



ADRP Conference Summary

Review Nos. 146-150 – Copper Tube exported from the People’s Republic of China and the Republic of Korea

Panel Member	Leora Blumberg
Review type	Review of termination decisions of the Commissioner
Date	11 January 2022
Participants	John O’Connor, Representative for MM Kembla Tony Bova, Executive General Manager MM Kembla
Time opened	2:00pm AEDT
Time closed	2:47pm AEDT

Purpose

The purpose of this conference was to obtain further information and clarification in relation to the five applications by Metal Manufactures Pty Ltd trading as “MM Kembla” (“MM Kembla”) before the Anti-Dumping Review Panel (“Review Panel”) in relation to Copper Tube exported from the People’s Republic of China (“China”) and the Republic of Korea (“Korea”).

General

The conference was held pursuant to section 269ZZRA of the *Customs Act 1901* (the Act). During the conference, I was able to ask parties to clarify an argument, claim or specific detail contained in their applications. The conference was not a formal hearing of the review, and was not an opportunity for parties to argue their case before me.

I have only had regard to information provided at this conference to the extent that it relates to information that was before the Commissioner when the Commissioner made the reviewable decision. Any conclusions reached at this conference are based on that information that was before the Commissioner when the Commissioner made the reviewable decision. Information that relates to some new argument not previously put in an application or submission is not something that the Review Panel has regard to, and is therefore not reflected in this conference summary.

At the time of the conference, I advised the participants:

- That the conference was being recorded and transcribed by Express Virtual Meetings Pty Ltd, and that the recording would capture everything said during the conference.



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- That the conference was being recorded for the Review Panel to have regard to when preparing a conference summary. The conference summary would then be published on the Review Panel's website.
- Any confidential information discussed during the conference would be redacted from the conference summary prior to publication.

Prior to the conference, participants were provided with a copy of the Review Panel's Privacy Statement. The Privacy Statement outlines who the conference recording and transcript may be disclosed to. The Privacy Statement is available on the Review Panel's website [here](#). The participants indicated that they understood the Privacy Statement and consented to:

- The recording of the conference; and
- The recording being dealt with as set out in the Privacy Statement.

Background

I set out the background to the conference as follows:

The Review Panel received five separate applications for review from MM Kembla relating to reviewable decisions under Termination Report No. 557 ("TER 557"). The five applications were differentiated only by the box ticked under Question 5 of the application form and the further descriptive paragraph also under Question 5 of each application form.

Each application form was accompanied by an identical Attachment 2 (confidential and non-confidential versions) setting out grounds of review in respect of which the applicant believes that the reviewable decisions are not the correct or preferable decisions.

In Confidential Attachment 2 there are four grounds of review stated to be relating to, "all Chinese exporters" ("Chinese Exporters Grounds")¹ and three grounds of review stated to

¹ The following should be noted in respect of the Chinese Exporters Grounds:

- In Chinese Exporters Second Ground (relating to the determination of normal values under s.269TAC(1)), sub-ground III (In respect Model Control Codes and International Standards) there is reference to Nungwon Metal Ind. Co., Ltd ("Nungwon") which is a Korean exporter and there is also reference to Korean Standards". See page 10 of Confidential Attachment 2.
- In Chinese Exporters Fourth Ground (relating to the determination of material injury) in addition to reference to Chinese Exporters First, Second and Third Grounds, there is also reference to Korean Exporters First and Second Grounds. See page 18 of Confidential Attachment 2.



be relating to, “all Korean exporters” (“Korean Exporters Grounds”)². It was not clear from the five application forms and Confidential Attachment 2 which grounds of review were applicable to each application.

Discussion

The specific information / clarifications that the Review Panel sought in this conference³ in respect of each specified application as well as the information and clarifications provided in response⁴ by MM Kembla’s representatives (“MR”) was /were as follows:

1. Application 1 (2021/146)

[Where the box referring to s.269TDA(1) was ticked under Question 5 and it was stated under Question 5 that the application, “relates to the Termination Decision under section 269TDA(1)(b)(i) of the Act in respect of the no dumping finding for all Chinese exporters of seamless copper tube exported to Australia”.]

- i. I requested clarification as to which of the seven grounds of review are applicable to Application 1.

MR clarified that:

² The following should be noted in respect of the Korean Exporters Grounds:

- In Korean Exporters First Ground (relating to the selection of invoice date for comparative purposes) there is a reference to Zhejiang Haliang’s (a Chinese exporter) export prices to Australia. See second bullet point at the bottom of page 21 of Confidential Attachment 2.
- In Korean Exporters Second Ground (relating to the determination of normal value under s.269TAC(1)):
 - ❖ In the introduction to this ground of review there is reference to the “particular market situation in China”. See first bullet point on page 24 of Confidential Attachment 2.
 - ❖ In Subsection II (relating to Draw Thin) there is reference to the “Chinese exporter briefing for Zhejiang Haliang” (a Chinese exporter). See the third paragraph on page 27 of Confidential Attachment 2.
 - ❖ In Subsection VI (relating to Conclusion – Normal value adjustments) there is reference to the Commissioner’s decision, “to determine normal values based upon domestic selling prices in the ordinary course of trade on the domestic market in China”. See page 29 of Confidential Attachment 2).
- In Korean Exporters Third Ground (relating to the determination of material injury), in addition to references to Korean exporters there are also references to Chinese exporters. See page 31 of Confidential Attachment 2.

³ The Review Panel provided MM Kembla with a document setting out the proposed discussion items for the conference (“the Discussion Items Document”) prior to the conference.

⁴ MM Kembla provide a written response to the Discussion Items Document (“the Written Response”) prior to the conference, which formed the basis for the responses of MM Kembla during the conference.



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- *Chinese Exporters First, Second and Fourth Grounds apply to all Chinese exporters; and*
- *Chinese Exporters First, Second, Third and Fourth Grounds apply to the cooperative Chinese exporter Zhejiang Hailiang (and the sales via its trade Hong Kong Hailiang).*

- ii. I requested further clarification that if Chinese Exporters Second and/or Fourth Ground is/are applicable, whether the references to Korean exporters or to Korea in these grounds of review (respectively) is applicable to Application 1, with reference to Footnote 1.

MR clarified that the references to Korea and Korean Standards were made to demonstrate the different standards that apply for copper tube across exporters from the countries the subject of Investigation No. 557. MR clarified further that such references highlight the different applicable standards and that this impacts the cost of production for the subject goods.

2. Application 2 (2021/147)

[Where the box referring to s.269TDA(2) was ticked under Question 5 and it was stated under Question 5 that the application, “relates to the Termination Decision under section 269TDA(2)(b)(ii) in respect of the negligible countervailable subsidy finding for Chinese exporters of seamless copper tube exported to Australia”.]

- i. I requested clarification as to which of the seven grounds of review (if any) are applicable to Application 2.

MR clarified that Chinese Ground 2 applies to all Chinese exporters that benefit from a countervailable subsidy where the Government of China influences the selling price of copper in China.

I pointed out that Chinese Exporters Second Ground related to the determination of normal value in the anti-dumping investigation and requested clarification as to how this was applicable to the finding of a negligible countervailable subsidy under s.269TDA(2)(b)(ii) of the Act.



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MR confirmed MM Kembla's submission that Chinese Ground 2 applies to all Chinese exporters that benefit from a countervailable subsidy where the Government of China influences the selling price of copper in China, with particular reference to the "particular market situation" finding in respect of China.

3. Application 3 (2021/148)

[Where the box referring to s.269TDA(13) was ticked under Question 5 and it was stated under Question 5 that the application, "relates to the Termination Decision under section 269TDA(13) in respect of the dumping margin by Daejin Copper Pipe & Tube Manufacturing Co Ltd, residual exporters and uncooperative exporters from Korea, for exports of seamless copper tube exported to Australia".]

- i. I pointed out that s.269TDA(13) relates to a termination in respect of injury caused by dumped exports from a particular country being negligible. I requested clarification as to whether the reference to the dumping margin by Daejin Copper Pipe & Tube Manufacturing Co Ltd, residual exporters and uncooperative exporters from Korea, in the statement under Question 5 of the application form, should in fact be a reference to the "negligible injury" caused by the dumped exports from such Korean exporters.

MR clarified that the statement at Question 5 should reference "negligible injury" caused by the dumped exports from the Korean exporters as nominated. MR advised that Application 3 had been amended accordingly.⁵

- ii. I requested clarification as to which of the seven grounds of review are applicable to Application 3.

MR clarified that the matters identified by the Review Panel as Korean Exporters First, Second and Third Grounds apply to Daejin Copper Pipe & Tube Manufacturing Co Ltd, residual and uncooperative Korean exporters.

⁵ A revised Application 3 reflecting this change was submitted to the Review Panel prior to the conference.



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- iii. I requested further clarification that if Korean Exporters First, Second and/or Third Grounds is/are applicable, whether the references to Chinese exporters or China in these grounds of review (respectively) is applicable to Application 3, with reference to Footnote 2.

With reference to Korean Exporters Second Ground, MR clarified that the reference to Zhejiang Hailiang could equally apply to any Korean exporter as it illustrates the impact of copper price volatility in the determination of normal values and export prices.

- iv. I requested further clarification that if Korean Exporters First and/or Second Ground is/are applicable, whether the references to Nungwon (in addition to Daejin) in these grounds of review (respectively) are applicable to [Application 3],⁶ bearing in mind that the application form only refers to Daejin.

MR clarified that Korean Exporters First, Second and Third Grounds apply to [Application 4].⁷

4. Application 4 (2021/149)

[Where the box referring to s.269TDA(1) was ticked under Question 5 and it was stated under Question 5 that the application, “relates to the Termination Decision under section 269TDA(1)(b)(ii) in respect of the dumping margin by the Korean exporter Nungwon Metal Ind Co., Ltd of Korea which were determined as less than 2 per cent for its exports of seamless copper tube exported to Australia.”]

- i. I requested clarification as to which of the seven grounds of review are applicable to Application 4.

MR clarified that Korean Exporters First, Second and Third Grounds apply to Application 4.

⁶ In the Discussion Items Document this was erroneously referred to as “Application 4”, which I corrected during the conference to be a reference to “Application 3”.

⁷ In the written response to the Discussion Items Document this was referred to as “Application 4” in response to the erroneous Discussion Item 3 (iv) in the Discussion Items Document, discussed in Footnote 3 above. MR confirmed during the conference that the clarification was still applicable with the correction made, to refer to Application 3.



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- ii. I requested further clarification that if Korean Exporters First, Second and/or Third Ground is/are applicable, whether the references to Chinese exporters or China in these grounds of review (respectively) is/are applicable to Application 4. See Footnote 2.

MR clarified that:

- *In Korean Exporters Second Ground the first dot point referencing the particular market situation for copper tube in China does not apply to Korean exports. MR advised that Confidential and Non-Confidential Attachment 2 have been amended accordingly.*
- *In the Conclusion to Korean Exporters Second Ground the reference to China is an error. MR advised that Confidential and Non-Confidential Attachment 2 have been amended accordingly.⁸*

- iii. I requested further clarification that if Korean Exporters First and/or Second Ground 2 is/are applicable, whether the references to Daejin (in addition to Nungwon) in these grounds of review (respectively) are applicable to Application 4, bearing in mind that the application form only makes reference to Nungwon.

MR clarified that Korean Exporters First and Second Grounds apply to Application 4.

5. Application 5 (2021/150)

[Where the box referring to s.269TDA(3) was ticked under Question 5 and it was stated under Question 5 that the application, “relates to the Termination Decision under section 269TDA(3) and (4) of the Act in respect of the negligible dumping finding for Chinese exporters of seamless copper tube exported to Australia”. (emphasis added)]

- i. I pointed out that s.269TDA(3) and (4) do not relate to a “negligible dumping finding” but rather to a negligible “volume” of dumped goods from a particular country. I requested clarification as to whether the reference to “negligible

⁸ Revised Confidential and Non-Confidential versions of Attachment 2 reflecting these changes (on pages 24 and 29 respectively) were submitted to the Review Panel prior to the conference.



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dumping finding for Chinese exporters” in the statement under Question 5, should in fact be a reference to, “negligible volume of dumped goods from China”.

MR advised that the application form had been amended to reflect negligible volume of dumped exports from China.⁹

- ii. I requested clarification as to which of the seven grounds of review are applicable to Application 5.

MR clarified that:

- *Chinese Grounds 1, 2 and 4 apply to all Chinese exporters; and*
- *Chinese Grounds 1, 2, 3 and 4 apply to the cooperative Chinese exporter Zhejiang Hailiang (and the sales via its trade Hong Kong Hailiang).*

- iii. I requested further clarification that if Chinese Exporters Second and/or Fourth Ground 4 is/are applicable, whether the references to Korean exporters or Korea in these two grounds (respectively) is applicable to Application 5. See Footnote 1.

MR clarified that the references to Korean Standards and exporters drawing thin (Chinese Exporters Second and Fourth Grounds) were for illustrative purposes only.

6. Other Issues Raised

MR referred to certain information and arguments and its concern with the ADC’s approach and findings relating thereto, stated to have been addressed in previous submissions, being:

- *the volatility of the copper price, and its link to pricing and the undercutting margin determined by and verified by the ADC;*
- *The ADC’s repeated reference to a 5 per cent variation being immaterial, and MM Kembla’s submission that when copper represents 95 per cent of the manufactured cost, 5 per cent is very material;*

⁹ A revised Application 5 reflecting this change was submitted to the Review Panel prior to the conference.



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- *the level of complexity associated with dealing with a commodity like copper, and the apparent lack of industry understanding by the ADC.*

Since the information and arguments are unrelated to the purpose of the conference and have been stated not to be new or “further” information, I have had regard thereto only to the extent set out in the five applications for review (including Confidential Attachment 2).