



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

TERMINATION REPORT
NO 580

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

4 March 2022

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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 Manual	<i>Dumping and Subsidy Manual – December 2021</i>
MCC	model control code
the Minister	Minister for Industry, Energy and Emissions Reduction
MM Kembla	Metal Manufacturers Pty Ltd trading as MM Kembla
NIP	non-injurious price
OCOT	ordinary course of trade
PAD	preliminary affirmative determination
REQ	response to the exporter questionnaire
SEF	statement of essential facts
SEF 580	Statement of Essential Facts No 580
SG&A	selling, general and administration
USA	United States of America
Vietnam	Socialist Republic of Vietnam

SUMMARY AND RECOMMENDATIONS

1.1 Introduction

The Anti-Dumping Commission (the commission) has prepared this report 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 has alleged that the Australian industry producing copper tube has experienced material injury caused by copper tube exported to Australia from Vietnam at dumped prices.

This report sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) terminates this investigation. 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).

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.²

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.³

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 statement of essential facts (SEF) on which the Commissioner proposes to base a

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

² Electronic public record (EPR) 580, document no. [1](#).

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

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recommendation to the Minister for Industry, Energy and Emissions Reduction (the Minister) in relation to the application.⁴

The SEF was due to be placed on the public record by 12 July 2021. However, the due date for the SEF was extended.⁵ The Commissioner placed the *Statement of Essential Facts No 580* (SEF 580) on the public record on 29 October 2021.⁶

1.2.3 Final report

The Commissioner was originally due to make a recommendation to the Minister in a report on or before 24 August 2021. The due date for the final report and recommendations were then extended to be due to the Minister on or before 4 March 2022.⁷ As the investigation has been terminated, no report will be provided to the Minister.

1.3 Findings

1.3.1 The goods and like goods (Chapter 3)

The Commissioner considers that the locally produced copper tube is 'like' to the goods the subject of the application.

1.3.2 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

1.3.3 Termination (Chapter 5)

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

Based on the above findings that the dumping duties were negligible, the Commissioner proposes to terminate the investigation as it relates 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 (the investigation period)

⁴ On 14 January 2017, the powers and functions of the Minister under section 269ZH1 were delegated to the Commissioner. Refer to ADN No. 2017/10 for further information.

⁵ ADN No. 2021/131, document no. [11](#).

⁶ EPR 580, document no. [14](#) refers

⁷ ADN 2022/021, document no. [019](#)

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- 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%.

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 initiated the investigation on 22 March 2021. ADN No. 2021/041 and CON 580 provide further details relating to the initiation of the investigation.⁸

In respect of the investigation:

- the investigation period⁹ 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 (the injury analysis period).

2.2 Importers

The commission identified the importers with the largest volume of imports of the goods in the investigation period, in the Australian Border Force (ABF) import database. The commission contacted these importers and invited them to participate in the investigation. The commission received an importer questionnaire response from Hailiang Copper Australia Pty Ltd (Hailiang Australia) and undertook verification of this importer.

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

2.3 Exporters

The commission identified the exporters with the largest volume of exports of the goods in the investigation period, in the ABF import database. The commission contacted these

⁸ EPR 580, document nos. [2](#) and [3](#).

⁹ Section 269T(1).

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exporters and invited them to participate in the investigation. The commission received an exporter questionnaire response from Hailiang and undertook verification of this exporter.

2.4 Preliminary affirmative determination

No preliminary affirmative determination (PAD) was made in this investigation for the reasons set out below.

In accordance with section 269TD, the Commissioner may make a 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.¹⁰

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.¹¹

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.¹² 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 SEF 580, the Commissioner has reconsidered whether to make a PAD in view of the additional evidence available. However, the evidence, as set out in SEF 580, did not establish sufficient grounds for the publication of a PAD. Accordingly, the commissioner has not made a PAD.

2.5 Submissions received from interested parties

The commission has received submissions 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.

Submission from	Date published on EPR	Document no.
MM Kembla	28 June 2021	006
Commission's report on the verification of Hailiang published on 14 September 2021		

¹⁰ Section 269TD(1).

¹¹ Section 269TD(4).

¹² EPR 580, document no. [4](#).

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MM Kembla	4 October 2021 ¹³	010
Hailiang	19 October 2021	013
SEF 580 published on 29 October 2021		
MM Kembla	15 November 2021 ¹⁴	015
MM Kembla	24 November 2021 ¹⁵	016
Hailiang	6 December 2021	017

Table 2: Submissions received from interested parties

The commission has had regard to all submissions in preparing and throughout the relevant sections of this report. This includes the submissions the commission received in response to SEF 580.

¹³ This submission is MM Kembla's response to the commission's report on the verification of Hailiang which was published on 14 September 2021.

¹⁴ SEF 580 was published on 29 October 2021. This submission was received after SEF 580 was published in response to a submission from Hailiang dated 19 October 2021.

¹⁵ This submission was received in response to SEF 580 which was published on 29 October 2021.

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Commissioner is satisfied that locally manufactured copper tube are like goods to the goods the subject of the application.

3.2 Legislative framework

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

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are 'like' to the imported goods. Section 269T(1) defines like goods as:

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

Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. Australian industry must, however, produce goods that are 'like' to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness
- ii. commercial likeness
- iii. functional likeness
- iv. production likeness¹⁶

3.3 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.

3.4 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*.

¹⁶ [Dumping and Subsidy Manual - December 2021](#) (the Manual) pages 10-12.

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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 reference only and does not form part of the goods described above. Please refer to this description for authoritative detail regarding goods that are the subject of this investigation.

3.5 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 commission explains the practice and basis for using a MCC structure in the Manual. The commission requested all interested parties participating in this investigation to provide sales and cost data in accordance with the MCC structure detailed in table 3.

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' <i>Hardness (HV/5): 100 minimum</i>	H	Mandatory	Mandatory
		'Bendable' or 'Half Hard' <i>Hardness (HV/5): ~71-99</i>	B		
		'Soft' or 'annealed' <i>Hardness (HV/5): 70 maximum</i>	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 3: MCC Structure

Outlined below are summaries of the submissions of interested parties relating to the MCCs and the commission's assessment of these submissions.

3.5.1 MM Kembla submission published on 4 October 2021

MM Kembla, in its submission¹⁷ in response to the commission's report on the verification of Hailiang,¹⁸ claimed that MCC category number 4, relating to capping costs, represents

¹⁷ EPR 580, document no. [010](#).

¹⁸ EPR 580, document no. [009](#) pages 5-6.

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a material portion of conversion costs. It submitted they should be considered as a relevant category for verification and claimed that the commission had incorrectly considered these costs to be immaterial.¹⁹ 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.²⁰

3.5.2 Hailiang submission published on 19 October 2021

Hailiang, in its submission (Hailiang submission)²¹, explains that the cleaning process is carried out during production and is included in Hailiang's production costs, which include the relevant labour, energy and supplemental material costs, that were verified by the commission.

Hailiang submitted that the commission was presented with, and verified, capping costs and that the commission had correctly concluded that these were immaterial.

3.5.3 MM Kembla submission published on 24 November 2021

MM Kembla, in its submission in response to SEF 580²², provided detailed costing for capping and cleaning costs and submitted that the commission has dismissed these as not material based on the exporter's unsubstantiated claims.

MM Kembla also submitted that due to the differences between the specifications of each Australian Standard, the commission has not considered the cost differences between the goods sold domestically in the country of export and those exported to Australia. MM Kembla claims that through using the MCC structure, the commission has compared goods manufactured for domestic use in Vietnam with those exported to Australia, requiring a higher standard of quality to comply with Australian Standards.

3.5.4 Commission's assessment

The commission verified actual capping costs for each specific product code sold by Hailiang, throughout verification. The commission has confirmed that capping costs are not a material component of costs. The commission did not identify a material difference in selling price between capped and uncapped copper tube for the verified exporter. The details of the analysis conducted by the verification team is outlined in the commission's report on the verification of Hailiang.²³

Further, in determining the MCC structure, the commission will have regard to differences in physical characteristics that give rise to distinguishable and material differences in price. Unit costs may also be taken into account in assessing differences in physical characteristics where the commission is reasonably satisfied that those cost differences affect price comparability.²⁴ The MCC structure used by the commission in this investigation includes a combination of domestic and export models in each MCC category. Each MCC contains a mixture of domestic and export models with similar prices

¹⁹ Refer to pages 17 – 18 and 27 of EPR 580, document no. [010](#).

²⁰ Confidential Attachment 7 - Capping & Cleaning Costs – Bill of materials extract at EPR 580, document no. [010](#).

²¹ EPR 580, document no. [013](#).

²² EPR 580, document no. [016](#).

²³ EPR 580, document no. [009](#).

²⁴ the Manual at page 48

and costs to one another. Therefore, particular models with lower costs and selling prices were grouped with other models with similar costs and selling prices in each category. As a result, the goods sold domestically with lower costs and prices are grouped in the same category as exported goods with the same or similar costs and prices. The commission therefore considers that the MCC structure allows for a proper comparison between domestic and exported goods when calculating dumping margins.

3.6 Like goods

The commission's framework for assessing whether locally produced goods are identical to, or closely resemble, the goods under consideration is outlined in Chapter 2 of the Manual. The Manual outlines that the commission will give consideration to physical likeness, commercial likeness, functional likeness, production likeness and other factors. The analysis below 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

The term 'like goods' is defined at section 269T as:²⁵

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.

3.6.1 Goods produced locally in Australia

In assessing the goods produced locally in Australia, the commission has relied on information presented in Australian industry's application²⁶ and the verification of information presented by Australian industry in Investigation No. 557.²⁷

Physical likeness

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.

Commercial likeness

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

- commercial construction (large apartments, new shopping centres)
- residential construction (new houses)
- refrigeration and air conditioning installation (supermarkets, hospitals, fruit and vegetable distributors, meat processing)
- medical gases (hospital)
- plumbing/gas fitting (replacement and new installations market for residential houses and commercial businesses).

²⁵ Refer also to Chapter 2 of the Manual.

²⁶ EPR 580, document no. [001](#).

²⁷ EPR 557, document no. [026](#).

Functional likeness

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. These include use in plumbing, refrigeration, medical, lagged and insulated tubing.

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 and finish treatment (i.e. annealing) to the applicable Australian standards.

3.6.2 Goods sold on domestic market in Vietnam

For the purposes of the findings below, the commission has relied upon information obtained from the application by Australian industry, verification of information presented by Australian industry in Investigation No. 557, verification of information presented by Hailiang, verifications of information presented by exporters in Investigation No. 557 and submissions received from all interested parties in this investigation.

The analysis below considers whether the goods sold domestically in Vietnam are like the goods exported to Australia and established that they are.

3.6.2.1 MM Kembla submission published on 4 October 2021 in relation to the goods

MM Kembla's submission in response to the commission's report on the verification of Hailiang,²⁸ disagrees 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. 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.

Functional likeness

MM Kembla submitted that the goods sold domestically in Vietnam cannot be used interchangeably on the Australian market.²⁹

MM Kembla further submitted 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.

Production likeness

MM Kembla submitted that due to Hailiang's use of scrap and locally sourced cathode, the manufacturing process for goods sold domestically in Vietnam differs to those exported to Australia, which use imported cathode only.

²⁸ EPR 580, document no. [010](#).

²⁹ Refer to pages 11 - 12 and 24 of EPR 580, document no. [010](#).

Findings in other cases

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.³⁰

3.6.2.2 Hailiang submission published on 19 October 2021 in relation to the goods

Hailiang, in its submission in response to MM Kembla,³¹ disagrees with MM Kembla's like goods assessment and noted that MM Kembla, in its application has considered its locally produced goods to have characteristics closely resembling the imported goods.

Commission's assessment of the goods sold domestically in Vietnam

Physical likeness

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

The commission, however, considers that there is a physical likeness between the goods sold on the domestic market in Vietnam and the goods exported to Australia as they are of the same or similar shape, appearance and would be classified to a matching tariff classification if they were exported to Australia.

Commercial likeness

The commission considers the goods sold on the domestic market in Vietnam to be commercially like the goods exported to Australia.

The commission also notes that the packaging for both the goods sold on the domestic market in Vietnam and those exported to Australia does not differ indicating that they are sold into similar market sectors.

Functional likeness

The commission considers the goods sold on the domestic market in Vietnam to be functionally like the goods exported to Australia as they are manufactured for specific functions such as construction, refrigeration, air conditioning and plumbing.

The commission accepts MM Kembla's claim in its submission published on 4 October 2021³² that the goods manufactured for use in the domestic market in Vietnam cannot be used interchangeably in the Australian market, however the commission notes, and MM Kembla confirms in its submission to Statement of Essential Facts No 557 which deals with the same goods sold into a similar domestic market to Vietnam,³³ that goods manufactured for export may be used interchangeably on the domestic market in Vietnam. This is an indication that the goods are functionally alike.

The commission has also used MCC categories throughout this investigation which compare goods used for the specific end use in domestic and export markets. For

³⁰ EPR 580, document no. [010](#).

³¹ EPR 580, document no. [013](#).

³² EPR 580, document no. [010](#).

³³ Refer to page 16 of EPR 557, document no. [035](#)

example, the first MCC category considers the end use of the goods. All goods used for refrigeration and air conditioning applications, whether sold into the domestic or export market, are compared within this same category. The commission therefore considers the end use for both domestic and export the goods to be the same.

The commission does not agree that the perceived quality difference claimed by MM Kembla is an indication of differing functional likeness. The commission has considered MM Kembla's quality claims and suggested adjustments at sections 4.3.1 and 4.3.2 of this report.

Production likeness

The commission, through the verification of Hailiang's data and production processes, has found that the goods sold domestically in Vietnam are manufactured in a similar manner, involving similar raw materials (cathode copper) and manufacturing processes and finish treatment (i.e. annealing) to those exported to Australia.

3.6.2.3 Commission's assessment of findings of 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 key difference between the 'like goods' assessment in this investigation and that in Investigation No. 469 was that Investigation No. 469 found that the PVC flat electric cable exported to Australia was manufactured exclusively for the Australian market and was incompatible with the domestic standards for electric cable. There were physical, functional and production differences between the PVC flat electric cables sold domestically and those exported, and the goods produced for domestic sale did not have characteristics closely resembling those of the goods exported to Australia.³⁴

Nonetheless, the like goods assessment requires the commission to form an independent view for each case based on the facts and evidence of that case.

3.7 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 in Vietnam has characteristics closely resembling the goods exported to Australia.

³⁴ EPR 469, document no. [019](#).

4 DUMPING INVESTIGATION

4.1 Finding

The Commissioner’s dumping margin findings in relation to copper tube exported to Australia during the investigation period are summarised in table 4.

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

Table 4: 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.

Adjustments to the normal value

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.

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,³⁵ 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. The Commissioner 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

The commission has determined 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**.

The commission has determined the dumping margin for uncooperative exporters is **0.4%**. The commission's calculations and analysis are included at **Confidential Attachment 6**.

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.³⁶

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 determining the variable factors applicable to its exports of the goods.

A report covering the commission's verification findings is available on the public record.³⁷

³⁵ 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.

³⁶ EPR 580, document no. [006](#).

³⁷ EPR 580, document no. [009](#).

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).³⁸

The commission observes that Hailiang's export sales to Australia were made through a related trading entity, Hong Kong Hailiang Metal Trading Limited (Hailiang HK). Hailiang HK then sold the goods to Hailiang's affiliated importer, Hailiang Australia, and to unrelated importers.

Cost recovery by Hailiang

4.3.1.1 MM Kembla submission published on 4 October 2021

MM Kembla, in response to the commission's report on the verification of, submits³⁹ 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.⁴⁰

4.3.1.2 MM Kembla submission published on 15 November

MM Kembla, in response to a submission from Hailiang, submitted that through a deductive export price calculation, which it had provided to the commission, it is evident that Hailiang is unable to recover its costs. MM Kembla considers that the only way Hailiang is able to export at these prices is by selling the goods at prices below the price at which it sells the goods or like goods domestically, which would lead to a finding of dumping by Hailiang.

MM Kembla further submitted that the key concept MM Kembla seeks to illustrate through the deductive export price calculation was that the deductive export FOB prices did not even cover the cost of copper. MM Kembla submitted that based on its own costs, which are competitive, the commission should expect Hailiang's costs to be very close to those used by MM Kembla and should question costs that are materially different.

MM Kembla has used data obtained from Hailiang Australia price lists and estimated Hailiang's costs including fabrication costs, selling, general and administration costs, and other domestic expenses in Vietnam, for the purpose of its calculations to demonstrate dumping, which it refers to as 'evidence-based' costs.

³⁸ Incoterms CIF = cost, insurance and freight; DDU = delivered duty unpaid; DDP = delivered duty paid.

³⁹ EPR 580, document no. [010](#).

⁴⁰ EPR 580, document no. [010](#).

4.3.1.3 Commission's assessment

The commission notes that MM Kembla's calculation of cost recovery includes a number of assumptions and estimates as to Hailiang's costs, however the commission is in possession of verified actual costs and selling prices that were used in Hailiang Australia's profitability assessment. During the verification of Hailiang and Hailiang Australia, the commission was able to verify the accuracy, completeness and relevance of the data in relation to the production and sale of the goods.

The commission therefore does not consider the calculation presented by MM Kembla to be an accurate reflection of Hailiang Australia's ability to recover costs. The commission is satisfied that Hailiang exports the goods to Australia at a price above the normal value. The commission is also satisfied that Hailiang recovers its costs to manufacture the goods in the domestic market and therefore, disagrees with MM Kembla's submission that sales by Hailiang Australia do not support the 'no dumping' finding.

'Arms length' finding between Hailiang HK and Hailiang Australia

4.3.1.4 MM Kembla submission published on 24 November 2021

MM Kembla, in its submission in response to SEF 580,⁴¹ questioned the commission's finding that sales between Hailiang HK and Hailiang Australia was assessed as being 'arms length', especially given that the commission had found transactions between Hailiang and Hailiang HK to be 'non-arms length'. MM Kembla further submits that the commission had not undertaken the appropriate analysis of FOB export prices.

4.3.1.5 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.⁴² 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:

- 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.⁴³

⁴¹ EPR 580, document no. [016](#).

⁴² Section 269TAA(1)(b).

⁴³ Section 269TAA(1).

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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 deductions⁴⁴ 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.

Further, as outlined in the commission's report on the verification of Hailiang,⁴⁵ the verification team compared Hailiang HK's unit prices of the goods to both related and unrelated customers. This analysis did not suggest that prices were influenced by the relationship between Hailiang HK and Hailiang Australia.

Additionally, the commission has examined MM Kembla's claims that the commission had not undertaken the appropriate analysis of FOB export prices. The commission confirms that the analysis of export FOB prices from Hailiang to Hailiang HK has been conducted and these have been compared with, and match, the ABF import database.

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.⁴⁶

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.

⁴⁴ As defined in section 269TAB(2).

⁴⁵ EPR 580, document no. [009](#).

⁴⁶ Section 269TAA.

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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 5: Hailiang exported MCCs and respective domestic sales of those MCCs

4.3.1.6 MM Kembla submission published on 4 October 2021

MM Kembla, in response to the commission's report on the verification of Hailiang, submits 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.⁴⁷ MM Kembla considers that the commission is incorrect in comparing products produced to different standards.

4.3.1.7 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 to normal value

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

⁴⁷ EPR 580, document no. [010](#).

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Adjustment type	Deduction/addition
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 6: Summary of adjustments – Hailiang

4.3.1.8 MM Kembla submission published on 4 October 2021

MM Kembla, in response to the commission’s report on the verification of Hailiang submits that copper tube sold on the domestic market in Vietnam uses cheaper raw materials that include a large quantity of scrap.⁴⁸

MM Kembla submitted that the commission has not considered the volatility in the copper price during the investigation period and should have done so. MM Kembla considers that the normal value used in calculations and the export price are non-comparable due to the difference between the date of entering into an export sale and the actual invoice, and that adjustments to the normal value are necessary to address this volatility.

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 and claims that this should be an upwards adjustment to the normal value for all MCCs. MM Kembla also claimed that the goods exported to Australia often did not meet Australian standards and therefore, required an adjustment to the FOB export price.

Further, MM Kembla is of the view that the commission has ignored the global industry practice for hedging of copper costs in SEF 580. MM Kembla also submits that Hailiang maintains hedge transactions within its related intermediary, Hong Kong Hailiang Metal

⁴⁸ EPR 580, document no. [010](#).

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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 submits that the commission should account for these losses in calculations of copper costs.

4.3.1.9 Hailiang submission published on 19 October 2021

Hailiang, in response to MM Kembla's submission, submits 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.⁴⁹ 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.

4.3.1.10 MM Kembla submissions published on 15 and 24 November 2021

MM Kembla submitted that domestic and export sales of copper tube are not conducted on similar terms such that the commission should make an adjustment to normal values under section 269TAC(8).

In support of this claim, MM Kembla submitted that export fixed sales prices and quantities are generally set at the time of order placement, which is typically many months before shipment and invoicing. MM Kembla submitted that to accurately compare export sales prices with domestic prices, the commission must make due allowance under section 269TAC(8) to address differences in copper pricing between the two markets. MM Kembla further submitted that the material terms of sale for fixed price tube exports are established at the order placement date, and that price and quantity are not subject to any continuing negotiation between the buyer and the seller after this date. MM Kembla argued that this demonstrates that the material terms of the contract are established on order date and this date should be used to establish the date of sale.

Additionally, MM Kembla submitted that the copper price was "extremely volatile from mid-January 2020 to mid-March 2020" and the difference in copper pricing between the low in March 2020 and the new high in December 2020 was an increase of 82%. The commission does not consider the comparison between the lowest daily price and the highest daily price achieved during the investigation period is meaningful in assessing whether a section 269TAC(8) adjustment is warranted. In fact, the average monthly movement, as evidenced by LME pricing supplied by MM Kembla, range from negative 9% to positive 11%, with the majority of month to month differences below 6% (**Confidential Attachment 7**).

MM Kembla also reiterated earlier claims that the commission should give consideration to goods exported to Australia not complying with Australian standards, resulting in cost savings by the exporter. MM Kembla submitted that the commission should make adjustments for the unfair cost advantages that Hailiang has gained by supplying tube that does not comply with Australian standards.

⁴⁹ EPR 580, document no. [013](#).

4.3.1.11 Commission's assessment

Date of sale

The Manual provides that where a claim is made that a date other than the date of invoice better reflects the date of sale, the commission will examine the evidence provided. For such a claim to succeed it would first be necessary to demonstrate that the material terms of sale were, in fact, established by this other date. In doing so, the evidence would have to address whether price and quantity were subject to any continuing negotiation between the buyer and the seller after the claimed contract date.

The Manual also provides that any claim for adjustment would need to substantively address:

- whether, why, and to what degree, the considerations in determining price differed between export and domestic sales
- whether the materials cost differs at the time of subsequent invoicing of that export sale (compared to domestic sale invoices in the same invoice month of that export sale) having regard to factors such as the production schedules for domestic and export, and lead times for purchasing main input materials
- whether contracts were entered into for the materials purchases, and materials inventory valuation.

The commission has reviewed the evidence before it, including sales confirmation and final invoices for Hailiang. The commission is satisfied that there are no material differences in the determination of price for export and domestic sales. Moreover, the sales order allows for, and the evidence demonstrates that sales quantities and prices differ between the date of order placement and the date of invoice in samples verified by the commission. 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. This reflects that the material terms of sale are resolved on the invoice date.

The commission has also considered the timing difference between the order placement date and invoice date for both the domestic and export sales. The evidence before the commission is that the timing difference between these dates for exported copper tube is only marginally higher than that for domestic sales, and this difference is not many months as submitted by MM Kembla which, in and of itself, is not significant. This analysis is at **Confidential Attachment 1**.

The commission does not consider that MM Kembla has provided the requisite evidence to demonstrate that the order placement date is the date which better reflects the date of sale. Additionally, MM Kembla stated in its application⁵⁰ that income, impacts of discounts, rebates, sales returns, warranty claims and intercompany transfers are not recognised until the date of despatch in its own accounting records. The commission verified Hailiang's accounting records and is satisfied that Hailiang follows a similar approach in recording transactions at the invoice date. This further supports the commission's finding that the invoice date is the appropriate date of sale for both domestic and export sales used in the calculation of dumping margins for Hailiang.

⁵⁰ EPR 580, document no. [001](#).

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The commission also considers that the timing difference between order placement and invoicing of export and domestic sales is not significant. Therefore, the commission does not consider that domestic and export sales for the exporters under investigation are made on different terms.

The commission does not consider fluctuations in copper prices in the investigation period to be evidence of order placement date better reflecting the date of sale. The commission is therefore not satisfied that an adjustment under section 269TAC(8) is warranted.

Volatility of copper

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 reviewed the hedging gains/losses reported by Hailiang HK during the investigation period. Hailiang HK has reported a hedging loss during this period.

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).

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 Hailiang, 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).

Adjustments for quality differences between domestic and export

In response to adjustments for scrap and conversion costs, the commission notes that Hailiang 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. In determining the MCC structure, the commission will have regard to differences in physical characteristics that give rise to distinguishable and material differences in price. Unit costs may also be taken into account in assessing differences in physical characteristics where the commission is reasonably satisfied that those cost differences affect price comparability.⁵¹ The MCC structure used by the commission in this investigation includes a combination of domestic and export models in each MCC category. Each MCC contains a mixture of domestic and export models with similar prices and costs to one another. Therefore, particular models with lower cost and selling prices were grouped with other models with similar costs and selling prices in each category. As a result, the goods sold domestically with lower costs and prices are grouped in the same category as exported goods with the same or similar costs and prices. The commission therefore considers that the MCC structure allows for a proper comparison between domestic and exported goods when calculating dumping margins.

The commission has ensured that appropriate models are included within each MCC, using verified data from Hailiang. The commission analysed the weighted average cost for each MCC used in the dumping margin calculations and compared these with the cost

⁵¹ the Manual at page 48

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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 verified 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**. Nonetheless, the commission does not consider adjustments for differences in costs are necessary where the same MCCs are used to compare the domestic sales to the export sales, as it does not affect price comparability.

On the basis of the above, the commission is satisfied that 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.

In Hailiang's submission,⁵² it addressed MM Kembla's claims that its copper tube does not meet the Australian Standards. The commission agrees with Hailiang's submission. 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 for a difference in standards between goods. The commission does not consider these adjustments to be necessary to ensure price comparability. The commission has made all necessary adjustments for each exporter in relation to the price comparability between domestic and export sales.

4.3.2 Uncooperative exporters

Hailiang is the only exporter to have provided a REQ. Therefore, 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.

⁵² EPR 580, document no. [013](#).

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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 commission has determined the dumping margin for uncooperative exporters is **0.4%**.

The commission’s calculations and analysis are included at **Confidential Attachment 7**.

4.3.3 Findings of other administrations

The commission notes that MM Kembla submits that the United State of America (USA) found there was dumping of goods exported from Vietnam and submits that the USA decision includes evidence that is relevant to the commission’s investigation.

The commission may consider another administration’s finding of dumping and subsidisation as relevant evidence in an investigation of the same goods, however, the commission forms its own views following a thorough assessment of all the available evidence. It does not automatically adopt the conclusions reached by the relevant authorities in other jurisdictions.

The commission notes key differences between this investigation and that of the USA authority, including the goods description and investigation period. That goods description related to copper tubing produced or comparable to the American Society for Testing and Material, and considered industry data from 1 January 2018 to 31 December 2020.⁵³ The goods description related to this investigation is specific to certain Australian and New Zealand Standards within a certain outside nominal diameter and nominal wall thickness. This investigation considers industry data from 1 January 2020 to 31 December 2020. Accordingly, the commission did not consider the USA goods description to be relevant to its investigation.

4.4 Summary of dumping margins

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

Country	Exporter	Dumping margin
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⁵³ USITC (U.S. International Trade Commission) (2021) [Seamless Refined Copper Pipe and Tube from Vietnam: Investigation No. 731-TA-1528](#), USITC, accessed 23 September 2022.

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Vietnam	Hailiang	-0.6%
	Uncooperative exporters	0.4%

Table 7: Dumping margins

4.5 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 TERMINATION OF THE INVESTIGATION

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

The Commissioner must terminate the dumping investigation in relation to:

- Hailing 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.

This terminates the investigation in its entirety.

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ATTACHMENTS

Confidential Attachment 1	Analysis of Hailiang sales and costs
Confidential Attachment 2	Hailiang Export Price
Confidential Attachment 3	Hailiang CTMS
Confidential Attachment 4	Hailiang Normal value
Confidential Attachment 5	Hailiang Dumping Margin
Confidential Attachment 6	Vietnam uncooperative dumping margin
Confidential Attachment 7	Copper cost analysis