



Consideration report number: 580

Application for a dumping duty notice

Submitted by: Metal Manufactures Pty Ltd trading as
MM Kembla

In relation to certain copper tube exported to Australia
from the Socialist Republic of Vietnam

18 March 2021

CONTENTS

1. FINDINGS AND RECOMMENDATIONS	2
1.1. Findings	2
1.2. Recommendations	2
2. THE APPLICATION AND THE AUSTRALIAN INDUSTRY	3
2.1. Lodgement of the application	3
2.2. Compliance with section 269TB(4).....	3
2.3. The goods the subject of the application	4
2.4. Like goods and the Australian industry.....	6
2.5. Australian industry information	8
3. REASONABLE GROUNDS – DUMPING	9
3.1. Findings	9
3.2. Legislative framework	9
3.3. Export price.....	9
3.4. Normal value.....	10
3.5. Dumping margins.....	12
4. REASONABLE GROUNDS – INJURY TO THE AUSTRALIAN INDUSTRY ...	13
4.1. Findings	13
4.2. Legislative framework	13
4.3. The Applicant’s claims	13
4.4. Approach to injury analysis	13
4.5. Volume effects	14
4.6. Price effects	17
4.7. Profit and profitability effects	18
4.8. Other injury factors.....	18
4.9. The Commission’s assessment.....	21
5. REASONABLE GROUNDS – CAUSATION FACTORS	22
5.1. Findings	22
5.2. Cause of injury to the Australian industry	22
5.3. The Applicant’s claims	22
5.4. The Commission’s assessment.....	23
5.5. Threat of material injury.....	24
5.6. Conclusion	24
6. APPENDICES AND ATTACHMENTS	26

ABBREVIATIONS

Abbreviations / short form	Full reference
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i> (Cth)
ADN	Anti-Dumping Notice
AUD	Australian Dollar
the applicant or MM Kembla	Metal Manufactures Pty Limited (Trading as 'MM Kembla')
China	the People's Republic of China
COGS	Cost of goods sold
CTMS	Cost to make and sell
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
EPR	electronic public record
EXW	ex works
FOB	free on board
the goods	certain copper tubes, as described in section 2.3
HVAC	heating, ventilation and air conditioning
investigation period	1 July 2019 to 30 June 2020
Korea	the Republic of Korea
the Minister	the Minister for Industry, Science and Technology
MT	Metric Tonnes
SG&A	selling, general and administrative
Vietnam	the Socialist Republic of Vietnam

1. FINDINGS AND RECOMMENDATIONS

This report provides the result of the consideration by the Anti-Dumping Commission (the Commission) of an application under section 269TB(1)¹ of the *Customs Act 1901* (Cth) (the Act) by Metal Manufactures Pty Ltd trading as MM Kembla (MM Kembla or the applicant) for the publication of a dumping duty notice in respect of certain copper tube that have been imported into Australia from the Socialist Republic of Vietnam (Vietnam).

MM Kembla alleges that the Australian industry for certain copper tube has suffered material injury caused by certain copper tube exported to Australia from Vietnam at dumped prices.

The legislative framework that underpins the making of an application and the Commission's consideration of an application is contained in Divisions 1 and 2 of Part XVB of the Act. The relevant legislative provisions are contained in Divisions 1 and 2 of Part XVB of the Act.

All monetary amounts referred to in this report are Australian dollars (AUD) unless stated otherwise. The quantities of the goods are measured in metric tonnes (MT) unless stated otherwise.

1.1. Findings

In accordance with section 269TC(1), the Commission has examined the application and is satisfied that:

- the application complies with the requirements of section 269TB(4) (as set out in section 2.2 of this report);
- there is an Australian industry in respect of like goods (as set out in section 2.4 of this report); and
- there appears to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application (as set out in sections 3, 4 and 5 of this report).

1.2. Recommendations

Based on the above findings, the Commission recommends that the Commissioner of the Anti-Dumping Commission (Commissioner) decide not to reject the application and initiate an investigation to determine whether a dumping duty notice should be published.

The Commission further recommends that:

- exports to Australia during the investigation period 1 January 2020 to 31 December 2020 be examined for dumping; and
- details of the Australian market from 1 January 2017 be examined for injury analysis purposes.

If the Commissioner agrees with these recommendations, the Commissioner must give public notice of the decision (**Non-Confidential Attachment 1**) in accordance with the requirements set out in section 269TC(4).

¹ All legislative references in this report are to the *Customs Act 1901* (Cth) unless otherwise specified.

2. THE APPLICATION AND THE AUSTRALIAN INDUSTRY

2.1. Lodgement of the application

2.1.1. Legislative framework

The procedures for lodging an application are set out in section 269TB.

The procedures and timeframes for the Commissioner's consideration of the application are set out in section 269TC.

2.1.2. The Commissioner's timeframe

Event	Date	Details
Application lodged and received by the Commissioner under sections 269TB(1) and (5)	10 February 2021	The Commission received an application from MM Kembla which alleges that the Australian industry is suffering material injury caused by certain copper tubes that have been imported into Australia from Vietnam at dumped prices.
	22 February 2021	The Commission notified MM Kembla that the application contained critical and important deficiencies which, if left unaddressed, create doubt on the reasonableness of the grounds for the publication of dumping duty notice.
Applicant provided further information in support of the application under section 269TC(2A)	26 February 2021	The applicant provided further information and data in support of their application without having been requested to do so (as provided in section 269TC(2A)). This restarted the 20 day period for consideration of the application.
Consideration decision due under section 269TC(1)	18 March 2021	The Commissioner shall decide whether to reject or not reject the application within 20 days after the applicant provided further information.

2.2. Compliance with section 269TB(4)

2.2.1. Finding

Based on the information submitted by the applicant, the Commission considers that the application complies with section 269TB(4).

2.2.2. Legislative framework

Section 269TC(1) requires that the Commissioner reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that the application complies with section 269TB(4).

2.2.3. The Commission's assessment

The table below summarises the Commission's assessment of compliance with section 269TB(4).

PUBLIC RECORD

Requirement for the application	Details
Lodged in writing under section 269TB(4)(a)	The applicant lodged in writing confidential and non-confidential versions of the application. The non-confidential version of the application can be found on the electronic public record on the Commission's website at www.adcommission.gov.au .
Lodged in an approved form under section 269TB(4)(b)	The application is in the approved form (Form B108) for the purpose of making an application under section 269TB(1).
Contains such information as the form requires under section 269TB(4)(c)	The applicant provided: <ul style="list-style-type: none"> • a completed declaration; • answers to all questions that were required to be answered by the applicant; • completed all appendices; and • sufficient detail in the non-confidential version of the application to enable a reasonable understanding of the substance of the information submitted in confidence.
Signed in the manner indicated in the form under section 269TB(4)(d)	The application was signed in the manner indicated in Form B108 by a representative of the applicant.
Supported by a sufficient part of the Australian industry under section 269TB(4)(e) and determined in accordance with section 269TB(6)	MM Kembla states that it is the sole producer of goods that have similar characteristics and are therefore like to the goods exported to Australia from Vietnam. Having examined available sources on the internet, including the applicant's history, industry publications and membership of industry bodies, at this time there is no information before the Commission contrary to MM Kembla's claims. The Commission considers that the application is supported by a sufficient part of the Australian industry under section 269TB(4)(e) and complies with the requirements of sections 269TB(6)(a) and (b).
Lodged in the manner approved under section 269SMS for the purposes of section 269TB(4)(f)	The application was lodged in a manner approved in the Commissioner's instrument made under section 269SMS, being by email to the Commission's nominated e-mail address provided in that instrument. The application was therefore lodged in a manner approved under section 269SMS(2).

2.3. The goods the subject of the application

2.3.1. The goods

The table below describes the goods subject to the application:

PUBLIC RECORD

Full description of the goods, as subject of the application

Round seamless copper tube complying with Australian Standard AS 1432, Australian and New Zealand Standard AS/NZ 1571, or Australian Standard AS 1572 with an outside nominal diameter between 9.52 mm and 53.98 mm, and a nominal wall thickness between 0.71 mm and 1.83 mm, including coated tube.

Goods specifically excluded from the goods description are:

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

Further information

The physical and technical characteristics of the goods subject to this application are in accordance with the requirement of one of the following Australia or Australian/New Zealand product standards:

- AS1432 - Copper Tubes for Plumbing, Gas fitting and Drainage Applications

Physically, AS1432 round seamless copper tubes are typically bare or coated copper tube containing ink marking and incising in accordance with and referencing the product standard and are packaged with open ends (uncapped).²

- AS/NZ1571 - Copper - Seamless Tubes for Air Conditioning and Refrigeration

Physically, AS/NZS 1571 round seamless copper tubes are bare (uncoated) and contain ink marking in accordance with and referencing the standard, are internally cleaned and tube ends are plastic/rubber capped to protect from internal contamination (green, pink, yellow or black caps).³

- AS1572 - Copper and Copper Alloys - Seamless Tubes for Engineering Purposes

Physically, AS 1572 tubes can be round, square or rectangular. For the goods the subject of this application, physically the goods are round seamless copper tubes typically bare, and containing ink marking in accordance with and referencing the standard.

2.3.2. Tariff classification

The goods are generally, but not exclusively, classified to the following tariff classifications in Schedule 3 of the *Customs Tariff Act 1995* (Cth).

² The Applicant provided a product brochure in relation to this type of goods as Non-Confidential Attachment A-3-3.1 to its Application.

³ The Applicant provided a product brochure in relation to this type of goods as Non-Confidential Attachment A-3-3.2 to its Application.

PUBLIC RECORD

Tariff classification				
<i>Tariff code</i>	<i>Statistical code</i>	<i>Unit</i>	<i>Description</i>	<i>Duty rate</i>
7411.10.00	11	T	Copper tube and pipes of refined copper	The goods ex-Vietnam are subject to a zero per cent duty rate under ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

This tariff classification and statistical code also include goods that are not subject to this investigation. The above table is for reference only and does not form part of the description of the goods that are subject to the application. Section 2.3.1 of this report provides the authoritative goods description.

2.3.3. Concurrent investigation – Investigation 557

The Commission is currently investigating certain copper tube allegedly imported to Australia from China and Korea at dumped prices, as well as certain copper tube allegedly imported to Australia from China at subsidised prices. Further information regarding Investigation 557 (INV 557) is available on the electronic public record.⁴

2.4. Like goods and the Australian industry

2.4.1. Finding

The Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application on the basis that:

- MM Kembla produces goods that have characteristics that closely resemble the goods the subject of the application, and
- the goods are wholly manufactured in Australia.

2.4.2. Legislative framework

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

Like goods are defined under section 269T(1). Sections 269T(2), 269T(3), 269T(4), and 269T(4A) are used to determine whether the like goods are produced in Australia and whether there is an Australian industry.

2.4.3. Locally produced like goods

The table below summarises the Commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods the subject of the application and are therefore like goods.

The Commission's assessment is based on its examination of the information in the application and the Commission's verification of MM Kembla's and overseas

⁴ Refer to Anti-Dumping Commission website, [EPR 557](#).

PUBLIC RECORD

exporters' manufacturing processes as part of verification activities relating to INV 557.

Factor	The Applicant's claims	The Commission's assessment
Physical likeness	The physical characteristics of the locally produced and imported seamless copper tube are similar – that is of similar shape and dimension, and are made from copper.	The Commission considers that the imported goods and the locally produced goods are physically alike. This is on the basis that the dimensions of the goods appear to be similar, and have similar attributes, being made of copper to relevant Australian Standards.
Commercial likeness	The locally produced and imported goods are commercially alike as they are sold to common customers for use in the same applications.	The Commission considers that the imported goods and the locally produced goods are commercially alike. This is on the basis that they compete directly for the same customer types (i.e. distributors of plumbing, hardware and heating, ventilation and air conditioning (HVAC) systems).
Functional likeness	The locally produced and imported goods are functionally alike as they perform the same function and are used in the same applications (and are interchangeable).	The Commission is satisfied that the imported goods and locally produced goods are used for the same end use, i.e. plumbing, HVAC systems and refrigeration systems.
Production likeness	The locally produced and imported goods are manufactured in a similar manner, involving similar manufacturing processes and finish treatment (i.e. annealing).	The Commission considers that locally produced goods and imported goods share a production likeness.
Commission's assessment		
The Commission considers that the locally produced goods are identical or closely resemble the goods the subject of the application and are therefore like goods, having regard to the physical, commercial, functional and production similarities described above.		

2.4.4. Manufacture in Australia

The table below summarises the Commission's assessment of whether the like goods are wholly manufactured in Australia and whether the like goods are therefore considered to have been manufactured in Australia.

<i>The Applicant's claims</i>
MM Kembla claims the like goods are wholly manufactured in Australia. MM Kembla casts copper logs from copper cathode and copper scrap, then cuts these logs into billets. The billets are re-heated and extruded into a tube using a die and mandrel, then cold rolled in a 'pilgering' process before being drawn to the final dimensions. The tubes are then straightened, cleaned, lagged (if required), quality assured, cut to length and bundled.

The Commission's assessment
Based on the description and filmed evidence of the manufacturing process provided by MM Kembla, and the fact that these processes take place at manufacturing facilities in Australia, the Commission is satisfied that the like goods are wholly manufactured in Australia.

2.5. Australian industry information

The table below summarises the Commission's assessment of whether MM Kembla has provided sufficient information in the application to analyse the performance of the Australian industry.

Have the relevant appendices to the application been completed?		
A1	Australian production	Yes
A2	Australian market	Yes
A3	Sales turnover	Yes
A4	Domestic sales	Yes
A5	Sales of other production	Yes
A6.1	Cost to make and sell (& profit) – Domestic sales	Yes
A6.2	Cost to make and sell (& profit) – Export sales	Yes
A7	Other injury factors	Yes
General administration and accounting information – MM Kembla		
History	MM Kembla was established in 1916 in Port Kembla, NSW.	
Ownership	MM Kembla is a division of Metal Manufactures Pty Limited, which is - through various entities - ultimately owned by Blackfriars Corp Delaware, domiciled in the United States of America.	
Operations	MM Kembla manufactures copper tube. MM Kembla also imports and distributes a range of associated goods.	
Financial year	The financial year is 1 January to 31 December.	
Audited accounts	Financial statements for 2019 have been provided. The applicant will provide audited accounts for 2020 once these are finalised.	
Annual reports	Annual report for 2019 has been provided.	
Production and sales information	Cost to make and sell information	Other injury factors
The Commission considers the production and sales information provided by the applicant for the purposes of the application is adequate.	The Commission considers the cost information provided by the applicant to be adequate.	The Commission considers the data provided in Appendix A7 of the application to be adequate.
The Commission's assessment		
The Commission is satisfied that the applicant has provided sufficient information in the application to enable analysis of the performance of the Australian industry.		

3. REASONABLE GROUNDS – DUMPING

3.1. Findings

Pursuant to section 269TC(1)(c), the Commission considers that there appear to be reasonable grounds to support the claims that:

- the goods have been exported to Australia from Vietnam at dumped prices
- the estimated dumping margin for exports from Vietnam is greater than 2% and therefore is not negligible, and
- the estimated volume of goods from Vietnam that appear to have been dumped is greater than 3% of the total Australian import volume of goods and therefore is not negligible.

3.2. Legislative framework

Section 269TC(1) requires that the Commissioner reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice.

Under section 269TG, one of the matters that the Minister for Industry, Science and Technology (the Minister) must be satisfied of in order to publish a dumping duty notice is that the export price of goods that have been exported to Australia is less than the normal value of those goods, i.e. that dumping has taken place (to an extent that is not negligible). This issue is considered in the following sections.

3.3. Export price

3.3.1. Legislative framework

The export price is determined by applying the requirements in section 269TAB taking into account whether the purchase or sale of goods was an arms length transaction under section 269TAA.

3.3.2. The Applicant's estimate

The applicant estimated the export price for the alleged dumped goods from Vietnam based on Vietnamese export data⁵ for the relevant tariff and statistical code. The applicant stated the data was at the Free on Board (FOB) terms under section 269TAB(1).

3.3.3. The Commission's assessment

The Commission examined the export price calculations and supporting evidence provided by MM Kembla. The Commission considers that MM Kembla's approach to estimating export prices is reasonable, considering the limitations of the information available to MM Kembla.

To assess the reliability of the export price estimated by MM Kembla, the Commission calculated an export price for Vietnam using data obtained from the Australian Border Force (ABF) import database. These calculations were compared to the export price for Vietnam in MM Kembla's application.

The import data for the tariff classification and statistical code identified in the application was downloaded, and any clear outliers were corrected (e.g. where an import was declared in kilograms instead of tonnes). The goods description was then checked to identify the goods not subject to the application (e.g. physical dimension,

⁵ Extract of the purchased data provided to the Commission as Confidential Attachment B-4-2 to the Application.

specified exclusion etc.). Finally, any samples or other imports that did not appear to be commercial in nature were removed.

As a result of this analysis, the Commission has observed variances between import quantities and the weighted average export prices calculated by MM Kembla and those calculated by the Commission. The Commission considers that the data obtained from the ABF provides a more accurate assessment of imports from Vietnam, particularly given the further interrogation of this data.

The Commission's export price calculation using this methodology was lower for Vietnam than the applicant's estimate.

3.4. Normal value

3.4.1. Legislative framework

The normal value is determined by applying the requirements in section 269TAC taking into account whether:

- the purchase or sale of the goods was an arms length transaction under section 269TAA;
- the goods were sold in the ordinary course of trade under section 269TAAD;
- there has been an absence or low volume of sales of like goods in the country of export; and
- whether the situation in the market of the country of export is such that sales in that country are not suitable for determining normal value under section 269TAC(1).

3.4.2. The Applicant's estimate

MM Kembla stated in its application that it does not have access to domestic selling prices for the goods in Vietnam. On this basis, MM Kembla has calculated constructed normal values using:

- a copper cost benchmark; the copper component was calculated based on monthly average London Metal Exchange (LME) cash price, converted to Australian dollars (AUD), plus an added market premium;
- estimated conversion costs; the conversion costs were estimated based on MM Kembla's actual manufacturing costs that had been adjusted to reflect Vietnamese labour and electricity costs in 2020;
- estimated selling, general and administrative (SG&A) costs; MM Kembla applied an amount for SG&A costs based on MM Kembla's own SG&A rate (as expressed in per cent); and
- an amount for profit based on the profit achieved by the Hailiang Group of companies in the 2018 calendar year.

The applicant has identified the Hailiang Group as a potential exporter of the goods from Vietnam in 2020.

The applicant stated in its application that they are aware that adjustments to normal value are required for export packaging and inland freight. The applicant stated that, since they did not have access to these associated costs that would be incurred in Vietnam, they did not add such amounts to the normal value. However the applicant stated that the inclusion of adjustments "will result in net upward adjustments to the exporter's normal values".⁶

MM Kembla's calculation of normal value is provided at **Confidential Attachment 2**.

⁶ As stated by the Applicant in section B-5.1 of the Application.

3.4.3. The Commission's assessment

The Commission must determine whether there appear to be reasonable grounds for supporting a claim that the goods have been exported at dumped prices. The Commission is therefore required to assess whether the estimated normal value provided in the application is a reasonable estimate.

For an estimated constructed normal value, as in the present application, the Commission will assess whether the costs used by MM Kembla to construct the normal value reasonably reflect the costs of production in Vietnam.

When making this assessment, the Commission is cognisant of the fact that applicants usually have access to limited data to enable them to estimate the costs in the country of production. The Commission considers it reasonable for applicants to use their own costs but, where it is reasonable and practicable to do so, the Commission considers that those costs should be adjusted to reflect costs in the country of production.

In certain circumstances, the Commission will have access to information which will enable it to make an assessment of the reasonableness of the information relied on by the applicant, on a comparison basis. The Commission may also have other sources of information that are directly relevant to the application, which the Commission may prefer to use in making its own assessment, particularly if that information is considered more relevant and reliable than the information relied upon by the applicant.

Methodology

The Commission considers the general approach taken by MM Kembla to estimate the normal value for Vietnam to be reasonable.

The Commission has accordingly assessed the elements of the normal value calculations. In making its assessment of whether MM Kembla's estimate of normal value is reasonable, the Commission has had regard to the information contained in the application and other information the Commission considers relevant.

Raw material costs

The Commission considers MM Kembla's copper cost estimates as a reasonable basis for estimating the raw material costs of copper in Vietnam. The Commission notes that the LME is the world's primary market for copper trading.⁷ The Commission also notes that it is common business practice that sellers of commodities include market premiums to the purchase price to cover transport costs for contracts written on a Delivered basis.

Conversion costs

The Commission considers MM Kembla's method for estimating conversion costs to be reasonable for the purposes of this assessment, noting that MM Kembla had adjusted the variable conversion costs for Vietnamese conditions.

SG&A costs

The Commission considers MM Kembla's method for estimating SG&A costs as reasonable for the purposes of this assessment given the limited data available to the applicant.

Profit

⁷ Refer to <https://www.marketindex.com.au/copper>, accessed 9 March 2021.

The Commission assessed the profit margins applied by MM Kembla in its calculation of the normal value for Vietnam. The Commission is satisfied that the profit used is reasonable, as entities within the Hailiang Group appear to have exported the goods from Vietnam during 2020. The Commission is satisfied that, even in the absence of profit, there still appears to be dumping greater than 2%.

3.5. Dumping margins

3.5.1. Legislative framework

Dumping margins are determined in accordance with the requirements of section 269TACB.

Dumping margins and dumping volumes cannot be negligible, otherwise the investigation is terminated. Whether the dumping margins and dumping volumes are negligible is assessed under section 269TDA.

3.5.2. Volume of dumped goods

Sections 269TDA(3) and (4) provide that an investigation into dumping must be terminated if the total volume of goods exported to Australia over the relevant investigation period that may have been dumped is negligible. A negligible volume of goods is less than 3 per cent of the total Australian import volume. Using the method set out in section 3.3.3, the Commission has estimated the volumes of goods exported from Vietnam. Based on the Commission's assessment, the Commission is satisfied that there appears to be reasonable grounds to consider that the volume of dumped goods are above negligible levels for Vietnam.

3.5.3. The Commission's assessment

The table below summarises the dumping margin estimated by the applicant and the dumping margin calculated by the Commission based on revised estimates of the export price and normal value. Dumping margins are expressed as a percentage of the export price. The table also indicates whether the Commission is satisfied that the dumping margin and volume of dumped goods are above negligible levels.

Country	The Applicant's estimate	The Commission's estimate	Volume
Vietnam	12.9%	24.9%	Not negligible

The Commission's assessment of dumping and volume of alleged dumped imports forms **Confidential Appendix 1**.

4. REASONABLE GROUNDS – INJURY TO THE AUSTRALIAN INDUSTRY

4.1. Findings

Pursuant to section 269TC(1)(c), having regard to the matters contained in the application, and to other information considered relevant, the Commission considers that there appear to be reasonable grounds to support the claims that the Australian industry has experienced injury in the form of:

- price depression,
- price suppression,
- loss of profits,
- reduced profitability,
- reduced cash flow,
- reduced employment,
- reduced capacity utilisation,
- reduced return on investment and
- reduced ability to raise capital

4.2. Legislative framework

Under section 269TG of the Act, one of the matters that the Minister must be satisfied of in order to publish a dumping duty notice is that the Australian industry has experienced material injury. This issue is considered in the following sections.

4.3. The Applicant's claims

MM Kembla claims that the Australian industry has been injured through:

- reduced sales volume
- reduced production volume,
- reduced market share,
- price suppression
- loss of profits
- reduced profitability
- reduced employment
- reduced capacity utilisation
- reduced return on investment
- increased inventories.

MM Kembla noted in its application that an investigation (INV 557) is ongoing in respect of copper tube exported from China and Korea and MM Kembla alleges these exports caused material injury commencing in 2018. MM Kembla further noted that, soon after the initiation of this investigation, imports of copper tube from Vietnam emerged in the Australian market for the first time. MM Kembla argues that the material injury sustained from the dumped exports from China and Korea has continued into 2021 with the addition of the dumped exports from Vietnam.

4.4. Approach to injury analysis

4.4.1. Legislative framework

The matters that may be considered in determining whether the industry has suffered material injury are set out in section 269TAE.

4.4.2. The Commission's approach

This section analyses the economic condition of the Australian industry and provides an assessment as to whether there appear to be reasonable grounds to support a claim that the Australian industry has suffered material injury.

In its analysis of volume effects and market share, the Commission has used data provided by the applicant in Confidential Appendix A2 to the Application in respect of Australian industry sales, and import data from the ABF imports database.

The applicant did not provide quarterly production volumes, instead indicating that production and sales volumes were very similar. As such, claims of injury have been assessed on cost of goods sold rather than cost to make and sell (CTMS).

The Commission's assessment of the economic condition of the Australian copper tube industry (and therefore the basis for the figures set out in this section) forms **Confidential Appendix 2**.

4.4.3. Injury analysis period

The purpose of the injury analysis period is to enable the Commission to identify and examine trends in the Australian market, which in turn assists the Commission in its examination of whether material injury has been caused by dumping. MM Kembla has provided data from 1 January 2017 to 31 December 2020 for this purpose.

4.5. Volume effects

MM Kembla has claimed that it has lost sales in a slightly expanding market, thereby suffering injury in the form of loss of sales volume.

In its application MM Kembla provided an estimate of the size of the Australian market for copper tubes meeting the goods description, having regard to their own sales in the market and import information for the relevant tariff code sourced from the ABS.

The Commission estimates that the Australian market for copper tube in the period from 1 January to 31 December 2020 is approximately 15,000 MT. The Commission's assessment of the Australian market size for certain copper tubes forms **Confidential Appendix 3**.

4.5.1. Sales volume

The figure below depicts the applicant's total sales volumes for the last four years ending 31 December 2020.

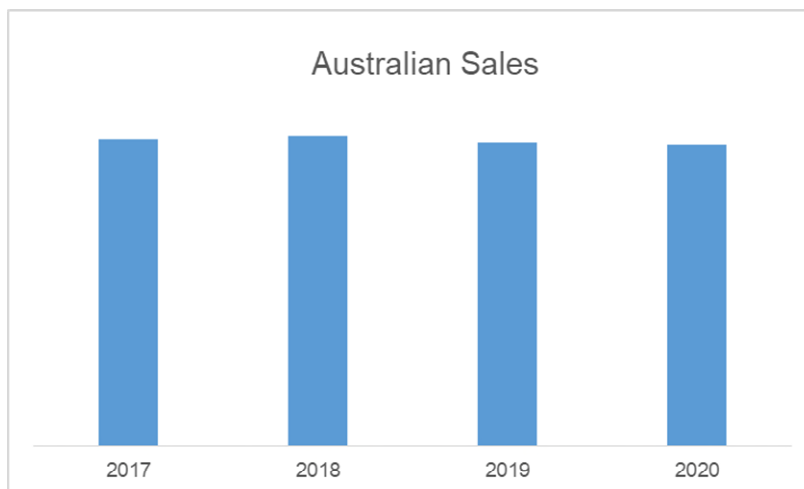


Figure 1 – Australian Industry Sales

PUBLIC RECORD

The Commission notes that sales volumes have declined slightly across the injury period, with the last 12 months being the lowest sales period in the injury period. However, the Commission does not consider this slight decline to be indicative of the applicant having suffered injury in the form of reduced sales volumes.

4.5.2. Production volumes

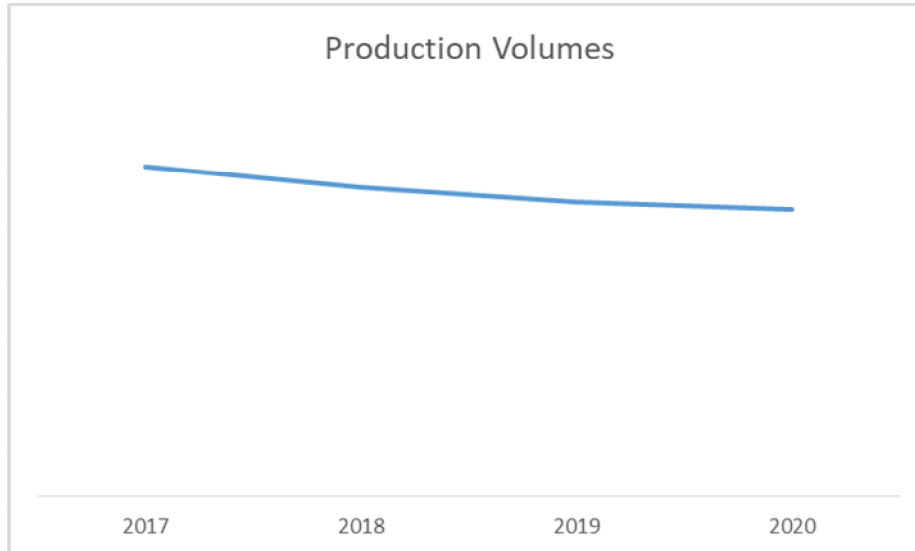


Figure 2 –Production volumes

The above figure depicts variations in MM Kembla's production volumes, which they state also include exports of copper tube. The Commission notes that the applicant stated in the application that the company cut production volumes in 2020 to reduce stock holdings and associated costs.

4.5.3. Market share

The figure below sets out the Commission's assessment of the market share held by the Australian industry (made up solely by MM Kembla), imports of alleged dumped goods from Vietnam, China and Korea respectively, and imports from all other countries since 1 January 2017.

PUBLIC RECORD

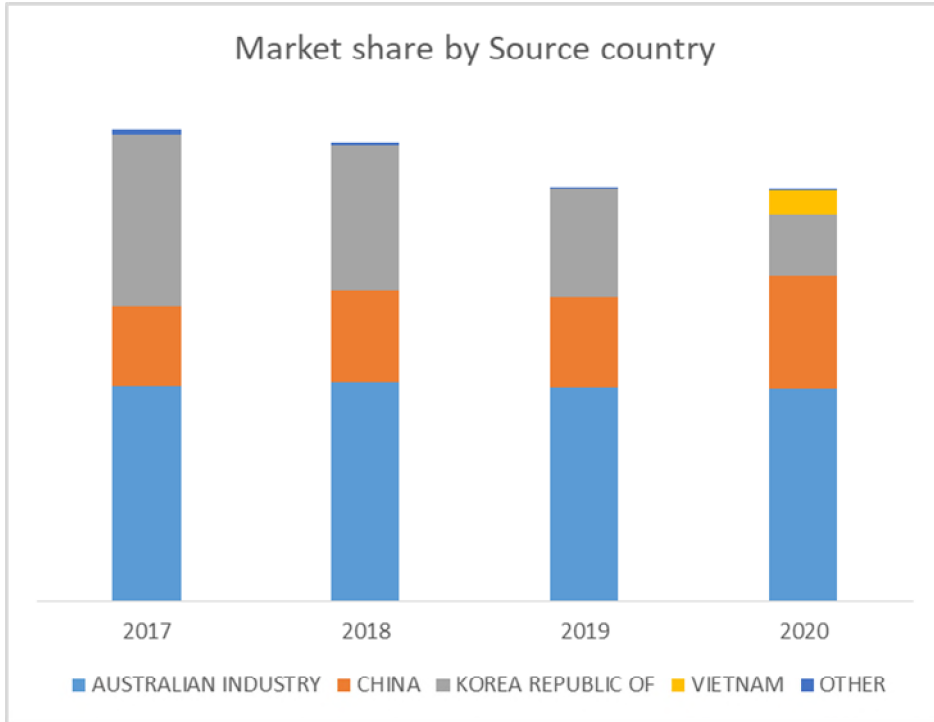


Figure 3 – Australian Market - Sales quantities by Source Country

The Commission notes that the Australian industry's sale quantities have not changed over the injury period, and that imports from other countries have been displaced by imports from Vietnam.

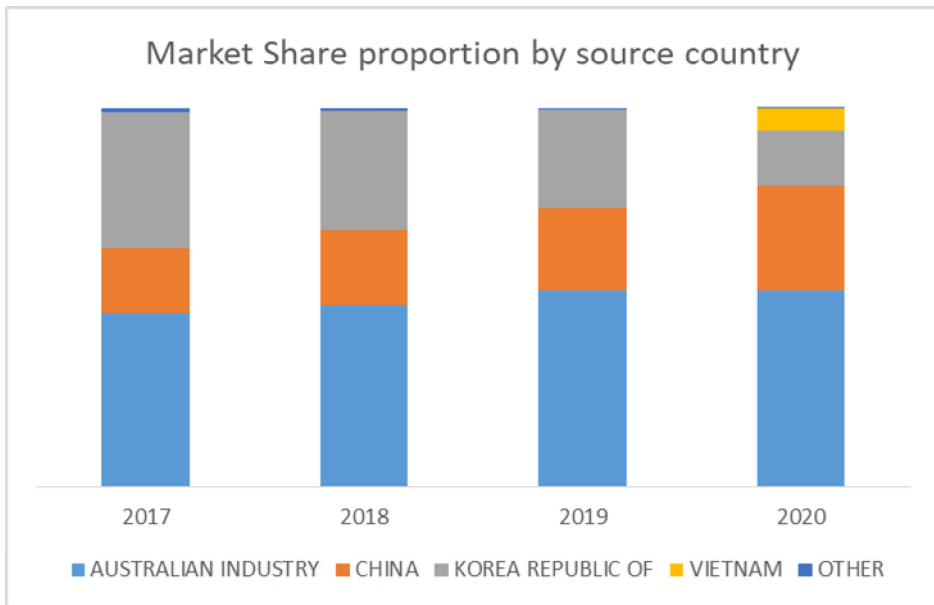


Figure 4 - Market share proportion

The figure above shows the applicant's and the source countries' relative market shares as a proportion of the Australian market. There is no indication in the data available to the Commission that the Australian Industry has lost market share during the injury assessment period.

The Commission also notes that based on this data it appears that the Australian market has not expanded during the investigation period, as claimed by MM Kembla in its application.

4.5.4. Conclusion – volume effects

Based on the analysis above of the information available to the Commission, the Commission is not satisfied that there appear to be reasonable grounds to conclude that the Australian industry has suffered injury in the form of lost sales volume, decreased production volumes and reduced market share.

4.6. Price effects

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

MM Kembla has alleged that price suppression has occurred due to price undercutting by the dumped goods from Vietnam.

The figure below shows the trends in MM Kembla's weighted average unit selling price and weighted average per unit CTMS for copper tube:

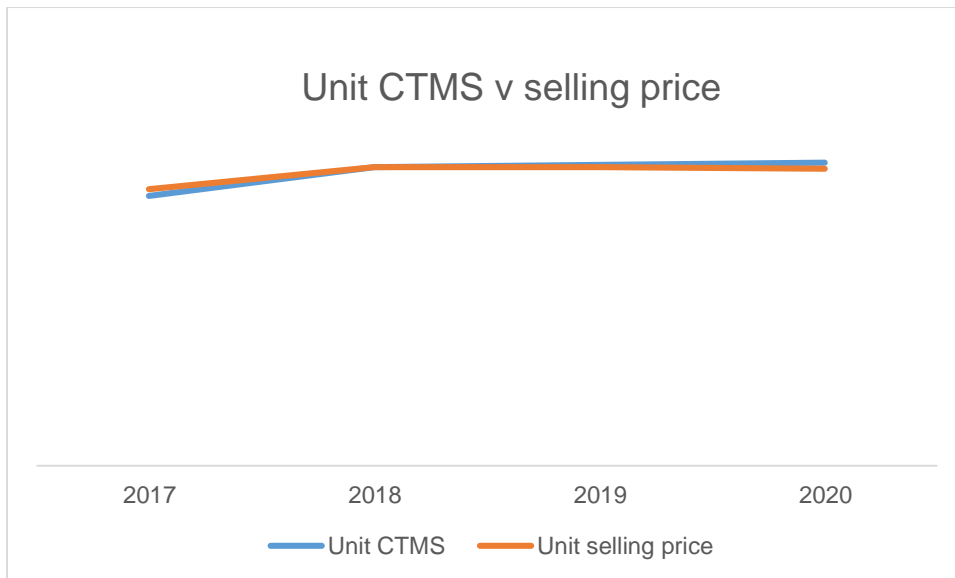


Figure 5 – Unit CTMS vs unit selling price

The figure above demonstrates that:

- per unit CTMS has increased year on year across the injury analysis period, though at a reducing rate of increase;
- per unit selling prices reached a peak in 2018 and have been in decline since; and
- in 2017 MM Kembla could sell for above the unit CTMS, however from 2018 the unit CTMS has exceeded the unit selling price.

This finding supports MM Kembla's claim that it has suffered injury in the form of price suppression. The Commission notes that while MM Kembla has not claimed injury in the form of price depression, the decline in per unit selling prices from 2018 is indicative of price depression. Specifically, the Commission notes that the decline in unit selling prices has become more marked in 2020.

4.6.1. Conclusion – price effects

Based on the above, the Commission is satisfied to that there appear to be reasonable grounds to conclude that the Australian industry has suffered injury in the form of price suppression and price depression.

4.7. Profit and profitability effects

MM Kembla has claimed injury from loss of profit and profitability. The applicant has provided the unit profit or loss for sales of the goods, which is charted in the figure below:

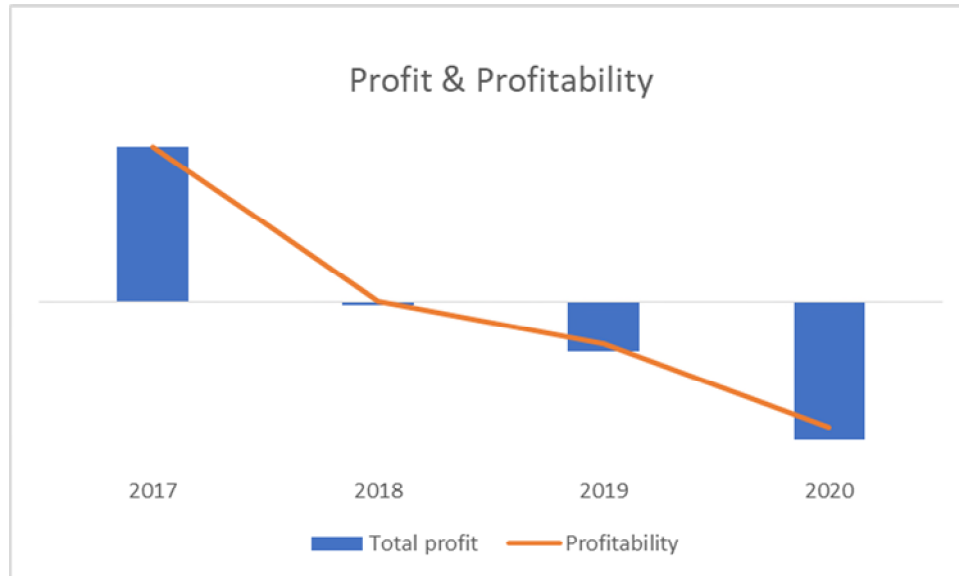


Figure 6 – MM Kembla profit and profitability

The figure above demonstrates that MM Kembla was able to sell copper tube for a profit in 2017, however in 2018 there was an immaterial profit and in 2019 sales were made on average at a loss. Profitability has accordingly followed the same trend, moving from positive to negative.

This finding supports MM Kembla’s claim that it has suffered injury in the form of reduced profits and profitability.

4.7.1. Conclusion – profit and profitability effects

Based on the above, the Commission is satisfied to that there appear to be reasonable grounds to conclude that the Australian industry has suffered injury in the form of lost profit and profitability.

4.8. Other injury factors

MM Kembla has additionally claimed injury from:

- reduced employment;
- reduced capacity utilisation;
- increased inventories; and
- reduced return on investment.

4.8.1. Employment

The applicant has claimed injury in the form of reduced employment, which is charted in the figure below:

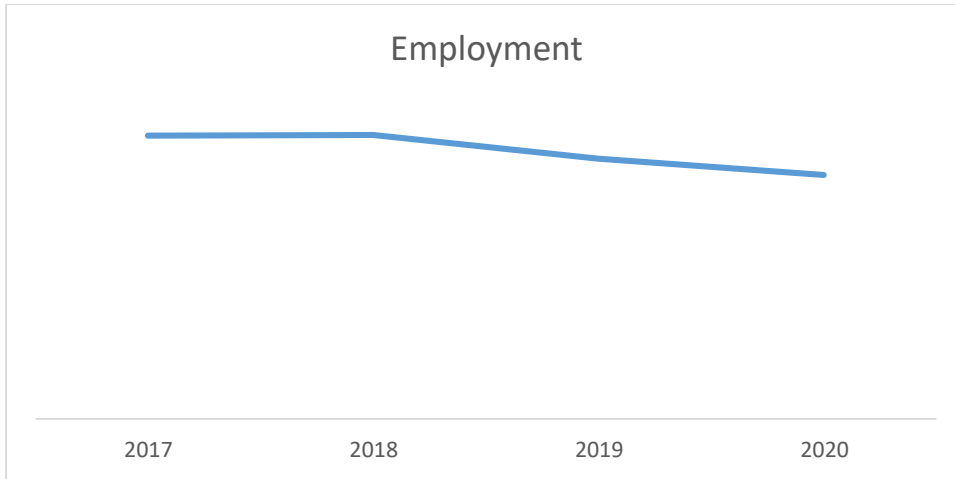


Figure 7 – Average number of employees

The figure above demonstrates that average employment has declined year on year across the injury analysis period, including the period since the alleged dumped imports from Vietnam commenced. This finding supports MM Kembla’s claim that it has suffered injury in the form of reduced employment.

4.8.2. Capacity utilisation

The applicant has claimed injury in the form of reduced capacity utilisation, which is charted in the figure below:

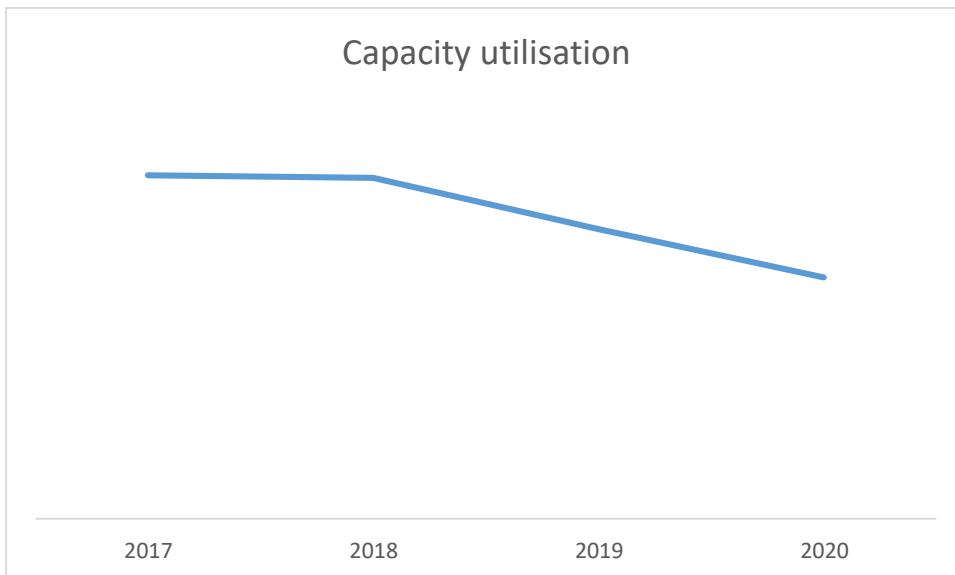


Figure 8 – Australian Industry capacity utilisation

The figure above demonstrates that capacity utilisation has declined year on year across the injury analysis period, including the period since the alleged dumped imports from Vietnam commenced. This finding supports MM Kembla’s claim that it has suffered injury in the form of reduced capacity utilisation.

4.8.3. Inventories

The applicant has claimed injury in the form of increased inventories, which is charted in the figure below:



Figure 9 – Australian Industry closing stock

The figure above demonstrates that closing stock increased until 2018, before declining each year thereafter. At the end of 2020 closing stocks were at a level lower than at the beginning of the injury analysis period. This does not support MM Kembla’s claim that it has suffered injury in the form of increased inventories. The Commission notes that the application states that MM Kembla had decreased its production volumes in 2020 to reduce its stockholding costs.

4.8.4. Return on investment

The applicant has claimed injury in the form of reduced return on investment, which is charted in the figure below:

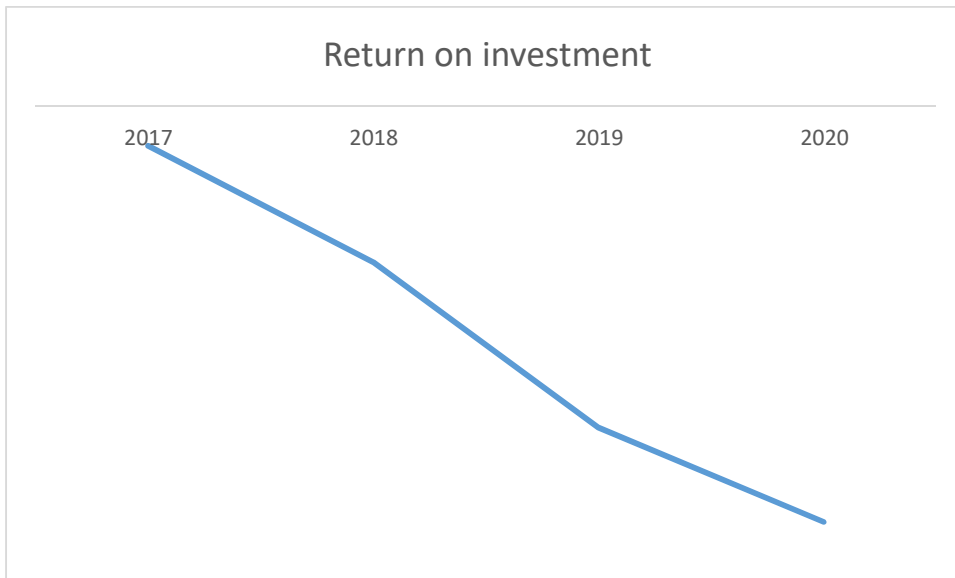


Figure 10 – Australian Industry return on investment

The figure above demonstrates that MM Kembla has maintained a negative return on investment (ROI) throughout the injury period. The ROI has declined further year on year across the four years. This finding supports MM Kembla’s claim that it has suffered injury in the form of reduced ROI.

4.8.5. Conclusion – other injury factors

Based on the above, the Commission is satisfied that there appear to be reasonable grounds to conclude that the applicant has suffered injury in the forms of reduced employment, reduced capacity utilisation and reduced return on investment.

4.9. The Commission's assessment

The Commission considers that there appear to be reasonable grounds to support the claim that the Australian industry has experienced injury in the form of:

- price depression;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced employment;
- reduced capacity utilisation; and
- reduced return on investment.

The Commission's assessment of the economic condition of the Australian industry for copper tube is contained at **Confidential Appendix 2**.

5. REASONABLE GROUNDS – CAUSATION FACTORS

5.1. Findings

Having regard to the matters contained in the application, and to other information considered relevant, the Commission considers that there appear to be reasonable grounds to support the claims that the Australian industry has suffered injury caused by dumping, and that the injury is material.

5.2. Cause of injury to the Australian industry

5.2.1. Legislative framework

Under sections 269TG and 269TJ of the Act, one of the matters that the Minister must be satisfied of in order to publish a dumping duty notice is that the material injury suffered by the Australian industry was caused by dumping. This issue is considered in the following sections.

Matters that may be considered in determining whether the Australian industry has suffered material injury caused by dumped goods are set out in section 269TAE.

5.3. The Applicant's claims

5.3.1. Cause of injury

MM Kembla claim in its application that following the initiation of INV 557 imports of copper tube from Vietnam emerged in the Australian market for the first time. MM Kembla argue that the material injury sustained from the dumped exports from China and Korea has continued into 2021; with the addition of the increasing level of alleged dumped imports from Vietnam. To underpin its claim the applicant provided evidence that imported Vietnamese copper tube is being supplied into the market by an affiliated Australian importer at prices which undercut the applicant's prices. Specifically, MM Kembla provided both an invoice and a price list for copper tube from a Vietnamese exporter. When the prices for these goods are compared to a like good manufactured by MM Kembla, the level of undercutting ranges from 4 per cent up to 13 per cent. MM Kembla also provided market intelligence from customers that indicated that importers were starting to shift suppliers to Vietnam following the initiation of INV 557.

5.3.2. Cumulation of injury

MM Kembla makes reference in the application to section 269TAE(2C) of the Act which details the requirements for assessing the cumulative effects of exports of goods to Australia from different countries. MM Kembla note that the investigation periods for INV 557 and the proposed investigation in relation to Vietnam would overlap by six months which MM Kembla considers to be significant, as required by the Act. In addition, MM Kembla assert that:

- the dumping margin for the subject imports is not negligible;
- the volume of imports from Vietnam is not negligible; and
- the conditions of competition between the imported goods, and between all of the imported goods and the like domestic goods, are essentially the same in that the imported goods and the like domestic goods can be actively substituted in applications by end-users.

5.3.3. Injury caused by other factors than dumping

MM Kembla acknowledged in its application that it experienced an increase in its copper costs and electricity costs over the period since 1 April 2017.

5.4. The Commission's assessment

5.4.1. Dumping margins

Under section 269TAE(1)(aa) the Minister may have regard to the size of the dumping margins worked out in respect of the goods exported to Australia. As set out in section 3.5.2, there appear to be reasonable grounds for concluding that the goods exported from the Vietnam are dumped.

5.4.2. Volume effects

As noted in section 4.5 above, the Commission considers that MM Kembla's sales volumes and market share have remained consistent during the injury analysis period. The Commission is presently not of the view that the applicant has suffered material injury in the form of lost sales volumes nor reduced market share.

5.4.3. Price effects

As noted in section 4.6, the Commission considers that the applicant has suffered injury in the form of price suppression. The applicant claims that it has been unable to raise its sale prices when providing quotes to customers in line with the increased cost of raw materials, particularly copper, due to the presence of dumped goods in the market, resulting in the sales prices that have been suppressed. The Commission understands, based on the information provided by the applicant and gathered through INV 557, that the copper tube market is price sensitive. The applicant has provided specific examples of goods from Vietnam undercutting the industry's prices, as noted above in section 5.3.1. The Commission considers the presence of these imported goods, at prices that undercut the Australian industry, contribute to the inability of the applicant to increase selling prices.

As a result of the above, the Commission's preliminary view is that there appears to be reasonable grounds to establish that the Australian industry has experienced price injury in the form of price suppression as a result of dumped goods exported from Vietnam.

5.4.4. Profit effects

As outlined above, the Commission is satisfied that there appears to be reasonable grounds to establish that the price of the goods sold by the applicant has been suppressed due to competition with dumped prices. In section 4.7 the Commission found that the applicant has suffered material injury in the form of reduced profits and profitability. The Commission is satisfied that there appears to be reasonable grounds to establish that the applicant has also suffered a loss of profit and profitability as a result of the dumped goods exported from Vietnam.

5.4.5. Cumulation of injury

The Commission noted that MM Kembla refers to section 269TAE(2C) in respect of its material injury claims.

Section 269TAE(2C) sets out the requirements for assessing the cumulative material injury effects of exports of goods to Australia from different countries. Where exports are from more than one country and are simultaneously the subject of an investigation, the Minister may cumulatively assess the effects of such imports if:

- the investigations of those exports resulted from applications under section 269TB lodged with the Commissioner on the same day, or they resulted from

applications under section 269TB lodged with the Commissioner on different days but the investigation periods for all the investigations overlap significantly; and

- the margin of dumping established for each exporter and/or the amount of countervailable subsidy received is not negligible;
- the volume of dumped and/or subsidised imports from each country is not negligible; and
- a cumulative assessment is appropriate in light of the conditions of competition between the imported goods, and between all of the imported goods and the like domestic goods.

The Commission will consider the applicability of section 269TAE(2C) as investigations 557 and 580 progress.

5.4.6. Injury caused by factors other than dumping

MM Kembla acknowledged that it experienced an increase in its copper costs and electricity costs over the period since 1 April 2017.

In accordance with section 269TAE(2A), the Commission will assess these and other potential causes of injury to the Australian industry during the course of the investigation.

5.5. Threat of material injury

MM Kembla completed section C-2 of the application form relating to threat of material injury.

MM Kembla claims that following the initiation of INV 557 imports of copper tube from Vietnam emerged in the Australian market for the first time. MM Kembla argues that the material injury sustained from the dumped exports from China and Korea has continued into 2021 with the addition of the increasing level of imports from Vietnam.

MM Kembla considers that in the absence of anti-dumping measures, the Australian industry will continue to experience material injury from the increasing exports from China and now Vietnam, and the dumped exports from Korea that have been priced to match Chinese exports to Australia.

MM Kembla argues that when material injury to the Australian industry caused by dumped exports from Vietnam is appropriately cumulated with the material injury from dumped exports from China and Korea, the exports from Vietnam pose a “foreseeable and imminent threat” of material injury and represents a significant future threat of injury to the Australian industry manufacturing like goods.

The Commission notes the acceleration in export volumes from Vietnam following the initiation of INV 557, and will consider information provided by MM Kembla in its application and other information in relation to threat of material injury throughout the course of the investigation.

5.6. Conclusion

The Commission considers that:

- the level of the dumping margins indicated in the application and in the Commission’s calculations;
- the preliminary assessment of price suppression, reduced profit and profitability, other injury factors; and
- specific feedback provided by customers during price negotiations,

PUBLIC RECORD

support MM Kembla's claim that there appear to be reasonable grounds that exports of the goods from Vietnam at dumped prices have caused material injury to the Australian industry.

6. APPENDICES AND ATTACHMENTS

Appendices	Title
Confidential Appendix 1	The Commission's assessment of dumping
Confidential Appendix 2	The Commission's assessment of the economic condition
Confidential Appendix 3	The Commission's assessment of the Australian market size

Attachments	Confidentiality	Title
Attachment 1	Non-Confidential	Public notice
Attachment 2	Confidential	The applicant's normal value calculation