



30 Gloucester Boulevard
P O BOX 21
PORT KEMBLA NSW 2505
Australia

Telephone: +61 2 4223 5332
Facsimile: +61 2 4275 1347

Website: www.kembla.com.au

ABN: 13 003 762 641



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31 August 2020

Mr Justin Wickes
Director
Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Email: investigations2@adcommission.gov.au

Public File

Dear Mr Wickes

Investigation No. 557 – Copper tube exported to Australia from China and Korea – Arms-length sales

I. Background

Metal Manufactures Pty Ltd trading as MM Kembla (hereafter referred to as “MM Kembla”) is the applicant company requesting anti-dumping and countervailing measures be imposed on certain copper tube (the goods) exported from the People’s Republic of China (“China”) and anti-dumping measures on exports from the Republic of Korea (Korea”).

MM Kembla seeks to highlight with the Anti-Dumping Commission (“the Commission”) its concerns about sales of certain copper tube between the Chinese exporters Zhejiang Hailiang Co. Ltd (Zhejiang Hailiang”) and Shanghai Hailiang Copper Co., Ltd (Shanghai Hailiang”) hereafter referred to as “Hailiang” for both entities) and the related Australian importer Hailiang Copper (Australia) Pty Ltd (“Hailiang Aust.”).

It is MM Kembla’s view that the declared export prices as published in Australian Bureau of Statistics (“ABS”) data cannot be relied upon as they do not reflect the subsequent selling prices with all additional costs for the goods as sold by Hailiang Australia.

II. Export price

Section 269TAA of the *Customs Act* details the circumstances in which the selling price between the exporter and the importer may not be treated as arms-length. These circumstances include where¹:

- there is any consideration payable for the goods other than price; or
- the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

¹ Refer Dumping and Subsidy Manual, Paragraph 5.1, P.25.



- in the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

MM Kembla submits that export price for Hailiang's sales to Australia cannot be determined under paragraph 269TAB(1)(a) or 269TAB(1)(b), as the price is influenced by a commercial or other relationship that exists between the exporter and the Australian affiliated importer. Hailiang's export price, therefore must be determined in accordance with paragraph 269TAB(1)(c) "*having regard to all the circumstances of the exportation*" and be calculated using the selling price of the Australian importer (Hailiang Aust) less all of the prescribed deductions to arrive at an FOB price.

III. Basis for copper tube selling prices

MM Kembla understands the Hailiang Aust pricing model to incorporate the following:

- USD LME (London Metals Exchange) copper price;
- AUD/USD exchange rate;
- USD fabrication cost;
- USD premium charge; and
- Nominal product weight (kg/length).

Each of these components is explained:

- (i) USD LME copper price – is the price observed for LME copper every Monday;
- (ii) AUD/USD exchange rate is reflective of the price observed on currency markets globally every Monday;
- (iii) USD Fabrication cost – historically, the fabrication cost has been observed to remain stable and reflects cost of production ex factory;
- (iv) USD premium charge – is developed to reflect the following:
 - (a) Land and sea freight from manufacturing point to port;
 - (b) Shipping costs to Australian port;
 - (c) Insurance;
 - (d) Duty;
 - (e) Clearance costs;
 - (f) Transport to warehouse;
 - (g) Warehousing costs;
 - (h) Packing costs;
 - (i) Freight to customer;
 - (j) Margin for Australian entity.
- (v) Nominal product weight – typically kg per length.

The selling prices (in USD per tonne) calculated as follows:

USD LME Cost Per Tonne + USD Fabrication Cost Per Tonne + USD Premium Price Per Tonne

$$\left(\left(\frac{\text{USD Total Sell Price Per Tonne}}{1000} \right) \times \text{AUD USD FX Rate} \right) \times \text{Nominal Product Weight} \\ = \text{Unit Price For Each Product Ex GST}$$

It is MM Kembla's understanding that price changes can occur weekly dependent upon changes in one or more of the following:

- USD LME price;
- AUD/USD exchange rate;
- USD Premium charge.

As indicated, the fabrication cost would typically remain constant.

IV. [Import] Pricing [Period]

MM Kembla has observed circumstances in respect of Hailiang Aust's selling prices in Australia which appear to highlight:

- non-arm's length transactions between Hailiang and Hailiang Aust; and
- erosion of the net added value (NAV) margin that exists between the prevailing LME copper price and the selling price in the market.

[*Commercially sensitive information concerning price offers and returns*]

Summary

The overall pricing movements for Hailiang Aust selling prices has a declining trend through the first half of 2020. [*Comment concerning trend in import offers*]. Where Hailiang Aust is selling its copper tube grades at negative USD premiums, it is evident that it is being supported by its exporting parent company Hailiang.

For these reasons, the selling prices between the related party exporters and importer cannot be considered to be at "arms-length" and the relationship between the exporter and the importer impacts the pricing between the two entities resulting in Hailiang Aust selling at a loss on recent sales.

V. Conclusions

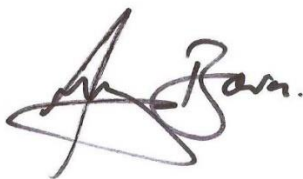
The examples cited by MM Kembla demonstrate that the Australian importer of copper tube has reduced its selling prices (via reductions in its USD Premium) over the recent February to June 2020 period.

MM Kembla considers that Hailiang Aust has only been able to achieve this reduction in the USD Premium due to its sourcing of the copper tube from its parent company Hailiang.

It is MM Kembla's considered view that export prices for Hailiang's sales to Australia cannot be determined under paragraphs 269TAB(1)(a) or 269TAB(1)(b) due to the relationship between the Chinese exporter and its affiliated Australian importer. Due to the non arms-lengthy nature of Hailiang's export sales to Australia Export prices for Hailiang therefore must be assessed under paragraph 269TAB(1)(c) using selling prices by Hailiang Aust less prescribed deductions to the FOB point.

If you have any questions concerning this submission, please do not hesitate to contact me on (02) 4223 5120 or MM Kembla's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely



Tony Bova
Executive General Manager