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25 January 2023

Director
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Anti-Dumping Commission
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Melbourne Victoria 3001

Received 25 January 2023

Email: Investigations2@adcommission.gov.au

Public File

Dear Sir/Madam,

Resumed Investigation No. 580 – Copper Tube exported to Australia from Vietnam – MM Kembla submission on key issues under reconsideration

MM Kembla refers to the Anti-Dumping Commission's resumed investigation concerning copper tube exported to Australian from the Socialist Republic of Vietnam (**Vietnam**). MM Kembla makes the following comments and representations in relation to Vietnam to provide its views on the record to-date.

1. Introduction

By way of an application to the Anti-Dumping Commission (**the Commission**) dated 10 February 2021, MM Kembla applied for a dumping investigation into certain copper tube exported from Vietnam.

In response to that application, the Commission initiated the subject anti-dumping investigation on 22 March 2021 (**INV 580**).

On 4 March 2022, the Commission terminated the investigation in its entirety.

On 31 March 2022, MM Kembla lodged an application to the Anti-Dumping Review Panel (**ADRP**) for review of the Commission's termination decision. This application sought merits review of certain facets of the Commission's termination decision that were neither correct nor preferable. The ADRP initiated its review on 21 April 2022.

On 4 July 2022, the ADRP revoked the Commission's termination decision, concluding that:

- the Commissioner’s decision not to include International Standards or Wall Thickness (**WT**) (by the process of drawing thin) as a separate category in the Model Control Code structure, or alternatively, by not making appropriate adjustments in the comparisons of normal value and export price for Vietnamese exporters, was not the correct or preferable decision;
- the Commissioner’s decision that it was satisfied that an adjustment to Vietnamese normal values for differences in capping and cleaning costs was unnecessary, was not the correct or preferable decision; and that
- the Commissioner’s decision concerning the profitability of Hailiang Australia and the related finding of the arms-length nature of export sales between Hailiang HK and Hailiang Australia was not the correct or preferable decision.

On 21 December 2022, the Commission published Anti-Dumping Notice No. 2022/112 advising of the resumed investigation, which is the subject of this submission.

2. Normal Value and Export Price Fair Comparison

Throughout the course of INV 580, the ADRP appeal, and now the resumed investigation, MM Kembla has maintained in the first instance that sales of goods by Vietnamese producers of seamless copper tube do not exist on the domestic market. The evidence presented on the record to-date, the ADRP Panel Members findings, and trade remedy precedent in other jurisdictions, has highlighted the complexities associated with the determination of variable factors for seamless copper tube. MM Kembla therefore continues to argue that normal values cannot be ascertained under subsection 269TAC(1), and must instead be assessed under subsection 269TAC(2)(c) using the cost of production of the manufacture of the goods in the country of export, plus SG&A expenses, plus profit.

In the second instance, where the Commission considers that domestic and export sales are capable of fair comparison, MM Kembla has also continued to emphasise that cost and price comparability normal value adjustments are required under subsection 269TAC(8) (for drawing thin and nominal versus actual weight, for differences in products produced to different standards, for differences in mandatory versus non-mandatory third party quality approval certification, and for differences in capping and cleaning costs).¹

In the third instance, MM Kembla submits that a comprehensive fair comparison assessment must include liner/per length price considerations (typically measured in metres). As the Commission is aware, standard industry practice is to sell seamless copper tube on a per length basis. Assessing price at this point yields an accurate representation of the price paid per length for the amount of actual copper used in the product, and the associated fabrication cost.

In contrast, assessing price on a nominal per kilogram or per tonne basis, as then compared to an actual per kilogram or per tonne basis, will result in the same per weight price. Critically, this approach does not account for the number of copper tube lengths on a per kilogram or per tonne basis and the selling price applicable to these.

By way of example,² the following highlights this price comparison variation for a plumbing tube product³ with the following specifications:

- outside diameter of 12.70 millimetres (**mm**);
- wall thickness of 0.91mm; and

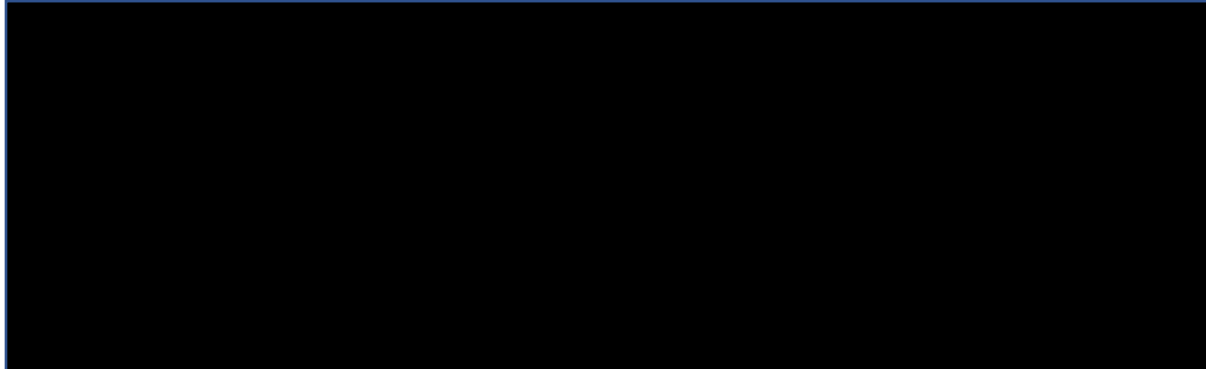
¹ MM Kembla’s submission of 14 September 2022 refers (and all other prior representations).

² Confidential Attachment 1.

³ In SEF 580, the Commission found no sales of Vietnamese plumbing tube in the domestic market under the original MCC structure. This example nonetheless highlights the importance of assessing price on a per length basis.

- length of 6 metres.

The tolerance levels permitted under the Australian standard for refrigeration tube, AS 1432 – *Copper tubes for plumbing, gasfitting and drainage applications*, permits a negative deviation from the nominal weight measurement of 15.4 per cent.⁴ The below example assumes a nominal to actual overall weight tolerance variance of 17 per cent to highlight the very likely situation in the Vietnamese home-market that even if the product is manufactured to non-mandatory standards (as articulated in MM Kembla’s submission of 14 September 2022), the negative tolerance levels on plumbing and refrigeration goods would exceed those as required under the Australian standard. Indeed, this additional 2 per cent variance to tolerance is what MM Kembla has observed in the Australian market for refrigeration goods, and would certainly, at a minimum, transpire in the Vietnamese domestic market.



Confidential Chart 1: Price Per Length Example

The number of lengths per kilogram or per tonne will depend on the actual versus the nominal weight of the goods. At nominal weight, the weight per kilogram or per tonne is higher and hence the number of per metre lengths is lower. At actual weight, the weight per kilogram or per tonne is lower (compared to the nominal) and hence the number of lengths is higher. The price per length is therefore different between nominal and actual. The price per kilogram or per tonne however, being a function of the price per length and the number of lengths, will equate to the same selling price number whether at nominal or actual.

It is therefore critical that the Commission consider liner/per length prices when ascertaining Vietnamese normal values.

3. Standards Compliance

In its submission received by the Commission on 3 November 2022, Hailiang (Vietnam) Copper Manufacturing Co., Ltd (**Hailiang Vietnam**) noted the following:⁵

As reported in Attachment D-2 (Domestic Sales Database) of the initial response, the following standards are applied to copper tube products that Hailiang Vietnam sold in domestic market of Vietnam:

(1) No. ASTM B280 American Standard, which is provided at Exhibit 1.

(2) No. JIS H3300 Japanese Standard, which is provided at Exhibit 2.

⁴ Refer AS1432, Table 4.2, p. 12. The standard uses the “Min. at any point”. That minimum equates to being 15.4% from the nominal wall thickness.

⁵ Hailiang submission, folio no. 24, p. 1.

(3) No. GB/T 17791 Chinese Standard, which is provided at Exhibit 3. Regarding the requirements of chemical composition, this standard refers to another Chinese standard No. GB/T 5231, which is provided at Exhibit 4. In addition, it is noted that “TP2” is also reported in Field 4.1 Specification / Standard in Attachment B-2. “TP2” is actually a copper grade number in Chinese standards, thus No. GB/T 17791 and GB/T 5231 Chinese standards also apply to the sales of copper tubes where “TP2” is reported.

In its submission to Resumed Investigation No. 557,⁶ MM Kembla highlighted that Zhejiang Hailiang Co., Ltd of China has made recent incorrect statements that compliance to Chinese copper tubes standards are mandatory and that such compliance ensures that home market goods are comparable to those exported to Australia under Australian standards. These Chinese standards are also referenced by Hailiang Vietnam as having application to locally manufactured Vietnamese goods. MM Kembla’s submission to Resumed Investigation No. 557 therefore equally applies here.

Furthermore, MM Kembla understands that:⁷

- there are no mandatory copper tube product standards in Vietnam (this has also not been refuted by Hailiang in its recent submission);
- the predominant applications for copper tube in Vietnam are for refrigeration, air conditioning and medical gas applications;
- the product standard applicable for these applications can range between ASTM, BS, EN and JIS standards; and that
- the required characteristics of the tube are as-agreed between purchaser and seller or as determined by designers.

In a circumstance where national product standards are non-mandatory and exist in an unregulated market, it is impossible to ascertain whether the local market produces and sells like goods as there is no reference comparison to a base set of requirements for that local market. In such instances, the characteristics of the product are determined between purchaser and seller and thus there is no comparative basis to the copper tube sold in Australia, a market where adherence and certification to product standards for plumbing and other applications is mandatory.

4. Conclusion

The purpose of this submission is to address critical normal value and fair comparison aspects of the resumed investigation.

MMK Kembla submits that a like-for-like fair comparison between Vietnamese and Australian export selling prices for copper tube is not permissible and that normal values should be constructed. This submission, and others prior, have highlighted in detail the complexities associated with the accurate assessment of Vietnamese home market selling prices, the Commission’s initial conclusions of which were overturned by the ADRP on the basis of such complexities. MM Kembla submits that the directions of the ADRP Panel Member in relation to the assessment of Vietnamese normal values can only be adequately addressed using the cost of production of the manufacture of the goods, plus SG&A expenses, plus profit.

In the alternative, it is paramount for the Commission to consider the standard industry-wide formula for pricing based on linear length when assessing domestic prices. As demonstrated above, prices are accurately depicted at the per-

⁶ Resumed Investigation Copper Tube exported to Australia from China and Korea – MM Kembla submission on key issues under reconsideration, 23 January 2023.

⁷ MM Kembla’s 1 October 2021 EPR submission (folio no. 10).

length unit of measure. Where the Commission maintains that like goods exist on the Vietnamese market, upwards normal value adjustments are required.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read "Tony Bova". The signature is stylized with a large, sweeping initial "T" and "B".

Tony Bova
Executive General Manager