



## **Consideration report number: 557**

Application for a dumping duty notice

Submitted by Metal Manufactures Pty Ltd (Trading as MM  
Kembla)

In relation to certain copper tube exported to Australia  
from the People's Republic of China and the Republic of  
Korea

and

Application for a countervailing duty notice

Submitted by Metal Manufactures Pty Ltd (Trading as MM  
Kembla)

In relation to certain copper tube exported to Australia  
from the People's Republic of China

13 July 2020

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**ABBREVIATIONS**

<b>Abbreviations / short form</b>	<b>Full reference</b>
ABF	Australian Border Force
the Act	Customs Act 1901
ADN	Anti-Dumping Notice
the applicant	Metal Manufactures Pty Limited (Trading as 'MM Kembla')
CBSA	Canada Border Services Agency
China	the People's Republic of China
COGS	Cost of goods sold
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
EPR	electronic public record
EXW	ex works
FOB	free on board
the goods	certain copper tubes, as described in section 2.3
GOC	Government of the People's Republic of China
HVAC	heating, ventilation and air conditioning
investigation period	1 July 2019 to 30 June 2020
Korea	the Republic of Korea
the Minister	the Minister for Industry, Science and Technology
SG&A	selling, general and administrative

## 1. FINDINGS AND RECOMMENDATIONS

This report provides the result of the consideration by the Anti-Dumping Commission (the Commission) of an application under subsection 269TB(1)<sup>1</sup> of the *Customs Act 1901* (the Act) by Metal Manufactures Pty Ltd trading as MM Kembla (MM Kembla, or the applicant) for the publication of:

- a dumping duty notice in respect of certain copper tubes that have been imported into Australia from the People's Republic of China (China) and the Republic of Korea (Korea), and;
- a countervailing duty notice in respect of certain copper tubes that have been imported into Australia from China.

MM Kembla alleges that the Australian industry for certain copper tubes has suffered material injury caused by certain copper tubes exported to Australia from Korea at dumped prices, and from China at dumped and subsidised prices.

The legislative framework that underpins the making of an application and the Commission's consideration of an application is contained in Divisions 1 and 2 of Part XVB.

### 1.1. Findings

In accordance with section 269TC(1), the Commission has examined the application and is satisfied that:

- the application complies with the requirements of 269TB(4) (as set out in section 2.2 of this report)
- there is an Australian industry in respect of like goods (as set out in section 2.4 of this report)
- there appear to be reasonable grounds for the publication of a dumping duty notice (for China and Korea) and a countervailing duty notice (for China only) in respect of the goods the subject of the application (as set out in sections 3, 4, 5 and 6 of this report).

### 1.2. Recommendations

Based on the above findings, the Commission recommends that the Commissioner of the Anti-Dumping Commission (Commissioner) decide not to reject the application and initiate an investigation to determine whether dumping and countervailing duty notices should be published.

The Commission further recommends that:

- exports to Australia during the investigation period 1 July 2019 to 30 June 2020 be examined for dumping and subsidisation,<sup>2</sup> and

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<sup>1</sup> All legislative references in this report are to the *Customs Act 1901* unless otherwise specified.

<sup>2</sup> On initiation of this investigation the Commission will request an additional quarter of information from the applicant.

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- details of the Australian market from 1 July 2016 be examined for injury analysis purposes.

If the Commissioner agrees with these recommendations, the Commissioner must give public notice of the decision (**Non-Confidential Attachment 1**) in accordance with the requirements set out in section 269TC(4).

## 2. THE APPLICATION AND THE AUSTRALIAN INDUSTRY

### 2.1. Lodgement of the application

#### 2.1.1. Legislative framework

The procedures for lodging an application are set out in section 269TB. The procedures and timeframes for the Commissioner's consideration of the application are set out in section 269TC.

#### 2.1.2. The Commissioner's timeframe

Event	Date	Details
Application lodged & receipted by the Commissioner under sections 269TB(1) and (5)	29 May 2020	The Commission received an application from MM Kembla which alleges that the Australian industry is suffering material injury caused by certain copper tubes that have been imported into Australia from China that are both dumped and subsidised, and have been imported into Australia from Korea that are dumped.
	6 June 2020	The Commission notified MM Kembla that the application contained critical and important deficiencies which, if left unaddressed, create doubt on the reasonableness of the grounds for the publication of dumping and countervailing duty notices.
Applicant provided further information in support of the application under section 269TC(2A)	12 June 2020	The applicant provided further information and data in support of their application without having been requested to do so (as provided in section 269TC(2A)). This restarted the 20 day period for consideration of the application.
	22 June 2020	The Commission notified MM Kembla that the application contained critical and important deficiencies which if left unaddressed, create doubt on the reasonableness of the grounds for the publication of dumping duty notice.
Applicant provided further information in support of the application under section 269TC(2A)	24 June 2020	The applicant provided further information and data in support of their application without having been requested to do so (as provided in section 269TC(2A)). This restarted the 20 day period for consideration of the application.
Consideration decision due under section 269TC(1)	14 July 2020	The Commissioner shall decide whether to reject or not reject the application within 20 days after the applicant provided further information.

## 2.2. Compliance with section 269TB(4)

### 2.2.1. Finding

Based on the information submitted by the applicant, the Commission considers that the application complies with section TB(4).

### 2.2.2. Legislative framework

Section 269TC(1) requires that the Commissioner reject an application for dumping and countervailing duty notices if, among other things, the Commissioner is not satisfied that the application complies with section 269TB(4).

### 2.2.3. The Commission's assessment

The table below summarises the Commission's assessment of compliance with section TB(4).

Requirement for the application	Details
Lodged in writing under section 269TB(4)(a)	The applicant lodged, in writing, confidential and non-confidential versions of the application. The non-confidential version of the application can be found on the electronic public record on the Commission's website at <a href="http://www.adcommission.gov.au">www.adcommission.gov.au</a> .
Lodged in an approved form under section 269TB(4)(b)	The application is in the approved form (B108) for the purpose of making an application under section 269TB(1).
Contains such information as the form requires under section 269TB(4)(c)	The applicant provided: <ul style="list-style-type: none"> <li>• a completed declaration;</li> <li>• answers to all questions that were required to be answered by the applicant;</li> <li>• a completed set of all appendices; and</li> <li>• sufficient detail in the non-confidential version of the application to enable a reasonable understanding of the substance of the information submitted in confidence.</li> </ul>
Signed in the manner indicated in the form under section 269TB(4)(d)	The application was signed in the manner indicated in Form B108 by a representative of the applicant.



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Requirement for the application	Details
Supported by a sufficient part of the Australian industry under section 269TB(4)(e) and determined in accordance with section 269TB(6)	<p>MM Kembla states that it is the sole producer of goods that have similar characteristics and are therefore like to the goods exported to Australia from the subject countries. Having examined available sources on the internet, including the applicant's history, industry publications and membership of industry bodies, at this time there is no information before the Commission contrary to MM Kembla's claims.</p> <p>The Commission considers that the application is supported by a sufficient part of the Australian industry under section 269TB(4)(e) and complies with the requirements of sections 269TB(6)(a) and (b).</p>
Lodged in the manner approved under section 269SMS for the purposes subsection 269TB(4)(f)	The application was lodged in a manner approved in the Commissioner's instrument made under section 269SMS, being by email to the Commission's nominated e-mail address provided in that instrument. The application was therefore lodged in a manner approved under section 269SMS(2).

**2.3. The goods the subject of the application**

The table below outlines the goods as described in the application and their corresponding tariff classification.

Full description of the goods, as subject of the application
<p>Round seamless copper tube complying with Australian Standard AS 1432, Australian and New Zealand Standard AS/NZ 1571, or Australian Standard AS 1572 with an outside nominal diameter between 9.52 mm and 53.98 mm, and a nominal wall thickness between 0.71 mm and 1.83 mm, including coated tube.</p> <p>Goods specifically excluded from the goods description are:</p> <ul style="list-style-type: none"> <li>• thermally insulated copper tube, such as Pair Coil;</li> <li>• Annealed coils;</li> <li>• Layer Wound Packs/Level Wound Coils;</li> <li>• Copper alloys</li> </ul>

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**Further information**

The physical and technical characteristics of the goods subject to this application are in accordance with the requirement of one of the following Australia or Australian/New Zealand product standards:

- AS1432 - Copper Tubes for Plumbing, Gasfitting and Drainage Applications  
Physically, AS1432 round seamless copper tubes are typically bare or coated copper tube containing ink marking and incising in accordance with and referencing the product standard and are packaged with open ends (uncapped).
- AS/NZ1571 - Copper - Seamless Tubes for Air Conditioning and Refrigeration  
Physically, AS/NZS 1571 round seamless copper tubes are bare (uncoated) and contain ink marking in accordance with and referencing the standard, are internally cleaned and tube ends are plastic/rubber capped to protect from internal contamination (green, pink, yellow or black caps).
- AS1572 - Copper and Copper Alloys - Seamless Tubes for Engineering Purposes  
Physically, AS 1572 tubes can be round, square or rectangular. For the goods the subject of this application, physically the goods are round seamless copper tubes typically bare, and containing inkmarking in accordance with and referencing the standard.

The goods are generally, but not exclusively, classified to the following tariff classifications in Schedule 3 of the *Customs Tariff Act 1995*.

<b>Tariff classification (Schedule 3 of the <i>Customs Tariff Act 1995</i>)</b>				
Tariff code	Statistica l code	Unit	Description	Duty rate
7411.10.00	11	T	Copper tube and pipes of refined copper	The duty rate for the product if originating from Korea is 5% and the duty rate if the product is originating from China is 4%. There is a possibility of reducing the duty rate to 'free' under the Korea-Australia Free Trade Agreement and China-Australia Free Trade Agreement.
<b>Other administrations</b>				
An investigation into certain copper tubes by the Canada Border Services Agency (CBSA) in 2013 <sup>3</sup> found that dumped and subsidised copper tube from China, and dumped copper tube from Brazil, Greece, Mexico and Korea had caused injury to Canadian manufacturers. In 2019 the CBSA conducted an expiry review <sup>4</sup> , analogous to a continuation review in Australia, and the measures against all countries were continued.				

<sup>3</sup> Canada Border Services Agency Measures in Force – Certain Copper Tube (<https://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/ct-eng.html>)

<sup>4</sup> ibid

## 2.4. Like goods and the Australian industry

### 2.4.1. Finding

The Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application on the basis that:

- MM Kembla produces goods that have characteristics that closely resemble the goods the subject of the application, and
- the goods are wholly manufactured in Australia.

### 2.4.2. Legislative framework

Section 269TC(1) requires that the Commissioner reject an application for dumping and countervailing duty notices if, among other things, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

Like goods are defined under section 269T(1). Sections 269T(2), 269T(3), 269T(4), and 269T(4A) are used to determine whether the like goods are produced in Australia and whether there is an Australian industry.

### 2.4.3. Locally produced like goods

The table below summarises the Commission’s assessment of whether the locally produced goods are identical to, or closely resemble, the goods the subject of the application and are therefore like goods.

Factor	The Applicant’s claims	The Commission’s assessment
Physical likeness	The physical characteristics of the locally produced and imported seamless copper tube are similar – that is of similar shape and dimension, and are made from copper	The Commission has examined information in the application and information available on the webpages of the applicant and importers, as well as brochures provided by the applicant. The Commission considers that the imported goods and the locally produced goods are physically alike. This is on the basis that the dimensions of the goods appear to be similar, and have similar attributes, being made of copper to relevant Australian Standards.

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Factor	The Applicant's claims	The Commission's assessment
Commercial likeness	The locally produced and imported goods are commercially alike as they are sold to common customers for use in the same applications	The Commission considers that the imported goods and the locally produced goods are commercially alike. This is on the basis that they compete directly for the same customer types (i.e. distributors of plumbing, hardware and heating, ventilation and air conditioning (HVAC) systems).
Functional likeness	The locally produced and imported goods are functionally alike as they perform the same function and are used in the same applications (and are interchangeable)	The Commission is satisfied that the imported goods and locally produced goods are used for the same end use, i.e. plumbing, HVAC systems and refrigeration systems.
Production likeness	The locally produced and imported goods are manufactured in a similar manner, involving similar manufacturing processes and finish treatment (i.e. annealing)	Based on the information contained in the application and the Commission's broad understanding of the manufacturing processes for copper tube, the Commission considers that locally produced goods and imported goods share a production likeness.
<b>Commission's assessment</b>		
The Commission considers that the locally produced goods closely resemble the goods the subject of the application and are like goods, having regard to the physical, commercial, functional and production similarities described above.		

**2.4.4. Manufacture in Australia**

The table below summarises the Commission's assessment of whether the goods are wholly manufactured in Australia and whether the like goods are therefore considered to have been manufactured in Australia.

<b>The Applicant's claims</b>
MM Kembla claims the goods are wholly manufactured in Australia. MM Kembla casts copper logs from copper cathode and copper scrap, then cuts these logs into billets. The billets are re-heated and extruded into a tube using a die and mandrel, then cold rolled in a 'pilgering' process before being drawn to the final dimensions. The tubes are then straightened, cleaned, lagged (if required), quality assured, cut to length and bundled.

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**The Commission’s assessment**

Based on the description of the manufacturing process provided by MM Kembla, and the fact that these processes take place at manufacturing facilities in Australia, the Commission is satisfied that the like goods are wholly manufactured in Australia.

**2.5. Australian industry information**

The table below summarises the Commission’s assessment of whether MM Kembla has provided sufficient information in the application to analyse the performance of the Australian industry.

<b>Have the relevant appendices to the application been completed?</b>		
A1	Australian production	Yes
A2	Australian market	Yes
A3	Sales turnover	Yes
A4	Domestic sales	Yes
A5	Sales of other production	Yes
A6.1	Cost to make and sell (& profit) – Domestic sales	Yes
A6.2	Cost to make and sell (& profit) – Export sales	Yes
A7	Other injury factors	Yes
<b>General administration and accounting information – MM Kembla</b>		
History	MM Kembla was established in 1916 in Port Kembla, NSW.	
Ownership	MM Kembla is a division of Metal Manufactures Pty Limited, which is wholly owned by MML Holdings Limited.	
Operations	MM Kembla manufactures copper tube, stainless steel tube, and fittings and accessories for these tubes.	
Financial year	The financial year is 1 January to 31 December.	
Audited accounts	Draft financial statements for 2019 have been provided.	
Annual reports	Draft annual report for 2019 has been provided.	
<b>Production and sales information</b>	<b>Cost to make and sell information</b>	<b>Other injury factors</b>
The Commission has no significant concerns in respect of the production and sales information provided by the applicant for the purposes of the application. The applicant did not provide quarterly production volumes, this will need to be provided during verification.	The Commission has no significant concerns in respect of the cost information provided by the applicant for the purposes of the application. As quarterly production volumes were not provided, the Commission has based its initial assessment on cost of goods sold (COGS), not cost to make and sell.	The Commission has no significant concerns regarding the data provided in Appendix A7 of the application.

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<b>The Commission's assessment</b>
Based on the information in the application, the Commission is satisfied that there is sufficient data on which to analyse the performance of the Australian industry between 1 April 2016 and 31 March 2020.

### 3. REASONABLE GROUNDS – DUMPING

#### 3.1. Findings

Pursuant to section 269TC(1)(c), the Commission considers that there appear to be reasonable grounds to support the claims that:

- the goods have been exported to Australia from China and Korea at dumped prices
- the estimated dumping margin for exports from China and Korea is greater than 2% and therefore is not negligible, and
- the estimated volume of goods from China and Korea that appear to have been dumped is greater than 3% of the total Australian import volume of goods and therefore is not negligible.

#### 3.2. Legislative framework

Section 269TC(1) requires that the Commissioner reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice.

Under section 269TG, one of the matters that the Minister for Industry, Science and Technology (the Minister) must be satisfied of in order to publish a dumping duty notice is that the export price of goods that have been exported to Australia is less than the normal value of those goods, i.e. that dumping has taken place (to an extent that is not negligible). This issue is considered in the following sections.

#### 3.3. Export price

##### 3.3.1. Legislative framework

Export price is determined by applying the requirements in section 269TAB taking into account whether the purchase or sale of goods was an arms length transaction under section 269TAA.

##### 3.3.2. The Applicant's estimate

The table below summarises the approach taken by the applicant to estimate export prices and the evidence relied upon.

Country	Basis of estimate	Details
China	ABS Data using the FOB price (section 269TAB(1))	The applicant has taken the FOB price from the ABS data for the relevant tariff and statistical code.
Korea	ABS Data using the FOB price (section 269TAB(1))	The applicant has taken the FOB price from the ABS data for the relevant tariff and statistical code.

### **3.3.3. The Commission's assessment**

The Commission examined the export price calculations and supporting evidence provided by MM Kembla. The Commission considers that MM Kembla's approach to estimating export prices is reasonable, considering the potential limitations of the information available to MM Kembla.

To assess the reliability of the export price estimated by MM Kembla, the Commission calculated an export price for each country using data obtained from the Australian Border Force (ABF) import database. These calculations were compared to the export prices for each country in MM Kembla's application.

The import data for the tariff classification and statistical code identified in the application was downloaded, and any clear outliers were corrected (e.g. declared in kg instead of tonnes). The goods description was then checked to identify any factors that would exclude the goods from consideration (e.g. physical dimension, specified exclusion etc.). Finally, any samples or other imports that did not appear to be commercial in nature were removed.

As a result of this analysis, the Commission has observed material variances between the weighted average export prices calculated by MM Kembla and those calculated by the Commission.

As the level of detail provided in the ABF data is at a more granular level than that available to the applicant in ABS data, the Commission considers the ABF import database to be a more reliable basis for the calculation of an export price for China and Korea. The export price calculated using this methodology was higher for China and lower for Korea than the applicant's estimates.

MM Kembla's calculation of export price and the Commission's comparison is provided at **Confidential Appendix 2**.

## **3.4. Normal value**

### **3.4.1. Legislative framework**

Normal value is determined by applying the requirements in section 269TAC taking into account whether:

- the purchase or sale of the goods was an arms length transaction under section 269TAA;
- the goods were sold in the ordinary course of trade under section 269TAAD;
- there has been an absence or low volume of sales of like goods in the country of export; and
- whether the situation in the market of the country of export is such that sales in that country are not suitable for determining normal value under section 269TAC(1).

### **3.4.2. The Applicant's estimate**

The table below summarises the approach taken by the applicant to estimate normal values and the evidence relied upon.



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Country	Basis of estimate	Details
China	<p>Constructed normal value (section 269TAC(2)(c)).</p> <p>MM Kembla has alleged that there is a particular market situation in China. Accordingly, the applicant has calculated constructed normal values using:</p> <ul style="list-style-type: none"> <li>• a copper cost benchmark;</li> <li>• estimated conversion costs;</li> <li>• a labour cost adjustment;</li> <li>• estimated selling, general and administrative (SG&amp;A) costs; and,</li> <li>• a profit margin.</li> </ul>	<p>The applicant contends that there is a particular market situation in China which renders the domestic sales prices unreliable for the purposes of determining a normal value under section 269TAC(1), and that the prices for domestic copper (the main raw material) do not always reflect competitive market prices.</p> <p>The applicant has obtained prices for refined copper from an the London Metals Exchange (LME) and constructed a selling price for seamless copper tube manufactured in China using MM Kembla's 2019/20 manufacturing costs. Costs for labour and electricity have been adjusted to reflect Chinese labour and electricity costs in 2019/20 using a labour pricing index and energy pricing index.</p> <p>The applicant has applied fixed and other variable costs from its own manufacturing costs to arrive at a cost to manufacture. To this, an amount for SG&amp;A expenses has been added. For profit, the Applicant has obtained the profit achieved by a Chinese manufacturer of like goods in its 2018 financial year and included this in the normal value calculation.</p>
Korea	<p>Constructed normal value (section 269TAC(2)(c)).</p> <p>MM Kembla does not have access to domestic selling prices for the goods in Korea.</p> <p>On this basis, MM Kembla has calculated constructed normal values using:</p> <ul style="list-style-type: none"> <li>• a copper cost benchmark;</li> <li>• estimated conversion costs;</li> <li>• a labour cost adjustment;</li> <li>• estimated SG&amp;A costs; and,</li> <li>• a profit margin.</li> </ul>	<p>The applicant has obtained prices for refined copper from the LME, and constructed a selling price for seamless copper tube manufactured in Korea using MM Kembla's 2019/20 manufacturing costs. Costs for labour and electricity have been adjusted to reflect Korean labour and electricity costs in 2019/20 using a labour pricing index and energy pricing index.</p> <p>The applicant has applied fixed and other variable costs from its own manufacturing costs to arrive at a cost to manufacture. To this, an amount for SG&amp;A expenses has been added. For profit, the applicant has used its profit achieved in 2016/17, prior to the claimed commencement of dumping.</p>

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MM Kembla informed the Commission that it determined normal values for each country at the EXW level, while export prices were determined at the free on board (FOB) level. As it does not have the relevant information to be able to do so, MM Kembla has made no adjustments for:

- domestic inland freight costs;
- domestic and export credit terms; and
- domestic and export packaging.

### **3.4.3. The Commission's assessment**

The Commission must determine whether there appear to be reasonable grounds for supporting a claim that the goods have been exported at dumped prices. The Commission is therefore required to assess whether the estimated normal value provided in the application is a reasonable estimate.

For an estimated constructed normal value, as in the present application, the Commission will assess whether the costs used by MM Kembla to construct the normal value reasonably reflect the costs of production in the subject countries. When making this assessment, the Commission is cognisant of the fact that applicants usually have access to limited data to enable them to estimate the costs in the country of production. The Commission considers it reasonable for applicants to use their own costs, but where it is reasonable and practicable to do so, the Commission considers that those costs should be adjusted to reflect costs in the country of production.

In certain circumstances, the Commission will have access to information which will enable it to make an assessment of the reasonableness of the information relied on by the applicant, on a comparison basis. The Commission may also have other sources of information that are directly relevant to the application, which the Commission may prefer to use in making its own assessment, particularly if that information is considered more relevant and reliable than the information relied upon by the applicant.

#### Particular market situation claims

MM Kembla has based its claim that a particular market situation exists within China because the Government of the People's Republic of China (GOC) has intervened in the domestic copper industry through:

- Industrial policies
- Ownership and control of suppliers
- Intervention in copper markets
- Subsidisation of copper tube manufacturers

Based on the information provided, the Commission considers it is appropriate to assess MM Kembla's market situation claims during the normal course of the investigation, noting it is a key question to resolve in establishing the appropriate method to establish normal value. The Commission will seek the necessary information from exporters and from the GOC in order to independently assess MM Kembla's claims.

#### Normal value

The Commission considers the general approach taken by MM Kembla to estimate normal values for China and Korea appears reasonable.

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The Commission has accordingly assessed the elements of the normal value calculations. In making its assessment of whether MM Kembla's estimate of normal value is reasonable, the Commission has had regard to the information contained in the application and other information the Commission considers relevant.

### Raw material costs

The Commission considers the use of copper selling prices on the London Metals Exchange sourced from an independent steel industry subscription service is a reasonable basis for estimating the domestic raw material costs of copper in each of the subject countries. The LME has been used as it is considered by the applicant to be reflective of copper prices generally.

### Conversion and SG&A costs

The Commission considers MM Kembla's method for estimating conversion and SG&A costs to be reasonable for the purposes of this report.

### Profit

The Commission assessed the profit margins applied by MM Kembla in each of its calculations of normal value for China and Korea. The Commission is satisfied that the profit used is reasonable. The Commission is satisfied that, even in the absence of profit, there still appears to be dumping greater than 2%.

### Adjustments

MM Kembla has access to limited information to adjust the EXW normal value it has calculated to ensure a fair comparison with FOB export prices. As the Commission does not have access to transport costs for the goods under consideration, it has not made any adjustments to the normal value. The Commission notes that using a normal value at EXW will understate the dumping margin compared to calculating it on a FOB basis.

MM Kembla's calculation of normal value is provided at **Confidential Attachment 3**.

## **3.5. Dumping margins**

### **3.5.1. Legislative framework**

Dumping margins are determined in accordance with the requirements of section 269TACB.

Dumping margins and dumping volumes cannot be negligible, otherwise the investigation is terminated. Whether the dumping margins and dumping volumes are negligible is assessed under section 269TDA.

### **3.5.2. Volume of dumped goods**

Sections 269TDA(3) and (4) provide that an investigation into dumping must be terminated if the total volume of goods exported to Australia over the relevant investigation period that may have been dumped is negligible. A negligible volume of goods is less than 3 per cent of the total Australian import volume. Using the method set out in section 3.3.3, the Commission has estimated the volumes of goods exported from each of the subject countries.

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Based on the Commission's assessment, the Commission is satisfied that there appears to be reasonable grounds to consider that the volume of dumped goods are above negligible levels for both China and Korea.

### 3.5.3. The Commission's assessment

The table below summarises the dumping margins estimated by the applicant, and dumping margins calculated by the Commission based on revised estimates of export prices and normal values. Dumping margins are expressed as a percentage of the export price. The table also indicates whether the Commission is satisfied that the dumping margins and volume of dumped goods are above negligible levels.

Country	The Applicant's estimate	The Commission's estimate	Volume
China	18.2%	16.5%	Not negligible
Korea	18.6%	30.3%	Not negligible

The Commission's assessment of dumping and volume of alleged dumped imports forms **Confidential Appendix 4**.

## 4. REASONABLE GROUNDS – SUBSIDISATION

### 4.1. Findings

Pursuant to section 269TC(1)(c), the Commission considers that there appear to be reasonable grounds to support the claims that:

- the goods exported to Australia from China have been subsidised
- the estimated subsidy margin for exports from China is greater than 2% and therefore is not negligible
- the estimated volume of goods from China that appear to have been subsidised is greater than 4% of the total Australian import volume of goods and therefore is not negligible.

### 4.2. Legislative framework

Section 269TC(1) requires the Commissioner to reject an application for a countervailing duty notice, if (among other things) the Commissioner is not satisfied that there appear to be reasonable grounds for its publication. This requires, consistent with section 269TJ, satisfaction that subsidisation has taken place to an extent that is not negligible. This issue is considered in the following sections.

### 4.3. Consultation with the Government of China

In accordance with section 269TB(2C), the Commission invited the GOC for consultations during the pre-initiation phase. The purpose of the consultations was to provide an opportunity for the GOC to respond to the claims made within the application in relation to countervailable subsidies, including whether they exist and, if so, whether they are causing, or are likely to cause, material injury to an Australian industry, with the aim of arriving at a mutually agreed solution.

To assist in determining whether it wished to undertake consultations and what it would like to consult on, the GOC was provided with a non-confidential version of the countervailing application.

The Commissioner made the decision to initiate on 10 July 2020. Subsequent to this, on the same day the Commission received notification from the GOC that it wished to participate in consultations. The Commission welcomed the GOC consultation on this matter and offered to hold consultations at their earliest convenience.

### 4.4. Subsidy programs

#### 4.4.1. Legislative framework

The determination as to whether there is a countervailable subsidy is made in accordance with section 269T(1), section 269T(2AA), section 269TACC and section 269TAAC.

#### 4.4.2. The Applicant's claims

The table below summarises the claims by the applicant that the goods exported to Australia have benefited from countervailable subsidies and the

evidence relied upon.

Country	Basis of claims	Summary of claims
China	Subsidy findings by the CBSA for certain copper tubes in 2013 and 2019	<p>The applicant relies on the CBSA findings in relation to investigations into certain copper tubes, which found evidence of numerous subsidies being received by Chinese manufacturers of copper tubes. The full list of actionable, or potentially actionable, subsidies stated by the applicant includes 178 programs. These are listed at Appendix 2 of non-confidential application C1.1 to the application. This includes subsidies being received by the one exporter who, the applicant contends, are the major exporter into Australia. The full list of subsidies contended by the applicant to have been received by this group are listed in the application.</p> <p>The applicant has relied on the margins calculated by the CBSA, which in the 2013 investigation ranged from 0.2% to 31.3%. Following the expiry review, all exporters are currently subject to a flat rate of 25,239 Renmimbi per metric ton, which equates to 31.3% of the export price.</p>

**4.4.3. The Commission's assessment**

The Commission assessed the claims made by MM Kembla, with respect to the provision of subsidies granted by the GOC, which exporters of copper tube from China may have received.

In its application, MM Kembla has detailed a large number of subsidy programs, relying on the findings of the CBSA anti-dumping and countervailing cases in relation to the export of commodities (namely certain circular copper tubes) exported from China to Canada, with a preliminary investigation in 2013 and an expiry review in 2019<sup>5</sup>.

The Commission considered the relevance of the subsidy programs assessed by the CBSA. On review of the program names of the subsidy programs assessed by the CBSA, the subsidy programs assessed by the CBSA could reasonably apply to the goods under consideration.

The Commission considers the CBSA is a reputable agency of a comparable jurisdiction, and in the absence of contrary information, there appear to be reasonable grounds for the claims by MM Kembla in its application that the subsidy programs it identified could be relevant for exports of copper tube from China to Australia.

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<sup>5</sup> <https://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/ct-eng.html>

The Commission also notes that in its investigation into dumped and subsidised PVC flat electric cables from China, the Commissioner found in REP 469 that there existed subsidies in the form of copper sold for less than adequate remuneration provided by the GOC.<sup>6</sup> This demonstrates the contemporaneous existence of subsidies in the market for the main raw material for seamless copper tubes.

### Conclusion

The Commission considers that the evidence relied on by MM Kembla at sections 4.4.2 and 4.4.3 establishes a reasonable basis for the alleged subsidy programs.

The Commission will further assess the existence of subsidy programs during the course of the investigation.

#### **4.4.4. Volume of subsidised goods**

Sections 269TDA(7) and (8) provide that an investigation into whether there are countervailing subsidies must be terminated if the total volume of goods exported to Australia over the relevant investigation period that may be subsidised is negligible. A negligible volume of goods is less than 4 per cent of the total Australian import volume. Using the method set out in section 3.3.3, the Commission has estimated the volumes of goods exported from China. Based on the Commission's assessment, the Commission is satisfied that there appears to be reasonable grounds to consider that the volume of subsidised goods is above negligible levels for China.

#### **4.5. Amount of countervailable subsidy**

##### **4.5.1. Legislative framework**

Subsidy margins are determined under section 269TACD.

The amount of the countervailable subsidisation and the volume of subsidised goods cannot be negligible. Whether the countervailable subsidisation and the volume of subsidised goods are negligible is assessed under section 269TDA.

##### **4.5.2. The Commission's assessment**

The table below summarises the subsidy margin estimated by the applicant. Subsidy margins are expressed as a percentage of the export price. The table also indicates whether the Commission is satisfied that the subsidy margin and volume of subsidised goods are above negligible levels.

The application focuses on one exporter of the goods who, in 2013, was found by the CBSA to have a de minimus countervailing margin of 0.2%, with all other exporters subject to a rate of 31.3%.<sup>7</sup> In the 2019 expiry review, the CBSA removed the individual rate for this company and now only has one countervailing rate for all exporters from China.<sup>8</sup>

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<sup>6</sup> See REP 469 at <https://www.industry.gov.au/regulations-and-standards/anti-dumping-and-countervailing-system/anti-dumping-commission-archive-cases/469>

<sup>7</sup> <https://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/ct-eng.html>

<sup>8</sup> Ibid

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The Commission notes that this company is not the only major exporter of what appears to be the goods to Australia in the investigation period, meaning that companies which have always been subject to the 31.3% rate if exporting to Canada have also exported to Australia in non-negligible amounts. Based on this, the Commission is satisfied that there appears to be reasonable grounds to consider that the amount of countervailable subsidy received by exporters from China is not negligible.

<b>Country</b>	<b>The Applicant's estimate</b>	<b>Negligible margin?</b>	<b>Negligible volume?</b>
China	0.2%-31.3%	No	No



## **5. REASONABLE GROUNDS – INJURY TO THE AUSTRALIAN INDUSTRY**

### **5.1. Findings**

Pursuant to section 269TC(1)(c), having regard to the matters contained in the application, and to other information considered relevant, the Commission considers that there appear to be reasonable grounds to support the claims that the Australian industry has experienced injury in the form of:

- loss of sales volume
- reduced market share
- price suppression
- loss of profits
- reduced profitability
- reduced employment
- reduced capacity utilisation
- reduced return on investment

### **5.2. Legislative framework**

Under sections 269TG and 269TJ of the Act, one of the matters that the Minister must be satisfied of in order to publish a dumping duty and a countervailing duty notice is that the Australian industry has experienced material injury. This issue is considered in the following sections.

### **5.3. The Applicant's claims**

MM Kembla claims that the Australian industry has been injured through:

- loss of sales volume
- reduced market share
- price depression
- price suppression
- loss of profits
- reduced profitability
- reduced employment
- reduced capacity utilisation
- reduced return on investment

The applicant claims that dumping and countervailing, and injury from dumping and countervailing, commenced in early 2018 and is ongoing.

### **5.4. Approach to injury analysis**

#### **5.4.1. Legislative framework**

The matters that may be considered in determining whether the industry has suffered material injury are set out in section 269TAE.

#### **5.4.2. The Commission's approach**

This section analyses the economic condition of the Australian industry and provides an assessment as to whether there appear to be reasonable

grounds to support a claim that the Australian industry has suffered material injury.

In its analysis of volume effects and market share, the Commission has used data provided by the applicant in Confidential Appendix A2 in respect of Australian industry sales, and import data from the ABF imports database.

The applicant did not provide quarterly production volumes, instead indicating that production and sales volumes were very similar. This contradicts the claim made in the application that there were increases in inventory due to the dumping. As such, claims of injury have had to be assessed on cost of goods sold rather than cost to make and sell.

The Commission's assessment of the economic condition of the Australian copper tube industry (and therefore the basis for the figures set out in this section) forms **Confidential Attachment 1**.

#### **5.4.3. Injury analysis period**

The purpose of the injury analysis period is to enable the Commission to identify and examine trends in the Australian market, which in turn assists the Commission in its examination of whether material injury has been caused by dumping and subsidisation. MM Kembla has provided data from 1 April 2016 to 31 March 2020 for this purpose.<sup>9</sup>

#### **5.5. Volume effects**

MM Kembla has claimed that it has lost sales in a slightly expanding market, thereby suffering injury from in the form of loss of sales volume and market share.

In its application MM Kembla provided an estimate of the size of the Australian market for copper tubes meeting the goods description, having regard to their own sales in the market and import information for the relevant tariff code sourced from the ABS.

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<sup>9</sup> On initiation of this investigation the Commission will request an additional quarter of information from the applicant.

### Australian market size for certain copper tube

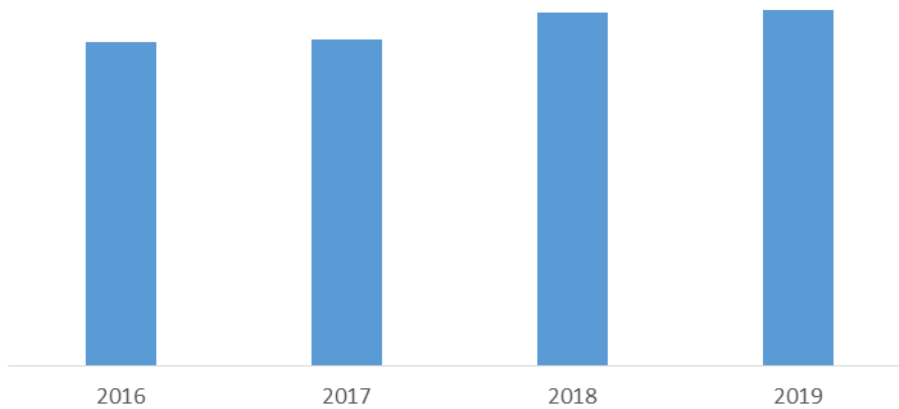


Figure 1 - Australian market size Apr 2016 - Mar 2020

Source data for the above figure is from the application for measures and data extracted from the ABF import database, in accordance with the process outlined in section 3.3.3 of this report.

The Commission estimates that the Australian Market for copper tube in the period from 1 April 2019 to 31 March 2020 is approximately 21,000 tonnes. The Commission's assessment of the Australian market size for certain copper tubes forms Confidential Appendix 1.

### Sales volume

The figure below depicts the applicant's total sales volumes (in MT) for the last four years ending 31 March 2020.

### Australian sales

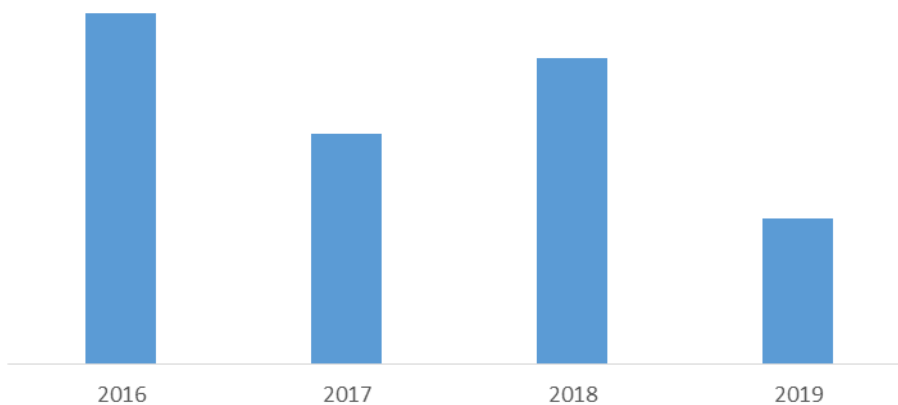


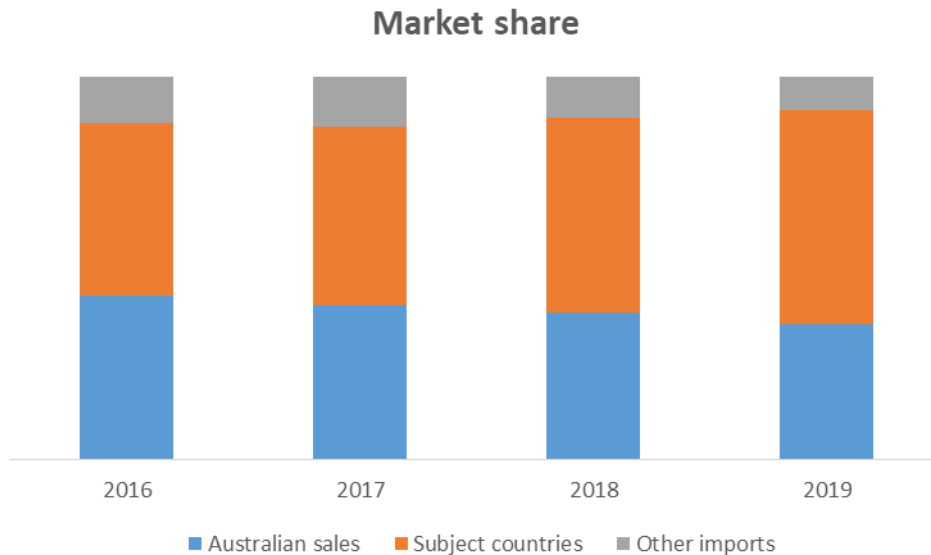
Figure 2 – Australian Industry sales

The Commission notes that sales have declined from 2016 levels, with the last 12 months being the lowest sales period in the injury period.

**5.5.1. Market share**

MM Kembla claims it suffered a reduction in its market share as a result of increased imports from China.

Figure 3 sets out the Commission’s assessment of the market share held by the Australian industry (made up solely by MM Kembla), imports from the subject countries, and imports from all other countries since 1 April 2016.



**Figure 3 - Market share by source**

The Commission notes that the Australian industry has had a declining share since 2016, and imports from other countries have also been displaced by imports from the subject countries.

**5.5.2. Conclusion – volume effects**

Based on the analysis above of the information available to the Commission, the Commission is satisfied that there appear to be reasonable grounds to conclude that the Australian industry has suffered injury in the form of lost sales volume and reduced market share.

**5.6. Price effects**

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs. MM Kembla has alleged that price suppression has occurred due to price undercutting by the dumped goods from the subject countries.

As noted above, due to the applicant not providing production volumes by quarter the Commission’s analysis has relied on COGS rather than cost to make and sell.

MM Kembla provided the unit COGS and unit selling price for the injury period, which has been charted below:

Unit Cost of Goods Sold vs Selling Price

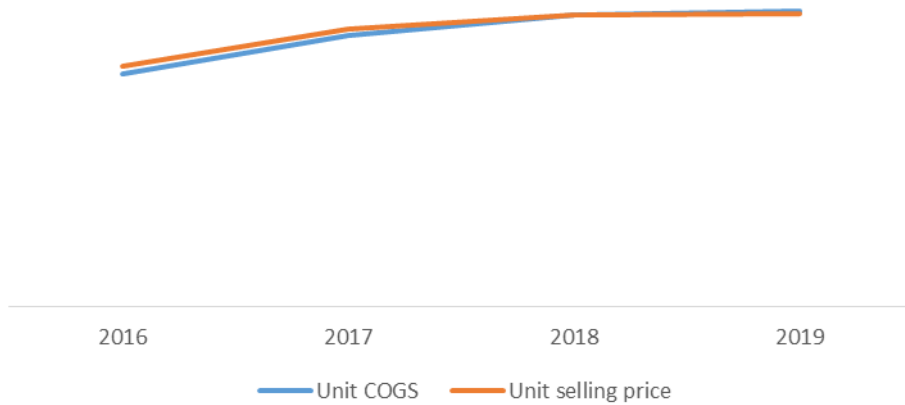


Figure 4 - Unit COGS vs sales price

The figure above demonstrates that in 2016 and 2017 MM Kembla could sell for above the unit COGS, however while the COGS has grown over this period the sale price has not increased at the same pace. By 2019 the COGS was greater than the selling price, meaning that the average sale of the goods had become unprofitable. This is indicative of price suppression.

5.6.1. Conclusion – price effects

Based on the above, the Commission is satisfied to that there appear to be reasonable grounds to conclude that the Australian industry has suffered injury in the form of price suppression, but not price depression.

5.7. Profit and profitability effects

MM Kembla has claimed injury from loss of profit and profitability. The applicant has provided the unit profit or loss for sales of the goods, which is charted below:

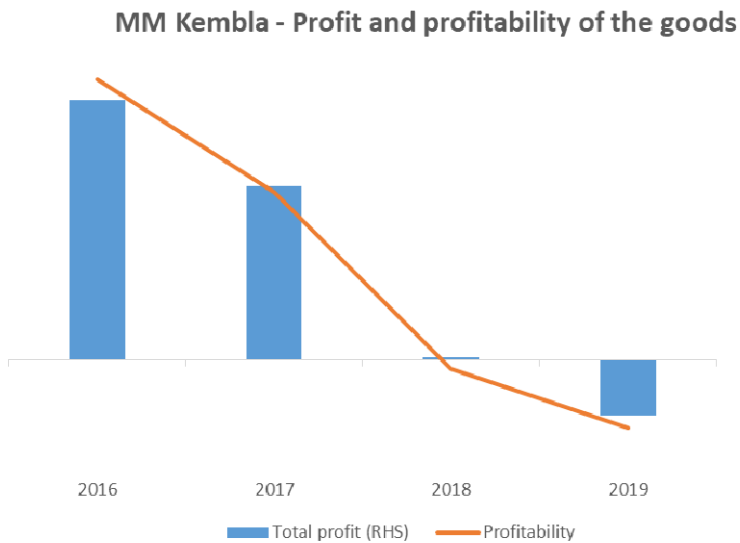


Figure 5 - MM Kembla profitability on like goods

The like goods sold by the applicant were able to be sold for a profit in 2016 and 2017, however for 2018 there was an immaterial profit and in 2019 sales were made on average at a loss. Profitability has accordingly followed the same trend, moving from positive, to minimal, to negative.

### 5.7.1. Conclusion – profit and profitability effects

Based on the above, the Commission is satisfied to that there appear to be reasonable grounds to conclude that the Australian industry has suffered injury in the form of lost profit and profitability.

## 5.8. Other injury factors

MM Kembla has additionally claimed injury from:

- reduced employment
- reduced capacity utilisation
- reduced return on investment

Analysis of the data for other injury factors is limited in comparability to the previous analysis as the periods provided are different – the applicant has provided information on a calendar year basis from 1 January 2016 to 31 December 2019, with the final quarter of information (1 January – 31 March 2020) isolated from the above. This final quarter has, in most cases, simply been multiplied by four to calculate a calendar year equivalent index.

The applicant notes that the January to March period has lower sales and production than other quarters, and as such the Commission is unable to rely on this quarter for the purposes of analysis. Accordingly, the assessment of other injury factors relates to the period 1 January 2016 – 31 December 2019.

The applicant has claimed injury in the form of reduced employment, which is charted below:

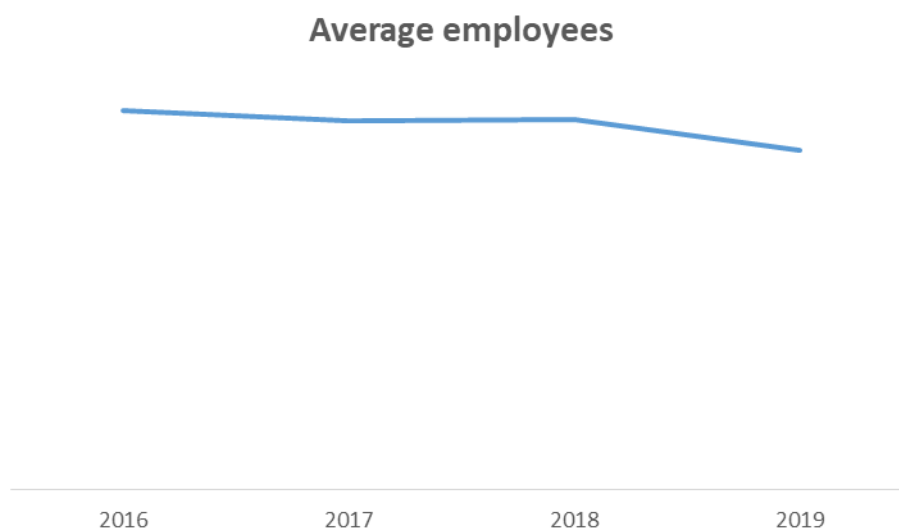
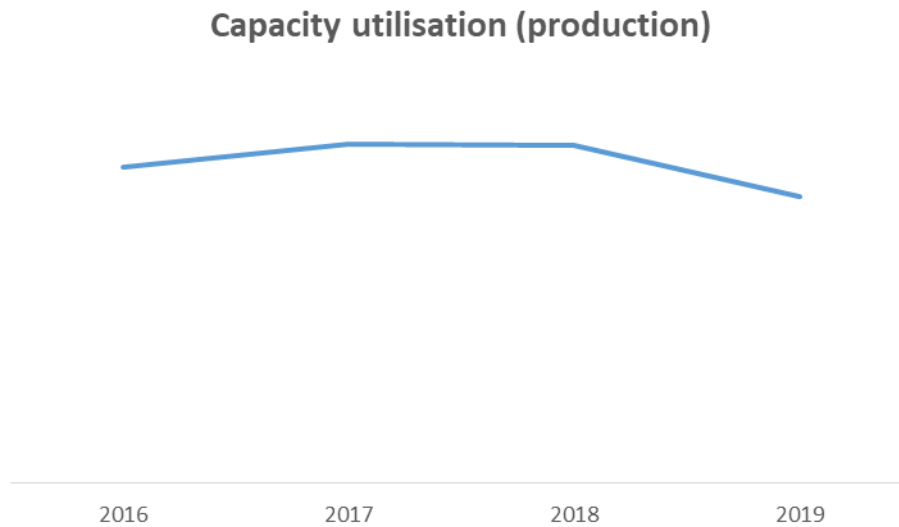


Figure 6 - Average employees for Australian industry

The chart above demonstrates that average employment fell from 2016 to 2017, rose slightly in 2018, before declining further in 2019.

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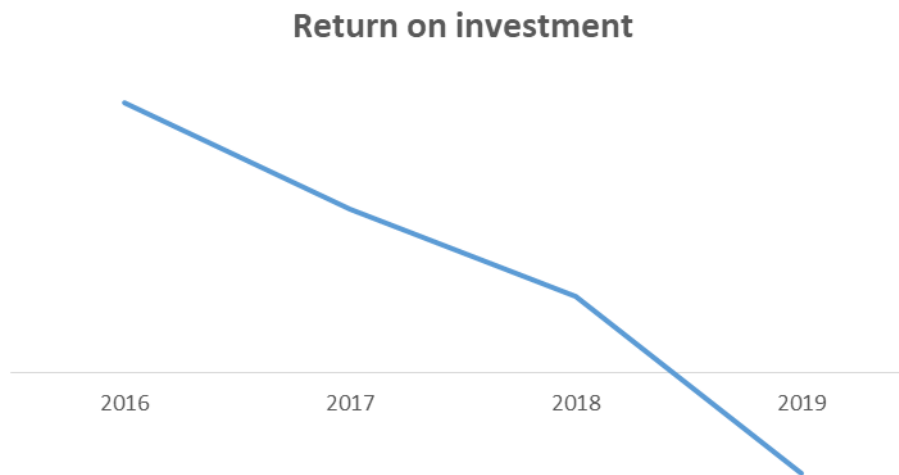
The applicant has also claimed injury in the form of reduced capacity utilisation, which has been calculated as production of all goods in kg divided by total capacity, is charted below:



**Figure 7 - Australian Industry capacity utilisation**

The chart above demonstrates that capacity utilisation rose in 2017, with a minor dip in 2018 before a significant decline in 2019.

Finally, the applicant has claimed return on investment, calculated as return on sales.



**Figure 8 - Australian Industry return on investment**

The above chart demonstrates that the return on investment has fallen each year, becoming negative in 2019.

### **5.8.1. Conclusion – other injury factors**

Based on the above, the Commission is satisfied that there appear to be reasonable grounds to conclude that the applicant has suffered injury in the

forms of reduced employment, reduced capacity utilisation and reduced return on investment.

**5.8.2. The Commission's assessment**

The Commission's assessment of the economic condition of the Australian industry for copper tube forms **Confidential Appendix 5**.



## 6. REASONABLE GROUNDS – CAUSATION FACTORS

### 6.1. Findings

Having regard to the matters contained in the application, and to other information considered relevant, the Commission considers that there appear to be reasonable grounds to support the claims that the Australian industry has suffered injury caused by dumping or subsidisation, and that the injury is material.

### 6.2. Cause of injury to the Australian industry

#### 6.2.1. Legislative framework

Under sections 269TG and 269TJ of the Act, one of the matters that the Minister must be satisfied of in order to publish a dumping duty and a countervailing duty notice is that the material injury suffered by the Australian industry was caused by dumping and subsidisation. This issue is considered in the following sections.

Matters that may be considered in determining whether the Australian industry has suffered material injury caused by dumped or subsidised goods are set out in section 269TAE.

### 6.3. The Applicant's claims

The table below summarises the causation claims of the applicant.

Injury caused by dumping and subsidisation
MM Kembla have claimed that the price of the dumped and subsidised goods has caused them to lose sales, or to reduce the price of sales to compete with the dumped and subsidised goods. MM Kembla provided a number of examples of tender feedback indicating that their pricing was higher than the price of the dumped and subsidised goods, and showed that goods from China or Korea were chosen instead of their own production.
Injury caused by other factors
No other factors were identified by the applicant.

### 6.4. The Commission's assessment

Section 269TAE(2C) sets out the requirements for assessing the cumulative material injury effects of exports of goods to Australia from different countries, such as in the present case. Where exports are from more than one country and are simultaneously the subject of an investigation, the Minister may cumulatively assess the effects of such imports if:

- the margin of dumping established for each exporter and/or the amount of countervailable subsidy received is not negligible;
- the volume of dumped and/or subsidised imports from each country is not negligible; and
- a cumulative assessment is appropriate in light of the conditions of competition between the imported goods, and between all of the imported goods and the like domestic goods.

### Margins of dumping and subsidisation

As outlined at sections 3.5.2 and 4.4.3, the dumping margins and subsidy margins for the subject countries are not negligible.

### Volumes of dumping and subsidisation

As outlined at sections 3.5.3 and 4.4.4, the volumes of dumped and subsidised goods imported from the subject countries are not negligible.

### Conditions of competition

The Commission has had regard to the conditions of competition between the exported goods<sup>10</sup> and the conditions of competition between the exported goods and the domestically produced goods.<sup>11</sup> The Commission has found, based on examples provided by MM Kembla in its analysis of price undercutting,<sup>12</sup> that the domestically produced goods and the exported goods compete in the same market and that the goods are functionally interchangeable.<sup>13</sup>

### Conclusion

The Commission considers that there are reasonable grounds to conclude that:

- the dumping margin for exporters from the subject countries is not negligible;
- the overall volume of dumped imports is not negligible;
- the amount of the countervailable subsidy margin for exporters from China is not negligible;
- the overall volume of subsidised imports is not negligible; and
- the conditions of competition between the imported goods, and between all of the imported goods and the like domestic goods, are essentially the same.

Accordingly, for the purposes of this report the Commission considers that the requirements of section 269TAE(2C) have been satisfied and that it is appropriate to examine the cumulative effect of the exports from the subject countries to determine whether the Australian industry has experienced injury caused by dumped and subsidised goods.

The analysis in the remainder of this section is therefore based on the cumulative effect of exports from the subject countries. The Commission's analysis is contained in **Confidential Appendix 6**.

#### **6.4.1. Margins of dumping and subsidisation**

Under section 269TAE(1)(aa) the Minister may have regard to the size of the dumping margins worked out in respect of the goods exported to Australia. As set out in section 3.5.2, there are reasonable grounds for concluding that the

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<sup>10</sup> 269TAE(2C)(e)(i).

<sup>11</sup> 269TAE(2C)(e)(ii).

<sup>12</sup> Refer section 6.4.3 of this report.

<sup>13</sup> Refer section 2.4.3 of this report.

goods exported from the subject countries are dumped at margins ranging between 16.5 and 30.3 per cent.

Under section 269TAE(1)(ab) the Minister may have regard to the particulars of any countervailable subsidy received in respect of the goods exported to Australia. As set out in section 4.4.3, the Commission considers that there are reasonable grounds for concluding that the amount of countervailable subsidy received in respect of the goods exported from China is greater than 2 per cent.

#### **6.4.2. Volume effects**

As noted in section 5.5, the Commission considers that MM Kembla's sales volumes and market share have declined in the period from 1 April 2016 to 31 March 2020. The Commission also considers that, based on its analysis of the ABF import database, sales volumes and market share of the subject countries has increased in the year ending 31 March 2020. Further to this, the applicant provided ten examples of feedback in price negotiations where they had been advised they had lost to exporters from the subject countries.

As a result, the Commission's preliminary view is that there appear to be reasonable grounds to establish that the Australian industry has experienced volume injury as a result of dumped or subsidised goods exported from the subject countries.

#### **6.4.3. Price effects**

As noted in section 5.6, the Commission considers that the applicant suffered injury in the form of price suppression. The applicant claims that it has been unable to raise its sale prices when providing quotes to customers in line with increased cost of raw materials, particularly copper, due to the presence of dumped and subsidised goods in the market, resulting in the sales that have been suppressed.

The Commission is satisfied that the applicant demonstrated through examples of lost contracts for sale that the market is price sensitive, as this appears to be the primary concern when customers are purchasing goods.

The Commission has also considered the evidence shown in Figure 4 that demonstrates the average sale in 2019-20 is below the cost of goods sold. The Commission considers that there are reasonable grounds to this this would not have occurred in the absence of dumped and/or subsidised goods in the market.

As a result of the above, the Commission's preliminary view is that there appears to be reasonable grounds to establish that the Australian industry has experienced price injury in the form of price suppression as a result of dumped and subsidised goods exported from the subject countries.

#### **6.4.4. Profit effects**

As outlined above, the Commission is satisfied that there appears to be reasonable grounds to establish that the applicant has suffered a loss of volume due to the dumped and subsidised goods, and that the price of the goods they have sold has been suppressed by competing with dumped prices. Due to the coupled impacts of lost volume and lower prices, the Commission

is satisfied that there also appears to be reasonable grounds to establish that the applicant has suffered loss of profit and profitability as a result of the dumped and subsidised goods exported from the subject countries.

#### **6.4.5. Injury caused by factors other than dumping**

As set out in its application, MM Kembla has acknowledged that it experienced an increase in its copper costs and electricity costs over the period since 1 April 2016.

In accordance with section 269TAE(2A), the Commission will assess these and other potential causes of injury to the Australian industry during the course of the investigation.

#### **6.4.6. Is the injury material?**

Based on information available at this time, the Commission considers it is reasonable to find that increasing raw material costs have likely impacted the Australian industry. However, these increased costs have occurred at a time when the Australian market appears to have been impacted by the alleged presence of dumped and/or subsidised goods.

On the basis that MM Kembla appears to have reduced its margins to respond to import prices, and noting the size of the corresponding losses and negative profitability, the Commission considers that there appear to be reasonable grounds to conclude that any injury to the Australian industry caused by dumping and/or subsidisation is material.

### **6.5. Threat of material injury**

MM Kembla has completed section C-2 of the application form relating to threat of material injury.

As relevant, the Commission will consider information provided by MM Kembla in its application and other information in relation to threat of material injury throughout the course of the investigation.

MM Kembla completed section C-2 of the application form relating to threat of material injury. MM Kembla claim that the increasing level of dumped imports from China, and dumped imports from Korea, has caused and will continue to cause material injury. The Commission does not consider MM Kembla's claims as relating to a threat of material injury.

The Commission does not consider that MM Kembla established reasonable grounds in section C-2 of the application form to substantiate a claim for threat of material injury, having regards to the specific questions. If further evidence is provided as part of the investigation, the Commission may revisit this issue.

### **6.6. Conclusion**

The Commission considers that:

- the level of the dumping and/or countervailing margins indicated in the application and in the Commission's calculations;
- the preliminary assessment of price suppression, lost sales volumes and reduced profit and profitability; and

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- specific feedback provided by customers during price negotiations, support MM Kembla's claim that there appear to be reasonable grounds that exports of the goods from the subject countries at dumped and/or subsidised prices have caused material injury to the Australian industry.

**7. APPENDICES AND ATTACHMENTS**

<b>Appendices</b>	<b>Title</b>
Appendix 1	Market size assessment
Appendix 2	Export price
Appendix 3	Normal value
Appendix 4	Dumping margin
Appendix 5	Injury assessment
Appendix 6	Undercutting assessment
Appendix 7	Legislative framework

<b>Attachments</b>	<b>Confidentiality</b>	<b>Title</b>
Attachment 1	Public	Anti-Dumping Notice 2020/071