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For Public File

Dear Sir/Madam

Investigation No. 557 – Copper tube exported to Australia from China and Korea – MM Kembla submission on key issues under consideration

1. Introduction

We refer to earlier submissions by MM Kembla including its response to Statement of Essential Facts No. 557 ("SEF 557")[1].

MM Kembla re-affirms the matters raised in its response to SEF 557. MM Kembla has not received any inquiries from the Anti-Dumping Commission ("the commission") concerning its SEF 557 submission which addressed a range of matters that were critical to the determination of normal values in China and Korea for copper tube.

The recent publication of Statement of Essential Facts No. 580 ("SEF 580") that also relates to exports of certain copper tube to Australia (and involves a key exporter that is related to the largest Chinese exporter of copper tube to Australia in Invest 557 – Zhejiang Hailiang Co., Ltd ("Zhejiang Hailiang") includes a range of matters that apply equally to the exports to Australia from China and Korea. This submission addresses those matters that are common to Invest 557 and Invest 580 as they are relevant in the determination of normal values for exporters in both inquiries.

MM Kembla does not consider that the commission has fully understood the key issues in this investigation, including:

- copper volatility and impact for fair comparison purposes;
- copper hedging costs;
- the acceptance of domestic selling prices (without adjustments) for fair comparison purposes;
- non-compliant copper tube exports to Australia; and
- cleaning and capping costs that are <u>not</u> immaterial production cost expenses.

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[1] Investigation No. 557, EPR Document No. 35.

The relevance of the identified matters and the impact on normal value determination are critical to the dumping margin determinations for all exporters in China and Korea (and Vietnam). The normal values and dumping margins as determined in SEF 557 are incorrect and do not reflect the true costs of exporting copper tube to Australia during the investigation period. For these reasons, the commission's SEF 557 is incorrect as it relies upon flawed assumptions for the cooperative exporters that the commission has not fully investigated with appropriate rigour. Further, the commission has disregarded each and every matter raised by MM Kembla in preference to the unreliable and inaccurate assertions provided by the exporters.

MM Kembla is extremely disappointed with the lack of probity in the conduct of Investigations 557 and 580.

The key issues critical to both investigations are further addressed below.

2. Like goods

'Like goods' is defined in section 269T of the *Customs Act* as:

> "*Like goods, in relation to goods under consideration, means 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*."

The Australian industry (i.e. MM Kembla) does not manufacture identical goods to the imported goods. However, the Australian industry does manufacture copper tube (i.e. "the goods") that possess "characteristics closely resembling" the imported copper tube.

It is not in contention that the goods are alike to the imported copper tube.

The goods the subject of MM Kembla's application are as follows:

> *"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*."

The commission is aware that the imported goods are required to meet the applicable Standards (whether AS 1432, AS/NZ 1571 or 1572). MM Kembla has tested the imported tubes in a laboratory and they do not comply with Australian standards AS 1432, AS/NZ 1571 or AS 1572. This includes copper tube from China, Korea and Vietnam.

Why does this matter?

The commission has recently stated in Statement of Essential Facts No. 580 ("SEF 580") that[2] it:

> "*does not consider claims [*by MM Kembla*] of copper tube not meeting Australian Standards to be related to the issue of whether dumping and ensuing material injury is occurring. Claims of non-compliance do not fall within the scope of the remit of the commission under the Act*".

MM Kembla strongly disagrees with the commission's statements.

MM Kembla submits that the exporters gain a significant unfair cost advantage by selling non-compliant tube into the Australian market. MM Kembla has requested that the commission make adjustments to normal value to permit for a 'fair comparison' between the domestic and exported goods, however the commission has refused to do so. The type of adjustments required include, for example, the exporter drawing copper tube thin (not consistent with standard).

[2] Statement of Essential Facts No. 580, Paragraph 4.3, .21.

Should the commission terminate the Investigations 557 & 580[3] and/or determines that anti-dumping measures should not be applied the effects on the local industry will be very significant, including:

> *[Commercially sensitive details of economic impact of MM Kembla competing with dumped exports of copper tube*]

Sub-section 269TAC(8) permits the Minister to make adjustments to normal value, where the normal value is to be ascertained under 269TAC(1)[4]. Adjustments to normal value are made to permit 'fair comparison' between the normal value (i.e. domestic price paid) and the export price for the subject goods, specifically for goods sold in the country of export that "are not in respect of identical goods" (subsection 269TAC(8)(b)) – that is, where there are instances where the imported goods (non-compliant) require adjustment to align them with the goods exported to Australia (i.e. subject to applicable Australian Standards).

The commission has <u>not</u> made adjustments to correctly permit a comparison between the domestic selling prices for copper tube sold in China, Korea and Vietnam (that do not meet Australian Standards AS1432 and AS/NZ 1571 & 1572), with the export prices to Australia (that do meet Australian Standards AS 1432 and AS/NZ 1571 & 1572). The commission states that it "*is not satisfied that such an adjustment is necessary*" (refer SEF 580, Section 4.3.1, P. 21-22).

MM Kembla submits that the importation of non-compliant tube, which is labelled and sold as compliant tube, has had a negative effect on the price paid for MM Kembla's copper tube. The exporters can significantly reduce manufacturing costs by producing non-compliant tube (including by manufacturing from scrap and drawing thin) and this gives the exporters a significant and unfair price advantage and significantly lower sales prices in the Australian market. These differences impact the physical likeness of the imported goods when contrasted with the locally produced goods. Adjustments to normal value are required and should not be dismissed without justification or on the basis that individually they lack materiality.

The differences in the physical of the imported goods when contrasted with MM Kembla's goods include:

- quality;
- copper content;
- cleanliness;
- chemical composition,

due to the imported goods having been manufactured to different standards to the goods exported to Australia.

Adjustments to normal value to account for these physical differences in the domestic sales of the goods sold domestically in the exporting country(ies) and the goods exported to Australia are necessary for 'fair comparison' purposes.

The commission's stance to ignore these ***material*** differences in physical attributes represents a failure of the Commissioner to correctly determine normal values for copper tube.

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[3] As is recommended in SEFs 557 and 580.

[4] For domestic sales of like goods where the price paid or payable for like goods sold in the ordinary course of trade 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 (Section 269TAC(1)).

The ‘drawing thin’ typically results in the wall thickness of the tube being thinner than is necessary to comply with Australian Standards. From the laboratory testing undertaken by MM Kembla, the actual weight of the imported non-compliant copper tube is xx to xx per cent lighter than copper tube manufactured to Australian Standard. An adjustment of xx to xx per cent of the average LME copper price for the period is therefore required as an upward adjustment to normal values.

An adjustment for drawing thin of copper tube that is sold for goods sold domestically versus exports (where a required thickness is mandated by the applicable Standard) is required.

Concerning the interchangeability of goods sold on the domestic market (i.e. in China and Vietnam), MM Kembla highlights that the applicable standards in both countries do not mandate compliance. In Korea, however, compliance with the domestic standard for refrigeration tube is required. Non-compliance with domestic standards further diminishes the specifications between the domestic and sales and goods exported to Australia thus necessitating adjustments for the differences between goods sold on different markets.

MM Kembla draws to the Commission’s attention the factually incorrect statement that[5]:

> *“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.”*

The statement “and are interchangeable where they meet specific Australian Standards” is factually incorrect for plumbing tube and limited with refrigeration tube. The commission needs to demonstrate through facts the level of domestic sales that support this statement.

It is considered that these negative impacts on the prices paid for MM Kembla’s like goods will continue and increase unless anti-dumping measures are applied.

A further key cost item requiring adjustment involves the cleaning and capping costs associated with refrigeration copper tube. The commission confirmed at verification with Zhejiang Hailiang that it had not included capping costs in its CTMS. The commission required Zhejiang Hailiang to include in a revised CTMS. However, in its Exporter Questionnaire Response, Zhejiang Hailiang (at Section C-3.1) Zhejiang Hailiang indicated that “it is impossible to identify” which customers request the use of “caps” in refrigeration tube, suggesting that the “cap cost” could be shown as a component of packaging costs.

The issue here is that Zhejiang Hailiang does not accurately report “cleaning and capping” costs. It only refers to the cost of the cap and the commission has accepted this item only in the costs for the relevant MCC. This is incorrect. MM Kembla has highlighted in earlier submission (EPR Document 023) to the commission that the cleaning and capping costs are not immaterial and that an adjustment to normal value is required to account for this cost differential between domestic and export sales. The inclusion of the cap cost only falls significantly short of the actual adjustment required for the cost of this service.

Recommended adjustments

The commission has failed to correctly apply the necessary adjustments to align the normal values (based upon domestic selling prices) and the export prices to Australia (that are allegedly in accordance with Australian Standards). Adjustments are required to address differences between lower specification domestic sales in China and Korea (and Vietnam) with the higher quality, tighter Standard-driven requirements of the goods exported to Australia.

The commission’s unwillingness to acknowledge and include the identified adjustments renders the determination of normal values in Investigations 557 and 580 void. The identified adjustments are required to normal values to properly align with export prices for fair comparison purposes in accordance with section 269TAC(8).

[5] Statement of Essential Facts No. 580, Section 3.4.3, P. 12.

3. **Copper Standards**

Refrigeration tube AS1571 costs and price versus plumbing AS1432 costs and price involves a variation of approximately **$xxx/t in cost or xx% ($xxx/t) increase in price (see Confidential Attachment 2 - Comparison of Plumbing and Refrigeration standard fabrication costs and sales prices.** Comparing domestic MCC fabrication costs including a range of difference standards, wall thickness, pressure rating, cleanliness requirements etc to Australian Standards especially when Zhejiang Hailiang has total production capacity of approximately xxxxx tonnes[6] and during the investigation period only approximately xxxxx tonnes of subject goods were exported to Australia, is incorrect.

The commission stated:

> *"the commission notes that each MCC is made up of multiple models, both domestic and export. The MCC structure therefore accounts for a difference in standards between goods. The commission is not satisfied that such an adjustment is necessary."*

With approximately xx % of total volume of Zhejiang Hailiang's production being made to a higher and mandatory Australian standard (despite proof from provided laboratory reports of non-compliance of imported tube) this will have little impact on the average MCC cost. Again, this is an example of the commission's lack of rigour and relying upon incorrect assumptions during the conduct of the investigation. If the specification adjustment for surrogate models (for which there were no domestic sales – first two models in Table 7 in SEF 580) is less than US$xxx/t - then it is incorrect. If this adjustment is made then it will be for the majority of the total fabrication cost, which again demonstrates that the lack of detailed product costing by exporters, which is a blend of different product for different MCC's and within MCC's for different standards and domestic and export products makes the comparisons unreliable and misleading. This further adds to MM Kembla's view that normal values for models where no domestic sales are evident should have been determined under subsection 269TAC(2)(c) on a constructed basis, with appropriate adjustments.

MM Kembla has provided detailed costings and summary data by MCC that has been verified by the commission, but the commission continues to reject MM Kembla's data in preference for the exporter's data which, by their own admission, does not have specific cost records for individual products to a specific standard or market.

Costs are all averages (outlined in Table 8 for Zhejiang Hailiang and in the SEF 580 Table 9 extract below[7] for Hailiang Vietnam) that are allocated on a volume basis not on actual product cost basis (i.e. small diameter and lower wall thickness product requires a higher cost of manufacturing on a $/tonne basis than larger diameter and larger wall thickness product, due to lower through put rates and more reduction passes bring required this is completely ignored in this costing methodology) and do not include all costs like capping and cleaning.

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[6] In Investigation 580, Hailiang Vietnam exported approx. xxxx tonnes from an annual production volume of approx. xxxxx tonnes.

[7] Hailiang Vietnam verification report, Paragraph 6.1, P. 12. & Zhejiang Hailiang export verification report 6.1 P.13

Table 8 outlines the allocation method applied to each cost item.

Cost item	Method applied
Raw Materials	Raw material costs are allocated based on production quantity.
Manufacturing Overheads	Actual costs relevant to the activity and allocated based on quantity.
Labour	Actual costs relevant to the activity and allocated based on quantity.
Depreciation	Depreciation expenses relevant to the activity and allocated based on quantity.
Scrap Allocation	Allocated based on quantity.

Table 8 Cost allocation method

Table below outlines the allocation method applied to each cost item.

Cost item	Method applied
Raw Materials	Raw material costs are assigned to products as standard costs and based on actual usage during the various production stages. Variances from standard cost were allocated to goods on a volume basis.
Manufacturing Overheads (including depreciation)	Manufacturing overhead costs incurred in relation to the main cost centres were attributed directly to the relevant goods. Manufacturing overheads from the auxiliary cost centres were allocated to relevant goods on the basis of volume.
Labour	Labour costs incurred in relation to the main cost centres were attributed directly to the relevant products. Labour costs from the auxiliary cost centres were allocated to relevant goods on the basis of volume.

Table 9 Cost allocation method

The commission has again demonstrated a complete lack of understanding of the production process and accepts the exporter's contention that cleaning is undertaken during the production process and is reflected in the production cost, which is blended and averaged across all products to all standards and different export and domestic markets, with varying levels of cleanliness required. This is incorrect.

MM Kembla acknowledges that some cleaning can be done inline ie bendable (annealed) but only for smaller sizes, larger products and hard drawn products must go through a wash tank cleaning process. (see photo's in Confidential Attachment 1 – MM Kembla wash tank cleaning process and capping machine.).

MM Kembla has provided detailed cleaning and capping costings to the commission, but this has been dismissed with no explanation other than agreeing with exporter claims when the commission hasn't even visited a single copper manufacturing plant to verify the process claimed by exporters is correct. The commission continually dismisses the local industry's representations that are based on over 100 years of manufacturing argument. Travel restrictions have now been lifted and MM Kembla would welcome the opportunity to have the commission visit the MM Kembla manufacturing plant and obtain a complete understanding of manufacturing cost and process.

> *"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."*

MM Kembla is concerned by the commission's apparent standard of proof concerning the 'materiality' of individual items for which MM Kembla is seeking adjustments to the exporters' normal value. The commission appears to have adopted a standard of proof concerning materiality of items that is at best unreasonable and opaque and at worst is not contemplated by the legislative provisions or the Dumping and Subsidy Manual (and the corresponding terms of the WTO Anti-Dumping Agreement).

Put simply, the commission is required to assess when making a fair comparison between export price and normal value whether there are differences which affect price comparability. The Manual acknowledges that s269TAC(8) places a **<u>responsibility</u>** on the commission as part of its **fact finding responsibility** to make adjustments. More detailed guidance is provided in the Manual, applicable in the event that potential adjustments are evaluated for the purposes of 269TAC(9), including that 'adjustment is allowed for differences in physical characteristics where the differences <u>*can be quantified*</u> to ensure fair comparison' (emphasis added).

Kembla has provided the ADC with evidence sufficient to enable the ADC to:

(i) positively determine that there are differences which affect price comparability; and
(ii) to quantify those differences for the purposes of making the appropriate adjustments under s269TAC(8) (or s269TAC(9), where relevant).

For goods to comply with AS1571 and MCC identifier "R" the good must be capped. This is a requirement of the standard. MM Kembla does not understand how the commission could verify the cost of capping, cleaning, labour and handling cost related to AS1571 tube to be immaterial when all exporters have confirmed this cost is not included in the product cost and treated as "packaging" or cleaning "during production" and simply adding the material cost of cap to MCC with identifier "R" is dramatically under costing the real cost. It is then not surprising the exporters do not price refrigeration/capped products differently and as result selling prices are not materially different.

As mentioned above, the cost of cleaning and capping has not fully appreciated by the commission and thus it has failed to make the appropriate adjustments to normal value for this material cost.

4. Volatility of copper

The commission concluded in recent SEF 580 that the movement in the copper price was "less than 5%" and thus concluded that this was immaterial and did not make adjustments to normal values for copper price volatility. Similarly, no adjustment was made to normal values in SEF 557 for copper volatility.

Copper price volatility is material and ADC assessment is factually incorrect and misleading to suggest it does not have a material impact on pricing.

SEF 580 at Paragraph 4.2.2, P. 16 states

> *"The commission has assessed the volatility of copper prices on a monthly basis on the LME and notes that these are in the range of falls and increases of less than 5% in the majority of months during the investigation period. The commission does not consider these changes in copper prices to be significant and therefore, a comparison of quarterly weighted average normal values and export prices is appropriate*".

Volatility impact on pricing could be anywhere between **US$xxx/t to US$xxxx/t (i.e. approx. xxx to xxxx per cent of selling price)** during the investigation period for Invest 580 (1 Jan 2020 to 31 Dec 2020). For investigation 557 (investigation period July 19 – Jun 20) volatility impact on pricing could be anywhere between **US$xxx/t to US$xxxx/t.** Details are shown in Confidential Attachment 3. To suggest this is not significant is another example of the commission carelessly dismissing fundamental and significant facts in relation to the economics of copper tube as part of their investigation.

The following Table 1 details the copper volatility during the investigation period (for Investigation 580) and demonstrates the commission statement above is factually incorrect (refer Confidential Attachment 3 for investigation period 1 July 2019 to 30 June 2020 in Investigation 580):

[*Table 1 – commercially sensitive details on Vietnam export prices Dec 2019 to Dec 2020*]

It is therefore inaccurate (and incorrect) to conclude that the copper volatility during the investigation periods in invest 557 and 580 is simply "immaterial". The above extracts demonstrate this not to be the case.

Separately to the above, MM Kembla has analysed the available export data for Vietnam copper tube HS Code 7411.10.00 Tubes and pipes of refined copper (Details shown in Confidential Attachment 4).

The data details each export shipment, the importer and a description of the specific product being exported. This detail was supplied to the commission in MM Kembla's original application and more recently in MM Kembla's submission to Investigation No. 580 – Copper tube exported to Australia from Vietnam – MM Kembla Response to Hailiang (Vietnam) Copper Manufacturing Co Ltd exporter verification report and Hailiang Copper Australia Pty Ltd importer Verification Report.

This data has been summarised for products that are subject goods only. This is shown in Table 2 below:

[*Table 2 – Commercially sensitive details on selling prices for imported goods*]

The above Table 2 highlights the xxx shipments in the investigation period (commencing July 2019 when the Hailiang Group moved production and export of subject goods to Vietnam from China due to the dumping investigation on China exports by the commission).

Table 2 demonstrates that for the subject goods only, the monthly variation in the FOB price by shipment within the same month ranged between xx% to xx%. This further demonstrates that the variation in pricing due to the copper benchmark and timing of when the copper price is fixed has had a material impact on Hailiang's own exports when using the invoice or FOB date within the same month.

When the average Hailiang Group fabrication cost is added (*source of pricing information*) many of the FOB shipments are not profitable. This again casts serious doubts as to the commission's assumptions in the investigation. This unquestionably demonstrates that the commission should be:

- Recognising the volatility in the copper price during the POI is significant (i.e. significantly exceeding the stated 5 per cent that the commission states as not material).
- The copper benchmark and timing of when this is set has a material impact on normal values and export prices even for Hailiang's own exports within any single month of the investigation period.
- A comparison of quarterly weighted average normal values and export prices is **NOT** appropriate.
- To accurately compare export sales prices with domestic prices the commission must make due allowance under subsection 269TAC(8) to address differences in copper pricing between the two markets.
- A more appropriate basis involves transaction by transaction comparison utilizing order date.

It is MM Kembla's view that the commission's failure to accurately assess the volatility in the copper price during the investigation period has contributed to an understatement of the exporter's actual costs to make and sell the exported goods. The exclusion of an adjustment to correctly price copper in the exporter's normal value for fair comparison purposes with export prices understates the actual margin of dumping for exports from both China and Vietnam by the Hailiang exporters.

5. Arms length sales Hailiang HK to Hailiang Australia

The commission has determined export prices for Zhejiang Hailiang of China and Hailiang (Vietnam) Copper Manufacturing Company Limited ("Hailiang Vietnam") in accordance with subsection 269TAB(1)(c) "having regard to all the circumstances of the exportation".

As with Zhejiang Hailiang, the commission confirmed that Hailiang Vietnam is the exporter of the goods. Also, the commission again concluded that Hailiang Vietnam (as with Zhejiang Hailiang) exported through a related entity, Hong Kong Hailiang Metal Trading Limited ("Hailiang HK"). Hailiang HK on-sells the subject goods to another related party that is the Australian importer – Hailiang (Copper) Australia Pty Ltd ("Hailiang Aust").

The commission states that it “assessed” each stage of the importation process to establish if sales were at ”arms length”. The commission found that the price between Hailiang Vietnam and Hailiang HK “appeared to be influenced by a commercial or other relationship between the buyer and the seller.” It was further considered that Hailiang HK’s profit was insufficient to cover its selling, general and administration (SG&A) expenses. The Commission concluded (as it did for sales between Zhejiang Hailiang and Hailiang HK) that the sales between the exporter and its affiliated trading arm based in Hong Kong, were not “arms length”.

The commission was satisfied that sales between Hailiang HK and the Australian importers (related and unrelated) were at arms length. This finding is questionable, as the commission states that it “*confirms that off-invoice rebates have been considered in its assessment of the arms-length nature of transactions and in profitability calculations of the importer*.”

Subsection 269TAA(1) concerning arms length transactions states:

> “*For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:*
>
> *(a) There is any consideration payable for or in respect of the goods other than their price; or*
> *(b) The price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or*
> (c) *In the opinion of the Minister the buyer, or an associate of the buyer, will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price*.”

MM Kembla notified the commission in the context of export briefings in Investigation 557 and 580 that Zhejiang Hailiang provides rebates to some Australian customers. This was detailed by MM Kembla in its exporter briefing. The rebates range from $xxx to $xxx per tonne. At the top end, that is an approximate xxx per cent discount.

It is evident that the off-invoice rebates represent a consideration other than price and that at least one of the provisions of ss269TAA(1) have been met. This would render the selling prices between Hailiang HK and Hailiang Aust non arms length. The commission considers, however, that the selling price is not influenced by the relationship and that the off-invoice rebates do not render the selling price non arms length.

It is not clear to MM Kembla how the commission satisfied itself that the rebates provided by Hailiang Australia is not evidence of a ‘compensatory arrangement’ for the purposes of subsection 269TAA(1)(c). More generally, there is a lack of clear explanation by the commission as to how it satisfied itself that the transactions between the related parties were the result of ‘real bargaining’ as described in the Dumping Manual – i.e. considering:

- Whether or not negotiation has taken place between buyer and seller;
- The manner in which the prices were determined as a result of that negotiation;
- Whether prices are comparable to those arrived at by parties at arm’s length;
- Whether the margins made by the transaction are comparable to those made by parties at arms length.

The commission’s unpreparedness to alter its stance as to the nature of the sales between Hailiang HK and Hailiang Australia has resulted in the commission’s refusal to undertake deductive export price calculations to determine whether Hailiang Australia’s selling prices into the Australian market are at full cost recovery (i.e. that all costs including the copper cost are covered by the Australian selling price).

MM Kembla submits that Hailiang Australia’s selling prices are at a loss (and has maintained though the conduct of the investigations). The commission has not shifted and refuses to undertake deductive export price assessments.

It is further evident to MM Kembla that the commission's verification team has not preliminarily determined the export prices for Zhejiang Hailiang and Hailiang Vietnam by referencing Australian Border Force import data.

> *"Hailiang Australia confirmed that the import listing extracted from the Australian Border Force (ABF) import database is a complete list of imports of the goods over the investigation period.*
>
> *It is noted however, that the verification team is* ***unable*** *to accurately filter the ABF data for only the subject goods, as the tariff classification covers a range of products and there was insufficient information to distinguish the goods the subject of this investigation. As such, the verification team has not preliminarily determined the export price having regard to the ABF data."*

MM Kembla considers that the commission should compare export FOB prices from the Vietnam export data (that has been supplied by MM Kembla in Confidential Attachment 4) from Hailiang Vietnam to Hailiang Hong Kong and compare this to the import data from the ABF. With only xxx shipments averaging xx a month across xx destinations Australian ports, this would be a relatively simple task to match the export details provided in Confidential Attachment 4 and the ABF data. This comparison would further confirm if the selling price by Hailiang Australia recovers all costs and the export prices from the exporter to Hailiang HK.

MM Kembla questions why this comparison has not been undertaken by the commission during verification?

The commission further stated:

> *"The verification team considers Hailiang Vietnam to be the exporter of the goods, as Hailiang Vietnam is:*
>
> - *the manufacturer of the goods;*
> - *named on the commercial invoice as the supplier;*
> - *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; and*
> - *arranges and pays for the ocean freight and marine insurance (for CIF, DDU, DDP*
> - *sales).*
>
> *The verification team is satisfied that for all Australian export sales during the period that Hailiang Vietnam was the exporter of the goods.*

And further;

> *"In respect of the export sales of the goods to Australia by Hailiang Vietnam, the verification team 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 verification team recommends that the export price be calculated under section 269TAB(1)(c) having regard to all the circumstances of the exportation. Specifically, the verification team 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."*

NO adjustment has been made for price differences between Hailiang Vietnam and Hailiang HK. The price used by the commission should be the export price ex Hailiang Vietnam less an amount of Hailiang Hong Kong's SG&A costs and other prescribed deduction for costs arising after exportation.

MM Kembla see this analysis as critical for the following reasons:

(i) The need to confirm the FOB export price to Hailiang Australia reflects the cost from the manufacturer (exporter) is the same FOB price Hailiang Hong Kong is invoicing Hailiang

Australia. MM Kembla would expect this is a fundamental piece of verification to ensure correct export prices are used.

(ii) If the import price is different to the export data how has this difference been accounted for by the commission particularly when the verification team considers that the Hailiang Vietnam export sales of the goods to HK Hailiang were not arms-length transactions.

MM Kembla maintains that the commission has erred in its assessment of export price in Investigations 557 and 580 concerning sales by Hailiang HK to its Australian customers (that are predominantly to Hailiang Australia).

6. Summary and recommendations

The commission has dismissed each contention raised by MM Kembla concerning relevant and appropriate adjustments to normal values determined for cooperative exporters in Investigations 557 and 580.

The commission's rejection of matters raised by MM Kembla that have been supported with detailed evidence and a reasonable level of proof have been completely dismissed by the commission. The commission has favoured the explanation of the exporters despite an obvious lack of detailed costing (by their own admission they do not record) or purely taken the exporter's response at face value without any questions, probity of investigation, or consideration of third-party industry experts.

The following Table 3 summarizes the key issues raised by MM Kembla requiring validation and adjustment to normal values for the cooperative exporters:

MM Kembla submission for adjustment to normal value	Commission Response	MM Kembla Evidence
Volatility in Copper price creating timing differences based on weighted average invoice date	*"The commission does not consider these changes in copper prices to be significant"*	Table 1 demonstrates on all measures the volatility is greater than 5% on at least xx% of months/quarters and by xx% on xx-xx% of all comparison periods during the period of investigation. The Hailiang Vietnam export data shows the variation in the export FOB price for subject goods within each month during the POI varies between xx% and xx%. Details provided in Confidential Attachment 4. With copper cost representing xx% of FOB price, volatility in copper pricing timing and benchmark is the only explanation.
Hedging costs should be included to ensure a fair comparison between domestic and export selling prices.	*The commission does not consider that there is a price comparability issue associated with hedging such that an adjustment is warranted under section 269TAC(8).* *Or,* *adjustment relating to gains or losses on hedging has any relevance to the setting of prices.*	Hailiang has stated copper hedging contracts are designed solely to eliminate the **risks to profits of future sales** from copper price fluctuations, by **locking in a purchase price at future sales prices**. There is a clear link between hedging and price contracts at order placement. MMK sets domestic pricing based on the hedged position of its copper inventories and export

		prices based on fixed hedge pricing agreed at order date. MMK has provided examples of these in Investigation No. 557 – Copper tube exported to Australia from China and Korea – MM Kembla Response to Statement of Essential Facts - Confidential Attachment 2 – Volatility of Copper and Hedge book explained with examples of MMK's pricing contracts are determined and fixed at order date. All of MMK MCC included in Confidential submission Schedule A6 include any metal trading costs/gains relating to copper hedging. It should be included for exporters also as it is an intrinsic element of raw material costs and price agreement.
MM Kembla considers that the commission is incorrect in comparing products produced to different standards.	*The commission considers that any differences in standards would be reflected in the cost difference and accounted for as part of the specification adjustment. The difference in cost was marked up by OCOT to reflect a difference in price and results in an accurate domestic selling price for the export model.*	The commission's 'blunt' approach to cost variance analysis can't be relied upon. The fact it proposes to rely on surrogate models for the purposes of ascertaining the normal values of two export MCC while relying on the domestic sales of two MCC that are sold in the country of export without any material adjustments based on actual cost not averaged costs allocated by volume within an MCC is flawed. MMK demonstrated that for Refrigeration tube AS1572 costs and price versus plumbing AS1342 is a variation of $xxx/t in cost or xx% ($xxx/t) increase in price. Comparing domestic MCC fabrication costs including a range of difference standards, wall thickness, pressure rating, cleanliness requirements etc to Australian Standards especially when Hailiang Vietnam has total production capacity of approximately xxxxx tonnes and during the POI only approximately xxxx tonnes of subject goods were exported to Australia, is incorrect. Details provided in Confidential Attachment 2.
MM Kembla has demonstrated that Hailiang often exports	*The commission notes that each MCC is made up of multiple models, both domestic and*	MMK has provided laboratory reports and evidence this is the case in Investigation No. 557 –

copper tube to Australia that does not meet Australian Standard which results in a cost advantage	*export. The MCC structure therefore accounts for a difference in standards between goods. The commission is not satisfied that such an adjustment is necessary*	Copper tube exported to Australia from China and Korea – MM Kembla Response to Statement of Essential Facts - Confidential Attachment 8 – [*analysis of imported goods*] MMK has also outlined the cost advantage as a result of having lower quality control and rework costs associated with non-compliance to Australian standards in response to MMK's submission for China.
Capping and cleaning costs, represents a material portion of conversion costs for AS1571 tube	*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*	MMK provided detailed costings in confidential attachment for China and in its application for Vietnam (Investigation No. 557 – Copper tube exported to Australia from China and Korea – MM Kembla Response to Statement of Essential Facts - Confidential Attachment 7 - Capping & Cleaning Costs - Bill of Materials extract ERP). This is detailed evidence that has been dismissed as not material based on exporters unsubstantiated claims and who have not included detailed rather than averaged product costings as MMK has provided to the commission. The commission "blunt" approach to cost analysis has failed in its fact-finding responsibilities.

MM Kembla urges the commission to take full account of the relevant matters contained in this submission that materially impact the determination of normal values for the subject exporters in China and Korea (and Vietnam).

If you have any questions concerning this submission, please do not hesitate to contact me.

Your sincerely

Tony Bova
Executive General Manager