



**Australian Government**  
**Department of Industry, Science,  
Energy and Resources**

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XVB*

# **STATEMENT OF ESSENTIAL FACTS**

## **NO. 557**

**ALLEGED DUMPING OF CERTAIN COPPER TUBE  
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA AND  
THE REPUBLIC OF KOREA**

**AND**

**ALLEGED SUBSIDISATION OF CERTAIN COPPER TUBE  
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

**14 September 2021**

# CONTENTS

<b>CONTENTS.....</b>	<b>2</b>
<b>ABBREVIATIONS.....</b>	<b>4</b>
<b>1 SUMMARY AND RECOMMENDATIONS .....</b>	<b>6</b>
1.1 INTRODUCTION.....	6
1.2 AUTHORITY TO MAKE DECISION.....	6
1.3 PRELIMINARY FINDINGS.....	7
<b>2 BACKGROUND.....</b>	<b>10</b>
2.1 INITIATION.....	10
2.2 IMPORTERS.....	10
2.3 EXPORTERS.....	11
2.4 PRELIMINARY AFFIRMATIVE DETERMINATION .....	12
2.5 SUBMISSIONS RECEIVED FROM INTERESTED PARTIES .....	13
2.6 RESPONDING TO THIS SEF .....	14
<b>3 THE GOODS AND LIKE GOODS.....</b>	<b>15</b>
3.1 PRELIMINARY FINDING .....	15
3.2 LEGISLATIVE FRAMEWORK.....	15
3.3 THE GOODS .....	15
3.4 TARIFF CLASSIFICATION .....	15
3.5 MODEL CONTROL CODES .....	16
3.6 LIKE GOODS .....	17
<b>4 THE AUSTRALIAN INDUSTRY .....</b>	<b>18</b>
4.1 PRELIMINARY FINDING .....	18
4.2 LEGISLATIVE FRAMEWORK.....	18
4.3 AUSTRALIAN INDUSTRY .....	18
4.4 PRODUCTION PROCESS.....	19
4.5 PRELIMINARY CONCLUSION .....	20
<b>5 AUSTRALIAN MARKET .....</b>	<b>21</b>
5.1 PRELIMINARY FINDING .....	21
5.2 BACKGROUND .....	21
5.3 MARKET STRUCTURE.....	21
5.4 PRICING .....	23
5.5 MARKET SIZE.....	23
<b>6 DUMPING INVESTIGATION.....</b>	<b>24</b>
6.1 PRELIMINARY FINDING .....	24
6.2 LEGISLATIVE AND POLICY FRAMEWORK .....	24
6.3 DUMPING ASSESSMENT – CHINA.....	27
6.4 DUMPING ASSESSMENT – ROK .....	31
6.5 SUMMARY OF DUMPING MARGINS .....	37
6.6 PROPOSED TERMINATION – LEVEL OF DUMPING .....	37
6.7 PROPOSED TERMINATION – VOLUME OF DUMPED IMPORTS.....	38
<b>7 SUBSIDY INVESTIGATION – CHINA .....</b>	<b>39</b>
7.1 PRELIMINARY FINDING .....	39
7.2 RELEVANT LEGISLATION .....	39
7.3 INFORMATION CONSIDERED BY THE COMMISSION .....	41
7.4 INVESTIGATED PROGRAMS .....	41
7.5 SUBSIDY ASSESSMENT.....	45

## PUBLIC RECORD

7.6	SUMMARY OF SUBSIDY MARGINS.....	46
7.7	PROPOSED TERMINATION – LEVEL OF SUBSIDISATION .....	46
<b>8</b>	<b>ECONOMIC CONDITION OF THE INDUSTRY .....</b>	<b>47</b>
8.1	PRELIMINARY FINDING .....	47
8.2	APPROACH TO INJURY ANALYSIS .....	47
8.3	VOLUME EFFECTS.....	47
8.4	PRICE EFFECTS .....	49
8.5	PROFIT AND PROFITABILITY .....	50
8.6	OTHER ECONOMIC FACTORS.....	50
8.7	PRELIMINARY FINDING .....	54
<b>9</b>	<b>HAS DUMPING CAUSED MATERIAL INJURY? .....</b>	<b>56</b>
9.1	PRELIMINARY ASSESSMENT .....	56
9.2	LEGISLATIVE FRAMEWORK.....	56
9.3	CAUSATION ANALYSIS .....	56
9.4	FACTORS OTHER THAN DUMPING CAUSING INJURY .....	59
9.5	CONCLUSION .....	60
<b>10</b>	<b>PROPOSAL TO TERMINATE THE INVESTIGATION .....</b>	<b>61</b>
<b>11</b>	<b>ATTACHMENTS.....</b>	<b>62</b>
	<b>APPENDIX A – PARTICULAR MARKET SITUATION .....</b>	<b>63</b>
A1	INTRODUCTION.....	63
A2	AUSTRALIAN INDUSTRY CLAIMS .....	64
A3	INFORMATION RELIED UPON TO UNDERTAKE THE COMMISSION’S ASSESSMENT .....	64
A4	GOC SUBMISSION.....	65
A5	COST OF COPPER.....	65
A6	COMMISSION’S ASSESSMENT.....	67

## ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
Airefrig	Airefrig Australia Pty Ltd
CBSA	Canada Border Services Agency
China	People's Republic of China
COMEX	Commodity Exchange
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 557	<i>Consideration Report No. 557</i>
CTM	cost to make
CTMS	cost to make and sell
the Customs Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
Daejin	Daejin Copper Pipe & Tube Manufacturing Co., Ltd
EPR	electronic public record
EXW	ex-works
FOB	Free On Board
GOC	Government of China
the goods	the goods the subject of the application (also referred to as the goods under consideration)
Hailiang	Zhejiang Hailiang Copper Co., Ltd
Hailiang Australia	Hailiang Copper (Australia) Pty Ltd
HK Hailiang	Hong Kong Hailiang Metal Trading Limited
HVAC	heating, ventilation and air conditioning
injury analysis period	from 1 July 2016
investigation period	1 July 2019 to 30 June 2020
LME	London Metals Exchange
the Manual	<i>Dumping &amp; Subsidy Manual</i>
MCC	model control code
the Minister	the Minister for Industry, Science and Technology
MM Kembla	Metal Manufacturers Pty Ltd trading as MM Kembla

## **PUBLIC RECORD**

Naile	Zhejiang Naile Copper Co., Ltd
Nungwon	Nungwon Metal Ind. Co., Ltd
OCOT	ordinary course of trade
PAD	Preliminary Affirmative Determination
PIR	preliminary information request
PVC	polyvinyl chloride
REQ	response to the exporter questionnaire
RGQ	response to the government questionnaire
ROK	Republic of Korea
SEF	statement of essential facts
SG&A	selling, general and administration
SHFE	Shanghai Futures Exchange
SIE	State Invested Enterprise
the subject countries	collectively, China and ROK

## 1 SUMMARY AND RECOMMENDATIONS

### 1.1 Introduction

This statement of essential facts (SEF) has been prepared in response to an application by Metal Manufacturers Pty Ltd trading as MM Kembla (MM Kembla). MM Kembla seeks the publication of a dumping duty notice in respect of certain copper tube (copper tube or 'the goods') exported to Australia from the People's Republic of China (China) and the Republic of Korea (ROK) and a countervailing duty notice in respect of copper tube exported to Australia from China. MM Kembla alleges that the Australian industry producing copper tube has experienced material injury caused by copper tube exported to Australia from China and ROK at dumped prices and at subsidised prices from China.

This SEF sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to terminate this investigation, subject to any submissions received in response to this SEF. The Anti-Dumping Commission (the commission) has prepared this report, pursuant to the commission's function specified in section 269SMD of *Customs Act 1901* (the Act).<sup>1</sup>

### 1.2 Authority to make decision

Division 2 of Part XVB describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application under section 269TB(1).

#### 1.2.1 Application

On 29 May 2020, MM Kembla lodged an application alleging that the Australian industry has experienced material injury caused by copper tube exported to Australia from China at dumped and subsidised prices and from ROK at dumped prices.

Having considered the application and further information provided by MM Kembla, the then Commissioner decided not to reject the application. On 13 July 2020 the then Commissioner initiated an investigation into the alleged dumping and subsidisation of copper tube from China and alleged dumping of copper tube from ROK.

*Consideration Report No. 557* (CON 557) and the public notice (Anti-Dumping Notice (ADN) No. 2020/071) provide further details relating to the initiation of the investigation and are available on the commission website at [www.adcommission.gov.au](http://www.adcommission.gov.au).<sup>2</sup>

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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> Electronic public record (EPR) 557, document nos. [002](#) and [003](#).

### **1.2.2 Statement of essential facts**

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as is allowed under section 269ZHI(3), place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister for Industry, Science and Technology (the Minister) in relation to the application.<sup>3</sup>

The SEF was originally due to be placed on the public record by 2 November 2020. However, the due date for the SEF and final report was extended on 3 occasions.<sup>4</sup> The Commissioner is required to place the SEF on the public record by 14 September 2021.

### **1.2.3 Final report**

The Commissioner's final report and recommendations in relation to this investigation must be provided to the Minister on or before 29 October 2021, unless the investigation is terminated earlier or a further extension of time to provide the final report is granted.

## **1.3 Preliminary findings**

The Commissioner's assessments and findings in this SEF are based on available information at this stage of the investigation. A summary of the preliminary findings are provided below.

### **1.3.1 The goods and like goods (Chapter 3)**

The Commissioner considers that the locally produced copper tube is 'like' to the goods the subject of the application.

### **1.3.2 Australian industry (Chapter 4)**

The Commissioner is satisfied that at least one substantial process in the manufacture of copper tube is carried out in Australia and therefore there is an Australian industry producing like goods.

### **1.3.3 Australian market (Chapter 5)**

The Australian copper tube market is supplied by MM Kembla and by imports from China and ROK (collectively, the subject countries), as well as from other countries.

### **1.3.4 Dumping assessment (Chapter 6)**

The commission's assessment of dumping margins is set out in Table 1.

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<sup>3</sup> On 14 January 2017, the powers and functions of the Minister under section 269ZHI were delegated to the Commissioner. Refer to ADN No. 2017/10 for further information.

<sup>4</sup> ADN Nos. 2020/124, 2021/026 and 2021/102 at EPR 557, document nos. [011](#), [017](#) and [028](#) refer.

## PUBLIC RECORD

Country	Exporter	Dumping margin
China	Zhejiang Hailiang Copper Co., Ltd	-4.7%
	Residual Exporters	-4.3%
	Uncooperative exporters	-4.3%
ROK	Daejin Copper Pipe & Tube Manufacturing Co., Ltd	6.0%
	Nungwon Metal Ind. Co., Ltd	0.9%
	Residual Exporters	6.0%
	Uncooperative exporters	6.0%

**Table 1: Dumping margins**

### 1.3.5 Countervailing assessment (Chapter 7)

The commission's assessment of subsidy margins is set out in Table 2.

Country	Exporter	Subsidy margin
China	Zhejiang Hailiang Copper Co., Ltd	0.4%
	Non-selected exporters	0.7%
	Non-cooperative and all other exporters	0.7%

**Table 2: Subsidy margins**

### 1.3.6 Economic condition of the Australian industry (Chapter 8)

The Commissioner is satisfied that the Australian industry has experienced injury in the forms of:

- reduced sales volume
- reduced market share
- price depression
- price suppression
- reduced profit
- reduced profitability
- reduced assets
- reduced capital expenditure
- reduced sales revenue
- reduced return on investment
- reduced capacity utilisation
- reduced employment
- reduced wages

### 1.3.7 Have dumping and subsidies caused material injury? (Chapter 9)

The Commissioner is satisfied that the injury, if any, to the Australian industry caused by the dumping of the goods exported to Australia from ROK by exporters other than Nungwon Metal Ind. Co., Ltd (Nungwon) is negligible.



### **1.3.8 Proposed termination (Chapter 10)**

Section 269TDA provides for the circumstances where the Commissioner must terminate an investigation.

Based on the above findings and subject to any submissions received in response to this SEF, the Commissioner proposes to terminate the investigation in relation to:

- All exporters from China, in accordance with section 269TDA(1)(b)(i), on the basis that no dumping was found to have occurred during the period 1 July 2019 to 30 June 2020 (the investigation period).
- China on the basis that the total volume of dumped goods from China is negligible in accordance with sections 269TDA(3) and (4).
- All exporters from China, in accordance with section 269TDA(2)(b)(ii), on the basis that a countervailable subsidy has been received in respect of some or all of the goods exported from China, however it never exceeded the negligible level of countervailable subsidy.
- Nungwon from ROK, in accordance with section 269TDA(1)(b)(ii), on the basis that the dumping margin was less than two per cent and therefore negligible during the investigation period.
- Daejin, residual exporters and uncooperative exporters from ROK, in accordance with section 269TDA(13), on the basis that the injury to the Australian industry that has been caused by dumped exports is negligible, for the reasons set out in chapter 9 of this report.

## 2 BACKGROUND

### 2.1 Initiation

On 29 May 2020, MM Kembla lodged an application under section 269TB(1) seeking the publication of a dumping and countervailing notice in respect of copper tube exported to Australia from China and a dumping notice in respect of copper tube exported to Australia from ROK. MM Kembla provided further information in support of the application under section 269TC(2A) on 12 June and 24 June 2020.

MM Kembla alleged that the Australian industry has experienced material injury caused by exports of copper tube from China at dumped and subsidised prices and from ROK at dumped prices. MM Kembla alleged that the Australian industry has experienced material 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

The commission was satisfied that the application complied with section 269TB(4). The Commissioner therefore decided not to reject the application and initiated the present investigation on 13 July 2020. ADN No. 2020/071 and CON 557 provide further details relating to the initiation of the investigation.<sup>5</sup>

In respect of the investigation:

- the investigation period<sup>6</sup> for the purpose of assessing dumping and subsidisation is 1 July 2019 to 30 June 2020.
- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped or subsidised goods is from 1 July 2016 (injury analysis period).

### 2.2 Importers

The commission identified the largest importers in the Australian Border Force (ABF) import database. The commission contacted these importers and invited their participation in the investigation. The commission received importer questionnaire responses and undertook verification of the following importers:

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<sup>5</sup> EPR 557, document nos. [002](#) and [003](#).

<sup>6</sup> Section 269T(1).

## PUBLIC RECORD

Grahame Cook Plumbing Supplies Sales Pty Ltd
Airefrig Australia Pty Ltd
Hailiang Copper Australia Pty Ltd

**Table 3: Verified importers**

Verification reports for each of these importers are available on the EPR.

### 2.3 Exporters

On 7 September 2020 the commission published a file note which, among other things, outlined that the Commissioner intended to make findings and recommendations in relation to this investigation based on an examination of a limited number of exporters in accordance with section 269TACAA.<sup>7</sup>

Section 269TACAA(1) states that, where the number of exporters from a particular country of export in relation to the investigation is so large that it is not practicable to examine the exports of all of those exporters, the investigation may be carried out, and findings may be made, on the basis of information obtained from an examination of a selected number of those exporters who:

- constitute a statistically valid sample of those exporters or
- are responsible for the largest volume of exports to Australia that can reasonably be examined.

#### 2.3.1 Selected exporters

The commission identified a large number of suppliers listed in the ABF import database that may be exporters of copper tube from China and ROK.

Given this large number of suppliers, it is not practicable to examine the exports of all exporters. Accordingly, the investigation has been carried out on the basis of information from an examination of a selected number of exporters who are responsible for the largest volume of exports to Australia that can reasonably be examined.

The commission selected and contacted the following exporters of copper tube responsible for the largest volume of exports that can reasonably be examined from China during the investigation period for examination.

Exporter	Questionnaire response received?
Foshan Huahong Copper Tube Co., Ltd	No
Zhejiang Hailiang Copper Co., Ltd	Yes
Zhejiang Naile Copper Co., Ltd	Yes

**Table 4: Selected exporters from China**

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<sup>7</sup> EPR 557, document no. [006](#) refers.

## PUBLIC RECORD

The commission selected the following exporters of copper tube responsible for the largest volume of exports the can reasonably be examined from ROK during the investigation period for examination:

Exporter	Questionnaire response received?
Daejin Copper Pipe & Tube Manufacturing Co., Ltd	Yes
Nungwon Metal Ind. Co., Ltd	Yes

**Table 5: Selected exporters from Korea**

### 2.3.2 Residual exporters

A 'residual exporter' is defined in section 269T, in relation to an investigation under Part XVB as to whether a dumping duty notice should be published. A residual exporter is an exporter of the goods or an exporter of like goods where the exporter's exports were not examined as part of the investigation and the exporter was not an uncooperative exporter in relation to the investigation.

Exporters of the goods other than the selected exporters were given an opportunity to make themselves known to the commission by providing a response to the preliminary information request (PIR).

The commission received responses to the PIR from 4 exporters of the goods from China and two exporters of the goods from ROK. After close analysis of the responses received, the commission identified the following exporters to be 'residual exporters' who were not selected for sampling and are not considered uncooperative exporters:

Country	Residual Exporter
China	Golden Dragon Precise Copper Tube (Xinxiang) Co., Ltd
	Guangdong Longfeng Precise Copper Tube Co., Ltd
	Ningbo Jintian Copper Tube Co., Ltd
	Shanghai Hailiang Copper Co., Ltd
ROK	Boo Kwang Metal Co., Ltd
	Skope Industries Limited

**Table 6: Residual Exporters**

## 2.4 Preliminary affirmative determination

In accordance with section 269TD, the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice, or if satisfied that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation of the goods into Australia.

A PAD may be made no earlier than day 60 of the investigation. The Commonwealth may require and take securities at the time a PAD is made or at any time during the investigation after a PAD has been made if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

In accordance with the *Customs (Preliminary Affirmative Determinations) Direction 2015* (PAD Direction), 60 days after the initiation of such an investigation, the Commissioner must either make a PAD or publish a status report outlining the reasons why he has not made a PAD.

On Day 60 of this investigation, 11 September 2020, a status report was published.<sup>8</sup> The status report advised that the Commissioner, at that time, was unable to establish that there appeared to be sufficient grounds that:

- the goods exported to Australia from China have been dumped and/or subsidised
- the goods exported to Australia from ROK have been dumped and
- the dumped and/or subsidised goods from China and dumped goods from ROK have caused material injury to the Australian industry producing like goods.

MM Kembla, in a submission dated 31 May 2021, requested the Commissioner to publish a PAD to prevent the continued material injury suffered by Australian industry.<sup>9</sup> MM Kembla claims that in the 6 month period immediately following the commission publishing a status report, material volumes of the goods have been exported from China and ROK, causing MM Kembla material injury.

The PAD Direction requires the Commissioner to reconsider making a PAD after the publication of a status report at least once prior to the publication of the SEF. In preparing this SEF, the Commissioner has reconsidered whether to make a PAD in view of the additional evidence available. However, the evidence, as set out in this report, does not establish sufficient grounds for the publication of a PAD.

## **2.5 Submissions received from interested parties**

The commission has received submissions from interested parties throughout the course of the investigation as set out in the table below. Non-confidential versions of all submissions are available on the EPR.

<b>Submission from</b>	<b>Date published on EPR</b>	<b>Document No.</b>
Airefrig Australia Pty Ltd	25 August 2020	004
MM Kembla	1 September 2020	005
MM Kembla	9 September 2020	009
MM Kembla	17 May 2021	023
MM Kembla	24 May 2021	024
MM Kembla	3 June 2021	025
Brasshards (Holdings) Pty Ltd	6 August 2021	026

**Table 7: Submissions received from interested parties**

The commission has had regard to all submissions throughout the relevant sections of this SEF.

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<sup>8</sup> EPR 557, document no. [008](#) refers.

<sup>9</sup> EPR 557, document no. [025](#) refers.

## 2.6 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to terminate the investigation.

This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF. It is important to note that the SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in deciding whether he is required to terminate the investigation or to make his final report to the Minister. If the Commissioner makes a report to the Minister, it will recommend whether or not a dumping duty notice and/or a countervailing duty notice should be published, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than **4 October 2021**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.

The Commissioner must report to the Minister by **29 October 2021**, unless the investigation is earlier terminated.

Submissions should preferably be emailed to [investigations1@adcommission.gov.au](mailto:investigations1@adcommission.gov.au). Alternatively, they may be posted to:

Director, Investigations Unit 1  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601  
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record. A guide for making submissions is available on the commission website, [www.adcommission.gov.au](http://www.adcommission.gov.au).

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the commission's reports and other publicly available documents. It is available by request in hard copy or online at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Documents on the Public Record should be read in conjunction with this SEF.

### 3 THE GOODS AND LIKE GOODS

#### 3.1 Preliminary finding

The commission is satisfied that locally manufactured copper tube are 'like goods' to the goods the subject of the application.

#### 3.2 Legislative framework

Section 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are 'like' to the imported goods. Section 269T(1) defines like goods as:

Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must, however, produce goods that are 'like' to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness
- ii. commercial likeness
- iii. functional likeness
- iv. production likeness

#### 3.3 The goods

The goods the subject of the application (the goods) are:

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.

Goods specifically excluded from the goods description are:

- thermally insulated copper tube, such as Pair Coil
- Annealed coils
- Layer Wound Packs/Level Wound Coils
- Copper alloy tube

#### 3.4 Tariff classification

The goods are generally classified to tariff subheading 7411.10.00 (statistical code 11) in Schedule 3 to the *Customs Tariff Act 1995*.



## PUBLIC RECORD

This tariff classification and statistical code may include goods that are both subject and not subject to this investigation. The listing of this tariff classification and statistical code is for convenience or reference only and do not form part of the goods described above. Please refer to this description for authoritative detail regarding goods, the subject of this investigation.

### 3.5 Model control codes

The commission has used a model control code (MCC) structure in order to identify key characteristics for, among other things, model matching when comparing export prices and normal values. The basis for using a MCC structure and the commission's practice is explained in the *Dumping and Subsidy Manual* (the Manual). All interested parties participating in this inquiry were requested to provide sales and cost data in accordance with the MCC structure detailed in Table 8.

Item	Category	Sub category	Identifier	Sales Data	Cost data
1	Standard	Copper tubes used for plumbing, gas fitting, drainage and/or medical gas applications (e.g. copper tube manufactured to AS1432)	P	Mandatory	Mandatory
		Copper tubes used for refrigeration and air conditioning applications (e.g. copper tube manufactured to AS/NZ1571)	R		
		Copper tubes used for engineering purposes (e.g. copper tube manufactured to AS1572)	E		
2	Temper	'Hard' Hardness (HV/5): 100 minimum	H	Mandatory	Mandatory
		'Bendable' or 'Half Hard' Hardness (HV/5): ~71-99	B		
		'Soft' or 'annealed' Hardness (HV/5): 70 maximum	S		
3	Lagging	Lagged	L	Mandatory	Mandatory
		Unlagged	U		
4	Capping	Capped	C	Mandatory	Mandatory
		Uncapped	U		
5	Form	Straight	S	Mandatory	Mandatory
		Coiled	C		
6	Finned or internally grooved	Finned	F	Mandatory	Mandatory
		Internally grooved	G		
		Plain (not finned or grooved)	P		

**Table 8: MCC Structure**

Any changes to the proposed MCC structure, or alterations in terms of its application in respect of each interested party, have been addressed in the relevant verification reports available on the public record for this investigation.

MM Kembla, in its submission dated 14 May 2021, claimed that MCC category number 4, capping costs, represents a material portion of conversion costs and therefore should be considered to be a relevant category for verification.<sup>10</sup>

<sup>10</sup> EPR 557, document no. [023](#) refers.



The commission examined the capping costs for each cooperating exporter throughout verification and has observed that capping costs are not a material component of costs. The commission was also unable to identify a material difference in selling price between capped and uncapped copper tube for the verified exporters. The details of the analysis conducted by verification teams is outlined in the relevant verification reports.

### **3.6 Like goods**

The following analysis outlines the commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods the subject of the application and whether they are therefore like goods.

#### **3.6.1 Physical likeness**

The commission has found that the physical characteristics of the locally produced and imported copper tube are similar, being of similar appearance, shape and dimension, namely round copper tube 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.

#### **3.6.2 Commercial likeness**

The commission has found that the locally produced and imported goods are commercially alike, as they are sold to common customers within the same market sectors (detailed in Chapter 5).

#### **3.6.3 Functional likeness**

The commission has found that the locally produced and imported goods are functionally alike as they perform the same functions and are used in the same applications (and are interchangeable where they meet specific Australian standards). These include use in plumbing, refrigeration, medical, lagged and insulated tubing.

#### **3.6.4 Production likeness**

The commission has found that the locally produced and imported goods are manufactured in a similar manner, involving similar raw materials (cathode copper) and manufacturing processes (detailed in Chapter 4) and finish treatment (i.e. annealing) to the applicable Australian standards.

#### **3.6.5 Like goods assessment**

Based on the above findings, the commission considers that copper tube manufactured by MM Kembla has characteristics closely resembling the goods exported to Australia.

## 4 THE AUSTRALIAN INDUSTRY

### 4.1 Preliminary finding

The Commissioner is satisfied that there is an Australian industry, consisting wholly of MM Kembla, producing like goods, and that the like goods are wholly or partly manufactured in Australia.

### 4.2 Legislative framework

The Commissioner must be satisfied that the 'like' goods are in fact produced in Australia. Sections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

### 4.3 Australian industry

MM Kembla has been manufacturing at its Port Kembla facility since 1916. The commission understands that MM Kembla is the only manufacturer of like goods remaining in Australia, following the closure of Crane Enfield Metals Pty Limited in 2015. No further Australian industry manufacturers of like goods identified themselves to the commission following the initiation of the investigation. The commission did not identify any further Australian industry manufacturers during the investigation.

MM Kembla produces a range of copper products, including copper tube that meets the goods description the subject of this investigation. These include copper tube in straights and coils, fittings and accessories. MM Kembla produces seamless copper tube having the following characteristics:

- conformance to Australian Standards AS 1432, AS 1572 or AS/NZS 1571
- of varying nominal diameters between 9.52 mm and 53.98 mm and of nominal thicknesses between 0.71 mm and 1.83 mm
- lengths of 1.5 m, 3 m and 6 m
- bare or coated or 'lagged' (to provide insulation)
- capped or uncapped (sealing generally required to maintain internal cleanliness)
- safe working pressure

Differing products can be physically identified by the following:

- Plumbing tube – bare uncoated seamless round copper tube; open ended (uncapped); permanently incised with standard and watermark licence; and ink marked in accordance with AS 1432 standard.
- Lagged tube – typically polyvinyl chloride (PVC) or low density polyethylene coated seamless round copper tube; open ended (uncapped); ink marked in accordance with AS 1432 standard; coated typically with green, lilac, brown or white coating.
- Refrigeration and medical gas tube - bare uncoated seamless round copper tube; sealed ends (capped) to maintain internal cleanliness; ink marked in accordance with AS/NZS 1571 standard; capped typically with pink or red (high pressure), green or black (low pressure) and yellow (specific use or medical gas) rubber or plastic caps.

MM Kembla also produces a small amount of copper tube that conforms to AS 1572 – seamless tubes for engineering purposes. This product is typically straight length round seamless copper tube bare/uncoated and open ended (uncapped) with outside diameters between 9.52 mm and 22.22 mm.

MM Kembla also imports a small volume of copper tube for resale where it is not considered economically viable to manufacture the small volumes of the particular items required by its customers.<sup>11</sup>

#### 4.4 Production process

In its verification of the information submitted in MM Kembla's application, the commission determined the production process for copper tube to be as follows:

- **Raw Materials:** Copper tube is manufactured from raw material copper which is predominately newly refined copper, cathode copper and copper scrap.
- **Production Stage 1 - *Melting*:** The raw material copper is melted in a furnace, impurities removed, and made ready for casting.
- **Production Stage 2 – *Casting*:** Molten metal is transferred from the furnace where it is cast into large 'logs' by a continuous casting method.
- **Production Stage 3 – *Extrusion*:** The logs are cut into shorter lengths called billets. The billets are then reheated and extruded, creating a long hollow tube.
- **Production Stage 4 – *Annealing, straightening and cutting*:** Copper tube is sold in either hard (i.e. as hard drawn), half hard or in a soft, annealed state.
- **Production Stage 5 – *Further processing (dependent on end use)*:** Depending on the intended end use, the tube can be put through a cleaning process, plastic coating (lagging) operation, or have end caps applied.
- **Scrap:** scrap is produced at various stages of the production process and is remelted in the billet caster for use in downstream production.
- **Packaging and despatch:** Products are packed to customer requirements and despatched through MM Kembla's distribution centres.<sup>12</sup>

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<sup>11</sup> Copper tube imported by MM Kembla for resale represents approximately 3% of the total volume of sales of the goods under consideration in the investigation period.

<sup>12</sup> EPR 557, document no. [026](#) refers.

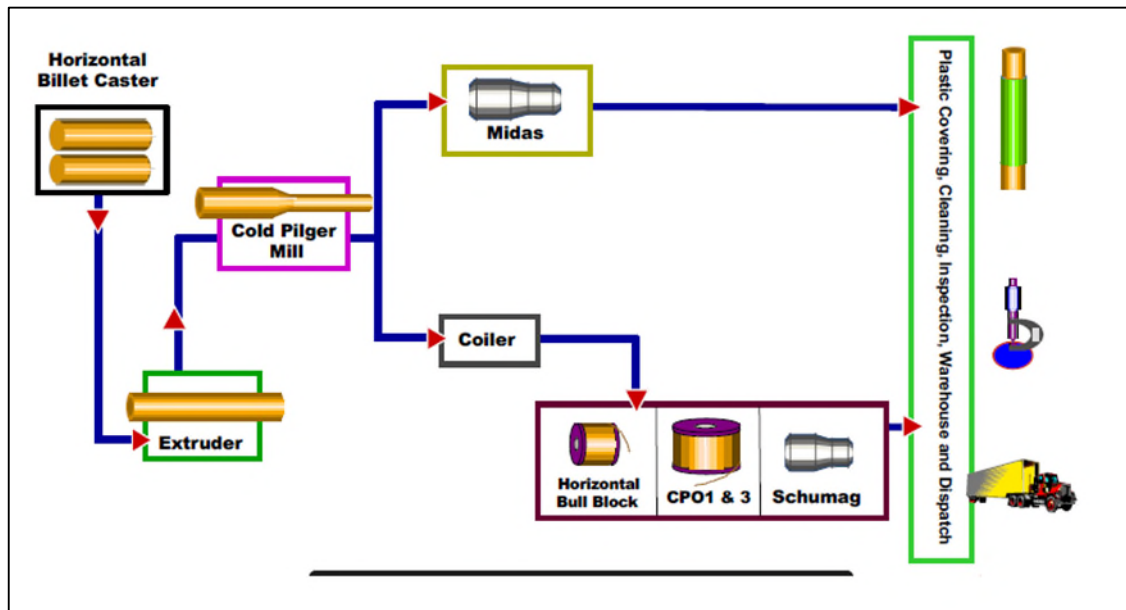


Figure 1 – MM Kembla – Manufacturing process

## 4.5 Preliminary conclusion

Based on the information detailed above, the commission is satisfied that:

- Copper tube manufactured by MM Kembla is like to the goods (chapter 3.6.5).<sup>13</sup>
- At least one substantial process of manufacture is carried out in Australia.<sup>14</sup>
- The like goods were, therefore, wholly or partly manufactured in Australia by MM Kembla.<sup>15</sup>
- There is an Australian industry, consisting of MM Kembla, which produces like goods in Australia.<sup>16</sup>

<sup>13</sup> Section 269T(1).

<sup>14</sup> Section 269T(3).

<sup>15</sup> Section 269T(2).

<sup>16</sup> Section 269T(4).

## **5 AUSTRALIAN MARKET**

### **5.1 Preliminary finding**

The Commissioner has found that the Australian market for copper tube is supplied by the Australian industry and imports from a number of countries, including the subject countries.

### **5.2 Background**

The Australian market for the goods and like goods is supplied by MM Kembla as the sole member of the Australian industry, as well as manufacturers from other countries who export to Australian customers directly or through intermediaries and distributors.

The analysis of the Australian market detailed in this chapter is based on verified information submitted by MM Kembla, import data from the ABF import database, and verified importer and exporter information.

### **5.3 Market structure**

#### **5.3.1 Market segmentation and end uses**

The Australian market for copper tube involves end-use applications relating to the movement of water, gas or refrigerant in heating, ventilation and air conditioning (HVAC) piping systems. End use applications include the following:

- plumbing
- refrigeration piping
- HVAC piping
- mechanical gas tubing
- medical gas tubing
- water and gas infrastructure.

In terms of practical application, copper tube is used in the following areas:

- commercial construction (large apartments, new shopping centres)
- residential construction (new houses)
- refrigeration and air conditioning installation (supermarkets, hospitals, fruit and vegetable distributors, meat processing)
- medical gases (hospital)
- plumbing/gas fitting (replacement and new installations market for residential houses and commercial businesses).

Copper tube can be broadly segmented into the following product categories:

- plumbing tube – for the reticulation of water and gas
- refrigeration tube – for HVAC and refrigeration systems
- medical gas tube – for the supply of medical gases
- lagged tube – PVC coated tube used for in-ground and corrosive environments
- insulated tube – mostly pair coil used in air conditioning installations.

Plumbing tube must be manufactured to be compliant with Australian Standard AS 1432 and must be independently Watermark certified as part of the Watermark Certification Scheme administered by the Australian Building Codes Board.

Refrigeration tube must be manufactured to be compliant with Australia / New Zealand Standard AS/NZS 1571.

Medical gas copper tube manufactured to AS/NZS 1571 must also conform to the requirements of the Medical Gas Systems installation standard AS 2896 and have been designed to be suitable for the transmission of medical gases such as oxygen, as well as vacuum or suction line applications.

### **5.3.2 Marketing and distribution**

The majority of copper tube is distributed and marketed in Australia through plumbing, HVAC and refrigeration and hardware merchants.

For plumbing tube, sales are predominantly through specialist plumbing distributors and to a lesser extent through hardware stores. For refrigeration and medical gas tube, sales are predominantly through HVAC and refrigeration distributors. The larger plumbing merchants operating in the Australian market include TRADELINK, Reece Plumbing Group and Plumbing Plus Group.

End users such as plumbers and refrigeration and air conditioning contractors purchase copper tube through these distributors.

### **5.3.3 Supply**

MM Kembla manufactures the copper tube at its Port Kembla facility and ships it to distribution centres in each capital city around the country. The branch warehouses in the capital cities are regularly replenished to ensure sufficient stock is maintained to meet demand.

Customers are supplied from the distribution centres, and then on-sell the products to contractors and end users.

### **5.3.4 Demand**

Demand drivers and subsequent demand variability in the copper tube market in Australia can be attributed to the following factors:

- Level of investment/activity in multi-residential and non-residential construction sectors such as accommodation, offices, education, health and aged care.
- System designation and operating parameters prescribed by designers or hydraulic and mechanical consultants.
- Seasonal fluctuations predominantly across extended holiday periods where construction activity is lower and warmer seasons for domestic air conditioning copper tube.
- Developments in alternative piping technologies, particularly in gas and hot water distribution and HVAC applications and large bore alternatives (stainless steel).
- Advancements in retail/supermarket sector refrigeration systems requiring copper piping.

## 5.4 Pricing

MM Kembla's pricing is set on the basis of the London Metals Exchange (LME) price of copper plus a premium. The premium covers conversion cost (from raw material to billet to the finished product) and the margin. The margin may be influenced by factors such as a rebate structure, order quantity, sales support, geography due to Free Into Store terms, and the length of contract.

## 5.5 Market size

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 its own sales in the market and import information for the relevant tariff code sourced from the Australian Bureau of Statistics.

The commission has estimated the size of the Australian market using verified sales data provided by MM Kembla, export data obtained from the ABF import database and verified data obtained from the cooperating exporters and importers. The commission's estimate is shown in Figure 2. The total Australian market was approximately 12,000 tonnes in the investigation period.

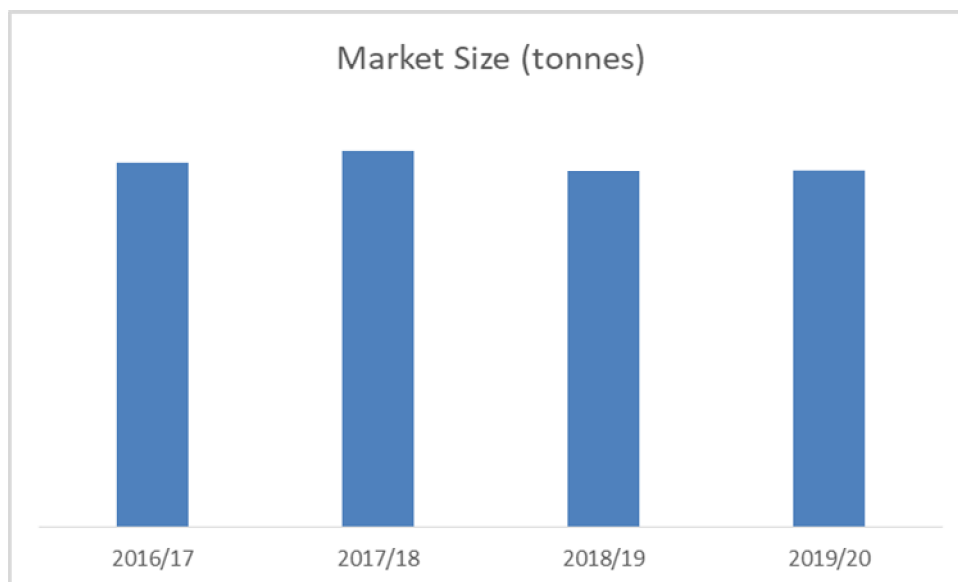


Figure 2 – Australian market size

The commission's assessment of the size of the Australian market is at **Confidential Attachment 1**.

## 6 DUMPING INVESTIGATION

### 6.1 Preliminary finding

The Commissioner's dumping margin findings in relation to copper tube exported to Australia during the investigation period are summarised in Table 9.

Country	Exporter	Dumping margin
China	Zhejiang Hailiang Copper Co., Ltd	-4.7%
	Residual exporters	-4.3%
	Uncooperative exporters	-4.3%
ROK	Daejin	6.0%
	Nungwon	0.9%
	Residual exporters	6.0%
	Uncooperative exporters	6.0%

Table 9: Dumping margins

### 6.2 Legislative and policy framework

In the report to the Minister under section 269TEA(1), the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG. Under section 269TG, one of the matters the Minister must be satisfied of, in order to publish a dumping duty notice, is that the goods have been dumped.

Section 269TDA(1) requires that the Commissioner must terminate the investigation, in so far as it relates to an exporter, if satisfied that there has been no dumping by the exporter, or there has been dumping during the investigation period, but the dumping margin is less than two per cent.

Section 269TDA(3) requires that the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that have been, or may be, dumped is a negligible volume.

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC, respectively.

For all dumping margins calculated for the purposes of this investigation, other than for residual exporters, the commission compared export prices over the whole of the investigation period with the corresponding normal values.

#### 6.2.1 Export price

Export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods are 'arms length' transactions under section 269TAA.



Section 269TAB(1)(a) provides that the export price of any goods exported to Australia is the price paid (or payable) for the goods by the importer where the goods have been exported to Australia otherwise than by the importer, and have been purchased by the importer from the exporter in 'arms length' transactions.

Section 269TAB(1)(b) provides that, where goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter, but not at 'arms length', and the goods are then subsequently sold in the condition they were imported to a party not associated with the importer, the export price of goods is the price that the importer sold the goods, less prescribed deductions.

Section 269TAB(1)(c) provides that in all other cases, the export price is a price determined by the Minister having regard to all the circumstances of the exportation.

Section 269TAB(3) provides that where sufficient information has not been furnished, or is not available, the export price shall be determined having regard to all relevant information.

### **6.2.2 Normal value**

#### Goods sold in the ordinary course of trade

Section 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid (or payable) for like goods sold in the ordinary course of trade (OCOT) for home consumption in the country of export in sales that are 'arms length' transactions by the exporter, or, if like goods are not so sold by the exporter, by other sellers of like goods.

#### Low volume of domestic sales

Section 269TAC(2)(a)(i) provides that the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1) where there is an absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under section 269TAC(1). Relevant sales are sales of like goods sold for home consumption that are 'arms length' transactions and sold in the OCOT.

Domestic sales of like goods are taken to be in a low volume where the total volume of like goods is less than 5% of the total volume of the goods under consideration that are exported to Australia (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison). As per the Manual, where the total volume of relevant sales is 5% or greater than the total volume of the goods under consideration, and where comparable models exist, the commission also considers the volume of relevant domestic sales of like goods for each model (or MCC).

When calculating a normal value under section 269TAC(1), in order to ensure a proper comparison between the goods exported to Australia and the goods sold on the domestic market, the commission considers the volume of sales of each exported MCC on the domestic market. Where the volume of domestic sales of an exported model is less than 5% of the volume exported, the commission will consider whether a proper comparison can be made at the MCC level. In these situations, the commission may consider whether a surrogate domestic model should be used to calculate normal value for the exported model.

Particular market situation

Section 269TAC(2)(a)(ii) provides that the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1) where the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under section 269TAC(1).

**6.2.3 Residual exporters**

In determining the dumping margin for residual exporters, section 269TACAB(2) prescribes that the export price for residual exporters must not be less than the weighted average of export prices for like goods of cooperative exporters from the same country. Section 269TACAB(2) also states that the normal value for residual exporters must not exceed the weighted average of normal values for like goods of cooperative exporters from the same country.

Section 269TACAB(3) provides that the weighted average of export prices and normal values of the cooperative exporters must not include any export price or normal value for exporters who are not dumping or where the exporters dumping margin is less than two per cent.

**6.2.4 Uncooperative exporters**

Section 269T(1) provides that an exporter is an 'uncooperative exporter' where the Commissioner is satisfied that:

- an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable, or
- where the Commissioner is satisfied that an exporter significantly impeded the investigation.

Section 8 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Customs Direction) sets out that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails

- to provide a response,<sup>17</sup> or
- fails to request a longer period to do so within a timeframe specified or prescribed for submitting any kind of response relating to the case (legislated period).

The Commissioner considered the Customs Direction and section 269T and determined that any exporter which did not do any of the following is an uncooperative exporter for the purposes of this investigation:

- provide a response to the exporter questionnaire (REQ) to the commission within the legislated period or
- request a longer period to provide a response within the legislated period or

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<sup>17</sup> Defined in the Customs Direction as any document or thing provided to the Commissioner in relation to any case, including submissions, information or answers to the questions in questionnaires.

- address requests for further information where REQs were given to the commission however those REQs provided information which was not relevant to the investigation, significantly impeding the investigation.

## **6.3 Dumping assessment – China**

### **6.3.1 Particular market situation**

In its application, MM Kembla alleged that the situation in the Chinese market is such that sales in the domestic market are not suitable for use in determining a price under section 269TAC(1).

In light of all the information before the commission, it is the commission's view that a particular market situation did not exist in respect of the domestic market for copper tube in China during the investigation period.

The commission's analysis is set out in **Appendix A**.

### **6.3.2 Zhejiang Hailiang Copper Co., Ltd**

#### Verification

The commission conducted a remote verification of the REQ from Zhejiang Hailiang Copper Co., Ltd (Hailiang).

The commission is satisfied that Hailiang is the producer of the goods. The commission is further satisfied that the information provided by Hailiang is complete, accurate and relevant for the purpose of determining the variable factors applicable to its exports of the goods.

A report covering the verification findings is available on the public record.<sup>18</sup>

#### Export price

The commission considers Hailiang to be the exporter of the goods because it:

- is the principal located in China, the country of export
- is the manufacturer of the goods
- is named on the commercial invoice as the supplier
- is named as consignor on the bill of lading
- arranges and pays for the inland transport to the port of export
- arranges and pays for the port handling charges at the port of export
- arranges and pays for the ocean freight and marine insurance

The commission observes that all of Hailiang's export sales to Australia were made through a related trading entity, Hong Kong Hailiang Metal Trading Limited (HK Hailiang). HK Hailiang then sold the goods to Hailiang's affiliated importer, Hailiang Copper (Australia) Pty Ltd (Hailiang Australia) and to unrelated importers.

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<sup>18</sup> EPR 557, document no. [030](#) refers.

## PUBLIC RECORD

MM Kembla submits that transactions between Hailiang and the related importer, Hailiang Australia, are not 'arms length'. MM Kembla submits that the export price cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b) due to the relationship between Hailiang and its affiliated Australian importer.<sup>19</sup>

The commission has observed the 'arms length' nature of each stage of the importation process. The commission considers that the price between Hailiang and HK Hailiang appeared to be influenced by a commercial or other relationship between the buyer and the seller. The commission considers that HK Hailiang's profit margin in relation to these sales were insufficient to cover its selling, general and administration (SG&A) expenses. Therefore, the commission concludes that the transactions between Hailiang and HK Hailiang were not 'arms length' transactions.

In respect of HK Hailiang's sales of the goods to Australia during the period, to related and unrelated customers, the commission considers the sales to be 'arms length' as it found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price or
- the price appeared 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
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.<sup>20</sup>

In respect of the export sales of the goods to Australia by Hailiang, the commission found that the importer has not purchased the goods from the exporter, therefore, export prices cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b). The commission recommends that the export price be calculated under section 269TAB(1)(c) having regard to all the circumstances of the exportation. Specifically, the commission recommends that the export price be calculated based on the price paid by the importer less an amount of HK Hailiang's SG&A costs and other prescribed deductions for costs arising after exportation. The commission is satisfied of the 'arms length' nature of the transaction between HK Hailiang and the importer, however, is not satisfied of the 'arms length' nature of the transaction between Hailiang and HK Hailiang.

### Normal value

In respect of Hailiang's domestic sales to both related and unrelated customers during the investigation period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price or
- the price appeared 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

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<sup>19</sup> EPR 557, document no. [005](#) refers.

<sup>20</sup> Section 269TAA refers.

## PUBLIC RECORD

- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.<sup>21</sup>

The commission therefore considers that all domestic sales made by Hailiang to its domestic customers during the investigation period were ‘arms length’ transactions.

As detailed in the Hailiang verification report, the commission assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of sales was not less than 5%.

The commission has considered the volume of each exported MCC and whether those MCCs were sold domestically in the table below:

Export MCC	Is model sold domestically?	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
E-H-U-S-P	Yes	Yes	Domestic sales of E-H-U-S-P used under section 269TAC(1)
E-S-U-S-P	Yes	Yes	Domestic sales of E-S-U-S-P used under section 269TAC(1)
P-B-L-S-P	Yes	Yes	Domestic sales of P-B-L-S-P used under section 269TAC(1)
P-B-U-S-P	Yes	Yes	Domestic sales of P-B-U-S-P used under section 269TAC(1)
P-H-U-S-P	Yes	Yes	Domestic sales of P-H-U-S-P used under section 269TAC(1)
R-B-U-S-P	Yes	Yes	Domestic sales of R-B-U-S-P used under section 269TAC(1)
R-H-U-S-P	Yes	Yes	Domestic sales of R-H-U-S-P used under section 269TAC(1)
R-S-U-S-P	Yes	Yes	Domestic sales of R-S-U-S-P used under section 269TAC(1)

**Table 10: Hailiang Exported MCCs and respective Domestic sales of those MCCs**

### Adjustments

The commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The commission considers these adjustments to be necessary to ensure a fair comparison of normal values and export prices.

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<sup>21</sup> Section 269TAA refers.

## PUBLIC RECORD

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic inland transport	Deduct an amount for domestic inland transport
Domestic packaging	Deduct an amount for domestic packaging
Domestic warehousing	Deduct an amount for domestic warehousing
Export packaging	Add an amount for export packaging
Export inland transport	Add an amount for export inland transport
Export handling & port charges	Add an amount for handling & port charges
Export commission	Add an amount for commissions
Export credit terms	Add an amount for export credit terms

**Table 1: Summary of adjustments – Hailiang**

### Dumping margin

The dumping margin in respect of the goods exported to Australia by Hailiang for the investigation period is **negative 4.9%**.

The commission's calculations are included at **Confidential Attachments 2 to 5**.

### **6.3.3 Zhejiang Naile Copper Co., Ltd**

The commission received a REQ from Zhejiang Naile Copper Co., Ltd (Naile) and attempted to verify the information presented during a remote verification.

Naile was given the opportunity to provide complete, relevant and accurate information by the conclusion of the remote verification. In particular, following the verification, the commission was not satisfied with the following:

- completeness, relevance and accuracy of domestic sales
- completeness and relevance of Australian sales
- completeness, relevance and accuracy of Naile's cost to make (CTM) the goods
- completeness and relevance of Naile's raw material purchases
- completeness, relevance and accuracy of SG&A expenses

A significant amount of information requested by the commission in order to attempt to verify certain parts of the REQ remains outstanding. The commission was able to verify the accuracy of Naile's Australian sales and raw material purchases (but not the relevance or completeness) and certain information as it relates to subsidisation. The commission therefore does not consider that Naile has cooperated with the investigation. The commission's analysis of the verification of Naile's REQ is detailed in **Confidential Attachment 6**.

On the basis of the above, for the purposes of this investigation, the Commissioner is satisfied that Naile did not give the Commissioner information the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable. As such, Naile has been considered an uncooperative exporter pursuant to section 269T.

Naile was notified of this decision on 13 September 2021. Naile is therefore subject to the rate for 'uncooperative exporters'.



#### **6.3.4 Residual exporters – China**

As there is no dumping from cooperative exporters from China, the commission is unable to calculate a margin for residual exporters from China as per section 269TACAB(3). The commission has therefore determined the residual exporter rate from China as the same rate that applies to uncooperative exporters. That is, the export price for residual exporters has been determined pursuant to section 269TAB(3) and the normal value for residual exporters has been determined pursuant to section 269TAC(6) as per the methodology in chapter 6.3.5.

#### **6.3.5 Uncooperative exporters – China**

As detailed in chapters 6.2.4 and 6.3.3, the commission considers all exporters of the goods from China, other than Hailiang and residual exporters, to be uncooperative exporters for the purposes of this investigation.

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative exporters, export prices are to be calculated under section 269TAB(3) and normal values are to be calculated under section 269TAC(6).

As Hailiang was the only cooperating exporter of copper tube from China, the commission has analysed exports by Hailiang to determine whether it would be appropriate to rely on Hailiang's information in calculating variable factors for uncooperative exporters. The commission has compared exports by Hailiang with other exporters of copper tube from China and observed the following:

- Hailiang is the largest exporter of copper tube from China.
- Hailiang's verified weighted average Free on Board (FOB) export price is lower than the weighted average FOB export price for all other exporters reported in the ABF import database.

The commission has had regard to the above analysis and considers that the verified export price of Hailiang is the most relevant information for determining an export price for uncooperative exporters during the investigation period. The commission has therefore relied on the weighted average export price for that exporter during the investigation period, pursuant to section 269TAB(3).

The commission has determined a normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information. Specifically, the commission has had regard to the normal value calculated for the sole cooperating exporter from China. In calculating the normal value for uncooperative exporters, no favourable adjustments were made.

The dumping margin for uncooperative exporters is **negative 4.3%**.

The commission's calculations are included at **Confidential Attachment 7**.

### **6.4 Dumping assessment – ROK**

#### **6.4.1 Nungwon**

##### Verification

The commission conducted a remote verification of Nungwon's REQ.

## PUBLIC RECORD

The commission is satisfied that Nungwon is the producer of the goods. The commission is further satisfied that the information provided by Nungwon is complete, accurate and relevant for the purpose of ascertaining the variable factors applicable to its exports of the goods.

A report covering the verification findings is available on the public record.<sup>22</sup>

### Export price

The commission considers Nungwon to be the exporter of the goods because it:

- is the principal located in ROK, the country of export
- is the manufacturer of the goods
- is named on the commercial invoice as the supplier
- is named as consignor on the bill of lading
- arranges and pays for the inland transport to the port of export
- arranges and pays for the port handling charges at the port of export
- arranges and pays for the ocean freight and marine insurance

The commission is satisfied that for all Australian export sales during the period that Nungwon was the exporter of the goods.

In respect of Nungwon's sales of the goods to Australia during the period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price or
- the price appeared 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
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.<sup>23</sup>

The commission therefore considers that all export sales to Australia made by Nungwon to all customers during the investigation period were 'arms length' transactions.

In respect of the export sales of the goods to Australia by Nungwon, the commission found that the importer has purchased the goods from the exporter, therefore the commission has determined the export price under section 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

### Normal value

In respect of Nungwon's domestic sales to both related and unrelated customers during the investigation period, the commission found no evidence that:

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<sup>22</sup> EPR 557, document no. [029](#) refers.

<sup>23</sup> Section 269TAA refers.



## PUBLIC RECORD

- there was any consideration payable for, or in respect of, the goods other than its price or
- the price appeared 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
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.<sup>24</sup>

The commission therefore considers that all domestic sales made by Nungwon to its domestic customers during the investigation period were ‘arms length’ transactions.

As detailed in the Nungwon’s verification report, the commission assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of sales was not less than 5%.

The commission has considered the volume of each exported MCC and whether those MCCs were sold domestically in the table below:

Export MCC	Is model sold domestically?	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
E-B-U-U-S-P	Yes	Yes	Domestic sales of E-B-U-U-S-P used under section 269TAC(1)
E-H-U-U-S-P	Yes	Yes	Domestic sales of E-H-U-U-S-P used under section 269TAC(1)
E-S-U-U-S-P	Yes	Yes	Domestic sales of E-S-U-U-S-P used under section 269TAC(1)
P-B-L-U-S-P	No	No	Surrogate MCC P-B-U-U-S-P used, with specification adjustments under section 269TAC(8)
P-B-U-C-S-P	Yes	Yes	Domestic sales of P-B-U-C-S-P used under section 269TAC(1)
P-B-U-U-S-P	Yes	Yes	Domestic sales of P-B-U-U-S-P used under section 269TAC(1)
P-H-L-U-S-P	No	No	Surrogate MCC P-H-U-U-S-P used, with specification adjustments under section 269TAC(8)
P-H-U-C-S-P	Yes	Yes	Domestic sales of P-H-U-C-S-P used under section 269TAC(1)
P-H-U-U-S-P	Yes	Yes	Domestic sales of P-H-U-U-S-P used under section 269TAC(1)
P-S-L-U-S-P	No	No	Surrogate MCC P-S-U-U-S-P used, with specification adjustments under section 269TAC(8)
P-S-U-U-S-P	Yes	Yes	Domestic sales of P-S-U-U-S-P used under section 269TAC(1)

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<sup>24</sup> Section 269TAA refers.

## PUBLIC RECORD

R-B-U-C-S-P	Yes	Yes	Domestic sales of R-B-U-C-S-P used under section 269TAC(1)
R-H-U-C-S-P	Yes	Yes	Domestic sales of R-H-U-C-S-P used under section 269TAC(1)
R-H-U-U-S-P	Yes	Yes	Domestic sales of R-H-U-U-S-P used under section 269TAC(1)

**Table 12: Nungwon Exported MCCs and respective Domestic sales of those MCCs**

### Adjustments

The commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The commission considers these adjustments to be necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic inland transport	Deduct an amount for domestic inland transport
Export inland transport	Add an amount for export inland transport
Export port handling charges	Add an amount for export port handling charges
Export bank fee	Add an amount for export bank fee
Export credit terms	Add an amount for export credit terms
Specification adjustment	Add a specification adjustment for the surrogate model
Timing adjustment	Add a timing adjustment for the relevant MCC

**Table 2: Summary of adjustments – Nungwon**

### Dumping margin

The dumping margin in respect of the goods exported to Australia by Nungwon for the investigation period is **0.9%**.

The commission's calculations are included at **Confidential Attachments 8 to 11**.

### **6.4.2 Daejin**

#### Verification

The commission conducted a remote verification of Daejin's REQ.

The commission is satisfied that Daejin is the producer of the goods. The commission is further satisfied that the information provided by Daejin is complete, accurate and relevant for the purpose of ascertaining the variable factors applicable to its exports of the goods.

A report covering the verification findings is available on the public record<sup>25</sup>.

#### Export price

The commission observes that all of Daejin's export sales to Australia were made through an unrelated trading entity. The trader then sold the goods to unrelated importers.

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<sup>25</sup> EPR 557, document no. [031](#) refers.

## **PUBLIC RECORD**

The commission considers Daejin to be the exporter of the goods because it:

- is the manufacturer of the goods located in the country of export
- is named as the seller on the commercial invoice to the intermediary
- pays for the transport of the goods to the port and the handling & other port costs to the Free on Board term of the sale, then the trader arranges transportation of the goods from the port to Australia
- has knowledge that the goods are destined for export to Australia

The commission is satisfied that for all Australian export sales during the period that Daejin was the exporter of the goods.

In respect of Daejin's sales of the goods to Australia during the period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price or
- the price appeared 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
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

The commission therefore considers that all export sales to Australia made by Daejin to all customers during the investigation period were 'arms length' transactions.

In respect of Australian sales of the goods by Daejin, the commission is satisfied that the importer has not purchased the goods from the exporter, therefore, export prices cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b).

The commission recommends that the export price be calculated under section 269TAB(1)(c) having regard to all the circumstances of the exportation. Specifically, the commission recommends that the export price be calculated based on the price received by the exporter when selling to the intermediary, which is a FOB price.

### Normal value

In respect of Daejin's domestic sales to both related and unrelated customers during the investigation period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price or
- the price appeared 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
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

The commission therefore considers that all domestic sales made by Daejin to its domestic customers during the investigation period were 'arms length' transactions.

## PUBLIC RECORD

As detailed in Daejin's verification report, the commission assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of sales was not less than 5%.

The commission has considered the volume of each exported MCC and whether those MCCs were sold domestically in the table below:

Export MCC	Is model sold domestically?	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
R-B-U-C-S-P	No	No	Surrogate MCC R-H-U-C-S-P was used with specification adjustment under section 269TAC(8)
R-H-U-C-S-P	Yes	Yes	Domestic sales of R-H-U-C-S-P used under section 269TAC(1)
R-S-U-C-S-P	Yes	Yes	Domestic sales of R-S-U-C-S-P used under section 269TAC(1)

**Table 14: Daejin Exported MCCs and respective Domestic sales of those MCCs**

### Adjustments

The commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The commission considers these adjustments to be necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Domestic packaging	Deduct an amount for domestic inland transport
Domestic inland transport	Deduct an amount for domestic inland transport
Domestic credit terms	Deduct an amount for domestic credit
Duty Drawback	Deduct an amount for duty drawback
Export packaging	Add an amount for export packaging
Export inland transport	Add an amount for export inland transport
Export port charges	Add an amount for port charges
Export credit terms	Add an amount for export credit terms
Specification adjustment	Add a specification adjustment for the surrogate model

**Table 3: Summary of adjustments – Daejin**

### Dumping margin

The dumping margin in respect of the goods exported to Australia by Daejin for the investigation period is **6.0%**.

The commission's calculations are included at **Confidential Attachments 12 to 15**.

### **6.4.3 Residual exporters – ROK**

As there is dumping above two per cent from only one cooperative exporter from ROK (Daejin) the commission is unable to calculate a weighted average export price or weighted average normal value for the residual exporters from ROK as per section 269TACAB(3). The commission has therefore determined the residual exporter rate from ROK as the same rate that applies to uncooperative exporters.

#### 6.4.4 Uncooperative exporters – ROK

As detailed in chapter 6.4, the commission considers all exporters of the goods from ROK, other than Daejin, Nungwon and the residual exporters, to be uncooperative exporters for the purpose of this investigation.

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative exporters, export prices are to be calculated under section 269TAB(3) and normal values are to be calculated under section 269TAC(6).

The commission has determined an export price for uncooperative exporters pursuant to section 269TAB(3) after having regard to all relevant information. Specifically, the commission has used the lowest weighted average export price of those that were established for cooperating exporters from ROK in the investigation period.

The commission has determined a normal value for uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information. Specifically, the commission has used the highest weighted average normal value of those that were established for the cooperating exporters from ROK in the investigation period.

This dumping margin for uncooperative exporters is **6.0%**.

The commission's calculations are included at **Confidential Attachment 7**.

### 6.5 Summary of dumping margins

A summary of the commission's dumping margins are set out below:

Country	Exporter	Dumping margin
China	Hailiang	-4.7%
	Residual Exporters	-4.3%
	Uncooperative exporters	-4.3%
ROK	Daejin	6.0%
	Nungwon	0.9%
	Residual Exporters	6.0%
	Uncooperative exporters	6.0%

Table 16: Dumping margins

### 6.6 Proposed termination – level of dumping

Section 269TDA(1)(b)(i) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if satisfied that there has been no dumping by the exporter of any of those goods. Section 269TDA(1)(b)(ii) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if there has been dumping by the exporter of some or all of those goods, but the dumping margin, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than two per cent.

Accordingly, the Commissioner proposes to terminate the dumping investigation in relation to all exporters from China (pursuant to section 269TDA(1)(b)(i)) and Nungwon from ROK (pursuant to section 269TDA(1)(b)(ii)).

## **6.7 Proposed termination – volume of dumped imports**

Pursuant to section 269TDA(3), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that are dumped is a negligible volume. Section 269TDA(4) defines a negligible volume as less than 3% of the total volume of goods imported into Australia over the investigation period if section 269TDA(5) does not apply.

Section 269TDA(5) provides that imports of dumped goods will be ‘aggregated’, the import volumes of dumped goods from the subject countries that individually constitute less than 3% of the total Australian import volume are not considered negligible if, cumulatively, they account for more than 7% of the total Australia import volume over the investigation period. Pursuant to section 269TDA(6), the volume of goods at negligible dumping margins are not prevented from being taken into account for the purposes of section 269TDA(3).

Accordingly, the Commissioner proposes to terminate the dumping investigation in relation to exports of copper tube from China pursuant to section 269TDA(3).

## 7 SUBSIDY INVESTIGATION – CHINA

### 7.1 Preliminary finding

The Commissioner's findings in relation to the subsidisation of copper tube exported to Australia during the investigation period are summarised in Table 17.

Country	Exporter	Subsidy margin
China	Zhejiang Hailiang Copper Co., Ltd	0.4%
	Non-selected exporters	0.7%
	Non-cooperative and all other exporters	0.7%

Table 17: Subsidy margins

### 7.2 Relevant legislation

#### 7.2.1 Countervailable subsidies

Section 269T(1) defines 'subsidy' as follows:

**subsidy**, in respect of goods exported to Australia, means:

(a) a financial contribution:

- (i) by a government of the country of export or country of origin of the goods; or
- (ii) by a public body of that country or a public body of which that government is a member; or
- (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

- (iv) a direct transfer of funds from that government or body; or
- (v) the acceptance of liabilities, whether actual or potential, by that government or body; or
- (vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or
- (vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or
- (viii) the purchase by that government or body of goods or services; or

(b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.<sup>26</sup>

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<sup>26</sup> Section 269TACC sets out the steps for working out whether a financial contribution or income or price support confers a benefit.

Section 269TAAC defines a 'countervailable subsidy' as follows:

- (1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.
- (2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:
  - (a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or
  - (b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or
  - (c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or
  - (d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.
- (3) Subject to subsection (4), a subsidy is not specific if:
  - (a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
  - (b) eligibility for the subsidy is automatic; and
  - (c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
  - (d) those criteria or conditions are strictly adhered to in the administration of the subsidy.
- (4) The Minister may, having regard to:
  - (a) the fact that the subsidy program benefits a limited number of particular enterprises; or
  - (b) the fact that the subsidy program predominantly benefits particular enterprises; or
  - (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
  - (d) the manner in which a discretion to grant access to the subsidy has been exercised;determine that the subsidy is specific.
- (5) In making a determination under subsection (4), the Minister must take account of:
  - (a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and
  - (b) the length of time during which the subsidy program has been in operation.

Section 269TACD provides that if the Minister is satisfied that a countervailable subsidy has been received in respect of the goods, the Minister must, if the amount of the subsidy is not quantified by reference to a unit of the goods, work out how much of the subsidy is properly attributable to each unit of the goods.



### **7.2.2 Non-cooperative entities**

Section 269TAACA(1) provides that, when determining whether a countervailable subsidy has been received in respect of particular goods, or when determining the amount of a countervailable subsidy in respect of particular goods, the Commissioner may act on the basis of all the facts available and may make such assumptions as the Commissioner considers reasonable. In particular, in circumstances where an entity:<sup>27</sup>

- has not given the Commissioner information the Commissioner considers to be relevant to the investigation, review or inquiry within a period the Commissioner considers to be reasonable or
- has significantly impeded the investigation, review or inquiry.

Such entities are referred to in this report as ‘non-cooperative entities’.

### **7.3 Information considered by the commission**

The commission has had regard to the following information as part of its assessment of the subsidy received by exporters of the goods in China:

- information presented in the application by MM Kembla
- information provided by exporters in their REQ as well as information provided during verification
- information provided by the Government of China (GOC) in its response to the government questionnaire (RGQ)

### **7.4 Investigated programs**

MM Kembla alleged the existence of a total of 178 programs in relation to exports of copper tube from China, based on the subsidy programs investigated in the Canada Border Services Agency (CBSA) investigation.<sup>28</sup> The GOC, in its RGQ, argued that the commission should not examine all 178 programs and should instead focus on the programs that the CBSA had found existed at the time for the two cooperating exporters.

MM Kembla has not provided new evidence of the existence of the alleged countervailable programs. Rather, MM Kembla relied on evidence from an investigation by the CBSA in 2013. In that investigation, the CBSA examined the countervailable programs received by Hailiang, the sole cooperating exporter in this investigation. The commission notes that the findings of another investigating authority may be relevant in its assessment of the evidence before it. However, in the absence of more contemporaneous evidence, or additional information from MM Kembla, the commission has relied on best available information obtained from the verification of REQ's for Hailiang and Naile as well as information provided by the GOC in its RGQ. The commission has only investigated those programs found to be countervailable and actually received by Hailiang and Naile during the investigation period.

The commission has assessed each program type and applied the following attribution and allocation of the subsidy where it was found to be countervailable:

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<sup>27</sup> Entities contemplated by section 269TAACA(1) are also described in section 269TAACA(2).

<sup>28</sup> [CBSA Statement of Reasons CV/137](#) refers.

Program name	Attribution and allocation of the subsidy
Grants	Financial grants should be attributed to either export sales or the whole company depending on the nature of the grant and allocated to the goods based on revenue over the period.
Loans	This program should be attributed to the whole company and allocated to the goods based on the revenue over the period.

**Table 18: Subsidy program types assessed by the commission**

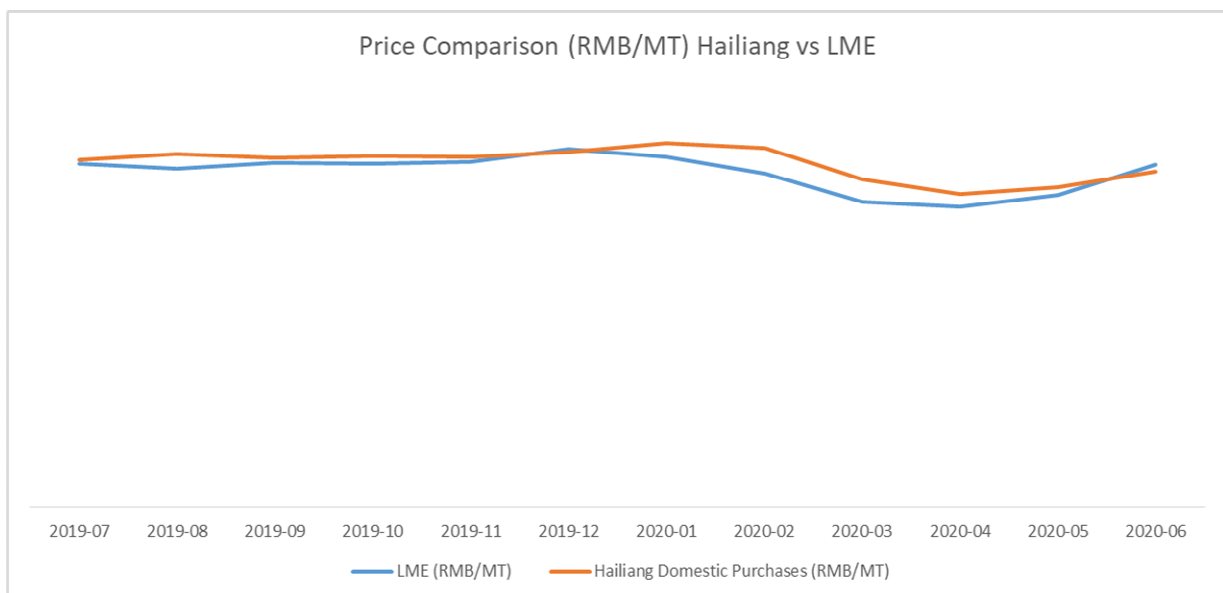
#### 7.4.1 Raw materials provided at less than adequate remuneration

The commission has assessed whether exporters in China had received raw materials at less than adequate remuneration.

In order to complete this assessment, the commission has considered how raw materials are sourced for goods exported to Australia. The commission has also considered how prices of raw materials are set by both State Invested Enterprises (SIE) and non-SIE when selling raw materials, such as cathode copper, to Hailiang.

The commission has observed that Hailiang have a 'bonded warehouse' arrangement whereby all exports of copper tube are manufactured using raw materials which are imported. These raw materials are priced in line with the LME. For raw materials purchased domestically, the commission is satisfied that prices are set in line with prices in the domestic market for cathode copper and in reference with prices of cathode copper traded on the Shanghai Futures Exchange (SHFE).

The commission has established a benchmark for a competitive market cost of cathode copper traded internationally. The commission has relied on the price of cathode copper traded on the LME as the benchmark of a competitive market cost. The commission has compared the purchase prices for cathode copper for Hailiang with prices of cathode copper traded on the LME during the investigation period on ex-works (EXW) terms. This analysis is contained in the graph below:



**Figure 3: Cathode copper price comparison (RMB/MT) between Hailiang and LME**

The commission observes that Hailiang's domestic purchase price for cathode copper during the investigation period has been higher than the LME price in all but two months and almost 3% higher on average over the investigation period. Additionally, the commission has observed that raw materials purchased on the domestic market have not been used in the manufacture of copper tube exported to Australia by Hailiang. Therefore, no benefit has been conferred by Hailiang in its purchase of raw materials. Accordingly, the commission is not satisfied that Hailiang had obtained raw materials at less than adequate remuneration.

The commission does not observe any countervailable subsidy received by Hailiang in respect of raw materials provided at less than adequate remuneration.

#### **7.4.2 Preferential Loans**

Section 269TACC(3)(b) provides that, when determining whether a financial contribution has conferred a benefit, the making of a loan by a government or public body does not confer a benefit, unless the recipient of the loan is required to repay on the loan, a lesser amount than would have been required under a comparable commercial loan which the enterprise could actually obtain.

The commission has undertaken an analysis of the information provided by Hailiang in relation to short term loans it has sourced from government owned banks operating on a commercial basis. The commission has compared the interest rates paid by Hailiang during the investigation period with the lending and real interest rates for China obtained from The World Bank during the investigation period.<sup>29</sup> The commission observes that the interest rates paid by Hailiang are in line with the published lending and real interest rates for China.<sup>30</sup> The commission is therefore not satisfied that there has been any benefit conferred to Hailiang in the form of preferential loans.

#### **7.4.3 Grants**

The commission has set out each countervailable program from which a subsidy had been received by Hailiang and Naile in respect of exports of the goods from China in the form of a grant in Table 19.

<b>Program Number</b>	<b>Program name</b>
1	2018 Zhuji City Enterprise Worker's Injury Insurance Premium Refunds
2	2019 Tax Breaks for Enterprises Hiring Self-Employed Veterans
3	Land use tax refunds for July-December 2019 in Zhuji City
4	2018 Central Foreign Trade and Economic Cooperation Development Special Fund Overseas Investment Credit Insurance Subsidy
5	2017-2018 Zhejiang Province domestic inventions patent maintenance provincial financial support fund subsidy
6	2017 Zhuji City Diankou Township People's Government Industrial Economic Policy Independent Training Talent Award
7	2018 Zhuji City Enterprise Equipment Investment and Intelligent Transformation Subsidy

<sup>29</sup> <https://data.worldbank.org/indicator/FR.INR.LEND?end=2020&locations=CN&start=2019>

<sup>30</sup> Confidential Attachment 16 refers.

**PUBLIC RECORD**

<b>Program Number</b>	<b>Program name</b>
8	Zhuji City to enjoy export incentives from open economic policies in 2018
9	2018 Zhuji City to enjoy export credit insurance incentives for open economic policies
10	2018 Zhuji City to enjoy the open economy policy quality Zhejiang goods project awards
11	2018 Zhuji City to Enjoy Overseas Investment Incentives from Open Economic Policies
12	2018 Zhuji City to benefit from open economic policies for foreign investment insurance incentives
13	2018 Zhuji City Listing Policy Fundraising Return Grant
14	2018 Zhuzhou City listed policy market value growth of more than 30% subsidy
15	2018 Zhuzhou City Listing Policy Private Stock Issuance Grant
16	2018 Zhuji City Revitalization of the Real Economy (Transformation of Traditional Industries) Financial Incentive Funds (Promoting the Integration of the Two Sections)
17	2018 Zhuji City provides incentives for building photovoltaic power generation projects such as rooftop sites
18	2019 Zhuji City Diankou Township People's Government Hailiang Nonferrous Wisdom Manufacture Industrial Park Project Incentive Payment
19	2017 Zhuji City Diankou Township People's Government Export Excess Award
20	2017 Zhuji City, Diankou Township People's Government cultivate 'three' awards
21	2017 Zhuji City Diankou Township People's Government Award for the Integration of the two
22	2017 Zhuji City Diankou Township People's Government Award for Qualified Enterprises in Occupational Health Infrastructure Construction
23	2017 Zhuji City Diankou Township People's Government Machine Replace labor Policy Rewards
24	2019 Zhuji City included in the provincial recycling economy '991' project awards
25	2019 Zhuji City High-Quality Development Policy Awards
26	2019 Zhuji City 'quality, brand, standardization' of the development of Zhejiang manufacturing standards awards
27	2019 Zhuji Capital Market Encourages Return to Investment Incentives
28	2019 Zhuji City Capital Market Encourages Direct Financing Incentives
29	2019 Zhuji City Capital Market Promotes Implementation of M&A and Restructuring Rewards
30	2019 Zhuji City Foreign Economic and Trade Development Award Export Credit Insurance and Foreign Investment Insurance Subsidy
31	2019 Shaoxing City to encourage and support open economic development enterprises to participate in the exhibition subsidies
32	2019 Zhuji PCT Patent Awards
33	2019 Zhuji City Invention Patent Maintenance Fee Awards
34	2019 Patent Awarded by Zhuji City
35	2019 Zhuji City support enterprises (units) to provide rooftops, sites and other construction of photovoltaic projects incentives
36	2019 Shaoxing provincial student employment and internship demonstration base awards
37	20100/Zhuji City Diankou Town People's Government Hailiang Nonferrous Wisdom Manufacture Industrial Park Award

## PUBLIC RECORD

Program Number	Program name
38	20100/Zhuji City Employment Management Service Skills Training Subsidy
39	2019 Zhejiang Province Overseas Economic and Trade Cooperation Zone Construction Pilot Award
40	2019 Zhuji City January-June Land Use Tax Refunds
41	2019 Financial Incentives for the Return of the Tax-Based Economy in Zhuji City
42	2020 Zhuji City stable job return social insurance premium incentives
43	Implementation of foreign economic and trade policies (Shangyu District Bureau of Commerce, Jiaxing City)
44	Patent grant (Cao'e Sub-district Office, Shangyu District)
45	Stable work return (Shangyu District Employment Management Service Centre)

**Table 19: Investigated and countervailable subsidy programs**

## 7.5 Subsidy Assessment

### 7.5.1 Hailiang

The commission is satisfied that Hailiang received programs 1 to 42 listed above and conferred a benefit from these pursuant to section 269TACC(1). During the verification process, Hailiang advised that it does not challenge the countervailability of these programs. Therefore, the total subsidies received have been attributed to either export sales or the whole company depending on the nature of the grant. It was then allocated to the goods based on the export revenue over the investigation period.

Based on the information available to the commission, the commission has calculated a subsidy margin for Hailiang of **0.4%**. The commission's calculations are shown in **Confidential Attachment 16**.

### 7.5.2 Non-cooperative exporters

As stated above in section 6.3.3, the Commissioner is satisfied that Naile did not give the Commissioner information the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable. Naile has been considered as a 'non-cooperative Chinese exporter'.

The amount of countervailing subsidy received for non-cooperative exporters is determined, pursuant to section 269TAACA, on the basis of all facts available and having regard to reasonable assumptions. When determining the countervailable subsidies for non-cooperative entities, the Commissioner has made reasonable assumptions, so as to determine whether a countervailable subsidy has been received in respect of the goods and the amount of the countervailable subsidy.

The commission considers that the volumes exported by the exporters who have cooperated with the inquiry do not represent the total volume of exports that are relevant to the inquiry period. Having regard to section 269TAACA with respect to relevant to non-cooperating entities, the commission calculated a subsidy margin for these entities.

The subsidy margin for non-cooperative entities has been determined on the basis of all facts available and having regard to reasonable assumptions pursuant to section 269TAACA. In determining the countervailable subsidies for those entities, the commission has assumed that non-cooperative exporters benefited from non-regional countervailable subsidies and the highest region-specific subsidy. The commission considers that this approach avoids the potential for double-count of similar programs between regions. The subsidy margin therefore considers that non-cooperative Chinese exporters are in receipt of subsidies under programs 1 to 45.

Based on information available to the commission, the commission has calculated a subsidy margin for non-cooperative exporters of **0.7%**.

The commission's calculations are included at **Confidential Attachment 7**.

### **7.5.3 Non-selected exporters**

For those exporters who cooperated with the subsidy investigation but were not selected for individual examination, a subsidy margin has been determined on the basis of all the facts available. The subsidy margin determined for non-selected exporters is the same as the rate for the non-cooperative exporters.

## **7.6 Summary of subsidy margins**

A summary of the commission's subsidy margins are set out below:

Country	Exporter	Subsidy margin
China	Zhejiang Hailiang Copper Co., Ltd	0.4%
	Non-selected exporters	0.7%
	Non-cooperative and all other exporters	0.7%

**Table 20: Subsidy margins**

## **7.7 Proposed termination – level of subsidisation**

Section 269TDA(2)(b)(ii) provides that the Commissioner must terminate a countervailing investigation, in so far as it relates to an exporter of the goods, if there has been a countervailable subsidy received by the exporter of some or all of those goods in respect of those goods, but it never exceeded the negligible level of countervailable subsidy, under section 269TDA(16).<sup>31</sup>

Accordingly, the Commissioner proposes to terminate the countervailing investigation in relation to all exporters from China (pursuant to section 269TDA(2)(b)(ii)).

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<sup>31</sup> China is classed as a developing country under Part 4, Division 1 of the *Customs Tariff Regulations 2004* and therefore, the negligible level of countervailable subsidy is two per cent.

## 8 ECONOMIC CONDITION OF THE INDUSTRY

### 8.1 Preliminary finding

The Commissioner is preliminarily satisfied that the Australian industry has experienced injury in the forms of:

- reduced sales volume
- reduced market share
- price depression
- price suppression
- reduced profit
- reduced profitability
- reduced assets
- reduced capital expenditure
- reduced sales revenue
- reduced return on investment
- reduced capacity utilisation
- reduced employment
- reduced wages

### 8.2 Approach to injury analysis

The commission considers that the Australian industry is comprised solely of MM Kembla. The injury analysis detailed in this chapter is therefore based on verified financial information submitted by MM Kembla, as well as data obtained from the ABF import database.

The data supporting the commission's analysis of the Australian market in the injury analysis period and the economic condition of the Australian industry is at **Confidential Attachments 1 and 17**.

### 8.3 Volume effects

#### 8.3.1 Sales volume

Figure 4 shows MM Kembla's sales volumes for its own production of copper tube in the Australian market since 1 July 2016, and its imports of the goods.<sup>32</sup>

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<sup>32</sup> As detailed in chapter 4, MM Kembla imports a small volume of the goods for resale. These imports have been excluded from the commission's assessment of the economic condition of MM Kembla.



## PUBLIC RECORD

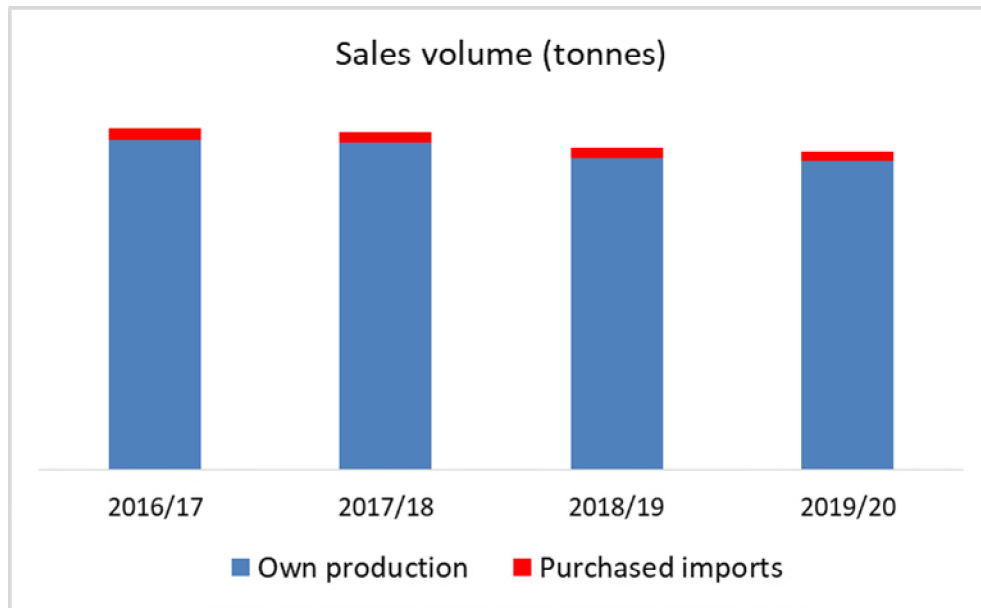


Figure 4 – Sales volume

Figure 4 shows that MM Kembla’s total sales volumes have declined year-on-year during the injury analysis period, while the volume of imported goods sold remained steady.

### 8.3.2 Market share

The commission analysed changes in market share during the injury analysis period. Figure 5 shows MM Kembla’s market share for its own production of copper tube in the Australian market since 1 July 2016.

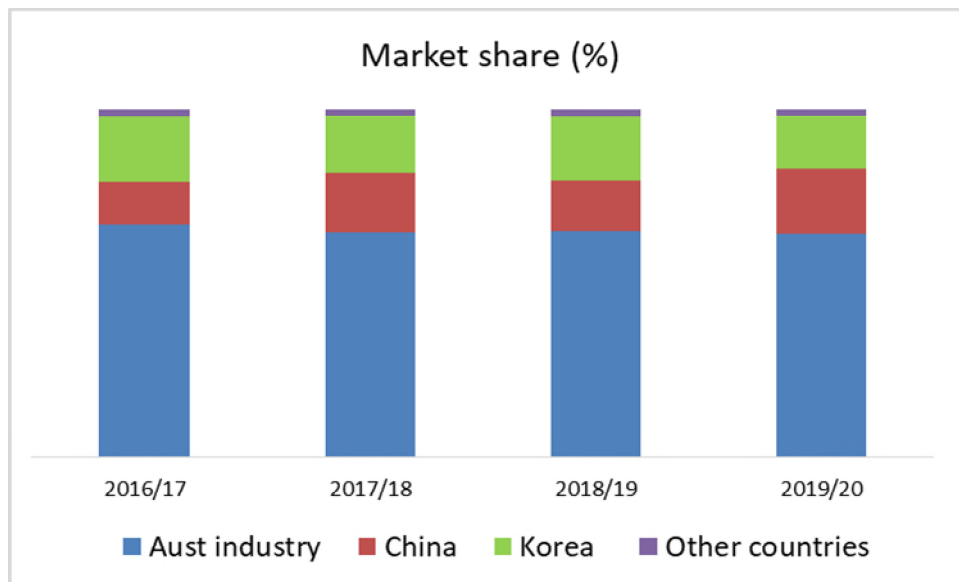


Figure 5 – Market share

Figure 5 shows that since 1 July 2016:

- Australian industry and exports from ROK have experienced a small reduction in market share.
- Exports from China have experienced an increase in market share.



- Exports from other countries have maintained a consistently small share of the market.

Figure 5 shows that the Australian market is predominantly supplied by copper tube manufactured by MM Kembla as well as imports from China and ROK, with small volumes from other countries.

### 8.3.3 Conclusion – volume effects

Based on the findings detailed above, the commission is satisfied that MM Kembla has experienced injury in the form of reduced sales volumes and market share.

## 8.4 Price effects

### 8.4.1 Price depression and price suppression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise might have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

The commission has examined MM Kembla's per unit selling prices and per unit cost to make and sell (CTMS) during the injury analysis period. The commission's findings are presented in Figure 6.

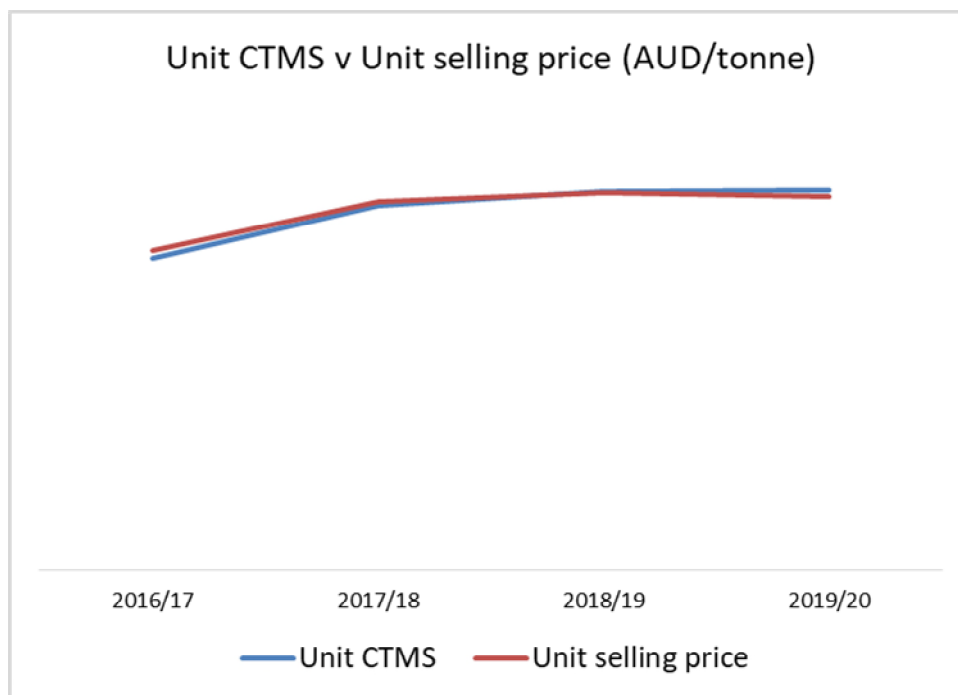


Figure 6 – Unit price and unit CTMS

In terms of price depression, Figure 6 demonstrates that MM Kembla experienced increasing selling prices until 2018/19, however prices fell in 2019/20.

In terms of price suppression, Figure 6 shows that:

- CTMS per unit has increased year on year throughout the injury analysis period.
- Unit selling prices increased until 2018/19, though at a slower rate than the increase in CTMS.

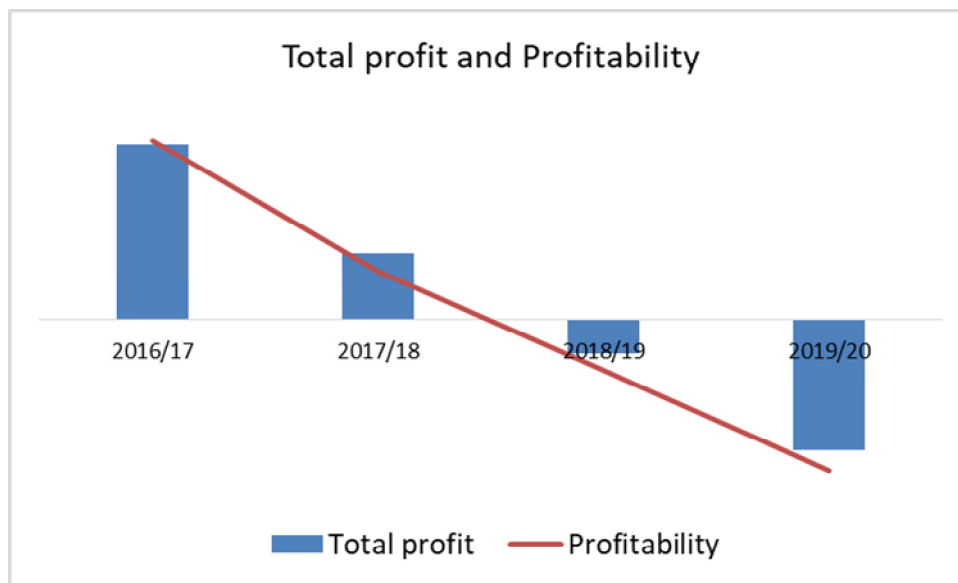
- Unit selling prices declined in 2019/2020 while unit CTMS increased, though at a slower rate than in prior years.
- From 2018/2019 onwards, the unit CTMS exceeded unit selling prices.

#### **8.4.2 Conclusion – price effects**

The commission is satisfied that MM Kembla has experienced injury in the form of price suppression and price depression.

### **8.5 Profit and profitability**

Figure 7 shows the movement in profit and profitability of MM Kembla's sales of its own production of copper tube in the Australian market since 1 July 2016.



**Figure 7 – Profit and profitability**

Figure 7 indicates that MM Kembla has experienced decreasing profit and profitability.

#### **8.5.1 Conclusion – profit effects**

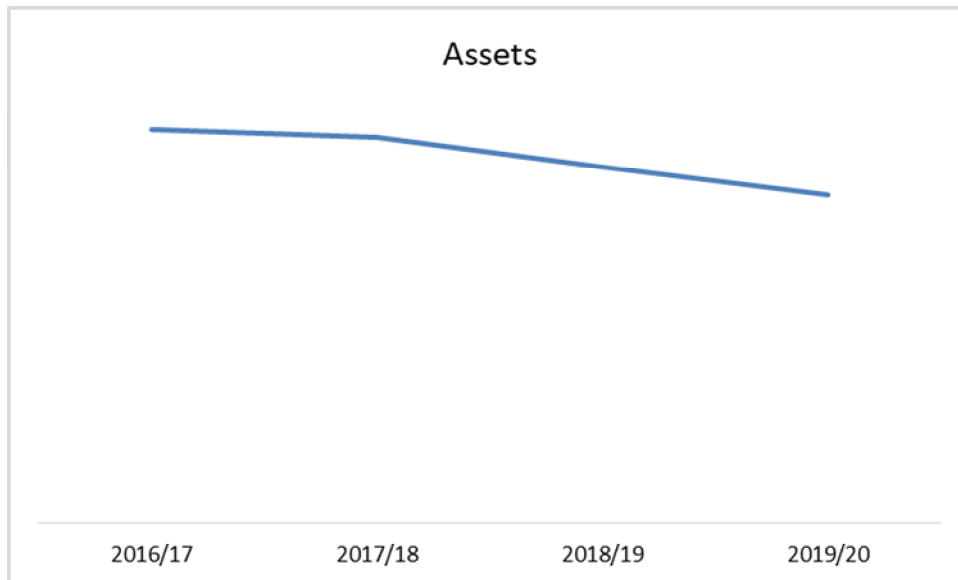
Based on the findings detailed above, the commission considers that MM Kembla has experienced injury in the form of reduced profits and reduced profitability.

### **8.6 Other economic factors**

The commission considered the following other economic factors.

#### **8.6.1 Assets**

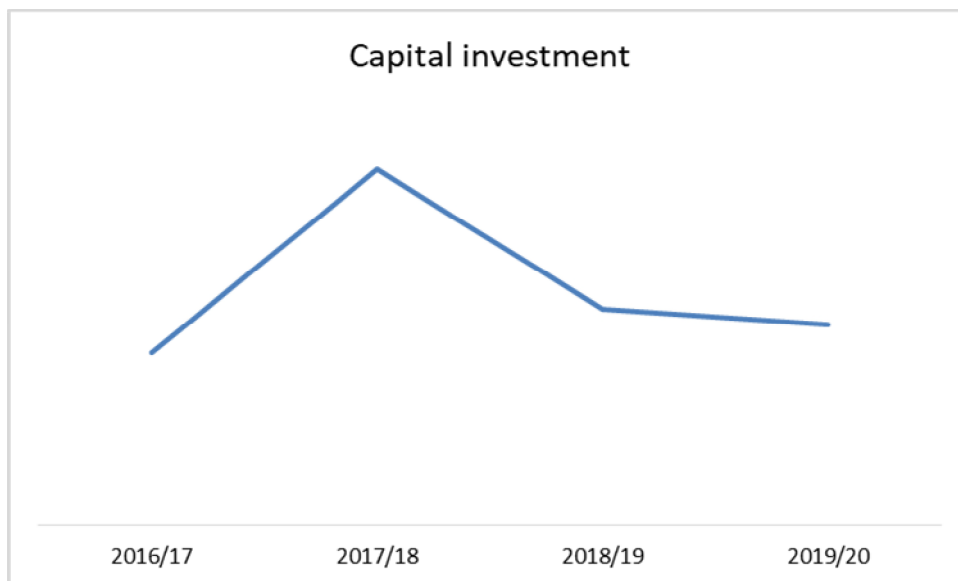
Figure 8 shows the value of assets employed by MM Kembla in the production of like goods during the injury analysis period.



**Figure 8 – Assets employed in the production of like goods**

### **8.6.2 Capital expenditure**

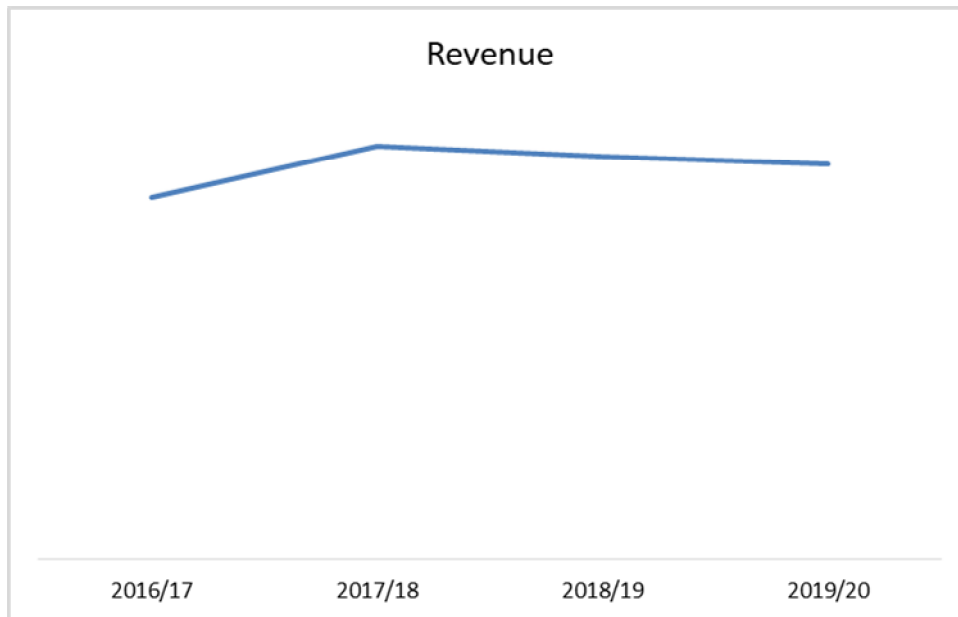
Figure 9 shows the value of capital expenditure undertaken by MM Kembla in relation to the production of like goods during the injury analysis period.



**Figure 9 – Capital investment**

### **8.6.3 Revenue**

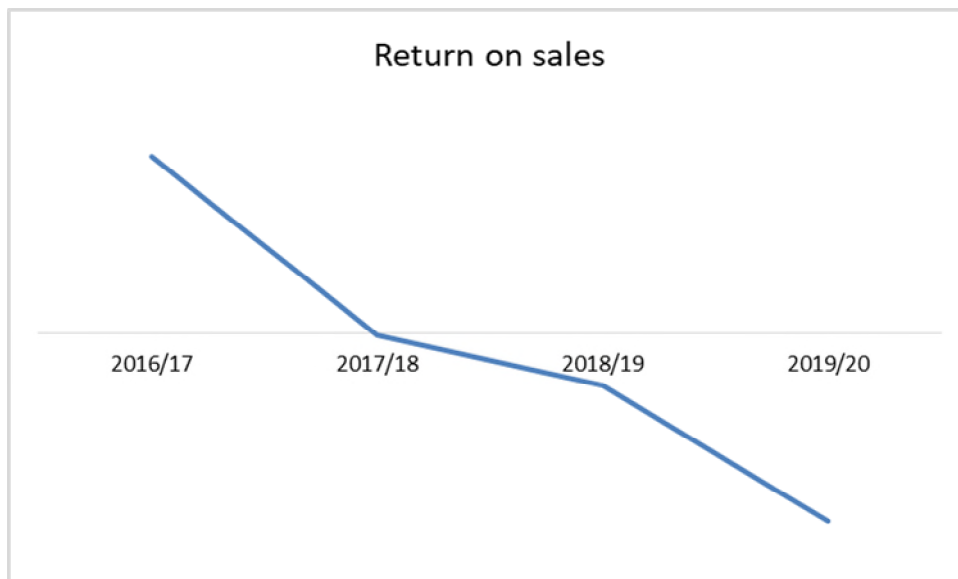
Figure 10 shows the revenue generated by MM Kembla on its sales of its own-manufactured copper tube sold into the Australian market during the injury analysis period.



**Figure 10 – Revenue from the domestic sales of manufactured like goods**

#### **8.6.4 Return on investment**

MM Kembla calculated return on investment using the return on sales method for sales of all like goods. The commission noted that the calculation included the sale of exported like goods. The commission recalculated return on sales to reflect the domestic sale of manufactured like goods only, which is shown in Figure 11.



**Figure 11– Return on sales**

#### **8.6.5 Capacity utilisation**

Figure 12 shows MM Kembla's capacity utilisation during the injury analysis period.

## PUBLIC RECORD

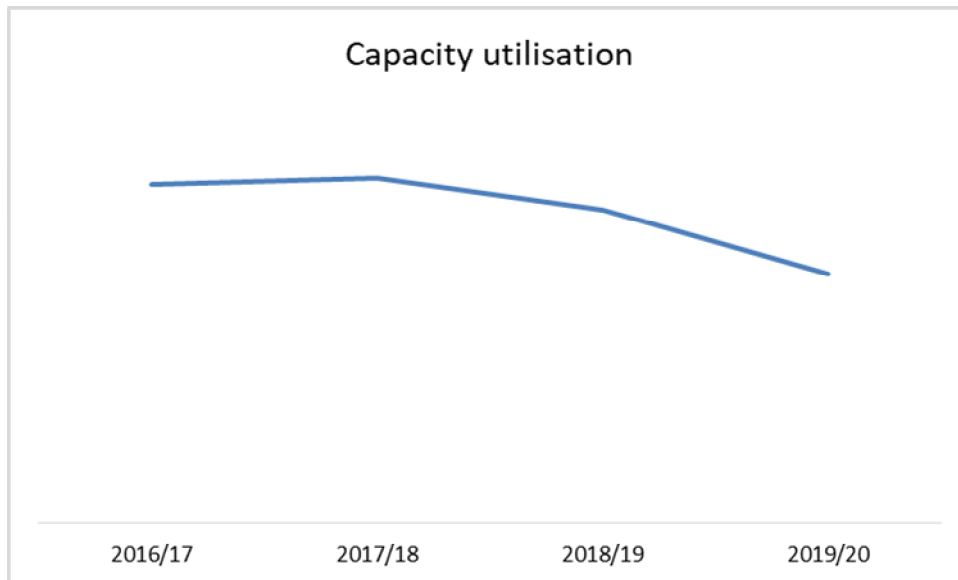


Figure 12 – Capacity utilisation

### 8.6.6 Employment

Figure 13 shows the number of employees engaged in the production of like goods during the injury analysis period.

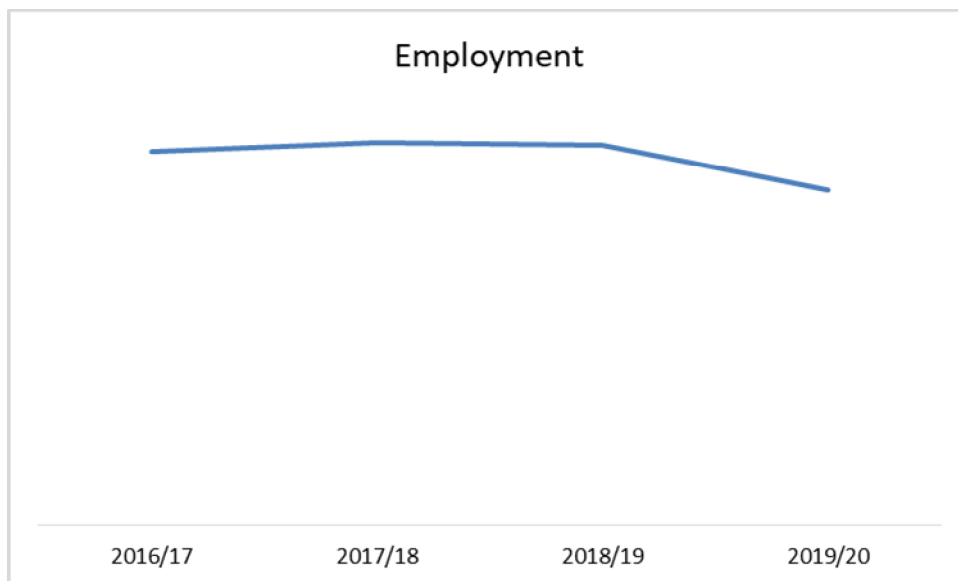


Figure 13 – Employment

### 8.6.7 Wages

Figure 14 shows the value of wages expended on the production of like goods during the injury analysis period.

## PUBLIC RECORD

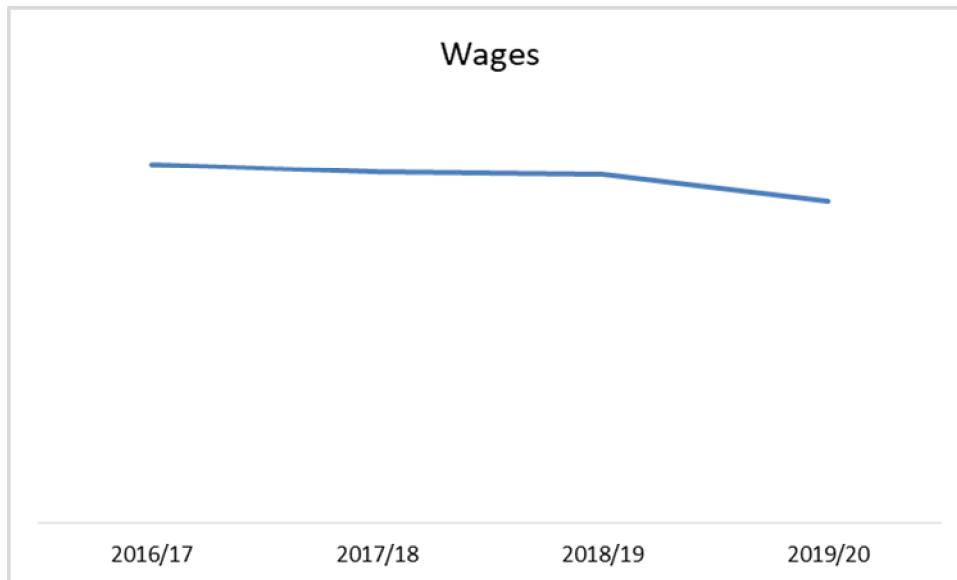


Figure 14 – Wages

### 8.6.8 Inventories

Figure 15 shows the value of closing stock of like goods during the injury analysis period.

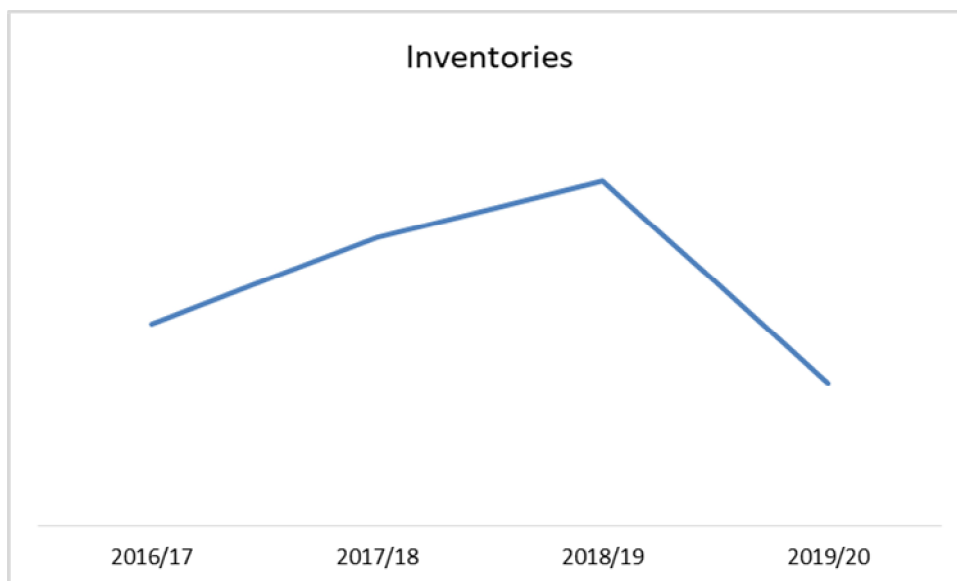


Figure 15 – Inventories

## 8.7 Preliminary finding

Based on an analysis of the information contained in the application and obtained and verified during verification, the commission considers that MM Kembla has experienced injury in the form of:

- reduced sales volume
- reduced market share
- price depression
- price suppression
- loss of profit
- reduced profitability

## **PUBLIC RECORD**

- reduced assets
- reduced capital expenditure
- reduced sales revenue
- reduced return on investment
- reduced capacity utilisation
- reduced employment
- reduced wages

## 9 HAS DUMPING CAUSED MATERIAL INJURY?

### 9.1 Preliminary assessment

The Commissioner is satisfied that the injury, if any, to the Australian industry caused by the dumping of goods exported to Australia from ROK by exporters other than Nungwon is negligible.

### 9.2 Legislative framework

Under sections 269TG, 269TJ and 269TJA, one of the matters that the Minister must be satisfied of in order to publish a dumping duty and/or countervailing duty notice is that, because of dumping and subsidisation, material injury has been, or is being caused, or is threatened to the Australian industry producing like goods.

Section 269TAE(1) outlines the factors, to which the Commissioner has had regard, and that may be taken into account when determining whether material injury to an Australian industry has been, or is being, caused or threatened.

Section 269TAE(2A) requires that regard be had to the question as to whether any injury to an industry is being caused by a factor other than the exportation of the goods, and provides examples of such factors.

In assessing material injury, the commission also has regard to the *Ministerial Direction on Material Injury 2012*.

The Commissioner proposes to terminate the investigation in respect of Daejin, residual and uncooperative exporters from Korea pursuant to s269TDA(13). The Commissioner notes there is a current investigation of exports of the goods from Vietnam which is examining a period which partially overlaps the investigation period in this investigation.<sup>33</sup> The Commissioner has therefore considered the requirements of s269TDA(14B). The Commissioner is not satisfied, on the information available, that the requirements for cumulation set out in that section have been met.

### 9.3 Causation analysis

#### 9.3.1 Scope of analysis and commission approach

As outlined in chapters 6 and 7, the commission has found that during the investigation period the goods exported to Australia from:

- China were not dumped and were subsidised at negligible levels and
- ROK by Nungwon were dumped, but at levels below two per cent.

As a result, the Commissioner proposes to terminate the investigation in so far as it relates to those exporters.

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<sup>33</sup> EPR 580 refers.



As outlined in chapter 8, the commission considers that the Australian industry has experienced injury. This injury has coincided with the presence of dumped goods exported from ROK by exporters other than Nungwon. The commission has therefore confined its analysis of whether injury to the Australian industry was caused by dumping of these exports, and whether that injury is material.

The commission has, for the purposes of this SEF, assessed injury and causation by examining the following evidence:

- Verified volume, price, and profit effects of the Australian industry during the injury analysis period and investigation period (refer chapter 8 above).
- Verified sales data from cooperating exporters and importers to determine sales prices and volumes achieved by the subject exporters from China and ROK.
- Dumping margins for the subject countries.
- Information from the ABF import database to determine import volumes and export prices.
- The broader context of the economic condition of the Australian industry.

### 9.3.2 Analysis of exports by Daejin

Daejin has been the sole supplier of copper tube to Airefrig Australia Pty Ltd (Airefrig), the Australian distributor of its goods, since the closure of the Crane Enfield Metals Pty Ltd manufacturing facility in 2014.<sup>34</sup> In keeping with its long-standing commercial relationship with Daejin, Airefrig did not source copper tube from MM Kembla during the investigation period.

Given this context, for the purposes of price comparison, the commission compared the fully absorbed delivered cost for Daejin's exports to Airefrig against MM Kembla's weighted average delivered selling price for the same subset of MCCs. Figure 16 illustrates the monthly pricing comparison at an aggregate level:

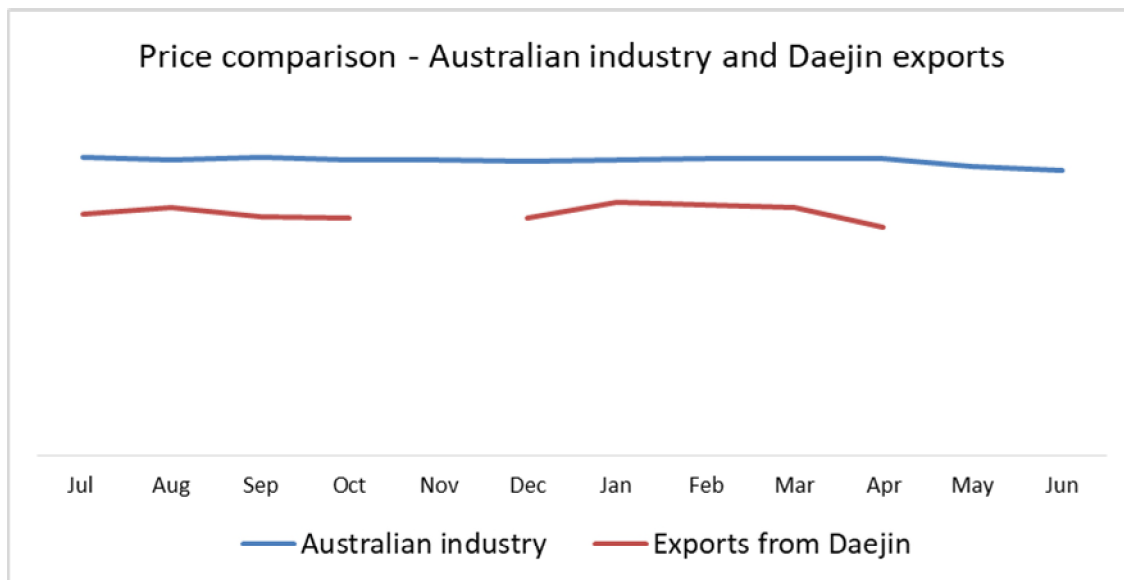


Figure 16 - Pricing comparison - MM Kembla and exports from Daejin (AUD/kg)

<sup>34</sup> Submission from Airefrig dated 13 August 2020, EPR 557, document no. [004](#) refers.

Figure 16 shows that in all relevant months of the investigation period Daejin's exports undercut MM Kembla's prices. The level of price undercutting ranged between 14 and 23%.

The levels of undercutting observed indicate that Daejin has maintained a significant price advantage over the Australian industry during the investigation period. The commission notes that the levels of undercutting exceeded the dumping margin determined for Daejin by between 8 and 17%. The commission considers that, even in the absence of dumping, Daejin would have still maintained a significant competitive pricing advantage over the Australian industry.

MM Kembla provided a price undercutting example that referenced the importer of Daejin's copper tube. The commission notes that the pricing negotiations detailed in that example occurred in 2017 and 2018. As detailed in the Manual, the commission focuses its causation analysis on injury indicators in the investigation period. It is the commission's view that section 269T(2AD) allows the examination of material injury indicators before the investigation period, but it cannot support an inference or presumption that material injury identified as occurring before the investigation period can be attributed to dumped imports. As such, the example provided by MM Kembla cannot be considered as evidence that it has experienced price injury due to dumped exports from Daejin.

No evidence was furnished by MM Kembla in respect of exports from Daejin influencing its pricing decisions during the investigation period.

The commission further notes that MM Kembla did not provide any evidence that volumes had been lost to exports from Daejin during the investigation period. The commission assessed the level of exports from Daejin during the injury analysis period and observed that exports peaked in financial year 2019 and declined by approximately one third during the investigation period, indicating that Daejin has also experienced reduced sales volumes and market share.

Taking into account:

- the competitive pricing advantage Daejin has in relation to Australian industry in the absence of dumping
- the long term trading relationships existing between Daejin and its Australian importer, and the importer and its customers
- Daejin's reduced export volume in the investigation period
- an absence of evidence demonstrating that Australian industry has lost sales volume to exports from Daejin, or reduced prices in relation to exports from Daejin,

the commission does not consider that Australian industry has been injured by dumped exports from Daejin.

The commission's analysis of exports by Daejin is at **Confidential Attachment 18**.

### **9.3.3 Analysis of exports by all other exporters from ROK**

A dumping margin of 6.0% has been attributed to all other exporters from ROK. While a margin of this magnitude could be sufficient in general terms to provide importers of copper tube with a competitive advantage on price when those goods are sold in the Australian market, the commission does not consider that any such advantage has been afforded in this case.

The commission conducted an analysis of copper tube exported from ROK during the investigation period using the ABF import database. In terms of export volumes, the commission observed that:

- There were only four suppliers of copper tube from ROK identified.
- The two selected cooperating exporters, Nungwon and Daejin, were responsible for 98% of the volume of copper tube exported from ROK during the investigation period.

The volume of dumped exports from exporters not individually examined by the commission during the investigation amounts to less than two per cent of the volume of exports from ROK. This represents a negligible share of sales in the Australian market. The commission considers that, in the absence of positive evidence that MM Kembla lost sales to, or set its prices by reference to, these dumped goods from ROK, these exports had a negligible impact on MM Kembla.

The commission is therefore satisfied that the impact (if any) on the Australian industry of the dumped exports from ROK is likely to have been negligible.

#### **9.4 Factors other than dumping causing injury**

In its application MM Kembla asserted that it had encountered price undercutting from imported copper tube from China and ROK. MM Kembla provided 9 case studies in support of its price undercutting claims. MM Kembla submitted that the price undercutting has caused lost sales volumes as well as price suppression, such that its profit and profitability have been negatively impacted.

As detailed in chapter 9.3, the commission found that MM Kembla's prices have not been influenced by dumped exports from ROK.

The commission undertook an analysis of the injurious effects of undumped exports in the Australian market.<sup>35</sup> The commission identified common customers of MM Kembla and the imported goods from China and ROK that were not dumped. The commission used verified information obtained from MM Kembla and cooperating exporters and importers to compare the delivered cost for the undumped exports from China and ROK against MM Kembla's delivered price. The commission observed price undercutting between 7 and 55%.

Based on the volumes of undumped exports from China and ROK and the observed levels of price undercutting, the commission considers that any price injury experienced by MM Kembla in the investigation period more likely relates to undumped exports from China and ROK (and/or exports from other countries not subject to the application). As such, any injury experienced by MM Kembla in respect of price undercutting by these exports cannot be attributed to dumping.

Submissions were received in respect of factors other than dumping causing injury.

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<sup>35</sup> The commission's analysis is at Confidential Attachment 17.

MM Kembla noted in its application that it had experienced an increase in the cost of energy in recent years, however indicated that such increases have been relatively insignificant when contrasted with the price undercutting and price suppression experienced from dumped and subsidised exports.

Airefrig submitted that there has been a shift in the construction and plumbing industries away from higher cost copper tubing toward lower cost plastic tubing.<sup>36</sup> Airefrig submitted that this has impacted both the size of the market for copper tube and the price, as the price of copper tube needed to be adjusted to remain competitive with the plastic substitute. Airefrig asserted that both the market for copper tube and the price point has contracted, and these effects are attributable to market forces, not to imports from ROK.

MM Kembla submitted that the substitution referenced by Airefrig occurred in the early 2000's and the market size over recent years has been stable. MM Kembla reasserted that the decline in prices is instead attributable to the price undercutting of dumped and subsidised exports.

Airefrig also noted that the costs of copper, labour and utilities have contributed to the increased cost of manufacturing of the Australian industry.

Brasshards submitted that the volume injury claimed by MM Kembla is not the result of dumping and subsidisation but rather the contraction in the construction industry during the injury analysis period. Brasshards provided data sourced from Trading Economics showing a decline in Australia's GDP from construction in support of this assertion.<sup>37</sup>

Brasshards further submitted that the profit injury claimed by MM Kembla appears to coincide with an unfavourable movement in the value of the Australian dollar compared to the US dollar.

## **9.5 Conclusion**

The commission has not found that exports of dumped goods from ROK have materially influenced MM Kembla's prices and have therefore not caused the deterioration in MM Kembla's economic condition detailed in Chapter 8.

As such, the Commissioner has found that the injury, if any, to MM Kembla caused by the dumping of goods exported from ROK is negligible.

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<sup>36</sup> EPR 557, document [004](#) refers.

<sup>37</sup> EPR 557, document 27 refers.

## 10 PROPOSAL TO TERMINATE THE INVESTIGATION

Section 269TDA provides for when the Commissioner must terminate an investigation.

Based on the findings in this SEF, and subject to any submissions received in response, the Commissioner proposes to terminate the investigation in relation to:

- All exporters from China, on the basis that there has been no dumping by those exporters of the goods the subject of the application, in accordance with section 269TDA(1)(b)(i).
- China on the basis that the total volume of dumped goods from China is negligible in accordance with sections 269TDA(3) and (4).
- All exporters from China, on the basis that there has been a countervailable subsidy received in respect of some or all of the goods but it never, at any time during the investigation period, exceeded the negligible level of countervailable subsidy under section 269TDA(16) in accordance with section 269TDA(2)(b)(ii).
- Nungwon from ROK, on the basis that there has been dumping but the dumping margin by that exporter of the goods the subject of the application is less than two per cent, in accordance with section 269TDA(1)(b)(ii) as far as it relates to the exporters.
- Daejin, residual exporters and uncooperative exporters from ROK, in accordance with section 269TDA(13), on the basis that the injury to the Australian industry that has been caused by dumped goods from ROK is negligible.

**11 ATTACHMENTS**

<b>Confidential Attachment 1</b>	Australian market size
<b>Confidential Attachment 2</b>	Hailiang Export Price
<b>Confidential Attachment 3</b>	Hailiang CTMS
<b>Confidential Attachment 4</b>	Hailiang Normal Value
<b>Confidential Attachment 5</b>	Hailiang Dumping Margin
<b>Confidential Attachment 6</b>	Naile verification analysis
<b>Confidential Attachment 7</b>	Uncooperative Dumping Margin calculation
<b>Confidential Attachment 8</b>	Nungwon Export Price
<b>Confidential Attachment 9</b>	Nungwon CTMS
<b>Confidential Attachment 10</b>	Nungwon Normal Value
<b>Confidential Attachment 11</b>	Nungwon Dumping Margin
<b>Confidential Attachment 12</b>	Daejin Export Price
<b>Confidential Attachment 13</b>	Daejin CTMS
<b>Confidential Attachment 14</b>	Daejin Normal Value
<b>Confidential Attachment 15</b>	Daejin Dumping Margin
<b>Confidential Attachment 16</b>	Hailiang Subsidy Margin
<b>Confidential Attachment 17</b>	Economic condition
<b>Confidential Attachment 18</b>	Undercutting analysis
<b>Confidential Attachment 19</b>	Copper cost analysis

## APPENDIX A – PARTICULAR MARKET SITUATION

### A1 Introduction

Section 269TAC(2)(a)(ii) implements, in part, Article 2.2 of the World Trade Organization *Anti-Dumping Agreement*.

When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits. [footnote omitted]

Where a particular market situation is found, pursuant to section 269TAC(2)(a)(ii), the commission must further consider whether, because of the situation in the subject market, sales in that market are also not suitable for determining a price under section 269TAC(1).

If a market situation exists in a country, such that domestic sales are not suitable for comparison with export sales, normal values may instead be constructed under section 269TAC(2)(c) or determined by reference to prices from a third country under section 269TAC(2)(d).

The Act does not prescribe what is required to reach a finding of a market situation. A market situation will arise when there is some factor (or factors) impacting the relevant market in the country of export generally. When considering whether sales are not suitable for use in determining a normal value under section 269TAC(1), because of the situation in the market of the country of export, the commission may have regard to factors such as:

- whether the prices are artificially low or
- whether there are other conditions in the market that render sales in that market not suitable for use in determining prices under section 269TAC(1).

Government influence on prices or input costs could be one cause of artificially low prices. Such government influence could come from any level of government.

In assessing whether a market situation exists due to government influence, the commission will assess whether government involvement in the domestic market has materially distorted market conditions. If market conditions have been materially distorted, then domestic prices may be artificially low or not substantially the same as they would be in a competitive market.

Prices for the like goods may also be artificially low, or not substantially the same as they would otherwise be, due to government influence on the costs of inputs. The commission assesses the effect of any such influence on market conditions and the extent to which domestic prices can no longer be said to prevail in a normal competitive market.



The Manual provides further guidance on the circumstances in which the commission will find that a market situation exists.<sup>38</sup>

## A2 Australian industry claims

In its application, MM Kembla alleges that a 'particular market situation' exists in the domestic market in China, such that selling prices for copper tube in China are not suitable for determining normal values under section 269TAC(1).

In support of its allegation, MM Kembla cites the findings of the CBSA Statement of Reasons concerning the dumping and subsidisation of certain copper tube originating from China, published in 2013.<sup>39</sup> In that investigation, the CBSA found there existed a wide range of measures applied by the GOC that resulted in a significant influence on the Chinese non-ferrous industry including the copper sector, which includes copper tube.

In a further submission dated 18 May 2021, MM Kembla noted that in the same investigation the CBSA found that an indicator of the domestic copper price in China is copper futures traded on the SHFE.<sup>40</sup> The CBSA also found that prices on the SHFE 'diverge significantly above and below the prices on...' the LME and the Commodity Exchange (COMEX) benchmark. MM Kembla also claims that during periods of high copper prices, similar to the finding in the CBSA investigation, it appeared that copper prices on the SHFE are noticeably lower compared with prices on the LME and COMEX. Only corporations registered in China can trade on the SHFE.

The CBSA concluded that due to the apparent differences between pricing on the SHFE and the LME, with SHFE prices consistently below prices on the LME, domestic prices of copper in China were not being determined under competitive market conditions.

MM Kembla contends that the GOC plans and policies for the non-ferrous metals industry - including copper - are broad and pervasive and significantly influence the domestic selling prices for raw material copper and the finished copper tube products. MM Kembla submits that the impact of the GOC policies is such that domestic selling prices for copper tube in China are - due to the GOC's plans and policies for the sector - lower than they otherwise would be and are not determined on a competitive basis. On this basis, MM Kembla contends that domestic selling prices for copper tube are not suitable for determining normal values in China in accordance with section 269TAC(1).

## A3 Information relied upon to undertake the commission's assessment

In undertaking its assessment of whether a market situation exists in China, the commission has considered the following:

- the information provided in the application
- the RGQ by the GOC
- verified information from Hailiang
- certain information from Naile

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<sup>38</sup> The Manual, p. 36.

<sup>39</sup> EPR 557, document 001, [non-confidential attachment C-1.1](#).

<sup>40</sup> EPR 557, document. [024](#) refers.



- desktop research, including information obtained from departmental resources and third party information providers.

### **A3.1 The commission's approach**

In investigating whether a market situation exists due to government influence, the commission will seek to determine whether the impact of the government's involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market.

The commission has given consideration to conditions:

- in the broader copper market in China and the degree to which these may impact on prices and/or raw material costs
- in the Chinese market for the raw materials used to produce copper tube and
- in the Chinese market for copper tube.

## **A4 GOC submission**

The GOC, in its RGQ, submits that all cooperative exporters in China purchase copper cathode as a raw material to manufacture copper tube. The GOC does not impose any special regulations on vertical integration for producers of copper tube or the producers and sellers of the input materials used by such producers. All policies and initiatives the GOC has implemented on the industry focus on improving the industry and are not mandatory. These do not result in an influence on the domestic selling prices in the Chinese market.

The GOC submits that the Chinese domestic sales prices of the copper tube producers are not affected by any particular market situation. The GOC argues that the competitiveness of the Chinese industry for copper tube and copper cathode is in line with the global copper market. The GOC also submits that the Chinese market for copper cathode typically uses the SHFE trading prices as the reference point, and that SHFE trading prices are sensitive to and correlated with the movement of copper cathode prices on the LME. LME prices are typically used by both Chinese and Australian companies as a reference point and basis for negotiation for copper tube prices in the Australian market. This highlights the similar underlying commercial considerations and strongly suggests that the Chinese copper tube market prices are more likely to permit proper comparison with the Australian market for copper tube, rather than the contrary.<sup>41</sup>

## **A5 Cost of copper**

### **A5.1 Significance of copper costs in the production of the goods**

The commission has found that copper is the major raw material input used in the production of the goods.

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<sup>41</sup> EPR 557, document [016](#) refers.

The commission verified the copper costs associated with the production of the goods during the investigation period for Hailiang. The commission found that copper costs represented a significant and broadly consistent proportion of the CTM of the goods produced for domestic sale (above 90%). This is broadly in line with the proportion of the CTM of MM Kembla. The commission's analysis of copper costs as a proportion of the CTM is at **Confidential Attachment 19**.

MM Kembla, Hailiang and Naile have all indicated that raw material prices are influential in setting selling prices for the goods. Given the high cost proportion of copper in the production of the goods and therefore its influence on pricing decisions, the commission considers that the copper price has a significant impact on both the production cost and selling price of the goods.

## A5.2 Comparison of SHFE and LME copper costs

The LME is the world centre for industrial metals trading, including for cathode copper. The prices discovered on the three LME trading platforms are used as the global reference price. The commission understands from previous investigations that suppliers refer to LME pricing of copper purchase prices when setting their selling prices. Interested parties have also advised that the pricing of copper tube is based on the LME copper price. The commission considers the pricing of cathode copper on the LME to reflect fair prices in competitive market conditions.

The commission has obtained LME and SHFE benchmark pricing for cathode copper during the period from 1 July 2016 to 30 June 2020. The commission has compared the benchmark spot copper cathode prices on the SHFE and LME between 1 July 2016 and 30 June 2020, on the same EXW terms. This comparison can be observed in the graph below:

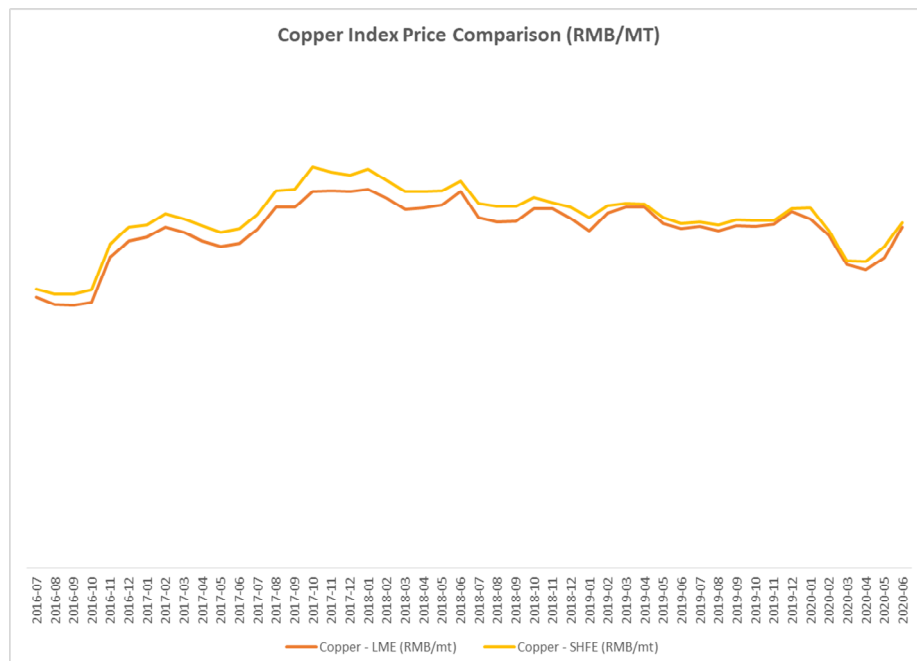
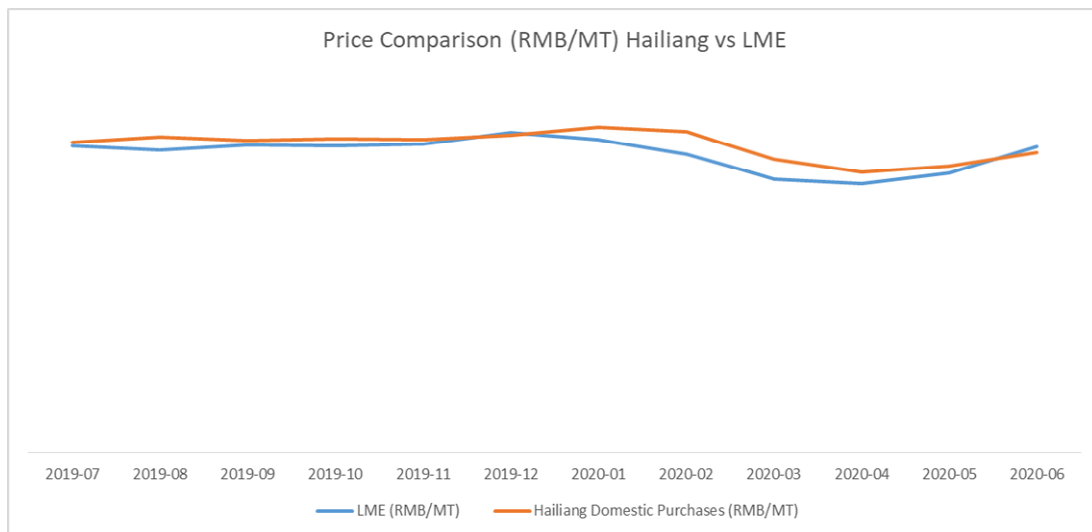


Figure 17: Cathode Copper Prices on LME and SHFE (RMB/MT)

The commission observes that the cathode copper price on the SHFE is higher than that on the LME in each month of the period examined.

As part of the verification process, the commission reviewed Hailiang and Naile's contracts for the purchase of raw materials between the exporters and their suppliers (both SIE and non-SIE). As the commission is not satisfied with the completeness of raw material purchase data, Naile's raw material purchases have not been considered in direct comparison with pricing of Hailiang, and trades prices on the SHFE and LME. However, the commission observes that Naile's raw material purchase data is comparable to those in Figure 17 above.

The commission is satisfied that domestic prices of raw materials are set with reference to domestic copper costs and that the SHFE reflects the domestic cathode copper costs in China. The commission has therefore compared the verified cathode copper purchase prices of Hailiang with cathode copper pricing on LME at EXW terms. This comparison can be observed in Figure 18:



**Figure 18: Cathode copper prices on LME and Hailiang purchases (RMB/MT)**

The commission observes that Hailiang's purchase prices of cathode copper in all but two months of the investigation period are above the LME cathode copper price. For two months of the investigation period, Hailiang's purchase price is higher by almost 8%. Naile's raw material purchases follow a similar trend.

The analysis of cathode copper pricing is available at **Confidential Attachment 19**. This comparison also supports the information presented to the commission in the GOC's RGQ.

## A6 Commission's assessment

In light of all the information before the commission, it is the commission's view that a particular market situation did not exist in respect of the domestic market for copper tube in China during the investigation period.

As per the Manual, the commission looks at the effect of government influence on market conditions and the extent to which domestic prices can no longer be said to prevail in a normal competitive market. Government influence on costs can only disqualify the sales if those costs can be shown to be affecting the domestic prices.

The commission has been unable to substantiate the evidence in MM Kembla's application of a market situation in the Chinese copper tube market. During the verification of the cooperative exporter, the commission examined the impact, if any, of policies and initiatives implemented by the GOC. The commission was unable to identify any financial reimbursements by the GOC to any of these exporters nor could it identify any government influence on the domestic selling prices of copper tube or raw material purchases. The commission has not identified any evidence to suggest that the GOC's plans and policies for the non-ferrous metals industry, including copper, influence the domestic selling prices for raw material copper and the finished copper tube products.

As set out in chapter A5.2, the commission compared cathode copper prices on the SHFE to those of a competitive international market, being cathode copper prices on the LME. The cathode copper prices on the SHFE are higher than on the LME over a considerable period of time, including during the entirety of the investigation period.

The commission has also compared the prices of Hailiang, the sole cooperating exporter from China, with the LME during the investigation period. The commission has found that the price paid for cathode copper by Hailiang to be higher than the LME price in 10 months, and only slightly lower in the other two months as can be observed at Figure 18.

The commission observes that Hailiang's purchase price of cathode copper and the price of cathode copper on the SHFE are closely aligned with prices of cathode copper on the LME. The commission considers that domestic selling prices in China are broadly consistent with global prices for cathode copper. This does not correlate with MM Kembla's assertion that domestic selling prices for copper tube in China are lower than they otherwise would be, due to the influence of the GOCs policies and plans in the non-ferrous industry, and are not determined on a competitive basis.

The commission notes MM Kembla's citation of the CBSA Statement of Reasons concerning the dumping and subsidisation of certain copper tube originating from China, published in 2013. In its findings, the CBSA confirmed that following its analysis of LME, SHFE and COMEX (Copper Futures Prices) it identified discrepancies between the copper prices on the respective exchanges which indicated 'that domestic prices of copper in China are not determined under competitive market conditions'. It identified that copper prices were low and thereby impacted the price of copper tube (as copper accounts for up to 95% of the cost of the tube).

In general, the commission considers another administration's finding of dumping and subsidisation as relevant evidence in an investigation of the same goods. However, the commission will undertake its own assessment of all the evidence before it.

As discussed above in A5.2, the commission has been unable to identify any significant discrepancies between the copper prices on the LME and SHFE to indicate that domestic selling prices of copper in China are not determined under competitive market conditions. Rather, the commission observes that copper cathode prices of the cooperating exporter and prices on the SHFE were broadly aligned with prices on the LME.

The commission also observes the older investigating period undertaken by the CBSA, being 1 May 2012 to 30 April 2013, compared to the period of investigation for the present investigation of 1 July 2019 to 30 June 2020. The commission considers that in the absence of additional information from the applicant, the findings of the CBSA are not contemporaneous to the present investigation and do not reflect the current state of the Chinese market for copper tubes.

## **PUBLIC RECORD**

The commission is therefore not satisfied that a market situation exists in the domestic market of copper tube in China such that those prices are not suitable for determining normal values.