



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](http://www.kembla.com.au)

ABN: 13 003 762 641



Quality  
ISO 9001



14 September 2022

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

Received 14 September 2022

Email: [Investigations2@adcommission.gov.au](mailto: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

#### 1. Introduction

MM Kembla refers to Anti-Dumping Review Panel (**ADRP**) Decision No. 146-150<sup>1</sup> concerning its consideration of the five applications made by MM Kembla for merits review of the decision of the Commissioner of the Anti-Dumping Commission (**the Commissioner**) to terminate Investigation No. 557 (**INV 557**) pursuant to section 269TDA(1)(b)(i), section 269TDA(3), section 269TDA(1)(b)(ii), section 269TDA(13) and section 269TDA(2)(b)(ii) of the Act,<sup>2</sup> respectively.

The ADRP Panel Member has concluded, for several aspects of MM Kembla's merits review claims, that the Commissioner's decision to terminate INV 557 was not the correct or preferable decision, and that the investigation should resume.<sup>3</sup> MM Kembla concurs with the Panel Members' findings, and will address below in substantive form the issues requiring reconsideration by the Anti-Dumping Commission (**the Commission**). In doing so, MM Kembla will evidence that the correct and preferable outcome from INV 557 was the finding of positive dumping margins for the subject countries (above negligible levels), an affirmative injury causation finding, and the consequent imposition of trade remedy measures.

<sup>1</sup> ADRP Decision No. 146 – 150: Copper Tube exported from the People's Republic of China and the Republic of Korea. June 2022.

<sup>2</sup> All legislative references are references to the *Customs Act 1901*, unless otherwise specified.

<sup>3</sup> ADRP Decision No. 146 – 150: Copper Tube exported from the People's Republic of China and the Republic of Korea. June 2022. Paragraph 425.

## 2. Grounds for Review

MMK Kembla's grounds for merits review were as follows:<sup>4</sup>

### *Reviewable Decisions 1 & 2*

- a) The Commissioner's decision concerning the selection of invoice date for fair comparison purposes, for all Chinese exporters, was not the correct or preferable decision;
- b) The Commissioner's decision concerning the determination of normal values under s.269TAC(1), for all Chinese exporters, was not the correct or preferable decision;
- c) The Commissioner's decision concerning arms-length sales between Hong Kong Hailiang Metal Trading Limited (**Hailiang HK**) and Hailiang Australia Pty Ltd (**Hailiang Australia**), was not the correct or preferable decision; and
- d) The Commissioner's decision involving the determination of material injury, for all Chinese exporters, was not the correct or preferable decision.

### *Reviewable Decision 3*

- a) The Commissioner's decision concerning the selection of invoice date for fair comparison purposes, for the Korean exporter Nungwon Metal Ind. Co., Ltd (**Nungwon**), was not the correct or preferable decision;
- b) The Commissioner's decision concerning the determination of normal values under s.269TAC(1) for Nungwon, was not the correct or preferable decision; and
- c) The Commissioner's decision that dumping (and subsidisation) by Nungwon did not cause material injury to the Australian industry, was not the correct or preferable decision.

### *Reviewable Decision 4*

- a) The Commissioner's decision concerning the selection of invoice date for fair comparison purposes, for the Korean exporter Daejin Copper Pipe & Tube Manufacturing Co., Ltd (**Daejin**), and residual and uncooperative Korean exporters, was not the correct or preferable decision;
- b) The Commissioner's decision concerning the determination of normal values under s.269TAC(1), for Daejin, residual and uncooperative Korean exporters, was not the correct or preferable decision; and
- c) The Commissioner's decision that dumping (and subsidisation) by Daejin, residual and uncooperative Korean exporters did not cause material injury to the Australian industry, was not the correct or preferable decision.

### *Reviewable Decision 5*

- a) The Commissioner's decision that a particular market situation did not exist and that Chinese exporters did not benefit from a countervailable subsidy where the Government of China influences the selling price of copper in China, was not the correct or preferable decision.

## 3. Panel Member Conclusions

Specific to the issues now requiring reconsideration by the Commission, the Panel Member concluded as follows:

- In relation to Reviewable Decisions 1 & 2:

---

<sup>4</sup> Ibid. Paragraph's 32-36 (p. 14-15).

- 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 (**MCC**) structure, or alternatively, by not making appropriate adjustments in the comparisons of normal value and export price for Chinese exporters was not the correct or preferable decision;<sup>5</sup>
  - that the Commissioner’s decision that it was satisfied that an adjustment to Chinese normal values for differences in capping and cleaning costs was unnecessary, was not the correct or preferable decision;<sup>6</sup> 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.<sup>7</sup>
- In relation to Reviewable Decisions 3 & 4:
    - that the Commissioner’s decision not to include International Standards or WT (by the process of drawing thin) as a separate category in the MCC structure, or by not making appropriate adjustments in the comparisons of normal value and export price for Korean exporters was not the correct or preferable decision;<sup>8</sup> and
    - that the Commissioner’s decision that it was satisfied that an adjustment to Korean normal values for differences in capping and cleaning costs was unnecessary, was not the correct or preferable decision.<sup>9</sup>

The Panel Member was unable to determine whether the decision in Termination Report 557 (**TER 557**) that the Australian industry had not suffered material injury from the dumped goods from the subject countries was the correct or preferable decision. This of course rests on a reconsideration of what should have been the correct and preferable outcomes of INV 557, as detailed above. MM Kembla now turns to an assessment of how the Commission can incorporate the Panel Member’s findings into a full reconsideration of the facts of the inquiry.

#### **4. Reconsideration of Normal Values & Fair Comparison**

MM Kembla submits that the Panel Member’s findings have highlighted the complexities associated with the determination of variable factors for seamless copper tube. Considering the Panel Member’s findings, MM Kembla does not deviate from its earlier position that there exist no sales of like goods by Chinese and Korean producers of seamless copper tube in their respective domestic markets.<sup>10</sup> Therefore, 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. MM Kembla details below a full like-goods assessment, and consideration of Australian domestic and foreign trade remedy precedent, in furthering this argument.

---

<sup>5</sup> ADRP Decision No. 146 – 150: Copper Tube exported from the People’s Republic of China and the Republic of Korea. June 2022.

Paragraph 136 (p. 47).

<sup>6</sup> Ibid, paragraph 153 (p. 53).

<sup>7</sup> Ibid, paragraph 227 (p. 76).

<sup>8</sup> Ibid, paragraph 344 (p. 99).

<sup>9</sup> Ibid, paragraph 349 (p. 100).

<sup>10</sup> MM Kembla’s 4 October 2021 Statement of Essential Facts response, p. 21-22.

MM Kembla also proposes a revised MCC framework to assist the Commission identify the relevant costs of production. Where the Commission maintains the view that domestic and export sales are capable of fair comparison, MM Kembla identifies those key characteristics that affect price comparability.

***i. Like Goods Sold on the domestic market***

Fundamental differences exist between the Australian exported goods, and those sold on the Chinese and Korean domestic markets. The goods are physically, functionally, commercially, and in a production sense not alike. Certain of MM Kembla's arguments below were made via earlier representations, and have been reproduced here for emphasis.

***a. Physical Differences***

The Commission is required to determine Chinese and Korean normal values which account for the less stringent physical characteristics evident in Chinese and Korean domestically produced and sold seamless copper tube. MM Kembla contends that the lower standards applicable in China and Korea result in a lower cost of production for the domestic like goods, the resultant selling prices of which cannot properly be compared with the goods exported to Australia (which are required to meet the AS/NZ Standards, require WaterMark product certification, and involve a higher cost of production).

The key premise of MM Kembla's merits review claim was that the Commission, throughout INV 557, did not consider the significance of the differing International Standards that apply to domestically sold copper tube in China and Korea vis-à-vis the Australian exported goods. The Commission did not take account of the markedly different physical characteristics between domestic copper tube (the WT of which is "drawn thin")<sup>11</sup> and the exported goods (the WT of which complies with Australian Standards) in correctly and preferably determining normal values.

***Different Standards***

Australian, as compared to the Chinese and Korean, product standards differ greatly. For example, the Chinese Standard applicable to plumbing copper tube products (G/BT 18033) requires a completely different range of outside diameter (**OD**) and WT, and allows two types of chemical composition or grades. The majority of OD's are hence larger (between 6% and 18%) and WT lower (between 2% and 31%) than the closest Australian standard (AS 1432) comparable size. The ratio of OD to WT size is on average 24-26% greater than the closest AS 1432 comparable size. Comparing product Types A and B of AS 1432 to product Types Y and X yields the following results:<sup>12</sup>

*[Confidential Chart 1 (reproduced): AS1432 Type A product compared to GBT 18033 Type Y product]*

*[Confidential Chart 2 (reproduced): AS1432 Type B product compared to GBT 18033 Type X product]*

***Different Working Pressures***

As a result of the differing standards and product dimensions, safe working pressures for the goods are different across sizes due to the calculation between OD and WT dimensions.

Subsequently, the tube chosen will have varying safe working pressures and may not be suitable for the same application in local as compared to export markets. This should not be considered comparable or interchangeable for normal value purposes as safe working pressures are a critical determining factor in the selection of product for an application.

---

<sup>11</sup> 'Drawing thin' results in the wall thickness of seamless copper tube being thinner than is required to comply with Australian standards.

<sup>12</sup> Reproduced from MM Kembla's 4 October 2021 Statement of Essential Facts response.

The range difference between similar sizes and their equivalent safe working pressures shows AS 1432 tube safe working pressures calculated at 50°C operating temperature, and is between 8% and 62% across 6 main products. The reproduced radar charts below illustrate the differences in safe working pressures by product standard and equivalent outside diameters:

*[Confidential Chart 3 (reproduced): AS1432 Type A product compared to GBT 18033 Type Y product]*

*[Confidential Chart 4 (reproduced): AS1432 Type B product compared to GBT 18033 Type X product]*

In order for Chinese and Korean seamless copper tube to meet the equivalent safe working pressure of AS 1432, WT needs to increase. Subsequently, the weight of the product increase, as does the total cost to manufacture. Based on these significant differences in the selection of copper tube for a required application, the copper tube sold in the Chinese and Korean markets cannot be considered like goods to those exported to the Australian.

### **Standards not mandatory**

National seamless copper tube product standards applicable to the local market in China and Korea are non-mandatory. The Government of China's (GOC) supplementary questionnaire response noted that the Chinese copper tube industry is relatively unregulated, with production dominated by non-SIE companies.<sup>13</sup> It further disclosed that:<sup>14</sup>

*TRIB notes that 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].*

In a circumstance where national product standards are non-mandatory and exist in an unregulated market, it is impossible to ascertain whether the local market produces and sells like goods as there is no reference comparison to a base set of requirements for that local market.

In such instances, the characteristics of the product can be determined between purchaser and seller and thus there is no comparative basis to the copper tube sold in Australia, a market where adherence and certification to product standards for plumbing and other applications is mandatory. Such characteristics can significantly change the cost and subsequent price if the seller choose to or agrees with the purchaser to alter the following:

- Supply copper tube that is thinner than the tolerance requirements of a standard;
- Alter the chemical composition by using lower cost scrap material;
- Eliminate production steps (e.g., cleaning of the tube);
- Eliminate capping requirements; and/or
- Eliminate ink marking and incising requirements.

---

<sup>13</sup> INV 557, Folio No. 16 (p. 15-16).

<sup>14</sup> Ibid, p. 19.

In Australia, and in particular the plumbing sector, these opportunities to reduce cost are not afforded due to the mandatory and regulatory nature of the market. It is therefore suggested that the Commission's assessment of like goods cannot be ascertained and that the goods sold in the local market should not be considered like goods when determining the normal value.

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:

<b>4 Requirements</b>					
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**

Under such circumstances where a product standard is non-mandatory and the form and specification can be agreed between seller and purchaser, there can be no basis to evaluate the physical likeness of the goods to an alternative standard as key characteristics of the product such as material grade and dimensional tolerances cannot be evaluated as like for like.

**Chemical Composition**

An analysis between the Australian and Chinese plumbing product standard shows that there is a difference in the grades of copper that can be used in the manufacture of seamless copper tube. The required grade for AS 1432 copper tube is listed in Section 2 Materials of AS 1432 (p.6) and reads such that *Tubes shall be manufactured from phosphorous deoxidised copper complying with the chemical composition requirements of alloy designation C12200 of AS 2738 as specified in Table 2.1:*

**TABLE 2.1**  
**CHEMICAL COMPOSITION**

Element	Composition %	
	Min.	Max.
Copper (including silver)	99.90	—
Phosphorus	0.015	0.040

**Non-Confidential Table 3: AS 1432 Chemical Composition**

The copper feed grades specified in Chinese G/BT 18033 provide two options; T2 which is a minimum 99.90% copper (same as the above); and TP2 which is phosphorous deoxidised copper:

**Table 2: Chemical composition of the tubes:**

Grade	Major constituent, %		Impurity constituent, % not more than									
	Cu+Ag	P	S	Bi	Sb	As	Fe	Ni	Pb	Sn	Zn	O
T2	≥99.90	—	0.005	0.001	0.002	0.002	0.005	0.005	0.005	0.002	0.005	0.06
TP2	≥99.90	0.015~0.040	0.005	0.001	0.002	0.002	0.005	0.005	0.005	0.002	0.005	0.01

**Non-Confidential Table 4: GB/T 18033 Chemical Composition**

Based on the non-mandatory standard, the use of either chemical composition is available and evaluation of the material used for sales in the exporters local market would need to be determined/chosen.

From the preceding commentary, it is evident that the verification team's conclusions in INV 557 that the differences between domestic and exported goods cannot be distinguished, and that the costs of production for models sold on the domestic and export markets are the same, is incorrect. Critically, the conclusion that domestic and exported goods are interchangeable is also flawed and incorrect.

**ADRP Decision 146 – 150; The Panel Member's View on International Standards and WT**

The Panel Member has highlighted that neither International Standards nor WT were key characteristics identified by the Commission in formulating the MCC's in INV 557, despite submissions by MM Kembla for these characteristics to initially be included, alongside a similar recommendation by the Chinese exporter, Zhejiang Hailiang.<sup>15</sup> In assessing the comparison-related challenges under the MCC structure, the Panel Member noted:<sup>16</sup>

*It was apparent from the submissions and clarifications, during the Second and Third Conferences, that the product model mix was complex with different combinations and ranges of OD and WT (resulting from differing standards). This appeared to create large variances in characteristics in the MCC's, with differing effects on the weight and conversion costs (and therefore on total cost of production).*

*The ADC adopted a broad approach to the MCC's, focussed on similarly costed and priced products being categorised in the same MCC's. The ADC was satisfied that the MCC categories ensured that high cost exported models were compared with similar high cost models sold on the domestic market, and that in this*

<sup>15</sup> Ibid, paragraph 128 (p. 44).

<sup>16</sup> Ibid, paragraph 130, 131, 132 (p. 45-46).

way the MCC structure accounted for a differences in International Standards between goods (including WT).

...

*I had difficulty with the broad approach adopted and how it accounted for **the very real physical differences** (and the resulting non-linear cost differences) related to different International Standards and WT. [emphasis added].*

The Panel Member concluded that the Commission's reasons for the exclusion of WT (or International Standards) as a specific MCC criteria was incorrect, and that it is undoubtedly correct that the thinner the tube, the less the weight (and amount of copper used), which then has a significant effect on the cost and resultant selling price of the seamless copper tube product. In other words, failing to recognise the important cost and selling price differences of the practice of drawing thin resulted in the Commission not ascertaining the normal value correctly.

Further:

*I noted the concerns of MM Kembla's relating to the ADC's consideration of weight, being 'nominal weight' (based on pricing as per the standard industry-wide formula) and the contention that the ADC failed to recognise the distinction between pricing based on nominal weight, rather than actual weight, with nominal weight being significantly more than the actual weight because of the tolerances and the practice of drawing thin. I considered this to be a valid concern, which cast further doubt on the ADC's methodology of establishing the MCC's, without taking WT (or International Standards) into consideration.<sup>17</sup>*

#### **ADRP Decision 146 – 150; The Panel Member's View on Capping & Cleaning Costs**

MM Kembla maintains that the cost of cleaning and capping refrigeration seamless copper tube is, contrary to the view taken by the Commission throughout INV 557, not insignificant or immaterial, and that it is a key consideration that affects price comparability.

Capping and cleaning costs represent a material portion of conversion costs for AS/NZ 1571 refrigeration tube. As illustrated in MM Kembla's submission of 14 May 2021,<sup>18</sup> the cost of cap material and the associated process of capping for MM Kembla's top 10 products during the investigation period was a weighted average AU\$[XXX]/metric tonne, and represented [XX]% of the total conversion/fabrication cost of capped refrigeration tube. This analysis *excluded* cleaning costs. The cleaning/washing process required prior to capping is an additional cost of AU\$[XXX]/metric tonne (these metrics are further assessed below at ii).<sup>19</sup>

Capping and cleaning costs are a direct and materially significant cost to ensure compliance with AS/NZS 1571, yet the Commission was satisfied, prior to TER 557, that cleaning and capping model characteristics did not generate material selling price and costs differences between domestic and export sales. In the same manner to which it sought to quantify wall thickness product characteristics (i.e., drawing thin), the Commission verified capping costs for each specific product code using the MCC framework, and did not identify a material difference in selling price between capped and uncapped copper tube for the verified exporters.<sup>20</sup>

MM Kembla's view, as put forward previously, is that most of the seamless copper tube manufactured by Chinese and Korean producers is for the domestic refrigeration markets. Drawing thin is a way to substantially reduce costs

---

<sup>17</sup> Ibid, paragraph 134 (p. 46-47).

<sup>18</sup> INV 557, Folio No. 23.

<sup>19</sup> Ibid, Folio No. 35, p. 26.

<sup>20</sup> ADRP Decision No. 146 – 150: Copper Tube exported from the People's Republic of China and the Republic of Korea. June 2022, paragraph 146 (p. 50).



in this competitive and unregulated market. MM Kembla also maintains that verified exporters do not maintain detailed capping and cleaning cost calculations for each model sold.

Throughout INV 557 verification processes, the Commission examined capping and cleaning costs for each cooperating exporter and observed that these were not a material component of the cost to make seamless copper tube. The Commission was also unable to identify a material difference in selling price between capped and uncapped tube for verified exporters.

The Panel Member has concluded that there appears to be a substantial difference in cleaning and capping costs associated with refrigeration products,<sup>21</sup> based on the information and submissions provided by MMK during the inquiry:

*MM Kembla's submissions during the investigation, in regard to this [capping/cleaning costs] issue, were detailed and based on verified costing information, and they were not disputed in any way by the ADC. I found them to be persuasive. MM Kembla's claimed the discrepancy in the Chinese exporter's accounts that did not show increased costs for cleaning and capping, was due to the exporters' costing systems not separately capturing these costs and all products having an average fabrication cost.<sup>22</sup>*

*Since the exported products would have been required to meet the same Australian standards as MM Kembla, the discrepancy in the exporters' per unit cleaning and capping costs, should have raised questions for the ADC as to whether the exporters' costing system effectively captured the specific costs, as reasonably argued by MM Kembla. The ADC did not appear to follow-up on this line of enquiry.<sup>23</sup>*

*The ADC appeared to only superficially address MM Kembla's detailed submissions and costings differences, such as focusing on the PVC cap used by Hailiang for capping to come to the conclusion that capping costs were minimal, without considering the other elements of the cleaning and capping costs referenced by MM Kembla. The ADC did not address the possibility put forward by MM Kembla that the costs of cleaning and capping were overshadowed by the savings on copper through the practice of drawing refrigeration tube thinner, in the large competitive and unregulated refrigeration market in China.<sup>24</sup>*

Given the major differences in the physical characteristics of the goods, arising from differing international standards, and in particular WT and the corresponding impact this has on capping and cleaning, MM Kembla submits that comparable like goods are not sold on the Chinese and Korean domestic markets.

#### **b. Commercial Differences**

##### ***Directly Competitive / Commercially Interchangeable***

MM Kembla submits that the goods are not directly competitive – the goods do not compete in either the Australian market or Chinese/Korean markets. Seamless copper tube made to the Australian standard AS 1432 is not sold in China or Korea as there are no products sold with the same WT, outside diameter, and pressure rating combination.

The goods are specifically manufactured for the Australian market and compete with other suppliers in the Australian housing and construction markets.

---

<sup>21</sup> Ibid, paragraph 148 (p. 51).

<sup>22</sup> Ibid, paragraph 150, p. 52.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid, paragraph 52, p. 53.

The foreign like goods are not commercially interchangeable as they do not meet the following Australian mandatory requirements:

- National Construction Code (**NCC**) in Australia (Vol.3 Plumbing Code of Australia). The NCC has no provision to allow the use of any alternative standard of copper tube to be used in plumbing, drainage and gas applications in Australia. As a result, the exporters local product and product used in Australia is not interchangeable. The referenced copper standard in the Plumbing Code of Australia is AS 1432 – Copper tube for plumbing, gas fitting and drainage applications. There is no provision for the use of the Chinese standard for plumbing copper tube G/BT 18033 within the Australian NCC;
- The exporters local product standard is not referenced in the WaterMark Schedule of Products for plumbing tube in Australia; and
- The standard for copper tube used in the exporters local market does not fall within the WaterMark Schedule of Products and does not require WaterMark Certification (which comes at a cost).<sup>25</sup>

The WaterMark Certification Scheme is a mandatory Australian certification scheme for certain plumbing and drainage products to ensure they are fit for purpose for use in plumbing and drainage installation. The Australian Building Codes Board manages and administers the Scheme. The Joint Accreditation System of Australia and New Zealand (JAS-ANZ) accredits WaterMark Conformity Assessment Bodies (WMCABs), who in turn evaluate and certify plumbing and drainage products.

As per the current list of products in Volume Three (Plumbing Code of Australia) of the NCC, there is no provision for other product standards for seamless copper tube:

Pipes – Metallic			
Product type	Product scope/application	Specification	Year
Copper alloy pipe	Round seamless copper alloy tubes intended for use in pressure and non-pressure plumbing and drainage applications as follows: a) Brass tubes intended primarily for sanitary plumbing services; and b) Copper nickel tubes intended primarily for water services.	AS 3795 Copper alloy tubes for plumbing and drainage applications	1996
Copper pipe	Round seamless copper tubes intended for use in pressure and non-pressure plumbing and drainage applications. Note: Product testing specific to gas products are not required.	AS 1432 Copper tubes for plumbing, gasfitting and drainage applications	2004
Ductile Iron pipe	Ductile iron pressure pipes centrifugally cast in moulds, and ductile iron fittings of nominal sizes up to and including DN 750. Pipes intended primarily for conveying water under pressure, but may be used for conveying sewage or other liquids.	AS/NZS 2280 Ductile iron pipes and fittings	2020
Stainless steel pipe	Stainless steel pipes and tubes in the range of DN 15 to DN 300 used in hot and cold water supply systems.	AS 5200.053 Stainless steel pipes and tubes for pressure applications Note: See NoD 2017/4.3	2008
	Pipes for non-pressure applications in the operating temperature range from - 40 C to 100 C.	AS 3495 Authorization requirements for plumbing products - Stainless steel non-pressure pipes and fittings	1997

**Non-Confidential Table 5: NCC Copper Tube Specifications**

The goods are also not commercially interchangeable. It is illegal to sell Chinese or Korean standard tube in the Australian market and plumbing copper tube in China and Korea is, as discussed extensively above, made to different non-mandatory domestic standards.

<sup>25</sup> The relevant certification requirements for products are specified in the WaterMark Schedule of Products <https://watermark.abcb.gov.au/sites/default/files/resources/2021/Schedule-of-Products-WaterMark.pdf>

The Canada Border Services Agency (CBSA) in the making of its final determination with respect to the dumping of certain copper tube originating in or exported from China, Republic of Korea, Brazil, Greece and Mexico,<sup>26</sup> determined that exporters did not sell identical or similar goods in their domestic market due to the fact the products were made to different product standards and subsequently that *...the model characteristics did not match with the model characteristics of the subject goods sold to Canada.*<sup>27</sup>

In its determination of like goods, the CBSA's investigations revealed that:<sup>28</sup>

*Copper Tube sold in each of the named countries is either produced to other international standards that do not meet ASTM standards or is produced to ASTM standards that do not require third party certification [e.g., the WaterMark for Australian tube] and do not meet the Canadian requirements of the standards.*

The CBSA determined that the domestic and export models were not alike due to the different dimensional and form stipulations and characteristics of the various standards:<sup>29</sup>

*ASTM standards specify characteristics such as tube type, outer diameter, wall thickness, and weight. Since the model characteristics of the domestic goods did not match with the model characteristics of the goods sold to Canada, it was, therefore, not possible to determine normal values pursuant to section 15 of SIMA, based on sales of like goods in the country of export. Normal values were, therefore, determined pursuant to paragraph 19(b) of SIMA, based on an aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.*

By way of specific example, the CBSA found for Nungwon that:<sup>30</sup>

*Nungwon sold like goods in its domestic market; however, it was unable to provide actual weight information for these goods. As mentioned previously, the cost of copper accounts for 75% to 95% of the total cost of production of Copper Tube. As a result, a slight difference in the amount of copper used to produce Copper Tube will affect both the cost and the selling price of the goods. Any difference between the weights of Copper Tube sold domestically and Copper Tube sold to Canada must be accounted for. Therefore, the CBSA was unable to determine normal values pursuant to section 15 of SIMA, based on sales of like goods in the country of export, as there was insufficient information to make the necessary adjustments to the domestic selling prices to reflect the differences in weights between the domestic models and the models exported to Canada. Normal values were, therefore, determined pursuant to paragraph 19(b) of SIMA, based on an aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.*

INV 557 shares many similarities vis-a-vis copper tube product standards and the required third-party certification with that of the Canadian findings. It would be remiss for the Commission to not consider the CBSA's reasoning in determining that varying product standards lead to dissimilarities in model characteristics, therefore making it impossible to determine normal values based on sales of like goods in the country of export.

---

<sup>26</sup> Certain Copper Tube Dumping (Brazil, China, Greece, Mexico and South Korea) & subsidizing (China). Refer <https://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/ct-eng.html>

<sup>27</sup> Statement of Reasons Concerning the making of final determinations with respect to the dumping of CERTAIN COPPER TUBE ORIGINATING IN OR EXPORTED FROM THE FEDERATIVE REPUBLIC OF BRAZIL, THE HELLENIC REPUBLIC, THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF KOREA AND THE UNITED MEXICAN STATES and the subsidizing of CERTAIN COPPER TUBE ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA. Refer <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1401/ad1401-i13-fd-eng.html>

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid, paragraph 141.

## ***Price Competition & Consumption***

There is no price competition between products of different standards. Within Australia price is important; major tube customers like [XXXXXX] prefer to buy from MM Kembla as product quality is assured. Imported tube is widely known to be of questionable quality and often does not comply with Australian standards.

Suppliers, builders, and tradesmen who use non-compliant tube carry significant long-term risk of product failure where they would become liable for damages. In China, certain products can be made to any wall thickness as a way of reducing cost, particularly when the copper raw material cost represents ~95% of the selling price. This cannot happen in Australia when copper tube needs to be made to strict product standards.

## ***Distribution Channels***

The distribution channels for refrigeration seamless copper tube (i.e., tube that is cleaned and capped) are very different to distribution channels for plumbing grade tube. Plumbing copper tube in China represents only [XX]% ([XXX – XXX] tonnes) of the total market.<sup>31</sup> and is not used in domestic construction. Rather, it is mainly used in applications for high end buildings, such as hotels, etc. Refrigeration tube accounts for [XX]% ([XX] million tonnes) of the market and is mostly sold into OEM applications (air conditioning manufacturers, heat exchangers, HVAC applications).<sup>32</sup> In Australia, this OEM market is very small, at less than [XX]%. Furthermore, the majority of imported copper tube are not the subject goods to this investigation. Therefore, the channels to market are very different. Copper tube in Australia is marketed to the end user (contractor and households) which is not the case in China. All products in Australia are sold via plumbing and refrigeration merchants, representing less than [XX]% of plumbing tube and much less for refrigeration tube.

Given the major differences in the commercial aspects of the goods, arising from the above-noted characteristics, MM Kembla submits that comparable like goods are not sold on the Chinese and Korean domestic markets.

### ***c. Functional Differences***

#### ***Functional Substitutability***

MMK Kembla submits that whilst some Chinese and Korean domestic tube may be functionally alike to the exported tube, the goods exported to Australia are manufactured exclusively for the Australian market and made to Australian standards. The requirements of copper tube according to Australian standards are incompatible with the domestic Chinese and Korean ones. As such, the domestic like goods and exported subject goods are not interchangeable between the Chinese/Korean and Australian markets. They are designed for different safe working pressures and end-use capabilities.

The goods are also not interchangeable as the engineering specifications are different. This is demonstrated by the fact that seamless copper tube products sold on the Australian export market are not sold in the Chinese and Korean domestic markets, and vice versa.

Given differences in the functional aspects of the goods, arising from the above-noted characteristics, MM Kembla submits that comparable like goods are not sold on the Chinese and Korean domestic markets.

---

<sup>31</sup> Confidential Attachment 1.

<sup>32</sup> Confidential Attachment 2.

## **Quality Differences & Consumer Preferences**

The Australian exported, as compared to the domestically produced Chinese and Korean goods, have very different quality characteristics. As critiqued above, the standards are not mandatory in China and Korea. Chinese and Korean producers manufacture thin-walled tube to reduce copper costs. The goods exported to Australia frequently do not comply with Australian standards.

Major consumers such as [XXXXXX] prefer to rely on seamless copper tube from MM Kembla that meets Australian standards, rather than risk buying non-conforming imported copper tube. Brands in Australia are specified by hydraulic consultants and developers which is not the case in China or Korea. In no instance are imported copper tube brands specified, and in no instance are brands to a different standard specified.

In terms of consumer preferences, MM Kembla submits that it is unlikely to change in the future. Major Australian consumers of seamless copper tube can only purchase and use copper tube that complies with Australian standards.

Given the major functional differences arising from the above-noted characteristics, MM Kembla submits that comparable like goods are not sold on the Chinese and Korean domestic markets.

### **d. Production Differences**

#### **Dissimilar Manufacturing Processes**

Firstly, there are significant differences between cleaned and capped tube for the refrigeration market as compared to tube produced for the plumbing market. Secondly, there exists significant differences in the cost of ensuring quality – production yields can be higher where quality is not closely managed, and production costs are lower. Production costs, measured in dollars/tonne, are also higher in Australia due to different processing throughput rates for different weight/length and wall thickness ratios which are specific to the Australian standards.

Products made to different standards have different costs. MM Kembla manufactures products for export to different standards; such items have different costs of manufacture in the production system. The cost to manufacture refrigeration tube versus plumbing tube, for example, is approximately [XX]% higher.<sup>33</sup> The cost to manufacture to EN standards (against which MM Kembla exports) is different to Australian standards.

Given the major production differences arising from the above-noted characteristics, MM Kembla submits that comparable like goods are not sold on the Chinese and Korean domestic markets.

#### **PVC Electrical Cables from China**

MM Kembla refers to the Commission's findings in the exporter verification reports for *Guilin International Wire and Cable Co. Ltd. (Guilin International)*<sup>34</sup> and *Nanyang Cable (Tianjin) Co. Ltd. (Nanyang Cable)*<sup>35</sup> in the dumping and subsidisation investigation on PVC flat electric cables from China (INV 469), where the locally produced goods differed from the exported goods due to the latter being manufactured to Australian Standard AS 1432 and AS/NZ 1571 whereas the locally produced goods were manufactured to Korean Standard KS D5301 (equivalent to Japanese Standard JIS H3300).

In INV 469, the Commission acknowledged that there existed a difference between the goods sold domestically in China and the exported goods for both cooperating exporters on the following grounds:

---

<sup>33</sup> Confidential Attachment 3: Comparison of Plumbing and Refrigeration standard fabrication costs and sales prices.

<sup>34</sup> INV 469, Folio No. 19, p. 4-5.

<sup>35</sup> INV 469, Folio No. 15, p. 4-5.

Like Goods on the domestic market – Criteria	INV 469 – Guilin International / Nanyang Cable Summary
Physical Likeness	The domestic goods were manufactured to a different technical standard which physically differentiated them from exported products. The domestic goods comprised a wire of a single copper core whereas the exported goods comprised three copper cores configured in parallel having distinct designations, which corresponded to the Australian Standard. They were also fire resistant.
Commercial Likeness	The goods were specifically manufactured for the Australian market and competed with other suppliers in the Australian housing and construction markets.  There was no marketing of the domestic good in the housing market in China, whereas the export good was a key product that competed with other suppliers in the Australian housing and construction markets.
Functional Likeness	Whilst some domestic cable may have been functionally alike to the exported cable, the goods exported to Australia were manufactured exclusively for the Australian market and complied with the Australian standards. The requirements of electric cable according to the Australian standard were incompatible with the domestic China standards for PVC cable. As such, the domestic and export goods were not interchangeable between Chinese and Australian markets.
Production Likeness	There was a significant production difference regarding the number and diameter of the wires used in the manufacturing of the domestic and export product.

**Non-Confidential Table 6: INV 469 Like Goods Assessment**

The verification teams considered that the goods produced by Guilin International and Nanyang Cable for domestic sales did not have characteristics closely resembling those of the goods exported to Australia and were therefore not like goods in accordance with subsection 269T(1).

The Commission's findings in INV 469 that PVC electrical cable manufactured for the Chinese domestic market was not identical to the PVC electrical cable exported to Australia due to the difference in National Standards applies equally here to the differences in the Chinese/Korean domestic and export markets for seamless copper tube. MM Kembla requests that the Commission critically appraise this precedent in its like goods reconsideration assessment.

**ii. Model Control Code Framework**

The Dumping and Subsidy Manual (**the Manual**) states that the purpose of the MCC structure is to:<sup>36</sup>

*..identify key characteristics that will be used to match models of the goods exported to Australia and like goods sold domestically in the country of export. In determining the MCC structure, the Commission will have regard to differences in physical characteristics that give rise to distinguishable and material differences in price.*

The MCC structure in relation to any goods is not static. MM Kembla submits that the Commission can consider modifications to the MCC structure from the original investigation, where justified. The Manual also states that:

*[S]uch modification may be considered, for example, where certain models sold by the exporter do not align within the proposed MCC structure, such as models specific to the exporter; unanticipated factors that the*

<sup>36</sup> The Manual, p. 48.

*Commission did not have regard to in determining the MCC; or new information on the characteristics that is put before the Commission.*

The Panel Member in ADRP Decision 146 – 150 has concluded that the Commission’s exiting MCC framework was insufficient to identify, account for, and permit fair comparison of seamless copper tube made to different international standards, WT variances between product types, and for capping & cleaning costs.

Should the Commission not agree with the view articulated above that the correct and preferable like goods assessment is that there is an absence of like goods sold on the Chinese and Korean domestic markets and that normal values should therefore be assessed under subsection 269TAC(2)(c), MM Kembla proposes the following revised MCC structure:

Item	Category	Sub-category	Identifier	Sales Data	Cost data
1	Standard	Copper tube used for plumbing, gas fitting, drainage and/medical gas applications, as manufactured to AS 1432.	P	Mandatory	Mandatory
		Copper tubes used for refrigeration and air conditioning applications, as manufactured to AS/NZ 1571.	R		
		Copper tubes used for engineering purposes, as manufactured to AS 1572.	E		
2	Outside Diameter (mm)	9.52	9	Mandatory	Mandatory
		12.70	12		
		15.88	15		
		19.05	19		
		22.22	22		
		25.40	25		
		28.58	28		
		31.75	31		
		34.92	34		
		38.10	38		
		41.28	41		
		50.80	50		
53.98	53				
3	Wall Thickness (mm)	0.81	81	Mandatory	Mandatory
		0.91	91		
		1.02	102		
		1.14	114		
		1.22	122		
		1.40	140		
		1.42	142		
		1.63	163		
		2.03	203		
		2.41	241		

4	Temper	Hard	H	Mandatory	Mandatory
		Bendable or Half Hard	B		
		Annealed or Soft	A		
5	Lagging	Lagged	L	Mandatory	Mandatory
		Unlagged	A		
6	Capping	Capped	C	Mandatory	Mandatory
		Uncapped	U		
7	Form	Straight	S	Mandatory	Mandatory
		Coiled	C		
8	Finned or internally grooved	Finned	F	Mandatory	Mandatory
		Internally Grooved	G		
		Plain	P		

**Non-Confidential Table 7: Proposed Model Control Codes**

The key critical amendment is the identification of models sold domestically on the Chinese and Korean markets to the Australian standards (at MCC item number 1). The key critical new inclusions are MCC item number 2 (Outside Diameter) and MCC item number 3 (Wall Thickness). These amendments are consistent with the Panel Member's comments in Decision No. 146-150 that the Commission did not adequately address in the MCC structure the very real physical differences across the product range.<sup>37</sup>

The revision of the original MCC structure to that proposed above ensures that the correct comparisons are made between the exported and home market goods. Cost and price comparability adjustments as required under s269TAC(8) (drawing thin and nominal versus actual weight, and capping and cleaning costs) are discussed below.

### ***International Standards & Drawing Thin***

In addition to determining normal value adjustments with reference to the product tolerance levels applicable to seamless copper tube standards between the Australian and Chinese/Korean markets, MM Kembla highlights with the Commission the fact that all producers of seamless copper tube would account for the gain that arises from the process of drawing thin (i.e. the gain derived from manufacturing the goods at actual weight, then invoicing at nominal weight) in the financial accounts/trial balance.

For MM Kembla, this process can be described as follows:

*[Commercial-in-confidence accounting processes]*

MM Kembla submits that the specific practices by which subject exporters account for the drawing thin difference may vary to the above, but that a gain is nonetheless periodically recognised. Assessing the gains derived by subject producers from drawing thin to Chinese and Korean standards will assist the Commission quantify the upwards normal value adjustment required.

### ***Capping and Cleaning Costs***

<sup>37</sup> Refer, for example, p. 46 (para. 33) of Decision No. 146-150 where the Panel Member stated that *I consider that the ADC's reasons for the exclusion of WT (or International Standards) as a specific MCC criterion, is flawed and I found MM Kembla's arguments in this regard to be persuasive. Also conclusively at para. 136 that ...I consider that the ADC's decision not to include international standards or WT (by the process of drawing thin) as a separate category in the MCC structure, or alternatively, by not making appropriate adjustments in the comparisons of normal value and export price, was not the correct or preferable decision.*



MM Kembla has earlier provided detailed costings to the Commission by way of *Confidential Attachment 7 – Capping & Cleaning Costs – Bill of Materials extract ERP* in its response to Statement of Essential Facts 557 (**SEF 557**).<sup>38</sup> At page 26 of the response, MM Kembla included the below table detailing the average capping and cleaning costs for two of its MCC's manufactured during the inquiry period (a bendable/half hard tempered product denoted as MCC R-B-U-C-S-P, and full hard tempered product denoted as MCC R-H-U-C-S-P):

[*Confidential Table 8 (reproduced): MM Kembla Capping and Cleaning Costs*]

The weighted average capping costs for the bendable tempered product was highlighted as AU\$[XXX]/tonne, and the capping cost plus the additional off-line washing cost required for the full hard tempered product was highlighted as AU\$[XXX]. MM Kembla proposes that the Commission utilise these cost details when making upwards normal value adjustments for capping and cleaning costs. As evidenced by MM Kembla at page 14 of the SEF 557 response, Australian and Chinese total conversion costs for seamless copper tube (before drawing thin) are [*conversion cost comparisons*]. On this basis, capping and cleaning costs can be assessed as [*comparison*], with the per/tonne rates highlighted above suitable to ensure fair comparison between the exported subject goods and the domestic like product.

In terms of selling price, refrigeration tube is evidenced in MM Kembla's Confidential Appendix A6.1 as being \$[XXX]/tonne higher (or [XX]%) than the equivalent selling price for plumbing tube.

MM Kembla request that the Commission critically reappraise this information, and therefore welcomes and encourages full engagement during the resumed inquiry. Quantifying and adjusting for capping and cleaning costs is critical to ascertaining correct Chinese and Korean normal values.

### **Volume of relevant sales**

If the volume of sales of like goods in the country of export considered relevant for the purpose of determining a normal value under section 269TAC(1)) is less than five per cent, the Commission will consider whether the volume is large enough to permit a proper comparison between domestic and export prices for the purposes of assessing the existence and margin of dumping.<sup>39</sup>

As noted earlier above, evidence available to MM Kembla suggests, in the case of the Chinese market for like goods, that the volume of sales of refrigeration tube holds the largest share, at [XXX] million tonnes.<sup>40</sup> The Chinese market for plumbing tube is approximately [XXX] tonnes, primarily used in high end building applications such as hotels, etc.<sup>41</sup>

In contrast, of the 12,000 tonnes the Commission has assessed comprised the total Australian market during the inquiry period,<sup>42</sup> the demand for seamless copper tube is primarily for plumbing applications at [XX]% (as evidenced in MM Kembla's Confidential Appendix A3). MM Kembla therefore submits that the Commission's reassessment may determine that the volume of domestic sales is not large enough to permit a proper comparison for plumbing tube, and that normal values needs to be determined under s269TAC(2).

---

<sup>38</sup> INV 557, Folio No. 35, p. 31-32.

<sup>39</sup> The Manual, p. 28.

<sup>40</sup> Confidential Attachment 2.

<sup>41</sup> Confidential Attachment 1.

<sup>42</sup> TER 557, p. 29.

## 5. Reconsideration of Arms-length Export Prices

### **MM Kembla's View**

The Commission assessed that Zhejiang Hailiang of China was the exporter of the goods, and determined export prices in accordance with s269TAB(1)(c) having regard to all the circumstances of the exportation. The Commission also confirmed that Zhejiang Hailiang exported through a related entity, Hong Kong Hailiang Metal Trading Limited (**Hailiang HK**). Hailiang HK on-sold the subject goods to another related party that is the Australian importer – Hailiang (Copper) Australia Pty Ltd (**Hailiang Australia**).

During INV 557, the Commission stated 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 China 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 that the sales between the exporter and its affiliated trading arm based in Hong Kong, were not arms length.<sup>43</sup>

The key issue of contention here is that, notwithstanding the Commission's related party finding between the exporter and intermediary trader, the Commission was satisfied that sales between Hailiang HK and the Australian importers (related and unrelated) were at arms length. MM Kembla submitted that this finding was questionable, given that the Commission had confirmed the existence of off-invoice rebates that had been included in the profitability calculations of the importer.<sup>44</sup>

Prior to the publication of TER 557, MM Kembla reemphasised with the Commission that:<sup>45</sup>

*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 \$[XX] to \$[XX] per tonne. At the top end, that is an approximate [XX] 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 s269TAA(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 was not clear to MM Kembla how the Commission satisfied itself that the rebates provided by Hailiang Australia was not evidence of a 'compensatory arrangement' for the purposes of s269TAA(1)(c). This resulted in the Commission not undertaking deductive export price calculations to determine whether Hailiang Australia's selling prices into the Australian market were at full cost recovery (i.e., that all costs including the copper cost were covered by the Australian selling price).

In its response to SEF 557, MM Kembla provided the Commission with a deductive export price analysis confirming that the selling prices by Hailiang Australia were not arms length as they failed to recover the raw material copper cost, plus fabrication and SG&A expenses incurred by the Chinese exporter. The Commission stated in TER 557 that MM Kembla's deductive export price calculation included a number of assumptions and estimates, while the Commission was in possession of actual costs and selling prices that were used in Hailiang Australia's profitability

---

<sup>43</sup> INV 557, Folio No. 45, p. 10.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

assessment. The Commission stated that it therefore did not consider the calculation presented by MM Kembla to be an accurate reflection of Hailiang Australia's ability to recover costs.<sup>46</sup>

MM Kembla's deductive export price calculations yielded an average loss of US\$[XXX]/tonne (negative [XX]% of Net Selling Value), which was before including the cost of fabrication, SG&A and profit for Zhejiang Hailiang, and SG&A recovery for Hailiang HK.<sup>47</sup> Estimate or otherwise, this is significant and is indicative of a non-arms-length relationship between the parties.

MM Kembla also contended that without verification of Hailiang HK, the full extent of off-invoice rebates paid to Australian importers and customers could not be fully assessed.

### **The Panel Member's View**

In relation to the profitability analysis of Hailiang Australia, the Panel Member concluded that:<sup>48</sup>

*...at the time of making the decision, the Commissioner could not have been "satisfied" as to the profitability of Hailiang Australia and the arms length nature of the sales between Hailiang HK and Hailiang Australia, if the off-invoice rebates were not taken into consideration in the profitability analysis, as reflected in the relevant spreadsheet at the time of the decision (being Confidential Attachment 3 to Hailiang Australia's importer verification report). The fact that the additional 'high-level' profitability analysis (subsequently undertaken by the ADC, for the purposing of responding to the Notice), found that Hailiang Australia was still profitable even when the off-invoice rebates were taken into consideration, does not detract from the apparent inadequacy of the profitability analysis of Hailiang Australia at the time the decision was made.*

In relation to sufficiency of verification, the Panel Member concluded it problematic that there was no verification of Hailiang HK, given that the facts presented by MM Kembla were indicative of the possibility that rebates were being paid to Australian customers by the trader.<sup>49</sup>

MM Kembla maintains that the Commission erred in INV 557 in the export price assessment concerning sales by Hailiang HK to Australian customers (primarily Hailiang Australia), and therefore requests that a full verification of Hailiang HK be undertaken.

### **Arms-length Precedent Considerations**

MM Kembla draws the Commission's attention to recent non-arms-length determinations involving related party relationships between exporter, intermediary trader, and Australian importer. In the Commission's inquiry into the continuation of anti-dumping and countervailing measures applying to certain Hollow Structural Sections (**HSS**) exported to Australia from China, Korea, Malaysia, and Taiwan (Investigation No. 590), the relationship between the Chinese exporter Dailian Steelforce and other entities within the same corporate group involved throughout the Australian export supply chain was assessed as follows:<sup>50</sup>

*...the commission found evidence a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller appeared to influence the price because:*

---

<sup>46</sup> TER 557, p. 36.

<sup>47</sup> SEF 557 response, p. 8.

<sup>48</sup> ADRP Decision No. 146 – 150: Copper Tube exported from the People's Republic of China and the Republic of Korea. June 2022, paragraph 221 (p. 74).

<sup>49</sup> Ibid, paragraph's 222-227, p. 75-76.

<sup>50</sup> INV 590, Final Report, p. 75.

- *Dalian Steelforce, Steelforce Australia, Austeel Trading and Austube Mills are ultimately wholly owned by InfraBuild*
- *Dalian Steelforce was a supplier of the goods to Steelforce Australia, via Austeel Trading and to Austube Mills*
- *Prices between Dalian Steelforce, Steelforce Australia, Austeel Trading and Austube Mills are determined according to an internal pricing guideline.*

In Investigation 578 concerning the alleged dumping of Quench & Tempered Steel Plate from the United States, the Commission similarly assessed a non-arms-length relationship across the full Australian export supply chain, as originating with the cooperative United States exporter *SSAB Alabama*:

*...the commission found evidence that 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 as:*

- *SSAB AB ultimately wholly owns SSAB Alabama and SSAB AU*
- *SSAB Alabama was the exclusive supplier of the goods to SSAB Swedish Steel Pty Ltd in the investigation period*
- *SSAB Alabama's prices of the goods sold to SSAB AU were determined in accordance with the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration 2017 (the OECD guidelines) which SSAB AB and its subsidiaries adopted.*

The Commission came to the logical economic conclusion in both examples that transactions between related parties across the full Australian export supply chain should not be considered arms-length. The specific pricing-related reasons cited above for this (internal price guidelines, and transfer price arrangements) can be equally applied to the rebate payment relationships between Hailiang HK and Hailiang Australia.

It is precedentially rare in Australian trade remedy inquiries that the Commission determines that only a portion of the export supply chain, where common ownership is shown, is non-arms-length. Yet the Commission has done exactly that in this case, concluding that the HK to Australia component somehow demonstrates a degree of competitive behaviour that would be evident where parties to export transactions are not related. There has been no evidence provided or gathered during this inquiry that would demonstrate any degree of competitive behaviour between Hailiang HK and Hailiang Australia.

In the 2019/20 United States (**U.S.**) Less-Than-Fair-Value Investigation of Seamless Refined Copper Pipe and Tube from the Socialist Republic of Vietnam,<sup>51</sup> the Department of Commerce (**DOC**) found that:

*During the POI, Hongkong Hailiang negotiated the sales prices and issued invoices to its unaffiliated U.S. customers for the subject merchandise shipped directly from Vietnam. Hongkong Hailiang acted as the exporter for all U.S. sales, and as such, Hailiang Vietnam provided sales reconciliation worksheets for the sales of subject merchandise based on Hongkong Hailiang's financial statements.*

*Although Hongkong Hailiang is not a producer, we nonetheless preliminarily find that **there exists a significant potential for manipulation of prices** pursuant to 19 CFR 351.401(f)(2). Specifically, as detailed above, Hailiang Vietnam and Hongkong Hailiang are under common ownership and have intertwined operations. The result is that Hongkong Hailiang not only acts as a conduit for U.S. sales, **but the potential exists for Hailiang Vietnam and Hongkong Hailiang to collectively determine prices,***

<sup>51</sup> Refer Seamless Refined Copper Pipe and Tube From the Socialist Republic of Vietnam: Antidumping Duty Order. Available at [Federal Register :: Seamless Refined Copper Pipe and Tube From the Socialist Republic of Vietnam: Antidumping Duty Order](#). The period of investigation for this inquiry was October 2019 – March 2020.

**negotiate with customers, and manage the sales and distribution process and to otherwise act in unison with one another.** Thus, while Hongkong Hailiang is not a producer, Commerce’s practice is to extend this analysis to resellers and other affiliated parties, where applicable. After analyzing all of the record evidence, we find that Hongkong Hailiang is an affiliated reseller acting in coordination with the primary producer. Therefore, we find that **there exists a significant potential between the entities to manipulate price.** [emphasis added].

Applied here, if the potential exists to manipulate price between Hailing Vietnam and Hailiang HK, it certainly also exists in the price determinations between Hailiang China and Hailiang HK, and then between Hailiang HK and Hailiang Australia., given common ownership and intertwined operations. The Commission is logically compelled to therefore conclude that non-arms-length arrangements extend from the exporter to the Australian importer.

Finally, MM Kembla can evidence the ongoing nature of the non-arms-length relationship:

- At Confidential Attachment 5, MM Kembla provides [commercial-in-confidence contemporary evidence of the non-arms-length relationship]; and
- At Confidential Attachment 6, MM Kembla provides [commercial-in-confidence contemporary evidence of the non-arms-length relationship].

## 6. Reconsideration of Material Injury

In TER 557, the Commission assessed the economic condition of the Australian industry across volume, price and other economic factors:<sup>52</sup>

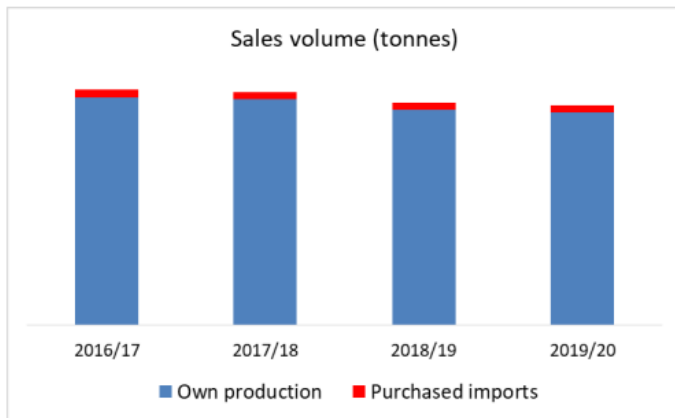


Figure 4 – Sales volume

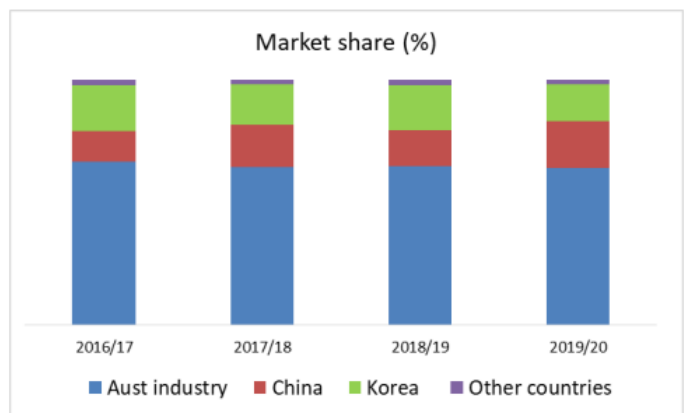
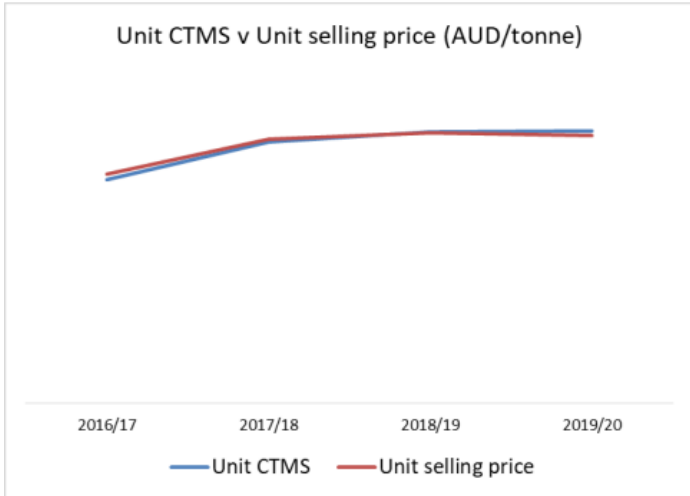


Figure 5 – Market share

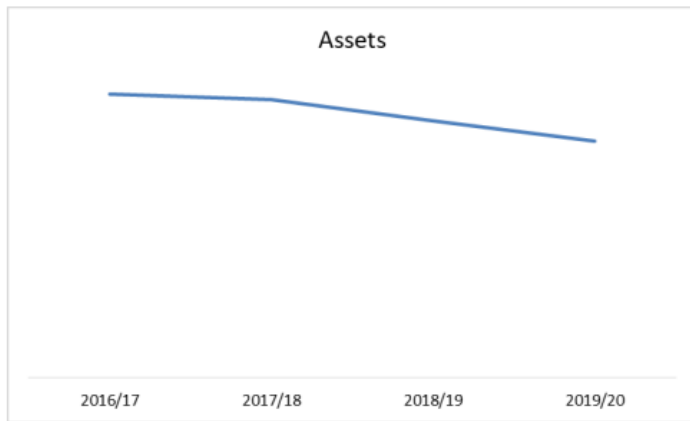
<sup>52</sup> TER 5547, Chapter 8, p. 58-64.



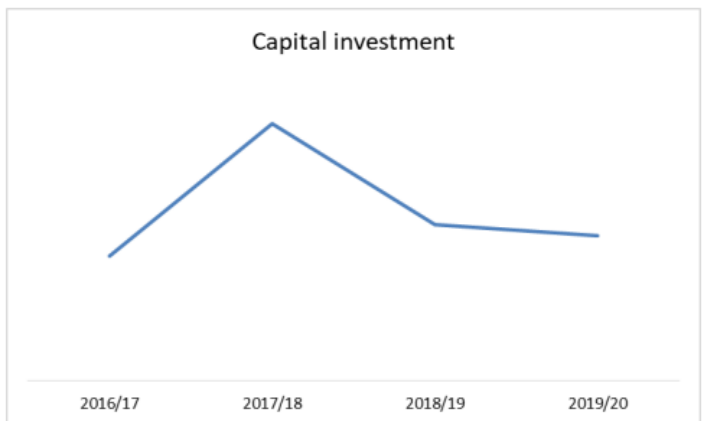
**Figure 6 – Unit price and unit CTMS**



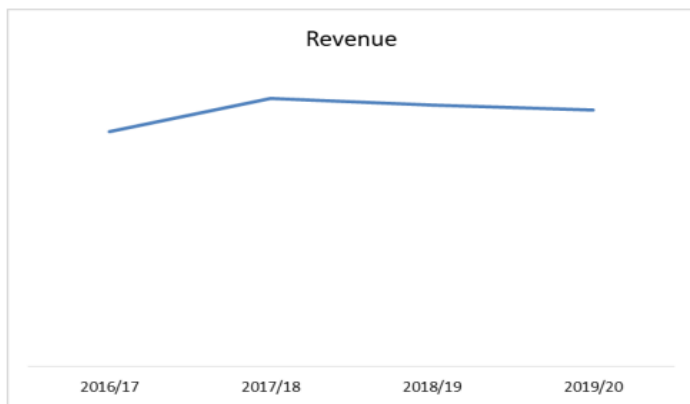
**Figure 7 – Profit and profitability**



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



**Figure 9 – Capital investment**



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



**Figure 11– Return on sales**

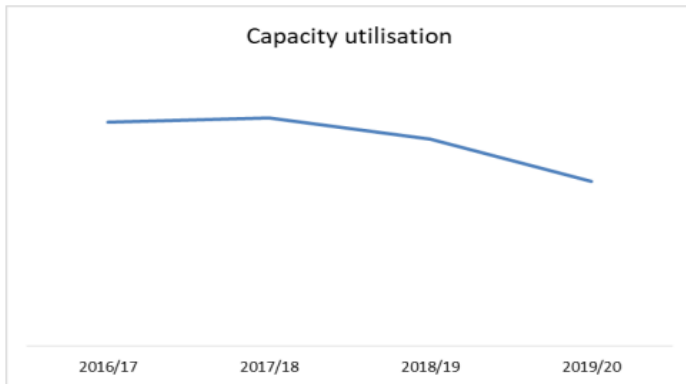


Figure 12 – Capacity utilisation

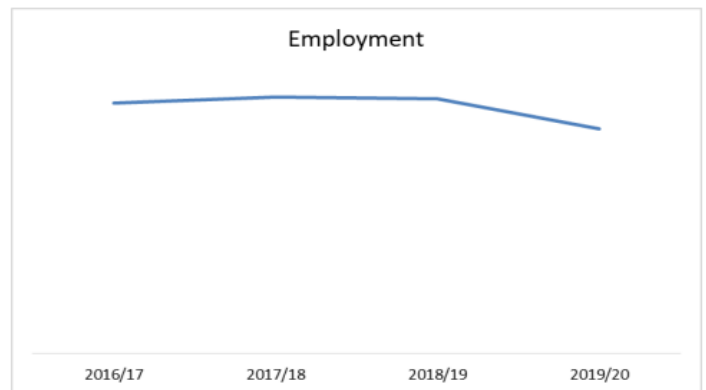


Figure 13 – Employment



Figure 14 – Wages

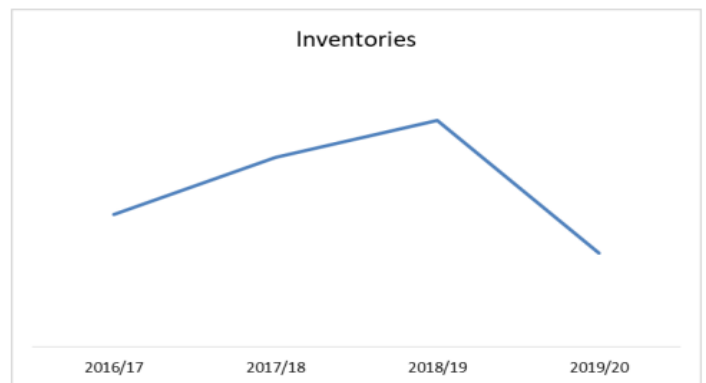


Figure 15 – Inventories

**Non-Confidential Chart Summary 9: TER 557 Economic Condition Assessment Charts (reproduced)**

Based on the above, the Commission considered that MM Kembla had experienced injury in the form of:<sup>53</sup>

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

In its consequent assessment of whether dumping caused material injury to the Australian industry (and on the basis of a negative dumping margin finding for all Chinese exporters), the Commission found in TER 557 that any injury caused by the dumping of goods exported to Australia from Korea by exporters other than Nungwon was negligible.<sup>54</sup>

<sup>53</sup> Ibid, p. 65-66.

<sup>54</sup> Ibid, Section 9, p. 66.

The Commission now needs to revise its variable factor assessments based on the Panel Member's conclusions in ADRP Decision No. 146-150 for both China and Korea. A consideration of the views provided above on the reassessment of normal values and export prices should lead the Commission to determine dumping above de minimis levels, and consequently that exports of dumped goods from China and Korea materially influenced MM Kembla's prices during the inquiry period leading to a material deterioration in its economic condition.

In terms of likely continued dumping and material injury in the absence of measures, the Commission can be informed by the Canadian International Trade Tribunal's (CITT) 2019 expiry review assessment in respect of the above-noted CBSA inquiry into the dumping of circular copper tube exported from Brazil, the Hellenic Republic, China and Korea, and the subsidising of those goods exported from China.

In the absence of measures, the volume impact to the domestic market was assessed by the CITT as follows:<sup>55</sup>

*The Tribunal finds that the rescission of the findings would result in the resumption of large volumes of subject goods being diverted to Canada for the reasons that follow, which apply, unless indicated otherwise, to both the goods from the subject dumping countries (Brazil, Greece, Korea and Mexico) and to the subject goods from China, which are both dumped and subsidized.*

*First, with trade measures affecting copper tube exports to other major markets, the rescission of the findings will make the Canadian market a much more attractive destination for producers of the subject goods.*

*Second, the excess capacity of copper tube producers in the subject countries means that they would have a significant incentive to try to export more volumes to Canada. In addition to excess capacity, it has been noted that, in some circumstances, there has been a deterioration of subject country domestic markets, leading to an increase in inventories. China has a reported overcapacity of copper tube of approximately 400 million pounds, which in and of itself greatly exceeds the Canadian market. Additionally, the CBSA has cited evidence that there is a significant capacity to produce subject goods in Brazil, Greece, Korea and Mexico.*

*Third, the continued presence of subject imports throughout the POR, despite the imposition of dumping and countervailing duties, is indicative of continued interest from foreign producers, from subject countries, in the Canadian market. Although the subject imports were imported in relatively small volumes, their presence reflects that distribution networks of subject goods remain established in Canada. This will facilitate rapid re-entry of larger volumes if the findings are rescinded. Furthermore, the continued export of copper tube, not covered under the product definition, from exporters in subject countries supports this conclusion.*

*Fourth, with slowing growth in the subject countries and investment in Canadian residential and non-residential construction forecasted to remain stable, Canada is an attractive export market. Moreover, despite the domestic supply of like goods over the POR, there is an ongoing demand for imported copper tube.*

In the absence of measures, the price impact to the domestic market was then assessed by the CITT as follows:<sup>56</sup>

*...the Tribunal is of the view that if the findings are rescinded, in order to capture sales and market share in Canada, subject goods from China as well as those from Brazil, Greece, Korea and Mexico, will be priced at or below the low prices of non-subject imports already competing in the Canadian market. This import pricing*

---

<sup>55</sup> Circular Copper Tube Expiry Review No. RR-2018-005, Statement of Reasons. Available at [Circular Copper Tube - Canadian International Trade Tribunal \(citt-tc.gc.ca\)](https://www.citt-tc.gc.ca/circular-copper-tube-canadian-international-trade-tribunal)

<sup>56</sup> Ibid.



would be low enough that it would, at the very least, prevent any price increases by the domestic industry and would most likely result in price depression.

Accordingly, the prices of the subject goods will likely significantly undercut, depress and suppress prices of like goods.

Applied here, MM Kembla submits that parallels can be clearly drawn from the Canadian findings; namely that in the absence of measures, continued dumping of seamless copper tube by China and Korea will cause ongoing material injury to the domestic Australian industry (for the same and similar reasons critiqued by the CITT). In the absence of measures imposed by the Commission in resumed INV 557, MM Kembla will therefore continue to experience material injury from the dumped imports.

## 7. Grounds to publish a Preliminary Affirmative Determination

ADN No. 2020/107 Day 60 Status Report was published on 11 September 2020. The notice was published to inform interested parties as to the reasons why the Commissioner was not, at that time, in a position to publish a Preliminary Affirmative Determination (**PAD**) concerning copper tube exported from China and Korea.

ADN No. 2021/026 was published on 17 February 2021 advising interested parties that the Statement of Essential Facts would be delayed until 17 August 2021, with the final report to the Minister due on 20 October 2021. No mention was referenced as to the desirability of the timing for a PAD at that stage.

MM Kembla notes that ADN 2020/107 confirmed that the available information before the Commission was *not yet sufficient to ascertain* whether the exports to Australia from China were at dumped and subsidised prices, whether the exports from Korea were at dumped prices, and whether the dumping (and/or subsidisation) had caused material injury to the Australian industry manufacturing like goods.

SEF 557 was published on 14 September 2021, preliminarily indicating that the Commission would terminate the inquiry in full. Based on correct and preferable assessments however, a PAD should have otherwise been published at this time, which is now approximately eleven months ago. In the six months ending June 2022, approximately [XXX] tonnes of copper tube have been imported from China and Korea, a six-monthly assessment of which shows that this is the highest year-on-year volume since 2014:

[Confidential Chart 10: China/Korea Import Seamless Copper Tube Import Volumes]

Chinese import prices also continue to not reflect the LME cost, plus conversion costs, and a realistic value-added margin. As noted by MM Kembla numerous times throughout the investigation, the cost of copper accounts for up to 95% of the total manufacturing cost of the goods.<sup>57</sup> As noted above and evidenced by MM Kembla at page 14 of the SEF 557 response, Australian and Chinese total conversion costs for seamless copper tube are [comparison]. The conversion/fabrication cost for Hailiang as a percentage of the LME was shown to be [XX] %<sup>58</sup> (this excluded SG&A and profit as the two additional components of a full Net Added Value (**NAV**) assessment). [XX] percentage points is therefore the minimum additive cost to the LME for Hailiang in seeking conversion cost recovery in an export selling price. The full NAV percentage would be higher again, in seeking full cost recovery, plus profit.

For the three months ending March 2022, the difference between the monthly average LME and the China FOB export price (i.e. the theoretical NAV) is only [XX]%, increasing to only [XX]% for the three months ending June

---

<sup>57</sup> See for example, INV 557 Folio No. 43, p. 3.

<sup>58</sup> INV 557 SEF response, p. 14.

2022.<sup>59</sup> Clearly these export sales are unprofitable. A [XX] percentage point, followed by a [XX] percentage point variance between the LME and the export selling price cannot permit full NAV recovery.

In seeking to evidence Hailiang's ongoing losses, MM Kembla also provides as follows:

- i. Confidential Attachment 7, [*commercial-in-confidence ongoing losses evidence*]; and
- ii. Confidential Attachment 8, [*commercial-in-confidence ongoing losses evidence*].

Copper tube utilisation rates in China are also decreasing, highlighting ever-growing excess capacity – capacity of which will be directed to Australia in the absence of appropriate trade measures. Utilisation rates in China have decreased from 80% in 2014,<sup>60</sup> to 77% in 2016,<sup>61</sup> and to 54% in August 2022.<sup>62</sup>

The Australian industry manufacturing certain copper tube is therefore experiencing continued price suppression and reduced profit and profitability as it competes with a continuing large volume of imports from China and Korea at prices that do not reflect the full cost of copper plus a realistic value-added component.

Exports from the subject countries caused, and continue to cause, material injury to the Australian industry manufacturing like goods. Accordingly, the imposition of provisional measures on seamless copper tube exported to Australia from China and Korea is warranted, and MM Kembla requests the Commission publish a PAD imposing measures at the earliest opportunity.


## 8. Conclusion

The Panel Member's assessment in ADRP Decision No. 146-150 of what ought to have been correct and preferable Ministerial recommendations for INV 557 now requires the Commission to reassess critical aspect of normal value and export price determinations, consequent margins of dumping, and material injury to the Australian industry.

A measured re-assessment of the issues addressed in the submission, alongside full engagement with MM Kembla during the resumed inquiry, will permit the Commissioner to conclude that the Australian industry has (and continues) to suffer material injury from dumped exports to Australia of seamless copper tube from China and Korea, and that a PAD should be applied at the earliest possible time to prevent further material injury.

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

Yours sincerely,



Tony Bova  
Executive General Manager

---

<sup>59</sup> Confidential Attachment 4.

<sup>60</sup> Non-Confidential Attachment 9: *Operating Rate at China's Copper Tube/Pipe Makers to Fall in July on Weak Housing Market*. SMM News. July 17, 2014.

<sup>61</sup> Non-Confidential Attachment 10: *Operating Rate at Chinese Copper Tube/Pipe Producers to Stabilize in December*. SMM News. December 26, 2016.

<sup>62</sup> Non-Confidential Attachment 11: *MySteel Monthly: Aug China copper tube production 116kt, -3.3% MoM*. Mysteel. September 8, 2022.