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commercial + international

04 October 2021

**The Director**  
**Investigations 1**  
**Anti-Dumping Commission**  
**GPO Box 2013**  
**Canberra**  
**Australian Capital Territory 2601**

By email

Dear Director

## **Investigation 557 – Copper tube from China and Korea**

### **Daejin comment on Statement of Essential Facts**

As you know, we represent Daejin Copper Pipe & Tube Manufacturing Co., Ltd (“Daejin”) in this investigation. Our client has participated throughout this investigation with the guiding belief that it has not caused material injury to the Australian industry. Daejin is gratified to see its belief confirmed in the preliminary findings set out in the Statement of Essential Facts (“SEF”) for this investigation.

The SEF proposes to terminate the investigation for all exporters, for differing reasons. With respect to Daejin the SEF states:

*the Commissioner proposes to terminate the investigation in relation to:*

- *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.<sup>1</sup>*

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<sup>1</sup> SEF at page 9.

Having reviewed the reasons set out at Chapter 9 of the SEF, our client is satisfied that the Commission has engaged in a rigorous and rational causation assessment. Daejin supports the proposal to terminate this investigation, and the associated rationale put forward to that end.

The SEF details three main factors that led the Commission to this proposal:

1. *Daejin has maintained a significant price advantage over the Australian industry during the investigation period.*<sup>2</sup>

The Commission conducted a price comparison between the fully absorbed delivered cost of Daejin's exports to Airefrig Australia Pty Ltd ("Airefrig") and the weighted average delivered selling price for the same subset of MCC products of the applicant, Metal Manufacturers Pty Ltd trading as MM Kembla ("MM Kembla"). The analysis found that Daejin had a significant price advantage of between 14 to 23%, or between 8 to 17% in the absence of the dumping margin calculated by the Commission.

In such a situation, and noting the longstanding relationship between Daejin and Airefrig, it is not realistic to consider MM Kembla would overcome the competitive pricing advantage held by Daejin and replace Daejin as supplier to Airefrig. With the price advantage Daejin would have continued to hold the sales volume to Airefrig, even in the absence of the calculated dumping margin. The Commission has rightly considered injury cannot be attributed to dumping in the circumstances.

2. *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.*<sup>3</sup>

The applicant sought to rely on evidence from occurrences in 2017 and 2018 to claim that Daejin influenced its price negotiations. Even if the occurrences were accurately portrayed by the applicant, neither would have taken place in the investigation period.

The Commission determined that such evidence "*cannot be considered as evidence that it has experienced price injury due to dumped exports from Daejin*".<sup>4</sup> To explain its decision the Commission refers to Section 269T(2AD) of the *Customs Act 1901* and notes that the Section:

*...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.*<sup>5</sup>

We agree with the Commission's interpretation of Section 269T(2AD). The alleged injury and causation must be established to have occurred in the investigation period, and there is no possibility to infer or presume prior circumstances into the investigation period. Evidence to support the allegations must be

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<sup>2</sup> Ibid at page 58.

<sup>3</sup> Ibid at page 57.

<sup>4</sup> Ibid at page 58.

<sup>5</sup> Ibid.

provided concurrent to the investigation. Failing this, the Commission has no option but to dismiss the allegations made by the applicant as being without a proper evidentiary basis.

3. *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.*

The Australian industry alleged injury occurred in the form of reduced market share, and the Commission has made the preliminary finding that such injury did occur.<sup>6</sup> The Commission in its assessment sought to assess whether that injury was a consequence of dumped exports from Daejin.

As stated, the Commission observed that exports from Daejin declined by about one third during the investigation period compared to the previous year. This is consistent with the market share analysis in the SEF, which shows that the major change in market share for the investigation period was an increase in exports from China.<sup>7</sup> As Daejin also experienced a reduction in sales volume and market share, the Commission has correctly identified that such an injury claim is not attributable to exports from Daejin.

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Taking all these factors into account, it is clear that there is no reasonable basis to attribute any injury suffered by the applicant to exports from Daejin.

Therefore, Daejin supports the Commission's thorough analysis, and welcomes the proposal to terminate this investigation in so far as it relates to Daejin.

Our client looks forward to termination of the investigation.

Yours sincerely



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Associate

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<sup>6</sup> Ibid at page 54.

<sup>7</sup> Ibid at page 48.