



Australian Government
**Department of Industry, Science,
Energy and Resources**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

**STATEMENT OF ESSENTIAL FACTS
NO. 580**

**ALLEGED DUMPING OF CERTAIN COPPER TUBE
EXPORTED FROM THE SOCIALIST REPUBLIC OF VIETNAM**

29 October 2021

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ABBREVIATIONS

ABF	Australian Border Force
the Act	<i>Customs Act 1901 (Cth)</i>
ADN	Anti-Dumping Notice
the applicant	Metal Manufacturers Pty Ltd trading as MM Kembla
the commission	Anti-Dumping Commission
the Commissioner	Commissioner of the Anti-Dumping Commission
CON 580	<i>Consideration Report No. 580</i>
Customs Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
EPR	electronic public record
FOB	free on board
Hailiang	Hailiang (Vietnam) Copper Manufacturing Company Limited
Hailiang Australia	Hailiang Copper (Australia) Pty Ltd
Hailiang HK	Hong Kong Hailiang Metal Trading Limited
the goods	the goods the subject of the application (also referred to as the goods under consideration)
injury analysis period	from 1 January 2017
investigation period	1 January to 31 December 2020
LME	London Metals Exchange
the Minister	Minister for Industry, Energy and Emissions Reduction
MM Kembla	Metal Manufacturers Pty Ltd trading as MM Kembla
the Manual	<i>Dumping and Subsidy Manual</i>
MCC	model control code
NIP	non-injurious price
OCOT	ordinary course of trade
PAD	preliminary affirmative determination
REQ	response to the exporter questionnaire
SEF	statement of essential facts
SG&A	selling, general and administration
Vietnam	Socialist Republic of Vietnam

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

The Anti-Dumping Commission (the commission) has prepared this statement of essential facts (SEF) in response to an application for the publication of a dumping duty notice made by Metal Manufacturers Pty Ltd trading as MM Kembla (MM Kembla). The application was made under section 269TB(1) of the *Customs Act 1901* (the Act).¹ The application is in respect of certain copper tube (copper tube or ‘the goods’) exported to Australia from the Socialist Republic of Vietnam (Vietnam). MM Kembla alleges that the Australian industry producing copper tube has experienced material injury caused by copper tube exported to Australia from Vietnam at dumped prices.

This SEF sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to terminate this investigation, subject to any submissions received in response to this SEF. The commission has prepared this report, pursuant to the commission’s function specified in section 269SMD.

1.2 Authority to make decision

Division 2 of Part XVB describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to goods covered by an application under section 269TB(1).²

1.2.1 Application

On 10 February 2021, MM Kembla lodged an application alleging that the Australian industry has experienced material injury caused by copper tube exported to Australia from Vietnam at dumped prices.

Having considered the application and further information provided by MM Kembla, the Commissioner decided not to reject the application. On 22 March 2021 the Commissioner initiated an investigation into the alleged dumping of copper tube from Vietnam.³

Consideration Report No. 580 (CON 580) and the public notice (Anti-Dumping Notice (ADN) No. 2021/041) provide further details relating to initiation of the investigation and are available on the commission’s website at www.adcommission.gov.au.⁴

1.2.2 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as is allowed under section 269ZHI(3), place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister for Industry, Energy and Emissions Reduction (the Minister) in relation to the application.⁵

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

² Section 269TBA.

³ Electronic public record (EPR) 580, document no. [1](#).

⁴ EPR 580, document nos. [2](#) and [3](#).

⁵ On 14 January 2017, the powers and functions of the Minister under section 269ZHI were delegated to the Commissioner. Refer to ADN No. 2017/10 for further information.

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The SEF was originally due to be placed on the public record by 12 July 2021, however, the due date for the SEF and final report was extended.⁶ The Commissioner is now required to place the SEF on the public record by 29 October 2021.

1.2.3 Final report

The Commissioner's final report and recommendations in relation to this investigation must be provided to the Minister on or before 13 December 2021, unless the investigation is terminated earlier or a further extension of time to provide the final report is granted.

1.3 Preliminary findings

The Commissioner's assessments and findings in this SEF are based on available information at this stage of the investigation. A summary of the findings is provided below.

1.3.1 Dumping assessment (Chapter 4)

The commission's assessment of dumping margins is set out in Table 1.

Country	Exporter	Dumping margin
Vietnam	Hailiang (Vietnam) Copper Manufacturing Company Limited	-0.6%
	Uncooperative exporters	0.4%

Table 1: Dumping margins

1.3.2 Proposed termination (Chapter 5)

Section 269TDA provides for the circumstances where the Commissioner must terminate an investigation.

Based on the above findings and subject to any submissions received in response to this SEF, the Commissioner proposes to terminate the investigation in relation to:

- Hailiang (Vietnam) Copper Manufacturing Company Limited (Hailiang) from Vietnam, in accordance with section 269TDA(1)(b)(i), on the basis that no dumping was found to have occurred during the period 1 January to 31 December 2020 (investigation period)
- uncooperative exporters from Vietnam, in accordance with section 269TDA(1)(b)(ii), on the basis that there has been dumping but the dumping margin is less than 2%.

⁶ ADN No. 2021/131, document no. [11](#).

2 BACKGROUND

2.1 Initiation

On 10 February 2021, MM Kembla lodged an application under section 269TB(1) seeking the publication of a dumping duty notice in respect of copper tube exported to Australia from Vietnam. MM Kembla provided further information in support of the application under section 269TC(2A) on 26 February 2021.

MM Kembla alleged that the Australian industry has experienced material injury caused by exports of copper tube from Vietnam. MM Kembla alleged that the Australian industry has experienced material 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
- reduced ability to raise capital.

The commission was satisfied that the application complied with section 269TB(4). The Commissioner therefore decided not to reject the application and initiated the present investigation on 22 March 2021. ADN No. 2021/041 and CON 580 provide further details relating to the initiation of the investigation.⁷

In respect of the investigation:

- the investigation period⁸ for the purpose of assessing dumping is 1 January to 31 December 2020
- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped goods is from 1 January 2017 (injury analysis period).

2.2 Importers

The commission identified the largest importers in the Australian Border Force (ABF) import database and these importers were contacted and invited to participate in the investigation. The commission received an importer questionnaire response and undertook verification of the following importer.

Importer
Hailiang Copper Australia Pty Ltd

Table 2: Verified importer

A verification report is available on the electronic public record (EPR).

⁷ EPR 580, document nos. [2](#) and [3](#).

⁸ Section 269T(1).

2.3 Exporters

The commission identified the largest exporters in the ABF import database and these exporters were contacted and invited to participate in the investigation. The commission received an exporter questionnaire response and undertook verification of the following exporter.

Exporter
Hailiang (Vietnam) Copper Manufacturing Company Limited

Table 3: Verified exporter

2.4 Preliminary affirmative determination

In accordance with section 269TD, the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice, or if satisfied that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation of the goods into Australia.⁹

A PAD may be made no earlier than day 60 of the investigation. The Commonwealth may require and take securities at the time a PAD is made or at any time during the investigation after a PAD has been made. The Commissioner needs to be satisfied that it is necessary to make a PAD to prevent material injury to an Australian industry occurring while the investigation continues.¹⁰

In accordance with the *Customs (Preliminary Affirmative Determinations) Direction 2015*, 60 days after the initiation of such an investigation, the Commissioner must either make a PAD or publish a status report outlining the reasons why he has not made a PAD.

On day 60 of this investigation, 21 May 2021, the Commissioner published a status report.¹¹ The status report advised that the Commissioner, at that time, was unable to establish that there appeared to be sufficient grounds that:

- the goods exported to Australia from Vietnam have been dumped
- dumped goods from Vietnam have caused material injury to the Australian industry producing like goods.

The *Customs (Preliminary Affirmative Determinations) Direction 2015* requires the Commissioner to reconsider making a PAD after the publication of a status report at least once prior to the publication of the SEF. In preparing this SEF, the Commissioner has reconsidered whether to make a PAD in view of the additional evidence available. However, the evidence (set out in this report) does not establish sufficient grounds for the publication of a PAD.

2.5 Submissions received from interested parties

The commission has received the following submission from interested parties throughout the course of the investigation as set out in the table below. Non-confidential versions of all submissions are available on the EPR.

⁹ Section 269TD(1).

¹⁰ Section 269TD(4).

¹¹ EPR 580, document no. [4](#).

PUBLIC RECORD

Submission from	Date published on EPR	Document no.
MM Kembla	28 June 2021	006
MM Kembla	4 October 2021	010
Hailiang	19 October 2021	013

Table 4: Submissions received from interested parties

The commission has had regard to all submissions throughout the relevant sections of this SEF.

2.6 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Minister.

This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF. It is important to note that the SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in deciding whether he is required to terminate the investigation or to make his final report to the Minister. The report will recommend whether or not a dumping duty notice should be published, and the extent of any interim duties that are, or should be, payable.

The Commissioner should receive responses to this SEF no later than **18 November 2021**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister. The Commissioner must report to the Minister by **13 December 2021**, unless the investigation is terminated on this date or earlier.

Submissions should preferably be emailed to investigations2@adcommission.gov.au. Alternatively, they may be posted to:

Director, Investigations Unit 2
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available on the commission website, www.adcommission.gov.au.

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the commission's reports and other publicly available documents. It is available by request in hard copy or online at www.adcommission.gov.au.

Documents on the public record should be read in conjunction with this SEF.

3 THE GOODS

3.1 The goods

The goods the subject of the application (the goods) are:

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
- copper alloy tube.

3.2 Tariff classification

The goods are generally classified to tariff subheading 7411.10.00 (statistical code 11) in schedule 3 to the *Customs Tariff Act 1995*.

This tariff classification and statistical code may include goods that are both subject and not subject to this investigation. The listing of this tariff classification and statistical code is for convenience or reference only and do not form part of the goods described above.

Please refer to this description for authoritative detail regarding goods, the subject of this investigation.

3.3 Model control codes

The commission has used a model control code (MCC) structure in order to identify key characteristics for, among other things, model matching when comparing export prices and normal values. The basis for using a MCC structure and the commission's practice is explained in the *Dumping and Subsidy Manual* (the Manual). All interested parties participating in this inquiry were requested to provide sales and cost data in accordance with the MCC structure detailed in table 5.

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Item	Category	Sub category	Identifier	Sales Data	Cost data
1	Standard	Copper tubes used for plumbing, gas fitting, drainage and/or medical gas applications (e.g. copper tube manufactured to AS1432)	P	Mandatory	Mandatory
		Copper tubes used for refrigeration and air conditioning applications (e.g. copper tube manufactured to AS/NZ1571)	R		
		Copper tubes used for engineering purposes (e.g. copper tube manufactured to AS1572)	E		
2	Temper	'Hard' Hardness (HV/5): 100 minimum	H	Mandatory	Mandatory
		'Bendable' or 'Half Hard' Hardness (HV/5): ~71-99	B		
		'Soft' or 'annealed' Hardness (HV/5): 70 maximum	S		
3	Lagging	Lagged	L	Mandatory	Mandatory
		Unlagged	U		
4	Capping	Capped	C	Mandatory	Mandatory
		Uncapped	U		
5	Form	Straight	S	Mandatory	Mandatory
		Coiled	C		
6	Finned or internally grooved	Finned	F	Mandatory	Mandatory
		Internally grooved	G		
		Plain (not finned or grooved)	P		

Table 5: MCC structure

MM Kembla submission

The commission received a letter from MM Kembla dated 1 October 2021 (MM Kembla submissions).¹²

MM Kembla, in its submission, claimed that MCC category number 4, capping costs, represents a material portion of conversion costs and therefore should be considered to be a relevant category for verification.¹³ MM Kembla included average costs included in its bill of materials for capping which it considers are material and should form part of the costs and MCCs for each cooperating exporter along with cleaning costs.¹⁴

Hailiang submission

Hailiang, in its submission (Hailiang submission)¹⁵, explain that the cleaning process is carried out during production and is included in Hailiang's production costs that were verified by the commission.

Commission's assessment

The commission examined the capping costs for each cooperating exporter throughout verification and has observed that capping costs are not a material component of costs. The commission was also unable to identify a material difference in selling price between

¹² EPR 580, document no. [010](#) refers.

¹³ Refer to pages 17 – 18 and 27 of EPR 580, document no. [010](#).

¹⁴ Confidential Attachment 7 - Capping & Cleaning Costs – Bill of materials extract ERP of EPR 580, document no. [010](#).

¹⁵ EPR 580, document no. [013](#) refers

capped and uncapped copper tube for the verified exporters. The details of the analysis conducted by verification teams is outlined in the relevant verification reports.

3.4 Like goods

The term 'like goods' is defined at section 269T as:¹⁶

like goods, in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or, although not alike in all respects to the goods under consideration have characteristics closely resembling those goods under consideration.

MM Kembla submissions

The MM Kembla submissions in response to the Hailiang verification report, disagree with the commission's finding that the goods sold domestically in the export country are like to the goods exported to Australia. MM Kembla submit that the goods sold domestically are not like to the goods exported to Australia as they do not have a physical, commercial, functional and production likeness.¹⁷ MM Kembla further submits that due to the difference in standards in the export country and in Australia, the goods cannot be like goods due to the significant differences in the characteristics of the goods.

MM Kembla also considers that the commission should follow the findings in Investigation No. 469 where the commission did not consider goods sold domestically in the exporting country to be like to the goods exported to Australia due to differences in standards to which those goods are manufactured.¹⁸

Hailiang submission

Hailiang, in its submission in response to MM Kembla¹⁹, disagrees with MM Kembla's like goods assessment and points out that MM Kembla in its application has considered its locally produced goods to have characteristics closely resembling the imported goods.

Commission's assessment

The Manual discusses the differences in physical, commercial, functional and production likeness to determine whether the goods are like goods.²⁰

The following analysis outlines the commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods the subject of the application and whether they are therefore like goods.

3.4.1 Physical likeness

The commission does not contest that the goods sold domestically in the export country to those exported to Australia are not identical in all respects. These goods may differ in quality, copper content, cleanliness, chemical composition and are made to different standards.

The commission however considers that there is a physical likeness between the goods sold on the domestic market in the export country and the goods exported to Australia as

¹⁶ Refer also to Chapter 2 of the Manual.

¹⁷ Refer to pages 14 – 15 and 29 - 30 of EPR 580, document no. [010](#).

¹⁸ Refer to pages 15 and 24 of EPR 580, document no. [010](#).

¹⁹ EPR 580, document no. [013](#) refers

²⁰ Refer to pages 12 – 13 of the Manual.

they are of the same or similar shape, appearance and are classified to a matching tariff classification.

The commission has found that the physical characteristics of the locally produced and imported copper tube are similar, being of the same or similar appearance, shape and dimension, namely round copper tube 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.

3.4.2 Commercial likeness

MM Kembla claims that the goods sold domestically in the export country cannot be used interchangeably on the Australian market.²¹ The commission does not contest this, however the commission notes, and MM Kembla confirms in its submission, that goods manufactured for export may be used interchangeably on the domestic market of the export country. The commission also notes that the packaging for both the goods sold on the domestic market of the export country and the goods exported to Australia does not differ.

The commission has also found that the locally produced and imported goods are commercially alike, as they are sold to common customers within the same market sectors.

3.4.3 Functional likeness

MM Kembla submits that the fundamental functional purpose of copper tube for both goods sold on the domestic market of the country of export and the exported goods is the same, with the main difference in the specifications in line with the Australian Standards.

MM Kembla also claims that the quality of the goods differs between the domestic and export markets in the country of export, however this has not been substantiated by any evidence.

The commission does not consider the perceived quality difference claimed by MM Kembla is an indication of differing functional likeness. MCC categories relied on by the commission throughout this investigation compare goods used for specific end use. For example, the goods used for refrigeration and air conditioning applications in the domestic market of the country of export are compared with the goods exported to Australia used for those same applications.

The commission has found that the locally produced and imported goods are functionally alike as they perform the same functions and are used in the same applications (and are interchangeable where they meet specific Australian Standards). These include use in plumbing, refrigeration, medical, lagged and insulated tubing.

3.4.4 Production likeness

The commission has found that the locally produced and imported goods are manufactured in a similar manner, involving similar raw materials (cathode copper) and manufacturing processes (detailed in chapter 4) and finish treatment (i.e. annealing) to the applicable Australian Standards.

²¹ Refer to pages 11 - 12 and 24 of EPR 580, document no. [010](#).

3.4.5 Findings in other cases

The commission disagrees with MM Kembla's view that a finding of goods not being alike in Investigation No. 469 applies in this case. That investigation concerned a very different category of product (PVC flat electric cables). The like goods assessment requires the commission to form an independent view for each case based on the facts and evidence of that case.

3.5 Like goods assessment

Based on the above findings, the commission considers that copper tube manufactured by MM Kembla has characteristics closely resembling the goods exported to Australia.

The commission also considers that copper tube sold in the domestic market of the exporting country has characteristics closely resembling the goods exported to Australia.

4 DUMPING INVESTIGATION

4.1 Preliminary finding

The Commissioner's dumping margin findings in relation to copper tube exported to Australia during the investigation period are summarised in table 6.

Country	Exporter	Dumping margin
Vietnam	Hailiang	-0.6%
	Uncooperative exporters	0.4%

Table 6: Dumping margins

4.2 Legislative and policy framework

In a report to the Minister under section 269TEA(1), the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG. Under section 269TG, one of the matters the Minister must be satisfied of, in order to publish a dumping duty notice, is that the goods have been dumped.

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC, respectively.

Section 269TDA(1) requires that the Commissioner must terminate the investigation, in so far as it relates to an exporter, if satisfied that there has been no dumping by the exporter, or there has been dumping during the investigation period, but the dumping margin is less than 2%.

Section 269TDA(3) requires that the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that have been, or may be, dumped is a negligible volume.

For all dumping margins calculated for the purposes of this investigation the commission compared export prices over the whole of the investigation period with the corresponding normal values.

4.2.1 Export price

Export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods are 'arms length' transactions under section 269TAA.

Section 269TAB(1)(a) provides that the export price of any goods exported to Australia is the price paid (or payable) for the goods by the importer where the goods have been exported to Australia otherwise than by the importer, and have been purchased by the importer from the exporter in 'arms length' transactions.

Section 269TAB(1)(b) provides that, where goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter, but not at 'arms length', and the goods are then subsequently sold in the condition they were imported to a party not associated with the importer, the export price of goods is the price that the importer sold the goods, less prescribed deductions.

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Section 269TAB(1)(c) provides that in all other cases, the export price is a price determined by the Minister having regard to all the circumstances of the exportation.

Section 269TAB(3) provides that where sufficient information has not been furnished, or is not available, the export price shall be determined having regard to all relevant information.

4.2.2 Normal value

Goods sold in the ordinary course of trade

Section 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid (or payable) for like goods sold in the ordinary course of trade (OCOT) for home consumption in the country of export in sales that are 'arms length' transactions by the exporter, or, if like goods are not so sold by the exporter, by other sellers of like goods.

Low volume of domestic sales

Section 269TAC(2)(a)(i) provides that the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1) where there is an absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under section 269TAC(1). Relevant sales are sales of like goods sold for home consumption that are 'arms length' transactions and sold in the OCOT.

Domestic sales of like goods are taken to be in a low volume where the total volume of like goods is less than 5% of the total volume of the goods under consideration that are exported to Australia (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison). As per the Manual, where the total volume of relevant sales is 5% or greater than the total volume of the goods under consideration, and where comparable models exist, the commission also considers the volume of relevant domestic sales of like goods for each model (or MCC).

When calculating a normal value under section 269TAC(1), in order to ensure a proper comparison between the goods exported to Australia and the goods sold on the domestic market, the commission considers the volume of sales of each exported MCC on the domestic market. Where the volume of domestic sales of an exported model is less than 5% of the volume exported, the commission will consider whether a proper comparison can be made at the MCC level. In these situations, the commission may consider whether a surrogate domestic model should be used to calculate normal value for the exported model.

MM Kembla submission

MM Kembla submits²² that copper tube sold on the domestic market in Vietnam uses cheaper raw materials which include a large quantity of scrap.

MM Kembla has further claimed in its submission that the commission has not considered the volatility in the copper price during the investigation period. Due to difference between the date of entering into an export sale and the actual invoice date, MM Kembla considers that there is a mismatch between the normal value used in calculations and the export price and adjustments to the normal value are necessary to address this volatility.

²² EPR 580, document no. [010](#) refers

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MM Kembla provided alternative methods of adjustments that would have regard to the volatility of the copper price including:

- a downwards adjustment to domestic prices by the average fall in the copper price on the London Metals Exchange (LME) during the investigation period
- substitution of the same LME copper cost using the average monthly settlement prices into the Australian export prices and the normal value calculation
- use of 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 normal value for invoices in the same period.

Additionally, MM Kembla submits that the conversion cost between the goods meeting standards overseas and those in Australia would result in higher costs for the exported models. MM Kembla has calculated an approximate conversion cost which should be made as an upwards adjustment to the normal value for all MCCs.

Further, MM Kembla is of the view that the commission has ignored the globally accepted industry practice for hedging of copper costs in SEF 557. MM Kembla further claims that Hailiang maintains hedge transactions within its related intermediary, Hong Kong Hailiang Metal Trading Limited (Hailiang HK). MM Kembla submits that the Hailiang annual report states that Hailiang HK incurred a 'hedging loss of the company's overseas raw materials.' The overall loss for the 2020 year for Hailiang HK is listed as 180,520 Yuan. MM Kembla submit that the commission should account for these losses in calculations of copper costs.

Hailiang submission in response to MM Kembla submission

Hailiang submits²³ that hedging contracts are used for both export and domestic copper purchases and Hailiang relies on the same information for its copper prices used to determine export and domestic selling prices. Hailiang does not take a position by speculating on future price fluctuations on its hedging contracts with a view to achieving additional profit. Hailiang's copper hedging contracts are designed solely to eliminate the risks to profits of future sales from copper price fluctuations, by locking in a purchase price at future sales prices and this applies to both domestic and export sales. Therefore, there is no difference in costs or prices of the domestic and export sales caused by the hedging positions, and as such no adjustment is necessary.

Commission's assessment

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

The commission may consider an alternative date if provided with evidence that the price and quantity of the goods or like goods were subject to any continuing negotiation between the buyer and seller after the claimed contract date. The commission acknowledges that there may be circumstances where an exporter and an importer agree on price and quantity and make a sales agreement to that effect, but this may not establish the date on which terms were finally agreed upon. The commission has verified the sales terms for each exporter and is satisfied that prices and conditions of sale, for

²³ EPR 580, document no. [013](#) refers.

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both domestic and export sales, are not finalised until invoice date. This reflects that the material terms of sale are resolved on the invoice date.

The commission has also verified and analysed the difference in timing between Hailiang entering into a sales contract on both the domestic and export markets. The commission disagrees with MM Kembla's claim that there is a mismatch between the invoice date for export and domestic sales. The commission is satisfied that the invoice date is the most appropriate date in determining normal values and export prices without an adjustment under section 269TAC(8). The analysis of Hailiang's sales terms is at **Confidential Attachment 1**.

In order to make the adjustments as suggested by MM Kembla, the commission would need to be satisfied that these adjustments are necessary for price comparability, such that the normal value cannot be calculated under section 269TAC(1) and the export price cannot be calculated under section 269TAB(1). Given the circumstances of each exporter, the commission has not been provided with any evidence to suggest that copper price volatility affects price comparability between domestic and export markets, and is satisfied that normal values can be calculated pursuant to section 269TAC(1) and export prices pursuant to section 269TAB(1).

The commission has also considered MM Kembla's claim that hedging costs should be included to ensure a fair comparison between domestic and export selling prices.

The commission notes that adjustments to the normal value are permitted in prescribed circumstances under section 269TAC(8). Pursuant to section 269TAC(8), where the normal value is the price paid or payable for like goods and that price and the export price:

- (a) relate to sales occurring at different times
- (b) are not in respect of identical goods, or
- (c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate

adjustments may be made to the normal value so that those differences would not affect its comparison with that export price.

In light of the evidence put forth by MM Kembla and Hailiang, the commission does not consider that there is a price comparability issue associated with hedging such that an adjustment is warranted under section 269TAC(8). The commission has reviewed the hedging gains/losses reported by Hailiang HK during the investigation period. Hailiang HK has reported a hedging *loss* during this period. Irrespective, the Commission does not consider that an adjustment relating to gains or losses on hedging has any relevance to the setting of prices that necessitates an adjustment under section 269TAC(8).

The commission is not satisfied that any adjustments under section 269TAC(8) should be made to the normal value for any exporter to account for MM Kembla's alleged volatility of copper prices or hedging gains or losses.

In response to adjustments for scrap and conversion costs, the commission notes that each exporter has provided, and the commission has verified, the costs for each specific model. The commission has examined the specific models included in each MCC category and is satisfied that these contain both domestic and exported models. The commission has analysed the weighted average cost for each MCC used in the dumping margin calculations and compared these with the cost to produce each specific model within that MCC category. On each occasion, the commission has found that there is a variety of domestic and exported models which have the lowest and highest cost

within each MCC and the weighted average cost closely aligns with the costs for each specific exported model.

Further, the commission has analysed the amount of scrap used by Hailiang to manufacture the goods sold and there is no evidence of the claims made by MM Kembla that domestic sales use cheaper materials and larger quantities of scrap. The analysis of Hailiang's raw material allocations is at **Confidential Attachment 1**.

On the basis of the above, the commission is satisfied that through calculating the cost to make using the MCCs gives consideration to both domestic and export models and therefore, no adjustment to the normal value is required.

4.2.3 Uncooperative exporters

Section 269T(1) provides that an exporter is an 'uncooperative exporter' where the Commissioner is satisfied that:

- an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable, or
- where the Commissioner is satisfied that an exporter significantly impeded the investigation.

Section 8 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (Customs Direction) sets out that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails to:

- provide a response,²⁴ or
- request a longer period to do so within a timeframe specified or prescribed for submitting any kind of response relating to the case (legislated period).

The Commissioner considered the Customs Direction and section 269T and determined that any exporter which did not provide a response to the exporter questionnaire (REQ) to the commission within the legislated period is an uncooperative exporter for the purposes of this investigation.

4.3 Dumping assessment

MM Kembla submits that dumping of goods exported from Vietnam was found by the USA. The commission generally considers another administration's finding of dumping and subsidisation as relevant evidence in an investigation of the same goods. The commission nonetheless forms its own views, following a thorough assessment of all the available evidence and does not automatically adopt the conclusions reached by the relevant authorities in other jurisdictions.

4.3.1 Hailiang

Verification

The commission conducted a verification of the REQ from Hailiang. In conducting this verification, the commission has had regard to the information provided by MM Kembla in its exporter briefing.

²⁴ Defined in the Customs Direction as any document or thing provided to the Commissioner in relation to any case, including submissions, information or answers to the questions in questionnaires.

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The commission is satisfied that Hailiang is the producer of the goods. The commission is further satisfied that the information provided by Hailiang is complete, accurate and relevant for the purpose of determining the variable factors applicable to its exports of the goods.

A report covering the verification findings is available on the public record.²⁵

Export price

The commission considers Hailiang to be the exporter of the goods because it is:

- the manufacturer of the goods
- named on the commercial invoice as the supplier
- named as consignor on the bill of lading
- arranges and pays for the inland transport to the port of export
- arranges and pays for the port handling charges at the port of export
- arranges and pays for the ocean freight and marine insurance (for CIF, DDU and DDP sales).²⁶

The commission observes that all of Hailiang's export sales to Australia were made through a related trading entity, Hailiang HK. Hailiang HK then sold the goods to Hailiang's affiliated importer, Hailiang Australia, and to unrelated importers.

MM Kembla submission

MM Kembla submits²⁷ that the commission has not undertaken a deductive export price analysis which, from MM Kembla's calculation, indicates that Hailiang Australia would not recover the cost of copper on the LME especially when off-invoice rebates are considered, which MM Kembla believes have not been included in the commission's assessment.²⁸ The commission notes that MM Kembla's calculation includes a number of assumptions and estimates, however the commission is in possession of actual costs and selling prices that were used in Hailiang Australia's profitability assessment. The commission therefore does not agree with the calculation presented by MM Kembla to be an accurate reflection of Hailiang Australia's ability to recover costs.

Commission's assessment

The commission has assessed the 'arms length' nature of each stage of the importation process. The commission considers that the price between Hailiang and Hailiang HK appeared to be influenced by a commercial or other relationship between the buyer and the seller.²⁹ The commission considers that Hailiang HK's profit margin in relation to these sales was insufficient to cover its selling, general and administration (SG&A) expenses. Therefore, the commission concludes that the transactions between Hailiang and Hailiang HK were not 'arms length' transactions.

In respect of Hailiang HK's sales of the goods to Australia during the investigation period, to related and unrelated customers, the commission considers the sales to be 'arms length' as it found no evidence that:

²⁵ EPR 580, document no. [9](#) refers.

²⁶ Incoterms CIF = cost, insurance and freight; DDU = delivered duty unpaid; DDP = delivered duty paid.

²⁷ EPR 580, document no. [010](#) refers.

²⁸ EPR 580, document no. [010](#) refers.

²⁹ Section 269TAA(1)(b).

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- there was any consideration payable for, or in respect of, the goods other than the price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.³⁰

The commission does not consider that a deductive export price calculation is necessary where transactions are found to be 'arms length' between the exporter and importer. The commission also confirms that off-invoice rebates have been considered in its assessment of the arms-length nature of transactions and in profitability calculations of the importer.

In respect of the export sales of the goods to Australia by Hailiang, the commission found that the importer has not purchased the goods from the exporter, therefore, export prices cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b). The commission recommends that the export price be calculated under section 269TAB(1)(c) having regard to all the circumstances of the exportation. Specifically, the commission recommends that the export price be calculated based on the price paid by the importer less an amount for Hailiang HK's SG&A costs and other prescribed deductions³¹ for costs arising after exportation. The commission is satisfied of the 'arms length' nature of the transactions between Hailiang HK and the importers, however, is not satisfied of the 'arms length' nature of the transaction between Hailiang and Hailiang HK.

Normal value

In respect of Hailiang's domestic sales to both related and unrelated customers during the investigation period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than the price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.³²

The commission therefore considers that all domestic sales made by Hailiang to its domestic customers during the investigation period were 'arms length' transactions.

The commission assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of sales was not less than 5%.

The commission has considered the volume of each exported MCC and whether those MCCs were sold domestically in the table below.

³⁰ Section 269TAA(1).

³¹ As defined in section 269TAB(2).

³² Section 269TAA refers.

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Export MCC	Is model sold domestically?	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	No	No	No domestic sales of 'P-B-U-S-P'. Surrogate model 'R-H-U-S-P' used under section 269TAC(1) with specification adjustments under section 269TAC(8)
P-H-U-S-P	No	No	No domestic sales of 'P-H-U-S-P'. Surrogate model 'R-H-U-S-P' used under section 269TAC(1) with specification adjustments under section 269TAC(8)
R-B-U-S-P	Yes	Yes	Domestic sales of R-B-U-S-P used under section 269TAC(1)
R-H-U-S-P	Yes	Yes	Domestic sales of R-H-U-S-P used under section 269TAC(1)

Table 7: Hailiang exported MCCs and respective domestic sales of those MCCs

MM Kembla submission

MM Kembla submits³³ that the commission's selection of surrogate MCCs for specification adjustments, where domestic sales of products are not available during the investigation period, are incorrect. MM Kembla considers that the commission is incorrect in comparing products produced to different standards.

Commission's assessment

The commission, in selecting a surrogate model, has selected the closest model with domestic sales in each quarter, with greater than 5% of domestic sales as a proportion of export sales. The specification adjustment that follows, involves calculating the cost difference between the domestic model and the export model. The commission considers that any differences in standards would be reflected in the cost difference and accounted for as part of the specification adjustment. The difference in cost was marked up by OCOT to reflect a difference in price and results in an accurate domestic selling price for the export model.

Adjustments

MM Kembla has claimed that Hailiang often exports copper tube to Australia that does not meet Australian Standard which results in a cost advantage.³⁴

In Hailiang's submission³⁵, it addressed MM Kembla's claims that its copper tube does not meet the Australian Standards.

The commission does not consider claims of copper tube not meeting Australian Standards to be related to the issue of whether dumping and ensuing material injury is occurring. Claims of non-compliance do not fall within the scope of the remit of the commission under the Act. Nonetheless, the commission notes that each MCC is made up of multiple models, both domestic and export. The MCC structure therefore accounts

³³ EPR 580, document no. [010](#) refers.

³⁴ EPR 580, document no. [010](#) refers.

³⁵ EPR 580, document no. [013](#) refers.

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for a difference in standards between goods. The commission is not satisfied that such an adjustment is necessary.

The commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The commission considers these adjustments to be necessary to ensure a fair comparison of normal values and export prices.

Adjustment type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic inland transport	Deduct an amount for domestic inland transport
Domestic packaging	Deduct an amount for domestic packaging
Domestic ocean freight and insurance fee	Deduct an amount for domestic ocean freight and insurance fee
Domestic handling and other expenses	Deduct an amount for domestic handling and other expenses
Export packaging	Add an amount for export packaging
Export inland transport	Add an amount for export inland transport
Export handling and other charges	Add an amount for handling and other charges
Export credit terms	Add an amount for export credit terms
Specification adjustment	Add or deduct an amount for specification differences
Timing differences	Add an amount for timing differences

Table 8: Summary of adjustments – Hailiang

Dumping margin

The dumping margin in respect of the goods exported to Australia by Hailiang for the investigation period is **-0.6%**.

The commission's calculations are included at **Confidential Attachments 2 to 5**.

4.3.2 Uncooperative exporters

As detailed in section 4.2.3, as Hailiang is the only exporter to have provided a REQ, the commission considers all exporters of the goods from Vietnam, other than Hailiang, to be uncooperative exporters for the purposes of this investigation.

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative exporters, export prices are to be calculated under section 269TAB(3) and normal values are to be calculated under section 269TAC(6).

As Hailiang was the only cooperating exporter of copper tube from Vietnam, the commission has analysed exports by Hailiang to determine whether it would be appropriate to rely on Hailiang's information in calculating variable factors for uncooperative exporters. The commission has compared exports by Hailiang with other exporters of copper tube from Vietnam and observes the following:

- Hailiang is the largest exporter of copper tube from Vietnam.

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- Hailiang's verified weighted average FOB export price is consistent with the weighted average FOB export price for all other exporters reported in the ABF import database.

The commission has had regard to the above analysis and considers that the verified export price of Hailiang is the most relevant information for determining an export price for uncooperative exporters during the investigation period.

The commission has therefore relied on the weighted average export price for that exporter during the investigation period, pursuant to section 269TAB(3).

The commission has determined a normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information. Specifically, the commission has had regard to the normal value calculated for the sole cooperating exporter from Vietnam. The normal value for uncooperative exporters is Hailiang's normal value with no favourable adjustments made.

The dumping margin for uncooperative exporters is **0.4%**.

The commission's calculations and analysis are included at **Confidential Attachment 6**.

4.4 Summary of dumping margins

A summary of the commission's dumping margins are set out below.

Country	Exporter	Dumping margin
Vietnam	Hailiang	-0.6%
	Uncooperative exporters	0.4%

Table 9: Dumping margins

4.5 Proposed termination – level of dumping

Section 269TDA(1)(b)(i) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if satisfied that there has been no dumping by the exporter of any of those goods. Section 269TDA(1)(b)(ii) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if there has been dumping by the exporter of some or all of those goods, but the dumping margin, when expressed as a percentage of the export price or weighted average of export prices used to establish the dumping margin, is less than 2%.

Accordingly, the Commissioner proposes to terminate the dumping investigation in relation to Hailiang from Vietnam (pursuant to section 269TDA(1)(b)(i)) and uncooperative exporters from Vietnam (pursuant to section 269TDA(1)(b)(ii)).

5 PROPOSAL TO TERMINATE THE INVESTIGATION

Section 269TDA provides the circumstances for when the Commissioner must terminate an investigation.

Based on the findings in this SEF, and subject to any submissions received in response, the Commissioner proposes to terminate the investigation in relation to:

- Hailiang from Vietnam, in accordance with section 269TDA(1)(b)(i), on the basis that no dumping was found to have occurred during the investigation period
- uncooperative exporters from Vietnam, in accordance with section 269TDA(1)(b)(ii), on the basis that there has been dumping but the dumping margin is less than 2% during the investigation period.

6 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Analysis of Hailiang sales and costs
Confidential Attachment 2	Hailiang export price
Confidential Attachment 3	Hailiang cost to make and sell
Confidential Attachment 4	Hailiang normal value
Confidential Attachment 5	Hailiang dumping margin
Confidential Attachment 6	Vietnam uncooperative dumping margin