping measures
Minister	Minister for Industry and Innovation & Minister for Science
Minister's Substitute Decision	The then Minister's decision of 15 December 2023 to accept the Review Panel's Recommendation in REP 155 to continue the dumping duty notice in respect of aluminium extrusions exported from Malaysia and Vietnam
PMAA	Press Metal Aluminium (Australia) Pty Ltd
PMBA	PMB Aluminium Sdn Bhd
Reconsideration Report	ADC Report to the Anti-Dumping Review Panel in accordance with Federal Court Orders Dated 20 November 2025 remitting the matter to the Anti-Dumping Commission (Order NSD67/2024: <i>Press Metal Aluminium (Australia) Pty Ltd & Anor V Minister for Industry & Innovation & Or</i> dated 20 February 2026
REP 591	The report published by the ADC in relation to the inquiry into the continuation of anti-dumping measures applying to certain aluminium extrusions exported to Australia from Malaysia and the Socialist Republic of Vietnam and dated 13 May 2022
Review Panel Report No. 155	The report published by the Review Panel in relation to the review of the Minister's decision on REP 591 published on 15 December 2023
Review Panel	Anti-Dumping Review Panel
Reviewable Decision	The decision of the Minister on 24 June 2022 under section 269ZH(1)(a) of the Act to not secure the continuation of anti-dumping measures currently applying to aluminium extrusions exported to Australia from Malaysia and Vietnam
RR 591	Reinvestigation Report 591
SEF 591	Statement of Essential Facts
Then Minister	The then Minister for Industry and Science
WTO	The World Trade Organization

Summary

1. Capral Limited ('Capral'), the Australian industry, lodged an application with the Anti-Dumping Commission ('ADC') in 2021 to secure the continuation of anti-dumping measures of aluminium extrusions ('the goods') exported from Malaysia and the Socialist Republic of Vietnam ('Vietnam'). The then Minister for Industry and Science ('then Minister') accepted the recommendation of the Commissioner of the ADC outlined in ADC Report No. 591 ('REP 591') to not secure the measures.¹ Capral sought review of this decision ('Review 155'), referred to as the Reviewable Decision in this report.
2. The Anti-Dumping Review Panel ('Review Panel') reviewed the decision and recommended in its report ('Review Panel Report No. 155') that the then Minister secure the continuation of the anti-dumping measures. The then Minister subsequently published a notice on 15 December 2023 notifying of this decision, referred to as the Minister's substitute decision.
3. PMB Aluminium Sdn Bhd ('PMBA') and Press Metal Aluminium (Australia) Pty Ltd ('PMAA') subsequently applied to the Federal Court of Australia ('Federal Court') seeking judicial review of the then Minister's substitute decision, Review Panel Report No. 155 and REP 591.
4. On 20 November 2025, the Federal Court made orders ('Court Orders'), by consent of the parties, to settle the proceedings. The Federal Court, in summary, ordered:
 - the ascertainment of the normal value and the dumping margin for PMBA at para 9.1 of REP 591 together with paras 6.3.10, 6.3.11, 8.6.1 and 8.6.5 be set aside,
 - the recommendations of the Review Panel in Review Panel Report No. 155 be set aside and the report be quashed, and
 - the decision of the Minister of 14 December 2023, published on 15 December 2023, be set aside.

¹ Anti-Dumping Notice (ADN) 2022/042.

5. The Court Orders ordered the ADC to prepare a report for the making of recommendations on the normal value and dumping margin for PMBA according to law. The ADC's report ('Reconsideration Report') was provided to the Review Panel on 20 February 2026 in accordance with the Court Orders.
6. In accordance with the Court Orders, this report outlines the further consideration by the Review Panel, pursuant to s 269ZZK of the *Customs Act 1901* (the Act), of Capral's application for review dated 12 July 2022, following the delivery of the ADC's Reconsideration Report.
7. For the reasons set out in this report, the Review Panel recommends that the Reviewable Decision be revoked and that the Minister substitute a new decision to secure the continuation of the dumping duty notice applying to exports of aluminium extrusions exported from Malaysia and Vietnam in accordance with s 269ZHG(1)(b) of the Act.

Introduction

8. On 19 September 2023, the Review Panel completed a review of the decision of the then Minister made under s 269ZHG(1)(a) of the Act not to continue the anti-dumping measures (the measures) applying to goods exported from Malaysia and Vietnam ('Reviewable Decision'). On 15 December 2023, the then Minister published a notice notifying of the decision to continue the anti-dumping measures applying to aluminium extrusions exported from Malaysia and Vietnam, (the Minister's substitute decision), following the Review Panel's Report No. 155 to the Minister.
9. As referred to in paragraph 4, the Federal Court set aside certain decisions, quashed Review Panel Report No. 155 and ordered the ADC to prepare a report on the normal value and dumping margin for PMBA. As the ADC's ascertainment of normal value and dumping margin for PMBA could have affected the Review Panel's conclusions with respect to material injury and the recommendation to the Minister in Report No. 155, the ADC was ordered to provide its Reconsideration Report to the Review Panel. The Court Orders required the Review Panel, upon provision of the Reconsideration Report from the ADC, to prepare a report under s 269ZZK of the Customs Act in response to Capral's application for review dated 12 July 2022

(Court Orders - Order 5). The ADC provided its Reconsideration Report to the Review Panel on 20 February 2026.

10. This report of the Review Panel must be completed within 40 business days of the provision of the ADC Reconsideration Report referred to in Court Order 4(b) (Court Orders - Order 5).
11. Notice of the reconsideration was published on the Review Panel's website on 23 February 2026.
12. The Senior Member of the Review Panel had directed in writing that I constitute the Review Panel for Review 155, in accordance with s 269ZYA of the Act. That original direction applies to this Review 155A.

Background

13. The original anti-dumping measures (dumping and countervailing duties) were imposed by public notice on 27 June 2017 following consideration of ADC Report No. 362 ('REP 362')² by the then Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science. Exports of aluminium extrusions during the original investigation period (1 July 2015 to 30 June 2016) were found to be dumped and subsidised. The original measures were in the form of a dumping duty notice on exports from Malaysia and Vietnam and a countervailing duty notice on exports from Malaysia. The anti-dumping measures were due to expire after 27 June 2022.
14. On 15 September 2021, the ADC initiated a continuation inquiry of the anti-dumping measures in relation to aluminium extrusions exported from Malaysia and Vietnam following an application from Capral. Caprial was the applicant for the original measures and is a member of the Australian industry.³ The period of inquiry was stated as 1 July 2020 to 30 June 2021 (inquiry period).

² Anti-Dumping Notices (ADN) 2017/72 and 73 respectively refer.

³ The original countervailing notice imposed following REP 362 applied only to non-cooperating exporters from Malaysia. The countervailing notice was revoked for Alumac following REP 490 and for Everpress in REP 590. In REP 591, PMBA was found not to be in receipt of a countervailing subsidy.

15. REP 591 indicated that there were a number of exporters from Malaysia that were excluded from the measures the subject of the continuation inquiry.⁴
16. A Statement of Essential Facts ('SEF 591') was published on 18 March 2022. The Commissioner provided a report (REP 591) to the Minister recommending not to secure the continuation of anti-dumping measures and that the notices applying to the goods be allowed to expire. This report was dated 13 May 2022.
17. The Commissioner's findings in REP 591 indicate that:
 - *... there is sufficient evidence to support a finding that exports for aluminium extrusions exported from Malaysia and Vietnam are likely to continue in the absence of anti-dumping measures, and that future exports (except for exports by Alumatic) are likely to be dumped;*
 - *... it is unlikely there will be a continuation or recurrence of the subsidisation, in relation to exports from Malaysia...;*
 - *While the Commissioner considers dumping will continue (except by Alumatic), the Commissioner does not consider that material injury to the Australian industry, that the measures are intended to prevent, is likely to continue or recur in the absence of the measures. This is because there is no demonstrable connection between:*
 - *The price advantage that dumping gives to exporters from Malaysia and Vietnam, and*
 - *The economic condition of the Australian industry, specifically in terms of how it sets its prices, which is distinct from the influence of other sources of the goods.*
 - *Two Australian industry members presented evidence of sales that appeared to have been lost to imports from Malaysia and/or Vietnam. It considered these examples related to very small volumes in the context of the overall market. It noted that while there was evidence presented in the original inquiry (in REP 362) that demonstrated that prices were impacted by*

⁴ REP 591, 7.

the presence of the dumped goods, this was not apparent in the Australian market during the continuation inquiry.

- *The volume of goods from Malaysia and Vietnam subject to the notices has remained a relatively small proportion of the Australian market over the last five years. While some exports have undercut the Australian industry's prices at different points during the inquiry period, the evidence does not demonstrate that this had any practical impact on the performance of the Australian industry. The imposition of measures appears to have prompted little change in the market. Taken together, this causes the commission to conclude that, in the absence of the measures, there would likely be little change to pricing behaviours by exporters and importers. In this context, there is little likelihood of a recurrence of material injury to the Australian industry that, in the absence of the measures, would be caused by dumped aluminium extrusions from Malaysia and Vietnam.⁵*

18. The Minister advised in Anti-Dumping Notice ('AND') 2022/042 that he had decided to accept the recommendations in REP 591.

19. The anti-dumping measures applying to exports from Malaysia and Vietnam and the dumping margins found in REP 591, except to those applying to PMBA which have been modified following the ADC's Reconsideration Report,⁶ noting that no subsidy margin was identified, are shown in the following table:

Country	Exporter	Dumping margin	Subsidy margin	Effective rate as published in ADN 2021/37	Dumping margin assessed in REP 591 in the inquiry period
Malaysia	Alumac Industries	0%	NA	0%	-2.3%

⁵ REP 591, Section 1.2, 8-9.

⁶ ADC Report to the Anti-Dumping Review Panel in accordance with Federal Court Orders Dated 20 November 2025 remitting the matter to the Anti-Dumping Commission (Order NSD67/2024: *Press Metal Aluminium (Australia) Pty Ltd & Anor V Minister for Industry & Innovation & Or* dated 20 February 2026

	Sdn Bhd (Alumac)				
Malaysia	Premium Aluminium	0%	0%	0%	***
Malaysia	PMB Aluminium Sdn Bhd (PMBA)	2.6%	0%	2.6%	6.7!!
Malaysia	Everpress Aluminium	10.7%	NA	10.7%	***
Malaysia	All other exporters	10.7%	0%	10.7%	27%
Vietnam	East Asia Aluminium Company Limited (EAA)	1.9%	NA	1.9%	5.2%
Vietnam	All other exporters	1.9%	NA	1.9%	9.0%

*** did not cooperate with the continuation inquiry, therefore all other exporters rate applies.

!! The ADC's Reconsideration Report changed this PMBA dumping margin finding to 3.3% from 6.7%. While this is a significant decrease, the dumping margin remains above the 'de minimis' level.⁷

20. The ADC noted that, with the exception of two exporters, there are also anti-dumping measures that apply to all imports from the People's Republic of China ('China'). These measures range from 0 to 77.4 per cent.⁸

⁷ 'De minimis' dumping margins are used to describe dumping margins below a threshold level and are referred to in s 269TDA(1)(b)(ii) in relation to when the Commissioner must terminate a dumping application if the dumping margin is below this amount.

⁸ ADN 2020/103 dated 12 October 2020 provided the then Minister's decision to continue anti-dumping measures on exports from China following REP 543 (the inquiry period of 1/1/2019 to 31/12/19).

21. Capral sought review of the Reviewable Decision in its application to the Review Panel. The Review Panel accepted the application and, on 17 August 2022, published the s 269ZZI Notice advising of the review and the reviewable grounds.
22. The Review Panel required the ADC to undertake a reinvestigation of certain findings in REP 591, pursuant to s 269ZZL of the Act.
23. The ADC's reinvestigation report dated 21 August 2023 ('RR 591') indicated that as a result of its reinvestigation, certain findings had changed. The Commissioner considered that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of the material injury that the anti-dumping measures are intended to prevent.⁹ A summary of the Commissioner's findings in RR 591 is outlined below:
- The Australian market for aluminium extrusions is competitive and price sensitive,
 - There are examples of price undercutting,
 - There is a high degree of price transparency and supplier competition, where customers source from multiple suppliers and switch between suppliers,
 - Exports from Malaysia and Vietnam are likely influencing how the Australian industry sets its prices and there is penetration of these imports across the Australian industry's customer base,
 - The ADC noted that the fact that there are imports from other sources, including the People's Republic of China, did not detract from its findings in relation to exports from Malaysia and Vietnam,
 - Absent the measures,

... importers and exporters will be able to use dumped prices, absent the dumping duty previously paid, to advantageously adopt

⁹ Anti-Dumping Commissioner Reinvestigation Report for the Anti-Dumping Review Panel: Reinvestigation of Certain Findings in Report No. 591: Certain Aluminium extrusions exported from Malaysia and the Socialist Republic of Vietnam to Australia ('RR 591'), 5.

*competitive pricing strategies which would likely further exacerbate the observed undercutting of the Australian industry's prices during the inquiry period...*¹⁰

24. The Review Panel provided Review Panel Report No. 155¹¹ to the Minister on 19 September 2023 and recommended that the then Minister revoke the Reviewable Decision and substitute a new decision to continue the measures. In ADC REP 591, the Commissioner recommended different variable factors for the exporters the subject of the anti-dumping measures. These were outlined in Schedule 1 Table 4 of that report. This stated that PMBA's ascertained normal value was [REDACTED] [REDACTED] and the Interim Dumping Duty (IDD) rate of 6.7 per cent. (Confidential variable factor information: [REDACTED]).¹²
25. On 14 December 2023, the then Minister accepted the Review Panel's recommendations. Notice of the decision was published on 15 December 2023 pursuant to s 269ZZM(4) of the Act.
26. PMBA sought review of the Minister's decision and as outlined in paragraphs 4 and 5, the Federal Court made orders, by consent of the parties, to settle the proceedings. A copy of the Court Orders is at Attachment 1. The Federal Court set aside paras 9.1, 6.3.10, 6.3.11, 8.6.1 and 8.6.5 of REP 591¹³ and quashed the Review Panel's Report No. 155 and its recommendations, and the Minister's subsequent s 269ZZM decision to continue the measures.
27. On 20 February 2026, in accordance with the Court Orders, the ADC completed its Reconsideration Report on the normal value and dumping margin for PMBA and provided its Reconsideration Report to the Review Panel outlining its recommendations. A copy of this report is at Attachment 2. As a result of the reconsideration, the ascertained normal value for PMBA is [REDACTED] [REDACTED] days and the IDD rate of 3.3 per cent.

¹⁰ RR 591, 5 – 6.

¹¹ The Court Orders quashed REP 155.

¹² PMBA's normal value in REP 591 has been set aside by the Court Orders.

¹³ Unless expressly stated otherwise, any reference to REP 591 in this report is a reference to REP 591 without [9.1], [6.3.10], [6.3.11], [8.6.1] and [8.6.5].

28. In accordance with the Court Orders, the Review Panel has prepared this report (Review Panel Report No. 155A) to the Minister under s 269ZZK of the Act in response to Capral's application for review dated 12 July 2022.
29. The goods to which this inquiry relates are:

Aluminium extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by The Aluminium Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness or diameter greater than 0.5 mm, with a maximum weight per metre of 27 kilograms and a profile or cross-section which fits within a circle having a diameter of 421 mm.

The goods under consideration include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. For example, aluminium extrusion products that have been painted, anodised or otherwise coated, or worked (e.g., precision cut, machined, punched or drilled) fall within the scope of the goods.

The goods do not extend to intermediate or finished products that are processed or fabricated to such an extent that they no longer possess the nature and physical characteristics of an aluminium extrusion but have become a different product.

Conduct of the Review

30. A notice was published on 23 February 2026 advising that the Review Panel would prepare a report under s 269ZZK of the Act in response to Capral's application for review dated 12 July 2022 and in accordance with the Court Orders. This report must be completed and provided to the Minister within 40 business days of the publication of the ADC Reconsideration Report.
31. In accordance with s 269ZZK(1) of the Act, the Review Panel must recommend that the Minister either affirm the reviewable decision or revoke it and substitute a new specified decision. Section 269ZZK(1A) of the Act requires that the Review

Panel may only make a recommendation to revoke and substitute a new specified decision if the new decision is materially different from the reviewable decision.

32. In undertaking the review, s 269ZZ(1) of the Act requires the Review Panel to determine a matter required to be determined by the Minister, in like manner as if it were the Minister, and having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter. This should be read in the context of the jurisdictional provisions outlined in Division 9 of Part XVB of the Act. The Review Panel notes that s 269ZZG(5) of the Act dealing with 'reviewable grounds' is relevant in this regard.
33. Subject to certain exceptions,¹⁴ the Review Panel is not to have regard to any information other than relevant information pursuant to s 269ZZK, i.e. information to which the Commission had regard or ought to have had regard when making its findings and recommendations to the Minister.
34. If a conference is held under s 269ZZHA of the Act, then the Review Panel may have regard to further information obtained at the conference to the extent that it relates to the relevant information, and to conclusions reached at the conference based on that relevant information. Conferences were held in relation to this review, and these are summarised at Appendix A of this report.
35. At the conferences held with the ADC on 7 and 14 September 2022, other parties were not included due to confidentiality concerns relating to the further information being sought on Australian industry and importers' prices into the Australian market. At the conference held with the ADC on 17 October 2022, following the letter requiring a reinvestigation, other parties were not included due to confidentiality concerns regarding the pricing analysis.
36. On 5 October 2022, pursuant to s 269ZZL of the Act, the Review Panel required the Commissioner to conduct a reinvestigation in relation to specific findings that formed the basis of the Reviewable Decision. Two extensions were sought and approved by

¹⁴ See s 269ZZK(4).

the Review Panel.¹⁵ A Reinvestigation Report (RR 591) was provided on 21 August 2023.

37. In conducting this review, the Review Panel has had regard to:

- The review application and documents submitted with the application;
- Submissions received pursuant to s 269ZZJ of the Act insofar as they contained conclusions based on relevant information or related to the reviewable grounds and received during Review 155;
- The Reconsideration Report provided by the ADC dated 20 February 2026;
- Relevant information gathered in response to Capral's application for review, including submissions and RR 591 dated 21 August 2023;
- REP 591, its confidential attachments, information referenced in the report, information created during the investigation, and submissions considered in Investigation 591, insofar as they related to the reviewable grounds, noting that certain sections in REP 591 were set aside by the Court Orders, namely 9.1, 6.3.10, 6.3.11, 8.61 and 8.6.5;
- Information from REP 362, REP 540, REP 541, REP 543 and REP 544;
- Relevant information obtained at conferences;
- The Court Orders in relation to this matter.

38. Australia's anti-dumping and countervailing system implements the following WTO agreements to which Australia is a party:

- Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994¹⁶ ('Anti-Dumping Agreement') – which prescribes rules for the conduct of anti-dumping investigations and the application of

¹⁵ The ADC requested and was granted two extensions for the provision of the reinvestigation report. This correspondence is available on the Review Panel website.

¹⁶ *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A ('*Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*') ('Anti-Dumping Agreement').

measures to address dumping, including how member countries may: initiate cases, calculate dumping margins, determine injury, enforce remedial measures and review past determinations; and

- Agreement on Subsidies and Countervailing Measures¹⁷ – which regulates measures designed to remedy material injury caused by subsidised imports, along similar lines to the Anti-Dumping Agreement.

39. The Act and the *Customs Tariff (Anti-Dumping) Act 1975*¹⁸ are the principal legislation relating to anti-dumping measures in Australia. The Review Panel will interpret and apply the legislation, as far as its language permits, so that it is in conformity, and not in conflict, with Australia's international obligations. In practice, this means that where the legislation is ambiguous, the Review Panel will favour a construction that is consistent with the Anti-Dumping Agreement, the SCM Agreement and the obligations which they impose (see *Pilkington (Australia) Ltd v Minister of State for Justice & Customs* (2002) FCAFC 423 [25]-[27]).
40. Subsection 269ZZG(5) of the Act deals with what must occur if the Review Panel does not reject an application and is satisfied that one or more grounds contained in the application under s 269ZZE(2)(b) of the Act are reasonable grounds for the reviewable decision not being the correct or preferable decision. In that context, s 269ZZG(5)(c) of the Act provides that the Review Panel “*must accept the reviewable grounds and must conduct the review in relation to those grounds and no other grounds*”. In *Yara AB v Minister for Industry, Science and Technology*,¹⁹ the Federal Court considered the operation of s 269ZZG(5)(c) of the Act. In the course of resolving Ground 5 of Yara AB's application, Wigney J observed that it was “clear”, having regard to s 269ZZG(5)(a)-(c), that “the review is not a de novo review or a merits review which is entirely at large” and that “[t]he Review Panel must restrict itself to a consideration of the grounds that it accepted were reasonable grounds for the reviewable decision not being the correct or preferable decision”.²⁰

¹⁷ *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) ('*Agreement on Subsidies and Countervailing Measures*') ('SCM Agreement').

¹⁸ *Customs Tariff (Anti-Dumping) Act 1975* (Cth).

¹⁹ [2022] FCA 847 ('*Yara AB*').

²⁰ *Ibid* at [172].

His Honour observed at [182] to [185]:

...the Review Panel's conduct of the review, including its consideration of whether the Minister's decision was the correct or preferable decision, is confined and constrained in certain respects. In particular, the Review Panel must conduct the review in relation to the reviewable grounds and no other grounds. It must also only have regard to certain information, that information essentially being the information that the Commission had regard to, or was required to have regard to, as well as any reinvestigation report. The Review Panel cannot conduct its own investigations or obtain and use further information.

The fact that the Review Panel is required to conduct the review only in relation to the reviewable grounds is particularly significant, especially given that the criterion for determining whether a ground is a "reviewable ground" is whether it is a "reasonable ground for the reviewable decision not being the correct or preferable decision". What that must mean is that the nature of the review undertaken by the Review Panel is to essentially determine whether the reviewable decision is not the correct or preferable decision for any of the reasons articulated in the reviewable grounds. It is only to that extent, and on those terms, that the Review Panel is required to consider and determine whether the reviewable decision is the correct or preferable decision.

If, on the one hand, the Review Panel, having conducted the review, is not satisfied that the reviewable decision is not the correct or preferable decision for any of the reasons articulated in the reviewable grounds, the Review Panel would be entitled to find that the reviewable decision was the correct or preferable decision, and therefore entitled to recommend that the Minister affirm the reviewable decision. The Review Panel is not required – indeed, it is not permitted – to look beyond the reviewable grounds in order to satisfy itself that there is no other reason for finding that the Minister's decision was not the correct or preferable decision. If, on the other hand, the Review Panel is satisfied that the reviewable decision is not the correct or preferable decision for one or more of the reasons articulated in the reviewable grounds, it would be entitled to recommend that the Minister revoke the reviewable decision and substitute a new decision.

What that means, as a practical matter, is that it might reasonably be expected that the Review Panel's report, and the reasoning contained therein, will largely focus on the merits or otherwise of the reviewable grounds and the submissions advanced in support of those grounds...

41. The Review Panel received the following submissions from interested parties pursuant to s 269ZZJ of the Act during its consideration of Review 155:

- **Press Metal Aluminium Australia Pty Ltd (PMAA) and PMB Aluminium Sdn Bhd (PMBA) submission dated 26 August 2022** indicating that it did not consider Capral's application was valid and questioning whether Capral's application had articulated what the correct or preferable decision should be, amongst other things. The Review Panel responded indicating that it was satisfied that Capral had supplied sufficient information in its application to indicate it was seeking a review of the Minister's decision to not secure the continuation of measures. The Notice published pursuant to s 269ZZI of the Act advises that the Reviewable Decision is the Minister's decision to not secure the continuation of anti-dumping measures applying to certain aluminium extrusions exported from Malaysia and Vietnam. A copy of this correspondence was placed on the public file.
- **PMAA and PMBA submission dated 15 September 2022** indicating that it agreed with the Minister's decision not to secure the continuation of anti-dumping measures from Malaysia and Vietnam. It proposed that the Minister's decision in relation to dumping by PMBA is incorrect as the normal value finding was not correct. The Review Panel notes, pursuant to s 269ZZG(5) of the Act, that the Review Panel must be satisfied that the applicant's ground/s are reasonable grounds for the Reviewable Decision not being correct or preferable. Such grounds are considered 'reviewable grounds' for the purpose of the review. The review must only be conducted in relation to reviewable grounds. Those grounds are published in the notice made pursuant to s 269ZZI of the Act. On this basis, to the extent that this submission deals with matters that are not related to the reviewable grounds, the submission on these aspects has not been further considered.

- **PMAA/PMBA's submission dated 16 September 2022** indicating that it agreed with the Minister's decision not to secure the continuation of anti-dumping measures exported from Malaysia and Vietnam. It commented as follows. PMAA/PMBA:
 - reserved its rights as to whether Capral's application was valid,
 - outlined its concerns regarding the insufficient evidence provided by Capral regarding material injury following the SEF 591,
 - does not consider that material injury has been caused or is likely to be caused to the Australian industry by exports by PMBA,
 - does not consider there is evidence of price, volume or other injury criterion has been identified in relation to Capral or other Australian industry members,
 - refers to the improved economic performance of Capral and other Australian industry members. It suggests that injury to Capral may be caused by other factors such as its business model and over reliance on the Australian construction industry, which is known to be cyclical in nature,
 - challenges the dumping finding of exports by PMBA (see also submission dated 15 September 2022),²¹
 - suggests that the price undercutting could relate to competition between Australian industry members rather than from imported aluminium extrusions.

42. On 27 September 2022, PMAA advised by letter that it had two duty assessments underway with the ADC relating to exports during the inquiry period. It provided this information in response to information obtained at the conference from the ADC on 7 September 2022 that indicated that no duty assessments relating to PMAA were apparent during the inquiry period. The Review Panel noted this clarification.

²¹ See earlier dot point in paragraph 40 regarding the Review Panel being required to consider the reviewable grounds and the *Yara AB* judgment.

43. On 1 September 2023, PMAA wrote to the Review Panel. That same day, the Review Panel advised PMAA that s 269ZZK(4) of the Act provides, subject to certain exceptions, the information that the Review Panel can have regard to in making recommendations to the Minister. The information in the letter did not meet the definition of information to which the Review Panel can have regard. On this basis, the Review Panel did not have regard to this letter and did not place a copy on the public file for Review 155.
44. On 11 February 2026, Capral wrote to the Review Panel outlining its views that the Review Panel should:
- uphold its earlier findings as outlined in Report No. 155 to the Minister,
 - reset the period applicable to the measures,
 - provide clarity of process on timelines and engagement in the remittal process, and
 - expedite the decision-making process associated with this matter.
45. On 13 February 2026, the Review Panel advised Capral that the ADC's report was due to be provided on 20 February 2026. Once received, a public notice would be placed on the public file advising of the procedures and timing of the Review Panel's reconsideration of its findings and recommendations to the Minister. Capral were advised that its correspondence would be placed on the public file.
46. The ADC's Reconsideration Report, dated 20 February 2026, found that PMBA's normal value changed as a result of the further consideration of the level of trade adjustment issue. This reduced PMBA's dumping margin from 6.7 per cent to 3.3 per cent for the inquiry period of the continuation inquiry undertaken by the ADC in REP 591.
47. On 2 March 2026, PMAA wrote to the Review Panel regarding its Reconsideration 155A:
- Referring to the public notice issued on 23 February 2026,
 - Noting the ADC's provision of the report to PMAA on 23 February 2026,

- Indicating that upon PMAA's review, it considers an additional and different adjustment (pursuant to s 269TAC(8) of the Act) should have been made to the normal value established under s 269TAC(1) of the Act,
- Proposing that this adjustment is required to address the timing difference between when the orders were placed and when the invoices were issued for such export sales of aluminium extrusions during the inquiry period to ensure that a proper comparison can occur between the normal value and export price so that they are not impacted by sales occurring at different times.
- Noting that the Review Panel cannot accept submissions but may call a conference pursuant to s 269ZZHA to obtain further information, and
- Proposing that the Review Panel should assess the need for such an adjustment and suggesting a conference be held to outline this information with the ADC.

48. For the purposes of obtaining further information about this issue, the Review Panel convened a conference on 13 March 2026 with PMAA and the ADC. The Review Panel invited Capral as an observer to the conference. A copy of the non-confidential conference summary was placed on the public file on 19 March 2026.

49. PMAA suggests that the determination of PMBA's normal value (and dumping margin) falls within the definition of 'relevant information' and on this basis can be obtained by the Review Panel via a conference pursuant to s 269ZZHA of the Act.

50. Section 269ZZK(6)(d) of the Act states:

"relevant information" means:

...

(d) if the reviewable decision was made because of an application under section 269ZHB--the information the Commissioner had regard to, or was, under paragraph 269ZHF(3)(a), required to have regard to, when making the findings set out in the report under section 269ZHF to the Minister in relation to the making of the reviewable decision.

51. The Review Panel has considered the information obtained at the 13 March 2026 conference and legislative powers in relation to PMAA's request for consideration of an additional adjustment to the normal value for a 'timing adjustment'.
52. In *Yara AB*²² (see paragraph 40 above) Wigney J held that the Review Panel must only conduct its review in relation to the 'reviewable grounds', reflecting s 269ZZG(5) of the Act. The Review Panel is not to consider the Reviewable Decision²³ in terms of whether it is the correct or preferable decision, other than in relation to 'any of the reasons articulated in the reviewable grounds'.
53. The Court Orders 5 and 6 state:
- 5. Pursuant to ss 16(1)(b) and (d) and 16(2)(b) of the ADJR Act, upon the provision of the ADC's report referred to in Order 4(b), the ADRP is to prepare a report under s 269ZZK of the Customs Act in response to Capral's application for review dated 12 July 2022.*
- 6. The report of the ADRP the subject of Order 5 above is to be completed within 40 business days of the publication of the ADC report referred to in Order 4(b) above.*
54. The Court Orders state that the ADC is to undertake its reconsideration of the normal value and the dumping margin and provide its report to the Review Panel and PMAA within 30 days of receiving information from PMAA.
55. On 23 February 2026, the Review Panel published a notice notifying its reconsideration of Capral's application and the reviewable grounds consistent with the Court Orders. These grounds are outlined at paragraph 68.
56. Capral's 'reviewable grounds' do not refer to PMBA's normal value or dumping margin. Capral's grounds relate to the ADC's price analysis and its findings as to whether material injury was likely to continue or recur. The determination of PMBA's normal value is not an accepted reviewable ground published in the Review Panel's s 269ZZI Notice in relation to Capral's review application.

²² *Yara AB* [182]-[183].

²³ The Reviewable Decision in this matter is the decision to continue or not continue the measures (s 269ZH(1) of the Act).

57. As referred to in paragraphs 89 to 90, s 269ZHF(2) of the Act requires that there are two conditions that must be met for the Commissioner to recommend to the Minister that the measures be secured.²⁴ First, if the measures expire, whether dumping or subsidisation is likely to continue or recur and second, whether it is likely that material injury will continue or recur in the absence of the measures intended to prevent such injury. If these are not met, then the Commissioner must not recommend that the Minister take steps to secure the continue of the measures.
58. In REP 591, the Commissioner recommended to the Minister that the dumping and countervailing measures be allowed to expire as the Commissioner did not consider material injury was likely to continue or recur if the measures expired. It is the second element of s 269ZHF(2) that is dealt with in Capral's reviewable grounds, not the first element related to whether dumping was likely to continue or recur. In considering the second element relating to material injury, the Review Panel takes into account the Commissioner's findings in relation to the dumping margins established for exports from Malaysia and Vietnam, but is not empowered to review the dumping margin, nor the relevant variable factors.
59. On this basis, the legislation does not permit the Review Panel to consider grounds other than the published 'reviewable grounds'.
60. The Court Orders state that the Review Panel is to prepare its report to the Minister in response to Capral's application. The notes to the Court Orders indicate that the reconsideration is on the basis that it '...could have affected the ADRP's conclusion with respect to material injury in ADRP Report 155 and its recommendations to the Minister as set out in ADRP Report 155'.
61. The Court Orders specifically require that the ADC would undertake its reconsideration of the normal value and the dumping margin to address the procedural fairness issue relating to the level of trade issue adjustment issue referred to in Note A to the Court Orders and provide its report to the Review Panel and PMAA within 30 days of receiving certain information from PMAA.
62. Whilst the Review Panel considers the Court Order authorises it to rely on the findings of the ADC's Reconsideration Report, if necessary, for the purposes of

²⁴ Pursuant to s 269ZHF(2) of the Act.

conducting Reconsideration 155A, the Review Panel does not consider that the Court Order authorises the Review Panel to otherwise extend the scope of its review to include a reconsideration of the ADC's findings of normal value and dumping margin.

63. The Review Panel considers that neither the Act nor the Court Orders provide authority to undertake consideration of PMBA's normal value in the manner proposed by PMAA. On this basis, it is not open for the Review Panel to adopt the approach to the adjustment to the normal value in the manner proposed by PMAA. Whether the normal value (and dumping margin) is 'relevant information' as proposed by PMAA in its 2 March 2026 letter does not need to be decided as it is unrelated to the reviewable grounds.
64. The Review Panel wrote to PMAA on 10 April 2026 providing its response to PMAA's letter dated 2 March 2026. A copy of this letter was placed on the public file. This letter afforded procedural fairness to PMBA by outlining the Review Panel's initial views as to whether the timing adjustment is outside the scope of its review, including its reasons for this view and invited PMAA to respond to this initial view. These views are similar to what is outlined in paragraphs 56 to 63 above.
65. PMAA responded by letter dated 13 April 2026. This letter was placed on the public file. PMAA disagrees with the Review Panel's approach, as summarised below. It considers:
- it will be a repeat of the errors identified in grounds 2 and 3 of the Amended Originating Application filed in the Federal Court of Australia proceeding NSD67/2024.
 - that '... the [Review Panel's] obligation to consider the correctness of the normal value (and dumping margin) for PMBA arises in two ways.'²⁵ It refers to the powers available under s 269ZZ for the Review Panel to have regard to same considerations as Minister in exercising its powers under s 269ZZK(1) in relation to its report to the Minister regarding the Reviewable Decision. In this regard it considers that in recommending a new 'specified'

²⁵ PMAA letter (from Corrs Chambers Westgarth) dated 13 April 2026, 2.

decision, it is doing so as if it is the Minister and should determine that decision in that manner.

- the decision of the Minister involves the Minister considering the Commissioner's findings. This includes the findings in relation to PMBA's normal value and dumping margin.
- that the Review Panel has information available to it to indicate the normal value is not correct and would fall into error by not addressing the error and its correction.
- That not addressing the error of PMBA's normal value would lead to an absurd outcome.
- that the Review Panel is obliged to consider the variable factors to be fixed by the Minister.
- that the Review Panel must consider the Commissioner's findings in relation to the likelihood of dumping continuing or recurring and the variable factors to be fixed.
- that its request is consistent with *Yara AB*²⁶ as it considers that one of Capral's grounds requires consideration of whether the expiration of measures would lead to the continuation of or recurrence of dumping that the measures are intended to prevent and its other reason is that the reasoning in *Yara AB* only extends to:

ADRP determination of whether the reviewable decision was correct or preferable. It does not extend to the performance by the Review Panel of its statutory duty to decide whether to make a recommendation under s 269ZZK(1)(b) of the Act that the Minister should substitute the earlier decision with a new specified decision.

- the Review Panel ought to obtain a corrected calculation of the dumping margin of PMBA.

²⁶ *Yara AB*.

- If the Review Panel is constrained to deal with PMBA's preferred approach, the Minister can deal with the issue in his decision-making role in this regard. PMAA included the Minister in the correspondence.
66. The Review Panel has considered PMBA's response and remains of the view that PMBA's request to the Review Panel is outside the scope of the reviewable grounds being dealt with and therefore outside its jurisdiction. The Review Panel does not conduct a 'de novo' merits review, it conducts a review of Ministerial Decisions in accordance with Division 9, Subdivision B of the Act.
67. The Review Panel agrees with PMAA that it must do so having regard to the same considerations as the Minister (s 269ZZ of the Act) but in the context of the 'reviewable grounds' accepted by the Review Panel (s 269ZZG(5)(c)) and published pursuant to s 269ZZI of the Act. To do otherwise is outside its jurisdiction and could potentially create procedural fairness issues to other interested parties.

Grounds of Review

68. Capral's reviewable grounds, as published in s 269ZZI Notice dated 17 August 2022 are:
- Ground 1: There is absence of a 'demonstrable connection' between the price advantage that dumping gives to exporters from Malaysia and Vietnam, is not the correct or preferred decision.
 - Ground 2: There is no evidence to demonstrate a connection between 'the economic condition of the industry, specifically in terms of how it sets its prices which is distinct from the influence of other sources of the goods', is not the correct or preferred decision.
 - Ground 3: In the absence of the measures, it is likely that the Australian industry would experience a recurrence of the material injury that the measures are intended to prevent.
69. All three grounds are dealt with jointly. Grounds 1 and 2 relate to the Commissioner's findings in REP 591 regarding injury caused by price, that is, the prices of the

dumped exports from Malaysia and Vietnam and the effect of such exports on how Capral sets its prices.²⁷ Ground 3 deals with the findings related to whether there would be a recurrence of material injury if the measures expired. Each of the grounds relate to whether material injury is likely to continue or recur if the measures expire: s 269ZHF(2) of the Act (paragraph 71).

70. Capral's application referred to anti-dumping measures, reflecting the terms used in s 269ZHG of the Act. The language used in each of the grounds refers only to dumped exports from Malaysia and Vietnam and the impact of the prices of the dumped exports on material injury, should the measures expire. It does not raise any aspect in relation to the Reviewable Decision regarding subsidisation and countervailing duties and the impact on prices.

Relevant legislation extracts:

71. Section 269ZHF

Report on application for continuation of anti-dumping measures

(2) The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

(emphasis added)

72. Section 269ZHG(1)

Powers of the Minister in relation to continuation of anti-dumping measures:

(1) After considering the report of the Commissioner and any other information that the Minister considers relevant, the Minister must by notice published in accordance with subsection (2):

(a) declare that the Minister has decided not to secure the continuation of the anti-dumping measures concerned; or

²⁷ REP 591 Section 1.2 Findings and Recommendations, 9.

(b) declare that the Minister has decided to secure the continuation of the anti-dumping measures concerned.

Note: Subsection (3) deals with the end of the anti-dumping measures and subsection (4) deals with the continuation of the anti-dumping measures.

Consideration of Grounds

Pricing and the threat of material injury if measures expire

Claims:

73. Capral claims that the ADC has not fully understood the impact of pricing by imports and the Australian industry during the inquiry period nor the price injury caused by dumped exports from Malaysia and Vietnam to the Australian industry and considers this has affected its consideration as to whether material injury is likely to continue or recur if the measures expire. Its specific claims are as follows:

- Prices from Malaysian and Vietnamese exporters are influenced by the ‘level of measures and the relativity of the cost of aluminium on the London Metal Exchange (LME)’.²⁸ As the LME price increased, the floor price of the measures determined on the combination method became outdated and volumes increased.²⁹
- The ADC has not understood the full impact of the time lag between changes in the LME cost of aluminium and the changes in export prices in its price analysis.
- In the context of the increased volumes from Malaysia and Vietnam between 2020 and 2021, the lower prices of such exports and the dumping margins

²⁸ In REP 591, the ADC indicates that aluminium extrusions manufacturers base prices on a formula that reflects the LME primary aluminium base price, plus a premium, plus a conversion or processing fee plus finish extras. It notes that the industry refers to the ‘spread’ as the difference between the combined sum of the LME price and premiums, and the selling price – see REP 591, 25.

²⁹ Capral’s application, Attachment A, 3.

by PMBA and EAA during the inquiry period (shown as 6.7 per cent in REP 591 (and updated to 3.3 per cent as a result of the ADC's Reconsideration Report)³⁰ and 5.2 per cent respectively), the ADC has not recognised the impact of these exports on the Australian industry's prices.

- The ADC has not recognised the impact of the lost sales volumes on the Australian industry and the price impact from the dumped exports from Malaysia and Vietnam. Customers are reluctant to supply information on selling prices from Malaysian and Vietnamese sources as this would limit access to the cheaper (dumped) exports.
- The ADC has been dismissive of the evidence of lost sales supplied by Capral following SEF 591 and in particular the likelihood of the recurrence of material injury if the measures expire. With no measures in place, Australia will be attractive for Malaysian and Vietnamese exporters who have continued to sell at dumped prices during the inquiry period. This will lead to a continuation and recurrence of material injury to the Australian industry.
- The ADC found evidence of price undercutting during the inquiry period (with dumping measures in place) but has not considered the full extent of the price undercutting.
- While there were other separate influences affecting prices in the Australian market, such as the larger volumes of exports from China and volumes from other sources, there was sufficient evidence of the direct loss of sales to Capral customers from exports from both Malaysia and Vietnam that demonstrates there is a connection between the dumped prices from Malaysia and Vietnamese exports and the economic condition of the Australian industry.
- The ADC, in REP 591, discounted the impact of the smaller volumes from Malaysia and Vietnam given there were imports with greater market shares.

³⁰ As a result of the Court-ordered reconsideration of PMBA's normal value, the ADC adjusted the dumping margin to 3.3 per cent. Capral's application referred to the dumping margin originally found in REP 591. The Court Orders set aside certain sections in REP 591 relating to PMBA's normal value and dumping margin.

This is erroneous, as it is well established that export volumes with small market shares can significantly influence prices and cause material injury.

- The ADC failed to undertake appropriate analysis of the price impacts of exports from Malaysia and Vietnam and the injurious effects of such exports if the measures were removed. The approach adopted by the ADC does not correctly deal with the issue of whether the dumped exports from Malaysia and Vietnam would continue or cause a recurrence of material injury if the measures were allowed to expire.

Snapshot of the ADC Findings in REP 591

74. This snapshot provides a brief outline of the price analysis undertaken in REP 591 and the significance of this analysis in the reasons provided to the Minister in the recommendation to not secure the continuation of measures. However as detailed in paragraphs 22 to 23, the Review Panel requested a reinvestigation of particular findings that formed the basis of the Reviewable Decision.
75. In RR 591, the ADC modified its findings in relation to its price analysis. This led to the Commissioner revising the finding as to whether the expiration of measures would likely lead to a continuation or recurrence of the material injury that the measures are intended to prevent.
76. In these circumstances, while a snapshot of the findings in REP 591 is outlined below, it does not reference the price analysis in any detail. The price analysis in REP 591 has been superseded by the Commissioner's findings in RR 591 to which the Review Panel has had regard. This is detailed in the section dealing with the reinvestigation findings.
77. Export volumes and prices and market share of exports from Malaysia and Vietnam since the imposition of measures and during the inquiry period:
- The three exporters who co-operated with the inquiry (Alumac, EAA and PMBA) comprise 95 per cent of the volume of exports subject to the notices from Malaysia and Vietnam.³¹

³¹ PMBA (Malaysia), Alumac (Malaysia), and EAA (Vietnam) REP 591,15.

- Dumping margins in operation (from previous review of measures REP 544 and REP 577 for exports by PMBA) during the inquiry period ranged between 0 to 10.7 per cent. The Court Orders set aside REP 591 paragraphs 8.6.1 and 8.6.5 to the extent that these dealt with PMBA's normal value and dumping margin. With respect to PMBA's dumping margins established in REP 544 and REP 577, and referred to in REP 591, these remain available for consideration given these were established in earlier ADC reports. The information in REP 591 for PMBA's export volumes and FOB export pricing has not been set aside.
- In REP 591, the dumping margins in the inquiry period:
 - for Malaysia ranged from negative 2.3 per cent for Alumac, 6.7 per cent for PMBA (the Court orders set aside this dumping margin and the ADC's Reconsideration Report provide an adjusted dumping margin of 3.3 per cent)³² and 27 per cent for uncooperative and all other exporters; and
 - for Vietnam, 5.2 per cent for EAA and 9 per cent for uncooperative and all other exporters.
- There was no evidence of countervailable subsidies in relation to exports by PMBA and to 'other exporters' from Malaysia. Alumac was not subject to the countervailing notices.

Malaysia:

- The market share of imports from Malaysia remained largely consistent since FY 2017. Imports from Malaysia subject to measures accounted for approximately 21 per cent in FY 2017, 6 per cent in FY 2019 but 50 per cent of all imports from Malaysia in FY 2021.
- PMBA: export prices had remained steady and then increased during the inquiry period. The ADC noted that this increase was while the LME prices

³² The ADC's Reconsideration Report advised that PMBA's normal value and dumping margin for the inquiry period had been adjusted.

increased and its profits on export sales remained at a similar level. Export volumes decreased in FY 2020 but increased in FY 2021.³³

- Alumac: had increased both its export volumes and prices since the measures were imposed and had negative margins in all subsequent reviews of measures and in the inquiry period. It had increased its prices in the inquiry period at a similar rate to the LME price increase.³⁴ Alumac has a relatively small volume of Malaysian exports subject to the notice. It has been found not to be dumping for some time.

Vietnam:

- The share of imports from Vietnam increased from FY 2017 but from a low base. In FY 2021, its market share was lower than in FY 2020 but higher than in FY 2017.
 - EAA had increased export sales volumes since the measures were imposed, had maintained relatively stable prices since the measures were imposed but had decreased its selling prices in the inquiry period (FY 2021) notwithstanding that there had been increases in the LME primary aluminium prices.³⁵

The ADC considered that dumped exports from Malaysia (except by Alumac) and from Vietnam were likely to continue if the measures expired.

78. China and other sources of imports since imposition of measures and during the inquiry period:

- China's exports comprise the major source of imports into Australia and while subject to measures, not all exports are dumped.³⁶ The measures in place for exports from China have margins ranging from 0 to 77 per cent as

³³ REP 591, 69.

³⁴ Rep 591, 72.

³⁵ Rep 591, 70-71.

³⁶ REP 591, 29-30.

identified in the continuation inquiry REP 543.³⁷ While its market share declined in FY 2020 and FY 2021, it remained the largest source of imports.

- 'Other sources' increased in both FY 2020 and FY 2021. While it is not contained in the body of REP 591, its Confidential Attachment 1 reveals that the three largest sources within 'other sources' were [REDACTED]. While [REDACTED] volumes remained relatively stable since FY 2017, between FY 2019 and 2021 [REDACTED] (Confidential import volumes – [REDACTED]).
- In REP 362, the ADC indicated that '... apart from China, Malaysia and Vietnam, the next largest volumes of imports were from Indonesia, New Zealand and Thailand...' noting these were relatively low volumes.³⁸

79. Australian market and economic condition of the Australian industry in the inquiry period:

- The Australian market size increased slightly between FY 2017 to FY 2019 but showed a large increase in FY 2020 with a further marked increase in FY 2021 (expansion of more than 15 per cent). Capral considers that the residential and commercial construction made up the majority of the market, with industrial being the other segment.
- Capral sold directly to end users as well as through its distribution centres.
- There had been an improvement in the economic conditions for the Australian industry in FY 2020 and FY 2021 with the Australian industry being able to maintain steady prices. The Australian industry market share declined in FY 2018 and 2019 but increased in FY 2020 and FY 2021. The Australian industry (which includes Capral) increased its market share in FY 2021.

³⁷ Minister's decision published on 15 October 2020.

³⁸ REP 362, 93.

- Capral's profits and profitability improved during the inquiry period as did its revenue.
- The ADC noted that supply chain disruptions were experienced in both FY 2020 and FY 2021 including limited shipping availability as well as increasing costs of international freight. The ADC considered that the lower prices of exports from Malaysia and Vietnam were relevant factors influencing the economic condition of the Australian industry.³⁹

80. Future focus: The ADC made the following findings in REP 591:

- It considered that, should the measures expire, exports from both Malaysia and Vietnam are likely to continue and that such exports from Malaysia (except from Alumac) and Vietnam are likely to be dumped. The Court Orders set aside PMBA's normal value and dumping margin in REP 591. The ADC's Reconsideration Report advised that PMBA's dumping margin for the inquiry period is 3.3 per cent. It did not consider that, should the measures expire, there was evidence that future exports from Malaysia would benefit from countervailable subsidies.⁴⁰
- It did not consider that the '... evidence is sufficient to support a finding that material injury to the Australian industry is likely to continue or recur as a result of future exports of the goods at dumped prices in the absence of measures'.⁴¹
- It commented on the relatively small volumes of exports from Malaysia and Vietnam subject to the notices in the Australian market and did not consider there was evidence that such volumes would change in the absence of measures. It did not consider it likely that there would be any change in pricing behaviours by exporters and importers.
- It did not consider that, in the immediate future and in the context of Capral's improved economic position and market share, Capral is as susceptible to the effects of the small volume of dumped exports from Malaysia and

³⁹ REP 591, 79.

⁴⁰ REP 591, 67.

⁴¹ REP 591, 62.

Vietnam. Accordingly, it does not consider Capral is likely to experience a recurrence of material injury.

- In REP 362, the ADC indicated that dumped goods (and subsidised goods as specified) from Malaysia and Vietnam would cause material injury. This was based on its finding that the Australian industry, in the absence of dumping (and subsidisation), would have been able to increase prices by 20 cents per kg which would have increased profits by 3.6 per cent. It considers this approach is based on the ‘... relationship between price offers from the exporters subject to the measures and the prices achieved by the Australian industry.’⁴²
- In REP 591, it did not consider that this relationship has been demonstrated, given the volumes from Malaysia and Vietnam, and in the context of market share held by other sources as well as the Australian industry (64 per cent). It suggests that the main source of price pressure would be from other sources with greater market share.
- It stated:
 - *The commission’s analysis in the preceding sections sets out that despite the presence of the dumped goods in the market in the inquiry period, there is no link to any current injury, likelihood of a recurrent of injury, or likely material impact on the Australian industry’s prices, volumes or any other injury criterion.*⁴³

The Reasons for the Reinvestigation:

81. In REP 591, the ADC relied on the analysis of price impacts, the economic condition of the Australian industry during the inquiry period and how it sets its prices in its finding that material injury to the Australian industry was not likely to continue or recur in the absence of measures. Following a conference with the ADC, it became apparent that the price undercutting analysis had an error which impacted the price

⁴² REP 591, 87.

⁴³ REP 591, 88.

analysis of the exports from Malaysia and Vietnam.⁴⁴ The ADC was unable to provide a view as to the extent of the impact on the price undercutting analysis for each of the levels of trade because of this comparison.⁴⁵

82. The price undercutting analysis also had implications for other aspects of the ADC's price analysis, given:

- the related findings regarding the price sensitivity of the market,
- the assessment of the impact of 'non-dumped prices',
- comments regarding the downward pressure on prices being exerted by dumped exports,
- the lack of evidence regarding pricing behaviour of importers, noting the assessment of the pricing behaviour of exporters and that only one importer's information was verified,⁴⁶
- the limited analysis of the unsuppressed selling price ('USP') and the non-injurious price ('NIP') in REP 591 and what this analysis might reveal in terms of injurious price levels,
- the unusual circumstances in the inquiry period linked to the COVID-19 pandemic (pandemic),
- the high reliance on the inquiry period with limited assessment of likely scenarios if the dumping measures expire, and
- what impact this would have on prices of the Australian industry in the future if the measures expired, noting the provisions of the legislation require an assessment of the material injury the measures are intended to prevent.

⁴⁴ Non-confidential conference summaries dated 7 and 14 September 2023 outline the confidential price undercutting information referred to this regard.

⁴⁵ Conference with the ADC on 14 September 2022.

⁴⁶ REP 591, the ADC sent importer questionnaires to 12 importers and received responses from two importers - one of these importers was verified, the other provided partial information only.

83. Given the reliance placed by the ADC in REP 591 on price impacts in its consideration of future injury, the Review Panel considered that certain ADC findings required reinvestigation.

RR 591 Findings

84. The ADC published a preliminary reinvestigation report ('PRR') on 26 June 2023 and invited interested parties to make submissions by 10 July 2023. The ADC advised that it received six submissions prior to the publication of the PRR and seven submissions following its publication. Section 2.2 of RR 591 outlines the ADC's approach to the submissions received. Many of the claims made by PMBA/PMAA in its submissions to the Review Panel were also raised in its submissions to the ADC in regard to the reinvestigation.
85. The Commissioner stated that, following the reinvestigation, it considered the expiration of dumping measures would lead or would be likely to lead to a continuation or a recurrence of the material injury that the anti-dumping measures are intended to prevent. The reinvestigation report noted that this is a different finding to that of REP 591. The further analysis undertaken in RR 591 outlined the following:⁴⁷
- The Australian market for the goods is competitive and price sensitive, with examples of price undercutting, high degrees of price transparency and supplier competition, including with import supply from Malaysia and Vietnam. It noted that customers obtain supply from multiple sources and switch supply sources. It stated that there was a greater degree and more consistent pattern of price undercutting than identified in its original report (REP 591).
 - It considered that the imports from Malaysia and Vietnam are likely influencing how the Australian industry sets its prices, noting that there is a large penetration (in terms of volume) of these imports across the Australian industry's customer base. It noted that imports from other sources, including

⁴⁷ RR 591, 5-6.

from China, are also having an impact, but this does not detract from its finding in relation to Malaysian and Vietnamese exports.

- The pandemic impacted the Australian market during the inquiry period, notably through supply constraints, increased shipping costs and government pandemic stimulus programs. It considered this favoured the Australian industry to a certain extent. It also affected the relationship between the import-sourced prices and the Australian industry's prices, such that any price advantage of the dumped products was diminished during the inquiry period. It noted that such dumped-priced goods were still undercutting Australian industry prices.
- It considers that, as the effects of the pandemic diminish, export supply will be more cost effective and timely, and that import prices will become more competitive. It considers this will likely lead to more price competition in the Australian market.
- It considers that if the dumping measures expire, dumped prices (absent the dumping duty previously paid) will enable more competitive pricing strategies by exporters and importers and will impact future purchasing decisions of customers.
- It notes that in the context of looking to the future and given the nature of the competitive and price sensitive market, absent the favourable impacts of the pandemic, the Australian industry would be more susceptible to the effects of the dumped exports from Malaysia and Vietnam. It considers the Australian industry would likely have to reduce or suppress its prices in the absence of dumping duties to remain competitive. It considers this is the material injury that the measures are intended to prevent. On this basis, it considers that material injury would be likely to continue or recur in the absence of dumping duties.

86. The ADC also advised that it did not conduct a non-injurious price-based comparative analysis as it did not consider this would assist in the analysis of the '...the future-oriented task of assessing the likelihood for a continuation or

recurrence of injury'.⁴⁸ It noted that the inquiry period had anomalous market conditions and the non-injurious price would have provided limited value to the price analysis. The Review Panel notes the reasons provided by the Commissioner as to why the analysis of the unsuppressed selling price and non-injurious price was not seen as valuable in the assessment of whether material injury would be likely to continue or recur in the future in the absence of measures.

Submissions

87. PMAA/PMBA made a number of submissions which are outlined in paragraph 41 in this report. In its submission dated 16 September 2022, it made the following comments relevant to the reviewable grounds. PMAA/PMBA raised issues relating to:

- Sufficiency of evidence provided by Capral regarding material injury following the SEF 591,
- Its view that material injury is not being caused, nor is likely to be caused to the Australian industry by exports by PMBA,
- What it considers to be a lack of evidence of price, volume or other injury criterion identified in relation to Capral or other Australian industry members,
- the improved economic performance of Capral and other Australian industry members. It suggests that injury to Capral may be caused by other factors such as its business model and over reliance on the Australian construction industry, which is known to be cyclical in nature,
- its suggestion that the price undercutting could relate to competition between Australian industry members rather than from imported aluminium extrusions.

Analysis

88. As directed by the Court Orders, the Review Panel, upon the provision of the ADC's Reconsideration Report, undertakes to provide a report under s 269ZZK of the Act in

⁴⁸ RR 591 section 3.5, 24.

response to Capral's application for review dated 12 July 2022 and accordingly the reviewable grounds.

89. The basis of the Minister's decision pursuant to s 269ZHG(1) arises from the Commissioner's recommendation to the Minister pursuant to s 269ZHF(2).⁴⁹ The recommendation from the Commissioner in REP 591 indicates that while dumping is likely to continue or recur, it did not consider that material injury was likely to continue or recur.
90. There are two conditions that must be met for the Commissioner to recommend to the Minister that the measures be secured.⁵⁰ First, if the measures expire, whether dumping or subsidisation is likely to continue or recur and second, whether it is likely that material injury will continue or recur in the absence of the measures intended to prevent such injury. The section therefore imposes a 'likelihood' test with respect to each of the two conditions. The 'likelihood' test has been accepted to mean that the occurrence of each condition is 'probable' or 'more probable than not'.⁵¹ If these are not met, then the Commissioner must not recommend that the Minister take steps to secure the continue of the measures.
91. In REP 591, the Commissioner recommended to the Minister that the dumping and countervailing measures be allowed to expire as the Commissioner did not consider material injury was likely to continue or recur if the measures expired. Subsequently in RR 591, the Commissioner modified the finding in relation to material injury to indicate that if the measures expired, he considered it was likely that material injury would continue or recur. The Review Panel observes that the measures apply to goods the subject of the dumping duty notice exported from Malaysia and Vietnam (except by specific exporters).
92. To undertake the reconsideration required by the Court, the Review Panel revisited the information provided by the ADC in RR 591 and the information in REP 591 in relation to Capral's reviewable grounds. Outlined below is the Review Panel's assessment of whether material injury is likely to continue or recur if the measures

⁴⁹ Section 269ZHG of the Act enables the Minister to also consider other relevant information. In this matter, no other relevant information was outlined in the Minister's Reasons other than that already referred to in this report.

⁵⁰ Pursuant to s 269ZHF(2) of the Act.

⁵¹ *Siam Polyethylene Co Ltd v Minister for Home Affairs (No.2)* [2009] FCA 838 at [48].

expire, noting the Court Orders and that the Reviewable Decision applies to exports from Malaysia and Vietnam.

93. The Review Panel considers that the aluminium extrusions market in Australia is complex and dynamic, as evidenced by:
- The Australian market and distribution channels being quite intricate: see RR 591 page 17 for a representation of the market, which includes key participants, the Australian industry members, distributors and importers, end users, fabricators and manufacturers.
 - Aluminium extrusion prices being strongly influenced by changes in the price of LME primary aluminium as referenced in REP 591.
 - The number of inquiries associated with aluminium extrusion exports, including the continuation inquiry related to exports from China (REP 543) and the recent reviews of measures applying to exports from Malaysia, Vietnam and China.
94. This complexity contributes to the challenges in assessing the inquiry period particularly given the impact of the pandemic and the supply chain disruptions identified by the ADC in FY 2020 and FY 2021. It also adds to the complexity in analysing probable scenarios of what is likely to happen to exports from Malaysia and Vietnam in the future in the absence of dumping duties given the degree of uncertainty apparent at that time.
95. The pandemic created unusual circumstances during the inquiry period. There is evidence that Capral's economic performance improved in the inquiry period. In REP 591, the ADC focused primarily on the Australian industry and market during the inquiry period. In the Review Panel's view, it did not appear to give sufficient consideration as to whether these factors would change after the inquiry period or how this might impact the likelihood of material injury that the measures are intended to prevent if the measures expired.
96. In REP 591, the ADC found that it was likely that dumping would continue from Malaysian exporters (except by Alumac) and from Vietnamese exporters based on the pattern of continued dumping since the measures had been imposed and during

the inquiry period. It is noted that the Court Orders set aside REP 591 paragraphs 8.6.1 and 8.6.5 to the extent that these referred to PMBA's normal value and dumping margin. The Review Panel has considered the information provided in the ADC's Reconsideration Report, being the modified PMBA's dumping margin amount of 3.3 per cent for the inquiry period⁵² in relation to the pattern of dumping analysis. There was no evidence that countervailable subsidies had been received during the inquiry period.

97. The ADC's findings in REP 591 with respect to the likelihood of future material injury were based on 'no demonstrable connection' between the 'price advantage' of the dumped exports and the 'economic condition of the Australian industry'.⁵³
98. REP 591 provides analysis of price and volume effects as well as the economic condition of the Australian industry during the inquiry period. The essence of the ADC's findings in REP 591 in relation to the Reviewable Decision is based on its price analysis and whether material injury is likely to recur in the absence of dumping measures.
99. The ADC also sought to differentiate its findings in REP 591 from the material injury findings in REP 362. It did not consider the same price relationship was established in REP 591 as that found in REP 362 for injury purposes. It proposed that the Australian industry was subject to very different economic conditions in the inquiry period in REP 591 as compared to the original investigation period.⁵⁴
100. Capral claims that the anti-dumping measures are a form of restraint on prices and volumes and have prevented exports from Malaysia and Vietnam further lowering prices. Capral also disagrees with the ADC's findings in REP 591 relating to the lack of a demonstrable connection between the dumped prices and the impact this is having on its prices. It claims there was widespread price undercutting occurring during the inquiry period. Capral's grounds relate to whether the ADC's findings related to price are correct and substantiate the findings regarding whether material

⁵² ADC Reconsideration Report dated 20 February 2026, 9. The normal value was adjusted and this impacted the dumping margin calculation for the inquiry period.

⁵³ REP 591, 9.

⁵⁴ Conference with the ADC dated 7 September 2022, question 6.

injury is likely to continue or recur in the absence of measures. RR 591 dealt with these claims in its analysis of price and volume effects.

101. The Review Panel disagreed with certain aspects of the material injury assessment and findings during the inquiry period in REP 591 as:

- the pandemic created an unusual set of circumstances for both Australian industry and importers to contend with.
- the price analysis was impacted by the undercutting issues referred to above.
- there appeared to be contradictory statements in REP 591 regarding whether the prices of Malaysian and Vietnamese exports were impacting the market.

102. On this basis, it was difficult to draw conclusions on:

- whether the price relationship was impacting Australian industry prices; and
- the correct assessment of what would be likely to occur in the future in relation to prices.

For these reasons, the Review Panel required that certain findings in REP 591 be reinvestigated.

103. As a result of the reinvestigation, the Commissioner modified his findings from those in REP 591: see the summary at paragraph 85. It is the findings in RR 591,⁵⁵ with reference to certain information in REP 591 as well as the ADC's Reconsideration Report, that will now be further considered in terms of whether the Reviewable Decision was correct or preferable.

104. The analysis in RR 591 dealt with the findings in the following manner:

⁵⁵ The ADC provided an opportunity for interested parties to consider the findings in its Preliminary Reinvestigation Report 591 (PRR) and provide submissions. The ADC considered the submissions received and, in reaching its findings, provided an explanation of its approach to these submissions. The submissions to the ADC by PMBA/PMAA were like those raised with the Review Panel.

- Price analysis (including price undercutting),
- Price behaviour of importers in the absence of measures,
- The influence of other import sources,
- Australian market conditions during the inquiry period and its impact on the price relationship, and
- Whether material injury is likely to continue or recur.

Price analysis

105. In relation to the price undercutting calculations, the Review Panel assessed these in some detail and considered the underlying assumptions used and the conclusions drawn by the ADC in RR 591. No error was identified in this analysis. It is apparent from this analysis that during the inquiry period there is evidence of consistent price undercutting and close competition on price between the Australian industry and the exports from Malaysia and Vietnam. There was enhanced analysis undertaken of pricing arrangements for common customers. It is apparent that there is supplier switching and price transparency (of customers) in the Australian market.

106. The Review Panel notes that the price analysis in RR 591 relates to the inquiry period.⁵⁶ It is based on actual PMBA prices, costs and IDD amounts as well as PMAA selling prices, Australian industry selling prices, and constructed amounts for EAA (Vietnamese exporter) during the inquiry period.⁵⁷ The IDD amounts used in the price analysis were the actual amounts levied on the imports as entered for clearance purposes during the inquiry period.⁵⁸

107. Capral's claim regarding the price undercutting being more extensive than what the ADC found in REP 591 is substantiated in RR 591. There is also evidence that

⁵⁶ The inquiry period was stated as 1 July 2020 to 30 June 2021. Some analysis focused on the inquiry period whereas other analysis included a longer period to when the measures were first imposed.

⁵⁷ RR 591, 22-23, 27, 33, 36.

⁵⁸ The dumping margins used to calculate the IDD during the inquiry period are those determined by the Minister from earlier reviews of measures or the original measures relating to exporters from the subject countries. Division 4 of the Act indicates the application process to enable a reconciliation of the IDD and final duty payable under the Dumping Duty Act. If an importer does not seek an assessment within a specific timeframe, the IDD paid on the goods is taken to be duty payable.

supplier switching and close competition occurred during the inquiry period, again consistent with Capral's claims of lost sales.

108. PMBA/PMAA raised several issues with the ADC's findings in relation to the price undercutting in the PRR. The Review Panel considered these issues and agreed with the ADC comments in RR 591.

109. It is apparent that price is a key factor in the purchasing decisions of importers and customers, notwithstanding there may also be alternate reasons why a customer may choose to retain multiple supply sources. The Review Panel agrees with the ADC's finding that there is evidence that the Australian industry's prices were impacted by the prices of exports from Malaysia and Vietnam during the inquiry period. The Review Panel agrees and adopts the Commissioner's findings in relation to price undercutting as outlined in RR 591. It is evident that the aluminium extrusions market is highly competitive with respect to price.

Pricing behaviour of importers in the absence of measures

110. In RR 591, the ADC considered that in the absence of measures, import costs for aluminium extrusions would be lower. It considered the significance of this in the context of the sensitivity of prices in the Australian market, noting that its price undercutting analysis had revealed:

- Consistent price undercutting of prices by Malaysian and Vietnamese exports during the inquiry period, noting these exports were subject to dumping duties during the inquiry period,
- High levels of common customers between the Australian industry and importers, with close price competition and supplier switching,
- A high degree of price transparency with customers maintaining multiple supply sources.

It concluded that in the absence of measures, importers could use the dumped import prices to adopt more competitive pricing strategies, which could include further undercutting of the Australian industry's prices. It also identified that for end-users who import directly from Malaysia and Vietnam, import costs would be

lower. In both scenarios, lower costs would be relevant to their purchasing decisions.⁵⁹

111. Capral's claims indicate that it considered that the removal of measures from exporters, who are already undercutting prices with dumped exports in the Australian market, would make the Australian market even more attractive. It considered this would cause the Australian industry material injury.

112. PMBA/PMAA disagreed with the ADC findings as it claimed that the expiry of measures would be unlikely to lead to exporters and importers lowering their prices. It considered there would be no commercial reason to do so and outlined other reasons why this would be unlikely to occur.

113. The analysis undertaken by the ADC reveals that it is a highly competitive market with a strong focus on price. During the inquiry period with dumping duties in operation, price undercutting was consistent from Malaysian and Vietnamese exports. It is not apparent that if measures are removed, competitive pricing strategies would not continue given the nature of the market. Accordingly, the Review Panel is not persuaded that exporters and importers would be unlikely to lower prices in the absence of measures as claimed PMBA/PMAA.

114. In RR 591, the ADC conducted pricing analysis of the Malaysian and Vietnamese exports. The ADC considered that the importers of goods from Malaysia and Vietnam have largely reflected the cost of anti-dumping duties and costs in its pricing.⁶⁰ In the context of the findings related to:

- consistent price undercutting,
- close price competition,
- common customers and supplier switching, and
- the responsiveness to changes in the LME prices and the transparency of price drivers,⁶¹

⁵⁹ RR 591, 30.

⁶⁰ RR 591, 34-36.

⁶¹ RR 591, 38.

the Review Panel considers that in the absence of measures, both importers and exporters behaviours would change. On this basis, in a highly price sensitive market, it is more likely than not that in the absence of the dumping duties, end users (who are importing) would make purchasing decisions related to lower cost goods and importers who on-sell, would adopt more competitive pricing strategies. Furthermore, exporters would be more likely to increase volumes if prices into the Australian market reduced.

115. The Review Panel agrees with and adopts Commissioner's findings in relation to the likely pricing behaviour of importers in the absence of measures.

The influence of other import sources

116. In RR 591, the ADC indicated that, based on its price undercutting analysis associated with common customers, the significant degree of price competition and supply switching, it considered that the Malaysian and Vietnamese imports were likely influencing Australian industry prices. It noted that the fact that imports from other sources, including China are also likely to be impacting pricing does not 'detract from this finding'.⁶²

117. The reinvestigation undertook additional analysis of prices from other sources including the examination of Chinese exports given it was the largest exporter of aluminium extrusions to Australia during the inquiry period with many of its exports also being subject to dumping duties. It compared the prices of Malaysian and Vietnamese exports with those from China in 2019. It used this period as it was not impacted by the pandemic. Furthermore, the ADC had verified and comparable price data for the highest volume mill finished, powder coated and anodised MCCs for this period from these export sources.

118. The ADC found that Malaysian direct prices were the cheapest in the market for all the highest volume MCCs, with Vietnam and Chinese direct prices showing some interchangeability as next lowest for power coated and anodised MCCs. The Australian industry's prices were higher than the other three sources for powder coated and anodised MCCs but were below the Chinese direct prices for the highest volume mill finish for three of the four quarters. This suggested to the ADC that there

⁶² RR 591, 40.

was a similar price relationship apparent to that found in the original inquiry in Investigation 362 relating to exports from Malaysia and Vietnam.

119. RR 591 also included analysis of Chinese, Vietnamese and Malaysian landed import prices based on Australian Border Force ('ABF') information from FY 2016 through to FY 2021. The ADC noted that this information does not provide the information of the finish type or actual mix of types and so has some limitations. However, it did show broad consistency with the 2019 price comparison, the information in Investigation 362 and the inquiry period.
120. PMBA/PMAA claimed that the impact of exports from Indonesia and Thailand had not been recognised by the ADC in the PRR.
121. Additional analysis on other export sources included ABF information on prices from Indonesia and Thailand. The ADC indicated that the pricing from these sources was broadly consistent with prices from Malaysia and Vietnam. It advised that import volumes from Thailand were less than volumes from both Malaysia and Vietnam. Import volumes from Indonesia had increased in the FY 2021 and 2022 and there were instances of importers switching to sourcing product from Indonesia.
122. The ADC concluded that, in the context of a price sensitive market with the degree of penetration of the Malaysian and Vietnamese exports, the prices of such exports were influencing Australian industry prices. It indicated that other sources may also be impacting prices, but this did not detract from the influence of the Malaysian and Vietnamese exports.
123. The Review Panel considered the analysis of impact of other export sources as well as the pricing of exports from Malaysia and Vietnam. It is evident from the confidential material contained in RR 591 that there are high levels of price competition as evidenced by price undercutting and supplier switching based on the Malaysian and Vietnamese exports. It is also evident that while Malaysian and Vietnamese exports are small in volume compared with exports from China, the pricing of these sources is significant and of influence of Australian industry prices in the market.
124. Based on the additional analysis undertaken, the Review Panel agrees with:

- the ADC's findings in RR 591 regarding the close price relationship between Australian industry prices with the prices from the Malaysian and Vietnamese exports, notwithstanding that there are prices from other sources also available in the market that may also impact prices, and
- the Commissioner's finding that the prices of Malaysian and Vietnamese exports are impacting Australian industry prices and that while other sources may also be impacting prices, this does not mean that the exports from Malaysia and Vietnam are not also having an impact.

Australian market conditions during inquiry period and its impact on the price relationship

125. The further analysis of the economic conditions during the inquiry period conducted in RR 591 revealed that the impact of the pandemic created circumstances that were unusual and to a certain degree favoured the Australian industry such that it '...diminished the price advantage of dumped exports'.⁶³

126. The ADC indicated that:

*... the supply constraints and increased shipping costs observed during the inquiry period are now returning to pre-pandemic conditions.... these reduced supply constraints and shipping costs are likely to be reflected in importers' Australian pricing. End users directly importing from Malaysia or Vietnam will also face reduced costs... In particular, absent the effects of the pandemic, prices of imports will likely become more competitive, increasing the degree of price competition in the Australian market.*⁶⁴

127. PMBA/PMAA raised a number of issues with the ADC's assessment of the market in RR 591. It considered:

- it would be unlikely for conditions to revert to pre-pandemic conditions,
- that the Australian industry had insufficient production capacity to accommodate the increased market demand during the inquiry period,

⁶³ RR 591, 46.

⁶⁴ RR 591, 46.

- there was insufficient evidence to support the ADC's assumption that price would remain static while freight costs adjusted,
- there was no price advantage from increased freight costs during the inquiry period.

The ADC addressed each of these issues in RR 591 in its consideration.

128. The Review Panel assessed the ADC's analysis in RR 591 and agreed with its findings regarding the economic conditions during the inquiry period being impacted by the pandemic. In particular, the assessment of what the ADC considers is likely to occur as the effects of the Government's support to industry, the supply chain disruptions and global freight costs change. While the market may not return to pre-pandemic levels, it is likely that the market size will not remain at the level seen during the inquiry period.

129. The evidence also supports the Commissioner's finding that:

*the commission considers that the observed price relationship between the Australian industry and import sources of aluminium extrusions is likely to return to conditions that are more consistent with those observed during the pre-pandemic period of 2019 and the original investigation period, removing any temporary advantage between the Australian industry enjoyed during the inquiry period.*⁶⁵

RR 591 provides information from other sources regarding the reduction in freight rates since the pandemic and the reduction in supply chain disruption.

130. While it is difficult to forecast what might occur in the future, the Review Panel agrees that the pandemic impacted the inquiry period, and this presented additional challenges in looking to the future. However, the additional analysis undertaken in RR 591 provides a sufficient fact-based scenario of what is likely to occur with respect to the market in relation to the dumped imports from Malaysia and Vietnam and the Australian industry. That is '... export supply will likely be more effective and

⁶⁵ RR 591, 46.

timely ... and the prices of imports will likely become more competitive...'⁶⁶ The Review Panel agrees and adopts the Commissioner's findings in this regard.

Whether material injury is likely to continue or recur in the absence of measures

131. The approach adopted in RR 591 was forward-looking and provided additional explanation of what was more probable to occur in the absence of measures in respect to prices of imported aluminium extrusions from Malaysia and Vietnam. It considered that prices of imported aluminium extrusions from Malaysia and Vietnam were likely to be more competitive if measures were removed, given the close price competition and price undercutting evident during the inquiry period and the existing price relationships were likely to impact the Australian industry prices.

132. The ADC based its finding on the assessment of what it considered likely in importers' pricing behaviour in the absence of measures. In this context, it considered that it was likely that the Australian industry would need to adjust by either decreasing or suppressing its prices to retain sales. A summary of the price analysis is shown in Section 7.3.1 of RR 591. It refers to the aspects of price analysis already referred to in earlier sections of this report.

133. The ADC also considered the impact on export volumes from Malaysia and Vietnam if measures expired. It considered, in the context of:

- well-established distribution networks in Australia;
- the pricing advantage of removal of dumping duties; and
- the level of competition in the market,

that the Australian industry would likely lose market share to these exports if it did not reduce its prices. In this scenario, export volumes from these sources could increase.

134. The Review Panel considered the submissions from EAA and PMBA/PMAA referred to by the ADC in response to the PRR 591, as both exporters disagreed that material injury was likely to occur if the measures were removed. Both referred to the level of price undercutting and the level of the dumping margins. They also suggested that

⁶⁶ RR 591, 54.

no link had been established between the imports and the economic performance of the Australian industry.

135. The Review Panel acknowledges that RR 591 referred to the removal of dumping duties that, in relation to PMBA, were assessed at 6.7 per cent. Given the ADC's Reconsideration Report adjusted this dumping margin to 3.3 per cent, the Review Panel reconsidered the 'price advantage' referred to above in this context. The Review Panel reconsidered the ADC's comments relating to these claims and agrees that, notwithstanding the adjusted dumping margin, the findings remain valid.

136. The Review Panel also agrees with the ADC's comments in this regard that:

*dumping provides a price advantage to imports from Malaysia and Vietnam, whether or not the amount of dumping aligns with the degree of price undercutting. The commission further notes that the question is whether the expiry of the measures would lead to a continuation or recurrence of the material injury that the measures are intended to prevent.*⁶⁷

137. The Review Panel considers the ADC applied the correct statutory test in its analysis in RR 591. That is, s 269ZHF(2) of the Act requires a forward-looking view on whether material injury, that the measures are intended to prevent, would be likely to continue or recur if the measures expired. The ADC examined the possible scenarios based on its assessment of the price competition apparent in the market and the likely pricing behaviour in the absence of dumping duties. It also assessed the likely impact on volumes and market share in this regard by reference to the material injury:

- in the original inquiry,
- the pricing behaviour since the original measures were introduced, and
- the situation in the inquiry period in considering what is likely to occur in the future.

138. The Review Panel has considered RR 591, including the confidential appendices and attachments, that support the Commissioner's revised finding and agrees and

⁶⁷ RR 591, 61.

adopts these findings. That is, ‘... the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the anti-dumping measures are intended to prevent.’

139. In this regard, PMBA’s changed dumping margin as a result of the ADC’s Reconsideration Report does not impact the information relating to:

- the size of the Australian market,
- the volumes of imports, and
- the relative market shares,

because these aspects are based on actual transactions⁶⁸ during the inquiry period and historical data.

140. RR 591 provides a comprehensive analysis of the pricing relationship of the Malaysian and Vietnamese exports with the Australian industry’s prices and has dealt with each of the issues raised by Capral’s claims and my letter to the Commissioner regarding the reinvestigation. The Review Panel reviewed the report, including each of its confidential appendices and spreadsheets which contain the detailed information that supports the findings and agree with its analysis and findings. It considers that PMBA’s changed dumping margin does not result in these finding being invalid. The Review Panel agrees and adopts the key findings as described in RR 591 and considers these remain valid notwithstanding the adjusted PMBA dumping margin.

141. The Court Orders require that the Review Panel reconsider its conclusions with respect to material injury and its recommendations to the Minister in REP 155 in view of the ADC’s Reconsideration Report.⁶⁹ The Review Panel has undertaken the above analysis using the information contained in:

- The ADC’s Reconsideration Report;

⁶⁸ Certain of the information used in the assessment was based on best available information in circumstances where parties did not provide actual data.

⁶⁹ Court Order 4 and Note D.

- RR 591 but in the context of PMBA having been found to have a lower dumping margin during the inquiry period;⁷⁰ and
- The information in REP 591 to the extent it deals with other aspects associated with the assessment of whether material injury is likely to continue or recur, and noting that certain paragraphs in REP 591 relating to PMBA's normal value and dumping margin have been set aside.

142. As outlined by the Commissioner in RR 591:

*... dumping provides a price advantage to imports from Malaysia and Vietnam, whether or not the amount of dumping aligns with the degree of price undercutting. The commission further notes that the question is whether the expiry of the measures would lead to a continuation or recurrence of the material injury that the measures are intended to prevent.*⁷¹

The dumping margins established for exporters from Malaysia and Vietnam based on the above-mentioned analysis, and noting PMBA's adjusted dumping margin suggests that if the measures were removed a price advantage would emerge.

143. If the dumping duties applying to PMBA, as well as the other exporters subject to the measures from Malaysia (except for Alumac) and from Vietnam, were to expire, the Review Panel considers that material injury is likely to continue or recur because:

- There is a demonstrable connection of the Australian industry's price with the prices of the dumped exports,
- there is evidence to demonstrate a connection between the economic condition of the industry and how it sets its prices (including consideration of the influence of other sources), and
- in the absence of measures that it is likely, or more probable than not, that there would be a recurrence of the material injury that the measures are intended to prevent is established.

⁷⁰ ADC's Reconsideration Report, 4

⁷¹ RR 591, 61.

144. The Commissioner's reinvestigation findings are that there is sufficient evidence that, should the measures expire, there would be additional pricing pressure on the Australian industry to either depress or suppress its prices from the Malaysian and Vietnamese exports. Furthermore, it is more probable than not that this price effect would lead or be likely to lead to a continuation or recurrence of the material injury that the measures are intended to prevent.
145. The Review Panel considers that for the reasons outlined in paragraphs 93 to 143 that in the absence of measures, material injury to the Australian industry is likely to lead to the continuation or recurrence of such injury that the measures are intended to prevent: see s 269ZHF(2) of the Act.
146. On this basis, and in the context of the reconsideration of Capral's reviewable grounds, including PMBA's changed dumping margin, the Review Panel agrees with and adopts the Commissioner's findings as outlined in RR 591. Accordingly, Capral's grounds have established that the Reviewable Decision was not correct or preferable.

Conclusion

147. The Review Panel has reviewed the ADC's Reconsideration Report as required by the Court Orders in making its recommendations to the Minister in relation to Capral's reviewable grounds.
148. Capral's claims relating to its three grounds as to whether there was evidence of a connection between pricing advantage that dumping provided to exporters from Malaysia and Vietnam, the impact of price setting and related economic condition of the Australian industry and whether material injury was likely to continue or recur if the measures expired have been established.
149. Notwithstanding that PMBA's dumping margin has changed from 6.7 per cent to 3.3 per cent, there is sufficient evidence that material injury would likely continue or recur if the measures expired based on the findings in RR 591 as well as the information relating to export volumes and market share from Malaysia and Vietnam.

Recommendations

150. Pursuant to s 269ZZK(1) of the Act and for the reasons given above, the Review Panel considers that the Reviewable Decision was not the correct or preferable decision. The recommended new decision is materially different to the Reviewable Decision as it secures the continuation of dumping duty measures on exports from Malaysia and Vietnam.

151. For the reasons set out in this report, the Review Panel recommends that the Minister, pursuant to s 269ZZM(1)(b) of the Act, revoke the Reviewable Decision and substitute a new decision as follows:

(a) that the Minister declare that he has decided to secure the continuation of the dumping duty notice applying to exports of aluminium extrusions from Malaysia and Vietnam in accordance with s 269ZHG(1)(b).⁷²

(b) that pursuant to s 269ZZM(3)(d) of the Act, the Minister declare that the dumping duty notice be reinstated.

152. The Review Panel has not reviewed the determination of the specified variable factors as these were not part of Capral's application and were not within the 'reviewable grounds' accepted for the purposes of this report in accordance with s 269ZZG(5)(c) of the Act. However, to the extent that the dumping margins (noting the changed PMBA dumping margin following the ADC's Reconsideration Report) are relevant to the consideration of whether the 'expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measures is intended to prevent' (s 269ZHF(2) of the Act), and the Minister's Reviewable Decision pursuant to s 269ZHG(1) of the Act, the dumping margins resulting from these ascertained variable factors have been taken into account by the Panel as part of its consideration of the grounds. In conducting its review, the Panel relied on the dumping margins for exporters, except for PMBA, resulting from the variable factors as ascertained in ADC Report 591 and accepted by the Minister for the purposes of his reviewable decision. In respect of PMBA, the Review

⁷² Paragraph 12 of this report notes that several exporters were not subject to the dumping duty notices the subject of Continuation Inquiry 591. These exporters remain exempt from the dumping duty notice the subject of Continuation Inquiry 591, should the Minister agree with the recommendations in this report.

Panel relied on the dumping margin as recommended by the ADC in its Reconsideration Report.

A handwritten signature in black ink, appearing to read 'Jaclyne Fisher', written in a cursive style.

Jaclyne Fisher OAM
Panel Member
Anti-Dumping Review Panel
22 April 2026

Appendix A

Conferences

Date of conference	Participants	Purpose of conference
7 September 2022	ADC representatives	To obtain further information in relation to material injury findings outlined in REP 591 and in particular the confidential price undercutting analysis as well as information on the USP and NIP and clarify some comments in REP 591 relating to pricing impact.
14 September 2022	ADC representatives	To obtain further information in relation to the confidential price undercutting analysis in relation to the FIS comparison and clarification regarding the Capral work program information and whether certain other data sets information was available.
17 October 2022	ADC representatives	To clarify the price analysis outlined in the letter to the Commissioner requiring a reinvestigation.
13 March 2026	PMBA representatives, ADC representatives, Capral representatives	To obtain further information in relation to PMBA's proposal to assess the need to an additional adjustment to the normal value and suggesting a conference be held to outline this information.

Attachment One

An extract of the Federal Court's Orders is provided below:

2. Pursuant to s 16(1)(a), including as read with s 3(3), of the *Administrative Decisions (Judicial Review) Act 1977 (Cth)* (**ADJR Act**):
 - (a) *the ascertainment of the normal value and dumping margin for the Second Applicant (PMBA) by the Third Respondent (ADC) at [9.1] of ADC Report 591, together with [6.3.10], [6.3.11], [8.6.1] and [8.6.5] in so far as they concern those matters, be set aside;*
 - (b) *the recommendations of the Second Respondent (ADRP) contained in ADRP Report 155 be set aside, and ADRP Report 155 be quashed;*
 - (c) *the decision of the Minister, made on 14 December 2023 and published on 15 December 2023 (the **Minister's Substitute Decision**), be set aside;*
3. Pursuant to ss 16(1)(b) and 16(2)(b) of the ADJR Act the matter be remitted to the ADC for preparation of a report and the making of recommendations on only the normal value and dumping margin for PMBA according to law.
4. In preparing a report and making recommendations on the normal value and dumping margin for PMBA in accordance with Order 3 above:
 - (a) *the ADC is to invite further submissions and/or information from PMBA consistent with that requested and provided in other reviews and duty assessments concerning PMBA's exports, including in Review 640, within 7 business days of these orders and in order to address the issue referred to in Note A; and*

(b) *the ADC is to provide its report to the ADRP within 30 business days of receipt of the further submissions and/or information from PMBA, and at or about the same time to provide a copy to PMBA and publish a non-confidential version on its electronic public file.*

5. *Pursuant to ss 16(1)(b) and (d) and 16(2)(b) of the ADJR Act, upon the provision of the ADC's report referred to in Order 4(b), the ADRP is to prepare a report under s 269ZZK of the Customs Act in response to Capral's application for review dated 12 July 2022. (emphasis added)*

6. *The report of the ADRP the subject of Order 5 above is to be completed within*

40 business days of the publication of the ADC report referred to in Order 4(b) above.

7. *The Minister is to re-make the Minister's Substitute Decision within:*

(a) *30 days of issue of the ADRP report in accordance with Order 6 above; or*

(b) *if the Minister considers there are special circumstances that prevent the decision being made within that period—such longer period as the Minister considers appropriate, in which case the Minister must give notice of the longer period on the Review Panel's website on or before the expiry of the period referred to in order 7(a) above.*

THE COURT NOTES THAT:

The parties have informed the Court that:

- B. In making the recommendations in ADRP Report 155, the ADRP relied on the ADC's conclusions with respect to the normal value and dumping margin for PMBA.*
- D. The ADC's denial of procedural fairness in relation to the normal value and dumping margin for PMBA could have affected the ADRP's conclusion with respect to material injury in ADRP Report 155 and its recommendations to the Minister as set out in ADRP Report 155.*
- E. The ADC's denial of procedural fairness in relation to the normal value and dumping margin for PMBA could have affected the Minister's Substitute Decision.*