



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

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

Website: www.kembla.com.au

ABN: 13 003 762 641



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Director
Investigations 2
Anti-Dumping Commission
GPO Box 1632
Melbourne Victoria 3001

Email: Investigations2@adcommission.gov.au

Public File

Dear Sir/Madam,

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

MM Kembla refers to the Anti-Dumping Commission's resumed investigation concerning copper tube exported to Australian from the People's Republic of China (**China**), and Korea. MM Kembla makes the following comments and representations in relation to China to provide its views on the record to-date.

1. Introduction

By way of an application to the Anti-Dumping Commission (**the Commission**) dated 29 May 2020, MM Kembla applied for a dumping investigation into certain copper tube exported from Korea, and a dumping and countervailing investigation into certain copper tube exported from China.

In response to that application, the Commission initiated the subject anti-dumping and countervailing investigation on 13 July 2022 (**INV 557**).

On 12 November 2021, the Commission terminated the investigation in its entirety.

On 12 December 2021, MM Kembla lodged an application to the Anti-Dumping Review Panel (**ADRP**) for review of the Commission's termination decision. This application sought merits review of certain facets of the Commission's termination decision that were neither correct nor preferable. The ADRP initiated its review on 4 February 2022.

On 4 July 2022, the ADRP revoked the Commission's termination decision, concluding that:

- the Commissioner's decision not to include International Standards or Wall Thickness (**WT**) (by the process of drawing thin) as a separate category in the Model Control Code structure, or alternatively, by not making appropriate adjustments in the comparisons of normal value and export price for Chinese and Korean exporters, was not the correct or preferable decision;
- the Commissioner's decision that it was satisfied that an adjustment to Chinese and Korean normal values for differences in capping and cleaning costs was unnecessary, was not the correct or preferable decision; and that
- the Commissioner's decision concerning the profitability of Hailiang Australia and the related finding of the arms-length nature of export sales between Hailiang HK and Hailiang Australia was not the correct or preferable decision.

On 21 December 2022, the Commission published Anti-Dumping Notice No. 2022/111 advising of the resumed investigation, which is the subject of this submission.

2. Normal Value and Export Price Fair Comparison

Throughout the course of INV 557, the ADRP appeal, and now the resumed investigation, MM Kembla has maintained in the first instance that sales of goods by Chinese producers of seamless cooper tube do not exist on the domestic market. The evidence presented on the record to-date, the ADRP Panel Members findings, and trade remedy precedent in other jurisdictions, has highlighted the complexities associated with the determination of variable factors for seamless copper tube. MM Kembla therefore continues to argue that normal values cannot be ascertained under subsection 269TAC(1), and must instead be assessed under subsection 269TAC(2)(c) using the cost of production of the manufacture of the goods in the country of export, plus SG&A expenses, plus profit.

In the second instance, where the Commission considers that domestic and export sales are capable of fair comparison, MM Kembla has also continued to emphasise that cost and price comparability normal value adjustments are required under s269TAC(8) (for drawing thin and nominal versus actual weight, for differences in products produced to different standards, for differences in mandatory versus non-mandatory third party quality approval certification, and for differences in capping and cleaning costs).¹

In the third instance, MM Kembla submits that a comprehensive fair comparison assessment must include liner/per length price considerations (typically measured in metres). As the Commission is aware, standard industry practice is to sell seamless copper tube on a per length basis. Assessing price at this point yields an accurate representation of the price paid per length for the amount of actual copper used in the product, and the associated fabrication cost.

In contrast, assessing price on a nominal per kilogram or per tonne basis, as then compared to an actual per kilogram or per tonne basis, will result in the same per weight price. Critically, this approach does not account for the number of copper tube lengths on a per kilogram or per tonne basis and the selling price applicable to these.

By way of example,² the following highlights this price comparison variation for a Chinese plumbing tube product with the following specifications:

- outside diameter of 12.70 millimetres (**mm**);
- wall thickness of 0.91mm; and

¹ MM Kembla's submission of 14 September 2022 refers (and all other prior representations).

² Confidential Attachment 1.

- length of 6 metres.

The tolerance levels permitted under the Australian standard for refrigeration tube, AS 1432 – *Copper tubes for plumbing, gasfitting and drainage applications*, permits a negative deviation from the nominal weight measurement of 15.4 per cent.³ The below example assumes a nominal to actual overall weight tolerance variance of 17 per cent to highlight the very likely situation in the Chinese home-market that even if the product is manufactured to the non-mandatory standard (discussed further below), the negative tolerance levels on plumbing goods would exceed those as required under the Australian standard. Indeed, this additional 2 per cent variance to tolerance is what MM Kembla has observed in the Australian market, and would certainly, at a minimum, transpire in the Chinese domestic market.



Confidential Chart 1: Price Per Length Example

The number of lengths per kilogram or per tonne will depend on the actual versus the nominal weight of the goods. At nominal weight, the weight per kilogram or per tonne is higher and hence the number of per metre lengths is lower. At actual weight, the weight per kilogram or per tonne is lower (compared to the nominal) and hence the number of lengths is higher. The price per length is therefore different between nominal and actual. The price per kilogram or per tonne however, being a function of the price per length and the number of lengths, will equate to the same selling price number whether at nominal or actual.

It is therefore critical that the Commission consider liner/per length prices when ascertaining Chinese normal values.

3. Standards Compliance

In its submissions received by the Commission on 3 November 2022, Zhejiang Hailiang Co., Ltd (**Hailiang**) noted the following:⁴

The copper tubes sold by Zhejiang Hailiang in domestic market should comply with the requirements set out in the standards above. This refutes the assertion made by the Australian industry that the Chinese standard is not mandatory. To confirm this point, in fact, the code “GB/T” means recommended standard under Chinese law, which ensure the following:

(1) When referred to in laws, regulations or mandatory standards, it shall be mandatory;

(2) When an enterprise expressly adopts the recommended standards, the standards are binding on the enterprises;

³ Refer AS1432, Table 4.2, p. 12. The standard uses the “Min. at any point”. That minimum equates to being 15.4% from the nominal wall thickness.

⁴ Hailiang submission, folio no. 51, p. 1.

(3) When the recommended standards are directly specified in a contract, or expressed on the package of the goods, it shall be binding between the parties to the transaction.

These comments are in stark contrast to the representations made by the Government of China (GOC) in its earlier supplementary questionnaire response to the original inquiry where it noted that the Chinese copper tube industry is relatively unregulated, and that:⁵

...the copper tube industry is mostly governed by the same general regulatory framework concerning corporate commercial operations in China as any other industry. It is not particularly distinct.

*In relation to product standards, the latest national standards applicable to copper tube are as follows, **all of which are non-mandatory in nature**:*

- GB/T 17791-2017 for “seamless copper and copper alloys tube for air conditioner and refrigeration equipment”;
- GB/T 18033-2017 for “seamless copper tubes for water and gas”;
- GB/T 1527-2017 for “drawn tube of copper and copper alloys” [**emphasis added**].

Hailiang’s representations are incongruent with the GOC’s official position on the application of copper tube standards in the Chinese domestic market.

Even if the reference to “GB/T” may officially deem adherence to Chinese standards (at least according to Hailiang), Hailiang omits to note that within the applicable standards themselves, significant flexibility is afforded to the way in which copper tube is manufactured which can in no way be compared to the far stricter requirements of the Australian standards. As evidenced by MM Kembla in its submission dated 14 September 2022:⁶

Further evidence of the non-mandatory nature of seamless copper tube standards the market in China (and Korea) can be found in assessing GB/T 18033 as per the excerpt below. A requirement of AS 1432 in Australia is a surface quality check for bendable temper tube, whereas the Chinese national product standard is non-mandatory and is as-agreed with the purchaser:

4.6 Surface quality

4.6.1 The inner surface of the tube shall not contain any detrimental layer, the carbon film test specified in annex A (standard’s annex) for the inner surface shall be passed, when required by the purchaser.

Non-Confidential Table 1: GB/T 18033 Surface Quality

Additional examples of the non-mandatory and as-agreed-with-the-purchaser nature of the Chinese product standards is also evident in the critical aspects of material employed and tolerances of the standards. As per the note at Table 2 below, the material grade, form and specifications of the tube including tolerances shall be indicated in the contract by the purchaser when required:

⁵ INV 557, Folio No. 16 (p. 19).

⁶ Folio no. 49, p. 7-8.

4 Requirements

4.1 Product classification

4.1.1 Grades, form, specifications

The grades, form and specifications of the tube shall conform to the requirements given in table 1.

Table 1: Grades, form and specifications of the tube

Grade	State	Form	Specifications, mm		
			Outside diameter	Wall thickness	Length
T2, TP2	Hard(Y)	Straight length	6 ~ 219	0.6 ~ 6	3 000
	Half hard(Y2)		6 ~ 54		5 800
	Annealed(M)		6 ~ 35		
	Annealed(M)	Coil	≤ 19		≥ 15 000

Note: The specifications and corresponding tolerance limit shall be indicated in the contract by the purchasers, when required.

Non-Confidential Table 2: GB/T 18033 Product Classification Requirements

The notion of “when required” does not afford Hailiang the ability to claim that its copper tube products sold on the Chinese domestic market are in any way comparable to those exported to Australia.

As noted by MM Kembla in its 14 September 2022 submission, copper tube products manufactured and sold on the Chinese market are not considered like goods across the requisite physical, commercial, function, and production parameters. Following initiation of the resumed inquiry, MM Kembla has brought to the attention of the Commission examples of instances where Chinese manufactured copper tube destined for the Australian market is manufactured to an agreed weight/wall thickness (outside of any standards compliance considerations) and then sold with a goods description at nominal.⁷

The point of highlighting this with the Commission is to advance the proposition that where this is seen in the Australian market, it is certainly assumed as common-practice in the Chinese market, making an affirmative like-goods assessment extremely problematic.

In a further update, by way of Confidential Attachment 2, MM Kembla can advise [commercial-in-confidence example details].⁸

4. Conclusion

The purpose of this submission is to address critical normal value and fair comparison aspects of the resumed investigation.

MMK Kembla submits that a like-for-like fair comparison between Chinese and Australian export selling prices for copper tube is not permissible and that normal values should be constructed. This submission, and others prior, have highlighted in detail the complexities associated with the accurate assessment of Chinese home market selling prices, the Commission’s initial conclusions of which were overturned by the ADRP on the basis of such complexities. MM Kembla submits that the directions of the ADRP Panel Member in relation to the assessment of Chinese normal values can only be adequately addressed using the cost of production of the manufacture of the goods, plus SG&A expenses, plus profit.

In the alternative, it is paramount for the Commission to consider the standard industry-wide formula for pricing based on linear length when assessing domestic prices. As demonstrated above, prices are accurately depicted at the per-

⁷ [Commercial-in-confidence example details].

⁸ Confidential Attachment 2.

length unit of measure. Where the Commission maintains that like goods exist on the Chinese market, upwards normal value adjustments are required.

Finally, the recent representations made by Hailiang in relation to compliance with product standards in the Chinese market are factually incorrect and warrant clarification.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read "Tony Bova". The signature is stylized with a large, sweeping initial "T" and "B".

Tony Bova
Executive General Manager