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Public File Copy

Dear Sir/Madam

Investigation No. 580 – Copper tube exported to Australia from Vietnam – MM Kembla Response to Hailiang (Vietnam) Copper Manufacturing Co Ltd exporter verification report and Hailiang Copper Australia Pty Ltd importer Verification Report

I. Executive Summary

(a) Erroneous findings

The Anti-Dumping Commission (“the Commission”) has preliminarily determined that exports of seamless copper tube to Australia by Hailiang (Vietnam) Copper Manufacturing Co., Ltd (“Hailiang Vietnam”) were exported during the period July to December 2020 with a dumping margin of negative 0.6 per cent.

Further, the Commission has assessed the selling prices by Hailiang Vietnam’s related party Australian importer Hailiang Copper Australia Pty Ltd (“Hailiang Australia”) for imported seamless copper tube were sold profitably into the Australian market.

MM Kembla – the sole manufacturer of seamless copper tube in Australia – disputes both findings by the Commission on the basis that the normal value determined for Hailiang Vietnam is incorrect and the ADC has failed to adequately investigate whether Hailiang Australia’s selling prices recover all costs incurred along the related party transaction trail between exporter, affiliated export agent, and related party Australian importer. Normal values for Hailiang Vietnam have incorrectly been established under section 269TAC(1) of *the Customs Act*. The domestic sales by Hailiang Vietnam are for goods that are not alike to the goods exported to Australia and, cannot be considered to have been sold in the ordinary course of trade in Vietnam.

Normal values for Hailiang Vietnam are correctly determined under subsection 269TAC(2)(c) on a constructed cost basis.

(b) Available information does not support a termination recommendation

MM Kembla respectfully rejects the Commissioner's proposed recommendation to terminate Investigation No. 580 as the assumption and findings relied upon by the Commissioner are incorrect as they fail to adequately consider:

1. The globally accepted industry practice for hedging of raw material copper costs;
2. That a comparison of export data from Vietnam to Australia and the USA for same like goods demonstrates lower export prices into Australia during the investigation period. The USA has determined a preliminary affirmative dumping margin of 8.35% in July 2021. On this basis, it is reasonable to conclude that dumping is therefore also present from Vietnam to Australia.
3. The Commission's finding further demonstrates that the methodology used by the Commission is erroneous and the economics of copper manufacturing is not understood;
4. The copper price volatility during the Investigation Period ("IP") and the timing impact for normal value and export price comparisons have not been appropriately considered;
5. The Commission's sales by Hailiang Australia at an average profit do not support a 'no dumping' finding;
6. The Commission's like goods analysis on the goods manufactured by Hailiang Vietnam is also flawed as the goods – where these are sold domestically – are not manufactured to an equivalent standard as goods sold for export to Australia;
7. The adjustments to normal values have not been relevantly considered due to the erroneous findings and conclusions in respect of like goods
8. A proper fair comparison of normal values and export prices has not resulted following the erroneous conclusions on like goods; and
9. No account has been made of the fact that the Imported goods consistently do not meet the requirements of AS1432 and AS1571 and therefore cannot be compared with domestic sales (where these may exist) as there are clear and obvious differences between the domestic and export sales of seamless copper tube.

(c) Dumping from Hailiang Vietnam above negligible levels is evident

The pricing of copper, timing differences impacting dates for domestic sales and export sales comparison (a one-month lag for the latter), differences in domestic and export standards, and the unchallengeable sales at a loss by Hailiang Australia (determined from deductive export price calculations), when reflected in the normal values (under subsection 269TAC(2)(c)) for the cooperative exporters confirm the existence of substantial margins of dumping from exporters in Vietnam.

(d) Re-examination of normal values for cooperative exporters required

MM Kembla urges the Commission to take full account of the issues and concerns raised in this submission. It is requested that the Commission engage with MM Kembla to fully understand the industry practices that impact copper costs and prices that have generated – to date - no questions from the Commission.

A considered examination and understanding of the matters identified in this submission will result in an accurate assessment of normal values and will confirm the existence of dumping margins (at greater than negligible levels) for exports of seamless copper tube to Australia from Vietnam.

The exports of the dumped goods have caused and continue to cause, material injury to the Australian industry manufacturing like goods. As such, the imposition of provisional measures on exports of seamless copper tube exported to Australia are warranted and MM Kembla requests the Commissioner to publish a Preliminary Affirmative Determination ("PAD") imposing measures at the earliest opportunity.

MM Kembla looks forward to discussing the content of this submission with the Commission.

II. Background

MM Kembla acknowledges the difficulties associated with the impact of the Covid 19 pandemic and the Commission’s ability to conduct the investigation into MM Kembla’s claims with a level of robustness. It is particularly difficult to verify information with a company in a foreign country in the absence of a physical visit. This would appear to have impacted the Commission’s ability to fully understand the complexities of the cost economics for copper tube in its verification analysis.

The inability to fully comprehend seamless copper tube economics, copper purchasing methodologies, and the actual costs associated with cleaning and capping refrigeration copper tube, have hindered the Commission’s conclusions and findings in the Hailiang Vietnam exporter verification report.

Additionally, the Commission has not reconciled its dumping findings with its material injury conclusions (i.e. price undercutting) as reflected in Statement of Essential Facts No. 557 (“SEF 557”). This is considered a significant flaw in the Commission’s rationale in the investigation.

III. Globally accepted practice for hedging of copper costs ignored by ADC

a. Copper Price Volatility During the IP

The LME copper price traded through a wide range during the IP, with an overall average bias to the downside before a sustained and dramatic increase in the second half of 2020.



Figure 1 LME Price & Average True Range – weekly (Source Bloomberg)

The copper price was extremely volatile from mid-January 2020 to mid-March 2020. During this two-month interval the copper price fell by xx%, from the January high of US\$xxxxx to the March low of US\$xxxxx. The price then rebounded moving up to a new high of US\$xxxx in December an increase of xx% from this low.

This chart clearly demonstrates the need for copper producers and fabricators to manage their copper price risk very carefully. The cost of copper can account for 90% to 95% of the total cost of copper tube. Copper fabricators, such as Hailiang Vietnam and MM Kembla typically manage their copper price risk by using a ‘hedge book’ process, where offsetting natural internal exposures are netted off and the residual price risk is mitigated using forward copper hedge contracts.

Every purchase and sales transaction to buy or sell copper has an impact on the net hedge book copper exposure for copper tube fabricators.

b. The Process for Fixed Price Copper Tube Export Sales

Export sales of fixed price copper tube expose the tube manufacturer to the risk that the copper price will increase between the time at which the sales order price is fixed and the invoice date.

The international copper tube markets use a benchmark of three months lead time between fixing the price on an export order to invoicing that order. Tube manufacturers will hedge this risk by buying forward derivative contracts on the LME that match the expected physical delivery date. This period can vary by country of manufacture and export location. Gains and losses on the hedge contract will offset the exposure created by taking the fixed price sales order.

If the copper price falls, then the losses on the hedge contract will offset the gains generated by the fixed price sales transaction. These hedge gains and losses can be directly associated with the underlying fixed price sales order.

When fixed price export sales orders are being negotiated between the manufacturer and the export customer this will normally be done on a shipping container by container basis. The export customer will contact the tube producer and request a quote on the copper price basis. The manufacturer will closely monitor live LME copper prices, using platforms like Bloomberg. The manufacturer will use the live 3-month LME copper price, at that instant, as the pricing basis to make an offer to the export customer. When the export customer accepts the pricing offer, the tube manufacturer will immediately hedge the copper exposure by buying forward 3-month LME contracts. The agreed fabrication premiums above LME for each tube product are then added to the agreed fixed copper price to form the total fixed price for the respective different tube sizes. Discounts and rebates may then adjust the net pricing.

The selling price is fixed until the sale is invoiced, regardless of subsequent copper price fluctuations on the LME. The copper hedge contract remains in place until it is settled at maturity.

Export sales are predominantly made at fixed price across the international tube market.

Confidential Attachment 2 shows examples of this hedge transaction and actual examples of MM Kembla export sales and import purchases of copper tube.

This globally accepted practice means all export copper sales are back-to-back with the copper cost at the time of order to minimise an exposure to the volatility of the copper cost. The LME 3-month contract is the most actively traded internationally. It is reasonable to assume that the 3-month hedge is the closest date range to match the average lag in the physical copper markets (eg tube market). So, the average lag in the physical market is 3 months.

For exports from Vietnam MM Kembla has correlated the export data FOB US\$/kg to the LME and found to Australia (predominately to Hailiang Australia) the lag is LME – xx Month and to the USA the lag is LME – xx Months.

c. The Process for Domestic Copper Tube Sales in Vietnam

The process of taking orders for the domestic tube markets in Vietnam is fundamentally different to the export tube markets.

In Vietnam, the manufacturer resets the copper price basis for tube sales [period]. The manufacturer references the Shanghai Metals Market (SMM) price as the basis for domestic sales. This means that there is essentially no price risk to be hedged for Vietnam domestic market because the tube delivery will be invoiced in [period] after the price has been set.

IV. **The copper price volatility during the IP and the timing impact on comparative export invoice values has not been considered.**

The Commission has calculated the dumping margins for Hailiang Vietnam on the basis of a comparison of quarterly weighted average export prices with the corresponding quarterly weighted-average normal value for the investigation period (as per subsection 269TACB(2)(a)).

Further, Section 9 of the Hailiang Vietnam verification report does not identify any adjustment for copper price variability. The Commission's methodology is considered reasonable *if* the same copper price is used in the sales for domestic and export. In reality, this is **not** the case and therefore an adjustment to normal value for the copper price variance is required. As outlined in MM Kembla's application, the copper cost accounts for up to 95% of the total cost of copper tube. Subsequently, the adjustment for copper price variability between domestic and export pricing needs to be considered as it is a significant contributor to the total price of copper tube.

Given the variability of the copper commodity and the exposure risk this creates when domestic and export orders are priced (at date of order), the industry accepted practice of hedging copper prices at the time of order, results in an alignment of the cost of copper for the manufacturer and what the customer pays for the copper component of the pricing model.

During the period of the investigation the LME copper price fell by xx%, from the January high of US\$xxxxx to the March low of US\$xxxxx. The price then rebounded moving up to a new high of US\$xxxxx in December an increase of xx% from the low. The timing difference between pricing dates of the copper cost and invoice date for domestic and export sales had a material impact on the comparative quarterly weighted average export price and domestic sale and a misalignment between the invoice price and product cost.

This over the 12 months of the investigation period has the impact of inflating domestic prices on average by \$xxx/t based on the correlated LME cost to export prices of LME – 1 Month. The chart below demonstrates this lag effect over the period of the investigation.

[*Commercially sensitive Graph redacted – Timing difference of Copper Cost US\$/T by invoice date*]

The Commission has not made any adjustments that recognise the impact of copper price volatility on sales prices. Adjustments for the impact of copper price movements are necessary to ensure a fair comparison of 'normal' values to export prices during the investigation period.

This timing difference in the copper cost is a xxx% increase to domestic pricing and almost entirely explains the different dumping margins determined for Vietnam and China (as detailed in Statement of Essential Facts No. 557 "SEF 557") as it hasn't been dealt with correctly in each case. The Commission has failed to make any adjustments for this. The Commission should have either adopted one of the following adjustments:

- Adjusted the domestic price lower by the value of the average LME price fall of \$xxx/tonne;
- Substitute the same LME copper cost using the average monthly settlement prices into the Australian export prices and the normal value calculation taking out this variability of copper movements and pricing methods; or
- Use the same copper cost priced on orders at first point of resale to an unrelated buyer in Australia to calculate the export FOB price and the normal value for invoices in same period.

For Hailiang Vietnam the Commission “*verified the reasonableness of the method used to calculate the cost information submitted in the REQ for each of the relevant MCCs*”.

However, it is evident from the conclusions that the verification team clearly failed to reconcile the total cost of raw material including the industry accepted practice described in this document to include the true hedged cost of copper raw materials.

The real hedged cost of copper is ignored. Hailiang Hong Kong carries out all the hedging transactions for all raw materials. This is common practice that Treasury functions are centralised. It is clear these real hedge costs have not been allocated to cost of copper for Hailiang Vietnam sales. In fact, during the 2020 year (January to December 2020) Hailiang Hong Kong made an operating loss 180,520,000 Yuan while Hailiang (Vietnam) Copper Industry Co., Ltd made a profit of 2,054,489,000 Yuan. In the Zhejiang Hailiang Co., Ltd. 2020 Annual Report, Section 3 the following statement explained the operating loss by Hailiang HK. (Non-Confidential Attachment 11)

“During the reporting period, the main reason for the net profit loss of Hong Kong Hailiang Copper Trading Co., Ltd. was the hedging loss of the company’s overseas raw materials.”

This oversight clearly demonstrates the lack of understanding by the Commission of how copper should be costed during the investigation period. Not calculating the true copper cost matching with invoice prices and the material impact of this due to copper representing up to 95% of the total manufacturing cost is a key flaw in the calculation of the dumping margin.

V. June 2021 USA dumping finding for seamless copper tube from Vietnam.

On 24 June 2021 by notice published in the Federal Register, the US Department of Commerce (USDOC) published a Final Affirmative Determination on seamless refined copper pipe and tube exported from Vietnam to the United States. The USDOC determined that exports by Hailiang (Vietnam) Copper Manufacturing Company Limited (affiliated with Hong Kong Hailiang Metal Trading Limited) exported seamless refined copper tube to the US at less than fair value (i.e. at dumped prices).

The margin of dumping determined by USDOC was 8.35 per cent (based upon a weighted average methodology).

The USDOC finding is in contrast to the Commission’s preliminary dumping margin assessment in Investigation 580. The USDOC finding raised genuine concerns about the Commission’s findings that are inconsistent with those of USDOC.

MM Kembla has compared and contrasted Vietnam export prices to the USA with export prices to Australia over the respective investigation periods of both jurisdictions.

MM Kembla purchases the export copper tube data for Vietnam. (Confidential Attachment 12 - US imports from Vietnam comparison Jul 20 to Sept 20). MM Kembla has undertaken a comparison of the export data to the USA with that of Australia, the period July to September 2020 where there was an overlap in available export data. MM Kembla’s examination confirmed:

- Comparing the US\$/KG export prices from Hailiang Vietnam between Australia and USA for the like product groups sold in both countries.

- There is 3 month overlap in both countries for these products (July 20 -Sept 20). Hailiang stopped exporting these products in October 2020 from Vietnam. Probably due to the pending Preliminary Affirmative Determination on imports from Vietnam.
- Based on the chart below the LME -xx month best correlates with Australian export NSV.
- For the USA the best correlation is LME -xx months.
- Based on this analysis the NAV's (Net added value = NSV less the LME copper cost) for Australia xxxx in 2 of the 3 months. For the quarter the weighted average NAV for the USA is US\$xxxx/kg vs US\$xxxx/kg for Australia.
- If USA imposed 8.35% dumping measures on Vietnam including Hailiang then given these lower NAV's to Australia then dumped prices must be occurring in Australia also. It further demonstrates the problem with using only export invoice prices and not considering the timing impact of the copper cost and the true hedged cost of copper.

[Commercially sensitive graph redacted – Comparison of USA & Australia US\$/kg FOB Export prices v LME]

[Commercially sensitive graph redacted – Comparison of NAV US\$/kg between USA & Australia]

A comparison of export data from Vietnam to Australia and the USA for same like goods demonstrates lower export prices into Australia during the investigation period. The USA has determined a preliminary affirmative dumping margin of 8.35% in July 2021. On this basis, it is reasonable to conclude that dumping is therefore also present from Vietnam to Australia. The USDOC finding raised genuine concerns about the Commission's findings that are inconsistent with those of USDOC

VI. Sales by Hailiang Australia do not support 'no dumping' finding

In the Hailiang Australia importer verification report for this inquiry, the Commission determined that Hailiang Australia's sales of seamless copper tube were sold profitably on the Australian market. Additionally, the Commission noted the Commission's finding in Investigation 557 where it was confirmed that "...on a weighted average basis, Hailiang Australia was profitable **by over 9 per cent**" (emphasis added).

The Commission examined 10 shipments by Zhejiang Hailiang to Australia from Vietnam. All 10 shipments were found to be profitable. On the basis that none of the shipments were made at a loss, it is likely that the level of profit is equal to, or higher, than the profit determined in Investigation 557.

MM Kembla does not consider that the Commission's determination that sales by Hailiang Australia can be sustained. The following details why Hailiang Australia's sales cannot be considered profitable or alternatively why the commissions export FOB pricing comparison methodology is flawed

(a) Deductive export price calculations

The Commission has not undertaken the appropriate deductive export price analysis using the Hailiang Australia customer selling prices to confirm whether the export price from Hailiang Vietnam via HK Hailiang to Hailiang Australia was arms-length.

The following deductive export price analysis undertaken by MM Kembla confirms that the selling prices by Hailiang Australia are at **not** arms-length as they fail to recover the hedged copper cost at the date of export (i.e. date of invoice), let alone the LME copper cost plus fabrication and SG&A expenses incurred by the Vietnam exporter.

The Commission confirms that it obtained invoice selling prices by Hailiang Australia to its Australian customers that it used to establish the profitability of those sales on the Australian market.

MM Kembla has access to a range of Hailiang Australia selling prices (via weekly list prices obtained from Hailiang Australia) covering the period February 2020 to November 2020. The list prices reflect the prevailing copper cost (based upon actual LME), fabrication cost of US\$xxxx-\$xxxx per tonne and an addition premium (variable based upon sales volume and product) to reflect import costs, SG&A and profit margin in Australia.

MM Kembla has utilised the selling price to the Australian customer (identified in Confidential Attachment 1 – Deductive export price calculations) and made relevant deductions for the selling price to deduce a Free-On-Board export price, China.

MM Kembla has made the following deductions to Hailiang Australia's selling price to its customer:

- profit (based upon Commission's 9 per cent determined profit);

- delivery to buyer (based upon MM Kembla's costs for imported copper products – refer Confidential Attachment 1a);
- warehousing (based upon MM Kembla's costs – refer Confidential Attachment 1b);
- SG&A (based upon 1 per cent of selling price – Hailiang Australia incurs minimal sales personnel costs in Australia);
- freight from wharf to store (based upon MM Kembla costs – refer Confidential Attachment 1c);
- import clearance and handling (MM Kembla costs for clearance of copper product – refer Confidential Attachment 1d);
- overseas freight and insurance (MM Kembla freight costs ex China – refer Confidential Attachment 1e).

Following calculation of deductive export prices based upon [*source of competitor selling prices*] (imports subject goods from Vietnam commenced in July 2020), MM Kembla has then contrasted the deduced prices with the prevailing LME copper price corresponding with the quoted sell price. Please refer to Confidential Attachment 1 – Deductive export price calculations evidencing the range of negative profit derived [*source of competitor selling prices*].

This comparison has yielded an average loss of US\$xxx/T (or negative xx per cent of NSV). This comparison is before the cost of fabrication, SG&A and profit is taken into consideration by Hailiang Vietnam and SGA recovery for Hailiang HK.

Further to this loss in Australia if the negative dumping margin of 0.6% is then deducted from the deductive export price to get back to normal value. This average xxx increased to US\$xxx/t or xx% below the average IP copper price of US\$xxxx/t.

The above analysis confirms that the Commission's conclusion that the selling prices for Hailiang Australia can be considered arms-length (before any rebates or reimbursements by Hailiang Vietnam are even considered) is **incorrect**. The correct hedged cost of copper has not been considered.

MM Kembla has established – based upon the Commission's own conclusions on the level of profit on sales achieved by Hailiang Australia) and information supplied to the Australian market [*redacted – source of pricing information*] - that the selling prices by Hailiang Australia do not recover the fully-absorbed cost to make and sell (CTMS) seamless copper tube by Hailiang Vietnam. In fact, the export prices to Australia by Hailiang Vietnam do not recover the cost of copper as reflected in LME copper pricing at the date of export.

This is due to the real hedged cost of the copper is ignored. If purely the importer invoice cost is used, then there is a misalignment between the "hedged copper" cost and the selling copper price. In the Zhejiang Hailiang Co., Ltd. 2020 Annual Report, section 3 the following statement explained the operating loss by Hailiang HK. (Non-Confidential Attachment 11):

"During the reporting period, the main reason for the net profit loss of Hong Kong Hailiang Copper Trading Co., Ltd. was the hedging loss of the company's overseas raw materials."

This clearly confirms that Hailiang HK performs all the hedging transactions for the export and domestic business. These hedging costs have not been addressed by the Commission and not addressed with as outlined above.

This analysis casts significant doubt over the reliability and rigour of the Commission's understanding of seamless copper tube production costs and industry practice concerning LME copper pricing. The Commission has not considered the total cost of copper including hedging, the global practice to align copper costs to invoice copper cost, or the variability in the timing of the copper price at time of export. Consequently, the preliminary normal value and dumping margin findings in SEF 557 must be considered flawed and cannot be relied upon.

(b) Rebates

Hailiang Australia's importer verification report states that the Commission did not consider that there was any benefit provided to Hailiang Australia by Hailiang Vietnam. However, MM Kembla understands that rebates are provided via the affiliated Hailiang HK trading company for sales made in Australia by Hailiang Australia.

It is also standard practice to provide rebates to merchants in Australia, [name of merchants]. These amounts are paid to head office and not shown on invoice. [name of merchant] would be Hailiang Australia's [commercially sensitive] customer. It is our understanding that a xx% rebate is paid to the [name of merchant] head office. It is important that the commission verification team has included this rebate in assessing profitability of the 10 selected invoices as it is very likely many of these are [name of merchant] sales. Confidential Attachment 15 demonstrates that [name of merchant] invoice price is higher than a smaller merchants comparative invoice even though they would be the [commercially sensitive] Hailiang Australia. Once it is reduced for the rebate the [commercially sensitive].

The Commission accepted explanations by Hailiang Australia that the exporter Hailiang Vietnam sets prices in accordance with prevailing LME copper prices. It was further considered that fabrication costs were included in the sales and profits of Hailiang Vietnam.

It cannot be assumed that merely because the Australian importer has stated that it did not receive any reimbursements from the exporter, that the sales between the exporter (via the related party trader) can be accepted as arms-length.

Where the Australian industry evidences information that reimbursements are evident there is an obligation for the Commission to further investigate the claims.

In its Commercial-in-Confidence exporter briefing document in Investigation 557 (provided by MM Kembla to the Commission on 4 May 2021) MM Kembla demonstrated [commercially sensitive] to Australian customers to assist in securing increased sales on the Australian market. This practice would also occur in relation to export sales by the affiliated Hailiang Vietnam.

[Redacted – commercially sensitive comments about rebates available to customers of imported goods] Confidential attachments 9 & 10. These products are purchases from Hailiang Vietnam.

The [commercially sensitive] were provided by Zhejiang Hailiang in China via Hailiang HK and not from Hailiang Australia and for products purchased from Hailiang Vietnam.

[Commercially sensitive graph redacted – rebates provided by Hailiang Vietnam parent]

Below is a copy of a Hailiang Australia's price list dated [Merchant Name]. The remarks section at the bottom outlines the above prices do not include any rebates, cash discounts or commissions. It would seem unnecessary to point this out if rebates are not paid. As outlined previously these rebates are paid by Zhejiang Hailiang in China directly to Australian tube customers.

[Redacted – commercially sensitive pricing information for imported seamless copper tube].

MM Kembla has demonstrated that Hailiang Australia's selling prices into the Australian market do not recover the fully-absorbed costs to manufacture copper tube that must achieve compliance with the Australian Standards AS/NZ 1432 and 1571. These sales at a loss by Hailiang Australia are before rebates are accounted for.

It is therefore critical that the Commission re-assess the arms-length nature of sales by Hailiang Australia.

VII. Not possible for price undercutting in the range 7 and 55 per cent to occur (as per SEF 557), based upon fabrications costs that represent less than 10 per cent of the CTM

The confirmed levels of price undercutting, however, are contrary to the "arms-length" finding.

The reality in the seamless copper tube industry is that where the copper accounts for more than 90 per cent¹ of the Cost to Make ("CTM") and the copper price is the same for the exporters and the Australian industry and based upon the same benchmark (i.e. London Metals Exchange), it is not possible (or even feasible) for price undercutting in the range 7 and 55 per cent to occur, based upon fabrications costs that represent less than 10 per cent of the CTM.

Confidential Attachment 3 shows the breakdown of the total MM Kembla manufacturing cost for the highest selling product and compares this to the Hailiang Australia average selling price and calculated manufacturing cost. [Commercially sensitive pricing information for imported goods] MM Kembla [Commercially sensitive pricing information for imported goods] provided directly to MM Kembla [Commercially sensitive pricing information for imported goods] as the [Redacted – commercially sensitive details of comments attributed to and source] to get more MM Kembla [Commercially sensitive pricing information for imported goods]

Using the Hailiang 2020 Annual Report which outlines copper pipe segmentation data shown in the Confidential Attachment 3, the fabrication cost could be adjusted for the SGA and Gross Margin, and also split into wages costs and manufacturing costs. What you can see from this

¹ SEF 557, Appendix A – Particular Market Situation, Section A5.1, P. 66.

comparison with MM Kembla product fabrication costs the . [*Commercially sensitive*]. When you then also allow for Commission of xx% (*Redacted – commercially sensitive source*) local warehousing and freight (based on MM Kembla actual costs) and xx% for other selling costs (based on Hailiang Vietnam claim of no local staff in Australia and minimal support for R&D, technical support, Debt collection, Finance and other support services provided out of China for the Australia Business). It is not possible to price undercut before making a loss. This proves that the quoted level of undercutting of 7-55 per cent in Commission's finding in Investigation 557 for Hailiang Australia (China and Vietnam sourced tube is sold interchangeably and priced the same by Hailiang Australia) is physically not possible without making a substantial loss and demonstrates the basis for the comparison of pricing by the Commission is not understood and incorrect.

Additionally, the Commission has not considered the true hedge book cost of all actual copper purchases by Hailiang Vietnam.

Therefore, when using the Commission's assumption there is no material difference in the LME cost of copper between Hailiang Vietnam's export FOB and MM Kembla domestic material costs, the level of price undercutting and assumed profitability of Hailiang Australia is again not possible.

The Confidential Table below shows for the top selling product in Australia the comparative fabrication costs and FIS sale price between Hailiang Australia and MM Kembla for the period of investigation. MM Kembla premiums are the actual cost above copper [*Redacted – commercially sensitive source of pricing*] outlined in Confidential Attachment 3. The copper cost assumed is the Average LME US\$/T for the period of the investigation. The exchange is the average USD/AUD for the investigation period.

What this shows and the summary table below the total product cost before SG&A ex works in Australia very similar (within xxx%). This demonstrates the cost competitiveness of the MM Kembla business. The chart below shows the year-on-year productivity gains the MM Kembla business has made to remain globally competitive. This is also demonstrated by the fact xx% of total production volumes are being exported back into Asia.

[Redacted – Commercially sensitive graph on tube mill efficiency for MM Kembla]

Once the SG&A costs for Hailiang Vietnam and Hailiang Australia are considered it is not possible for Hailiang Australia to price undercut and be profitable. The table below shows that the level of price undercutting is xx% and results in a xxx% loss after SG&A.

[Redacted – Commercially sensitive Table on price undercutting versus cost of copper]

The Commission's findings on price undercutting confirm a significant error in the negative 0.6 per cent dumping margin finding for Hailiang Vietnam. The price undercutting margins as determined in SEF 557 and dumping margin determinations for Hailiang Vietnam are in conflict and must be re-examined.

VIII. Like goods

MM Kembla disagrees with the finding of the verification teams' assessment of like goods in the exporter verification report. The like goods assessment is incorrect on the following grounds:

- The applicable product standards for copper tube for Plumbing applications in the exporters local market are not the same as those in the Australian market;
- The goods are not interchangeable as they do not meet the mandatory requirements in Australia of National Construction Code (NCC) in Australia (Vol.3 Plumbing Code of Australia);
- The exporters local product standard is not referenced in the Watermark Schedule of Products for plumbing tube;
- The selection of surrogate MCC codes where domestic sales of products are not available on the investigation period are incorrect and cannot compare products produced to 2 different Standards AS1432 and AS1571.
- Evidence to suggest imported tube from Vietnam present a high rate of non-conformances across a range of product standard requirements;
- The national product standards applicable to the local market in Vietnam are non-mandatory;
- There are precedents in other jurisdictions involving seamless copper tube dumping that have determined that the goods sold in the exporters local market do not constitute "like goods".
- The deletion of capping from the MCC structure incorrectly ignores the material cost of capping and cleaning refrigeration tube.

(a) Domestic Products Made to a Different Standard Are Not Like Goods

The Commission concluded in the Exporter Verification Report for Hailiang Vietnam (EPR Document No. 009) that:

The verification team considers that the goods produced by Hailiang Vietnam for domestic sale have characteristics closely resembling those of the goods exported to Australia and are therefore 'like goods' in accordance with section 269T(1) of the Act.

In its examination of the goods manufactured by Hailiang Vietnam, the Commission determined that the goods produced by the exporter like goods sold on the domestic market as they:

- *Physical likeness: The exported and domestically sold goods are physically alike as evidenced from the physical dimensions specified in the commercial invoices and description of goods in the company's internal system.*
- *Production likeness: The process employed by Hailing Vietnam for production of the exported goods and the like goods sold domestically is identical.*
- *Commercial likeness: The goods sold domestically and in the export market are sold in similar market sectors and through similar distribution channels. While the exported goods are routed through Hong Kong based group entity and the domestic goods are sold directly to the customer, the goods target the same commercial ends.*

- *Functionally alike: the exported goods and goods sold domestically are functionally alike as they have similar end uses.*

The Commission's like goods analysis for seamless copper tube manufactured by Hailiang Vietnam is considered erroneous.

MM Kembla references the Commission's findings in the exporter verification report for Guilin International Wire and Cable Co Ltd in PVC Electrical Cables exported from China , the locally produced goods differ from the exported goods due to the latter being manufactured to Australian Standard AS 1432 and AS/NZ 1571 whereas the locally produced goods are manufactured to various product standards not including AS 1432 and AS/NZS 1571 and/or do not manufacture copper tube for the same applications (i.e. Plumbing).

Further, in Investigation 469 the Commission acknowledged that there existed a difference between the goods sold domestically in China and the exported goods on the following grounds:

Physical likeness

The domestic good is manufactured to a different technical standard, voltage capacity and is fire-resistant.

Commercial likeness

There is no marketing of the domestic good in the housing market in China whereas the export good is a key product that competes with other suppliers in the housing and construction market in Australia.

Functional likeness

Based upon the operation of different wiring standards the domestic and export good are not interchangeable between Chinese and Australian markets.

Production likeness

There is a significant production difference regarding the number and diameter of the wires used in the manufacturing of the domestic and export product.

The Commission's findings in Investigation 469 that PVC electrical cable manufactured for the Chinese domestic market is not identical to the PVC electrical cable exported to Australia due to the applicable National Standards applicable in the respective market applies equally to the differences in the Vietnamese domestic and export markets for seamless copper tube.

MM Kembla understands from its exporting of copper tube into the Vietnamese market that there are no mandatory copper tube product standards. It is understood that the predominant applications for copper tube in Vietnam are for the purposes of refrigeration, air conditioning and medical gas applications. The product standard applicable for these applications can range between ASTM B280, BS EN 12735-1, BS EN 13348 and JIS standards or agreed due to the non-mandatory nature. The required characteristics of the tube are as agreed between purchaser and seller or as determined by designers.

The applicable standards for seamless copper tube manufactured and sold in Vietnam are different to the goods manufactured and exported to Australia which comply with the applicable Australian standards. The differences between to the seamless copper tube produced for the Vietnamese market and the goods exported to Australia include differences in:

- manufacturing standards
- safe working pressures
- cleaning requirements
- acceptable temper of product
- manufacturing wall thickness tolerance;

The differences in these factors significantly impact the manufacturing cost (necessitating adjustments for specification differences between domestic and export models) and when the copper price is fixed (as reflected in the London Metals Exchange (LME) price) this represents a large percentage of the conversion cost (i.e. different manufacturing costs for domestic versus export seamless copper tube). The following explanations detail the clear differences:

(i) Made to different product standards

As reported earlier, there are varying product standards used in the Vietnamese local market due to the non-mandatory specification of copper tube in the local market. In addition, copper tube is not predominantly used for plumbing applications as found in the Export Verification Report where the verification team found no domestic sales of MCC P-B-U-S-P or P-H-U-S-P and subsequent adopted surrogate models of the refrigeration MCC's.

The reverse is true in Australia where copper tube is still one of the prominent materials used for plumbing in major construction works. Subsequently, it is considered that these goods are not interchangeable and cannot be considered like across markets and applications where no local standard or requirement exists.

As an example, the following evaluation of standards by their relevant applications (plumbing or refrigeration) demonstrates the lack of interchangeability that exists:

(a) *Refrigeration Copper Tube – ASTM B280 vs AS/NZ5 1571*

A commonly referenced standard by customers in Vietnam for refrigeration and air conditioning tube is ASTM B280. When compared to AS/NZS 1571 sold in Australia; whilst they share the same Outside Diameter ("OD") dimensions, the Wall Thickness ("WT") dimensions are different as illustrated in Figure 1.

Refer to product sizing table in Confidential Attachment 5 – Product Comparison Tables AS1571 vs ASTM B280 that show the differences in Wall thickness ("WT") between the goods sold in Australia and the Vietnamese markets. There is little alignment with wall thickness variance ranging between -xx and xx% and on average AS/NZS 1571 product being xx% thicker than ASTM B280 product.

As a result of the variations in the product dimensions, on average AS/NZS 1571 copper tube weighs xx% more than ASTM B280 tube with weight variances ranging between -xx% and xx%.

[Redacted – Commercially sensitive - Figure 1 - OD & WT Plot AS/NZS1571 Vs ASTM B280 Copper Refrigeration Tube]

(b) *Capping Costs & Removal of the Capping Model Characteristics from MCC's*

MM Kembla has reviewed the exporter verification report for Hailiang Vietnam (EPR Document No. 009) recently published on the Investigation 580.

Section 2.2.1 of the report states:

“The verification team considered the cost of the caps relative to the production costs of the goods and like goods per kilogram and found the capping cost was immaterial. The verification team also examined the unit prices in sales of the goods and like goods and did not identify any price differences attributable to capping. On the basis of these findings, the verification team considers it necessary to amend the MCC structure to remove the category for capping”

The determination that capping costs are not material components of cost and no material difference in selling price between capped and uncapped copper tube is an inaccurate evaluation by the verification team.

The requirement for cleaning and capping of tube to Australian product standard AS 1571 is to ensure the product is suitable for its intended application – for installation in refrigeration and air conditioning systems. Such applications require that the copper tube is internally cleaned and maintained prior to installation. The only way to achieve this requirement is to suitably clean the tube during the manufacturing process; or perform a treatment after manufacture; and maintain its internal cleanliness prior to installation. This can only be assured and conform with the product standard by capping the tube.

These requirements are explicitly stated in Australian product standard AS 1571: 2020 – Copper – Seamless tubes for air-conditioning and refrigeration (see Figures 1 and 2 below) a product standard referenced in Australia's National Construction Code (Volume 3) for heating, ventilation and air-conditioning systems. Capping and cleaning are considered material components of this type of copper tube. Any verification team evaluation that considered capping to not be a material component of this type of tube would require that all capped products in the MCC should be re-instated and the products not be considered “like goods” with those sold in the exporters domestic market.

The requirement for “cleaning and capping” is above and beyond the requirements of product uncapped and for Plumbing purposes. No such requirement for cleaning and capping is included in the Australian product standard AS1432 – Copper tube for plumbing, gasfitting and drainage applications and any such costs for cleaning and capping cannot be considered a general packaging expense and allocated more generally over items that relate to “Plumbing” and “Uncapped” categories within the MCC's.

As illustrated in MM Kembla's Capping Costs submission on 14 May 2021 as part of Investigation 557 (EPR Document No. 23), the average capping cost (this excludes the cleaning cost); including the cost of cap material and associated process of capping for the top 10 products; is a weighted average of \$xxx/tonne and represents xxxx% of the total conversion/fabrication cost of capped refrigeration tubes. The capping cost is a direct cost associated with refrigeration copper tube to comply with AS 1571 and should be correctly assigned to those products.

Capping is a defining characteristic of refrigeration and medical gas copper tube, and it is proposed all cleaning and capping costs be included in evaluation of exporter prices and MCC's with capping be reinstated for the purposes of verification. If neither is considered and an adjustment made accordingly to factor in this cost, then the goods should not be deemed "like goods" in the treatment of determining its normal value.

5.3 End sealing

Tubes shall be either capped, plugged, crimped or otherwise packaged in order to maintain internal cleanness under normal conditions of handling and storage.

Figure 1 - Excerpt from AS 1571 - Clause 5.3 (End Sealing)

12 Cleanness

The measured residue of the internal surface of a tube (supplied with ends sealed) shall not exceed 0.038 g/m² of the internal surface when tested by either of the following methods:

- (a) When washed with trichloroethylene, or other suitable solvent, the residue after evaporation of the solvent shall not exceed the limit stated above. Testing for cleanness shall be conducted in accordance with the method described in ASTM B280.
- (b) When tested in accordance with the method described in EN 723, the lubricant residue as total carbon content shall not exceed the limit stated above.

Tubes manufactured or tested with trichloroethylene, or any chlorinated hydrocarbon solvent, shall not be supplied to the market with any residual solvent present.

NOTE UV radiation from arc welding processes and/or intense heat from gas brazing processes in the vicinity of certain solvents may cause the formation of highly toxic by-products.

Figure 2 - Excerpt from AS 1571 - Clause 5.3 (Cleanness)

(c) Surrogate MMC codes are incorrect

The selection of surrogate MCC codes where domestic sales of products are not available on the investigation period are incorrect and cannot compare products produced to 2 different Standards AS1432 and AS1571. The assumptions in the table below are incorrect.

Export MCC	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
P-B-U-S-P	N	No domestic sales of 'P-B-U-S-P'. Surrogate model 'R-H-U-S-P' used under section 269TAC(1) with specification adjustment under section 269TAC(8). Verification team has used the model 'R-H-U-S-P' as the surrogate model as the other model with greater than 5% of domestic sales as a proportion of export volume, 'R-B-U-S-P', did not have sales in each quarter and therefore, multiple adjustments under section 269TAC(8) would be required.
P-H-U-S-P	N	No domestic sales of P-B-U-S-P. Surrogate model R-H-U-S-P used under section 269TAC(1) with specification adjustment under section 269TAC(8).
R-B-U-S-P	Y	Domestic sales of R-B-U-S-P used under 269TAC(1) with adjustment under section 269TAC(8) for timing differences, to account for export and domestic sales being made in different quarters.
R-H-U-S-P	Y	Domestic sales of R-B-U-S-P used under section 269TAC(1)

Australian Copper Plumbing Tube vs Refrigeration Tube – AS 1432 vs AS/NZ5 1571

To further illustrate that plumbing and refrigeration copper tube is not interchangeable and surrogate models should not be adopted due to the lack of sales of plumbing tube in the Vietnamese local market, it is wise to compare the relevant local standards for plumbing tube and refrigeration tube in Australia.

Whilst both standards share some likeness in OD dimensions, there once again is significant variance in WT dimensions due to increased pressure requirements of refrigeration and air conditioning pipelines when compared to plumbing applications. Figure 2 illustrates the relationships between OD and wall thickness and the lack of interchangeability that exists as a result of the varying requirements of the two product standards.

In addition, the manufacturing process for AS/NZS 1571 refrigeration tube is considerably different to that of AS 1432 plumbing tube due to the additional product standard requirements of internal surface quality and capping requirements of refrigeration tube.

Refer to product sizing table in Confidential Attachment 4 – Product Comparison Tables AS1571 vs AS 1432 that show the differences in Wall thickness (“WT”) between the highest volume items of the two standards and subsequent applications. There is little alignment, with wall thickness variance ranging between -xx% and xx% and on average AS/NZS 1571 product being xx% thicker than AS 1432 product.

As a result of the variations in the product dimensions, on average AS/NZS 1571 copper tube weighs xx% more than AS 1432 copper tube with weight variances ranging between -xx% and xx%.

[Redacted – Commercially sensitive Figure 2 - OD & WT Plot AS/NZS1571 Vs AS 1432 Copper Tube]

ii. Made to different working pressures

As a result of the differing standards and product dimensions in (i), the safe working pressures 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/may not be suitable for the same application in local/export markets. These should not be considered comparable for normal value purposes as safe working pressures are a critical determining factor in the selection of product for an application.

iii. Cleaning requirements

Refrigeration Copper Tube – ASTM B280 vs AS/NZ5 1571

The requirement for the cleaning of copper tube is vastly different when comparing the two product standards.

ASTM B280 does not have a mandatory requirement for product to pass cleaning tests. Subsequently, such requirements are as agreed in the sales or purchasing contract between buyer and seller. Section 4.2.3 of ASTM B280 states that the Cleanness test option is available and shall be specified in the contract or purchase order when required. The standard further states in Section 10.2.1 Performance Requirements – Cleanness of Interior Surface, “When specified in the contract or purchase order, this test shall be performed by the manufacturer”.

Such freedom to meet internal cleanness requirements does not exist in the Australian product standard AS/NZS 1571. Section 12 Cleanness states that:

The measured residue of the internal surface of a tube (supplied with ends sealed) shall not exceed 0.038 g/m² of the internal surface when tested by either of the following methods:

- When washed with trichloroethylene, or other suitable solvent, the residue after evaporation of the solvent shall not exceed the limit stated above. Testing for cleanness shall be conducted in accordance with the method described in ASTM 8280.
- When tested in accordance with the method described in EN 723, the lubricant residue as total carbon content shall not exceed the limit stated above.

It is erroneous to consider these products as “like” or interchangeable when one of the primary requirements of internal cleanness is not mandatory and only as agreed in the exporters local standard. The average cost to clean hard drawn temper product is an additional A\$xxx/tonne and subsequently

[redacted – commercially sensitive – capping and cleaning costs – MM Kembla]

Source: Confidential Attachment 7 – Capping & Cleaning Costs – Bill of Materials extract ERP

iv. Acceptable temper of product

a. Refrigeration Copper Tube – ASTM B280 vs AS/NZ5 1571

There only exists a provision for hard drawn temper in ASTM B280 for straight length refrigeration tube, however in AS/NZS 1571 tube with OD's 12.70mm to 22.22mm are permitted and are standard practice to be manufactured to half hard temper as per the provision allowed for in AS/NZS 1571. The subsequent process to anneal the product and reductions to work harden the product to half hard require a different manufacturing process to that of hard drawn temper tube and subsequent different cost structure.

In addition, bendable/half hard copper tube does not usually require additional cleaning as the annealing process removes any residual lubricants that would affect internal surface quality. In order for ASTM B280 tube to be like product to AS/NZS 1571, the product would require additional cleaning costs to meet the mandatory cleanness requirements of the Australian product. The subsequent cost for additional washing treatment for bendable or half hard tube is on average AU\$xxx per tonne (Refer to Confidential Attachment 13 – Cleaning costs of Bendable Tube (Cleaning after manufacture))

v. Made to different manufacturing wall thickness tolerance

a. Refrigeration Copper Tube – ASTM B280 vs AS/NZ5 1571

The local product standard not only has varying dimensions but also varying allowable min and max. tolerances of the tube wall thickness. Refer to Wall Thickness Tolerance Tables in Confidential Attachment 5 – Product Comparison Tables AS1571 vs ASTM B280

Min and max tolerances in the ASTM local standard range between 7.9% and 11.2%, and in the standard exported to Australia, tolerances are set at 10%.

b. Australian Copper Plumbing Tube vs Refrigeration Tube – AS 1432 vs AS/NZ5 1571

The Australian product standards for refrigeration and plumbing copper tube also state varying allowable min and max. tolerances of the tube wall thickness. Refer to Wall Thickness Tolerance Tables in Confidential Attachment – Product Comparison Tables AS1432 vs AS1571

Min and max tolerances in the Australian plumbing tube standard AS 1432 range between 13.7% and 15.4%, whereas the refrigeration tube standard AS/NZS 1571 has tolerances set at 10%.

vi. The national product standards applicable to the local market in Vietnam are non-mandatory

MM Kembla understands from its exporting of copper tube into the Vietnamese market that there are no mandatory copper tube product standards. It is understood that the predominant applications for copper tube in Vietnam are for the purposes of refrigeration, air conditioning and medical gas applications. The product standard applicable for these applications can range between ASTM, BS EN and JIS standards. The required characteristics of the tube are as agreed between purchaser and seller or as determined by designers.

In a circumstance where national product standards are non-mandatory and exist in an unregulated market, it is impossible to ascertain that 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 and agreed between buyer and seller and thus there is no comparative basis to the copper tube that is sold in Australia, a market where adherence and certification to product standards for Plumbing and Refrigeration applications is mandatory. Such characteristics can significantly change the cost and subsequent price if the seller chooses 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, semi annealing);
- Eliminate capping requirements;
- Eliminate ink marking and incising requirements.

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

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 "likeness" of the goods to an alternative standard as key characteristics of the product such as performance requirements and dimensional tolerances cannot be evaluated as like for like.

In the instance of this application, no evaluation can be made to the "likeness" of product sold in the Vietnamese local market and that exported to Australia for the calculation of a normal value and subsequently alternative means to determine the normal value are clearly required.

vii. Evidence to suggest Hailiang Vietnam do not produce like exported goods to those produced in Australia

Testing conducted by MM Kembla on [*imported*] product imported in the Australian market shows non-conformances with product standard AS 1432. Results of which can be found in Confidential Attachment 8 – Laboratory Testing Results These non-conformances are across a range of product standard requirements:

- Wall Thickness tolerances;
- Incising – not repeated at correct intervals and/or no presence;
- Failure of internal surface quality (carbon cleanliness).

Details are provided in Table 8 below of report CC65400 in Confidential Attachment 8. The final 3 items of Table 1 are samples tested of [*imported*] manufactured copper tube. The samples supplied did not meet all requirements of AS1432 for Type B copper tube. Refer to the relevant sections above for failure details. A summary is provided in Table 8, where '✓' means specification requirements were met and 'x' means specification requirements were not met.

[Redacted – commercially sensitive laboratory test results on imported copper tube]

In particular, we draw your attention to non-conformances on wall thickness measurements and internal surface quality

Wall Thickness Tolerances

Table 7 of report CC 64500 of Confidential Attachment 8 shows testing of DN32 Type B AS1432 Hard Drawn Copper Tube indicated as “Sample ID H AS1432 DN32 3”.

Measurement of the minimum wall thickness of the sample show the copper tube produced by [exporter] as not conforming with the minimum wall thickness requirements of mandatory Australian standard AS 1432. This is further evidence of a “draw thin” program of manufacturing that is not within the tolerable limits of copper tube allowable for plumbing and gas fitting pipework installations in Australia.

Furthermore, reduction of the wall thickness below the minimum levels reduces weight and subsequent copper material used.

[Redacted – commercially sensitive details on tested wall thicknesses for imported product]

Product failing the minimum wall thickness test further demonstrates that Hailiang Vietnam draw extra thin (below the minimum in the standard) to reduce copper cost. This is what enables exporters to sell at lower prices. Therefore, these cannot be considered like goods without an adjustment to the export FOB price to recognise the copper and fabrication cost impacts of this out of specification product being sold in the Australian market against MM Kembla tube as AS 1432 compliant tube.

Internal Surface Quality

As per Section 5.3 of AS 1432, copper tubes of bendable temper, in the size range DN 15, DN18 and DN20 shall have the inner surface of the tube specimen test for carbon. The results show in report CC 62544 of Confidential Attachment 8 that all 3 samples tested failed the maximum carbon test by up to 6 times the accepted level (refer to Table 5).

[Redacted – commercially sensitive details on carbon content for imported product]

A standard manufacturing process for half hard tube does not require a cleaning treatment after manufacture, as the annealing process cleans the internal surface of the tube. However it is evident that such process does not meet the requirements of AS 1432 and subsequently, in order to meet the standard, [exporter] would be required to wash the produce via a treatment after manufacture.

The subsequent cost for additional washing treatment for bendable or half hard tube is on average AU\$xxx per tonne based on Kembla's experience of washing bendable tube. (Refer to Confidential Attachment 13 – Cleaning costs of Bendable Tube (Cleaning after manufacture))

viii. (CBSA Dumping Case AS1401 / Subsidy Case CV137), Canada Border Services Agency (CBSA)

As outlined in the CBSA Statement of Reasons; concerning the making of final determinations with respect to the dumping of certain copper tube originating in or exported from China, Republic of Korea, Brazil, Greece and Mexico; the CBSA determined that exporters did not sell identical or similar goods in its domestic market due to the fact the products were made to different product standards and subsequently "*the model characteristics did not match with the model characteristics of the subject goods sold to Canada*".

In its determination of like goods, the CBSA's investigations revealed that "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 and do not meet the Canadian requirements of the standards".

As is outlined in all copper tube product standards, the CBSA determined that the model characteristics were not alike due to the different dimensional and form characteristics of the various standards:

"...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."

It would be remiss for the Commission to not consider the CBSA's reasoning in determining that varying product standards lead cause to dissimilarities in model characteristics, therefore making it impossible to determine normal values based on sales of like goods in the country of export.

Like goods conclusions

This analysis confirms (consistent with the findings in Investigation 469) that the verification team's conclusions that domestic and exported goods are the same and can be used "interchangeably" is incorrect. Similarly, it is erroneous to conclude that the costs of production for models sold on the domestic and export markets are the same, as there are specification adjustments required to ensure a fair comparison can be made.

Furthermore, the analysis confirms that it is also erroneous to conclude that plumbing copper tube represented by MCC's P-B-U-S-P and P-H-U-S-P adopt a surrogate MCC model of refrigeration tube "R" type due to a lack of domestic sales in the exporters local market. The analysis has demonstrated

that there are vast differences in product produced for plumbing applications and refrigeration and air conditioning applications.

There exist considerable cost differences between seamless copper tube produced for sale on the domestic market in Vietnam and the goods produced and exported to Australia. These differences are material in terms of the copper cost (primarily) and the cost of conversion. The differences therefore warrant adjustments for copper cost and conversion costs for the differences in the domestic and export models.

The Commission's findings on this ground are erroneous and cannot be relied upon.

IX. Normal Values

The correct and relevant cost differences that exist between domestic and export sales of seamless copper tube have not been considered by the Commission due to the incorrect conclusions determined for like goods. The differences identified above necessitate different copper cost and conversion costs for the differences in the domestic and export models.

MM Kembla considers there are additional relevant considerations to the issue of like goods that have not been adequately considered. These include:

- The seamless copper tube manufactured for domestic sale by Hailiang Vietnam manufactured from scrap and locally sourced cathode which introduces quality and differing manufacturing processes to the goods produced from imported cathode only and exported to Australia;
- Timing on copper price basis during period of volatility in copper price;
- Additional draw thin in domestic Vietnam market - lowers real cost of copper in domestic sales;
- Difference in fabrication cost on a \$/T basis for manufacturing to the non-mandatory local standard vs exported goods produced to mandatory Australian standard;
- Tube imports into Australia do not meet Australian standards;
- Additional \$/T cost of fabrication based on difference weight and wall thickness;
- Adjustment for cost of capping and cleaning in domestic market for refrigeration tube.

(i) Scrap

MM Kembla understands that Hailiang Vietnam purchases significant quantities of scrap copper for use in the production of goods for the domestic market. For this reason alone, the domestic and export goods cannot be construed as being the same, with the selling prices and costs for the domestic and export costs being substantially different due to the raw material input (and costs thereof).

[Redacted – commercially sensitive detail on raw material product used by manufacturers] .

Confidential Attachment 6 shows the *[redacted – commercially sensitive details of raw material scrap]*

It is reasonable to expect that this is the case in the Hailiang Vietnam factory also.

The table below shows for the investigation period the difference in the China copper scrap price and the discount to the SSM cathode price. The average discount (excluding VAT) for this 12-month period for mixed scrap is US\$xxx/T or xx% and for Bare Bright Copper Wire - Zhejiang the average discount is US\$xxx/t or xx%. Based on the China factory visit both types of scrap was present so an average of US\$xxx/t or xxx% should be assumed.

[Redacted – commercially sensitive graph on SMM copper scrap discount to A class Cathode]

If this scrap is only used in domestic products, then this is because of the lower quality expectation of the domestic market versus the Australian market. The average US\$/T difference in the production of domestic product to this lower standard needs to add to the normal value calculation for comparison to export Australian standards produced copper tube. With xx% scrap used in the production process this result in a \$xxx/t **increase** required to normal value.

MM Kembla only use 100% A grade LME cathode sourced from [source of supply] for the manufacturing of copper tube.

(ii) Copper Costs

The Commission has calculated the dumping margins for Hailiang Vietnam on the basis of a comparison of quarterly weighted average export prices with the corresponding quarterly weighted-average normal value for the investigation period (as per subsection 269TACB(2)(a)).

As outlined in Sections iv above the Commission in this approach fails to account for real hedge book cost of copper and the alignment of the copper costs with invoice date between domestic and export sales.

The LME copper price has been very volatile during the IP. The Commission has failed to make any adjustments for this. The Commission should have adopted one of the following adjustments:

- Adjusted the export price up by the value of the average LME price fall of \$xxx/tonne; or
- Adjusted the domestic price down by the value of the average LME price fall of \$xxx/tonne;
- Substitute the same LME copper cost using the average monthly settlement prices into the Australian export prices and the normal value calculation taking out this variability of copper movements and pricing methods; or
- Use the same copper cost priced on orders at first point of resale to an unrelated buyer in Australia to calculate the export FOB price and the normal value for invoices in same period.

(iii) Draw Thin

In [redacted – commercially sensitive details about product purchase] option of buying the “lite” product with thinner wall thickness and lower copper content to reduce costs. The local standard in Vietnam are different to Australia, and the standards are not mandatory. Customers can and do negotiate to buy tube using customer defined specifications. Customers are highly motivated to set their own wall thickness specifications well below the official product standards due to the high cost of copper as a % of total costs. Hailiang Vietnam has demonstrated this reduced wall thickness option in the export markets as well.

The increased draw thin percentage is in the order of an additional xx% saving in copper cost.

Using the average copper price for July 2020 to December 2020 of US\$xxxxx/t, an additional \$xxx/t increase to normal value is required.

(iv) Capping and cleaning

The determination that capping costs are not material components of cost and no material difference in selling price between capped and uncapped copper tube is an inaccurate evaluation by the verification team.

The requirement for cleaning and capping of tube to Australian Standard AS 1571 is to ensure the product is suitable for its intended application – for installation in refrigeration and air conditioning systems. Such applications require that the copper tube is internally cleaned and maintained prior to installation. The only way to achieve this requirement is to suitably clean the tube during the manufacturing process; or perform a treatment after manufacture; and maintain its internal cleanliness prior to installation. This can only be assured and conform with the product standard by capping the tube.

As illustrated in MM Kembla's Capping Costs submission on 14 May 2021 (Investigation 557 EPR Document No. 23 and referenced in exporter briefing for Hailiang Vietnam) and Confidential Attachment 7, the average capping cost (this excludes the cleaning cost); including the cost of cap material and associated process of capping for the top 10 products; is a weighted average of A\$xxx/tonne and represents xxxx% of the total conversion/fabrication cost of capped refrigeration tubes. The capping cost is a direct cost associated with refrigeration copper tube to comply with AS 1571 and should be correctly assigned to those products. For hard drawn capped product an offline washing process is required prior to capping and the additional cost is A\$xxx/tonne.

[Redacted – commercial sensitive data concerning MM Kembla's cleaning & capping costs]

MM Kembla's ability to determine the difference very accurately in costs for capped and uncapped tube is evident, but the ADC has chosen to ignore our submission and detailed costing and take the word of exporters who are unable to identify the true cost of these MCC's through their own admission and take the word of the exporter that it is immaterial when MM Kembla has detailed costings.

As a result of Hailiang Vietnam not disclosing the cost of cleaning and capping, a significant cost element has been excluded from Refrigeration MCC s identified by the Commission.

This failure to recognise the additional production cost of AS 1571 refrigeration tube and resulting in no material change in pricing demonstrates that Hailiang Vietnam is not recovering all costs for these MCC and results in additional price suppression and undercutting as a result.

(v) Difference in fabrication cost on a \$/T basis for manufacturing to the local standard vs Australian standard.

Refer to product sizing table in Confidential Attachment 5 – Product Comparison Tables AS1571 vs ASTM B280 that show the differences in Wall thickness ("WT") between the goods sold in Australia and the Vietnamese markets. There is little alignment with wall thickness variance ranging between -xx% and xx% and on average AS/NZS 1571 product being xx% thicker than ASTM B280 product.

As a result of the variations in the product dimensions, on average AS/NZS 1571 copper tube weighs xx% more than ASTM B280 tube with weight variances ranging between -xx% and xx%.

The thinner the wall thickness and lower the total weight of the product the conversion cost increases on a \$/T basis. In MM Kembla's experience every xx% increase in weight equates to A\$xx/T reduction in variable conversion cost. The xx% difference equates to A\$xxx/t difference across the range due to the difference in the AS1571 standard and ASTM B280. This represents a material difference and should be a positive adjustment to the Hailiang Vietnam normal value (so that the dumping margin truly reflects the difference in conversion cost between the domestic and export sales).

Additionally, the result of the making to a non-mandatory standard that is unregulated in Vietnam is an increase in yields with less rejects and rework of copper. It is estimated this yield improvement would equate to xx%. MM Kembla total yield loss is xx% which is world best practice.

With an average fabrication cost in Vietnam based on its price list equating to US\$xxx this xx% rework cost improvement equates to an additional US\$xx/T

(vi) Additional rebates paid to customers in Vietnam.

MM Kembla understands [*redacted source of market intelligence*] that it is quite common to have rebates to domestic customers (i.e. Vietnam), but different customers will have different rebate schemes.

As with Zhejiang Hailiang in China, Hailiang Vietnam also likely rebates some of its domestic customers. The Commission did not follow up this matter with Hailiang Vietnam.

An increase to normal value is required to account for rebates paid in Vietnam which are understood to be of the magnitude of about 3 per cent of sell price.

(vii) Summary of Normal Value adjustments – Hailiang Vietnam

[*Redacted – Table summary of adjustments to Hailiang Vietnam normal value for fair comparison purposes*]

X. Imported tube consistently not meeting the AS1342 & AS1571 standards, enabling lower export prices, and further undercutting of domestic prices.

a. Laboratory testing [exporter goods]

Three samples of [exporter] AS1432 copper tube DN20B (19.05OD x 1.02WT) were received for testing against requirements of AS 1432.

The samples supplied did not meet all requirements of AS1432 for Type B copper tube. Refer to the relevant sections above for failure details. A summary is provided in Table 7 below, where '✓' means specification requirements were met and 'x' means specification requirements were not met.

[Redacted – commercially sensitive laboratory testing of imported samples from Vietnam]

See Laboratory Report dated 24 September at Confidential Attachment 8. [exporter] tube tested failed to meet the AS 1342 on a range of parameters. All products tested failed the standard. This is what enables exporters to sell at lower prices. Therefore, these cannot be considered like goods without an adjustment to the export FOB price to recognise the fabrication cost impacts of this out of specification product being sold in the Australian market against MM Kembla tube as AS 1432 compliant tube.

XI. Material injury

MM Kembla maintains its position that it has suffered continued injury from dumped exports of seamless copper tube exported to Australia by Hailiang Vietnam.

The Commission's release of the Hailiang Vietnam exporter verification report, whilst disappointing, contains numerous shortcomings that can be readily corrected by the Commission prior to the publication of the Statement of Essential Facts.

It is critical that the Commission examine the issues raised in this submission that address the shortcomings in the determination of Hailiang Vietnam's normal value and substitute a revised normal value assessment for the Vietnamese exporter.

XII. Conclusions and recommendations

MM Kembla has examined the Commission's findings in the Hailiang Vietnam exporter verification report in Investigation 580. The Commission has erred in its preliminary findings including:

- that the goods sold domestically in Vietnam are alike in all respects to the goods exported to Australia – the supporting evidence demonstrates this is not the case;
- the determination of normal values for refrigeration seamless copper tube in Vietnam cannot be assessed by reference to selling prices for plumbing tube – both categories have significantly different cost structures;


- normal values for seamless copper tube are correctly determined under subsection 269TAC(2)(c) constructed cost basis (as opposed to non like goods selling prices under section 269TAC(1));
- a failure to address the correct copper pricing differentials that exist between sales on the domestic and export market;
- the significant loss by Hailiang Hong Kong for hedging of overseas raw materials demonstrating the true hedged cost of copper not used in determination of normal value and export FOB prices;
- not acknowledging that the goods exported to Australia are manufactured to Australian Standards whereas the goods sold domestically in Vietnam are not manufactured to equivalent standards with no adjustment to normal values;
- incorrectly accepting that there is no cost associated with cleaning and capping refrigeration tube (in order to meet the requirements of AS 1571) which therefore necessitate an upward adjustment to Hailiang Vietnam's normal value for refrigeration tube;
- a further failure to establish that the exported goods do not meet the AS standards that they are required to meet – raising concerns about the validity of fair comparison requirements between domestic and exported goods.

In combination, the above factors raise genuine and serious concerns about the validity of the Commission's dumping margin finding for Hailiang Vietnam. The failure to address these substantive matters has delivered a conflicting outcome for Australian industry to that only recently confirmed by the USDOC.

I look forward to hearing from you for an appropriate time to discuss the matters raised in this submission.

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

Your sincerely

A handwritten signature in black ink, appearing to read 'Tony Bova', with a stylized flourish underneath.

Tony Bova
Executive General Manager

Attachments

- Confidential Attachment 1 - Deductive Export Price
 - Confidential Attachment 1a – Delivery to Buyer
 - Confidential Attachment 1b – Warehousing Costs
 - Confidential Attachment 1c – Freight from wharf
 - Confidential Attachment 1d – Import Clearance and Handling
 - Confidential Attachment 1e – Overseas Freight & Insurance
- Confidential Attachment 2 - Volatility of Copper and Hedge book explained with examples
- Confidential Attachment 3 - Calculation MM Kembla & Hailiang Australia price undercutting
- Confidential Attachment 4 – Product Comparison Tables AS1571 vs AS 1432
- Confidential Attachment 5 – Product Comparison Tables AS1571 vs ASTM B280
- Confidential Attachment 6 - Hailiang Factory July 2018 - photos
- Confidential Attachment 7 - Capping & Cleaning Costs – Bill of materials extract ERP
- Confidential Attachment 8 - Laboratory Testing Summary and Reports
- Confidential Attachment 9 - Hailiang Rebate Agreement – MM Kembla
- Confidential Attachment 10 - Hailiang HK Rebate Credit Note Paid to MM Kembla
- Non-Confidential Attachment 11 - Zhejiang Hailiang Co., Ltd. 2020 Annual Report
- Confidential Attachment 12 - US imports from Vietnam comparison Jul 20 to Sept 20
- Confidential Attachment 13 – Cleaning costs of Bendable Tube (Cleaning after manufacture)
- Confidential Attachment 14 – Cathode to scrap discount Vietnam
- Confidential Attachment 15 - Comparison Merchant Pricing v Market 211001