



# For the Worst Transnational Corporation Operating in Aotearoa/New Zealand in 2011

Organised by CAFCA  
(Campaign Against Foreign Control Of Aotearoa)  
& GATT Watchdog

**Front cover cartoon by Ian Dalziel**

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**Winner**

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**Rio Tinto Alcan NZ Ltd**

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**Second =**

**Westpac  
Sajo Oyang Corporation  
Oceania**

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**Fifth  
Telecom**

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**Accomplice Award  
The Government**

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**Judges**

**Joce Jesson, Wayne Hope, Paul Maunder, Paul Corliss, Sam Mahon**

# 2011 Roger Award Judges' Statement

The criteria for judging the eight finalists is to assess the transnational corporation (TNC; a corporation with 25% or more foreign ownership) that has the most negative impact in each or all of the following categories:

**economic dominance** - monopoly, profiteering, tax dodging, cultural imperialism; **people** - unemployment, impact on tangata whenua, impact on women, impact on children, abuse of workers/conditions, health and safety of workers and the public; **environment** - environmental damage, abuse of animals; and

**political interference** - interference in democratic processes, running an ideological crusade.

As one of the judges noted this judging involves negative utilitarianism: the greatest harm or impact to the greatest number.

What is interesting to note is the changing relationships of many TNCs with NZ over the years as that they don't go away, they just change their economic form and more come in.

In 2011 we have examples such as:

- the original scavenger economy of the 1880s, (Newmont Mining) creating holes in the ground and turning that into exported money, usually without regard to the people affected or sometimes without any royalties.
- the continuation of an ongoing exploitative process over using cheap electricity to rip oxygen off alumina and export both most of the product and profits (NZ Aluminium Smelters).
- the commodification of old age into money in rest homes and retirement villages (Oceania). Here, in exchange for taxpayer dollars they are creating a growing asset base for investment returns for an overseas equity company in a fund that specialises in getting returns from previously State-owned businesses internationally.
- the State-assisted creation of monopoly services for knowledge logistics such as ultra-fast broadband using State

resources (Telecom).

- the way that money has become a commodity in itself through debt vehicles and debt leverage, rewarding only the top level in the finance company and creating a particular culture of expanse at the top (the entire finance industry including Macquarie Group and Westpac this year).
- the reality of having FCV (Foreign Chartered Vessels) fishing in our waters. The exploited, vulnerable workers from underdeveloped countries work in appalling conditions with the NZ partners just focused on profits, while any opposition to these practices is portrayed as just anti-Government, a union beat up or even an anti-iwi beat up, as we see in the views of the Chair of Te Ohu Kaimoana (TOK) in its' 2011 *Annual Report*. What about employing our own on decent wages, you can hear the unemployed youth cry?

Our finalists for 2011 in alphabetical order were:

**Adidas, Newmont Waihi Gold, New Zealand Aluminium Smelters Ltd/Rio Tinto Alcan NZ Ltd, Oceania, Sajo Oyang Corporation, Sky City, Telecom and Westpac.**

**Adidas was** nominated for its total arrogance. In the year in which New Zealand both hosted and won the Rugby World Cup for the first time since 1987, this transnational corporation (TNC) tried to charge New Zealanders substantially more for its "official" All Blacks' jersey than it charged for the same item if bought overseas. When NZ fans resorted to buying the jerseys online, Adidas then blocked those Internet sales outlets, so much for their free market!!

**Newmont Waihi Gold** was previously a finalist in 2003 and 2009, and made it again in 2011, for the same reason – its appalling mining activities, which have created a huge hole in the middle of Waihi and which it now wishes to extend into creating a giant underground mine under the

town. Understandably the locals aren't crazy about mining literally under their homes. The Government touts mining as one of the keys to "freeing up the wealth" in parts of the country such as Coromandel. Waihi is the reality check of what mining in Coromandel is like already (and let's not forget that they still do not pay royalties on the gold extracted under their license for the Martha Mine).

**New Zealand Aluminium Smelters Ltd/Rio Tinto Alcan NZ Ltd** (well known for decades under its previous name of Comalco) has been a regular finalist and was runner up in both the 2009 and 08 Roger Awards. This time the nominator put in a detailed (even footnoted) nomination of the owners of the Bluff aluminium smelter for a new reason – for lobbying two Governments "over several years to secure excessive allocations of free emissions units under the NZ Emissions Trading Scheme (ETS). NZAS/Rio Tinto has interfered in a democratic process via political lobbying through its industry advocate the Greenhouse Policy Coalition in order to dodge a tax (greenhouse gas pricing under the NZETS), and to profit from the ETS through excessive free allocation of emissions units...there is very little doubt that the NZETS unit allocation rules are so distorted that the smelter would face a higher carbon price if it were exempted from obligations under the NZETS and just paid its electricity bills". This is the same transnational which, only a few years ago, threatened to quit NZ if the ETS went ahead. If you can't beat them, you might as well make money out of them, eh.

**Oceania** is New Zealand's largest rest home provider and is owned by a foreign equity fund. It is the perfect illustration of what has happened to this sector which used to exist to provide a service for old people no longer able to look after themselves in their own homes. Now it is a profit-driven business, with the residents as the "product" and the workers overwhelmingly female, brown and/or Third World, paid very low wages to do the literal shit work – while the owners of Oceania cream it. They are at the beginning of an expansionary phase, we can predict more from them.

**Sajo Oyang** is a South Korean fishing company, part of a TNC established to create joint ventures around the world to gain access to various exclusive economic fishing zones. The **Sajo Oyang Corporation** has achieved the not inconsiderable

feat of having the worst record when it comes to treatment of the poor buggers from Third World countries who have to risk their lives and health in working on these joint venture fishing boats. It was nominated for exploitation and harm of its crew members (six of whom died when one of its boats sank in NZ waters; others have walked off Oyang boats in NZ ports in protest at the appalling systematic abuse of crewmen). Oyang is the "star" of the report into abuses in the fishing industry, the report which forced the Government to open an Inquiry (which issued its Report in February 2012). But in this, Sajo Oyang is supported by none other than the chair of the Te Ohu Kaimoana, Matiu Rei of Ngati Toa, who in the TOK 2011 *Annual Report*, repeated the spin that this was union-led and anti-iwi mischief-making.

**Sky City** was nominated for all the reasons you would expect for a corporation that makes its money from gambling, particularly for its impact on the poor and vulnerable. To single out its most egregious example of political interference, the nominator wrote: "Sky City is trying to buy New Zealand law (building a convention centre in exchange for changes to the law to enable a significant expansion of the casino". A startling example of the way Sky City treats its staff is that the workers have to wear flea collars or flea spray because Sky City won't close for 24 hours to have the place properly cleaned. Just reading that makes you feel all itchy (and not for poker machines, either).

**Telecom** remains the only TNC to have been a finalist every year since the Roger Award started in 1997 (although it's only actually won it twice). Its crimes in 2011 include being fined a record \$12 million for breaches of the Commerce Act and for being subsidised by the Government as the preferred supplier of the ultra fast broadband (UFB) scheme). The nominator wrote: "Telecom has made mega profits out of NZ for two decades now and has shamefully reinvested very little of that back into its NZ telecommunications business, preferring to enrich its foreign owners and biggest shareholders with dividends instead. With the money it has made out of this country it could have paid for the UFB scheme several times over out of its own profits, without any taxpayers' money having to be involved. It is an indictment of Telecom - past and present - that it instead chooses to rely on a Government subsidy to fund such an essential part of any modern country's telecommunications infrastructure".

**Westpac** was a finalist in both 2010 and 09 and the joint winner of the 2005 Roger Award. One of the reasons it was nominated in 2011 was for profiteering (including paying its Chief Executive Officer \$5.8 million and \$5.4 million, respectively, over the previous two years, the highest in NZ) while its workers are left to struggle on low pay. Shamefully, it pressured its Christchurch tellers to meet normal sales targets by pushing loans and insurance products onto financially stricken Christchurch customers after the earthquakes, adopting a “business as usual” policy.

And so we turn to the **Accomplice Award**. Here we had only one nominee **The Government with** two nominators.

**First: The Government** was nominated for the **Accomplice Award** “for hypocritically subsidising Telecom whilst simultaneously proclaiming the virtues of the market (where is the Government subsidy for the tens of thousands of Canterbury earthquake victims who can’t get any cover from the insurance market?). The UFB scheme is simply massive corporate welfare for a recidivist transnational bludger”.

**Second The Government** was nominated for the **Accomplice Award** because of its “neglect and active harm caused to the NZ maritime industry, comprising (1) the failure to regulate the NZ fishing industry to protect jobs, conditions, the wellbeing of overseas workers, the environment and New Zealand control of its resources, and (2) the open coast policy which is responsible for flag of convenience shipping, the decline of shipping standards and NZ shipping, and the failure to sign the international treaty to maximise liability for clean up costs by charterers”.

The Government seems to have forgotten that the role of the State is not just to make things better for Big Business, or raise taxes but it is also to make and monitor the regulations and processes in order to create a balance to benefit the overall welfare of the population.

**The Judges were all in agreement that in 2011 the Government was the winner.**

**But now to the 2011 Roger Award, (with Accompanying boos and hisses).**

All of the finalists were worthy contenders for

this year’s Award and so provided a great deal of debate. Because the judging was such a close run thing across all nominees, with the reasonably clear reasons for their choices by the judges, as well as different ways of interpreting the criteria, for the final *Report I*, as Chief Judge, tried to find some way of distinguishing who is the **absolute worst TNC** for 2011, given that this had become what one judge described as “shooting ratbags in a barrel: the shot gun approach produces equal casualties”.

In the event each nominated company was given a multiplier weighting according to the number of times and placings it was ranked by the judges. The complicated judging yielded us one “just” winner and three second places. I have to say the winner is first among equals, much like the Rugby World Cup.

So lets in good sporting terms in tune with the spirit of 2011, first turn to the also-runs.

During 2011, the activities of **Adidas, Sky City and Newmont Waihi Gold** met the Roger Award judging criteria. The effects and significance of these activities, however, were less widespread compared to other finalists. Thus, **Adidas’** profiteering and uncompetitive behaviour only affected the deluded purchasers of branded All Black apparel. Similarly, **Sky City’s** destructive impact upon poor gambling patrons and their families was felt regionally rather than nationally. We have to acknowledge that **Sky City** trying to influence New Zealand’s legal system by building a convention centre in exchange for law changes enabled a significant expansion of the casino.

In local terms the social and environmental impacts of **Newmont Waihi Gold’s** activities have been appalling, as has its potential for more of the same in the future. We await the outcome of its license applications (more future awards, I expect). But, compared to the top ranked finalists, nationwide impact in 2011 was less easy to demonstrate at this stage.

**It is to these major finalists that I now turn.**

The fifth place getter overall is **Telecom**. As in previous years this finalist performed strongly in the areas of economic dominance and people. The scale of **Telecom’s** impact is worth noting. According to a Commerce Commission Report cited by Fairfax journalist Tom Pullar-Strecker:

“New Zealanders pay on average 26% more for fixed line calls than phone users in other countries, even taking into account free local calling” (*Press*, 10/11/10). This near-monopoly profiteering at the expense of most New Zealanders fully justifies a place in the Award. Telecom’s ranking is confirmed by evidence of its high mobile termination fees and extraordinarily high mobile roaming charges for emails, text messaging, and occasional Internet use overseas. Telecom’s standard employment practices have been considered by previous Roger Award judges (de-unionisation, subcontracting, redundancies). There is no evidence that such practices neither ceased nor diminished during 2011. Telecom’s major accomplishment in 2011 was to win most of the contract for the rollout of ultra fast broadband. Although Telecom is forced to become two listed companies, it will now enjoy several new profiteering opportunities. These are admirably outlined by New Zealand journalist Chris Barton in an article entitled “Telecom’s New Monopoly” (2/8/11). The arrangements were even criticised in a *New Zealand Herald* editorial tellingly entitled “Slow-learning Government to boost Telecom Profit” (2/5/11).

**Now to the second place winners.** As I said earlier the complicated judging quadrant yielded us, a just winner and three seconds.

The first of three corporations in second place is **Westpac**. All major Australian banks within New Zealand score highly in terms of general economic dominance (market share for different banking products), profiteering (especially in the setting of mortgage interest rates) and worker exploitation (especially in contrast to CEO remuneration). **Westpac**, however, stands out for the following reasons in 2011. To begin with, their cash earnings increased by more than 40% from 2010 to 2011 (\$NZ454 million). This suggests an aggressive profiteering strategy at the expense of bank staff and ordinary borrowers. In the latter context, *New Zealand Herald* journalist Jamie Gray noted that “Chief Executive Gail Kelly boosted earnings by raising borrowing costs higher than the country’s central bank to offset higher funding costs and slow demand for credit” (5/5/11). Correspondingly, Fairfax journalist Roeland van den Bergh had earlier noted that “higher lending margins from **Westpac New Zealand** helped to boost the Australian parent’s profit for the first quarter” (*Press*, 16/2/11). Meanwhile, as bank staff received pay rises barely matching the cost of living, New Zealand CEO George Frazis drew a

salary and bonus package worth \$NZ5.8 million. This amount approximately doubles that received by CEOs at the BNZ, ANZ and National Bank. Such an extreme level of remuneration, compared to bank workers, confirms **Westpac’s** second equal place status.

The next second equal placing was **Sajo Oyang Corporation**. The short-listing nomination was accompanied by excellent documentation from the Maritime Union and the authors of “Not in New Zealand Surely? Labour and human rights abuses aboard foreign fishing vessels”. That **Sajo Oyang** ship crew members have been abused, mistreated and otherwise exploited is totally beyond question. The documentation provides a vivid local snapshot of prevailing labour practices within the transnational corporate fishing industry. While the fishing industry is often turning a blind eye to these abuses, we do need to note that Te Ohu Kaimoana gains most of its income from these Foreign Chartered Vessels and so we await the outcome of the Government Inquiry due in February 2012 (*this Report was written in January 2012. Ed.*).

Also the third equal runner up is New Zealand’s largest aged care provider, **Oceania**. Their economic dominance of the rest home market affects hospital patients, rest home and retirement village occupants along with 3,000 plus staff nationwide. Alistair Duncan’s *Foreign Control Watchdog* article (May 2011) highlights the adverse consequences of Oceania’s dominance. These include the low hourly rates of health care assistants and the contracting out of food services in Oceania hospitals and rest homes (the latter practice runs counter to “best practice” elderly care and marginalises union collective agreements). Here, however it is important to acknowledge the controlling influence of Macquarie Global Infrastructure Funds. These equity funds, within each of their diverse portfolios, specify given targets in terms of capital structure and rates of return. This is a financialised form of capitalism whereby portfolio content is almost incidental; Macquarie’s Holdings in gas distribution, container ports, electricity transmission and aged care businesses must all conform to pre-given measures of commercial performance which puts the concerns of Oceania residents and workers into stark perspective.

So then the winner of the 2011 Roger Award for the Worst Transnational Corporation Operating in Aotearoa/New Zealand - **Drum roll PLEASE - is**

## Rio Tinto Alcan NZ Limited

**Rio Tinto Alcan NZ Limited**, a subsidiary of Canadian transnational corporate **Rio Tinto Alcan Inc.** Owner of 79.36% of New Zealand Aluminium Smelters (**NZAS**). Before discussing this decision, let's comment again about Roger Award judging criteria. The approach is largely informed by the idea of negative utilitarianism; the greatest misery, so to speak, for the greatest number. In this respect, **Rio Tinto** scores strongly in all four categories: Economic Dominance, People, Environment, and Political Interference. And has an effect on the greatest number, the entire taxpaying population.

As New Zealand's largest power user it pays a secretly determined wholesale unit rate to operate the Tiwai Point aluminium smelter. This represents a system of corporate welfare which indirectly penalises every New Zealand taxpayer (while residential electricity bills relentlessly increase). The collusive arrangement over electricity pricing between **Rio Tinto** and **State** executives constitutes political interference at a national level and imperils basic principles of democratic governance. Such criticisms of **Rio Tinto** are longstanding, but maintain their relevance.

More recently, **Rio Tinto's** environmental performance is particularly significant. On the basis of the nominator's account, New Zealand Aluminium Smelters Ltd (NZAS) has effectively undermined the purposes of the carbon emissions trading scheme. Between July 1 and December 31, 2010 **NZAS** was allocated 210,421 free emission units yet only had to surrender 156,147. This adds up to a new gain of 24,274 free emissions units worth \$759,836. In this regard it appears that **NZAS** has already been secretly compensated for any electricity price increases associated with the emissions trading scheme (*since this was written the nominator, at the request of the judges, used the Official Information Act, and has advised that NZ Aluminum Smelters Ltd/Rio Tinto Alcan Ltd were provisionally allocated 423,047 New Zealand*

*Units for 2011. When asked if this more up to date figure made any difference to his nomination he replied: "No, it does not change my view that their allocation of free NZUs is excessive". Ed.).*

It appears therefore, that the New Zealand taxpayer is subsidising a transnational corporate **port** of the emissions trading scheme. **Rio Tinto** has, effectively, abrogated any responsibility to mitigate the incidence of anthropogenic global warming. The significance of this stance cannot be underestimated; a major transnational player within New Zealand materially benefits from its non-compliance with a strategy to reduce global climate change and its ecological effects. Of course, this raises fundamental questions about the efficiency of emissions trading, as compared to a tax-based model directed toward the largest CO<sup>2</sup> emitters. But let's not go there at this moment.

At a time when New Zealand's clean green image has been tarnished by recent events such as the *Rena* spill, **Rio Tinto's** silent contribution cannot be ignored.

**Will an officer of that company please come up and receive the award?**

**Joce Jesson, Chief Judge, Roger Award 2011.**



# Judges' Report

## New Zealand Aluminium Smelters Ltd/Rio Tinto Alcan NZ Ltd

For half a century the Comalco/RTA aluminium smelter at Tiwai Point has been New Zealand's living proof of the extent to which transnational corporations can make supposedly sovereign national governments dance to their tune. The company has featured in CAFCOA's *Foreign Control Watchdog* repeatedly for ripping off the New Zealand electricity system<sup>1</sup>, for busting unions at the plant<sup>2</sup>, for trying to score a cheap privatisation deal to grab control of the Manapouri power station in 1989-93<sup>3</sup>, and now for obstructing the development of climate change policy since the early 1990s, issuing direct blackmail threats in public over the 2008 Emissions Trading Scheme legislation, and then cutting a sweetheart deal with Government to get itself enough emission units to make a profit on the ETS. Not only does it face no cost of carbon emissions, but it gets its electricity costs subsidised even more than before, by additional free gifting of New Zealand emission units – which widens yet again the yawning gap between what the smelter pays for its electricity and what ordinary New Zealanders pay.

The smelter's political tactics are the classic practices of transnational corporations: hold-up and blackmail. Comalco/RTA has repeatedly threatened to shut the smelter and walk away, leaving the New Zealand government to pick up the pieces, if its demands are not met. Once the smelter was established and the local economy in Southland became hooked on its wage packages and purchases from local contractors and suppliers, Comalco/RTA was able to use Southland as its hostage in demanding ransom from the rest of the New Zealand community, and this exercise in hostage-taking has been brutally effective. As often happens in hostage-taking, the hostage is friendly towards its captor; Invercargill Mayor Tim Shadbolt has called the smelter "a good corporate citizen [with] plenty of local support"<sup>4</sup>.

The company has poured large resources into self-serving greenwash and PR to polish up its public image. From "saving the kakapo" to supporting local schools and charities, the smelter company's regular so-called "Sustainable Development Report" is filled with pronouncements of commitment to the community and the

environment. The dark side is hidden away in the detailed corporate accounting numbers and behind the veil of ostentatious secrecy that surrounds the electricity contracts.

Even smart transnationals, though, cannot fool all of the people all of the time; the Comalco name was dropped overboard in 2006 when the company re-branded as RTA, with every sign of relief at getting rid of a brand identity that had become toxic in the New Zealand public mind.

### Some History: The Electricity Saga

The smelter was located near Bluff for one reason only: cheap electricity. To get that, Comalco played off governments in New Zealand and across the Australian states against each other and against themselves in order to secure and lock-in low-priced long-term contracts for electricity supply. First, Comalco offered to build the Manapouri hydroelectricity station itself to supply its smelter; having got the Second Labour government hooked on the idea it walked away and left the Holyoake National government to make the decision to build the station at taxpayer expense, with the price of electricity to the smelter set by a long-term contract signed in 1963. The smelter itself was built between 1969 and 1971 and came into full production in 1972, paying an electricity price of 0.16 cents per kWh (kilowatt hour), just over one-quarter of the 0.55 cents paid by other large industrial users, and a fifth of the Bulk Supply Tariff to supply authorities of 0.77 cents. The contract, for a continuous 305.25 MW (megawatts), included provisions for an extension by mutual agreement for a further 15 years beyond 2007, to final termination in 2022.

From the outset that power contract drew heated public criticism, both because it required the Government to raise the level of Lake Manapouri and because the price, although ostentatiously kept secret for two decades, was obviously far lower than that paid by ordinary New Zealanders, and other industry sectors, for their electricity. Huge public protests in the early 1970s blocked the raising of the lake, but the contract price

remained safely protected from public view. Following continued public pressure, the Muldoon government in 1977 passed legislation forcing a revision of the price, but achieved only a modest one-off increase, and failed to achieve the hoped-for ongoing price escalation through the amended formula in the contract. In the mid 1980s the smelter was still paying, under its original contract, only 44% of the large-industry price, and 35% of the general wholesale price paid by supply authorities<sup>5</sup>. By 1993 it was still paying 45% of the baseload price<sup>6</sup>.

The Lange Labour government in 1987 attempted to renegotiate the price, but in the face of determined opposition from Comalco, was forced to abandon the attempt, for reasons that remain unclear. ECNZ (Electricity Corporation New Zealand), which inherited the supply end of the contract following corporatisation of the old New Zealand Electricity Department in 1986, recognised that the contract price was too low and involved large cross-subsidies from other electricity consumers, but the new contract which ECNZ signed in 1993 spectacularly failed to achieve the declared goal of moving the price up to parity with other large electricity users by 2012.

Along the way, Comalco had picked up two other electricity contracts. Contract 2, in 1981, was its reward for installing a third potline as part of Muldoon's Think Big industrial development programme. This was a 30-year contract for 178.5 MW, subject to a price review in 1997; if agreement was not reached at that point the contract was to run for only a further five years until 2002, with the price raised to the full South Island baseload price, and then terminate. If agreement was reached on a new price in the 1997 review, then the contract was to terminate in 2012. The price under this contract was 2.14 cents/kWh in 1982, about 65% of the bulk supply tariff; by 1989 it had risen to 72% under the escalation provisions in the contract<sup>7</sup>, but in 1993 it was reported as 75% of the "delivered baseload electricity price" which implied a fall back to, or below, the 1982 ratio to the bulk supply tariff<sup>8</sup>.

Contract 3, signed in 1987 with the newly-corporatised ECNZ, was for an additional 25 MW of continuous electricity, to be paid for at the prevailing wholesale price. Following corporatisation of ECNZ, and with electricity market restructuring underway, Comalco tried to

buy the Manapouri station for itself, which would have taken the electricity pricing issue out of the public eye. After a major public controversy, the proposed deal fell through, leaving the company in 1993 facing expiry of its low Contract 2 price in 1997.

New contract terms were thereupon negotiated with ECNZ in 1993 but not signed until December (after the election, over some opposition even within the National Party Cabinet<sup>9</sup>). Keith Turner, then General Manager (Generation) at ECNZ, said at the time that ECNZ's expectation was that Comalco's Contract 1 price would rise to 90% of the delivered baseload market price by 2010, and that the Contract 2 price would reach 90% of the wholesale price by 1999<sup>10</sup>. In 2012 he expected all of Comalco's contract prices to rise to the full market baseload price.<sup>11</sup> Unsurprisingly, given Comalco's history and undoubted negotiating skills, the actual outcome has never approached this lofty aspiration.

As part of the 1993 negotiating mix, Comalco threw in proposals to expand the smelter again. To accommodate this ECNZ agreed to an increase in the take-or-pay contract volume from the 483.75 MW of Contracts 1 and 2 to a combined contract for 543.75MW, plus an increase in the amount of Contract 3 from 25MW continuous supply to 60 MW at the prevailing wholesale market price. The expansion project was approved in June 1994 and completed in June 1996, raising capacity from 268,000 to 313,000 tonnes per year<sup>12</sup> and adding 48 pots<sup>13</sup>.

By 2005 when Comalco/RTA entered into new negotiations with Meridian Energy, now the contract supplier, the Comalco/RTA contract price was still obstinately stuck at around half of the price paid by other industry, less than half the price paid by commercial users, and about one-third the price paid by residential users. According to a press report at the time the energy component of the smelter's power was 4.7 cents/kWh and the full delivered price (including transmission) was 6 cents/kWh<sup>14</sup>. But official energy statistics suggest lower figures; in the year to March 2006 the non-ferrous metals sector (dominated by the smelter) paid only 5.03 cents/kWh. Over the same period the remainder of the industrial sector (including agriculture and forestry) paid 10.96 cents, commercial users paid on average 13.53 cents, and residential users 17.29 cents per kWh<sup>15</sup>.

Comalco's negotiating position in 2005 was, as usual, confrontational: either Meridian agreed to a low price, or the company would build its own coal-fired 600 MW power station – either next to the smelter, or on the Southland lignite fields<sup>16</sup>. Since the issue of New Zealand's carbon emissions (and obligation to reduce them under the 1997 Kyoto Protocol) was by now well to the fore in policy discussions, this was not just a threat to Meridian's market but also to New Zealand's emissions profile – effectively the Government was being held to ransom together with Meridian. As noted below, Comalco was simultaneously seeking exemption from any carbon tax that might be imposed, and playing a lead role in the Greenhouse Policy Coalition which opposed every policy proposal aimed to achieve greenhouse gas emissions reductions across the New Zealand economy. The tactics paid off as usual: in 2006 Meridian agreed to a new contract to replace the 1993 one in 2013. The take or pay quantity is to rise to 572MW in 2013, and the contract runs until 2030, locking in cheap electricity for the smelter for another 17 years.<sup>17</sup>

At each stage of this long-drawn-out game the smelter owners have successfully faced down both public anger and the best (usually half-hearted) efforts of Ministers, officials, and electricity generation companies to fix the problem.

### **Some Corporate History**

Until 2006 the main owner's name was Comalco, but then the ultimate owners, Rio Tinto, stepped out from behind the Australian company name.

On 6 November 2006 Comalco New Zealand Ltd changed its name to Rio Tinto Aluminium (New Zealand) Ltd<sup>18</sup>.

The following year there was another name change:

On 3 December 2007, Rio Tinto Aluminium (New Zealand) Ltd changed its name to Rio Tinto Alcan (New Zealand) Ltd<sup>19</sup>

These name changes reflected only a reshuffling of assets around the Rio Tinto transnational empire, not any substantive change from the point of view of New Zealand. What happened in 2007 was a successful takeover bid in October-November 2007 by Rio Tinto PLC's Canadian subsidiary Rio Tinto Canada Holding Inc for the Canadian aluminium producer Alcan Inc<sup>20</sup>. The success of the bid was followed by merger of the two companies on 17 November 2007, resulting in a new company named Rio Tinto Alcan Inc<sup>21</sup>.

The Tiwai Point smelter was one of the assets shifted to Rio Tinto Alcan Inc in the reorganisation, but the ultimate owner throughout remained Rio Tinto PLC. Essentially the smelter was part of a game of pass-the-parcel around the Rio Tinto transnational organisation. In fact, the Comalco story since 1962 has been a Rio Tinto story.

The origins of the company lie in 1956, when bauxite deposits were discovered at Weipa in northern Queensland. To develop these, a new company, Commonwealth Aluminium Proprietary Ltd (Comalco), was set up. The company's early history runs as follows<sup>22</sup>:

“The Commonwealth Aluminium Corporation Pty Ltd was formed in 1956 to develop bauxite deposits at Weipa, Queensland. In the following year it entered into a partnership with British Aluminium Co. Ltd. In 1960 British Aluminium withdrew and a new partnership formed between Consolidated Zinc Corporation Ltd and Kaiser Aluminium & Chemical Corporation resulted in the company changing its name to Comalco Industries Pty Ltd and registering in Victoria on 15 Dec 1960. Comalco was to manage and market products from an integrated group of aluminium companies. Based on the mining of bauxite from Weipa and Aurukun, the company operates aluminium smelters at Bell Bay, Queensland; Gladstone, Tasmania; and Bluff, New Zealand. In 1962 Kaiser Aluminium sold its interests to CRA and other companies. The company listed on the stock exchange in 1970 and issued a small shareholding to the public, at the same time changing its name to Comalco Ltd, but Rio Tinto Ltd acquired the remaining shares that it did not own in 1960 and the company was delisted. It is now a wholly owned subsidiary of Rio Tinto Ltd”.

The company “CRA” which bought out Kaiser Aluminium in 1962 had been formed in the same year following the merger of Consolidated Zinc Corporation with another long-established UK mining giant, Rio Tinto Ltd, to form the Rio Tinto Zinc Corporation (RTZ), whose Australian

subsidiary became Conzinc Riotinto of Australia (CRA)<sup>23</sup>. In 1995 the name of the Australian company was changed, as part of a reorganisation, to Rio Tinto Ltd, which was thereafter listed as the ultimate holding company of Comalco NZ Ltd. By 2000 Rio Tinto had bought out all minority shareholders and was the outright owner of Comalco<sup>24</sup>.

Development of the Weipa deposits required the establishment of processing plants: first a refinery to convert bauxite into alumina (aluminium oxide, Al<sub>2</sub>O<sub>3</sub>), and then smelters to convert the alumina into aluminium. Because aluminium smelting is very electricity-intensive, Comalco set out in the late 1950s in search of smelter locations in Australia and New Zealand. The Second Labour government headed by Walter Nash was keen to promote both hydroelectricity projects and industrial ventures, and a deal was struck whereby Comalco would construct the Manapouri power station and use it to power a smelter at Bluff (as noted above, Comalco quickly reneged on this deal, dumping the cost of building Manapouri onto the New Zealand taxpayer). Originally the smelter project involved three joint venture partners - Comalco NZ Ltd, Sumitomo, and Showa Denko – but Comalco was always the majority partner and the driving force in negotiations (Showa Denko exited in the 1980s, leaving the smelter owned 79.36% by Comalco and 20.64% by Sumitomo Chemical Company Ltd).

### **Climate Change Policy And The Emissions Trading Scheme**

The public face of Comalco/RTA is green and climate-friendly until we get to the company's actual behaviour. The annual NZAS *Sustainable Development Report* makes much of the fall in the smelter's own emissions per tonne of aluminium since 1990, and of the company's declared general commitment to emission reduction<sup>25</sup>:

“NZAS accepts the science behind climate change. As a major industry we have a responsibility to the community, our shareholders, and more broadly speaking our stakeholders, to engage constructively around policy and technology solutions to climate change.

### **Our Approach**

“At NZAS we are implementing a portfolio of initiatives to address climate change. Our climate change strategy focuses on key areas including:

- Setting meaningful targets and improving performance to reduce greenhouse gas emissions, through direct reductions or by offsets, and reducing energy consumption.
- Constructive engagement with policy development.
- Working with Rio Tinto to undertake and encourage research, development and deployment in zero and low emission technology.
- Working with our suppliers and customers to reduce greenhouse gas emissions”.

Three quarters of this list consists of actions the company takes within its own operation, and these actions are matters of profitable innovation<sup>26</sup> or customer relations that have no (or negative) cost for the company. The remaining bullet point is “constructive engagement with policy development”, which has translated in practice to obstructive engagement with any policy initiative that threatens smelter profits.

Comalco/RTA has been a central political player in lobbying efforts against carbon taxes and emissions trading since the early 1990s. Following the formation of the Intergovernmental Panel on Climate Change in 1988, and the 1992 Rio Earth Summit, the worldwide aluminium industry became alerted to the potential threat to its profitability if carbon taxes were introduced, and engaged in a range of actions to protect itself. In Australia, where Comalco New Zealand Ltd's parent company was a key player, a 2002 Australia Institute study noted that<sup>27</sup>

“The aluminium industry ... has been a vocal opponent of policy proposals to reduce greenhouse gas emissions from energy use and has continually sought to undermine the development of all but the most ineffective measures. Its constant refrain is that measures to restrict emissions will damage the industry's international competitiveness

resulting in lost market share and a decline in Australian economic welfare. The aluminium industry was one of the business groups to contribute \$A50,000 to gain a place on the Steering Committee for ABARE's MEGABARE model<sup>28</sup> that was used to justify the Government's position in the preparation for the Kyoto conference. It is also a prominent member of the Australian Industry Greenhouse Network (AIGN), an industry lobby that has consistently sought to block or water down effective abatement policies. The industry has continually relied on questionable research to make dubious claims about the impact of climate change policies, more recently suggesting that household energy and petrol costs could increase by more than 30% if a strong Kyoto Protocol were adopted.

"Moreover, the industry has frequently threatened to direct investment offshore if governments introduce climate change policies that affect the industry's access to cheap electricity. It has also argued that such a relocation of the industry would be environmentally damaging because smelters would move to countries with fewer environmental restrictions. Through its industry association, the Australian Aluminium Council (AAC), the industry consistently argues that it is of great economic importance to Australia, especially for the foreign exchange it earns. In the lead-up to the agreement to restrict greenhouse gas emissions at the Kyoto conference in November 1997 it was at the forefront of industry claims that mandatory targets would cause severe economic damage in Australia, and has produced dozens of media releases since then repeating this claim".

All the above tactics were faithfully repeated in the New Zealand context by Comalco/RTA.

Comalco was involved with the Natural Resources Users Group which in 1994 strongly lobbied against a \$10 per tonne carbon tax proposed by Simon Upton, then Minister for the Environment. It played a leading role in the Greenhouse Policy Coalition, set up in 1996 to fight the carbon tax.

The composition of the group was familiar<sup>29</sup>:

"The [Greenhouse Policy Coalition] has sprung into being just a week before a Government-appointed working party is to release a discussion paper on greenhouse strategies, expected to include options for both a carbon tax and tradeable emissions permits. The GPC joins the Natural Resource Users Group, the Major Energy Users Group (MEUG), and other business lobby groups trying to blunt the Government's plans to impose a low-level carbon tax if emissions are not on track to reduce to 1990 levels by the turn of the century...

"The coalition is headed by MEUG chief Terrence Currie. Membership includes MEUG, the Cement and Concrete Association, Comalco, Manfed, Carter Holt Harvey, BHP NZ Steel, the Packaging Industry Advisory Council, the Employers Federation, and the Petroleum Exploration Association. Currie said that despite the Government's almost obsessive desire to introduce a carbon tax, a tax is not the only option available to meet New Zealand's commitments to reduce greenhouse gas emissions. He told *The Independent* other options include greater use of carbon sinks through both plantation forests and native bush, and increased energy efficiency".

The lobbying effort was successful, and the National government agreed instead to negotiate voluntary agreements with major industrial firms under which they would agree to reduce their own emissions in return for the Government staying its hand. Very few agreements ever saw the light of day, but all momentum went out of the early policy drive towards pricing carbon.

The Clark Labour government ratified the Kyoto Protocol in 2002 and proceeded to develop proposals for a carbon tax, which were floated in early 2005, drawing the customary response from Comalco/RTA<sup>30</sup>:

"Giant aluminium maker Comalco

is threatening to quit New Zealand because the cost of the Government's new carbon tax could put it out of business...

"Comalco Smelting Managing Director Tom Campbell said the carbon tax the Government was introducing in 2007 as part of its commitment to the Kyoto Protocol could hit Comalco with a \$60 million a year bill... Mr Campbell said the \$60 million would be made up of a \$20 million bill for CO<sup>2</sup> emissions and another \$40 million in higher electricity costs because the carbon tax was expected to raise the price of electricity by about 2c a kilowatt hour. Since Comalco's profit in 2003 was \$35 million, the extra \$60 million cost would make the operation unprofitable.

"If you are exposed to this level of carbon tax obviously you could not continue', Mr Campbell said... Asked if this was an empty threat from Comalco because shutting an aluminium plant would deprive it of \$1 billion in sales and help New Zealand's electricity shortage, Mr Campbell said: 'That's not being stated as a threat'. An aluminium smelter could be closed quite quickly. 'You can flick a switch and walk away', he said.<sup>31</sup>

The carbon tax proposal was subsequently quietly abandoned by the Government. The next attempt to implement policies to reduce greenhouse gas emissions came in 2007 with the announcement of plans for an emissions trading scheme. Since one of the arguments used successfully in 2005 against a carbon tax had been that the (less effective) alternative of a permit trading scheme would be preferable, Comalco/RTA paid lip service to the ETS as a good idea in principle – but moved immediately to argue that it should be completely exempt from having to meet any costs under such a scheme because this would destroy its export competitiveness. Comalco/RTA said in its written submission to the Select Committee in February 2008<sup>32</sup>

"NZAS is clearly a trade exposed emissions intensive (TEEI) industry ... NZAS cannot pass Emissions Trading Scheme

(ETS)-related cost increases to its customers as aluminium is a commodity with prices set independently through the London Metal Exchange.... The introduction of an ETS in New Zealand before countries which have smelters that compete against NZAS for market share implement comparable climate change policies puts aluminium and other trade exposed industries at risk...

"It is critical that the New Zealand aluminium industry receive an allocation of permits for both its direct site-related emissions and permits for its indirect exposure to the electricity market as a transitional mechanism until there is a global carbon market. This is due to its trade exposed emissions intensive status...

"A failure to appropriately address TEEI issues in the New Zealand ETS legislation would almost certainly result in perverse outcomes. Industries in New Zealand would gradually close... Many TEEI issues can be appropriately addressed through the free allocation of NZUs... RTANZ supports the free allocation of NZUs (NZ Emissions Units) for firms and industries that are recognised as being trade exposed..."

When Xiaoling Liu, RTA's President of Primary Metal, Asia/Pacific Region, appeared before the Select Committee in May 2008, the message was driven home forcefully: "Rio Tinto will continue to support the New Zealand operation for as long as it is a cost-competitive location. The Bill in its current form would mean New Zealand would not remain a cost-competitive location"<sup>33</sup>. The General Manager, Paul Humborrow, stated that the Bill would "most likely put the smelter on a path to closure"<sup>34</sup>.

The structure of Comalco/RTA's case to Parliament was to combine a blitz of impressive-looking numbers about the smelter and the aluminium

market with the crudest of direct threats. MPs were, as usual, intimidated. The really important question – was the reduction in profits that the (very weak) ETS might bring truly enough to make the smelter non-viable? – was conspicuously not addressed in the written submission, and ducked with vague language in the Select Committee hearing.

The efforts of “trade exposed” large industries in their lobbying over the ETS were spectacularly successful. To make sure that they would face no actual costs on their emissions, the eventual legislation provided for them to be given enough free emission units to cover their obligations under the ETS. Then to make sure they faced no extra electricity costs once the price paid by all other electricity consumers was driven up by the ETS, the legislation provided for them to be given yet another pile of free units that they could sell off to recover the costs – and potentially make a profit on the deal. The icing on the cake for Comalco/RTA was its additional success in persuading the National government in 2009 to issue free permits not on a fixed amount of emissions but on the basis of the “emissions intensity” of production, which is code for getting more free units as output increases, provided that the ratio of emissions to output stays within some benchmark<sup>35</sup>.

With both Labour and National governments in thrall and with Greenhouse Policy Coalition lobbyists closely involved in the design and implementation of the ETS, it was only to be expected that Comalco/RTA would be at the head of the queue for its free handouts of emission units. Hence the 2011 Roger Award.

### **And Now It's Up For Sale....**

In late 2011 Rio Tinto started looking to sell off some of its older aluminium smelters in Australasia, and Tiwai Point was among those listed for disposal<sup>36</sup>. Tiwai Point itself is only one part of the package that a prospective buyer would look at. The three components that make the smelter a valuable asset are:

- The physical smelting plant and equipment at Bluff, including the specialised wharf for unloading alumina and other inputs;
- The low-price electricity contract, which is held by a separate company and does not have to be sold with the smelter

unless RTA decides to do so – it has always been a possibility that Comalco/RTA could close the smelter and remain as one of the biggest electricity suppliers in New Zealand;

- The vertically integrated corporate network of upstream supply and downstream markets that a stand-alone smelter would have to replace somehow, probably at high cost.

It is the last of these that makes it unlikely that the New Zealand government could contemplate nationalising the smelter to be operated as a national enterprise. Vertical integration is the key to competitive success in the world aluminium industry, and an independent stand-alone smelter would struggle to survive without overseas partners.

### **Conclusion**

In short, regardless of the PR cosmetics, this is one very big, very ugly transnational corporation whose behaviour over the five decades it has been active in New Zealand has lived up to every expectation of predatory, anti-social behaviour. The three dimensions of corporate misbehaviour that stand out from its history are

- suborning, blackmailing and conning successive New Zealand governments into paying massive subsidies on the smelter's electricity;
- dodging tax, and;
- running a brilliantly effective PR machine to present a friendly, socially responsible and thoroughly greenwashed face to the media and the public.

Its milking of the Emissions Trading Scheme is entirely in character.

# Financial Analysis

## New Zealand Aluminium Smelters Limited/Rio Tinto Alcan NZ Limited

by Sue Newberry

In late 2011, Rio Tinto announced that it would sell a group of its aluminium assets that it calls Pacific Aluminium. The New Zealand operations, which include operation of the Bluff smelter, as well as some of Rio Tinto's Australian ones, are part of Pacific Aluminium.<sup>37</sup> Rio Tinto holds its investment in New Zealand from Australia. This analysis of New Zealand Aluminium Smelters Limited/Rio Tinto Alcan NZ Limited concentrates on the time from 2007 when Rio Tinto made changes in the way it has structured its investment in the New Zealand operations. The timing of this restructuring should be noted – it was shortly after the Government's 2007 announcement of plans for a emissions trading scheme (ETS) from which Rio Tinto sought exemption, suggesting that New Zealand would no longer be cost-competitive. It might be expected that company restructuring would normally seek to reduce reported costs and improve competitiveness, but the *Judges' Report* suggests this restructuring had the opposite effect: subsequently, the NZ operation appeared to be less profitable and more costly. Whether this helped Rio Tinto to gain its ETS concessions is not known. Closer attention to the before- and after-restructuring financial operations is a matter for future scrutiny. This financial analysis concentrates on after-restructuring.

Under the post-2007 arrangement, Rio Tinto's investment in New Zealand is represented by very small investments in ordinary shares and a much larger investment in hybrid financial instruments with characteristics of both shares and debt. Presumably this arrangement allows Rio Tinto to take best advantage of the tax regimes in each country. A key hybrid arrangement relates to an amount of \$495,104,000, and this will be outlined below. There is no hope of untangling Rio Tinto's tax affairs in New Zealand from the information reported in the various financial reports. The Inland Revenue Department is aware of the threats to its tax base posed by some financial arrangements between New Zealand and Australia, including hybrid financial instruments. Some of Rio Tinto's financial reports are rounded off to thousands of dollars, while others are presented without rounding. For the purposes of this analysis, all of the amounts reported in financial reports that have been rounded off have been converted back to dollars by adding three zeroes to the rounded amount and so all amounts mentioned here are simply dollars.

### The Structure Of Rio Tinto's Holdings In New Zealand

Rio Tinto's investment in New Zealand is held from Australia by Rio Tinto Aluminium Ltd and RTA Pacific Pty Ltd. That investment involves four layers of companies in New Zealand, each of which owns shares in the next layer down. These are shown in the table below.

Rio Tinto's New Zealand Companies	Shares/ hybrid financial instruments held by:
RTA Investment (NZ) Ltd	<u>Ordinary shares:</u> RTA Pacific Pty Ltd <u>Mandatory convertible notes:</u> Rio Tinto Aluminium Ltd
RTA Pacific (NZ) Ltd	<u>Ordinary shares:</u> RTA Pacific Pty Ltd <u>Redeemable participating preference shares:</u> RTA Investment (NZ) Ltd
Rio Tinto Alcan (NZ) Ltd	<u>Ordinary shares:</u> RTA Pacific (NZ) Ltd
RTA Power (NZ) Ltd	<u>Ordinary shares:</u> Rio Tinto Alcan (NZ) Ltd
New Zealand Aluminium Smelters Ltd	<u>Ordinary shares:</u> Rio Tinto Alcan (NZ) Ltd (79.36%); Sumitomo Chemical Company (20.64%)



## RTA Investment (NZ) Limited

The New Zealand registered parent company of this Rio Tinto operation in New Zealand is RTA Investment (NZ) Limited which reports ordinary share capital of \$5,000. An Australian company, RTA Pacific Pty Limited, owns these ordinary shares. On 1 January 2007, RTA Investment (NZ) Ltd issued mandatory convertible notes of \$495,104,000 to Rio Tinto Aluminium Ltd, in Australia. RTA Investment (NZ) Ltd “pays interest on the Mandatory Convertible Notes in the form of accruing incremental shares or cash ... at 10.4%p.a.”<sup>38</sup> At 31 December 2010 RTA Investment (NZ) Ltd reported the liability relating to these mandatory convertible notes as \$746,200,399, this being the notes, initially at \$495,104,000 plus accrued interest of \$251,096,399.

RTA Investment (NZ) Limited reports as its revenues, dividends from a wholly owned subsidiary, RTA Pacific (NZ) Limited. Its shareholding was obtained on 1 January 2007 when it invested \$495,104,000 in these shares. RTA Investment (NZ) Limited’s expenses are finance costs, predominantly the interest on the mandatory convertible notes held by Rio Tinto Aluminium Ltd. The revenue and expense figures for each of the four years from 2007 to 31 December 2010 are shown below. The after tax figures show there have been large tax credits, but what shows as tax in the financial statements is never the same as the amount, if any, assessed by the Inland Revenue Department.

## RTA Investment (NZ) Limited

	Revenues	Expenses	Net Profit (+) Loss (-) before tax	Net Profit (+) Loss (-) after tax	Balance of Retained earnings
2007	58,719,353	53,521,140	+5,198,213	+5,198,213	+5,198,213
2008	71,775,520	59,197,252	+12,578,268	+47,997,798 <sup>39</sup>	+53,196,011
2009	54,458,378	65,644,707	-11,186,329	+8,507,083	+61,703,094
2010	47,365,986	72,734,335	-25,368,350	-\$6,315,651	\$55,387,443
Totals	\$232,319,237	\$251,097,434	\$18,778,198	+\$55,387,443	

The next table summarises the change in this investment over the four years. The mandatory convertible notes held by Rio Tinto Aluminium Australia have increased by the amount of interest on those notes. The interest has not actually been paid out but has instead been added to the amount reported as a liability on the mandatory convertible notes:

<b>RTA Investment (NZ) Ltd</b>	1 Jan 2007	31 Dec 2010
Contributed equity	5,000	5,000
Retained earnings	-	55,387,568
<b>Total Equity</b>		<b>55,392,568</b>
<b>Liability</b> (Mandatory convertible notes held by Rio Tinto Aluminium, Australia)	495,104,000	746,200,399

## RTA Pacific (NZ) Limited

The next layer down from RTA Investment (NZ) Ltd is RTA Pacific (NZ) Ltd. From 2007 until recently, the Australian company RTA Pacific Pty Ltd owned \$200,000 of ordinary shares in RTA Pacific (NZ) Ltd. During this time, RTA Pacific (NZ) Ltd paid more than \$1 billion in dividends on those shares (\$677,171,000 in 2008 and \$400,000,000 in 2009). Today, these ordinary shares have been reduced to just \$1,000.

In 2007, RTA Pacific (NZ) Ltd issued \$495,104,000 of redeemable participating preference shares to RTA Investment (NZ) Ltd. RTA Pacific (NZ) Ltd shows these redeemable participating preference shares as contributed equity, that is, as shares. Recall that RTA Investment (NZ) Ltd's revenues are the dividends RTA Pacific (NZ) Ltd reportedly paid on these redeemable participating preference shares. RTA Pacific (NZ) Ltd's financial reports show that the amount reported for redeemable participating preference shares issued to RTA Investment (NZ) Ltd has increased over time. The increase in the redeemable participating preference shares is the amount of the dividend. Instead of paying the dividend, RTA Pacific (NZ) Ltd has, on the first day of the following year, issued more redeemable participating preference shares for the amount of the dividend, thus increasing the amount of RTA Investment (NZ) Ltd's investment.

On 1 January 2007, RTA Pacific (NZ) Limited reported retained earnings of \$388,672,000. Those retained earnings are increased by the amount reported as after tax profit and decreased by the amount reported as dividends, some of which were paid to RTA Pacific Pty as dividends on the redeemable participating preference shares. The table below shows the retained earnings at 1 January 2007, and then tracks the changes in that figure for each of the years to 31 December 2010:

### RTA (Pacific) Limited

	RTA Pacific (NZ) Ltd's reported Profit(+)/ or loss (-)after tax	Dividends (on the \$200,000 ordinary shares) (to RTA Pacific Pty)	Tax adjustments (mostly non-resident withholding tax)	Dividends (redeemable participating preference shares) (to RTA Investment (NZ) Ltd)	Balance of retained earnings
	\$	\$	\$	\$	\$
1 Jan 2007					\$388,672,000
2007	+ 213,027,000		-52,000	-58,719,000	542,928,000
2008	+ 27,473,000	-677,171,000	+101,575,000	-71,775,000	-76,970,000
2009	- 14,199,000	-400,000,000	+60,000,000	-54,458,000	-485,627,000
2010	-26,919,000	-		-47,366,000	-\$559,912,000
Totals	+199,382,000	-1,077,171,000	+161,523,000	-232,318,000	

Note the major drop in balance of retained earnings is because the reported profits after tax for the four years which total \$199,382,000 are exceeded by the dividends reportedly paid which, offset by the non-resident withholding tax, amount to \$1,147,966,000. The next table summarises the changes in this investment over the four years.

<b>RTA (Pacific)</b>	<b>1 Jan 2007</b>	<b>31 Dec 2010</b>
Contributed equity		
- Ordinary shares (RTA Pacific Pty, Australia)	200,000	200,000
- Redeemable participating preference shares (RTA Investment (NZ) Ltd)	495,104,000	680,057,000
Retained earnings	388,672,000	-559,912,000
<b>Total Equity</b>	<b>888,976,000</b>	<b>120,345,000</b>

### **Rio Tinto Alcan (NZ) Limited**

RTA Pacific (NZ) Limited owns the shares of Rio Tinto Alcan (NZ) Limited which reports ordinary shares of \$350,654,000. In 2007, Rio Tinto Alcan (NZ) Limited reported retained earnings of \$371,065,000. From this opening balance the reported profits after tax and the dividends paid or provided each year are shown in the table below, with the right hand column tracking the balance of the retained earnings.

### **Rio Tinto Alcan (NZ) Limited**

	+ Profit/ or – loss after tax	Dividends	Balance of +Retained earnings/- accumulated losses
2007			Opening balance +371,065,000
2007	+204,530,000		= +575,595,000
2008	+ 19,065,000	-575,595,000	= +19,065,000
2009	- 15,084,000	-291,000,000	= -287,019,000
2010	-27,340,000		= -314,359,000
Totals	\$181,171,000	\$866,595,000	

The dividends reported paid over the four years exceed Rio Tinto Alcan (NZ) Limited's reported profits by \$685,424,000 (\$866,595,000 - \$181,171,000). Recall that these dividends go up the line, and note that the dividends relate to 2008 and 2009, the year that RTA Pacific (NZ) Limited made the big dividend payments to RTA Pacific Pty Ltd. In fact, the 2008 dividend of \$575,595,000 is exactly the amount paid on to RTA Pacific Pty Ltd after adjustment for non-resident withholding tax (\$677,171,000 - \$101,575,000). The next table summarises the changes in this investment over the four years, showing that total equity has been reduced from more than \$700 million in 2007 to \$36 million by the end of 2010.

<b>Rio Tinto Alcan (NZ) Ltd</b>	<b>1 January 2007</b>	<b>31 December 2010</b>
Contributed equity (held by RTA Pacific (NZ) Ltd)	350,654,000	350,654,000
Retained earnings	371,065,000	-314,359,000
<b>Total Equity</b>	<b>721,719,000</b>	<b>36,295,000</b>

### **RTA Power (NZ) Limited**

Rio Tinto Alcan (NZ) Limited owns \$450,000 of ordinary shares in RTA Power (NZ) Limited, but \$200,000 of this is uncalled (i.e. not paid), leaving a paid up ordinary share investment of \$250,000. RTA Power (NZ) Limited holds a take or pay contract with Meridian Energy Limited to purchase 543.75 megawatts of electricity. That contract is to expire in 2012, but in 2010 Rio Tinto Alcan (NZ) Limited reported that a new take or pay contract

had been negotiated with Meridian. This new contract runs through until 2030 and is for 572 megawatts. According to Rio Tinto Alcan (NZ) Limited additional power is also purchased at market rates.

RTA Power (NZ) Limited buys the electricity from Meridian and on-sells it to New Zealand Aluminium Smelters Ltd. It appears to buy and sell the electricity for approximately the same price. RTA Power (NZ) Limited does not report paying dividends to its shareholder but it has accumulated losses equivalent to most of the \$250,000 reported share investment. For the record, the balance of accumulated losses at 1 January 2007 is shown below, and then each year's after tax result is shown and the right hand column tracks the balance of the accumulated losses account.

#### RTA Power (NZ) Limited

	+ Profit/ or - loss after tax	Balance of Retained earnings/ accumulated losses
1 Jan 2007		Opening balance -\$115,621
31 Dec 2007	-69,281	-\$184,902
2008	-24,505	-\$209,407
2009	+ 366	-\$209,041
2010	-755	-\$209,796

The \$250,000 share investment in RTA Power (NZ) Limited is therefore offset by the \$209,796 of accumulated losses, leaving a net investment of \$40,204. The change over the four years is summarised in the table below:

<b>RTA Power</b>	<b>1 January 2007</b>	<b>31 December 2010</b>
Contributed equity (held by Rio Tinto Alcan (NZ) Ltd)	250,000	250,000
Retained earnings	-115,621	-209,796
<b>Total Equity</b>	<b>134,379</b>	<b>40,204</b>

#### New Zealand Aluminium Smelters Limited

Rio Tinto Alcan (NZ) Limited owns 79.36% of the shares in New Zealand Aluminium Smelters Ltd (NZAS), and Sumitomo Chemical Company of Japan owns the other 20.64%.

<b>NZAS</b>	<b>1 January 2007</b>	<b>31 December 2010</b>
Contributed equity (79.36% held by Rio Tinto Alcan (NZ) Ltd and 20.64% held by Sumitomo Chemical Company, Japan)	31,500,000	31,500,000
Retained earnings	-2,077,000	894,000
<b>Total Equity</b>	<b>29,423,000</b>	<b>32,394,000</b>
Liability – Comalco (Tasman) Limited (Cayman Islands?)	270,730,000	247,798,000

At 31 December 2010, NZAS's equity is reported as \$32,394,000 but NZAS also reports a liability of \$247,798,000 to Comalco (Tasman) Limited a related company that NZAS suggests is a joint venture between NZAS and another party.<sup>40</sup> The financial reports do not identify where this company is registered, but it appears to be the Cayman Islands.

Both Rio Tinto Alcan (NZ) Limited and Sumitomo Chemical Company state that NZAS functions as a joint venture, and this affects the way that this investment is accounted for. If the arrangement was straightforward each company would report in its results for the year a percentage of NZAS's after tax results that, if added together, would amount to the total of NZAS's after tax results. While things do seem to be straightforward for Sumitomo they are not so straightforward for Rio Tinto Alcan (NZ) Limited. There are adjustments made to the proportion of its profit or loss from NZAS. This is usual for the form of accounting but it would also be usual for the financial reports to provide some explanation of these adjustments. Rio Tinto Alcan (NZ) Limited's financial reports are not so informative. There is no way of identifying the nature of all the adjustments made or of understanding the changing balance reported for Rio Tinto Alcan (NZ) Limited's consolidated net investment in NZAS.

The first column below shows NZAS's reported after tax result. The column immediately to the right of that shows 79.36% of that amount as a means of comparing that number to the amount reported in Rio Tinto Alcan (NZ) Limited's financial reports as its share of NZAS's profit. The column to the right of that again shows what Rio Tinto Alcan (NZ) Limited reports as its share of NZAS's reported results and the final column on the right shows the consolidated investment in NZAS as reported in Rio Tinto Alcan (NZ) Limited's financial reports.

### New Zealand Aluminium Smelters Limited

Year	NZAS reported result after tax	79.36% of NZAS reported result after tax	RTA share of profit (after adjustments for whatever reason)	RTA consolidated investment
2007	+24,633,000	+19,548,749	1,695,000	129,437,000
2008	-55,556,000	-44,089,242	27,157,000	147,673,000
2009	+56,004,000	+44,444,774	4,348,000	76,505,000
2010	-22,110,000	-17,546,496	68,520,000	46,911,000
Total result	2,971,000	+2,357,785	-35,320,000	

Rio Tinto Alcan (NZ) Limited's accounting policy states that "the carrying value [of the investment] will include any long term debt interests which "in substance" form part of the Group's net investment"<sup>41</sup> The full amount of the investment is reported as \$316,300,000. The difference between this amount and the net amount shown in the right hand column might be partly explained by some sort of in substance allowance for long term debt.<sup>42</sup> If that is the case, one adjustment might be to reduce the share of profit by some sort of interest calculation on that in substance long term debt. This is just one possibility. With no reconciliation or explanation in the financial reports it is impossible to know.

### Operating Arrangements

From the long explanation above about the layered structure of Rio Tinto's investment in New Zealand, it should be apparent that the bulk of the transactions reported at the level where the actual aluminium operations occur (Rio Tinto Alcan (NZ) Ltd and NZAS) are related party transactions. Very little occurs with parties outside either Rio Tinto or Sumitomo.

NZAS's major cost of operating seems to be electricity which it buys from RTA Power NZ Limited, which is owned by Rio Tinto Alcan (NZ) Limited. Rio Tinto and Sumitomo send their alumina to NZAS for smelting to convert it to aluminium. According to Sumitomo's financial reports, "NZAS levies a charge (tolling charge) for this service and the stocks of alumina and aluminium remain the property of [Sumitomo or Rio Tinto] at all times. Tolling charges from NZAS represent the tax deductible costs to NZAS as required by the Initial Tolling Contract."<sup>43</sup>

Sumitomo on-sells its aluminium to another Sumitomo company outside New Zealand. Rio Tinto Alcan (NZ)

Limited appears to do the same with its aluminium, selling it on mostly to other Rio Tinto operations outside New Zealand. Consequently, reported profits or losses in New Zealand, as well as the investments and retained earnings or accumulated losses have more to do with decisions by the international parent companies than with operational matters within New Zealand. Sumitomo illustrates this point with its explanation of the NZAS tolling contract. NZAS's sales revenues are intended to recover NZAS's costs, but not to make a profit. The smelter merely operates as a cost centre within a larger integrated mining and aluminium production operation. Further, if NZAS does make a profit in any one year, the charges are reduced the following year to offset the profits of the previous year. This may be seen by adding the total of NZAS's results for the four years ended 31 December 2010. Although the reported profits and losses varied each year, over the four years they came close to balancing out. The results added together amount to some \$2,971,000.

### Export Earnings From The Aluminium Smelting Activity: The Claimed Benefits To New Zealand

The benefit to New Zealand of hosting this aluminium processing operation was said recently to be the export earnings resulting from it. The recently quoted figure has been of annual export earnings around the \$1 billion mark.<sup>44</sup> In the four years to 31 December 2010, NZAS did not report revenues anywhere near this amount, although Rio Tinto Alcan (NZ) Ltd's financial reports did do give the impression of "around \$1 billion" in revenues.<sup>45</sup>

Working from Rio Tinto Alcan (NZ) Ltd's financial reports the "around \$1 billion" in revenues is exaggerated because some revenues are double counted. This results from the accounting effect of having NZAS as a joint venture which purchases its electricity from a Rio Tinto Alcan (NZ) subsidiary, and then charges Rio Tinto Alcan (NZ) for its smelting. The joint venture arrangement means that transactions between RTA (NZ) Power Ltd and NZAS, and between NZAS and Rio Tinto Alcan (New Zealand) Limited are not cancelled out in Rio Tinto Alcan (New Zealand) Limited's financial statements. The table below shows the revenues and expenses reported in Rio Tinto Alcan (New Zealand) Limited's financial reports from 2007 to 2010.

	2010	2009	2008	2007
Revenues	1,231,564,000	913,251,000	1,060,897,000	1,129,060,000
Expenses	-1,180,497,000	-899,178,000	1,059,637,000	829,951,000
Net	51,067,000	14,073,000	1,260,000	299,109,000

These revenues and expenses include the electricity twice: first RTA Power (NZ) Ltd purchases the electricity and sells it to NZAS, so this is reported in Rio Tinto Alcan (NZ)'s statements as a revenue and expense because Rio Tinto Alcan (New Zealand) Limited's financial statements include the activities of RTA Power (NZ) Limited; second NZAS's tolling charge to Rio Tinto Alcan (NZ) includes the cost of electricity and Rio Tinto Alcan (NZ) then on-sells the processed aluminium. So this is included in Rio Tinto Alcan (New Zealand) Limited's financial reports. If the double counted electricity were excluded, both the revenues and expenses, but not the profit, would be reduced by \$343,034,000 for 2010; \$292,660,000 in 2009; \$310,152,656 in 2008 and \$299,931,345 in 2007. The effect of removing the double counting is shown below.

	2010	2009	2008	2007
Revenues	888,530,000	620,591,000	770,774,344	829,128,655
Expenses	-837,463,000	-606,518,000	-749,484,344	-530,019,655
Net	51,067,000	14,073,000	1,260,000	299,109,000

This is still a sizeable operation but if there are benefits to New Zealand from the export revenues those benefits must surely be reduced by Rio Tinto Alcan (NZ)'s import costs for the alumina, as well as for any other import costs. Clearly, the alumina processed at the smelter does not come from New Zealand but it is not clear what other import costs there may be. Consequently, the table below deducts only the materials costs from the revenues after the double counting is removed. Totalled over the four years, this comes to

\$2,148,965,999, which approximates to \$537,000,000 per year, approximately half the amount claimed.

It should be noted, however, that the \$2,148,965,999, ignores the large amounts going back to the Australian parent companies as dividends on the ordinary shares in Rio Tinto Pacific (NZ) Limited (\$1,077,171,000) and interest on the mandatory convertible notes in RTA Investment (NZ) Limited (\$251,096,399). When these are removed from that four year total it is reduced from \$2,148,965,999 to \$820,698,600 for the whole four years. Averaged over the four years this amounts to \$205,174,650 or about one fifth of the \$1 billion export revenues claimed to benefit New Zealand each year.

	2010	2009	2008	2007	Total for the four years
Revenues with double counted electricity removed	888,530,000	620,591,000	770,774,344	829,128,655	
Less materials and supplies (export costs)	242,447,000	155,060,000	268,408,000	264,143,000	
Net revenues	646,083,000	465,531,000	482,366,344	554,985,655	2,148,965,999
Less dividends and interest paid overseas					-1,328,267,399
Approximate net export revenues for four years					\$820,698,600

This is not to suggest that the smelter operation does not earn export revenues, but rather to demonstrate that the claims about the benefits to New Zealand from the export revenues are exaggerated.

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## Endnotes

- 1: E.g. Murray Horton, "Comalco's Power Play", *Watchdog* 70 August 1992, p.15-19, <http://www.historicalwatchdog.blogspot.co.nz/2009/12/foreign-control-watchdog-august-1992.html>; Pete Lusk and Ron Currie, *The Amazing Adventures of NZ's No 1 Power Junky*, CAFCA 1982, online at <http://www.historicalwatchdog.blogspot.co.nz/2009/01/comalco-comic.html>.
- 2: "Comalco's Litany", *Watchdog* 72, March 1993 pp.14-15; <http://www.historicalwatchdog.blogspot.co.nz/2009/12/foreign-control-watchdog-march-1993.html>; "How Comalco broke the unions at the Bluff smelter", *Watchdog* 97, 2001, Pete Lusk, <http://www.converge.org.nz/watchdog/97/8.htm>.
- 3: "Comalco still after Manapouri", *Watchdog* 67 June 1991 p.2, <http://www.historicalwatchdog.blogspot.co.nz/2009/12/foreign-control-watchdog-june-1991.html>
- 4: Marta Steeman, "Comalco threatens to quit New Zealand", *Waikato Times* 17/3/05, p.15.
- 5: The key source for these figures is a press statement issued on 10/6/87 by the office of the Minister of Energy, RJ Tizard, entitled "Government Committed to Resolving Comalco Dispute".
- 6: Media release by Keith Turner, General Manager (Generation), ECNZ, 20/12/93, p.1; Patrick Smellie "At last: a ray of light on Comalco's secret power price", *The Independent* 27/8/93, p.6.
- 7: ECNZ Board paper "Comalco - Strategic Issues" by Keith Turner (Corporate Development Manager) dated 27/7/89, p.1.
- 8: Media release by Keith Turner, General Manager (Generation), ECNZ, 20/12/93, p.2. The difference between the two market prices referred to here is that the Bulk Supply Tariff was the price paid for wholesale supply by the country's retailing operations – Electricity Supply Authorities and Municipal Electricity Boards, whereas the delivered baseload price was the wholesale price paid by large industrial customers supplied directly off the grid. Because the large industrial users had steady demand whereas the supply authorities' requirements had daily peaks and troughs, it was cheaper to supply baseload users and hence they paid a lower price per unit. The delivered baseload price to a large user was generally around 80% of the Bulk Supply Tariff to electricity supply authorities.
- 9: Patrick Smellie, "Comalco releases power report", *The Independent* 26/4/96 p.8.
- 10: Media release by Keith Turner, General Manager (Generation), ECNZ, 20/12/93, pp.1-2.
- 11: See the chart "ECNZ/Comalco Contracts Price Summary" appended to media release by Keith Turner, General Manager (Generation), ECNZ, 20/12/93.
- 12: Fran O'Sullivan, "Prospects for Comalco NZ float rise with its profits", *National Business Review* 8/12/95 p.71; James Weir, "Prime Minister opens Comalco upgrade", *Dominion* 3/6/96 p.11.
- 13: Richard Inder, "Comalco's Tiwai Point smelter gears up to face market storms", *National Business Review*, 20/10/95, p.54.
- 14: Paul Gorman, "Turning off Tiwai Point", *The Press*, 9/4/05 p.1.
- 15: *Energy Data File June 2007* pp.118-119 TableG.5e.
- 16: James Weir, "Comalco starts \$5 billion power talks", *Dominion Post* 16/6/05. The plan was signalled in the *NZAS Sustainable Development Report 2004* p.2: "In 2005 we begin negotiations to secure a long-term power supply for NZAS beyond our current agreement, which expires in 2012. As part of this process, a project team is investigating the feasibility of NZAS commissioning its own power supply". And p.3: "a small project team is investigating options for the supply of electricity to NZAS beyond 2012 when our existing contract runs out. At the end of 2004 NZAS directors approved pre-feasibility studies into: 1. A black coal fired station (500 to 1000 MW) on the Tiwai Peninsula; and 2. A lignite fired station (500 to 1000 MW) adjacent to a Southland mine site. These studies will be complete by the end of 2005. While a wind farm could only supply a proportion of NZAS' energy demand, the smelter is conducting ongoing monitoring and data analysis of wind flow, along with studies of bird flight paths on the Tiwai Peninsula".
- 17: *Rio Tinto Alcan (New Zealand Ltd) and Subsidiaries Annual Financial Report for the Year Ending 31 December 2010*, p.22 note 22 (Companies Office Website).
- 18: *Rio Tinto Aluminium (NZ) Ltd and Subsidiaries Directors' Report for the year ended 31 December 2006*, p.2.
- 19: *Rio Tinto Alcan (NZ) Ltd and Subsidiaries Directors' Report for the year ended 31 December 2007*, p.2.
- 20: [http://www.riotinto.com/media/5157\\_6844.asp](http://www.riotinto.com/media/5157_6844.asp) .
- 21: [http://en.wikipedia.org/wiki/Rio\\_Tinto\\_Alcan](http://en.wikipedia.org/wiki/Rio_Tinto_Alcan) .
- 22: <http://gallery.its.unimelb.edu.au/imu/imu.php?request=feature&key=579>
- 23: <http://www.riotinto.com/aboutus/history.asp>
- 24: <http://www.riotinto.com/aboutus/history.asp#/all/0/1956>
- 25: *NZAS Sustainable Development Report 2007* p.16.
- 26: In an example of a Government ministry doing the company's PR job for it, the Ministry for the Environment lavished praise on Comalco in the November 2006 issue of the Ministry's publication *Te Take Aoteraroa*. Philip Millichamp, the Ministry's Senior Operator Climate Change Implementation, was quoted as saying: "[Comalco/RTA] is now making considerable savings by being more energy efficient. It shows that environmental measures also make good business sense". The company's General Manager, Tom Campbell, was similarly quoted as saying that: "There has been a relentless drive on



energy efficiency throughout the smelter's operating history. Improvements have been driven by business imperatives and economics rather than a response to any taxes, greenhouse charges or levies".

27: Hal Turton, *The Aluminium Smelting Industry Structure, market power, subsidies and greenhouse gas emissions*, The Australia Institute 2002, p.1, [http://www.tai.org.au/documents/dp\\_fulltext/DP44.pdf](http://www.tai.org.au/documents/dp_fulltext/DP44.pdf)

28: 'MEGABARE' was the name given to a general-equilibrium model of the world economy produced by the Australian Bureau of Agricultural and Resource Economics (ABARE). The model was claimed by ABARE to be more realistic than other so-called "top-down" models because "a distinctive feature ... is the modelling of the choice of production technology in major energy-using industries. The choice of input mix is constrained to correspond to known technologies...." (K Hanslow, M Hinchy and BS Fisher, "International Greenhouse Economic Modelling", in WJ Bouma et al, *Greenhouse: Coping with Climate Change*, CSIRO, 1996, p.642). Translated into plain English, the central feature of this model was that it assumed (or rather, asserted) that the Australian electricity industry was incapable of switching away from coal, which meant that a carbon tax would simply shut down much of the Australian economy as electricity supply dropped. The family resemblance with Comalco's customary negotiating position is obvious enough. Australia successfully used this argument at Kyoto to escape from having any serious carbon-reduction target imposed on it by the Kyoto Protocol.

29: "New Coalition forms to fight greenhouse tax", *The Independent*, 14/6/96 p.2.

30: Marta Steeman, "Comalco threatens to quit New Zealand", *Waikato Times* 17/3/05, p.15.

31: CAFCA immediately invited him to do just that. See Murray Horton, "Comalco up to old tricks again", *Watchdog* 109, August 2005, <http://www.converge.org.nz/watchdog/09/07.htm> .

32: *Rio Tinto submission to the Finance and Expenditure Select Committee on the Climate Change (Emissions Trading and Renewable Preference) Bill*, 28/2/08, [www.parliament.nz/NR/rdonlyres/945D2372-A4F5-4DC3-AE0E-EE6E8819468c/79869/RioTintoAlcanNZLtd.pdf](http://www.parliament.nz/NR/rdonlyres/945D2372-A4F5-4DC3-AE0E-EE6E8819468c/79869/RioTintoAlcanNZLtd.pdf), pages 3-4, 11.

33: "Rio Tinto ETS submission – key points", press release 13/5/08, <http://www.scoop.co.nz/stories/BU0805/S00252.htm>

34: Brian Fallow, "Emissions scheme 'threat to smelter'", *NZ Herald*, 13/5/08.

35: For the detail see Chapter 6 of Geoff Bertram and Simon Terry, *The Carbon Challenge: New Zealand's Emissions Trading Scheme* (Bridget Williams Books, Wellington, 2010) (reviewed in *Foreign Control Watchdog* 125, December 2010, <http://www.converge.org.nz/watchdog/25/11.htm>)

36: Patrick Smellie, "What am I bid for *an old aluminium smelter in Bluff?*", *Press*, 20/10/11.

37: Patrick Smellie, "What am I bid for an old aluminium smelter in Bluff", *Press*, 20/10/11.

38: RTA Investment (NZ) Limited, Annual financial report for the year ended 31 December 2010, Note 11.

39: In this year RTA Investment (NZ) Limited reported a tax credit of \$35,419,530, most of which related to non taxable income and to non-taxable interest on a loan.

40: New Zealand Aluminium Smelters Limited, annual financial report for the year ended 31 December 2010.

41: Rio Tinto Alcan (New Zealand) Limited and subsidiaries, annual financial statements for the year ended 31 December 2010, Note 2

42: In this context, in substance seems to mean making an assumption that Rio Tinto in Australia is debt financing the investment even though that is not what is reported in Rio Tinto Alcan (New Zealand) Limited's financial reports.

43: Sumitomo Chemical Company Ltd New Zealand Branch, financial statements for the year ended 31 March 2011.

44: Patrick Smellie, "What am I bid for an old aluminium smelter in Bluff", *Press*, 20/10/11. See also Radio New Zealand's news item, 2/2/12, titled, "Aluminium record set in 2011". It seems that the \$1 billion figure comes from NZAS. The details of the 2011 financial information have not yet been made available to the public. NZAS has not yet reported revenues of anywhere near that amount and, of course, it is not reporting export revenues because all of its sales are to other companies domiciled in New Zealand (Sumitomo and Rio Tinto Alcan (NZ) Limited. In the four years to 31 December 2010, NZAS reported sales revenues of \$660,962,000 (in 2007), \$786,792,000 (in 2008), \$569,521,000 (in 2009) and \$655,687,000 (in 2010). It also reports that the whole of sales are to either Sumitomo's New Zealand operation or to Rio Tinto Alcan (New Zealand) Limited. Strictly, NZAS has no export revenues at all.

45: Even in 2010, NZAS's total revenues were reported as \$655,687,000.

