Australian Government

Anti-Dumping Review Panel

Anti-Dumping Review Panel C/O Legal Branch

Department of Industry, Science, Energy and Resources 10 Binara Street Canberra City ACT 2601

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By EMAIL

Commissioner of the Anti-Dumping Commission
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Dear Commissioner

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

As you know, I am conducting a review of your decisions under sections 269TDA(1)(b)(i), 269TDA(1)(b)(ii), 269TDA(2), 269TDA(13) and 269TDA(3) of the *Customs Act 1901* ("the Act") in respect of Copper Tube exported from the People's Republic of China ("China") and the Republic of Korea ("Korea") ("the Reviewable Decisions"). The applicant for review in respect of each of the Reviewable Decisions is Metal Manufactures Pty Ltd trading as "MM Kembla" ("MM Kembla").

Under section 269ZZRB of the Act, the Anti-Dumping Review Panel ("Review Panel") may seek further information from you in relation to information that was before you when you made the Reviewable Decisions. Pursuant to section 269ZZRB(1) of the Act, I request further information in respect of a number of grounds (or sub-grounds) of review of the various applications:

A. Further information is requested in relation to the following grounds or sub-grounds of review:

- **The decision concerning the selection of invoice date for fair comparison purposes, for Chinese and Korean exporters, is not the correct or preferable decision**

- **The determination of normal values under s.269TAC(1) is not the correct or preferable decision, in respect of (i) copper volatility and (ii) hedging costs**

1. The ADC stated in TER 557 that, "…the evidence demonstrates that sales quantities may differ between the date of order placement and the date of invoice". MM Kembla stated that it accepted that quantity in the order advice can change but submitted that the price set at order date (based on a copper benchmark) does not change. It stated that it provided evidence to the ADC of its own imported copper purchases from the same exporters showing the lag between order date and invoice date, and that prices do not change.[1] Please clarify whether evidence was before the ADC demonstrating that price varied after order date if price of copper and /or volumes were changed.

2. Please comment on the "Export Fixed Price Tube Sales Examples" provided in Confidential Attachment 2 to MM Kembla's submission to the ADC, dated 4 October 2021, and the apparent impact of the copper price fluctuations that occurred between the date when the fixed price order is set and the date of the sales invoice.

3. The ADC stated in TER 557 that it compared the sales order dates and invoice dates for both domestic and export sales for all cooperative exporters, for a sample of sales transactions used for the verification of sales. The ADC found that the number of days between sales order dates and invoice dates to be substantially less than the 3 months submitted by MM Kembla. The ADC stated further that it found that the number of days between the sales order date and invoice date, on average for "at least one exporter", is longer for domestic sales than export sales. Reference was made to Confidential Attachment 2 to TER 557 in this regard. Does the ADC have comparable data for any other exporters, and if so please provide this information to the Review Panel?

4. The ADC also stated in TER 557 that it assessed the volatility of copper prices on a quarterly basis on the LME and noted that these were in the range of falls of approximately 5% and increases of approximately 2%. It stated further that it had also assessed the differences in the cathode copper price on the LME on a monthly basis and found that the differences were both increases and falls of under 2% in the majority of months during the investigation period. The ADC did not consider these changes in copper prices to be significant and therefore found that a comparison of quarterly weighted average (WA) normal values and export prices was appropriate.

    a. With reference to the table included in MM Kembla's submission to the ADC on 9 November 2021, pages 7 – 8,[2] please could the ADC comment on MM Kembla's statement that, "the inter-month volatility was very significant and further supports why it is not reasonable to compare domestic sales with export sales at the date

[1] Reference was made to MM Kembla submission in response to SEF 557, dated 4 October 2021, in particular, Confidential Attachment 2 thereto.
[2] This table is also included on page 4 of Confidential Attachment 2 to MM Kembla's applications for review)

of invoice even if the timing difference is less than 3 months as suggested by the Commission".

   b. In the light of MM Kembla's submission that it is incorrect to suggest that the volatility of copper prices is not significant or material considering, "the economics of manufacturing and selling copper tube when the raw material accounts for more than 90 per cent of the selling price", and in view of the fact that inter-month volatility was less than when assessed on a quarterly basis, did the ADC consider whether it was more appropriate to compare <u>monthly</u> WA normal values and export prices, rather than on a quarterly basis? Please provide the reasons for your answer.

5. If there were concerns about the volatility of the price of copper, did the ADC consider using s.269TACB(3) of the Act, as suggested by MM Kembla, even if it considered the relevant date of sale to be the date of invoice? Please provide the reasons for your answer

6. The ADC stated in TER 557 that it does not consider that an adjustment relating to "gains or losses on hedging" has any relevance to the setting of prices that necessitates an adjustment under section 269TAC(8). Please clarify whether <u>hedging costs (associated with entering into hedging contracts)</u> were taken into consideration (as financial costs) as part of the CTMS and if so, whether there were differences in hedging <u>costs</u> for domestic and export sales that could warrant an adjustment.

B. Further information is requested in relation to the following sub-ground of review:

- **The determination of normal values under s.269TAC(1) is not the correct or preferable decision in respect of (i) the particular market situation, relating to Chinese exporters**

1. Can ADC comment on MM Kembla's articulated concerns about the ADC's particular market situation analysis and copper pricing, being:

   - the ADC's LME pricing analysis appeared to be limited to pricing at the "EXW" terms;

   - there was an absence of commentary surrounding the terms of the SHFE prices examined by the ADC (only stating that it reflected "domestic cathode copper price";

   - there was no reference to the import CIF port premium eg Yangshan Copper Premium - used as a premium for warehouse warrant over LME price that is payable in addition to the LME cash price; and

- it was unclear whether the SHFE “domestic price” was a delivered price to customers in China.

C. Further information is requested in relation to the following sub-ground of review:

- **The determination of normal values under s.269TAC(1) is not the correct or preferable decision in respect of (i) cost of scrap copper in the domestic sales relating to Chinese exporters**

1. MM Kembla in Attachment 2 of its applications for review, refers to Zhejiang Hailiang’s submission of 15 October 2021 which states:

   Zhejiang Hailiang confirms that scrap was used in the production of copper billet which was then used in the production of both domestic and export sales.

   MM Kembla submits that Zhejiang Hailiang’s submission of 15 October 2021 contradicts its earlier representations to the ADC’s investigation team where it confirmed that copper sourced for export sales was imported copper only.[3] Please comment on this apparent contradiction in the information submitted by Zhejiang Hailiang.

2. The ADC stated in TER 557 that it had further analysed verified cost information and was not satisfied with MM Kembla’s claims that exporters use more scrap for domestic sales than export sales, with the analysis contained at Confidential Attachment 2 to TER 557. Please explain how the ADC reached this conclusion from Confidential Attachment 2, since the headings of the columns and rows of the relevant worksheet are in Chinese.

3. Please elaborate on the ADC’s statement in TER 557 that it did not consider adjustments for differences in costs necessary where the same MCCs were used to compare the domestic sales to the export sales, as it did not affect price comparability.

D. Further information is requested in relation to the following sub-ground of review:

- **The determination of normal values under s.269TAC(1) is not the correct or preferable decision in respect of (i) model control codes and international standards, relating to Chinese and Korean exporters**

1. MM Kembla argued that the ADC failed to adjust normal values to account for the less stringent physical characteristics that are evident in the Chinese and Korean domestic sales of copper tube. In Attachment 2 of its applications for review, MM Kembla referred to (and reproduced extracts from) its submission to the ADC of 9 September 2021 in response to the Nungwon exporter verification report, in which it

[3] Reference was made to Zhejiang Hailiang Exporter Verification Report, Paragraph 2.5, page 8.

provided a detailed analysis of the difference between the applicable domestic standards in Korea, the non-compulsory Chinese Standards and the mandated Australian Standards for the exported goods, including relating to:

- physical differences in applicable standards;
- safe working pressures;
- manufacturing wall thickness tolerances; and
- manufacturing outside diameter ("OD") tolerance.

This analysis included details of how such differences could be quantified.

The ADC responded to these detailed and specific submissions in a very broad and general way in REP 557:

> *The commission has examined the specific models included in each MCC category and is satisfied that these contain both domestic and exported models. The commission has analysed the WA cost for each MCC used in the dumping margin calculations and compared these with the cost to produce each specific model within that MCC category. On each occasion, the commission has found that the highest cost within the MCC is for a domestic model and the WA cost closely aligns with the costs for each specific exported model. On this basis, the commission is satisfied that through calculating the cost to make (CTM) using the MCCs gives consideration to both domestic and export models and therefore, no adjustment to the normal value is required.*[4]

Please elaborate on the ADC's reasons for determining that no adjustments were necessary with respect to each of the categories of differences referred to in the 9 September 2021 submission, and explain how such a general response adequately addresses MM Kembla's detailed submissions relating to differences in standards.

E. Further information is requested in relation to the following sub-ground of review:

- **The determination of normal values under s.269TAC(1) is not the correct or preferable decision in respect of (i) Drawing thin, relating to Chinese and Korean exporters**

1. The ADC's response in TER 557 to MM Kembla's claims regarding drawing thin, both in regard to Chinese and Korean exporters, is the same as that with regard to MCCs and international standards, referred to above.[5] As requested in the above sub-ground relating to MCCs and international standards, please elaborate on how

[4] TER 557, page 34.
[5] See passage quoted from TER 557, page 34.

such a general response adequately addresses MM Kembla’s detailed submissions (including quantification of differences) relating to drawing thin.

F. Further information is requested in relation to the following sub-ground of review:

- **The determination of normal values under s.269TAC(1) is not the correct or preferable decision in respect of (i) cleaning and capping, relating to Chinese and Korean exporters**

1. MM Kembla stated that it provided the ADC with submissions demonstrating that the cost of cleaning and capping was not insignificant or immaterial , and that it should be included as an upward adjustment cost associated with the export of the refrigeration copper tube exported to Australia (that are required to be cleaned and capped).[6] Please provide further clarification in respect of the ADC statement in TER 557 that it examined the capping costs for each cooperating exporter throughout verification and observed that capping costs are not a material component of costs, and also that it was unable to identify a material difference in selling price between capped and uncapped copper tube for the verified exporters.

G. Further information is requested in relation to the following ground of review:

- **The decision concerning arm’s length sales between Hailiang Hong Kong and Hailiang Australia is not correct or preferable**

1. The ADC confirmed in TER 557, in response to MM Kembla’s submissions, that off-invoice rebates <u>were</u> considered in its assessment of the ‘arm’s length’ nature of transactions and in profitability calculations of the importer. Please indicate which documents / spreadsheets, that were provided to the Review Panel, contain this assessment and the calculations referred to.

I request that the ADC respond to the request by close of business on **Friday, 8 April 2022**.

Yours sincerely,

Leora Blumberg
Panel Member
Anti-Dumping Review Panel
30 March 2022

[6] Reference was made to MM Kembla’s submissions of 14 May 2021 and 4 October 2021.