Australian Government
Anti-Dumping Review Panel

Anti-Dumping Review Panel Report No. 175

Aluminium Extrusions exported from the People's Republic of China

April 2026

https://www.adreviewpanel.gov.au

Contents

Abbreviations

Term	Meaning
ABF	Australian Border Force
Act	*Customs Act 1901*
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice
Anti-Dumping Agreement	*Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*
AUD	Australian Dollar
Appellate Body	Appellate Body of the World Trade Organization
Capral	Capral Limited, the Australian industry
China	People's Republic of China
CIO Regulation	*Customs (International Obligations) Regulation 2015*
CTM	Cost to make
CTMS	Cost to make and sell
Commissioner	Commissioner of the Anti-Dumping Commission
The Direction	*Customs (Extensions of Time and Non-cooperation) Direction 2015*
Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act 1975*
EPR	Electronic public record
FOB	Free on board
GAAP	Generally accepted accounting principles
Guangdong Haomei	Guangdong Haomei New Materials Co., Ltd. A manufacturer and Hao Mei Aluminium Products Company Limited, an exporter.

Goods	Certain aluminium extrusions – see full description at paragraph 9 of this report
Goomax	Goomax Metal Co., Ltd, an exporter and an applicant
GOC	Government of China
GUC	Goods under consideration
ICD	Interim countervailing duty
IDD	Interim dumping duty
Injury Examination Period	From 1 October 2020
Inquiry Period	1 October 2023 to 30 September 2024
LTAR	Less than adequate remuneration
LME	London Metal Exchange
Manual	Dumping and Subsidy Manual December 2021
Measures	Anti-Dumping Measures
Minister	Minister for Industry and Innovation and Minister for Science
MJP	Major Japanese Port Premium
MCC	Model Control Code structure: provides the framework for identifying the key physical characteristics that will be used to match the exported goods to the like goods sold domestically.
OCOT	Ordinary course of trade
PMAA	Press Metal Aluminium (Australia) Pty Ltd, an importer and an applicant
PMI	Press Metal International Ltd, an exporter
REQ	Response to Exporter Questionnaire
REP 543	Continuation Inquiry Report 543 / ADC Report No. 543
REP 609	Review of Measures Report 609

REP 657	The report published by the ADC in relation to the goods exported from China and dated 23 September 2025
RR 657	Reinvestigation Report No 657 dated 20 March 2026.
Review Panel	Anti-Dumping Review Panel
Reviewable Decision	The Minister for Industry and Innovation and Minister for Science's decision under s 269ZHG(1) of the Act in respect of the goods exported from China
SCM	Agreement on Subsidies and Countervailing Measures
SEF 657	Statement of Essential Facts No. 657
SG&A	Selling, general and administrative costs
SIEs	State-Invested Enterprises
SOEs	State-Owned Enterprises (or partially owned)
WTO	World Trade Organization
Xingfa	Guangdong Xingfa Aluminium Co Ltd, an exporter and an applicant

Summary

1. This review concerns the Minister for Industry and Innovation and Minister for Science's ('Minister') decision to secure the continuation of the anti-dumping measures ('measures') applying to aluminium extrusions ('goods') exported from the People's Republic of China ('China') under s 269ZHG(1)(b) of the *Customs Act 1901*[1] ('Act') ('Reviewable Decision'). The applicants for this review are Goomax Metal Co., Ltd ('Goomax'), Guangdong Xingfa Aluminium Co Ltd ('Xingfa') and Press Metal Aluminium (Australia) Pty Ltd ('PMAA').

2. The Anti-Dumping Review Panel ('Review Panel') accepted five grounds of review in total. These relate to the normal values (and dumping margins) for Xingfa and Press Metal International (PMI), the level of subsidy for Goomax and whether material injury was likely to continue or recur if the measures expired. The grounds are listed in paragraph 37 of this report.

3. The Review Panel required a reinvestigation, pursuant to s 269ZZL of the Act, of a certain finding in REP 657 relating to Goomax. The Commissioner provided this report, referred to as Reinvestigation Report 657 (RR 657) on 20 March 2026.

4. The Review Panel found that:

    a) Goomax has established that the Reviewable Decision in relation to its ground on the applicable subsidy margin was not correct or preferable.

    b) Xingfa has not established that the Reviewable Decision in relation to its ground as to the construction of its normal values by relying on non-arms length transactions between related parties was not correct or preferable.

    c) PMAA has not established that the Reviewable Decision in relation to its grounds that:

        i. there was no or insufficient information supported by evidence that dumping by PMI had occurred or would be likely to continue or recur if the anti-dumping duties expired;

[1] *Customs Act 1901* (Cth).

ii. there was no information, or insufficient information that the expiry of the anti-dumping measures would lead to, or be likely to lead to, the continuation or recurrence of the material injury that the measures are intended to prevent

was not correct or preferable

d) PMAA has established that in relation to Ground 2, the Minister's determination of the normal value was incorrect, is valid as there was an error in its calculation. The adjusted normal value led to an insignificant change in the dumping margin. The Review Panel considers that as the result of this error does not lead to a material difference to the dumping margin, it does not recommend that the Minister revoke the Reviewable Decision as it would not be materially different to the Reviewable Decision, pursuant to s 269ZZK(1A) of the Act.

5. For the reasons set out in this report, I recommend that the Reviewable Decision be revoked and that the Minister substitute a new decision:

a) to secure the continuation of measures in relation to exports from China by Goomax but with different variable factors as specified in Confidential Attachment 1 to this report; and

b) to secure the continuation of measures in relation to exports from China by other exporters with the variable factors as specified in ADN 2025/096 except for Goomax.

Introduction

6. Goomax, Xingfa and PMAA applied under s 269ZZC of the Act for a review of the Reviewable Decision.

7. On 13 November 2025, the Senior Member of the Review Panel directed in writing that the Review Panel be constituted by me in accordance with s 269ZYA of the Act.

8. The applications were accepted and notice of the proposed review, as required by s 269ZZI of the Act, was published on 21 November 2025.

9. The goods to which the applications relate 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, anodised or painted or otherwise coated, whether or not worked, having a wall thickness or diameter greater than 0.5 mm, with a maximum weight per metre of 27 kilograms and a profile or cross-section which fits within a circle having a diameter of 421 mm.*
>
> *The following explanatory comments also form part of the goods description:*
>
> *The goods include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. Aluminium extrusion products that have been painted, anodised, or otherwise coated, or worked (e.g., precision cut, machined, punched or drilled) fall within the scope of the goods. The goods do not extend to intermediate or finished 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.*

Background

10. The measures (dumping and countervailing duties) were first imposed on the goods exported from China by public notice on 28 October 2010, following the publication of Trade Remedies Branch Report No. 148.

11. On 20 October 2015, after considering Anti-Dumping Commission ('ADC') Report No. 287, the then Parliamentary Secretary to the Minister for Industry, Innovation and Science decided to continue the measures for an additional five years.[2]

[2] Anti-Dumping Notice ('ADN') 2015/125.

12. On 12 October 2020, the then Minister for Industry, Science and Technology continued the measures for a further five years in response to ADC Report No. 543 ('REP 543').[3]

13. The measures were due to expire on 28 October 2025. On 20 September 2024, Capral Limited ('Capral') applied to the Commissioner of the Anti-Dumping Commission ('Commissioner') to continue the measures. On 8 November 2024, the Commissioner initiated Continuation Inquiry 657,[4] setting an inquiry period of 1 October 2023 to 30 September 2024 ('inquiry period').

14. A Statement of Essential Facts ('SEF 657') was published on 21 July 2025. On 31 July 2025, the Commissioner issued a corrigendum to SEF 657 revising dumping margins, noting that the corrigendum should be read in conjunction with SEF 657.[5]

15. On 23 September 2025, the Commissioner made a report to the Minister ('REP 657') recommending that the Minister:

    a) continue the measures applying to the goods exported from China; and

    b) determine that the notice remain in force after 28 October 2025 but as if different variable factors had been fixed for all exporters.

16. On 16 October 2025, the Minister accepted the Commissioner's recommendations in REP 657 and notice of the decision was published the following day.[6]

Conduct of the Review

17. Pursuant to s 269ZZK of the Act, a report must be provided no later than 60 days beginning on the day of the publication of the notice of review, unless a reinvestigation is required under s 269ZZL(1) of the Act.[7]

18. On 19 January 2026, pursuant to s 269ZZL of the Act, I required the Commissioner to reinvestigate a specific finding that formed the basis of the Reviewable Decision.

[3] ADN 2020/103.
[4] ADN 2024/085.
[5] ADN 2025/070.
[6] ADN 2025/096.
[7] Pursuant to s 269ZZK(3) of the Act.

RR 657 was provided on 20 March 2026. A copy of it is at Confidential Attachment Two to this Report.

19. 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.

20. 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.

21. Subject to certain exceptions,[8] 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. See also paragraph 33.

22. 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. A list of the conferences held during the course of this review is available at Appendix A. This includes details of attendees and the purpose of the conference. A non-confidential summary of the information obtained at each conference was made publicly available in accordance with s 269ZZX(1) of the Act.

23. The Review Panel received submissions from interested parties pursuant to s 269ZZJ of the Act:

    a) Capral dated 16 December 2025

    b) ADC dated 19 December 2025

    c) PMAA provided three submissions dated 22 December 2025

[8] See s 269ZZK(4).

d) Guangdong Haomei New Materials Co., Ltd. ("Guangdong Haomei") and Hao Mei Aluminium Products Company Limited dated 22 December 2025.

24. In conducting this review, the Review Panel has had regard to information which relates to the reviewable grounds which is:

a) Relevant information contained in the review applications including documents submitted as part of applications;

b) Relevant information contained in submissions received pursuant to s 269ZZJ of the Act;

c) Information that relates to relevant information obtained at conferences and conclusions based on that information;

d) REP 657 (including confidential attachments), SEF 657 (including confidential attachments), REP 543, REP 609 and REP 591,[9] to the extent referenced by PMAA;

e) RR 657;

f) Review Panel Reports Nos.104 and 155[10] to the extent referenced by PMAA; and

g) Relevant case law (as described in this report) and WTO reports (as described in this report).

25. PMAA wrote to the Review Panel on 12 January 2026 following the conference held on 9 January 2026. This information was attached to the Conference Summary of 9 January 2026. To the extent that this information has been referred to in information outlined in paragraph 24 above, that is, PMAA's application and submissions, or at a conference (subject to s 269ZZHA of the Act), it has been considered in this report.

[9] The Review Panel notes that certain sections of REP 591 were set aside following orders by the Federal Court of Australia on 20 November 2025 (NSD67/2024) in *Press Metal Aluminium (Australia) Pty Ltd & Anor V Minister for Industry & Innovation & Or*.
[10] The Review Panel notes that Report No.155 was quashed following orders by the Federal Court of Australia on 20 November 2025 (NSD67/2024) in *Press Metal Aluminium (Australia) Pty Ltd & Anor V Minister for Industry & Innovation & Or*.

26. PMAA wrote to the Review Panel on 23 January 2026 proposing that the Review Panel '… request the Commissioner to reinvestigate whether the 'fabricated products' which are central to PMAA's application for review are 'like goods' to those exported to Australian by Press Metal International Ltd (PMI).'[11] The Review Panel responded on 12 February 2026. This correspondence was placed on the public file.

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

    a) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*[12] ('Anti-Dumping Agreement') – which prescribes rules for the conduct of anti-dumping investigations and the application of measures to address dumping, including how member countries may: initiate cases, calculate dumping margins, determine injury, enforce remedial measures and review past determinations; and

    b) *Agreement on Subsidies and Countervailing Measures*[13] ('SCM') – which regulates measures designed to remedy material injury caused by subsidised imports, along similar lines to the Anti-Dumping Agreement.

28. The Act and the *Customs Tariff (Anti-Dumping) Act 1975 ('Dumping Duty Act')*[14] 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 where the legislation is ambiguous the Review Panel will favour a construction that is consistent with the Anti-Dumping Agreement and 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]).

[11] Letter from Corrs Chamber Westgarth dated 23 January 2026 on behalf of PMAA.
[12] *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').
[13] *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').
[14] *Dumping Duty Act* (Cth).

29. 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*, 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".[15]

30. 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*

[15] *Yara AB v Minister for Industry, Science and Technology* (2022) FCA 847 [172] ('*Yara AB*').

> *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…*

31. Before considering the grounds, I will address the scope of the grounds and the definition and application of relevant information.

Scope of reviewable grounds

32. As described at paragraphs 29-30, the Review Panel must limit its consideration to the 'reviewable grounds and no other grounds' in undertaking its review. In considering information provided as claims or arguments in relation to specific grounds, it became apparent that certain aspects of claims were not related or within the scope of the stated ground. In such circumstances, the Review Panel is unable to address such issues to the extent that they are not within the scope of the ground. This is apparent in Wigney J's analysis in paragraphs [182] - [183] in *Yara AB*. The specific issues that emerged are identified in the respective grounds.

Relevant Information

33. Section 269ZZK(4) of the Act provides that in making its recommendations, the Review Panel must not have regard to information that is not 'relevant information'.[16] Section 269ZZK(6)(d) states that in a continuation of measures review, the 'relevant information' refers to '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…'.

34. In the context of a decision to continue measures, the Review Panel undertakes an assessment with respect to submitted information as to whether the Commissioner had regard to the information or was, under paragraph 269ZHF(3)(a) of the Act, required to have regard to the information when making findings outlined in the report to the Minister. The Review Panel does not conduct its own investigation, as such, and is confined to the information that was before the Commissioner and within the powers outlined in s 269ZZK of the Act.

35. Section 269ZZHA(2) of the Act enables the Review Panel, in making its recommendation under s 269ZZK(1), to have regard to certain further information obtained at a conference, but this is limited to further information to the extent it relates to relevant information and any conclusions reached at the conference based on that relevant information.

36. In summary, the Review Panel's role is to confine its consideration to the 'relevant information' relevant to the grounds of review, subject to certain exceptions.[17]

Grounds of Review

37. The grounds of review relied upon by the applicants, which the Review Panel accepted as reviewable grounds, are as follows:

    Goomax:

    Ground One: The Minister's decision on the applicable subsidy margin for Goomax was erroneous, as it was premised on the Commissioner's factual error (mistakenly categorising privately held suppliers/manufacturers as state-owned)

[16] Section 269ZZK(4) of the Act is subject to sub-sections (4A) and (5) and s 269ZZHA(2).
[17] The exceptions relate to subsections 269ZZK(4A), (5) and Section 269ZZHA.

concerning the receipt of a 'Less Than Adequate Remuneration' ('LTAR') subsidy.

Xingfa:

Ground One: The Minister erred in constructing Xingfa's normal values by relying on non-arms length transactions between related parties.

PMAA:[18]

Ground One: There was no information, or insufficient information supported by evidence, that dumping by Press Metal International Ltd ('PMI') had occurred or would be likely to continue or recur if the anti-dumping duties expired.

Ground Two: The Minister's determination of the normal value was incorrect, which impacted on the alteration of the variable factors and the assessment of the dumping margin.

Ground Three: There was no information, or insufficient information supported by evidence, that the expiry of anti-dumping measures would lead to, or be likely to lead to, the continuation or recurrence of the material injury that the measures are intended to prevent.

Consideration of Grounds

Goomax: Ground One

The Minister's decision on the applicable subsidy margin for Goomax was erroneous, as it was premised on the Commissioner's factual error (mistakenly categorising privately held suppliers/manufacturers as state-owned) concerning the receipt of a LTAR subsidy.

Claims

38. Goomax submits that in its response to the exporter questionnaire ('REQ') to the ADC, it advised that its suppliers and/or manufacturers of aluminium ingots and billets (raw materials) were privately held entities and not State-Invested Enterprises

[18] On 19 November 2025, the Review Panel held a pre-initiation conference with PMAA seeking clarification of the wording of its three grounds. PMAA confirmed the wording of its grounds. This information was placed on the public file.

('SIEs') or State-Owned Enterprises ('SOEs'). Whereas the ADC determined these suppliers were SIEs and SOEs and had calculated and applied the LTAR subsidy to Goomax on this basis.

39. Goomax has provided with its review application confidential evidence obtained from Wolters Kluwer (a legal information database) of the ownership structure of each of its suppliers indicating that these are privately held entities.

40. Goomax advised the ADC on 21 October 2025 that its suppliers are not SIEs/SOEs and therefore the LTAR subsidy is not applicable to its exports. The ADC advised that the Minister had made the decision on 16 October 2025. Goomax states that the ADC indicated that in such circumstances it would be necessary to make an application to the Review Panel for a review of the subsidy decision.

41. Goomax considers a factual error has been made and refers to the Minister's decision (based on the Commissioner's report to the Minister) relating to another exporter (Jinxiecheng) which had not been subject to the LTAR subsidy. It considers it should be treated in a similar manner to Jinxiecheng.

42. Goomax claims that the subsidy margin applied to its exports should be reduced by 4.7 percentage points from 5.6 per cent to 0.9 per cent.

Snapshot of ADC Findings

43. The ADC indicated that:

    a) exports from China have been subject to countervailing measures since the original investigation. Program 15: Aluminium at LTAR is one of the subsidies subject to countervailing measures. A benefit may be provided by a public body '… via the provision of aluminium at an amount reflecting less than adequate remuneration by a government-owned (SOE) or partially government-owned enterprises (SIE) in China at less than adequate remuneration.'[19]

    b) it had compared the prices exporters paid their suppliers for aluminium to a benchmark price during the inquiry period: 'The benchmark price is

[19] REP 657 Appendix D-4, D4.1, 201.

established to reflect adequate remuneration for aluminium'.[20] The ADC stated that it had compared the four selected exporters' (including Goomax) purchase prices of aluminium to the London Metal Exchange ('LME') based benchmark and found that all had paid less than the benchmark during the inquiry period.

c) Goomax had been subject to the LTAR subsidy in the previous continuation inquiry relating to aluminium extrusions. In this inquiry, it found that Goomax received a range of subsidies, and continued to benefit from the LTAR subsidy.[21] It calculated the amount of benefit received in relation to this subsidy to each unit of aluminium extrusions (per kg) using the volume of sales by Goomax. The ADC's calculation of the subsidy margins is shown in ADC REP 657 'Confidential Attachment 22: Goomax – Subsidy margin'.

d) it sought information from the selected exporters to establish their purchases of aluminium, its origin, suppliers/manufacturers and their status as to whether SIE or SOE. It had undertaken desktop research to identify ownership of suppliers provided in the respective REQ's. It noted that:

> *The commission then determined whether a benefit was provided in respect of those purchases by calculating the difference between the prices paid by the exporter to the SOE/SIE and the LME-based benchmark. It is noted, as discussed in chapter 7.6.2, that Jinxiecheng did not receive an LTAR subsidy during the inquiry period as none of their raw material purchases were found to be purchased from SOE/SIEs.*[22]

Submissions

Capral

44. Capral's submission[23] outlined its view that Goomax's LTAR assessment is different to that of Jinxiecheng as Jinxiecheng did not purchase from SIE/SOEs, its prices were not below the benchmark, and it had not received a LTAR subsidy during the

[20] REP 657, section 7.4.3, 86.
[21] Program 15-Aluminium at LTAR subsidy.
[22] REP 657, 202-203.
[23] Capral Ltd submission dated 16 December 2025, 2-5.

inquiry period. It suggests that Goomax paid LTAR measured against the benchmark. It suggests that Goomax's suppliers benefit from a range of Government of China ('GOC') programs.

ADC

45. The ADC's submission[24] indicates that it considers the information provided in Goomax's review application on ownership details of its suppliers does not fall with the definition of 'relevant information' pursuant to s 269ZZK of the Act.

46. The ADC also provided additional information in relation to the proportion of raw materials purchased by one supplier to Goomax that had also supplied Jinxiecheng (the company referred to in Goomax's application). Its additional analysis suggested that given the relatively low volume purchased from this supplier, it would not have had a material impact on the LTAR subsidy amount. Furthermore, its research in relation to the other suppliers/manufacturers indicated SIE/SOE ownership.

Analysis

47. Goomax's claim centres on whether the Commissioner (and the Minister) incorrectly assessed the ownership of its suppliers of aluminium as SOEs or SIEs when it has recently obtained information (following the Minister's decision) that suggests that the ownership of its suppliers are privately owned entities. It considers that it has not been in receipt of the LTAR subsidy and proposes that the LTAR element of the amount of the countervailing duty applicable to its exports should be removed.

48. As referred to in paragraph 45, the ADC's submission indicates that it does not consider Goomax's evidence submitted to the Review Panel is 'relevant information'.

49. The role of the Review Panel is not to conduct its own investigations.[25] Rather its role is to conduct a merits review of whether the Minister's decision is not correct or preferable in relation to the Reviewable Grounds and within a limited review framework. 'Relevant information' was considered in *Yara AB*[26] and it was commented that there is specific and limited information to which the Review Panel

[24] ADC submission dated 19 December 2025, 16-18.
[25] *Yara AB v Minister for Industry, Science and Technology* [2022] FCA 847 [182].
[26] *Yara AB v Minister for Industry, Science and Technology* [2022] FCA 847 [175].

may have regard in undertaking a review. Paragraphs 33 to 36 above provide more detail regarding the issue of 'relevant information'.

50. In short, the Review Panel is required to consider information that was before the Commissioner to which regard was had, or should have been, in the report to the Minister. Whether information provided to the Review Panel is 'relevant information' becomes a key determinant as to whether it may be considered.

51. The Review Panel examined the confidential information provided by Goomax and dealt with in Inquiry 657. Further information was also sought from the ADC at a conference on 11 December 2025 in relation to:

    a) its findings in REP 657,

    b) the information in REP 657 'Confidential Attachment 22',

    c) the spreadsheet in REP 657 titled '657 - Exporters – Raw material purchases considered by the ADC'.[27]

52. The ADC advised that Goomax had claimed in its REQ that its suppliers were not SIEs or SOEs but had not provided any supporting evidence. The ADC conducted desktop research, referring the Review Panel to the specific references linked to Goomax's suppliers. The ADC outlined the desktop research undertaken in relationship to the ownership of one of the major manufacturers/suppliers to Goomax and it also referred to information it had obtained in earlier inquiries undertaken in relation to the measures in place, and in particular, ADC Reports 543 and 609.[28]

53. The ADC's submission dated 19 December 2025 indicates that it had information regarding the ownership of one of Goomax's suppliers, as this supplier also provided raw material to Jinxiecheng.[29]

54. Following consideration of the ADC's submission, indicating that one of Goomax's suppliers was also a supplier to Jinxiecheng and found not to be in receipt of the LTAR subsidy, the Review Panel repeated the desktop research referred to above.

[27] Non-confidential conference summary with the ADC dated 11 December 2025.
[28] Non-confidential conference summary with the ADC dated 11 December 2025.
[29] ADC's submission dated 22 December 2026, 17-18.

This is based on information before the Commissioner. This research entailed consideration of the open-source research of the ownership of Goomax's suppliers based on the references provided by the ADC at the 11 December 2025 conference. This research suggested that another of Goomax's suppliers was privately owned and not a SIE/SOE.

55. On the basis of this research, the Review Panel considered that further consideration of the ownership of Goomax's major suppliers/manufacturer was required through a reinvestigation. The Review Panel required the Commissioner to review the status of the ownership of Goomax's major suppliers/manufacturers in relation to whether they are SIEs or SOEs for the purposes of determining if Goomax was in receipt of the LTAR subsidy.

56. On 19 January 2026, the Review Panel wrote to the Commissioner requiring that a reinvestigation be conducted, pursuant to s 269ZZL of the Act, into the Goomax finding in REP 657 that it was in receipt of a LTAR subsidy.

57. On 20 March 2026, the Commissioner provided RR 657 which states that the manufacturers/suppliers of aluminium billet provided to Goomax were not SIEs or SOEs for the purposes of the LTAR subsidy. Accordingly, Goomax was not in receipt of the LTAR subsidy as it did not receive raw material from public bodies.

58. RR 657 indicated that Capral made a submission to the Commissioner's preliminary reinvestigation report. This related to its concern regarding the admissibility of evidence relied upon in the preliminary reinvestigation report and noting that Goomax continues to receive other subsidies identified in REP 657. The Commissioner addressed both of these issues in its report.

59. The Review Panel convened a conference with the ADC to obtain further information on the revised variable factors for Goomax.[30] This was on the basis that, the Review Panel considers that there was no benefit from the LTAR subsidy to Goomax as Goomax's major suppliers/manufactures were not SIEs or SOEs.

60. The ADC advised that Goomax's revised subsidy amount is [redacted] (confidential subsidy information: [redacted] and the

[30] Conference summary dated 23 March 2026, 2.

revised effective duty rate is 0.9 per cent. The ADC advised that the other variable factors remained unchanged.

Conclusion

61. This ground of review succeeds as the Commissioner has found that the entities supplying the raw material of aluminium billet to Goomax were not SIE's or SOEs and Goomax was not in receipt of the LTAR subsidy.

62. Accordingly, the decision of the Minister is not correct or preferable in relation to this ground.

Xingfa: Ground One

The Minister erred in constructing Xingfa's normal values by relying on non-arms length transactions between related parties.

Claims

63. Xingfa states that it '… seeks review specifically of the Commissioner's determination of the billet premium component within its normal value which relied on costs derived from a non-arms length transactions between related entities within the PMI group'.[31]

64. Xingfa states that:

    a) the ADC compared the primary aluminium prices of selected exporters against a constructed benchmark (to reflect an equivalent import price unaffected by the alleged particular market situation in China) using:

        i. LME price, plus

        ii. The Major Japan Premium ('MJP'), and

        iii. Inclusive of a billet premium.[32]

[31] Xingfa's Application, 9.
[32] Xingfa's application, 10.

b) the ADC made a comparison of this benchmark with Xingfa's aluminium billet purchases. It found that Xingfa's billet purchases were below the benchmark for 11 months of the period of inquiry.

c) the ADC stated that:

> *… the benchmark's billet premium component is derived from Malaysian import contracts referenced by another of the sampled cooperating exporters, Press Metal International Ltd (PMI), which involves transactions between PMI and its related entities in Malaysia.*[33]

Xingfa considers the billet premium which is an element within the calculation of the normal value referred to above is in error due to being based on the transactions involving PMI related parties.

65. Xingfa claims that the ADC's (and Minister's decision) relating to the construction of the normal value should be based on Xingfa's actual (and verified) costs relating to its conversion of ingot into billet rather than the use of billet premium costs derived from PMI's transactions with its related Malaysian entities referred to above.

66. Xingfa considers the transactions used by the ADC were not subject to competitive and independent market conditions as they were based on non-arms length transactions and did not reflect Chinese market conditions, and accordingly, overstate the normal value.

67. Xingfa makes a series of claims in its application in this regard which the Review Panel has grouped into two categories:

a) Billet Premium - PMI related party transactions, and

b) What Xingfa considers is the correct approach to the constructed normal value: Use of Xingfa's actual conversion costs which it claims would be consistent with recent World Trade Organization ('WTO') Report in *Australia – Anti-Dumping and Countervailing Measures on Certain Products from China* (WT/DS603/R).

[33] Xingfa's Application, 9.

Billet Premium - PMI related party transactions

68. Xingfa considers that the ADC determination of the billet premium component within its normal value is unreasonable and incorrect as it relies on costs derived from non-arms length transactions between related parties within the PMI group. Xingfa considers the billet premium:

    a) was unverified against market conditions,

    b) was not appropriate as it was not subject to market considerations and potentially reflects corporate objectives (transfer pricing or internal allocations) rather than market competition and conditions,

    c) may embed transfer pricing strategies or internal allocations not aligned with third party market rates.

    d) distorts the purpose of using a surrogate benchmark by the use of transfer pricing arrangements as these may have different objectives than dealing with prevailing market conditions (such as supply chain dynamics, energy costs and raw material sourcing).

    e) relies on one exporter's affiliated transactions, which it considers non-arms length and which it understands is based on quotes derived from internal transfers between PMI and its related smelting and extrusion entities in Malaysia, and

    f) was not reliable as it reflects a small volume of imports into China.

    It questions whether the use of the PMI information can be considered reliable information.

69. Xingfa suggests the other reasons it considers the PMI transactions are flawed is there is potential for PMI's data to not have addressed issues such as premiums being '… sensitive to regional supply chains, logistics, and contractual specifics' and that 'PMIs related party contracts, are set by reference to LME + MJP + "Malaysian billet premium"'.

What Xingfa considers is the correct approach to the constructed normal value:

70. Xingfa considers the ADC should have used Xingfa's verified costs and should have used its arms-length domestic purchases of aluminium billet as being reflective of bargaining between unrelated buyers and sellers. It considers it is not appropriate and should not include a billet premium in the benchmark that is greater than Xingfa's actual incurred conversion cost of self-producing billet.

71. Xingfa claims it can opt to self-produce aluminum billet rather than purchase when the prevailing billet premium (i.e., the additional cost charged above the base aluminum price), exceeds its unit conversion cost of processing ingot into billet. Xingfa outlines a range of advantages it accrues by self-production and notes that billet premiums are influenced by market dynamics, such as supply chain constraints, demand fluctuations, or quality factors, which can inflate the cost of purchased billet.

72. Xingfa suggests that given the ADC has used part of its actual costs based on its self-production of billet in the construction of the normal value, it should use that approach as if it had self-produced the entire amount of aluminium billet in its CTM, thus relying on its actual costs. This would be consistent with the above-mentioned WTO panel report as referred to in paragraph 67(b).

Snapshot of ADC findings

73. The ADC states that Xingfa's domestic selling prices are not suitable for use in determining the normal value pursuant to s 269TAC(1) of the Act given the situation in the domestic market in China: see s 269TAC(2)(a)(ii) of the Act.[34] The ADC's analysis of the constructed normal value is outlined in Appendix C: Constructed Normal Value.[35]

74. The ADC calculated the normal value pursuant to s 269TAC(2)(c) of the Act by summing:

[34] A particular market situation has been determined by the Commissioner in relation to the domestic market for aluminium extrusions during the inquiry period for Xingfa. This information is detailed in Appendices A and B of REP 657.
[35] REP 657 Appendix C Constructed Normal Value, 173-198, C4.5 refers to Xingfa's aluminium records, 192 – 195 and C5 deals with the Aluminium cost adjustment, 196.

a) The cost of production of the goods in China calculated by using the cost to make ('CTM') with its primary aluminium costs adjusted by reference to a benchmark:[36] the ADC used a combination of Xingfa's records and an external benchmark (the LME + MJP benchmark) in developing the CTM. It referred to this as the 'equivalent LME + MJP import price or benchmark' in its report. Table 31 titled 'Equivalent LME + MJP import price to China components' details the approach adopted by the ADC, including each item and the reasons underlying the item.[37]

b) Selling, general and administrative costs ('SG&A') on the assumption that the exported goods, instead of being exported, were sold domestically in the ordinary course of trade ('OCOT') in China based on Xingfa's records under section 44(2) of the *Customs (International Obligations) Regulation 2015 ('CIO Regulation')* (the ADC used Xingfa's records for this element);

c) An amount for profit based on data relating to the production and sale of like goods on the domestic market in the OCOT under section 45(2) of the CIO Regulation: the ADC used Xingfa's records for this element and used an amount of profit based on that achieved on all OCOT sales.

75. In assessing the raw material input costs for Xingfa's aluminium CTM, the ADC considered that Xingfa's records relating to the goods were in accordance with Generally Accepted Accounting Principles ('GAAP') of China. The ADC indicates it was not satisfied that Xingfa's aluminium costs reasonably reflected competitive market costs associated with the production of like goods, due to the influence of the GOC in the domestic market of aluminium.[38] The ADC decided not to use Xingfa's records for the purchase of primary aluminium[39] and instead adjusted the benchmark. REP 657 includes the following statement regarding the aluminium cost adjustment:

[36] The billet premium in the normal value in this ground is one of the components in the benchmark.
[37] REP 657,176.
[38] The ADC's analysis of Xingfa's aluminium costs is outlined at C4.5 (REP 657,192-195), C4.1.1 and in 'Confidential Attachment 40 Xingfa Aluminium – Cost Records and in 'Confidential Attachment 36 Aluminium benchmark'.
[39] The ADC indicated that the primary aluminium costs in Xingfa's records were not normal and ordinary and so did not use this component in the calculation of the CTM the aluminium extrusions.

> *The Commissioner has determined, based on the evidence currently before the commission, the aluminium costs by comparing the LME-based benchmark cost to the exporter's actual costs and applying the resulting variation as an adjustment to the exporters' records.*
>
> *The commission used the equivalent aluminium price between PMI and its related entities in Malaysia for the aluminium cost adjustment in this inquiry.*[40]

76. Xingfa used self-produced billet (from ingot) and also purchased billet to produce aluminium extrusions. The ADC noted that both its purchases of ingot and billet were lower than the respective benchmarks.

77. The ADC notes:

> *… the function of the LME price for 'price discovery' and as reference prices for physical contracts demonstrate that the LME cash prices are sufficiently reliable and representative for use in determining a market-based cost in China. With the addition of regional premiums and other costs, this is considered an appropriate replacement as it reasonably represents a market driven cost for primary aluminium available to producers in China in the absence of market induced distortions that existed during the inquiry period. In this regard, the commission considers the LME +MJP benchmark as a suitable proxy for primary aluminium given its close relationship to prices of imports of aluminium into China, which indicates that it in fact a price that is paid by Chinese manufacturers. The commission considers this is apt to yielding the cost of producing primary aluminium in China.*[41] (emphasis added)

Adjustments under s 269TAC(9) of the Act were made to enable a comparison of the normal value and the export price. A dumping margin of 4 per cent was established for the inquiry period.

78. In response to Xingfa's submission following the publication of the SEF 657, the ADC made adjustments to the constructed normal value to '…reflect that a

[40] REP 657, 196.
[41] REP 657, 80.

proportion of the billets used in the production of the goods were self-produced from ingot… '.[42] These adjustments include:

a) The requirement to adjust values to reflect local market conditions and the cost of production in China,

b) An adjustment to the billet benchmark by calculating the weighted average of:

(i) Xingfa's self-produced billet cost calculated by adding the monthly billet conversion costs incurred by Xingfa to the ingot benchmark for the same month, and

(ii) monthly billet benchmark prices used by the commission, adjusted to reflect Xingfa Aluminium's inland delivery cost.[43]

The ADC's calculation of Xingfa's CTMS is in REP 657 'Confidential Attachment 18' and its normal value is in 'Confidential Attachment 19'.

Submissions

Capral

79. Capral proposes that Xingfa has not correctly represented the ADC's analysis of Xingfa's costs in relation to whether they reflected competitive market costs due to the GOC's influence in China's aluminium market. It claims that Xingfa's conversion costs were 'not normal and ordinary' due to the distortion in the aluminium market. It claims that it was appropriate for the ADC to use a benchmark in such circumstances and that Xingfa is challenging the particular market situation assessment by the ADC.[44]

80. Capral supports the finding of the particular market situation and the use of a benchmark. It comments that '… had the benchmark been based solely on market economy ingot and billet between unrelated parties, it would likely have been *higher*

[42] REP 657, 80.
[43] REP 657, 179.
[44] Capral's submission dated 16 December 2025, 5-7.

than the benchmark used. Related party transactions typically understate rather than overstate costs…'. [45]

ADC

81. The ADC's submission centres on its assessment of the scope of Xingfa's ground. It considers the ground focuses on whether:

    a) the transactions between PMI and its related party supplier (in Malaysia) were arms length; and

    b) the Minister erred in constructing the Xingfa's normal value by relying on the billet premium in the aluminium benchmark because it was based on non-arms length transactions.

82. It proposes that certain of Xingfa's arguments go beyond its stated ground pursuant to s 269ZZG(5)(c) of the Act and as referenced in the s 269ZZI notice. The specific arguments the ADC claim are unrelated to the grounds of review include.[46]

    (a) the use of a billet premium based on transactions between related parties from Malaysia to China uses an '… an external benchmark to determine the cost of production in China, without proper justification or adjustment to Chinese specific factors, in contravention of s 269TAC(2)(c) of the Act and Article 2.2 of the WTO Anti-Dumping Agreement'; and

    (b) whether it was appropriate to use a billet premium in the benchmark which is greater than Xingfa's own conversion costs of self-produced billet as Xingfa would choose to self-produce in certain circumstances.

83. The ADC refers to the consideration of arms length transactions as follows:

    a) the use of arms length is used in relation to normal value and export price determination,

    b) 'arms length' is not specifically defined and s 269TAA outlines 'particular circumstances' that may be treated as not being treated as arms length,

[45] Capral's submission dated 16 December 2025, 7.
[46] ADC's submission dated 19 December 2025, 26.

c) there is no specific legislative requirement that transactions being used as part of a benchmark be arms length, and

d) there is no explicit requirement that information used in a constructed normal value must be based on arms length transactions.

84. The ADC refers to the WTO ADA Article 2.2.1.1 in relation to the constructed normal value. It discusses the circumstances under which an exporter's records may not be used and draws attention to the following:

> *Neither the Act, the Regulation, nor the WTO Anti-Dumping Agreement provide explicit rules as to the information may be used in such circumstances where an exporters' records are not used. The Commission considers that such information as is used must be apt to determine "*the cost of production or manufacture of the goods in the country of export" *as per s 269TAC(2)(c)(i).*[47]

85. The ADC suggests that if the Review Panel does not accept the Commissioner's submission regarding the reviewable grounds it provides comments on Xingfa's application which reflect the ADC's findings in relation to the determination of normal value. (These are outlined in the section dealing with the Snapshot of ADC findings).

86. The ADC notes that Xingfa's application does not concern:

a) the use of a constructed normal value,

b) the assessment of particular market situation, or

c) the assessment of whether its records reasonably reflect competitive market costs.

87. The ADC considers certain arguments focus on Xingfa's preferred outcome rather than its stated ground. The ADC elaborates on other aspects of its findings from REP 657 relating to the use of Xingfa's recorded costs of conversion and the costs of production in China. [48]

[47] ADC submission dated 19 December 2025, 22.
[48] ADC's submission dated 19 December 2025, 18-28.

Legislation

88. Appendix B outlines the relevant legislative provisions related to the determination of the normal value and arms length transactions.

Analysis

89. Xingfa's ground centres on whether the normal value, constructed pursuant to s 269TAC(2)(c) of the Act, is incorrect due to the inclusion of a flawed aluminium billet premium cost within the aluminium billet cost.[49] It considers that the ADC relied on what it considers are non-arms length transactions to establish this cost. Xingfa proposes that the billet premium component used in constructing the normal value should be based solely on Xingfa's actual conversion costs of ingot into billet as it considers this the correct or preferable decision.[50]

90. The ADC's approach to determine the billet premium component used in the CTM aluminium extrusions was based on the weighted average of Xingfa's monthly costs for the self-produced billet (monthly conversion cost plus the ingot benchmark cost) and the monthly billet benchmark prices (as adjusted to reflect Xingfa's inland delivery costs).[51] As referred to in paragraph 74, the aluminium billet benchmark price is based on the transactions of PMI's related Malaysian suppliers of billet to China and derived from PMI's costs.[52] Paragraph 78 details the cost elements used in the calculation of the benchmark.

91. The ADC, in its submission, suggests that certain claims made to support the reviewable ground are focused on Xingfa's preferred approach to the construction of the normal value, proposing the use of its actual conversion costs. It suggests that these claims are unrelated to the stated 'reviewable ground' and are out of

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[49] REP 657 Section C4.1.1, 175 explains the meaning of the billet premium:
The billet premium in the aluminium billet cost is an amount that reflects the additional costs to convert an ingot to a billet for use in the production of aluminium extrusions. The aluminium billet cost is a major raw material included in the CTM aluminium extrusions.

[50] Xingfa's response to Question 10 (What the correct or preferable decision ought to be) in its review application and also referred to in Conference Summary 12 December 2025.

[51] The proportion is calculated by reference to self-production of billets and purchases of billet by Xingfa.

[52] REP 657 Table 31, 176 outlines the full details of the source of each of the cost components as does page 131. The ADC also provided a detailed explanation of its approach as referred to in the 5 December 2025 Conference Summary (ADC), 3-6.

scope as the stated ground refers to whether certain information used to construct the normal value relied on non-arms length information.

92. Xingfa's ground is specific as to its view that the normal value is in error due to its reliance on what is considers are non-arms length transactions between PMI and its associated companies in Malaysia. It claims the reliance on such transactions is unreasonable and an error.

93. In order to understand the approach adopted by the ADC, it is necessary to step through the construction of the CTM aluminium extrusions. This enables the context of Xingfa's ground to be understood in terms of the use of the billet premium in the aluminium benchmark calculation used in the construction of the normal value.

94. The aluminium benchmark (as adjusted for Xingfa: see paragraph 78) was used in constructing the normal value for Xingfa. It has three cost components, as outlined in paragraph 74. Xingfa states that it is only focused on the non-arms length transaction, that is the billet premium component. It proposes not using the aluminium benchmark, but rather using its actual conversion costs applied to the ingot benchmark as the aluminium cost.[53] In its submission, Capral commented that Xingfa's conversions costs were 'not normal and ordinary' due to the distortion in the aluminium market in China (see paragraph 79).[54]

Context

95. The normal value is based on the domestic selling price in the country of export, subject to certain conditions, unless the Minister is satisfied that there is an absence or low volume of sales of the like goods that would be relevant, or there is a situation in the export market that sales are not considered suitable. This latter scenario is referred to as a particular market situation.

96. In REP 657, the ADC (and the Minister) found that a particular market situation existed. Appendix A of REP 657 contains the reasons for this assessment. The normal value was determined pursuant to s 269TAC(2)(c) with reference to Regulations 42, 43 and 45 of the *Customs (International Obligations) 2015*: see Appendix B of REP 657.

[53] Conference Summary 12 December 2025, 3-4.
[54] Capral's submission dated 16 December 2025.

97. The ADC, as referred to in paragraphs 73 to 78 above, assessed whether the aluminium ingot and billet costs reflected competitive market costs by comparing each of the selected exporters' input costs with the relevant benchmark. This was outlined in detail by the ADC at conference on 5 December 2025.[55] For the selected exporters, including Xingfa, the aluminium costs were below the benchmark. The benchmark was based on PMI's related party transactions with certain adjustments specific to each exporter. In Xingfa's case, the additional adjustment referred to in paragraph 78 was used in the calculation of the CTM for Xingfa.

98. Following SEF 657, Xingfa made a submission regarding its normal value, and the ADC adjusted the amounts used in the CTM to reflect certain of Xingfa's costs. The modified approach acknowledged that the billet premium amount it used included profit and selling cost components which it considered were not relevant to Xingfa's self-produced billet. It modified the billet premium applied to reflect a weighted average of monthly benchmark prices (adjusted) and an amount relating to Xingfa's self-produced billet cost (based on the monthly billet conversion cost to the Xingfa ingot benchmark). The billet premium retains an element related to the benchmark derived from PMI's transactions.

99. The ADC did not agree with Xingfa's proposal that the billet premium be based on Xingfa's costs of converting ingot into billet rather than an external billet benchmark price. Xingfa's preferred option [redacted] (confidential Xingfa CTM information: [redacted] Xingfa advised that it can self-produce billet or purchase billet, and that it decides which option to pursue based on commercial decisions.

100. The ADC indicated that during the inquiry period, Xingfa [redacted] in any month. (confidential production information: [redacted] The ADC considered '… the commission is not satisfied that Xingfa would switch to full self-production when it was cheaper to self-produce billet'.[56]

101. Xingfa objects to the use of the billet premium included in the benchmark given it considers it is based on related party transactions that it considers to be non-arms

[55] Conference Summary 5 December 2025 (ADC), 3.
[56] REP 657, 179.

length. Whereas the ADC's finding is that such related party transactions can be considered arms length and are suitable for use in the construction of the normal value.

102. Capral, in its submission, suggests that Xingfa is challenging the particular market situation assessment by the ADC. It supports the ADC's finding of the particular market situation and the use of a benchmark. It further comments that '… had the benchmark been based solely on market economy ingot and billet between unrelated, it would have likely been *higher* than the benchmark used'. [57]

103. The Review Panel has considered the scope of the reviewable ground. The wording is very specific and directed at whether the normal value is in error due to its reliance on the PMI related party transactions on the basis that such transactions were not arms length in relation to the billet premium.

104. Xingfa outlines its arguments as to what it considers should be the correct or preferable decision if its reviewable ground is successful in its review application, question 10 is relevant in this regard. These arguments do not necessarily demonstrate why its stated ground is not correct or preferable. The Review Panel considers that to this extent, arguments supporting what Xingfa considers is the preferred outcome do not necessarily deal with whether the normal value is flawed. In relation to its reviewable ground, Xingfa must first establish that there is an error related in the use of the transactions between PMI and its related parties in the construction of the normal value that would be in error to require the consideration of its preferred decision.

105. The Review Panel has considered Xingfa's claims related to its specific ground. Those arguments that do not deal with whether the transactions between PMI related parties are suitable for use in the billet premium included in the normal value, that is, what Xingfa considers should be the costs used in the billet premium are not further addressed.

106. Xingfa questions whether the use of the PMI information for the billet premium can be considered reliable information given it is based on related party transactions.

[57] Capral's submission dated 16 August 2025, 7.

107. Xingfa raises issues regarding the suitability of the use of PMI's data in respect to the billet premium and identifies the potential for 'transfer pricing strategies' and 'internal allocations not aligned with third party rates'. Xingfa also questions the reliance on a benchmark which represents one exporter's affiliated transactions.

108. The Review Panel considered the ADC's analysis at 'Confidential Attachment 36 Aluminium Benchmark' and the outline of the approach adopted by the ADC in section C4.1.1. In particular, the nature of PMI's transaction outlined in 'non-arms length assessment of raw material purchases from related suppliers' and the confidential information that supports this analysis.[58]

109. In SEF 657, the ADC had considered PMI's purchases of aluminium from Malaysian related parties were below the contracted LME+MJP import price to China and non-arms length on this basis. The ADC, following additional information provided by PMI, was satisfied that the prices paid by PMI were at arms length. The ADC's analysis is contained in REP 657 'Confidential Attachment 44 PMI – arms length assessment of raw material purchases'.

110. The Review Panel considered the confidential information and analysis undertaken by the ADC in relation to PMI's transactions as outlined in:

    a) 'Confidential Attachment 44 – PMI arms length assessment of raw material purchases from related supplier'; and

    b) REP 657 Table 31 regarding the validation of information to external sources.

111. The Review Panel considers that the ADC has addressed the concerns raised by Xingfa's ground associated with relying on related party transactions by undertaking additional steps to assess the suitability of relying on these transactions. This is evident in the information referred to above. While Xingfa raises issues associated with whether it reflected the Chinese market conditions and the relative volumes of the transactions in question, the Review Panel has considered the information available to the ADC in this regard and satisfied with the approach adopted by the ADC. It notes the comments from the ADC that 'The commission has deliberatively sought to isolate and remove the effects of those not normal and ordinary

[58] REP 657, 73-74.

circumstances, as they have the effect of masking the actual cost of production of aluminium in China.'[59]

112. The Review Panel has considered Xingfa's specific claims in the context of its ground. There is no evidence apparent that suggests that the related party PMI transactions should be treated as other than arms length transactions. The Review Panel considers there is information that supports the ADC's finding that the PMI transactions can be considered arms length.

113. The Review Panel observes that the ADC's submission indicates that there is nothing in the legislation that would preclude a benchmark within a cost element being based on a non-arms length transaction. Each case is unique and is dependent on the particular circumstances and information available.

114. The Review Panel agrees and adopts the findings of the ADC that the PMI related party transactions can be treated as arms length transactions and the billet premium in the adjusted aluminium benchmark is suitable for use in the construction of the normal value. The Review Panel agrees that this approach is consistent with the legislation. Xingfa's ground fails in this respect. Accordingly, the Review Panel does not consider that the Minister erred in relying on PMI's related party transactions in constructing the costs used to determine the normal value for Xingfa.

115. The Review Panel agrees that Xingfa's normal value including the billet premium in the aluminium cost has been constructed in accordance with s 269TAC(2)(c) of the Act. Xingfa arguments relating to its preferred approach to calculating the billet premium in the normal value require no additional consideration.

Conclusion

116. Xingfa has not been successful in establishing that the Minister erred in constructing Xingfa's normal value by relying on the transactions between the related parties of PMI. The Review Panel agrees and adopts the ADC's findings that the PMI transactions can be treated as arms length and relied upon in the determination of Xingfa's normal value.

[59] REP 657, 196.

117. Accordingly, the Minister's decision is correct or preferable in relation to the stated ground.

PMAA

118. PMAA's Ground one proposes that the Minister could not have been satisfied that PMI had been found to be dumping and that it would continue or recur. This largely relies on the claims made in Ground two in respect to whether the normal value is incorrect. Accordingly, the Review Panel has chosen to deal with Ground two first, followed by Ground one and Ground three. While PMAA is the applicant in this review, there are references to both, PMAA and to PMI, who is the exporter and a related party to PMAA.

Ground Two

119. The Minister's determination of the normal value was incorrect, which impacted on the alteration of the variable factors and the assessment of the dumping margin.

Claims[60]

120. PMAA states that the constructed normal value was incorrectly determined due to:

    a) adjustments in relation to the level of trade and related 'jobbing' not being made or incorrectly made, it refers specifically to the profit calculation;

    b) adjustments in respect of rebates not being made or incorrectly made;

    c) an incorrect treatment of certain financial costs/expenses being included in the SG&A in the constructed normal value.

    PMAA claims this led to the incorrect determination of the variable factor of the normal value and impacted the assessment of the dumping margin. It provided its calculations of its preferred normal value that it considers addresses these issues in its spreadsheet 'Confidential Dumping Margin Calculation 15 Tab PMI (h) normal value'.[61] This spreadsheet has been referred to as DM 15 in this report.

[60] PMAA's Application for review.
[61] PMAA provided 15 different spreadsheets representing different permutations of the above-mentioned claims.

121. PMAA proposed the normal value is incorrect and raised a number of issues in its application. These claims are outlined below:

a) *Level of Trade and jobbing*

There are a number of issues identified in this category:

(i) There was a level of trade adjustment in the normal value constructed for PMI, and this was incorrectly calculated. PMAA suggests that an error had occurred as the dumping margins found for distributors were positive while the dumping margins found for manufacturers were all negative for the same model control code ('MCC') category of goods. It notes that manufacturers are at a level of trade below distributors and are paying less for the same goods than for the goods sold to a distributor. It suggests that this is not credible as ordinarily prices to distributors are at a lower level to support their ability to on-sell to other parties. PMAA suggests that when the constructed normal values in 'Confidential Attachment 14 – PMI- Normal value' are reviewed there are also anomalies. It claims that certain MCC goods, while having different characteristics, had identical CTM and cost to make and sell ('CTMS') while their domestic profit and ex-work prices were different.

PMAA suggests that the anomaly is located in the calculation of the unit profit[62] and the ADC attributed this to a level of trade difference which was not investigated by the ADC. It claims PMI provided this information to the ADC in its submission dated 6 August 2025. PMI's explanation centred on certain goods that underwent 'further processing' (referred to as 'jobbing') by a third party (on behalf of PMI) and this added to the costs and higher prices for the finished 'fabricated' product. These products were included in the assessment of the dumping margin. PMAA suggests that the 'further processed' goods are not exported to Australia and should not be considered 'like goods' and not included in normal value determination. It claims these

[62] See 'Normal Value spreadsheet DM 15 Net profit'. [redacted] Confidential profit information [redacted]

are fabricated goods and are out of scope. It suggests this has inflated the constructed CTMS for the particular MCC goods. PMAA claims an adjustment is required and the ADC did not address this issue in REP 657 and has not made a proper comparison of the normal value for the relevant MCC to the matching export sales.

(ii) PMAA suggests that the ADC has confused the 'level of trade' adjustment with the treatment of aluminium extrusions subject to 'jobbing'. It also proposes that this could be dealt with by the creation of a separate (and different) MCC category with an adjustment, or if maintained in the existing MCC category, an appropriate adjustment pursuant to s 269TAC(9) to remove the 'further processing' cost to enable a comparison with the exported goods. This mirrors the claims made to the ADC in PMI's submissions following SEF 657.

PMAA claims that an adjustment should have been made for the sales of certain goods to the distributor level of trade as this includes the sale of a different category of goods which are not the same as the goods exported to Australia. That is, PMI did not make sales of the 'jobbed' goods to Australian distributors but in China it made domestic sales of the 'jobbed goods' to a particular distributor.

The sales were included in the MCC category of goods that were exported to Australia. PMAA claims an adjustment is required on this basis. PMAA suggests that the ADC made a level of trade adjustment (section 6.5.3) to the costs used in the constructed normal value by the manner in which it calculated the level of profit to be applied for each level of trade.[63] The ADC based the profit level on all domestic sales in the OCOT.

PMAA claims the profit margins for PMI domestic sales to distributors are materially higher than its sales to its manufacturer customers due to an 'incorrect level of trade or jobbing adjustment' which impacted these calculations and increased the profit level and impacted the dumping margins. The difference in profits was [redacted] and led to

[63] REP 657, 76.

the very different normal values between the two levels of trade. PMAA has provided calculations for the differences it considers should have been reflected in the construction of the normal values as outlined in the 15 different spreadsheets attached to its review application.

PMAA also referred to PMI's submission to the ADC of 6 August 2025, which stated:

> *...the differences in CTM and 'prices' in the comparison between export price MCCs and constructed normal value MCCs is due to the difference in costs that have not been taken into account in the existing MCC structure. Because those differences have not been taken into account in the existing MCC structure and its application, adjustments are mandatorily required by Section 269TAC(9) to account for those differences. Such adjustments do not appear have been made, nor explanation provided as to why they have not been made. Hence a 'proper (like-for-like) comparison' has not occurred with the (unfortunate) erroneous outcome. This requires correction.*

PMI then went on to submit that:

> *To ensure a 'proper comparison', one of the following approaches is required:*
>
> 1. *an adjustment to the constructed normal value under Section 269TAC(9) of the Customs Act 1901; or*
> 2. *the creation of a separate MCC specifically for products subject to further processing; or*
> 3. *a determination that such products fall outside the scope of the goods under consideration and are excluded from dumping calculations. – that is, they are not 'like goods' due to being 'further processed products' and, therefore, not possessing characteristics closely resembling those*

exported to Australia, the goods under consideration (GUC).

PMI contends that amendment of the MCC structure as proposed by it is the preferable approach in the interests of transparency and accuracy, as opposed to making adjustments to the constructed normal value pursuant to Section 269TAC(9). PMI respectfully submits that the calculations contained in Confidential Attachment E – - Further Processing & Finishing - MCCs and Sales - CTM Domestic & Australia, support its contentions in this regard.[64]

b) *Adjustment for rebates*

PMAA claims that the ADC (and the Minister) did not take into account certain rebates payable and paid by PMI in the constructed normal value on the basis that PMI had not included this information in its REQ. PMAA indicates that the ADC had dismissed this claim on the basis that PMI had listed the lump sum of rebates and had not apportioned these to actual sales. It refers to its submission to the ADC dated 11 August 2025 in which it provided additional information on the rebates PMI pays in its domestic market sales. It claims that the ADC has not acted consistently with its legal obligations or policy in relation to rebates. It considers the constructed normal value is incorrect for this reason. PMAA provided details of its calculations of a revised normal value to account for rebates.

c) *Inclusion of financial costs and expenses in SG&A*

PMAA claims that the ADC erred in including financial costs in the SG&A amount used to construct the normal value. It claims that under GAAP in China, 'finance charges' are not included in the operating expenses in PMI's SG&A.

PMAA suggests that:

[64] Quote from PMAA's application and referring to comments in REP 657, 71 referring to PMI's submission to the ADC dated 6 August 2025 and REP 657, 37.

> *"finance charges" or "finance expenses" refer to 'costs incurred independently of SG&A costs, whereas finance charge or expenses related to external and fund management, including interest expenses, interest income, bank charges etc. As such, they are different in nature from SG&A and are presented separately in a company's income statement.*[65]

PMAA suggests these expenses should not have been included in the SG&A element in the constructed normal value.

122. PMAA also claims that certain transactions occurred in September 2023 and were included in the December 2023 quarter in the dumping margin calculation for PMI. It considers these transactions should not have been included in the dumping margin calculation as they are outside the inquiry period.

123. PMAA claims that the dumping margin based on the corrected (and its preferred) normal value should be [redacted]

Snapshot of ADC Findings

124. The ADC states that PMI's domestic selling prices are not suitable for use in determining the normal value pursuant to s 269TAC(1) of the Act given the situation in the domestic market in China: see s 269TAC(2)(a)(ii) of the Act.[66] The ADC determined that the normal value be calculated pursuant to s 269TAC(2)(c); its analysis of the constructed normal value is outlined in Appendix C: Constructed Normal Value.[67]

125. The ADC calculated the normal value pursuant to s 269TAC(2)(c) of the Act by summing:

    a) the cost of production of the goods in China calculated by using the CTM for PMI, with its primary aluminium costs adjusted by reference to a benchmark. The ADC used the raw material cost by apportioning the adjustment to only

[65] PMAA's Application, 24.
[66] A particular market situation has been determined by the Commissioner in relation to the domestic market for aluminium extrusions during the inquiry period for PMI. This information is detailed in Appendices A and B of REP 657.
[67] REP 657 Appendix C Constructed Normal Value,173-198. C4.4 PMI's records, 187-192.

Chinese-sourced ingot or billet based on the proportion of aluminium purchased within China (the benchmark refers to the LME + MJP benchmark).

b) SG&A, on the assumption that the exported goods, instead of being exported, were sold domestically in the OCOT in China based on the company's records under reg 44(2) of the *CIO Regulation*. The ADC used PMI's records for this element and advised that following a submission from PMI it corrected the formula and reflected that it included amounts relating to tax surcharges and finance expenses.

c) an amount of profit for each level of trade based on the profit achieved on all domestic sales of like goods in the OCOT under section 45(2) of the CIO Regulation. The ADC used PMI's records for this element.[68]

126. The ADC also referred to PMI's 6 August 2025 submission that certain of the domestic CTM data in its REQ included 'only further worked' products. The ADC removed these lines from PMI's CTMS listing, noting such items had not been included in the domestic sales listing. PMI advised of other errors and the ADC made certain changes to the relevant spreadsheets. The ADC specifically dealt with the related party transactions relating to aluminium purchases from related parties in 'REP 657 Confidential Attachment 44: PMI arms length assessment of raw material purchases from related suppliers'.

127. PMI's normal value is shown at 'REP 657 Confidential Attachment 13: PMI CTMS and Confidential Attachment 14: PMI – Normal Value'.

128. The dumping margin for the goods exported to Australia during the inquiry period is 17.7 per cent.

129. There were a range of issues raised with the ADC by PMI in relation to the determination of the normal value.[69] As certain of these issues are the subject of PMAA's application for review, there is a summary of the specific ADC comments from REP 657 below:

[68] A separate profit level was calculated for each level of trade.
[69] REP 657 refers to meetings with PMI on 10 July (referring to errors it had made in its REQ, PMI's submissions dated 6 August 2025, 18 July 2025, 29 July 2025 and 15 August 2025).

130. Goods subject to further processing: The goods under consideration are aluminium extrusions as outlined in paragraph 9 of this report and referred to in Section 3.3.1 of REP 657. The ADC outlines the MCC categories (Section 3.4 of REP 657) based on the key characteristics of the goods that influence price. An additional MCC category was accepted by the ADC but other requests for changes of categories were not accepted. The MCC categories are shown at Table 13 of REP 657.[70]

131. Jobbing: The ADC noted that PMI included in its submission of 6 August 2025 following SEF 657, a request for an additional MCC category referred to as 'jobbing' that it considered should be adopted by the ADC. The ADC stated:

> *PMI submitted that 'jobbing' refers to 'further processing' undertaken to the product. PMI describes 'jobbing' as a process where aluminium extrusion products undergo further processing either internally by PMI or externally by third parties before being sold to the customer. This includes activities such as precision cutting to non-standard lengths, or the application of specialised coatings by external processers.*[71]

PMI provided updated cost and sales data indicating transactions that included 'jobbing'.

132. MCC categories: The ADC indicated that it met with PMI following the SEF to discuss the variable factors. PMI advised that there were certain errors in its REQ relating to MCCs and data relating to the level of trade adjustment applied and the associated amount of profit calculated. The ADC indicated that it made certain adjustments following this meeting and requested the provision of a written submission on the issues raised. It modified certain MCC categories and also excluded domestic sales of Aluminium profiles with cross section greater than 421 mm and extrusions with a thermal break.

133. In relation to the 'jobbing' goods, the ADC noted that this information had not been provided in PMI's REQ. It further stated that it considered PMI's claim but that it did not consider '…sufficient reliable information and evidence has been furnished regarding the additional 'jobbing' category to establish that this change to the MCC

[70] Table 13 at page 39 includes the category of 'Further Processing' as an option in the MCC structure.
[71] REP 657, 37.

structure is warranted.'[72] It also noted the late stage that this information had been provided to the ADC and commented that this restricted its ability to undertake the assessment of the information in terms of reliability and sufficiency. It noted that Capral submitted to the ADC that the goods are still aluminium extrusions as they possess the nature and physical characteristics of an aluminium extrusion.

134. Level of Trade adjustment: PMI claimed that the ADC had misapplied a level of trade adjustment in the constructed CTMS the goods. PMI stated that the adjustment was applied on the basis that a customer operated as a 'wholesaler/distributor' and others being 'manufacturers' with different prices. It claims this is not a level of trade prices issue but rather one related to the purchase of 'jobbed' or further processed items: see also paragraph 131 above.

135. The ADC indicated that it had relied on PMI's level of trade classifications provided in its REQ and accepted its claims in this regard. It stated that it compared PMI's domestic sales to customers with different levels of trade as PMI had claimed that there is a difference in prices between different levels of trade. It outlined the approach adopted which is shown in 'EPR document 25: PMI file note for the preliminary variable factors assessment'. The ADC noted that it had observed differences in prices between different levels of trade and based its decision on the information PMI provided. The ADC noted the legislation requires all domestic sales of 'like goods' to be included in the profitability assessment.

136. SG&A amount: The ADC advised that it used the SG&A amount based on domestic sales in China provided in PMI's REQ by PMI. This included tax surcharges and finance expenses as part of the final SG&A amount applied pursuant to s 269TAC(2)(c)(ii) of the Act.

137. Rebates payable: The ADC indicated that following PMI's 29 July 2025 submission which identified some inconsistencies regarding the constructed normal value, PMI also referred to the amount applied of SG&A and the treatment of rebates. The ADC made certain adjustments in light of PMI's submission. However, it did not agree with the proposed treatment of rebates in the normal value calculation on the basis that in PMI's REQ it stated it did not provide any on-invoice or off-invoice to

[72] REP 657, 37.

customers in relation to the sales of like goods. It listed a lump sum of rebates but had not apportioned this to the actual sales of like goods.

Submissions

Capral

138. Capral's submission questions whether the information provided by PMAA in its review application comprises 'relevant information'. It suggests that new files, new information, or attempts to provide new interpretations of existing information should be dismissed by the Panel Member. It also questions whether the '… late-stage submission…undermines orderly inquiry processes.'[73]

139. Capral claims that the 'jobbing' argument was submitted following the SEF in a submission dated 6 August. It refers to the ADC's comments in this regard noting the late stage of the inquiry and its inability to ascertain the 'sufficiency and reliability' of the data. Capral referred to its submission to the ADC indicating that such 'jobbing' products remained within the scope of aluminium extrusions.

140. Capral referred to rebates and the fact that PMI had initially indicated that no rebates were provided despite introducing rebates data following the SEF. It claims that the ADC should rely on the exporter's questionnaire responses in this regard.

ADC

141. The ADC's submission referred to the fact that initially it had chosen to look at three exporters given the large number of exporters. PMI requested that it be included in the selected exporters and the ADC accepted, increasing the number to four. It indicated that while not undertaking verification visits, it had conducted assessments for deficiencies, data analysis, comparative analysis as well as other activities to assess the reliability and relevance of the information provided. It outlined the steps undertaken in this assessment.[74]

142. In respect to the 'jobbing' adjustment and the submissions provided by PMI to the ADC within the 20-day statutory period for submissions following the SEF 657, these were considered by the ADC. It outlined the approach adopted in relation to

[73] Capral's submission dated 16 December 2025, 8-9.
[74] ADC's submission dated 19 December 2025, 5-14.

model matching of the goods exported to Australia with the domestically sold goods. It emphasised the importance of the MCC categorisation approach and that it has sought to establish this coding approach early in the inquiry process. It refers to ADN 2024/085 in this regard and that interested parties needed to provide proposals to modify no later than 15 December 2024.

143. The ADC advised that while PMI did make submissions prior to the publication of SEF 657, this was not supported by sufficient evidence, and in particular the relevant sales and cost data to enable an assessment of '... genuine differences in models produced by PMI'. It outlines the type of deficiencies in this regard.

144. Following SEF 657, PMI provided a submission dated 6 August 2025 which proposed a new MCC category for 'jobbing'. The ADC referred to this in REP 657 as follows:

    a) PMI – post SEF submissions on MCC pages 37 to 38,

    b) 'Confidential Attachment 43 PMI MCC analysis', and

    c) Section 6.5.1 PMI claims for consideration after SEF 657- MCC's pages 69 to 71.

    The ADC flags the issues it had reconciling the information provided in its original REQ on sales and costs to the new information, but ultimately '… does not consider that sufficient reliable information and evidence has been furnished regarding the additional 'jobbing' category to establish that this change to the MCC structure is warranted'. The ADC noted that it did accept certain of the changes proposed by PMI in its 6 August 2025 submission.

145. The ADC referred to the Review Panel's 1 December 2025 conference held with PMAA where it was acknowledged that PMI had not provided certain cost information in its REQ to the ADC relevant to the cohort of goods that underwent further processing by a third party in respect of 'jobbing'. The ADC indicated that it could not have been expected to know that costs were missing from an exporter's REQ.

146. In respect to the 'finance expenses' inclusion in the SG&A amount calculated for use in the normal value, the ADC's submission noted that it did not add a separate

finance charge into PMI's SG&A. It accepted the data provided in PMI's REQ. It stated that PMI declared in its REQ the 'main operating costs' in the audited profit and loss ('P & L') and such costs were said to include selling expenses, admin expenses, taxes & surcharges and finance expenses. The submission referred to the ADC's usual approach that finance charges (for example bank charges, interest expenses) are included in SG&A as it is a '… normal part of doing business'. It adopted the amount provided by PMI in its REQ.

147. In respect to 'rebates', the ADC's submission indicated that PMI had indicated in its response to the REQ that it did not provide on-invoice or off-invoice or issue credit or debit notes to its customers in its domestic sales during the inquiry period. It also advised that no rebates were recorded in PMI's domestic sales listing. In response to PMI's 11 August 2025 submission, the ADC did reconcile 'offsetting negative' (credit) transactions. While it did refer to a lump sum of rebates following the SEF, it had not been apportioned to the actual domestic sales, so no adjustment was made.

PMAA

148. PMAA's submission refers to its view that the ADC failed to take into account the 'jobbed' goods sold on the domestic market. It refers to its submissions of 6 and 11 August 2025 in this regard. It notes that it provided to the Review Panel (in the conference on 1 December 2025) information on the further processing costs incurred by PMI in relation to certain of its sales, that had not been included in its REQ. It considers this should be considered 'relevant information' in terms of s 269ZZK of the Act.[75]

149. PMAA considers that the normal value was erroneous and has provided in its review application '… each of the possible alternate dumping margins determination based on that correction as well as others identified in the Application'. Its preferred dumping margin is outlined in 'Confidential Dumping Margin spreadsheet 15', noting this results in a negative dumping margin. It considers this supports its position that dumping did not occur during the inquiry period, nor since REP 609, and the Minister should not have secured the continuation of anti-dumping measures.

[75] PMAA submission (1) dated 22 December 2025.

150. PMAA focuses on the differences of certain of its domestic sales that it claims relates to further processing and are therefore not 'like goods' to those exported to Australia. It indicates that this information was provided to the ADC in submissions dated 6 and 11 August 2025. It suggested that if its 'like goods' claim was not accepted by the ADC then it should have been dealt with via an adjustment pursuant to s 269TAC(9) of the Act to deal with the differences between the goods exported to Australia and those goods sales made in the domestic market.

151. PMAA claims that the different products mix in the sales to domestic distributors as opposed to manufacturers and between those two levels in its export sales has led to an error in the determination of the constructed normal value for these two levels. It says the errors relate to:

    - *a constructed normal value of MCCs that included products that had undergone further processing and, therefore the additional CTMS for that further processing in the constructed normal value, with*

    - *export prices of MCCs that do not include products that had undergone such further processing with the associated additional CTMS and higher prices and, therefore, are at lower prices than would otherwise have been the case, i.e. if such further processed products(s) had been exported to Australia.*[76]

152. PMAA referred to Review Panel Report No. 104 in circumstances where the Review Panel member excluded the profit of certain sales of 'high-end' models from the profit level that applied to the constructed normal value in relation to the exported goods given such sales did not include the 'high-end' goods. It considers a similar situation exists in relation to PMI's sales of the further processed goods.

153. PMAA also referred to its concerns regarding the ADC failing to deal with issues it flagged in its submissions to the ADC dated 6 August and 11 August 2025 relating to the determination of the normal value and the dumping margins.

[76] PMAA submission dated 22 December 2025, Attachment B, 8.

Legislation

154. Extracts of the relevant legislative provisions relating to normal value are shown at Appendix B.

Analysis

155. PMAA's main theme in this ground is that the normal value is incorrect which means the dumping margin is also incorrect. It refers to the need for an adjustment pursuant to s 269TAC(9) of the Act as well as to correct the treatment of rebates and the amount of SG&A. Certain information provided refers to what it considers should be the preferred outcome, whereas other information relates to the specific methodology applied to the construction of the normal value. Prior to dealing with this latter issue, it is worth addressing certain arguments raised by PMAA that were also raised in PMI's submissions following SEF 657.

156. PMAA claims that certain goods referred to as the 'jobbed' goods should not be included in the normal value determination. It proposed three options for the ADC to consider.[77] These have also been outlined in its review application to the Panel. The Review Panel has phrased these options as follows and agrees with PMAA that the different options could have consequences in terms of the calculation methodology used to construct the normal value:

    (a) The 'jobbed goods' should not be considered 'like goods',[78] and all costs and sales revenue of the 'jobbed goods' should be removed from consideration of the normal value,[79] or

    (b) The 'jobbed goods' are considered 'like goods' and an additional MCC category should be created to reflect the specific characteristics of these 'jobbed goods' and/or further processed goods, or

    (c) The 'jobbed goods' are considered 'like goods' and adjustments to the normal value pursuant to s 269TAC(9) of the Act, may be undertaken to address

[77] Referred to in PMI's submissions to the ADC on 6 August 2025 and 11 August 2025.
[78] See s 269T(4) of the Act.
[79] In the 1 Dec 2025 conference with PMAA, it indicated that certain goods manufactured by PMI are further processed but there are also goods that are undergo different further processing by a third party and it refers to these as 'jobbed' goods. The terms are not interchangeable.

differences between the goods exported to Australia and the goods sold on the domestic market in China.

157. In PMAA's review application, option (a) is used as the preferred option in the construction of the normal value as it excludes the cohort of 'jobbed goods' CTM (the 'jobbed costs' and presumably associated revenues) from the calculation. This is shown in its DM 15 spreadsheet. However, the specific claims in its review application propose s 269TAC(9) of the Act adjustments as outlined in option (c). There are some inconsistencies in the arguments presented in PMAA's review application given it moves between the different options (a), (b) and (c) and presents a range of permutations of its claims in its dumping margin spreadsheets.

158. The approach adopted by the Review Panel is first to deal with whether the 'jobbed goods' are 'like goods' (option a) or if an additional MCC is required (option b): see paragraphs 160 to 183. If it is established that either the 'jobbed goods' are not 'like goods, or the additional MCC proposal is valid, it would require a different approach to dealing with PMAA's claims which are largely centred on the application of s 269TAC(9) adjustments as well as other claimed errors.

159. As will become apparent from the discussion outlined below, the Review Panel does not agree with PMAA's claims in relation to 'like goods' or that a change to the MCC structure is required. Accordingly, the specific claims referred to in PMAA's application relating to s 269TAC(9) adjustments and other errors, are addressed at paragraphs 187 to 243 relating to what PMAA refers to as 'anomalies' in relation to the profit, level of trade and jobbed goods as well as rebates and SG&A claims.

Like Goods and the MCC structure

160. At the 1 December 2025 conference, PMAA advised that certain assumptions were adopted in its dumping margin spreadsheets attached to its review application and prepared to support its claims as to the correct normal value. Its preferred option included the removal of a cohort of domestic transactions (sales of 'jobbed goods' to [redacted] in the construction of the normal value as it considers these are not 'like

goods'. This reflected certain claims that the CTMS and profitability calculations were incorrect on this basis.[80]

161. PMAA stated that '… the terms 'further processing' and 'jobbing' are often used as interchangeable. This is not necessarily the case as some products are subject to further processing and are still the goods under consideration (GUC). Whereas PMAA contends there are some further processed/jobbed that should no longer be considered the GUC'.[81] I have referred to the 'jobbed goods' in this report to reflect PMAA's terminology and references to goods sold to [redacted] in this regard.

162. The Review Panel notes that the issue of 'like goods' and 'jobbing' was also referred to in PMI's submissions to the ADC, dated 6 and 11 August 2025 dealing with the MCC categories, like goods, level of trade, jobbing and other aspects of the normal value and dumping margins. PMI's 6 August 2025 submission[82] states as it does not export any 'jobbed goods' to Australia, sales of such goods on the domestic market of China should not be included as 'like goods' for normal value purposes.

163. PMAA further claims that the 'jobbed goods' are not 'like goods' to the goods exported to Australia because these goods are subject to additional processing, including precision cutting and anodising after production at PMI's plant.[83] PMAA made references to the differences between these goods in the conference held on 1 December 2025 and in its submission to the Review Panel. PMAA considered the 'jobbing' made a significant difference to the goods to the extent they were no longer 'like goods'.

164. In REP 657, the ADC referred to PMI's submission regarding whether the 'jobbed goods' were 'like goods' as well as the suggestion to create a new MCC. The ADC decided that a change to the MCC structure was not warranted for certain reasons.[84] The ADC did not specifically refer to the 'jobbed goods' but indicated that

[80] PMAA explained at the 1 December 2025 conference that its sales to the distributor, [redacted] included 'jobbed goods' that had been captured in the MCC category [redacted][80] While this MCC category of aluminium extrusions had been exported to Australia, such exports did not include any of the 'jobbed goods'.
[81] Conference Summary 1 December 2025, 7.
[82] PMI submission to the ADC dated 6 August 2025, 13.
[83] PMAA Application, 15 – 16 and Conference Summary 1 December 2025, 9.
[84] REP 657, 27 'PMI-post SEF submissions on MCC' and at page 71 in Level of Trade.

reg 45(2) required that the profit amount be calculated by data relating to the production and sale of the 'like goods' by the exporter or producer of the goods in the OCOT.

165. The ADC, in its profit calculation included all domestic sales in the OCOT of what it considered to be the 'like goods'. The ADC did amend, based on PMI's submissions, the goods within certain MCC categories in the calculation of the dumping margins as well as exclude certain domestic sales.[85] The ADC also removed certain 'only further worked goods' from the domestic CTMS listing, noting that '… sales of these goods were not identified by PMI in its domestic sales listing'.[86] It made a series of other changes to its calculations in response to issues identified by PMI.

166. The ADC had regard to the issues of an additional MCC category and 'jobbing' and what was included in the 'like goods' assessed for normal value purposes as it made a series of adjustments to the MCC and the CTMS information provided in PMI's submission. It did not agree to an additional MCC category being created.

167. In the outline of goods under consideration section in REP 657, the ADC dealt with the submissions from other exporters, including PMI, regarding the proposed MCC structure.[87] In particular, it noted the submission of PMI on 'jobbing' and commented:

> *This information was not provided in PMI's original REQ and it is not clear how PMI differentiated transactions that included 'jobbing' and those that did not. While the commission has considered PMI's claim, it does not consider that sufficient reliable information and evidence has been furnished regarding the additional 'jobbing' category to establish that this change to the MCC structure is warranted.*[88]

168. The ADC also outlined in its submission to the Review Panel the approach adopted to establishing the appropriate MCC structure as outlined in paragraph 142.

[85] REP 657, 70.
[86] REP 657, 73.
[87] REP 657, 33-39.
[88] REP 657, 37.

169. The Review Panel has considered the claims regarding why the 'jobbed goods' are different on the basis that the goods sold to [redacted] underwent [redacted] on behalf of PMI. PMAA states this results in PMI incurring additional costs which in turn were reflected in higher prices. This includes consideration of the references in REP 657 to PMI's claims and PMI's submission of 6 August 2026 to the ADC relating to the MCC structure as well as other submissions on normal value.

170. The Review Panel noted the ADC also commented in its submission to the Review Panel on its approach to PMI's application in relation to 'like goods' and the MCC: see paragraphs 141 to 145.

171. Section 269T defines 'like goods' as follows:

> *in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration, or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration. (emphasis added)*

172. In REP 657[89], the goods description of aluminium extrusions specifically refers to the inclusion of:

> *… the goods include aluminium extrusions that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. Aluminium extrusion products that have been painted, anodised, or otherwise coated, or worked (e.g. precision cut, machined, punched or drilled) fall within scope.* (emphasis added)

173. The Review Panel reviewed PMI's 6 August 2025 submission to the ADC on MCC categories as well as the ADC's comments in REP 657 in 'PMI – post SEF submissions on MCC'.[90] The Review Panel considered other information presented in REP 657 as well as that provided in PMAA's review application.

174. PMAA claims that the 'jobbing', which it considers means that the products are not 'like goods' to the goods exported to Australia, relates to the additional processing,

[89] The goods description is also paragraph 9 of this report and the s 269ZZI Notice relating to this review.
[90] REP 657, 37.

including precision cutting (to different lengths) and anodising.[91] It also suggests that the further manufacturing process performed by a third party shifts it to not falling within the goods description. PMAA made references to the differences between these goods in the conference held on 1 December 2025 and in its submission to the Review Panel.

175. The Review Panel reviewed PMAA's claims and evidence submitted in its:

a) application;

b) submission;

c) submissions to the ADC following SEF 657; and

d) further information provided at conference.

176. The Review Panel has considered the issue of whether the 'jobbed goods' were not 'like goods' to those exported to Australia, by reference to the:

a) definition of like goods in s 269T of the Act,

b) the goods description outlined in the initiation notice and referred to in paragraph 9,

c) the information referenced by PMAA,

d) further information provided at conferences,[92] and

e) references by the ADC in REP 657.

177. The definition of 'like goods' enables goods that are not identical to those exported to Australia to be considered as 'like' if they have characteristics closely resembling the goods under consideration. The goods description referred to above specifically

[91] PMAA Application, 15 – 16 and Conference Summary 1 December 2025, 9.

[92] PMAA in its comments on the accuracy and confidentiality of the 9 January 2026 conference summary provided a range of comments. To the extent that this information had already been provided at conference/s, in PMAA's Application and in its submissions, the Review Panel has taken this information into account. The Review Panel noted that submissions pursuant to s 269ZZJ closed on 22 December 2026. Any comments that appeared to be in the form of an additional submission have not been taken into account by the Review Panel (see s 269ZZK of the Act).

states that aluminium extrusions that have been anodised or worked, including by precision cutting, fall within the goods description. It does not differentiate the 'likeness' of the goods based on which entity performed the manufacturing process.

178. Based on the information provided by PMAA, the goods that underwent 'jobbing' fall within the definition of s 269T of the Act of 'like goods'. While not identical, they have characteristics closely resembling the goods under consideration and include particular characteristics referred to in the goods description. The Review Panel considers that PMAA has not provided information that differentiates the 'jobbed goods' to the extent that they would no longer fall within the goods description outlined in paragraph 9 of this report.

179. On this basis, the Review Panel is not persuaded by PMAA's claim that the jobbed goods are not 'like goods'. Therefore, all domestic sales of 'like goods' remain under consideration and are to be dealt with in accordance with the relevant legislative provisions in constructing the normal value. To the extent that an adjustment relating to 'jobbing' under s 269TAC(9) is appropriate or required, is considered and is dealt with below, noting that PMAA claims that such goods:

    a) underwent additional processing by a third party;

    b) PMI incurred additional costs; and

    c) the goods were sold at higher prices.

180. The Review Panel has considered whether an additional MCC category is required for the 'jobbed goods' as proposed by PMAA. PMAA did not provide additional information to that already provided to the ADC and referenced as PMI's 6 August 2025 submission in its review application.

181. The ADC has outlined its approach to the MCC structure in REP 657 and refers to PMI's submission regarding the 'jobbed goods' and provided additional comments in its submission to the Review Panel. The ADC decided that a change to the MCC structure was not warranted for certain reasons.[93] The Review Panel notes the ADC's statement referred to in paragraphs 141 to 145 which outlines the approach it adopted.

[93] See REP 657 Section 3.5 Proposed amendments to MCC structure, 35 – 39.

182. The Review Panel has reviewed the following information:

    a) the information referred to in REP 657 on MCC,

    b) PMI's submissions to the ADC regarding the creation of an additional MCC,

    c) the confidential analysis undertaken on PMI's MCC (REP 657 Confidential Attachment 43) which includes information on other exporter's MCC categories,

    d) the information supplied in PMAA's application and submissions to the Review Panel.

    This information does not persuade the Review Panel that the ADC's assessment of whether an additional MCC is justified is in error.

183. The Review Panel has considered PMAA's claims and agrees with the ADC that there is insufficient information provided in PMI's submission to justify an additional MCC category. In addition, the Review Panel has also considered the information supplied in PMAA's review application, its submission and at conference and considers sufficient differences have not been established in the context of REP 657 Table 13 to justify an additional category in the MCC structure. Accordingly, the Review Panel does not agree with PMAA proposed additional MCC category.

<u>Omission of certain costs information:</u>

184. In the 1 December 2025 conference, PMAA further identified that it had become apparent that the additional costs incurred for the 'jobbing' had not been included in PMI's REQ CTM spreadsheet listing but the 'direct' production costs for the goods subject to 'jobbing' as well as the revenues from sales of these products had been included in the CTMS and Domestic Sales listings.

185. The Review Panel understood the explanation provided regarding the 'jobbing' costs not being included in the REQ CTM information related to PMI's view that it needed to include only its direct manufacturing costs. However, in effect, this meant that the domestic CTM information for the 'like goods' provided to the ADC is likely understated as it did not include the 'jobbing costs' the subject of the claimed adjustment. Given it included the domestic revenues from sales of these goods to

the Chinese market, this creates an anomaly. This omission would likely impact the profit level calculation undertaken by the ADC under CIO regulation 45(2). I will refer in this report to these excluded costs as the 'specific missing costs'.[94]

186. PMAA advised that these additional costs were not recorded as part of PMI's plant CTM, they were recorded elsewhere in PMI's accounts and financial records. PMAA later submitted that it was not separately identified in the REQ and claims there is no requirement to do so. The Review Panel disagrees with PMAA in this regard as there are areas within the REQ CTMS spreadsheet listing that refers to 'other costs'. Ordinarily, it is understood that CTMS requires all costs associated with the production/manufacture of the goods to be included, particularly when such information is being used to compare with the selling prices of such goods.

PMAA's claims for adjustments in its application

187. In its review application, PMAA proposes that there are certain errors in the calculation of the constructed normal value. These claims have been characterised as follows:[95]

    a) The calculation of the profit level to be applied in the construction of the normal value of aluminium extrusions is incorrect for three reasons:

        (i) the level of trade adjustment is incorrect,

        (ii) there was no adjustment made in relation to what PMAA refers to as 'jobbing' given the exported goods did not include any goods that had been subject to 'jobbing', whereas certain domestic sales had been subject to 'jobbing'. PMAA proposes that an adjustment is required to deal with this difference. The other options referred to in

[94] Following the 9 January 2026 conference, PMAA indicated that there was no omission in PMI's response to the REQ relating to the failure to include fabricated costs in the REQ. At the 1 December 2025 conference, PMAA indicated that PMI only included its own production costs in the REQ records, not for sending specific goods for [redacted] This difference in description appears to relate to whether the costs were in the CTMS spreadsheet listing. At the 1 December 2025 conference, PMAA confirmed such costs were not in the CTMS listing as it only included its own production costs. The Review Panel has relied on this statement.

[95] PMAA outlined these as errors relating to adjustments for level of trade and jobbing of the products exported, adjustments in respect to rebates and accounting for certain financial costs and expenses. It refers to anomalies and adjustments being required. The Review Panel has summarised these in relation to the relevant legislative provision in the context of the constructed normal value.

PMAA's application were outlined in the preceding paragraphs (160 to 183),[96] and

(iii) the amount of the domestic sales revenue was overstated, due to the rebates not being deducted, which led to the amount of the profit being overstated - this impacted the rate of profit.

b) The calculation of the SG&A amount to be applied in the calculation of the normal value of aluminium extrusions was incorrect as it included financial expenses.

188. The approach adopted by the ADC to the construction of PMI's normal value is similar to the approach adopted for each of the selected exporters. That is, the normal value is constructed pursuant to s 269TAC(2)(c) of the Act with reference to CIO Regulations 42, 43 and 45 and s 269TAC(9) as to any cost adjustments required to ensure that the normal value is comparable with the export price.

189. The Review Panel notes that s 269TAC(9) of the Act requires the Minister to make adjustments to the costs to ensure that the constructed normal value can be properly compared with the export price. There are specific requirements in determining the costs methodology to be used with respect to (and as relevant) in reg 43 (determine the CTM), reg 44 (determine the SG&A) and reg 45 (determine the profit) of the CIO Regulations. These provide the methodologies to be considered in constructing the normal value. The Review Panel has dealt with PMAA's claims in terms of the relevant legislative provisions relating to the determination of costs and profit as well as whether s 269TAC(9) of the Act adjustments are required.

190. As referred to earlier, PMAA provided 15 different spreadsheets detailing the normal value based on the different permutations of its claimed errors. At conference, PMAA explained each of the scenarios and amended the index summarising the different calculations.[97] As referred to in paragraph 120, PMAA's preferred normal value is outlined in 'DM 15 spreadsheet'.

[96] PMAA indicated that these claims were also provided by PMI to the ADC in its submission dated 6 August 2025.
[97] Conference Summary 1 December 2025.

a) <u>The calculation of the profit level to be applied in the construction of the normal value of aluminium extrusions:</u>

(i) Level of Trade Adjustment:

191. In relation to whether the level of trade adjustment in the constructed normal value is incorrect, the ADC assessed that there were differences in the prices in the domestic market between the two levels of trade with respect to sales to manufacturers and distributors: see REP 657 page 76. This was based on the information provided in PMI's REQ. The ADC calculated normal values for distributors and manufacturers by assessing the different profit rates on domestic sales to these levels. The approach aligns with reg 45 as well as s 269TAC(9) of the Act.

192. At the 1 December 2025 conference, PMAA agreed that sales are made to both manufacturers and distributors in the domestic market.[98] During the conference, PMAA accepted that the issue it has referred to as a level of trade claim in its review application relates to the different product mixes in the cohort of sales made to the domestic market as well as the incorrect costs being used to calculate the amount of profit. PMAA acknowledged that there is a level of trade difference in its pricing between its domestic sales to distributors and manufacturers.

193. The Review Panel has assessed PMAA's level of trade adjustment and considers that the ADC has determined that the constructed normal values should reflect sales to the two levels of trade apparent in the domestic market. This approach aligns with the relevant legislative provisions referred to above. PMAA has failed to establish that the 'level of trade' approach recommended by the ADC to the Minister is incorrect. However, it is apparent that the calculation of the profit amount used in the constructed normal value has an error relating to the exclusion of 'specific missing costs' in the CTMS spreadsheet listing used in the calculation of the profit. This will be dealt with in the 'jobbing' claim below.

(ii) Jobbing:

194. The Review Panel notes that PMAA's claims indicate that an adjustment to the normal value is required pursuant to s 269TAC(9) of the Act to deal with the

[98] Conference Summary 1 December 2025, 6.

difference between the 'jobbed goods' sold to [redacted] in the Chinese domestic market and the goods exported to Australia. PMAA indicated at the 1 December 2025 conference that the goods sold to Australia include sales of the same MCC but do not include any of the specific 'jobbed goods'. PMAA indicates the selling prices [redacted] were higher to reflect the additional costs incurred by PMI for the 'jobbing' associated with these sales. These third-party costs were not included in PMI's CTM spreadsheet listing, as outlined at conference with PMAA on 1 December 2025.[99]

195. In REP 657, the Commissioner recommended that the Minister base the CTM for normal value purposes on the CTM of the goods exported to Australia: see paragraph 125. PMAA, in its review application, states that the ADC considered no adjustment was required to take into account the price differences of the 'jobbed goods' and considers this an error. The Review Panel notes that s 269TAC(9) specifically refers to cost differences, not price differences. PMAA proposes that an adjustment should be made to account for an error in the normal value to account for the additional costs associated with the 'jobbed goods'.

196. The Review Panel considers there has been a misunderstanding as to what the ADC included in the CTM aluminium extrusions in its recommended normal value in REP 657. The ADC did not include the 'jobbed costs' in its CTM calculation for the goods exported to Australia. This was on the basis that this information was not included in the relevant spreadsheet listing: see PMAA's application indicating that this information was not separately identified or included in the plant's CTM. The ADC used the CTM of the models exported to Australia. This CTM did not include the 'specific missing costs'.

197. In order to require an adjustment to the normal value per s 269TAC(9) of the Act, it must be established that there is a cost that requires adjustment to enable a proper comparison of the normal value with the export price.

198. The Review Panel considers that as these additional costs were not included in the CTMS spreadsheet listing provided by PMI and used by the ADC to calculate the CTM, the claimed difference in costs associated with the 'jobbing' does not arise. In other words, there is no 'jobbing costs' included in the CTM listing used by the ADC

[99] Conference Summary 1 December 2025, 4-6.

to construct the normal value, as the 'specific missing costs' were not included in the information before the ADC. None of these costs were included in either the CTM of the domestic or the exported goods. At the conference on 1 December 2025, the Review Panel was advised that: '… it was noted that this particular MCC category was exported to Australia, but products included in this MCC exported to Australia did not include any further processed goods.'[100]

199. The Review Panel considers that to the extent that PMI did not include the 'specific missing costs' associated with 'jobbing' in the cost information presented to and used by the ADC in the normal value construction, there is no cost adjustment required pursuant to s 269TAC(9) of the Act.

200. On this basis, PMAA's argument regarding the requirement to make an adjustment pursuant to s 269TAC(9) for the differences between the costs associated with sales made on the domestic market and the costs associated with sales for export fails as there was no difference in relation to the CTM information used in the constructed normal value. However, if the 'jobbed costs' had been included in the CTM information, an adjustment may have been required.

201. The issue that arises in relation to the 'specific missing costs' is that it creates an error in the profit calculation used as part of the construction of the normal value. This is because the profit amount is calculated by deducting from domestic sales revenue the CTMS (which includes the CTM of the goods and the domestic SG&A).[101] The implication of this error is:

    a) the domestic CTM of a particular MCC category may be incorrect and understated, and

    b) the calculation of the profit used for the distributor level of trade may be incorrect and overstated:

    potentially impacting the calculation of the normal value and dumping margin.

202. The profit calculation prescribed by s 269TAC(2)(c) of the Act, requires the Minister to determine the amount of the profit on the assumption that the 'like goods'

[100] Conference Summary 1 December 2025, 4.
[101] Profit and SG&A cost amounts are based on the assumption that the exported goods had been sold for domestic market in the OCOT.

exported to Australia had been sold in the OCOT in China's domestic market. See CIO Regulation 45(2).

203. In REP 657, the ADC established different profit amounts for the sales to distributors and to manufacturers, to give effect to the requirement to construct the normal value that is properly comparable with the export price pursuant to s 269TAC(9) of the Act. This is the level of trade adjustment referred to in the earlier claim that requires recalculation due to the 'specified missing costs' referred to above.

204. At the 1 December 2025 conference, PMAA provided further information relating to the 'specific missing costs' incurred for the 'jobbing' and advised that certain of the costs relating to the last quarter in 2023 were not included in the confidential information provided.[102] Subsequently at the 19 December 2025 conference, PMI advised that it would be able to update the Review Panel with the December 2023 quarter data relating to the above-mentioned costs. The Review Panel acknowledged the offer and indicated it would require further consideration by the Panel Member regarding whether such information can be considered 'relevant information'.

Relevant information:

205. The Review Panel considered the 'specific missing costs' information as to whether it can be considered 'relevant information' in relation to s 269ZZK(6)(d) of the Act. The 'specific missing costs' information was not included in PMI's REQ domestic sales costs spreadsheet, though PMI's direct manufacturing costs were included. The full cost information was not provided to the Commissioner in the relevant REQ CTM spreadsheet listing.

206. In its submission to the Review Panel, PMAA referred to the information provided to the Commissioner via submissions dated 6 and 11 August 2025 relating to issues associated with the normal value and dumping margin calculations.[103] PMAA also suggests that the Review Panel can have regard to the 'jobbing costs' information as it considers it is further information related to relevant information provided at a

[102] Conference Summary 19 December 2025, 3-4. PMAA identified that this was an incomplete amount as certain transactions were missing.
[103] PMAA submission dated 22 December 2025 2-10

conference and outlines the more complete 'jobbing cost' information referred to in PMI's 6 and 11 August 2025 submissions to the ADC.[104]

207. The Review Panel has examined the information provided to the ADC by PMI and notes that it did provide certain information relating to the 'jobbing costs' undertaken in respect to the sales to [redacted]. This was framed in relation to whether the MCC categories were correct, what the 'jobbing' entailed and whether a s 269TAC(9) adjustment was required. PMI referred to the updated costs and sales data provided to the ADC to support its claims in the above-mentioned submission. PMAA suggests that the views in PMI's submission following SEF 657 concerned costs and differences in the MCC's provides a sufficient nexus to the amounts provided to the Review Panel in relation to the 'specified missing costs' to enable such information to be considered 'relevant information'.[105]

208. The Review Panel notes that the submission following SEF 657 to the ADC (and the confidential spreadsheets) are similar to those provided to the Review Panel.

209. Capral in its submission raises concerns that PMAA are raising claims that should not be considered as 'relevant information' as it is new files, information and arguments.

210. The ADC's submission's only reference to the issue is: 'The commission could not have been reasonably expected to account for costs missing from an exporter's REQ or to have acted otherwise.'[106]

211. The Review Panel has considered the issue of the 'specific missing costs' and considers this information is 'relevant information' for the purposes of the determination of the normal value. This is because these costs were referred to in the 6 August 2025 PMI submission relating to the issue of sales to [redacted] notwithstanding the total amounts were not provided. The Review Panel considers that this falls within the definition of 'relevant information' vide s 269ZZK(6)(d) of the Act as the Commissioner could have had regard to this cost information.

[104] PMAA submission, 'Submission – relevant information', 5-6.
[105] PMAA submission dated 22 December 2025, 4-5.
[106] ADC submission dated 19 December 2025, 12.

212. The Review Panel convened a conference on 5 January 2026 to obtain this further information of the 'specific missing costs' from PMAA.[107] In the conference, PMAA provided the updated 'jobbed costs' information which was also provided to the ADC. A separate conference was held on the same date with the ADC to request it to undertake additional calculations, taking into account the 'jobbed costs' and the rebates adjustment (see paragraph 236) to enable the normal value (and as necessary, the dumping margin) to be re-calculated.[108]

213. In the 5 January 2026 conference, the Review Panel requested the ADC to undertake the calculation to include the 'jobbed costs' in the CTMS calculation but not to introduce the 'jobbed costs' into the calculation of the CTM element of the aluminium extrusions used in the construction of the normal value of the goods being exported to Australia.[109] If this was not possible, the Review Panel requested that an adjustment pursuant to s 269TAC(9) of the Act be undertaken to address any differences associated with the CTM of the 'jobbed goods' so as to allow a proper comparison between the normal value and export price.[110]

214. The ADC provided the updated normal value information on 8 January 2026, a copy of which was supplied to PMAA. A further conference was held on 9 January 2026 with the ADC and PMAA to clarify the calculations undertaken by the ADC. The outcome of the recalculations led to an insignificant difference to the normal value and no difference to the dumping margin, given the rounding of the dumping margin to one decimal place: the standard practice adopted by the Commissioner.[111] This will be dealt with further later in this report.

215. In the 9 January 2026 conference, PMAA outlined its concern regarding the calculations undertaken by the ADC. On 12 January 2026, PMAA provided comments on the 5 January 2026 conference summary, referring to the further

[107] The ADC was directed by the Review Panel to calculate the CTM the exported goods in a manner that did not give rise to the need to make an adjustment under s 269TAC(9) for differences between the goods, in light of the inclusion of the further processed costs.
[108] There are other claims that impact the constructed normal value, these are dealt with separately. These relate to rebates impacting sales revenue and SG&A.
[109] Given the 'jobbed goods' cost had not previously been included in the CTM the goods exported to Australia.
[110] Conference Summary with ADC on 5 January 2026, 4.
[111] Conference Summary 9 January 2026, 2.

information requested at the earlier conference. This information as well as the 'other comments' have been attached to the conference summary.

216. PMAA indicates that it considers the Review Panel has not issued the correct instructions to deal with the deficiencies in PMI's normal value as claimed in its application. It made no comment on the actual ADC calculation which was the further information requested in the conference held pursuant to s 269ZZHA of the Act.

217. With respect to PMAA's concern regarding the calculation methodology, the additional 'jobbed costs' were included by the ADC to correct the profit calculation as referred to in PMAA's application. The CTM calculation for the relevant MCC as previously referred to in paragraph 198 above did not include the 'jobbed' costs, and did not require an additional adjustment or correction, as it was based on the CTM MCC's exported to Australia.

218. PMAA's concerns centre on whether an appropriate cost allocation method has been applied.

219. However, the issue being addressed by the Review Panel relates to the correct application of the legislative provisions to construct the normal value for each of the goods exported to Australia pursuant to s 269TAC(2)(c) of the Act. In this regard, as the ADC used the CTM of the exported models which did not include costs associated with the 'jobbing', it was unnecessary to add the "jobbing" costs to the particular MCC that included the jobbed goods as this would have necessitated the removal of these costs by the application of s 269TAC(9) to allow a fair comparison. The domestic CTM for each MCC did not need to be recalculated as the export CTM was used, which excluded the 'jobbed costs'.

220. The 'specific missing costs' were added to the amount of the CTMS to ensure that the appropriate profit amount was applied as required by reg 45(2) of the CIO regs. This profit amount is based on data relating to the production and sales of all like goods in the OCOT in the domestic market. It also necessitated the correct revenue amount to be used. In this regard, the rebate amounts were removed from the total domestic revenue amount to correct that amount for this purpose. There were two errors identified by PMAA which were addressed by the Review Panel by requiring

these re-calculations. The ADC was instructed on this basis and in accordance with the terms of the relevant legislative provisions in the Review Panel's view.

221. The Review Panel notes that the majority of the 'other comments' by PMAA repeat earlier information provided to the Review Panel:

    a) In PMAA's review application,

    b) Obtained as relevant information during earlier conferences, and

    c) In PMAA's submission.

    to this extent, the information has been considered by the Review Panel. The Review Panel has not had regard to other additional arguments made by PMAA in its comments provided following the 9 January 2026 conference in making its recommendation to the Minister, as these were in effect an 'additional submission'.

222. The Review Panel notes that PMAA's submission suggests that in Report 104, the Review Panel excluded the profit from the constructed normal value for Kam Kiu's 'high-end' models.[112] It suggests that the same approach should have been adopted in this case. The Review Panel considered the assessment of Kam Kiu's Ground one and does not agree that the circumstances are similar to those applying to PMI's sales and particularly to the sales to [redacted] It is the circumstances of the current matter that are relevant in this regard.

223. The Review Panel acknowledges that if PMAA had established that, due to the difference between the types of goods within a particular MCC, potential differences between the domestic and export sales arose, an adjustment to the costs may be appropriate under s 269TAC(9) of the Act. Due to the particular circumstances that became apparent following with 1 December 2025 conference with PMAA this was unnecessary.

224. The Review Panel considers that PMAA has established that the normal value had certain errors, but this did not relate to the inclusion of the 'jobbed costs' charges in the CTM the goods for normal value purposes as the exported models CTMs were used in this calculation. While the calculation of the profit amount was impacted, as these costs were not included in the initial ADC's profit calculation, this was

[112] PMAA submission (1) dated 22 December 2025, 8.

addressed by their inclusion plus the adjusted total domestic revenue (with rebates removed) to calculate the profit pursuant to reg 45(2) of the CIO regulation. The recalculated normal value was not materially different as a result of the errors identified by PMAA's claims.[113]

Dumping Margin - Use of data from outside Inquiry period

225. There is a further issue flagged in PMAA's review application. It claims that the ADC has included in the dumping margin calculation, sales transactions relating to September 2023 which is outside the inquiry period.

226. In order to assess whether this issue is related to the normal value, the Review Panel requested further information from the ADC in the 5 January 2026 conference.[114]

227. The ADC advised that this related to the calculation of the export price rather than the normal value. PMI proposed and the ADC accepted that the order date rather than invoice date would apply to export sales. Certain sales were exported to Australia during the inquiry period which had been ordered in September 2023. As these goods were exported during the inquiry period, they are considered for the assessment of dumping.

228. The Review Panel agrees that the ADC adopted the correct treatment of these goods for the purposes of the dumping margin calculation but notes that this issue is not related to the normal value.

(iii) *Rebates*:

229. The ADC indicated that it had not adjusted the domestic sales revenue for rebates, as PMI in its REQ:

a) had responded 'no' to the questions relating to whether on-invoice or off-invoice discounts/rebates were given in domestic sales; and

b) not included any amounts in the domestic sales spreadsheet in the columns for discounts/rebates.

[113] Conference Summary 5 January 2026 (ADC).
[114] Conference Summary 5 January 2026 (ADC).

230. The ADC referred to PMI's 11 August 2025 submission following SEF 657 regarding negative values in the domestic sales spreadsheet and adjusted negative values in the domestic sales spreadsheet but indicated this did not relate to rebates.

231. At the 1 December 2025 conference with PMAA, it indicated that PMI had issued rebates on certain domestic transactions and detailed the companies in receipt of the rebates, the nature of the rebates and referred to the relevant submissions provided to the ADC.[115]

232. At the 5 December 2025 conference with the ADC, the ADC indicated its understanding of the negative invoices but did not locate rebate information in the relevant spreadsheets.[116]

233. In order to resolve this difference of view, the Review Panel held a further conference on the 19 December 2025 with the ADC and PMAA to obtain further information in relation to the issue of rebates. In particular, to seek from PMAA the exact reference in PMI's REQ domestic sales listing spreadsheet. PMAA advised that there were invoices resolved by the ADC in relation to negative invoices and there were additional amounts relating to rebates in the [redacted] (confidential REQ domestic sales spreadsheet information: [redacted][117]

234. The information was provided by PMI in its REQ domestic sales spreadsheet, though it was not shown in the relevant column. The Review Panel did not locate any references in PMI's REQ as to its location.

235. Regardless, it was information that was before the Commissioner, and the Review Panel agrees with PMAA that it is appropriate to deduct the rebates. This impacts the amount of domestic revenue used in the calculation of the profit amounts in the constructed normal value.

236. As referred to in paragraph 212, the Review Panel convened a conference on 5 January 2026 with the ADC and PMAA to seek further information in relation to re-calculating the normal value. This included the deduction of the rebates from the

[115] Conference Summary 1 December 2025, 7-8.
[116] Conference Summary 5 December 2025 (ADC), 10.
[117] Conference Summary 19 December 2025, 2-3.

domestic sales revenue identified as being in error by PMAA, thereby reducing the domestic sales revenue.[118] The ADC provided the updated calculations on 8 January 2026, and this was also provided to PMAA by the Review Panel.

(b) SG&A: the calculation of the SG&A amount used in the normal value of aluminium extrusions was incorrect as it included financial expenses

237. PMAA claims that the ADC incorrectly included financial expenses in the SG&A amount used in the construction of the normal value. It proposed that in accordance with GAAP in China, finance charges are not included in operating expenses in SG&A.[119]

238. In the 1 December 2025 conference with PMAA, it suggests a deduction for finance expenses of [redacted] per cent, being based on the finance expense divided by net revenue, be removed from the SG&A figures.[120] PMAA commented in its application:

> *Specifically "finance charges" or "finance expenses" refer to costs incurred independently of SG&A costs, whereas finance charge or expenses related to external and fund management, including interest expenses, interest income, bank charges etc. As such, they are different in nature from SG&A and are presented separately in a company's income statement*.[121]

239. In the 5 December 2025 conference, the ADC advised that it had not added a financial charge to the SG&A amount provided by PMI in its REQ, but used the amount of SG&A provided by PMI calculated from its profit and loss statement.[122] It noted that following SEF 657, PMI had made a submission that there was an error in the SG&A due to a formula error: it referred the Review Panel to REP 657 page 76 where it identified that it had corrected the formula. The ADC noted at conference that it considers finance costs, such as interest expenses and bank charges, are usually included in the SG&A when constructing a normal value.

[118] Conference Summary 5 December 2025 (PMAA & ADC).
[119] PMAA claims that under GAAP in China, 'finance charges' are not included in the operating expenses in PMI's SG&A.
[120] Conference Summary 1 December 2025.
[121] PMAA's Application, 24.
[122] Conference Summary 5 December 2025 (ADC), 7.

240. The Review Panel notes that the term 'operating costs' includes all the costs associated with a business manufacturing and selling goods. This ordinarily includes finance costs associated with bank charges and interest charges.

241. PMAA supplied information in the 1 December 2025 conference of an extract of PMI's profit and loss statement that showed the:

> [redacted][123] (confidential PMI Financial information: [redacted] (emphasis added)

242. The Review Panel notes that items referred to as operating expenses are taken to refer to the costs associated with the operations of the business whereas non-operating income and expenses are not. Ordinarily, expenses shown as operating costs should be included in the SG&A amount as they relate directly to the production and sale of goods. The Review Panel agrees with the ADC that the [redacted] in the profit and loss statement provided by PMI in its REQ is appropriate for inclusion in the SG&A amount used in the construction of the normal value.

243. PMAA's claim that the finance expense should be removed from the SG&A fails. In addition, PMAA provided an explanation of the amount of [redacted] per cent it considered represented the finance expense as a proportion of net revenue and described the process it had used to arrive at this amount. This was unable to be reconciled with the confidential profit and loss statement provided to the Review Panel. The finance expense as a proportion of net sales revenue [redacted] PMI's profit and loss statement. Given the need for adjustment was not established, further information was not sought as to the variance identified between the profit and loss statement provided to the Review Panel and PMAA's claimed amount.

Conclusion

[123] Conference Summary 1 December 2025 at Attachment A, 15.

244. The Review Panel agrees with PMAA that there were errors that impacted the calculation of the profit used in the construction of the normal value:

    a) due to the rebates not being deducted from the domestic sales revenue; and

    b) the profit calculation being based on incomplete information as the 'jobbed costs' had not been included in the CTM spreadsheet listing. The profit calculations to the two levels of trade were based on the total domestic sales revenue (reduced by the rebates amount) of like goods sold in the domestic market less the CTMS information for these domestic sales. This necessitated the use of the revised domestic sales revenue and the revised total amount of the CTMS of the 'like goods' to correct the profit calculation.

245. The Review Panel requested the ADC to re-calculate the normal value (and dumping margin) to deal with these errors.[124] These were provided on 8 January 2026. There was a slight difference to the normal value from [redacted] to [redacted] and the dumping margin reduced from [redacted] per cent to [redacted] per cent. Given the dumping margin is expressed to one decimal place, the dumping margin remains unchanged. There is no material difference to PMI's dumping margin as outlined in REP 657 as well as in the Minister's published decision (ADN 2025/096) as 17.7 per cent.

246. PMAA's ground has established that there was an error in the calculation of the normal value. The adjusted normal value did not lead to a change in the dumping margin. The Review Panel does not recommend that the Minister revoke the Reviewable Decision in relation to this reviewable ground as it would not be materially different from the Reviewable Decision, pursuant to s 269ZZK(1A) of the Act.

247. With respect to the other claims made in relation to the normal value, the Review Panel concludes that these fail for the following reasons:

    a) (i) The level of trade was correctly identified as relating to two levels: distributor and manufacturer. There was no error in this finding.

[124] Conference Summary 5 January 2026 (PMAA & ADC).

(ii) The 'like goods' and 'jobbing' adjustment: The Review Panel agrees with the ADC's treatment of the 'jobbed goods' as 'like goods' and that such goods should be included in the profit calculation in the determination of the normal value. The Review Panel does not agree with PMAA that there was an error in the ADC's assessment of 'like goods' used in the construction of the normal value. To the extent that PMAA claims a 'jobbing' adjustment pursuant to s 269TAC(9) of the Act is required, this has been addressed as referred to above as the CTM of the goods exported to Australia did not include the 'jobbed costs'. The calculation of the normal value directed by the Review Panel required the 'jobbing costs' to be added to the 'total cost to make and sell and SG&A' and this amount deducted from the corrected total sales revenue to enable the calculation of the profit amounts to the different levels of trade pursuant to CIO regulation 45(2).

b) Finance charges in SG&A: The Review Panel considers that the finance charges should remain included in the SG&A cost to the used in the construction of the normal value for the exported goods.

248. The Review Panel did not agree with PMAA's arguments that the 'jobbed goods' were not 'like goods' or that these should be removed from the calculation of the profit used in the construction of the normal value. The Review Panel agreed with the ADC's assessment that the information and evidence provided did not substantiate the need to create an additional MCC.

Ground One

There was no information, or insufficient information supported by evidence, that dumping by PMI had occurred or would be likely to continue or recur if the Anti-Dumping duties expired

Claims

249. PMAA contends that there was no or insufficient evidence supporting the Commissioner's finding that dumping by PMI had occurred or was likely to continue or recur if the anti-dumping measures expired. It questions the recommendation by the Commissioner to the Minister, as well as the Minister's decision to secure the continuation of the dumping measures.

250. PMAA suggests that the dumping margin found for PMI as set out in REP 657 'Confidential Attachment 15 PMI-Dumping (Tab C)' is incorrect as the normal value was in error. It suggests that as the level of PMI's dumping margin during the inquiry period is incorrect, these findings as well the likelihood of dumping continuing or recurring is also flawed. It states that there was no evidence of dumping or that dumping was likely to continue or recur if the measures expired. It claims the Minister should not have been satisfied in this regard.

251. PMAA indicates its concerns with the approach adopted by the ADC in its inquiry process and in particular its view that the ADC failed to take into account information provided in its 6 August 2025 submission without advising PMI that '… such information was in any way insufficient or unreliable or what additional information and /or evidence was required in this regard…'[125] It also questions whether there was sufficient verification of information and evidence undertaken by the ADC of information provided by interested parties, nor does it consider this was outlined in the report to the Minister. It claims that the ADC did not deal with the issues it flagged about the 'jobbing' issue associated with whether the further processed fabricated products were different to those that had not undergone further processing and whether they no longer possessed the same characteristics of the goods subject to the anti-dumping measures.

252. PMAA claims based on its assessment of the proposed constructed normal value that the dumping margin should have been negative [redacted] per cent. PMAA indicates that this demonstrates that PMI's exports were not dumped during the inquiry period and there is no evidence that dumping would likely continue or recur if the dumping measures expired.

253. PMAA also refers to previous findings that PMI had not been found to be dumping since the review of measures in REP 609 and its view that no finding of dumping should be found in REP 657.

254. Throughout its application, PMAA makes a number of statements in relation to the manner in which the ADC dealt with the inquiry process: such as not verifying information, not seeking clarification, and for relying on incomplete or unverified

[125] PMAA's Application, Attachment B, 20.

data. It also suggests that a different standard was applied to the Australian industry members given only one member fully participated.[126]

Snapshot of ADC Findings

255. See the outline of ADC findings in paragraphs 124 to 137 for aspects relating to the claims made in relation to the normal value and whether the dumping margin during the inquiry period was incorrect and paragraphs 282 to 287 in relation to whether dumping was likely to continue.

Submissions

256. See also paragraphs 138 to 153 for submissions specific to the assessment of dumping during the inquiry period (Ground two) and paragraphs 288 to 298 for whether dumping is likely to continue or recur (Ground three).

ADC:

257. The ADC's submission referred to its findings that a dumping margin of 17.7 per cent was found for PMI's exports during the inquiry period. The ADC undertook additional analysis of exports after the inquiry period, by examining free on board ('FOB') export prices until July 2025 as well as the movements in the aluminium inputs. It focused on the 11 largest volume exporters to Australia, which included Chinese exporters (both subject to measures as well as not subject to measures), and exporters from Indonesia, Malaysia, Thailand and Vietnam.[127]

258. The ADC's conclusion was that '… this analysis was supportive of the fact that the subject exporters had not adjusted selling prices in response to upward movements in aluminium input costs, leading to a likelihood that dumping will continue or recur.'[128] It noted that it did not examine PMI's exports immediately after the inquiry period. Against the background of PMI's dumping margin during the inquiry period and the above-mentioned pricing behaviour analysis of the larger Chinese exporters

[126] The Review Panel notes that its focus is on the Reviewable Decision and it does not engage in comments regarding the manner in which the ADC undertakes its inquiries.
[127] ADC submission dated 19 December 2025, 3 and 16.
[128] ADC submission dated 19 December 2025, 4.

and the relative competitiveness of undumped prices in Australia, it concluded that PMI was likely to also continue dumping.

259. On this basis, the ADC concluded that it had sufficient information and evidence to support its findings that dumping by PMI had occurred during the inquiry period and was likely to continue or recur if the measures expired. It referred to the evidence it had relied on in its recommendation to the Minister and considered this provided a sufficient factual basis to draw its conclusions.

PMAA:

260. PMAA repeats its claims made in its review application that dumping did not occur during the inquiry period and considers that there is insufficient evidence that PMI will dump in the future and accordingly it does not support the dumping measures being continued.

Legislation

261. At Appendices C and D are the relevant legislative provisions (ss 269ZHF and 269ZHG of the Act) relating to the Commissioner's report to the Minister and the Reviewable Decision and an extract of relevant case law concerning the continuation of measures.

Analysis

262. The Commissioner must not recommend to the Minister the securing of the continuation of dumping measures unless satisfied that the expiry of 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 measures are in place to prevent. In this ground, PMAA is concerned only with whether dumping is likely to continue or recur, whereas its Ground three refers to whether material injury is likely to continue or recur, if the anti-dumping measures expire.

263. The ADC found that PMI was dumping during the inquiry period. PMAA claimed that PMI should be found to not have dumped during the inquiry period as well as prior to that period. It refers to the findings in REP 609 in this regard. REP 609 is a previous review of measures relating to exports of aluminium extrusions from China.

264. In REP 609, PMI was found to be a 'residual exporter'[129] and subject to a negative 1.1 per cent dumping margin and a 0.5 per cent subsidy margin, with an effective duty rate of 0.5 per cent. Hence PMAA's comments of a 'no dumping' finding since REP 609. The Review Panel also considered the previous continuation inquiry, REP 543, and at that time PMI was treated as a 'residual exporter' and subject to an effective duty rate of 11.5 per cent which includes a dumping component.

265. Given the Review Panel's findings in relation to Ground two, that the ADC's finding of dumping by PMI remains at 17.7 per cent during the inquiry period, there is evidence that PMI's exports have been dumped during the inquiry period. There is also a history of PMI being subject to dumping measures given the finding in the last continuation inquiry REP 543. It is also correct to note that PMI was not subject to a dumping margin finding in REP 609 but remained subject to anti-dumping measures. The Review Panel finds there is evidence of dumping occurring during the inquiry period by PMI.

266. The second element of this ground relates to whether there is sufficient information supported by evidence as to whether dumping is likely to continue or recur if measures expire.

267. The Review Panel has considered the findings in REP 609 as well as the history of anti-dumping measures referred to in Section 2.3 of REP 657 noting that the current and recommended new effective rates of duty refer to both dumping and countervailing duties (referred to as anti-dumping measures). It is noted that REP 657 Section 2.3.1 details the history of anti-dumping measures cases relating to Chinese exports of aluminium extrusions since the original measures were imposed in 2010. There is additional analysis outlined in Ground three relating to whether it is likely dumping will continue or recur: see paragraphs 282 to 287.

268. The Review Panel considered the ADC's submission in this regard highlighting the assessment of trends in prices at FOB level and the primary aluminium prices (the major input) since the inquiry period and its finding that dumping is likely to continue or recur if the measures are removed.[130]

[129] Residual exporters are exporters of goods, other than the selected exporters, who have provided a basis level of information via a preliminary information request and have not been considered uncooperative exporters.
[130] ADC submission dated 19 December 2025, 3-5.

269. PMI has been found to be dumping during the inquiry period and has been subject to dumping measures following the last continuation inquiry. The Review Panel also notes that the Minister changed the variable factors for certain exporters as a result of the recommendations from REP 609. This led to PMI (as well as other exporters) being subject to a negative dumping margin and an effective duty rate of 0.5 per cent. The Review Panel notes that there is a history of dumping of exports from China by PMI as well as by other exporters, as outlined in REP 657.

270. The Review Panel has noted the ADC's findings regarding strong price competition apparent in the Australian market, with China being a major source of imports with a large group exporting to Australia, as well as being a major global producer of aluminium extrusions. The Review Panel agrees with the ADC's finding and considers there is sufficient evidence to support the finding that if the measures expire, it is probable that dumping is likely to continue or recur from Chinese exporters, including PMI. This is further discussed in Ground three.

271. Accordingly, for the reasons outlined above as well as in the analysis in Ground three, the Review Panel considers it probable that dumping of exports from China, and by PMI, will continue or recur if the measures expire.

Conclusion

272. The Review Panel does not agree with PMAA that there is no information or insufficient information supported by evidence that dumping by PMI did not occur during the inquiry period, noting PMI's dumping margin of 17.7 per cent.

273. The Review Panel considers that given

    a) the history of dumping since the measures were imposed,

    b) dumping by PMI during the inquiry period,

    c) the ADC's analysis of pricing behaviour of certain exporters since the inquiry period

    it is likely that dumping will continue or recur if the measures expire.[131]

[131] Refer to paragraphs 257 to 258 regarding the fact that selling prices of certain Chinese exporters have not moved upwards notwithstanding that aluminium input costs have increased.

274. PMAA has failed to establish that the Reviewable Decision was not correct or preferable in relation to this ground.

Ground Three

There was no information, or insufficient information supported by evidence, that the expiry of anti-dumping measures would lead to, or be likely to lead to, the continuation or recurrence of the material injury that the measures are intended to prevent.

Claims:

275. PMAA contends that the Minister should not have been satisfied that the Commissioner's findings that material injury was likely to continue or recur were based on sufficient evidence. In particular, PMAA questions whether the Commissioner had sufficient evidence, in the absence of anti-dumping measures, that:

    a) it was likely that exports from China would be in higher volumes,

    b) such exports would undercut the Australian industry's selling prices, leading to price suppression and price depression, and

    c) the Australian industry would likely experience a recurrence of injury in the form of lost sales and market share. It refers to REP 609 and states there was '… no evidence that price undercutting by un-dumped exports from China had led to an increase in the volume of exports from China despite their obvious competitive price advantage over the Australian industry'.[132]

276. PMAA suggests that the Australian industry has not suffered material injury from price undercutting as there have been price increases, production and sales are at capacity, and its profitability is strong. It notes that there are also exports from other countries such as Vietnam, Malaysia and Indonesia and suggests there is no evidence that any injury has occurred. It claims that the ADC's findings are speculative rather than based on evidence.

277. PMAA questions whether there has been any assessment of the effectiveness of the measures in terms of whether material injury has been prevented. It claims there

[132] PMAA's Application, 26.

is not a causal link between the exports from China and material injury as the material injury does not exist.

278. PMAA refers to the basis of the findings of material injury, given that not all members of the Australian industry provided evidence of material injury. It refers to Section 2.5.1 of REP 657 in this regard where details of the submission of information from the Australian industry members are outlined. It states that only one of the nine industry members provided the required information. PMAA questions why additional inquiries weren't conducted into other members of the Australian industry economic performance. It refers to *Swan Portland Ltd & Anor v Minister for Small Business and Customs and the Anti-Dumping Authority [1991] FCA 42*, in relation to the 'material injury to the Australian industry as a whole' as the required standard.[133]

279. PMAA also refers to *Siam Polyethylene Co Ltd v Minister of State for Home Affairs No. 2 [2009] FCA 838* ('*Siam'*) which cites the decision of the Appellate Body of the World Trade Organization ('Appellate Body') in Corrosion Resistant Carbon Steel (AB-2003 – 5 at [110] to [113]). In *Siam*, the Court held that in assessing the likelihood of material injury, the standard of 'probable' rather than possible or plausible is required. PMAA suggests that the lack of evidence in REP 657 doesn't meet the 'probable' standard.

280. PMAA claims that the Commissioner was prohibited from recommending that the Minister secure the continuation of measures as there was insufficient evidence and information of the likelihood of material injury if the measures expired. It considers that the Commissioner's findings were based on speculation and not on evidence that China's exports would support such findings.

281. PMAA notes that there has been a reduction, generally across most exporters, in the levels of dumping found during the inquiry period. It questions how this supports a determination that dumping is likely in the future if measures expired. It refers to the findings in REP 609 that indicated that '…exports by all exporters with the exception of one were not being dumped'.[134] It suggests that the findings in REP 657 are similar in relation to the levels of dumping. It states the ADC has not explored the reasons for the reduction in dumping margins across most exporters

[133] PMAA's application, 28.
[134] PMAA's Application, 29.

during the inquiry period. It suggests that this supports its view that the threshold of probable has not been met.

Snapshot of ADC Findings

282. In REP 657, the Commissioner indicated that he is satisfied that there is sufficient evidence to support a finding that, in the absence of the anti-dumping measures, exports of the goods from China, would lead, or would be likely to lead, to a continuation or recurrence of the dumping, subsidisation, and material injury that the anti-dumping measures are intended to prevent. The following extract is from REP 657:

Specifically, after considering the commission's analysis and findings, the Commissioner is satisfied that if the measures expire:

- *Exports from China will likely continue because:*
    - *exports have been observed throughout the life of the measures. Specifically, imports from China accounted for around 20% of all sales in the Australian market during the inquiry period.*
    - *exporters have maintained distribution links as well as forming new links.*
    - *new exporters and importers have entered the market since the measures were last continued.*
    - *exporters maintain excess production capacity sufficient to supply the entire Australian market.*
    - *trade measures in other jurisdictions make Australia an attractive export market.*
- *Those exports will likely be dumped because:*
    - *Xingfa, PMI and uncooperative exporters were found to have exported the goods at dumped prices during the inquiry period.*
    - *an analysis of export pricing after the inquiry period indicates that export prices have not increased in line with the increase in*

aluminium input costs, such that dumping has likely continued in relation to those exporters found to have been dumping during the inquiry period and recurred in relation to those not found to have been dumping during the inquiry period.

- *the category of "all other exporters" have exported at dumped prices during the inquiry period and are not competitive in the Australian market at undumped prices.*
- *the commission observed a significant number of exporters in the "all other exporter" category with FOB export prices below those of the largest suppliers to the Australian market, such that in the absence of measures these exporters would have increased price competitiveness and would leverage these dumped prices to challenge the market share of the more established exporters, likely putting further downward pressure on export prices for all participants in the market.*
- *trade measures in several other jurisdictions indicate that Chinese exporters have a propensity to export at dumped prices to capture market share in export markets.*

- *Those exports will be likely subsidised because:*
  - *exporters were identified as having received countervailable subsidies during the inquiry period.*
  - *countervailable subsidies have been observed throughout the life of the measures.*
  - *throughout the life of the measures the GOC has influenced the price of aluminium such that the price for primary aluminium is lower than it would otherwise be, and the commission has no evidence that this practice is likely to change.*
- *The dumping and subsidisation will likely cause material injury to Australian industry because:*
  - *aluminium extrusions are a price sensitive commodity.*

- *importers of aluminium extrusions from the subject exporters compete directly with Australian industry's customer base.*
- *imports from China undercut Australian industry's prices during the inquiry period, particularly regarding the value-added segment of the market, placing downward pressure on Australian industry's prices.*
- *in the absence of measures, competition would intensify among the large cohort of Chinese exporters supplying the Australian market, leading to downward price pressure on all participants in the Australian market.*
- *should Australian industry seek to compete on price against dumped and subsidised exports from China it will experience price suppression and/or price depression.*
- *should Australian industry be unwilling or unable to compete on price, it will likely experience lost sales volumes and market share to dumped and subsidised exports from China.*
- *while the economic condition of the Australian industry is likely also impacted by lower priced exports from other sources, the commission considers that should the measures be removed, dumped and subsidised exports from China will become the price leader. This is likely given:*
    - *the existing market penetration and market share held by Chinese exporters*
    - *the number of Chinese exporters already supplying the Australian market, and*
    - *excess Chinese production capacity.*

- *lower Chinese export prices will depress prices for all participants including exporters not subject to measures, exporters from other countries, and Australian industry itself.'*[135]

283. The ADC noted that since the last continuation inquiry (in 2020) the volume of exports from China have increased and there have been new exporters from China selling to Australia. It noted that distribution channels were well-established and that China has a large capacity in relation to production of the goods. The ADC provided details of its analysis in 'Confidential Attachment 26: Will exports continue'.

284. With respect to whether dumping and subsidisation was likely to continue or recur, the ADC relied on the following findings:

a) Dumping was found during the inquiry period.

b) Prices of exports from after the inquiry period had not increased in line with the increases in aluminium costs, the major cost item in the goods. The ADC suggests that this means that dumping is likely to have continued or recurred.

c) There were over 200 unique exporters of the goods from China during the inquiry period, the majority of which were subject to the "all other exporters" rate of duty, being an effective rate of duty of 42.9%. Given these levels of duty, such exporters are not competitive on price in the Australian market. The ADC identified that 54 of these exporters were observed to have FOB export prices (exclusive of duty) below the lowest priced cooperating exporter.

d) Subsidy programs have continued since the original measures were imposed and are likely to continue to be received by Chinese manufacturers.

e) That, in the absence of measures, '… these exporters would be incentivised to export at dumped and subsidised prices to capture market share from other exporters from China and other countries, as well as Australian industry.' In light of this, there would continue to be pressure on exporters to price and sell at dumped levels to remain competitive.

[135] REP 657, 93-94.

285. There are measures applying to aluminium extrusions exported from China in other jurisdictions.[136]

286. The ADC provided details of its analysis in 'Confidential Attachment 28: Will material injury continue or recur'. Its findings included:

> *The commission considers that:*
>
> - *aluminium extrusions are a commodity product where price is a key determinant in the decision making of purchasers.*
> - *since the measures were last continued exporters from China subject to measures have increased in number and have extended their market penetration and market share.*
> - *during the inquiry period Australian industry's prices were undercut by Chinese exporters subject to the measures, particularly in relation to the value-added segment of the market.*
> - *the category of "all other exporters" are not competitive in the Australian market due to the rate of duty applied to them, however absent the duty there are numerous exporters in this category with FOB export prices that undercut other participants in the market.*
> - *the removal of measures would likely lead to aggressive price competition among the 200 plus exporters from China currently subject to measures, reducing prices for all participants in the Australian market, including exporters from other countries, exempt exporters and Australian industry.*
> - *in the 6 months following the inquiry period subject exporters have not increased export prices in line with the increased cost of aluminium inputs, or with exporters not subject to measures or exporting from other countries, increasing the relative price competitiveness of these exporters.*
> - *exports after the inquiry period have likely been dumped at higher rates, and in the absence of measures currently subject exporters would likely continue*

[136] REP 657, 100.

to engage in dumping to leverage market share in an increasingly competitive market.

- *the Australian industry would likely experience price suppression and/or price depression due to the increased price advantage enjoyed by dumped exports from China.*
- *if Australian industry is unable or unwilling to reduce prices it will likely experience injury in the form of reduced sales volume and market share*.[137]

287. The ADC also acknowledged that there are other injury factors also relevant to the economic condition of the Australian industry. It remained of the view that '… the removal of measures would likely increase the price competition among the sizable cohort of Chinese exporters with consequent impact on all participants in the Australian market.'[138]

Submissions

Capral

288. Capral's submission proposes that the ADC's analysis of material injury complied with the *Ministerial Direction on Material Injury 2012* and that PMAA's claims are based on 'assertions unsupported by facts'. It refers the Review Panel to the particular findings relating to material injury in REP 657 (see commentary in pages 106 to 111) and indicates these are based on facts.[139]

289. Capral indicates that REP 657 specifically deals with what is likely to occur in the absence of measures with respect to the Australian industry and likely loss of market share and the implications on its economic performance in such circumstances. It also refers to the non-attribution analysis conducted in Section 8.8.3 of REP 657 and supports the ADC's findings in this regard and disagrees with PMAA's claim that there is insufficient evidence of a causal link between the export prices and the economic performance of the Australian industry.

[137] REP 657, 104-105.
[138] REP 657, 108.
[139] Capral's submission dated 16 December 2025, 9-13.

ADC

290. The ADC's submission indicates that PMAA's application suggests that there was no information or insufficient information supported by evidence to conclude that the expiry of measures would lead to or be likely to lead to the continuation of material injury that the measures were intended to prevent. For this reason, PMAA is claiming that the Commissioner's recommendation to the Minister is flawed.[140]

291. The ADC considers it applied the correct statutory test in its recommendation to the Minister, and its recommendation was based on 'reasoned conclusions based on positive evidence'. It referred to its findings in Chapter 8 of REP 657 in this regard and provided a summary. It considered:

> *…finding that the removal of measures would likely lead to more intensive price competition among this sizeable cohort of exporters currently subject to measures, which in turn would necessitate other participants in the market reducing prices to remain competitive. The commission found that if the Australian industry does not further depress or suppress its selling prices in response, the commission considers that it would be likely that Australian industry would suffer a recurrence of injury in the form of loss of sales volume and market share.*[141]

292. The ADC also referred to its consideration of the 'other factors'. It remained of the view that in the absence of anti-dumping measures, exports from China would continue and the pricing advantage resulting from dumping would likely lead to a continuation of material injury.

PMAA

293. PMAA refers to the similarities of arguments claimed by Capral in an earlier continuation report (REP 591, the Reinvestigation Report and Review Panel Report 155)[142] and proposes that ADC's REP 657 adopts the same approach to the

[140] ADC submission dated 19 December 2025, 14-16.

[141] ADC submission dated 19 December 2025, 15 quoting from REP 657, 106-107.

[142] The Review Panel notes that Report No. 155 was quashed and certain sections of REP 591 were set aside following orders by the Federal Court of Australia on 20 November 2025 (NSD67/2024) in *Press Metal Aluminium (Australia) Pty Ltd & Anor V Minister for Industry & Innovation & Or*.

assessment as to whether material injury is likely to continue or recur if the measures expire. It also suggests that there was a finding in REP 609 that:

> *… Chinese exports were undercutting the prices of the Australian industry and other participants in the Australian industry by significant amounts, but this according to, for example Capral Limited's Annual Reports and Shareholder Presentations, was not causing injury…*[143]

294. PMAA also questions the analysis of price undercutting and whether the Australian industry was likely to reduce its prices, given the relative markets shares of China's exports and Malaysian and Vietnamese exports and the market share held by Capral. It suggests that the evidence does not support the findings regarding likely impact on prices (depression and suppression) given these relative market shares.

295. PMAA considers there was no evidence suggesting that it would be advantageous for an importer to decrease prices in the Australian market, it suggests that with the removal of measures it would be prudent to maintain or increase existing prices. It considers that it is not probable that prices would decrease in the Australian market.

296. PMAA states:

> *Further, in the Review 609, the Commission found that exports from China, all of which were determined to be un-dumped except those from one exporter that supplied high-quality aluminium extrusions to niche markets in Australia that the Australian industry was unwilling or unable to supply, were undercutting prices in the Australian market…*[144]

297. PMAA refers to the current inquiry period and suggests that Capral is experiencing strong economic performance. Its claim is that if the findings with respect to price undercutting from REP 591[145] and 609 together with the current inquiry period are considered as to the impact on Capral's prices, there is no evidence that price undercutting is probable if the measures are removed.

[143] PMAA submission dated 22 December 2025, 2-3.
[144] PMAA submission dated 22 December 2025, 3.
[145] The Review Panel notes that Report No. 155 was quashed and certain sections of REP 591 were set aside following orders by the Federal Court of Australia on 20 November 2025 (NSD67/2024) in *Press Metal Aluminium (Australia) Pty Ltd & Anor V Minister for Industry & Innovation & Or*.

Guangdong Haomei

298. Guangdong Haomei stated in its submission:

> *We believe that there was no information, or insufficient information supported by evidence, that the expiry of anti-dumping measures would lead to, or be likely to lead to, the continuation or recurrence of the material injury that the measures are intended to prevent.*

Legislation

299. The legislative provisions relating to material injury and an extract of relevant case law related to consideration of material injury in the context of a continuation inquiry are included at Appendices C and D.

Analysis

300. As I have referred to in previous reviews of continuation inquiries, the Reviewable Decision pursuant to s 269ZHG(1)(b) of the Act is made by the Minister after considering the Commissioner's recommendation to the Minister pursuant to s 269ZHF(1)[146] It is the decision of the Minister to secure the continuation of anti-dumping measures in respect of the goods exported from China which is subject to the review. Section 269ZHG requires the Minister to consider the Commissioner's report and any other matters the Minister considers relevant in deciding to secure or not secure the measures.

301. Section 269ZHF(2) of the Act requires that the Commissioner must not recommend that the Minister secure the continuation of measures unless satisfied that the expiration of measures would lead or 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 are intended to prevent.

302. There are two conditions that must be met for the Commissioner to recommend to the Minister that the measures be secured.[147] First, if the measures expire, whether

[146] 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 those already referred to in this report.
[147] Pursuant to s 269ZHF(2) of the Act.

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'.[148] If these conditions are not met then the Commissioner must not recommend that the measures continue.

303. The Review Panel has relied on the approach expressed by Rares J regarding 'likelihood' in a continuation inquiry: 'The scenarios adverted to in s 269ZHF(2) involve a consideration of future events based on an evaluation of the present position'.[149] (my emphasis)

304. In order to assess the claims made by PMAA regarding whether there was no or insufficient information supported by evidence, the Review Panel considered the confidential information relied upon by the ADC in its findings in relation to the specific claims outlined by PMAA.

305. This included in relation to the ADC's findings:

    a) why exports would be likely to continue, outlined in REP 657 'Confidential Attachment 26' and 'Confidential Attachment 27'.

    b) whether dumping will continue or recur as well as the volume of exports and Australian market information, outlined in REP 657 'Confidential Attachment 1'.

    c) The economic conditions of the Australian industry as outlined in REP 657 'Confidential Attachment 2'.

    d) Whether material injury will continue or recur in REP 657 'Confidential Attachment 28'.

306. The Review Panel does not propose to repeat the information contained in these attachments given it relates to confidential information and has been summarised in

[148] *Siam Polyethylene Co Ltd v Minister for Home Affairs (No.2)* [2009] FCA 838 at [48]; see paragraph 40 of this report.
[149] *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No.2)* [2009] FCA 838 [46].

the ADC's report. An outline is included in the 'Snapshot of ADC's findings' section of this report at paragraphs 282 to 287. The Review Panel has reviewed each of the relevant confidential spreadsheets relating to the findings referred to in the ADC's snapshot section of this report. The Review Panel considers there were no apparent errors or inconsistencies identified in the information examined in terms of the findings expressed in REP 657. Accordingly, the Review Panel considers that there was sufficient information available that underpinned the analysis undertaken in respect to each of the findings of the Commissioner and presented in the report to the Minister.

307. PMAA outlined certain issues specific to export volumes and price undercutting, which it considered supported its ground. These are dealt with below.

308. PMAA refers to the findings regarding why if the measures expire, exports from China would be in higher volumes. It refers to REP 609 (dated August 2023) in this regard and states:

> *In Review 609, it was determined in REP 609 that exports from China, despite not being dumped, were undercutting the prices of the Australian industry. There was no evidence that price undercutting by un-dumped exports from China had led to an increase in the volume of exports despite their obvious competitive price advantage over the Australian industry.*[150]

309. At conference with PMAA, I requested the full reference in REP 609 relied on in relation to PMAA's comment.[151] PMAA's response is outlined below:

> *…Section B3.4 of Appendix B to Report 609 for ADC statements regarding price undercutting by Chinese exports which were un-dumped during the review period in that review other than those by Kam Kiu, including the following extract at pages 123-124 from that Section:*
>
> > *The commission has also considered exporters' margins on cost within the context of the price undercutting, by MCC, by each exporter relative to the prices achieved by Australian industry in the Australian market. In terms of price undercutting, the commission observed that:*

[150] PMAA's Application, 26.
[151] Conference Summary,1 December 2025 Appendix 2, 19-20.

• for all products, all exporters had undercut Australian industry prices in all quarters of the review period, with annual levels of undercutting ranging from 15% to 56% over the entire review period; and

• for mill finished products price undercutting was less significant compared to other products, however annual levels of undercutting still varied from 15% to 37%.

Finally, the commission compared the FOB export pricing of the selected cooperating exporters against the weighted average FOB export pricing of exports from Malaysia and Vietnam as recorded in the Australian Border Force ('ABF') database. The commission identified the weighted average FOB export prices of the selected cooperating exporters were generally lower than those of Malaysia and Vietnam specifically in the September and December 2021 quarters of the review period. The commission considers this finding indicates that, in addition to undercutting Australian industry, Chinese manufacturers generally undercut other export participants in the Australian market as a result of the distortions in the Chinese primary aluminium market.

Based on the above analysis, the commission considers that:

• there is a consistency and stability in the domestic pricing by Chinese manufactures which confirms a competitive market where no competitive advantage is derived by any individual manufacturer as the reduced input costs resulting from the situation in the market appears to equally benefit most producers and

• the Australian market is a competitive market. However, the commission considers variability of pricing by Chinese manufacturers in the Australian domestic market builds a competitive advantage enjoyed by Chinese exporters due to the market situation, which allows them to engage in pricing strategies in the Australian market that allow them to achieve either:

- *higher margins than the margins attainable on the sale of the same goods on the domestic market*
- *increased sales volumes by significantly undercutting other participants in the Australian market or*

- *a combination of higher margins and increased sales volumes resulting from undercutting.*

[Report 609, Appendix B, Section B3.4, pages 123-124; footnotes omitted from extract.]

310. REP 609 was a review of measures examining whether there were changes necessary to the variable factors. Included in Appendix B is a section dealing with the proper comparison of normal values and export prices relating to the assessment by the ADC of 'whether goods in that market (China) are suitable for assessing the normal value of the cooperating Chinese exporters under s 269TAC(1) of the Act.' The section quoted by PMAA deals with the 'Relationship between price and cost'. My reading does not suggest there were any conclusions regarding a relationship between dumping and price undercutting, nor was there a reference to changes in export volumes. The Review Panel disagrees that there was a determination made in REP 609 regarding price undercutting and dumping as proposed in PMAA's statement shown at paragraph 310.

311. REP 609 did recommend to the Minister changes to the variable factors (and effective duty margins) established as a result of the review of measures. The Minister outlined the changes which led to an effective Interim Dumping Duty ('IDD') and Interim Countervailing Duty ('ICD') ranging from 0 per cent to 77.4 per cent. REP 609 did not deal with the volume of exports.

312. The Review Panel notes that REP 657 identifies that the Australian market size has changed since the previous continuation inquiry (REP 543 in 2020) with volumes of imports reflecting the changed demand.[152] The ADC found that while there was initially an increase in the market size, it decreased in the year ending Sept 2023 with the year ending Sept 2024 having a slight increase. The ADC noted that there had been a growth in the volume of imports from Chinese exporters subject to measures and reductions from other countries. It found that exports from China comprise approximately 60 per cent of the volume of imports into Australia. It stated:

> *… the volume of imports from China subject to measures has increased in absolute terms and in terms of the share of total imports, while the aggregate*

[152] REP 657 Section 4.7 Market size.

> *volume of imports from other countries has declined in absolute terms and in terms of the share of total imports.*[153]

313. This does not support PMAA's comments in regard to the volume of imports from China not having increased. Furthermore, while there were changes to the variable factors as a result of REP 609, there were still anti-dumping measures applying to the majority of Chinese exporters. The analysis conducted by the ADC, and under consideration by the Review Panel, relates to what has occurred since the previous continuous inquiry and particularly during the inquiry period with a view to assessing what is likely to occur if the measures expire.

314. PMAA suggests that Capral had increased its prices in the Australian market since the previous continuation inquiry and is not suffering any injury, and in particular not material injury. As referred to in paragraph 302, the question to be addressed in the Reviewable Decision is what is likely to occur if the measures expire. In this regard, *Siam (No 2)* refers to the need to consider whether material injury is likely to continue or recur if the measures are removed:

> *When s.269ZHF(2) refers to the question of whether the expiration of the measures would lead to a continuation or recurrence, it is addressing the issue that arises where current dumping would in fact cause material injury were it not for the operation of the measures that are in place at the time. Ordinarily, this will involve the CEO, or then the Minister, considering whether the removal of the dumping duty would cause the Australian industry material injury. Ordinarily, this will be because the price of the imported goods would be sufficiently below that of its Australian competitor to cause or be likely to cause it material injury.*[154] (my emphasis)

315. Accordingly, the statutory test requires consideration of what is likely to occur if the measures expire. It does not necessarily turn on whether the Australian industry has had price increases since the last continuation of measures, nor whether production and sales are at capacity or whether it has achieved profitability during the inquiry period. The Review Panel considers this is relevant to what is likely to happen in the

[153] REP 657, 12.
[154] *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No.2)* [2009] FCA 838, [46].

future if the measures expire, it is not determinant in the manner suggested by PMAA.

316. Ordinarily, if there have been improvements in Australian industry performance when measures are in place, this suggests that the measures are removing the injurious effects of dumping and subsidisation and allowing the market to operate at a 'fair' level. Such factors, while important in understanding the current situation of the Australian industry, are framed in the context of measures being in operation. The question to be addressed is what is likely to occur if the measures are not continued.

317. In this regard, the ADC acknowledged the current performance of the Australian industry but focused, in my view, its analysis on what the likely effects of the removal of measures would be. Please see the findings outlined in paragraphs 282 to 287 in this regard. The Review Panel having reviewed the underlying confidential information provided in REP 657 relating to these findings agrees with the ADC's findings.

318. PMAA claim that the Commissioner has concluded that the Australian industry would incur price suppression and/or price depression if it elected to compete with Chinese exports. It suggests that this is speculative and not supported by evidence. It suggests that as the Australian industry is profitably competing, maintaining market share and volumes (and at capacity) there is no reason for it to reduce prices. PMAA does not outline the evidence it relies on in its assessment that prices will not be impacted if the measures expire.[155]

319. PMAA refers to other aspects of the ADC's findings as to what is likely to occur if the measures expire and refers to this as speculative. The Review Panel observes that as recognised by Rares J in *Siam (No 2)*[156] there is a need to develop scenarios of what is likely to happen in the future based on an evaluation of the current situation (see paragraph 303 above). To a certain degree, the assessment of likely scenarios requires a forward-looking approach but grounded in an assessment of the recent history and the current situation.

[155] PMAA's Application for review.
[156] *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No.2*) [2009] FCA 838, [46].

320. The Review Panel considered the ADC's findings of what is likely to occur if measures expire. These findings are based on the assessment of the situation during the inquiry period, the past history of dumping and subsidisation since the measures commenced included from the last continuation inquiry and what is likely to occur in the future. The ADC also analysed the change in the number of companies exporting from China as well as the patterns of behaviour with respect to dumping and subsidisation (including PMI) over an extended period of time. The ADC outlines what it considers will occur in the future if the measures expire.

321. The ADC's submission highlights the analysis conducted in relation to prices of exports at the FOB level in comparison with the aluminium benchmark for the 11 largest volume exporters in the Australian market since the inquiry period. This included both exporters subject to measures from China as well as not subject to measures and other countries exporters. Its detailed findings are outlined in REP 657 Section 8.7.1. The Review Panel notes the divergence between the aluminium benchmark and the prices at FOB level and agrees with the conclusions drawn that it is likely that, by not adjusting prices in relation the benchmark prices, dumping would be likely to continue or recur if the measures were removed.

322. PMAA also questions whether the evidence supported a 'probable' standard rather than 'possible or plausible'. It refers to *Siam (No 2)* in this regard. The Review Panel considers the ADC adopted an approach that involved assessing what was probable rather than possible as outlined in the preceding paragraphs.

323. PMAA considers that there has been no assessment of the effectiveness of the measures in place in preventing the material injury that they are intended to prevent. It suggests this is due to the fact that no causal link has been established. The Review Panel considers that the legislation does not require the effectiveness of measures to be assessed when determining whether to continue measures. The Review Panel has observed in paragraph 302 that the effect of the measures is intended to remove the injurious effect of dumping and subsidisation.

324. The Review Panel notes the following WTO Appellate Body and Panel reports which have dealt with the issue of causal link when undertaking a sunset review under Article 11[157] of the Anti-Dumping Agreement and the differences that arise in

[157] A sunset review is a continuation inquiry in Australia's legislation.

relation to the assessment of material injury under Article 3 when compared with a sunset review.

> *…However, this does not mean that a causal link between dumping and injury is required to be established anew in a 'review' conducted under Article 11.3 of the Anti-Dumping Agreement. This is because the 'review' contemplated in Article 11.3 is a 'distinct' process with a 'different' purpose from the original investigation.*[158]

and

> *As the text of Article 11.3 shows, there is no prescribed methodology that authorities are required to follow in determining whether such a link exists. More specifically, we agree with Korea that there is no legal requirement on authorities to follow the disciplines set out in Article 3 of the Anti-Dumping Agreement that govern the establishment of the causal link between dumping and injury in the original investigation. This is because the injury assessment under Article 11.3 is different to that under Article 3. The assessment under Article 11.3 is not about whether dumping is causing injury, but is instead about whether the expiry of anti-dumping duties would be likely to lead to the continuation or recurrence of injury. Thus, as both parties accept, the causal link between dumping and injury need not be established afresh in a sunset review. Of course, this does not foreclose the ability for an interested party in a sunset review to seek to rebut the continued existence of a causal link between dumping and injury, by e.g. substantiating that continued dumping would not be likely to lead to a continuation or recurrence of injury if the anti-dumping duty were lifted.*[159] *(footnotes removed)*

> '*The nature and extent of the evidence required for such proof will vary with the facts and circumstances of the case under review*'.[160]

[158] WTO Appellate Body Report, US – Anti-Dumping Measures on Oil Country Tubular Goods, WT/DS282/AB/R, [117-118].
[159] WTO Panel Report in Korea – Sunset Review of Anti-Dumping Duties on Stainless Steel Bars, WT/DS553/R, [7.54].
[160] WTO Panel Report in Korea – Sunset Review of Anti-Dumping Duties on Stainless Steel Bars, WT/DS553/R, [108].

325. In the Full Court judgment in *Minister of State for Home Affairs v Siam Polyethylene Co,* it chose not to deal with the issue of whether regard must be had to s 269TAE of the Act but did comment that the application of s 269TAE(2A), (2B) or (2C) to the task being undertaken when discharging the functions conferred by s 269ZHF and s 269ZHG is 'not immediately self-evident'.[161] This does not suggest that the consideration of causal link in a continuation inquiry is required, though clearly s 269TAE (relating to material injury) is relevant and available for guidance. It is not, as suggested by PMAA that a causal link must be established 'anew'.

326. To the extent that PMAA suggests that there is no demonstration of a causal link between the presence or absence of anti-dumping measures and the economic performance of the Australian industry, as referred to above, the answer is not clear cut. The question to be addressed as stated in the above-mentioned Appellate Body report is '…*whether the expiry of anti-dumping duties would be likely to lead to the continuation or recurrence of injury.*' Given the range of dumping and subsidisation levels established during the inquiry period, the increasing number of exporters from China and the strong price competition in the Australian market, the Review Panel considers that is likely that if measures are removed, there would likely be a continuation or recurrence of material injury from the dumped and subsidised exports.

327. PMAA suggests that as only one of the nine Australian industry members provided information and evidence, with the other members not fully participating, this challenges the findings that material injury to the Australian industry as a whole would likely continue or recur. It refers to *Swan Portland Ltd & Anor v Minister for Small Business and Customs and the Anti-Dumping Authority [1991] FCA 42 in* this regard. Interestingly, this decision by Lockhart J follows an earlier decision of Wilcox J[162] which expresses the approach in fuller detail in my opinion:

> *Whilst I am of the opinion, that the better view is that the words 'Australian industry' refer to the industry in particular goods as a whole, s 8(1)(b) does not require that material injury be caused or threatened to each individual*

[161] *Minister of State for Home Affairs v Siam Polyethylene Co Ltd* [2010] FCAFC 86, [105], [118]-[122] and [124]-[125].
[162] *Swan Portland Ltd and Anor v the Minister for Science and Customs and Anor*, NG 26 of 1989, 21.

participant. The industry must be considered as a whole and material injury to a part may constitute material injury to the whole. (emphasis added)

328. The Review Panel notes the Ministerial Direction dated 27 April 2012 also provides guidance on the determination of material injury.[163]

329. The approach adopted by the ADC in using Capral's data as well as certain data from other members of the Australian industry was questioned by PMAA in relation to the assessment of material injury. 'If Capral's economic performance was somehow representative of the economic performance of the Australian industry as a whole…' [164] While the ADC indicated in its report that there were a number of Australian producers, it noted that Capral is the largest local manufacturer and makes up a major proportion of the total Australian market.[165] On this basis, there is no error in the approach adopted by the ADC in relying on Capral's information in assessing whether material injury was likely to continue or recur if the measures were to expire. As Wilcox J observed '… *material injury to a part may constitute material injury to the whole'.*[166]

330. In the circumstances of a highly competitive market based on price, longstanding and emerging exporters from China, the capacity of the China's aluminium industry and well established distribution channels for exporters, the Review Panel considers there is sufficient evidence that, in the absence of measures, more intensive competition would emerge with the likely increase in exports from China. The consequences that appear probable is that the Australian industry would need to compete by lowering its prices (price suppression and/or price depression) to retain market share if measures expired. Such a likelihood would impact profitability and create the situation that the measures were intended to prevent.

331. PMAA also questions the analysis of price undercutting and whether the Australian industry was likely to reduce its prices, given the relative market shares of China's exports and Malaysian and Vietnamese exports and the market share held by Capral. It suggests that the evidence does not support the findings regarding likely impact on prices (depression and suppression) given these relative market shares.

[163] ACDN 2012/24 New Ministerial Direction on Material Injury.
[164] PMAA Application Attachment A, 28.
[165] REP 657, 40-41.
[166] *Swan Portland Ltd and Anor v the Minister for Science and Customs and Anor*, NG 26 of 1989, 21.

332. The ADC has outlined the price competitiveness of the Australian market as well as between exporters and also referred to the range of low-priced imports available. There is evidence supporting this analysis that suggests that if measures expire, price competition would likely intensify between exporters which would impact the prices of the Australian industry.

333. The ADC also considered the number of 'new' exporters from China who were subject to the 'all other exporters' rate. It compared the FOB prices of such exporters with the larger exporters' FOB prices, that is, without the impact of the varying anti-dumping measures in operation. It did so to assess the relative competitiveness of Chinese exporters. This analysis was undertaken to consider what would likely occur if the measures were removed. Its assessment is that price competition within the Chinese exporters would intensify and lead to lower prices being offered in the Australian market. The Review Panel agrees with this conclusion.

334. Therefore, the Review Panel disagrees with PMAA that the ADC has failed to consider what is likely to occur to prices if the measures expired. REP 657 outlines the analysis undertaken in what is clearly a dynamic situation of a large number of exporters from China, exports from other countries, excess production capacity in China, strong price competition, and a range of entities with varying levels of measures applicable.

335. PMAA suggests that there would be no reason for an importer to decrease prices in the Australian market if measures were removed. The ADC's analysis in my opinion suggests that the price behaviour will be driven by exporter competition, particularly between Chinese exporters. The Review Panel considers that given the price sensitivity of the Australian market, if prices from Chinese exporters reduced through the removal of the anti-dumping measures, there would likely be a decrease in offered prices.

336. PMAA refers to REP 609 and states that:

> *…the Commission found that exports from China, all of which were determined to be un-dumped except from one exporter that supplied high-*

quality aluminium extrusions to niche markets in Australia that the Australian industry was unwilling or unable to supply, were undercutting prices.[167]

This relates to a review of measures inquiry undertaken for an earlier period. The Review Panel notes that while only one of the selected exporters was found to be dumping, there was also dumping margins applicable to the 'all other exporters' cohort. Accordingly, there were anti-dumping measures in place for a range of exporters.

337. For the reasons outlined above, the Review Panel does not agree with PMAA's stated ground that there was no information or insufficient information supported by evidence of the findings expressed by the Commissioner with respect to what would likely occur if the measures expired with respect to material injury. The Review Panel agrees and adopts the findings of the Commissioner.

Conclusion

338. PMAA has failed to establish that there was either no information or limited information supported by evidence that the expiry of measures would not lead to a continuation or recurrence of material injury that the measures are intended to prevent.

339. The Review Panel has considered the ADC's assessment of:

a) the past history of dumping and subsidisation,

b) the circumstances apparent during the inquiry period,

c) what is likely to occur in relation to volume and pricing of exports if the measures expire, and

d) the pattern of export pricing since the end of the inquiry period.

340. The Review Panel considers that the findings reached by the ADC are reasonable given the facts available and agrees and adopts these findings.

[167] PMAA submission dated 22 December 2025, 3.

Conclusions and Recommendations

341. The Review Panel found that:

a) Goomax has established that the Reviewable Decision was not correct or preferable in relation to its ground that the subsidy margin applied to Goomax was erroneous.

b) Xingfa has not established that the Reviewable Decision was not correct or preferable in relation its ground as the Minister did not err in constructing Xingfa's normal value by relying on non-arms length transactions between related parties; and

c) PMAA has not established for two of its grounds (Grounds 1 and 3) that there was no or insufficient information supported by evidence that:

(i) dumping by PMI had occurred or would be likely to continue or recur if the anti-dumping duties expired and

(ii) the expiry of the anti-dumping measures would lead to, or be likely to lead to, the continuation or recurrence of the material injury that the measures are intended to prevent.

(iii) In relation to Ground 2, PMAA has established that the Minister's determination of the normal value was incorrect is valid, as there was an error in its calculation. The adjusted normal value led to an insignificant change in the dumping margin. The Review Panel considers as the result of this error does not lead to a material difference in the dumping margin, that is, the dumping margin remained at 17.7 per cent, it does not recommend that the Minister revoke the Reviewable Decision in relation to this ground as it would not be materially different to the Reviewable Decision. S 269ZZK(1A) of the Act provides that the Review may make a recommendation in this regard only if the new decision is materially different from the Reviewable Decision.

342. Pursuant to s 269ZZK(1) of the Act:

a) For the reasons given in paragraphs 47 to 60 above, I consider that the Reviewable Decision was not the correct or preferable decision in relation to the reviewable ground submitted by Goomax;

b) For the reasons given in paragraphs 105 to 115 above, I consider that the Reviewable Decision was the correct or preferable decision in relation to the reviewable ground submitted by Xingfa; and

c) For the reasons given in paragraphs 262 to 271 and 300 and 337 above, I consider that the Reviewable Decision was the correct or preferable decision in relation to the reviewable grounds one and three submitted by PMAA. In relation to PMAA's reviewable ground two, there was an error in the calculation of the normal value, which led to the normal value decreasing from [redacted] to [redacted]. The reasons related to this error are given in paragraphs 242 to 247. Other aspects of PMAA's claims did not support additional changes. The dumping margin remained unchanged at 17.7 per cent. This error did not lead to a material difference to the Reviewable Decision.

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

a) to secure the continuation of measures in relation to exports from China by Goomax but with different variable factors as specified in Confidential Attachment 2 to this report; and

b) to secure the continuation of measures in relation to exports from China by other exporters with the variable factors as specified in ADN 2025/096 except for Goomax.

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

Appendix A

Conferences

Date of conference	Participants	Purpose of conference
19 November 2025	PMAA	To clarify PMAA's three grounds of review.
1 December 2025	PMAA and ADC	To obtain further information in relation to PMAA's grounds concerning the determination of the normal value, level of trade, jobbing, rebates and financial charges in SG&A.
5 December 2025	ADC	To obtain further information in relation to: Goomax: relating to whether its suppliers of aluminium billet are SIEs or SOEs. Xingfa: regarding the manner in which the billet premium was calculated. PMAA: the calculation of the normal value - in particular rebates, financial charges in SG&A, level of trade and 'jobbing' information.
11 December 2025	ADC	To obtain further information in relation to Goomax, specifically information before the ADC and the assessment of ownership of suppliers and/or manufacturers who supplied aluminium and the calculation of the LTAR subsidy.
12 December 2025	Xingfa	To obtain further information as to the calculation methodology used by Xingfa in support of its claim that actual conversion costs (for the billet premium) should be used in the constructed normal value.
19 December 2025	PMAA and ADC	To obtain further information from PMAA in relation to rebates and costs related to jobbing.
5 January 2026	ADC	To obtain further information relating to normal value & dumping margin calculations.
5 January 2026	PMAA and ADC	Provision of PMI information relating to further processing costs.
9 January 2026	PMAA and ADC	Explanation of re-calculations undertaken in relation to the Review Panel's direction.
23 March 2026	ADC	Information on the new subsidy margin and effective duty rate applying to Goomax.

Appendix B

Relevant Legislation relating to Normal Value:

Relevant extracts of the Act and the CIO Regulation are set out below:

- Section 269TAC(1) of the Act:

> *(1) Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.*

- Section 269TAC(2)(a) of the Act:

> *(2) Subject to this section, where the Minister:*
>
> *(a) is satisfied that:*
>
> *(i) because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or*
>
> *(ii) because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1);*
>
> *the normal value of goods exported to Australia cannot be ascertained under subsection (1); or*

- Section 269TAC(2)(b) of the Act:

> *(b) is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1);*
>
> *the normal value of the goods for the purposes of this Part is:…*

- Section 269TAC(2)(c) of the Act:

(c) except where paragraph (d) applies, the sum of:

(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and

(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale; or…

- Section 269TAC(9) of the Act provides that:

(9) Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2)(c) or (4)(e), the Minister must make such adjustments, in determining the costs to be determined under that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

- An extract of Regulation 43 of the CIO Regulation:

Determination of cost of production or manufacture

(1) For subsection 269TAAD(5) of the Act, this section sets out:

*(a) the manner in which the Minister must, for paragraph 269TAAD(4)(a) of the Act, work out an amount (the **amount**) to be the cost of production or manufacture of like goods in a country of export; and*

(b) factors that the Minister must take account of for that purpose.

(2) If:

(a) an exporter or producer of like goods keeps records relating to the like goods; and

(b) the records:

(i) are in accordance with generally accepted accounting principles in the country of export; and

(ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Minister must work out the amount by using the information set out in the records.

- An extract of Regulation 44 of the CIO Regulation:

Determination of administrative, selling and general costs

(1) For subsection 269TAAD(5) of the Act, this section sets out:

*(a) the manner in which the Minister must, for paragraph 269TAAD(4)(b) of the Act, work out an amount (the **amount**) to be the administrative, selling and general costs associated with the sale of like goods in a country of export; and*

(b) factors that the Minister must take account of for that purpose.

(2) If:

(a) an exporter or producer of like goods keeps records relating to the like goods; and

(b) the records:

(i) are in accordance with generally accepted accounting principles in the country of export; and

(ii) reasonably reflect the administrative, general and selling costs associated with the sale of the like goods;

the Minister must work out the amount by using the information set out in the records.

(3) If the Minister is unable to work out the amount by using the information mentioned in subsection (2), the Minister must work out the amount by:

(a) identifying the actual amounts of administrative, selling and general costs incurred by the exporter or producer in the production and sale of the same general category of goods in the domestic market of the country of export; or

(b) identifying the weighted average of the actual amounts of administrative, selling and general costs incurred by other exporters or producers in the production and sale of like goods in the domestic market of the country of export; or

(c) using any other reasonable method and having regard to all relevant information.

(d the information mentioned in subsection (4) does not identify the circumstance.

- An extract of Regulation 45 of the CIO Regulation:

Determination of profit

(1) For subsection 269TAC(5B) of the Act, this section sets out:

*(a) the manner in which the Minister must, for subparagraph 269TAC(2)(c)(ii) or (4)(e)(ii) of the Act, work out an amount (the **amount**) to be the profit on the sale of goods; and*

(b) factors that the Minister must take account of for that purpose.

(2) The Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.

(3) If the Minister is unable to work out the amount by using the data mentioned in subsection (2), the Minister must work out the amount by:

(a) identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or

(b) identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or

(c) using any other reasonable method and having regard to all relevant information.

- An extract of Section 269TAA(1) of the Act:

(1) For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:

(a) there is any consideration payable for or in respect of the goods other than their price; or

(b) the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

(c) in the opinion of the Minister the buyer, or an associate of the buyer, will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

- An extract of Section 269TAAD(1) of the Act:

(1) If the Minister is satisfied, in relation to goods exported to Australia:

(a) that like goods are sold in the country of export in sales that are arms length transactions in substantial quantities during an extended period:

(i) for home consumption in the country of export; or

(ii) for exportation to a third country;

at a price that is less than the cost of such goods; and

(b) that it is unlikely that the seller of the goods will be able to recover the cost of such goods within a reasonable period;

the price paid for the goods referred to in paragraph (a) is taken not to have been paid in the ordinary course of trade.

- Section 269TACC states that:

(1) Subject to subsections (2) and (3), the question whether a financial contribution or income or price support confers a benefit is to be determined by the Minister having regard to all relevant information.

(2) A direct financial payment received from any of the following is taken to confer a benefit:

(a) a government of a country;

(b) a public body of a country;

(c) a public body of which a government of a country is a member;

(d) a private body entrusted or directed by a government of a country or by such a public body to carry out a governmental function.

Guidelines for financial contributions

(3) In determining whether a financial contribution confers a benefit, the Minister must have regard to the following guidelines:

(a) the provision of equity capital from a government or body referred to in subsection (2) does not confer a benefit unless the decision to provide the capital is inconsistent with normal investment practice of private investors in the country concerned;

(b) the making of a loan by a government or body referred to in subsection (2) does not confer a benefit unless the loan requires the enterprise receiving the loan to repay a lesser amount than would be required for a comparable commercial loan which the enterprise could actually obtain;

(c) the guarantee of a loan by a government or body referred to in subsection (2) does not confer a benefit unless the enterprise

receiving the guarantee is required to repay on the loan a lesser amount than would be required for a comparable commercial loan without that guarantee;

(d) the provision of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the goods or services are provided for less than adequate remuneration;

(e) the purchase of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the purchase is made for more than adequate remuneration.

(4) For the purposes of paragraphs (3)(d) and (e), the adequacy of remuneration in relation to goods or services is to be determined having regard to prevailing market conditions for like goods or services in the country where those goods or services are provided or purchased.

- Section 269TACD provides that:

(1) If the Minister is satisfied that a countervailable subsidy has been received in respect of goods, the amount of the subsidy is an amount determined by the Minister in writing.

(2) After the amount of the countervailable subsidy received in respect of goods has been worked out, the Minister must, if that subsidy is not quantified by reference to a unit of those goods determined by weight, volume or otherwise, work out how much of that amount is properly attributable to each such unit.

344. As Perram J stated in *Steelforce Trading* judgment:

The effect of these provisions is that the Minister is required to determine the hypothetical profit on a hypothetical sale para 83 and para 84 In considering that hypothetical exercise the Minister is constrained by Reg 45.[168]

[168] *Steelforce Trading P/L v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20.

Appendix C

Relevant legislation relating to material injury and the continuation decision

Outlined below are relevant extracts from the Act:

- Section 269TAE(1):

Material injury to industry

(1) In determining, for the purposes of section 269TG or 269TJ, whether material injury to an Australian industry has been or is being caused or is threatened or would or might have been caused, or whether the establishment of an Australian industry has been materially hindered, because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A) to (2C), have regard to…(emphasis added)

- Section 269TAE(2A):

(2A) In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:

(a) the volume and prices of imported like goods that are not dumped; or

(b) the volume and prices of importations of like goods that are not subsidised; or

(c) contractions in demand or changes in patterns of consumption; or

(d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or

(e) developments in technology; or

(f) the export performance and productivity of the Australian industry;

and any such injury or hindrance must not be attributed to the exportation of those goods.

- Section 269TAE(2AA):

(2AA) A determination for the purposes of subsection (1) or (2) must be based on facts and not merely on allegations, conjecture or remote possibilities.

- Section 269ZHF(2):

(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.

Section 269ZHG:

(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 sub-section (2):

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

(b) declare that the Minister has decided to secure the continuation of 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.

Appendix D

Relevant case law relating to material injury and continuation inquiries.

In my view, the most recent and relevant case law relating to continuation matters is *Siam Polyethylene Co Ltd.*[169] I note that his Honour's decision was overturned on appeal. However, the Full Court of the Federal Court of Australia did not appear to have disagreed with the extracts of the judgment shown below:

> *Thus, a review under Div 6A of Part XVB is not intended as a complete replication of the process under Div 3 involved in the initial imposition of anti-dumping measures. But the continuation review under Div 6A is still directed to the purpose of preventing material injury or the threat of such an injury caused by dumping. So, in exercising his or her discretion under s.269ZHG(1), I am of the opinion that the Minister must consider whether the existing measures are appropriate and adapted to achieve the purpose served by the measures identified in s.269ZHF(2) if they are to be continued*.[170]
>
> *… Thus s.269ZHF(2) addresses a number of possible scenarios including whether that expiration actually would lead, or alternatively would be likely to lead, to a continuation or recurrence of both the dumping and the material injury that the measures were intended to prevent*.[171]
>
> *… The scenarios adverted to in s.269ZHF(2) involve a consideration of future events based on an evaluation of the present position. When s.269ZHF(2) refers to the question of whether the expiration of the measures would lead to a continuation or recurrence, it is addressing the issue that arises where current dumping would in fact cause material injury were it not for the operation of the measures that are in place at the time. Ordinarily, this will involve the CEO, or then the Minister, considering whether the removal of the dumping duty would cause the Australian industry material injury. Ordinarily, this will be because the price of the imported goods would be sufficiently*

[169] *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No.2*) [2009] FCA 838.
[170] *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No.2*) [2009] FCA 838 [41].
[171] *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No.2*) [2009] FCA 838, [42].

below that of its Australian competitor to cause or be likely to cause it material injury.[172] (emphasis added)

345. From the Full Court on *Siam Polyethylene Co Ltd:*[173]

[105] Section 269TAE(1) and (2), it will be noted, confine the application of s 269TAD to ss 269TG and 269TJ as ss 269TH and 269TK respectively. The application of s 269TAE((2A), (2B) or (2C) to the task being under when discharging the functions conferred by ss 269ZHF and 269ZHG is thus not immediately self-evident.

[*118] There is much to be said, however, for a conclusion that the use of the phrase "material injury" when used in s 269ZHF(2) bears the same meaning as that set forth in Division 1 and s 269TAE. Division 1 is itself a "Preliminary" division which sets forth a series of definitions to be thereafter applied. And it is "[a] fundamental rule of construction that unless a contrary intention appears the words in a statute are used consistently": Construction, Forestry, Mining and Energy Union v Hadgkiss [2007] FCAFC 197 at [53], 169 FCR 151 at 160 per Lander J.*

[119] The potential difficulty in the application of s 269TAE to the discharge of the functions in s 269ZHF and s 269ZHG arises, of course, by reason of the express statement in s 269TAE(1) that the section applies "for the purposes of section 269TG or 269TJ" and the express reference in s 269TAE(2) to "the purposes of section 269TH or 269TK". The express terms of s 269TAE(1) and (2) may go a long way to expressing a "contrary intention".

[120] But the very specificity of the functions targeted by s 269TAE(1) and (2) is at best ambiguous– possibly serving to support an inference that all that the specificity is directed at is the identification of the "material injury" in question. Or it may support an inference that those particular provisions are directed at the initial task undertaken at the point of time when dumping duties or countervailing duties are being imposed rather than at the

[172] *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No.2*) [2009] FCA 838, [46].
[173] *Minister of State for Home Affairs v Siam Polyethylene Co Ltd* [2010] FCAFC 86.

subsequent point of time when consideration is being given (for example) to their continuation.

[121] Section 269TAE(1), by its terms, targets decisions being made under Division 3, being decisions to impose dumping duties (s 269TG) and countervailing duties (s 269TJ); s 269TAE(2), also by its terms, targets decisions being made under Division 3, being decisions to impose third country dumping duties (s 269TH) and third country countervailing duties (s 269TK). Section 269TAE(1) thus focuses upon "material injury to an Australian industry"; s 269TAE(2) focuses upon "material injury to an industry in a third country". Having identified the different analyses required, the draftsman of s 269TAE then reverts to matters common to an assessment of material injury to either an Australian industry or a third country in s 269TAE(2A), (2B) and (2C).

[122] But there is no self-evident reason why, in any given case, the matters to which regard must be had by reason of s 269TAE(1) or (2) – and the subsequent matters set forth in s 269TAE(2A), (2B) and (2C) – may not also be relevant matters to which regard may be had when preparing a report pursuant to s 269ZHF and making a declaration pursuant to s 269ZHG. The express confinement of the operation of s 269TAE(1) and (2) to the specific sections there mentioned, it is considered, is not necessarily a reason why those provisions may not also <u>be of relevance in discharging the functions</u> set forth in s 269ZHF and s 269ZHG.

[124] However they may ultimately be resolved, it is with the next conclusion of the learned primary Judge that concurrence cannot be expressed. His Honour concluded:

> [65] Report 137 did not provide any reasoning process as to why the removal of measures against Siam would be likely to cause material injury to Qenos. …
>
> [66] … In considering any injury likely to be caused to Qenos based on the evidence of price undercutting, the Minister had to address under s 269TAE(2A) Dow's and Qenos' cost to supply their customers at their locations in Australia, any differences in grade and

> substitutability of the product supplied to or required by the customers, whether instances in confidential appendix 7 were simply the result of competition between Siam, as a foreign, and Qenos, as an Australian, producer of like goods or of some other factor or factors including ones relating to the customers. But, Report 137 did not examine any correlation between the price cutting referred to in confidential appendix 7 and the particular circumstances of any case of price cutting or relate these to the likelihood of material injury to Qenos were the measures to expire.
>
> [67] I am not satisfied that Report 137 suffered from mere looseness in language when it concluded that the factors to which the Minister had regard were likely to create an environment where the Australian industry was "more susceptible to injury caused by dumping". That was not a finding on the question of whether some identifiable material injury to Qenos more probably than not would occur if the measures expired having regard to the parameters of forseeability and imminence referred to in s 269TAE(2B). The Minister (and the CEO) did not identify any threat of material injury to Qenos that would be likely to be caused by Siam's dumping that was foreseeable and imminent, if the dumping measures were allowed to expire.

The reliance placed by the primary Judge upon s 269TAE(2A) in identifying those matters not addressed in Report 137 is there self-evident. Reference may thus be made (by way of example) to the need to make findings as to whether "some other factor or factors" were causing injury and, in s 269TAE(2A), to the need to "consider whether any injury … is being caused … by a factor other than the exportation of those goods".

[125] Even if it be presently assumed, however, that s 269TAE(2B) "operate[s] on a sunset review under Div 6A of Pt XVB" ([2009] FCA 838 at [55]), it is not considered that Report 137 failed to address the matters referred to in s 269TAE(2A) or (2B).