



Australian Government
Anti-Dumping Review Panel

Application for review of a Commissioner's decision

Customs Act 1901 s 269ZZQ

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 June 2021 for a review of a reviewable decision of the Commissioner of the Anti-Dumping Commission.

Section 269ZZO of the *Customs Act 1901* sets out who may make an application to the ADRP for a review of a decision of the Commissioner.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after the applicant was notified of the reviewable decision.

Conferences

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 10, 11, 12 and/or 13 of this application form (s269ZZQA(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

Contact

If you have any questions about what is required in an application, refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

¹ By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

PART A: APPLICANT INFORMATION**1. Applicant's details**

Applicant's name: Metal Manufactures Pty Ltd trading as "MM Kembla".
Address: 30 Gloucester Boulevard, Port Kembla NSW 2505.
Type of entity (trade union, corporation, government etc.): Company

2. Contact person for applicant

Full name: John O'Connor
Position: Director
Email address: jmoconnor@optusnet.com.au
Telephone number: +61 7 3342 1921

3. Set out the basis on which the applicant considers it is entitled to apply for review to the ADRP under section 269ZZO

<p>Section 269T of the <i>Customs Act 1901</i> ("the Act") defines "interested party" for the purposes of an anti-dumping investigation includes "a person or body representing, or representing a portion of the industry producing, or likely to be established to produce, like goods".</p> <p>MM Kembla is an Australian manufacturer of the goods to which the termination decision of the Commissioner relates in Investigation No. 580. MM Kembla is therefore an interested party for the purposes of the Act and this application.</p>

4. Is the applicant represented?

Yes No

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

- Subsection 269TC(1) or (2) – a negative prima facie decision
- Subsection 269TDA(1) – a termination decision
- Subsection 269TDA(2) – a termination decision
- Subsection 269TDA(3) – a termination decision
- Subsection 269TDA(7) – a termination decision
- Subsection 269TDA(13) – a termination decision
- Subsection 269TDA(13A) – a termination decision
- Subsection 269TDA(14) – a termination decision
- Subsection 269TDA(14A) – a termination decision
- Subsection 269X(6)(b) or (c) – a negative preliminary decision
- Subsection 269YA(2), (3), or (4) – a rejection decision
- Subsection 269ZDBEA(1) or (2) – an anti-circumvention inquiry termination decision

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed.**

This application relates to the Termination decision under section 269TDA(1)(b)(ii) of the Act in respect of the dumping margins by Hailiang (Vietnam) Copper Manufacturing Company Limited (“Hailiang”) and the uncooperative exporters from Vietnam, which were determined as less than 2 per cent for their respective exports of seamless copper tube to Australia.

6. Provide a full description of the goods which were the subject of the reviewable decision:

The goods the subject of the reviewable decision as detailed in Termination Report 557 are:

Round seamless copper tube complying with Australian Standards 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.

7. Provide the tariff classifications/statistical codes of the imported goods:

The tariff classifications of the imported goods is tariff subheading 7411.10.00 (statistical code 11) in Schedule 3 to the *Customs Tariff Act 1995*.

8. If applicable, provide the Anti-Dumping Notice (ADN) number of the reviewable decision:

Anti-Dumping Notice (ADN) number: 2022/024 (Refer Non-Confidential Attachment 1).

Date ADN was published: 4 March 2022.

9. Provide the date the applicant received notice of the reviewable decision:

MM Kembla was notified of the Commissioner's decision on 4 March 2022.

Attach a copy of the notice of the reviewable decision to the application

PART C: GROUNDS FOR YOUR APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be **highlighted in yellow**, and the document marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so:

10. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

Refer Confidential Attachment 2.

- 11. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10:**

Refer Confidential Attachment 2.

- 12. Set out how the grounds raised in question 10 support the making of the proposed correct or preferable decision:**

Refer Confidential Attachment 2.

- 13. Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision:**

Only answer question 13 if this application is in relation to a reviewable decision made under subsection 269X(6)(b) or (c) of the Customs Act 1901.

Refer Confidential Attachment 2.

- 14. Please list all attachments provided in support of this application:**

Non-Confidential Attachment 1 – ADN 2022/024;
Confidential Attachment 2 – MM Kembla's Application – Grounds for appeal.

PART D: DECLARATION

The applicant/the applicant's authorised representative [*delete inapplicable*] declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* beginning to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.



Signature:

Name: Tony Bova

Position: Executive General Manager

Organisation: Metal Manufactures Pty Ltd

Date: 31 / 03 / 2022

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative

Full name of representative: John O'Connor
Organisation: John O'Connor and Associates Pty Ltd
Address: P.O. Box 329, Coorparoo QLD 4151
Email address: jmoconnor@optusnet.com.au
Telephone number: (07) 3342 1921

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.



Signature:

(Applicant's authorised officer)

Name: Tony Bova

Position: Executive General Manager

Organisation: Metal Manufactures Pty Ltd

Date: 31 / 03 / 2022



Customs Act 1901 (Cth) – Part XVB

ANTI-DUMPING NOTICE NO 2022/024

Certain Copper tube

exported to Australia from the Socialist Republic of Vietnam
(Vietnam)

Termination of Investigation No 580

Public notice under section 269TDA(15) of the Customs Act 1901 (Cth)

On 22 March 2021, Dr Bradley Armstrong PSM, the Commissioner of the Anti-Dumping Commission (Commissioner), initiated an investigation into the alleged dumping of copper tube (the goods) exported to Australia from the Socialist Republic of Vietnam (Vietnam).

The investigation followed an application lodged in accordance with section 269TB of the *Customs Act 1901 (Cth)* (the Act) by Metal Manufacturers Pty Ltd trading as MM Kembla.

Public notice of the Commissioner's decision to initiate the investigation (Anti-Dumping Notice No. 2021/41 refers) was published on 22 March 2021 on the Anti-Dumping Commission's (commission) website at: www.adcommission.gov.au.

As a result of the commission's investigation, I am satisfied that:

- there has been no dumping by Hailiang (Vietnam) Copper Manufacturing Company Limited from Vietnam of any of the goods in the investigation period; and
- there has been dumping by uncooperative exporters of the goods from Vietnam, but the dumping margin by those exporters when expressed as a percentage of the export price worked out under section 269TACB, is less than 2% in the investigation period.

I therefore terminate this investigation so far as it relates to:

- Hailiang (Vietnam) Copper Manufacturing Company Limited in accordance with section 269TDA(1)(b)(i) of the Act; and
- uncooperative exporters of the goods from Vietnam in accordance with section 269TDA(1)(b)(ii) of the Act.

This terminates the investigation in its entirety.

In making the decision to terminate this investigation, I have had regard to the application, submissions from interested parties, *Statement of Essential Facts No 580* (SEF 580), submissions in response to SEF 580 and *Termination Report No 580*.

Termination Report No 580, which sets out my reasons for the decision to terminate this investigation, including the material findings of fact or law upon which the decision is based, has been placed on the commission's public record at: www.adcommission.gov.au.

The applicant may request a review of this decision to terminate the investigation by lodging an application with the Anti-Dumping Review Panel in the approved form and manner within 30 days of the publication of this notice.

You may enquire about this notice by contacting the case manager via telephone on +61 (03) 8539 2440 or via email at: investigations2@adcommission.gov.au.

Dr Bradley Armstrong PSM
Commissioner
Anti-Dumping Commission

4 March 2022

A. Introduction

On 10 February 2021 MM Kembla (“MMK”) made an application for anti-dumping measures in respect of exports of copper tube (“the goods”) to Australia from the Socialist Republic of Vietnam (“Vietnam”).

MMK’s application alleged that the exports from Vietnam were at dumped prices and the Australian industry had suffered material injury from the dumping. The application also asserted that the injury from Vietnam was cumulative to injury sustained from the dumping and subsidization of copper tube exported from China and the dumping of copper tube from Korea.

On 22 March 2021 the Commissioner decided not to reject MMK’s application and published Consideration Report No. 580 and a notice commencing a formal investigation into MMK’s allegations (refer ADN 2021/041).

The investigation period for Investigation No. 580 (“Invest 580”) was 1 January 2020 to 31 December 2020. The Commissioner indicated that he will examine details of the Australian market for copper tube from 1 January 2017.

MMK is the only manufacturer of copper tube in Australia. MMK’s manufacturing facilities are located in Port Kembla, New South Wales.

The Anti-Dumping Commission (“the Commission”) was unable to visit MMK at its manufacturing site due to the Covid 19 Pandemic restrictions. All verifications – for the Australian industry, exporters and importers - were conducted via video conferencing and follow-up emails.

Statement of Essential Facts No. 580 (“SEF 580”) was originally scheduled to be published on 12 July 2021. ADN No. 2021/131 notified that the SEF would be delayed until 29 October 2021. SEF 580 detailed the Commissioner’s findings including the following margins of dumping:

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

It was also established by the Commissioner that the Australian industry had suffered injury during the investigation period, however, this injury could not be attributed to the exports from Vietnam.

The Commissioner was originally due to publish a final report on 24 August 2021. The date for the final report was extended, and was published on 4 March 2022.

MMK does not agree with the Commissioner’s decision to terminate Invest 580 (as detailed in Termination Report No. 580 “Report 580”). By this application, MMK seeks a review of the Commissioner’s termination decision in Report 580. In accordance with subsection 269ZZN(b) of the *Customs Act* MMK requests the Anti-Dumping Review Panel (“ADRP”) to review the decision of the Commissioner to terminate the investigation into exports of copper tube from Vietnam.

MMK has identified the following grounds of appeal concerning the Commissioner’s termination decision in respect of the goods exported to Australia from Vietnam.

I. Grounds for appeal

A. First Ground – The Commissioner’s decision with respect to the selection of invoice date for fair comparison purposes was not correct or preferable decision

10. Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

The Commissioner calculated the dumping margins for Hailiang Vietnam Copper Manufacturing Company Limited (“Hailiang Vietnam”) based on a comparison of quarterly weighted average export prices with the corresponding quarterly weighted-average normal value for the investigation period (as per subsection 269TACB(2)(a)). The date for fair comparison of normal values with export prices selected by the Commissioner was the date of invoice.

The Dumping and Subsidy Manual “the Manual” (at Section 15.3) discusses “establishing the date of sale”. The Manual notes that “*the Commission will normally use the date of invoice as it best reflects the material terms of sale*”. The Manual also states that where “*a date other the date of invoice better reflects the date of sale, the Commission will examine the evidence provided.*”

MMK contends that the Commissioner has failed to give due consideration to the evidence provided by MMK regarding the volatility of copper pricing that is priced differently for domestic and export sales when date of invoice is used for fair comparison purposes.

MMK has demonstrated that copper pricing is more relevantly (and accurately) aligned at order date where the terms of sale are well established.

In its response to SEF 580, MMK demonstrated the volatility of copper pricing and how comparing a domestic and export sale at invoice date would likely result in substantially different raw material copper input prices for the copper tube (see below further at Ground 2).

MMK acknowledges that the Commission’s methodology is considered reasonable *if* the same copper price time basis is used in the sales for domestic and export. In reality however, this is **not** the case. Given the variability of the copper commodity price and the exposure risk this creates when domestic and export orders are priced (at date of order), the industry accepted practice of hedging copper prices at the time of order, results in an alignment of the cost of copper for the manufacturer and what the customer pays for the copper component of the pricing model.

Importantly, the order date provides for a more comparable date for domestic and export sales where the cost of the raw material input copper (that accounts for up to 95 per cent of the cost of copper tube) is known for both domestic and export sales (whereas sales compared at invoice date have different agreed copper prices).

During the period of the investigation¹ the LME copper price copper price fell by xx%, from the January high of US\$xxxxx to the March low of US\$xxxxx. The price then rebounded to a new high of US\$xxxxx in December an increase of xx% from the low.

This extreme volatility in copper pricing invariably impacts the difference between pricing dates of the copper cost and invoice date for domestic and export sales and *would have* had a material impact on the comparative quarterly weighted average export price and quarterly weighted average domestic sale, demonstrating a misalignment between the invoice price and product cost.

The Commissioner considered the timing difference between the order placement date and invoice date for both the domestic and export sales for the exporters the subject of this investigation. The evidence before the Commission led it to conclude that the timing difference for

¹ The investigation period in Investigation No. 580 was 1 January 2020 to 31 December 2020.

exported copper tube is substantially less than the 3 months as submitted by MMK and, in the Commissioner's opinion, of itself, is not significant.

A more appropriate basis for fair comparison purposes that was available to the Commissioner and more accurately reflects the commercial terms and industry practices for copper tube sales involves a transaction by transaction comparison of domestic and export prices utilizing order date (as per subsection 269TACB(3)).

The Commissioner's failure to accurately assess the volatility in the copper price during the investigation period has contributed to an understatement of the exporter's actual costs to make and sell the exported goods. The exclusion of an adjustment to correctly price copper in the exporter's normal value for fair comparison purposes with export prices understates the actual margin of dumping for exports to Australia by Hailiang Vietnam.

The movement in copper price from the date of order placement to invoice can be substantial and, given the longer lead time (up to three months) for export sales, it is not reasonable to compare domestic sales with export sales at date of invoice due to the volatility in the copper price that evolves over this period.

In addressing the copper pricing differences between order and invoice date and MMK's 18 November 2021 submission, the Commissioner retorted in SEF 580²:

"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."

And further:

"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 the sale are resolved on the invoice date."

The Commissioner continued in SEF 580:

"The commission has also considered the timing differences 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 for domestic sales, and this difference is not many months as submitted by MM Kembla which, in and of itself, is not significant."

MMK is not disputing that in some instances there may be a difference between quantities between order date and invoice date. What is relevant, however, is at what copper benchmark price is the sale locked in at.

In rejecting MMK's representations in the 18 November 2021 submission, the Commissioner stated:

"The commission does not consider that MM Kembla has provided the requisite evidence to demonstrate that order placement date is the date which better reflects the date of sale."

The Commissioner contended that as "all discounts, rebates and sales returns, warranty claims and intercompany transfers are not recognized until invoice date" in MMK's records and that Hailiang Vietnam followed a similar policy, that this supports the conclusion that invoice date is appropriate for comparison purposes.

In concluding on the issue, the Commissioner confirmed:

² Statement of Essential Facts No. 580. Section 4.3.1.11 at P. 26.

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

MMK accepts that quantity in the order advice can change by up to 5% (this is normal practice); but the **price** set at order date based on a copper benchmark used on the order does not change. The Commission has failed to demonstrate when and with what regularity the price change it evidenced had occurred. MMK provided evidence³ to the Commission 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.

In response to the Commission’s assertions, MMK provided evidence⁴ detailing [redacted – commercially sensitive details of copper pipe purchases] the price set at order date is **exactly the same** as the invoice price in 100% of the line items. MMK questions how the Commission finds the number of days between sales order date and invoice date is not significant for all other importers of goods but is very significant for MMK’s dealings with the same exporter, Hailiang Vietnam.

MMK has included below a [source confirmation] received during the investigation period. The purchase order allows for a “tolerance” of +/- 5%” on the order quantity but the price is **fixed** based on the “LME Links” line which highlights the LME benchmark used in setting the price. This does not change. The Commission did not consider for Hailiang Vietnam exports to Australia on how many occasions the price changed from order date to invoice date when the available evidence as per the purchase order is that the copper benchmark price can’t fluctuate (i.e. and therefore the Commission could not maintain its position that invoice date is the appropriate date for fair comparison purposes).

³ MM Kembla submission in response to SEF 580, 18 November 2021 (EPR Document No. 016).

⁴ MM Kembla submission in response to SEF 580, 18 November 2021, at Confidential Attachment 5.

[redacted -commercially sensitive sales confirmation information]

The evidence provided by MMK to the Commission unquestionably demonstrates that the Commission:

- should have acknowledged that the volatility in the copper price during the investigation period is significant (i.e. significantly exceeding the stated 5 per cent that the Commission states as not material). MMK contends that the economics of copper tube makes a minor 2% variation in LME significant or material (as copper accounts for 90 per cent of the copper tube cost to produce).
- did not relevantly consider that the copper benchmark and timing of when this is set has a material impact on normal values and export prices within any single month of the investigation period as demonstrated from the export data for Hailiang Vietnam's own exports.
- failed to consider the analysis presented of *[redacted – commercially sensitive purchase information]* that demonstrate that the time between price setting date and invoice date is significant and the resulting difference in copper price is very significant.
- In its comments that it "*is satisfied that there are no material differences in the determination of price for export and domestic sales*" cannot be justified with the level of variability and volatility in copper pricing and as such the conclusion is statistically wrong.
- should not have undertaken a comparison of quarterly weighted average normal values and export prices which in the circumstances are **NOT** appropriate.
- should have undertaken a comparison of export sales prices with domestic prices at order date and where a difference copper price difference exists the Commission should have made an adjustment under subsection 269TAC(8) to address differences in copper pricing between the two markets.

- due to the differences in copper pricing evident as demonstrated by MMK, should have followed the more appropriate basis for fair comparison of examining on a transaction by transaction comparison utilizing order date and the same copper benchmark price.

MMK demonstrated in its response to SEF 580 to the Commission that the terms of sale are more accurately reflected on the date of order placement for copper tube that is exported to Australia. At that time the terms of the contract (i.e. the three-month forward price of copper is used) and this can be correctly compared and contrasted with domestic sales that reflect a similar copper input price (and are not subject to the variations in copper pricing that are evident when invoice date is used for fair comparison purposes).

The Commissioner's decision to use invoice date for fair comparison purposes is not the correct or preferable decision.

11. Grounds in support of the decision

Set out how the grounds raised in Question 10 support the making of the proposed correct or preferable decision.

Where the cost of the raw material input (i.e. copper) accounts for as much as 95 per cent of the cost of the exported goods (or 90% of the invoice price) and there is high volatility surrounding raw material pricing, it is appropriate to select the date for fair comparison purposes where the terms of the sales for domestic and export sales are best aligned. This occurs when the copper benchmark for pricing is agreed. In nearly all cases this occurs at order date.

The selection of invoice date as used by the Commission allows for significant movement in prices for the raw material between the order date and invoice date (i.e. up to three months for export sales). The Commission thus compared export sales with domestic sales in which prices had been set at different times and the key determinant of price – the cost of copper – was likely to have been quite different.

12. Material difference between the decisions

Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.

The material difference in using the date of order as the comparison date for domestic and export sales more readily aligns the terms of sales in the different markets and removes the vagaries of subsequent movements in copper prices that inevitably occurs between setting of the copper benchmark, date of order, and invoice date.

MMK demonstrated that the volatility impact on pricing during the investigation period (refer Ground 2 below for quantification) when the economics of manufacturing and selling copper tube are considered and correcting this error will result in higher, positive dumping margin for Hailiang Vietnam and the uncooperative exporters.

B. Second Ground – The Commissioner’s decision concerning the determination of normal value without the appropriate adjustments was not the correct or preferable decision

10. Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

I. Introduction

It is MMK’s considered view that the Commissioner’s decision as to the determination of normal values for Hailiang Vietnam is incorrect and not the preferred decision.

The Commission has rejected MMK’s representations concerning the determination of normal values for copper tube as the Commissioner has failed to take account of:

- the impact of the applicable International Standards on domestic sales versus export sales, that result in different costs to make copper tube in the domestic and export markets respectively;
- the exporter’s practice to draw thin in copper tube production for sales on the domestic market, resulting in a lower CTM than applies for exported goods;
- actual capping and cleaning costs for refrigeration copper tube models; and
- hedging costs that impact domestic and export selling prices for copper tube.

MMK evidenced to the Commission in its response to SEF 580⁵ the required adjustments to normal values for Hailiang Vietnam so that there was a fair comparison between the domestic and export sales of the exporter. The representations demonstrated numerous shortcomings with the acceptance of Hailiang Vietnam’s normal values based upon non-compliant copper tube made to lower Standards than the exported copper tube that meet the necessary AS/NZ Standards.

The Commission elected to disregard each matter raised by MMK (and its more than 100 years experience producing copper tube) in preference to the acceptance of information provided by Hailiang Vietnam in its Exporter Questionnaire Response (“EQR”) and during the video verification with the exporter. MMK contends that the normal values determined for Hailiang Vietnam do not reflect the full cost elements (only achieved by adjustment) to fairly compare with the export prices for Hailiang Vietnam’s sales to Australia during the investigation period.

II. Model Control Codes and International Standards

MMK concurs with the Commission that the goods manufactured by it possess “*characteristics closely resembling*” the goods exported to Australia from Vietnam.

However, the locally produced goods and the imported goods are not identical. It is therefore essential for fair comparison purposes that the normal values assessed by the Commission for the goods sold in Vietnam be adjusted to align with the goods that are exported to Australia.

The normal values for Hailiang Vietnam as determined by the Commissioner in Report 580 are for generic copper tube that has been manufactured to a lower standard and possess physical characteristics that involve a lower cost of production (and selling price) than the goods exported to Australia.

The Commissioner has failed to adjust normal values to account for the less stringent physical characteristics that are evident in the Hailiang Vietnam domestic sales of copper tube. These physical differences include product dimensions, product quality, copper content, product cleanliness and chemical composition. Ultimately, the lower standards applicable in Vietnam result in a lower cost of production for the subject goods that, without appropriate adjustment, cannot properly be compared

⁵ MM Kembla submission in response to SEF 580, P.4-10.

with the goods exported to Australia (which are required to meet the AS/NZ Standards involving a higher cost of production).

There are varying product standards used in the Vietnamese local market due to the non-mandatory specification of copper tube sold in Vietnam. In addition, copper tube is not predominantly used for plumbing applications as found in the Hailiang Exporter Verification Report where the verification team found no domestic sales of MCC P-B-U-S-P or P-H-U-S-P and subsequently adopted surrogate models of the refrigeration MCC's.

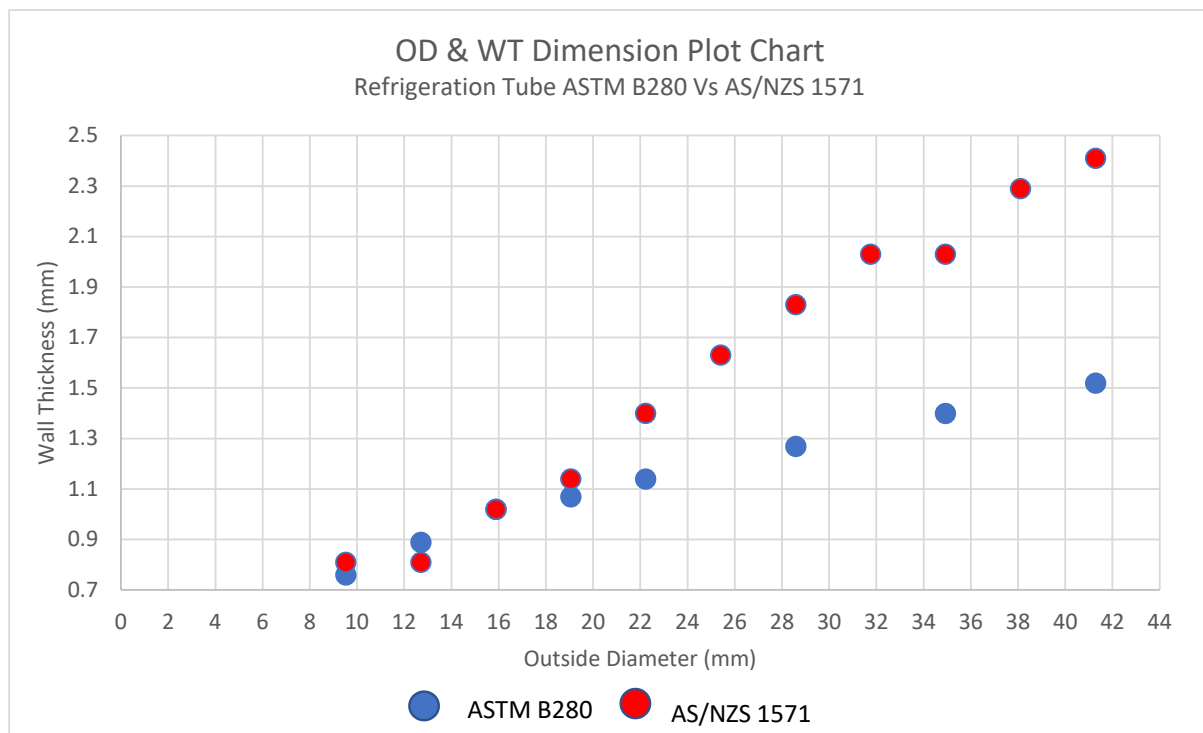
The reverse is true in Australia where copper tube is still one of the prominent materials used for plumbing in major construction works. Subsequently, it is considered that these goods are not interchangeable and cannot be considered like across markets and applications where no local standard or requirement exists.

As an example, the following evaluation of standards by their relevant applications (plumbing or refrigeration) demonstrates the lack of interchangeability that exists:

Refrigeration Copper Tube – ASTM B280 vs AS/NZ5 1571

A commonly referenced standard by customers in Vietnam for refrigeration and air conditioning tube is ASTM B280. When compared to AS/NZS 1571 sold in Australia; whilst they share the same Outside Diameter (“OD”) dimensions, the Wall Thickness (“WT”) dimensions are different as illustrated in Figure 1.

There is little alignment with wall thickness variance ranging between -9% and 59% and on average AS/NZS 1571 product being 22% thicker than ASTM B280 product.



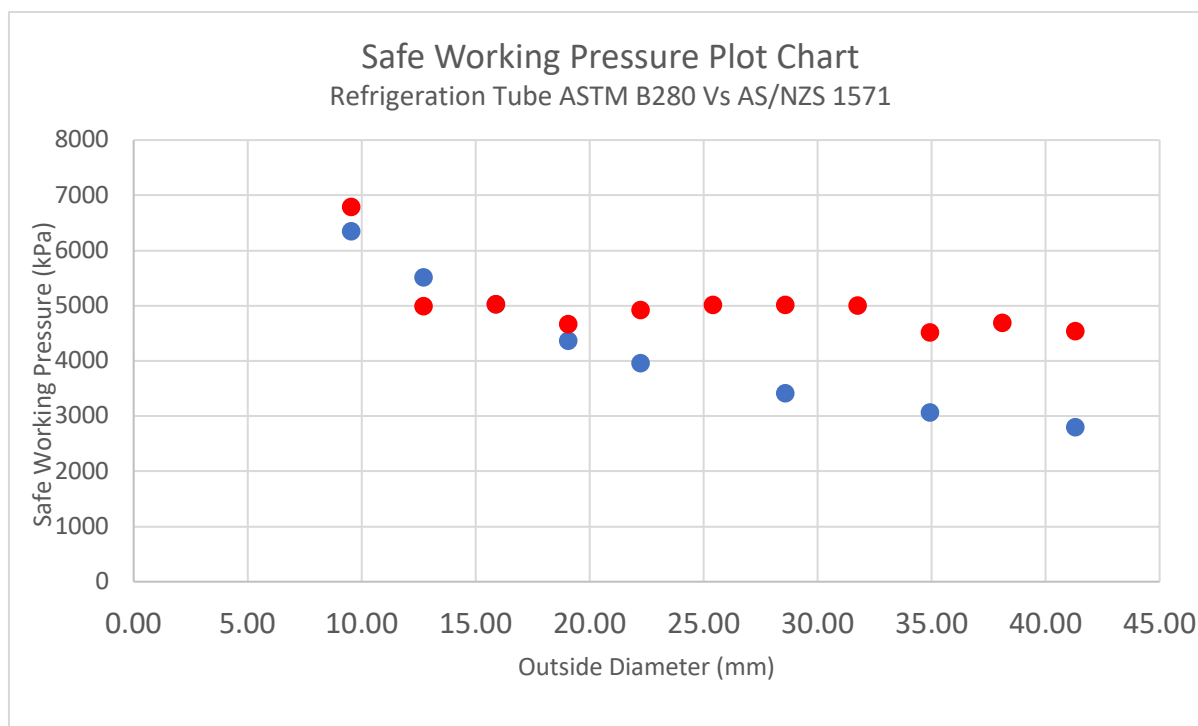


Figure 1 - OD & WT Plot AS/NZS1571 Vs ASTM B280 Copper Refrigeration Tube

A number of the physical differences are generated by the Standard that applies to the goods. The Australian Standard (for the exported goods) differs greatly to the local Standard in Vietnam (for the domestic goods). The Vietnamese Standards are not mandatory whereas the Australian Standards are mandatory. ASTM B280 does not have a mandatory requirement for product to pass cleaning tests. Subsequently, such requirements are as agreed in the sales or purchasing contract between buyer and seller. Section 4.2.3 of ASTM B280 states that the Cleanness test option is available and shall be specified in the contract or purchase order when required. The standard further states in Section 10.2.1 Performance Requirements – Cleanness of Interior Surface, “When specified in the contract or purchase order, this test shall be performed by the manufacturer”.

Such freedom to meet internal cleanness requirements does not exist in the Australian Standard AS/NZS 1571. In a circumstance where national product standards are non-mandatory and exist in an unregulated market, it is impossible to ascertain that the local market produces and sells like goods as there is no reference comparison to a base set of requirements for that local market.

The goods the subject of MMK’s application are as follows:

“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.”

The Commission is aware that the imported goods are required to meet the applicable Standards (whether AS 1432, AS/NZ 1571 or 1572). MM Kembla has tested the imported tubes in a laboratory and they do not comply with Australian standards AS 1432, AS/NZ 1571 or AS 1572.

The Commission stated in SEF 580 that⁶ it:

⁶ Statement of Essential Facts No. 580, Paragraph 4.3, .21.

“does not consider claims [by MM Kembla] 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”.

MMK strongly disagrees with the Commission’s statements.

MMK submits that Hailiang Vietnam gains a significant unfair cost advantage by selling non-compliant tube into the Australian market. MMK has requested that the Commission make adjustments to normal value to permit for a ‘fair comparison’ between the domestic and exported goods, however the Commission has refused to do so. The type of adjustments required include, for example, the exporter drawing copper tube thin (not consistent with standard).

MMK further detailed to the Commission that the differences in the applicable standards for copper tube manufactured in Vietnam translated to differences in the costs of production of the goods sold domestically in both countries. These differences include:

- physical differences in applicable standards;
- safe working pressures;
- manufacturing wall thickness tolerances;
- manufacturing outside diameter (“OD”) tolerance.
- Cleanliness of the tube.

Sub-section 269TAC(8) permits the Minister to make adjustments to normal value, where the normal value is to be ascertained under 269TAC(1)⁷. Adjustments to normal value are made to permit ‘fair comparison’ between the normal value (i.e. domestic price paid) and the export price for the subject goods, specifically for goods sold in the country of export that “are not in respect of identical goods” (subsection 269TAC(8)(b)) – that is, where there are instances where the imported goods (non-compliant) require adjustment to align them with the goods exported to Australia (i.e. subject to applicable Australian Standards).

The Commission has not made adjustments to correctly permit a fair comparison between the domestic selling prices for copper tube sold in Vietnam (that do not meet Australian Standards AS1432 and AS/NZ 1571 & 1572), with the export prices to Australia (that do meet Australian Standards AS 1432 and AS/NZ 1571 & 1572). The Commission states that it “*is not satisfied that such an adjustment is necessary*” (refer SEF 580, Section 4.3.1, P. 21-22).

MMK submits that the importation of non-compliant tube, which is labelled and sold as compliant tube, has had a negative effect on the price paid for MMK’s locally manufactured copper tube. Hailiang Australia can significantly reduce its selling prices (versus MMK’s selling prices) by selling non-compliant tube (including by manufacturing from scrap and drawing thin) and this provides importers a significant and unfair price advantage and significantly lower sales prices in the Australian market. These differences impact the physical likeness of the imported goods when contrasted with the locally produced goods.

Adjustments to normal value are required and should not be dismissed without justification or on the basis that individually they lack ‘materiality’.

The relevant differences in the physical of the imported goods when contrasted with MMK’s goods that warrant adjustment under subsection 269TAC(8) include:

- quality;
- copper content;
- cleanliness;
- chemical composition,

⁷ For domestic sales of like goods where the price paid or payable for like goods sold in the ordinary course of trade 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 (Section 269TAC(1)).

due to the imported goods having been manufactured to different standards to the goods exported to Australia.

Adjustments to normal value to account for these physical differences in the domestic sales of the goods sold domestically in the exporting country and the goods exported to Australia are necessary for 'fair comparison' purposes.

The Commission's stance to ignore these **material** differences in physical attributes represents a failure of the Commissioner to correctly determine normal values for copper tube.

III. Refrigeration Standard AS1571 v Plumbing Standard AS1432

MMK highlights with the ADRP that Refrigeration Tube Standard AS1571 costs and price versus Plumbing Standard AS1432 costs and price involves a variation of approximately \$xxx/t in cost (which reflects the capping and cleaning costs) or xx% (\$xxx/t) increase in price⁸. The comparison of domestic Vietnam MCC fabrication costs including a range of difference standards, wall thickness, pressure rating, cleanliness requirements etc to the applicable Australian Standards especially when Hailiang Vietnam has a total production capacity of approximately xxxxx tonnes and during the investigation period only approximately xxxxx tonnes of subject goods were exported to Australia, is simply incorrect.

In SEF 580 the Commission stated:

"The commission does not contest that the goods sold domestically in the export country to those exported to Australia are not identical in all respects. These goods may differ in quality, copper content, cleanliness, chemical composition and are made to different standards". (SEF 3.4.1 page 11).

Despite this the Commission went on to state:

"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 is not satisfied that such an adjustment is necessary."

With approximately xxx % of total volume of Hailiang Vietnam's production being made to a higher and mandatory Australian standard (despite proof from provided laboratory reports of non-compliance of imported tube) this will have little impact on the average MCC cost. Again, this is an example of the Commission's lack of rigor and relying upon incorrect assumptions during the conduct of the investigation. If the specification adjustment for surrogate models (for which there were no domestic sales – first two models in Table 7 in SEF 580) is less than US\$xxx/t - then it is incorrect. If this adjustment is made then it will be for the majority of the total fabrication cost, which again demonstrates that the lack of detailed product costing by exporters, which is a blend of different product for different MCC's and within MCC's for different standards and domestic and export products makes the comparisons unreliable and misleading.

The Commission has not identified the extent of these differences as is required by the Dumping and Subsidy Manual ("the Manual"). The verified MMK MCC data and as also as shown in the Confidential Attachment 2 to MMK's response to SEF 580, outlines the extent of differences between standards which is significant. It is MMK's view that normal values for models where no domestic sales are evident should have been determined under subsection 269TAC(2)(c) on a constructed basis, so that the constructed normal value matched the export price for the particular model of copper tube.

MMK has provided detailed costings and summary data by MCC that has been verified by the Commission, but the Commission has rejected MMK's data in preference for the exporter's data which, by their own admission, does not have specific cost records for individual products to a specific standard or market.

⁸ See MM Kembla submission in response to SEF 580, Confidential Attachment 2 comparison of plumbing and refrigeration standard fabrication costs and sales prices.

Costs are all averages (outlined in Table 9 for Hailiang Vietnam in SEF 580) extract below⁹ for Hailiang Vietnam) that are allocated on a volume basis not on actual product cost basis (i.e. small diameter and lower wall thickness product requires a higher cost of manufacturing on a \$/tonne basis than larger diameter and larger wall thickness product, due to lower through put rates and more reduction passes bring required this is completely ignored in this costing methodology) and do not include all costs like capping and cleaning.

Table below outlines the allocation method applied to each cost item.

Cost item	Method applied
Raw Materials	Raw material costs are assigned to products as standard costs and based on actual usage during the various production stages. Variances from standard cost were allocated to goods on a volume basis.
Manufacturing Overheads (including depreciation)	Manufacturing overhead costs incurred in relation to the main cost centres were attributed directly to the relevant goods. Manufacturing overheads from the auxiliary cost centres were allocated to relevant goods on the basis of volume.
Labour	Labour costs incurred in relation to the main cost centres were attributed directly to the relevant products. Labour costs from the auxiliary cost centres were allocated to relevant goods on the basis of volume.

Table 9 Cost allocation method

MMK is concerned by the lack of transparency and detail in Report 580 concerning the unit of measurement for cost and sales in the Hailiang Vietnam Exporter Verification report. It is understood that sales of copper tube are generally made on a "per length" basis, with costs typically measured on a \$ per kg (or tonne) basis.

The Hailiang Vietnam Exporter Verification report provides no detail as to the unit of measurement for costs and/or sales. If sales have been verified on a "per piece" basis, the conversion factors to arrive at a per tonne equivalent must be identified.

IV. Cleaning and capping costs

The Commission has demonstrated a lack of understanding of the production process and accepts the exporter's contention that cleaning is undertaken during the production process and is reflected in the production cost, which is blended and averaged across all products to all standards and different export and domestic markets, with varying levels of cleanliness required. This is incorrect.

MMK acknowledges that some cleaning can be done in-line ie bendable (annealed) but only for smaller sizes, larger products and hard drawn products must go through a wash tank cleaning process. The Hailiang manufacturing process is designed around the higher volume ASTM B280 standard which does not have a mandatory requirement for product to pass cleaning tests. Subsequently, such requirements are as agreed in the sales or purchasing contract between buyer and seller. Section 4.2.3 of ASTM B280 states that the Cleanness test option is available and shall be specified in the contract or purchase order when required. The standard further states in Section 10.2.1 Performance Requirements – Cleanness of Interior Surface, "*When specified in the contract or purchase order, this test shall be performed by the manufacturer*". As a result, they do not have a wash tank process to ensure cleanliness to AS/NZS 1571.

Such freedom to meet internal cleanness requirements does not exist in the Australian Standard AS/NZS 1571 for refrigeration copper tube. MMK provided¹⁰ the Commission with photos of the cleaning and capping process undertaken for its production of refrigeration copper tube.

⁹ Hailiang Vietnam verification report, Paragraph 6.1, P. 12.

¹⁰ MM Kembla submission in response to SEF 580, Confidential Attachment 1.

MMK also provided detailed cleaning and capping costings to the Commission, but this was dismissed with no explanation other than agreeing with exporter's claims when the Commission hasn't even visited a single copper manufacturing plant to verify the process claimed by exporters is correct. The Commission has rejected the local industry's representations that are based on over 100 years of manufacturing argument:

"The commission examined the capping costs for each cooperating exporter throughout verification and has observed that capping costs are not a material component of costs. The commission was also unable to identify a material difference in selling price between capped and uncapped copper tube for the verified exporters. The details of the analysis conducted by verification teams is outlined in the relevant verification reports."

MMK is concerned by the Commission's apparent disregard for a reasonable standard of proof concerning the 'materiality' of individual items for which MMK is seeking adjustments to the exporters' normal value. The Commission appears to have adopted a standard of proof concerning materiality of items that is at best unreasonable and opaque and at worst is not contemplated by the legislative provisions or the Manual (and the corresponding terms of the WTO Anti-Dumping Agreement).

Put simply, the Commission is required to assess when making a fair comparison between export price and normal value whether there are differences which affect price comparability. The Manual acknowledges that s269TAC(8) places a **responsibility** on the Commission as part of its **fact finding responsibility** to make adjustments. More detailed guidance is provided in the Manual, applicable in the event that potential adjustments are evaluated for the purposes of 269TAC(9), including that 'adjustment is allowed for differences in physical characteristics where the differences can be quantified to ensure fair comparison' (emphasis added).

MMK has provided the Commission with evidence sufficient to enable it to:

- (i) positively determine that there are differences which affect price comparability; and
- (ii) to quantify those differences for the purposes of making the appropriate adjustments under s269TAC(8) (or s269TAC(9), where relevant).

For example, for goods to comply with AS1571 and MCC identifier "R" the good must be capped. This is a requirement of the standard. MMK is unclear as to how the Commission could verify the cost of capping, cleaning, labour and handling cost related to AS1571 tube to be immaterial when all exporters have confirmed this cost is not included in the product cost and treated as "packaging" or cleaning "during production" and simply adding the material cost of cap to MCC with identifier "R". The exporter's explanation dramatically under costs the real cost of meeting the requirements of AS 1571.

As mentioned, the cost of cleaning and capping or the difference in manufacturing to different standards has not been fully validated and appreciated by the Commission and it has thus failed to make the appropriate adjustments to normal value for this material cost.

V. Copper volatility

MMK provided a detailed outline of the volatility of copper during the 2020 investigation period in its response to SEF 580. The following table below was included in MMK's 18 November 2021 submission:

[Redacted – Table detailing monthly movements in the LME copper spot price]

This above table demonstrates the volatility impact on copper pricing that was evident during the investigation period was between US\$xxx/t to US\$xxx/t. 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 of invoice even if the timing difference is less than 3 months as suggested by the Commission. To suggest this is not significant or material is incorrect when the economics of manufacturing and selling copper tube (circa \$xxxx per metric tonne) when the raw material accounts for more than 90 per cent of the selling price.

In MMK's 12 November 2021 submission (in response to the Hailiang Vietnam submission of 15 October 2021), MMK highlighted the significant decline in the international copper price in early 2020. The copper price demonstrated significant volatility by declining as much as xx per cent.

MMK submits that the Commission (based on the evidence before it as provided by MMK and readily available from third party industry analysis in relation to domestic and global copper markets) should have concluded that:

- the volatility in the copper price during the period of investigation was significant and material;

- the timing of when the copper price is set and has a material impact on normal values and export prices (as evidenced in Hailiang Vietnam's export prices to Australia in table below); and
- an adjustment to normal value for difference copper benchmark price between export and domestic sales was required.

Separately to the above, MMK has analyzed the available export data for Vietnam copper tube HS Code 7411.10.00 Tubes and pipes of refined copper¹¹.

The data details [*data content*] and a description of the specific product being exported. This detail was supplied to the commission in MMK's original application and more recently in MMK's submission to Investigation No. 580 – Copper tube exported to Australia from Vietnam – MMK Response to Hailiang (Vietnam) Copper Manufacturing Co Ltd exporter verification report and Hailiang Copper Australia Pty Ltd importer Verification Report.

This data has been summarised for products that are subject goods only. This is shown in Table 2 below:

[redacted – commercially sensitive Vietnam export data, by month].

Table 2: Source Vietnam export data and Confidential Attachment 4.

The above Table 2 highlights the xxx shipments in the investigation period (commencing July 2019 when the Hailiang Group moved production and export of subject goods to Vietnam from China due to the dumping investigation on China exports by the Commission).

Table 2 demonstrates that for the subject goods only, the monthly variation in the FOB price by shipment within the same month ranged between xx% to xx%. This further demonstrates that the variation in pricing due to the copper benchmark and timing of when the copper price is fixed has had a material impact on Hailiang Vietnam's own exports when using the invoice or FOB date within the same month.

In order to accurately compare export sales prices with domestic prices the Commission is required to make due allowance under subsection 269TAC(8) to address differences in copper pricing between the two markets.

VI. Drawing thin

MMK raised¹² with the Commission the practice of Hailiang Vietnam drawing thin its copper tube for domestic supply.

In price negotiations with [REDACTED] on a range of copper tube products they have regularly raised the option of buying the "lite" product with thinner wall thickness and lower copper content to reduce costs. The local standards in Vietnam are different to Australia, and the standards are not mandatory. Customers can and do negotiate to buy tube using customer defined specifications. Customers are highly motivated to set their own wall thickness specifications well below the official

¹¹ MM Kembla submission in response to SEF 580, Confidential Attachment 4.

¹² MM Kembla submission in response to submission by Hailiang Vietnam, 12 November 2021, P. 7, 8.

product standards due to the high cost of copper as a % of total costs. Hailiang Vietnam has demonstrated this reduced wall thickness option in the export markets as well.

The increased draw thin percentage is in the order of an additional xx% saving in copper cost.

Using the average copper price for July 2020 to December 2020 of US\$xxxxx/t, an additional \$xxx/t increase to normal value is required.

The Commissioner has incorrectly accepted the Vietnamese exporter's CTMS for all goods (i.e. domestic and exports) which reflects Hailiang Vietnam's lower cost of production achieved by drawing thin.

The Commissioner's determination of normal value for Hailiang Vietnam does not take account of an adjustment required to normal value to permit a fair comparison between the domestic copper tube (that is drawn thin) versus the exported goods (with a thickness that complies with Australian Standards) is not the correct or preferable decision.

VII. Conclusion - Normal value adjustments

The Commissioner's decision to determine normal values for Hailiang Vietnam based upon domestic selling prices in the ordinary course of trade on the domestic market in Vietnam is not the correct or preferable decision.

On the basis that it is appropriate to use domestic selling prices for normal value determination, the Commissioner failed to take full account of MMK's representations concerning relevant adjustments including to reflect differences in:

- the applicable standards that apply to domestic versus export sales;
- the raw material copper benchmark volatility evident between domestic and export sales;
- the 'material' cleaning and capping costs, the practice of drawing thin for domestic sales (not evident in export sales),

that would have resulted in normal values determined at much higher levels (that are consistent with the quality and specifications of copper tube exported to Australia).

11. Grounds in support of the decision

Set out how the grounds raised in Question 10 support the making of the proposed correct or preferable decision.

The grounds addressed in question 10 support the making of the proposed correct or preferable decision by adjusting normal values to take account of the factors identified in Question 10 to ensure the correctly adjusted normal value(s) may be fairly compared with the actual export prices for the goods exported to Australia.

12. Material difference between the decisions

Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.

The proposed decision is materially different to the reviewable decision, as the proposed decision involves the determination of revised normal values that, when compared with export prices for the goods, would demonstrate the existence of dumping margins above negligible levels and support the publication of notices under Sections 269TG(1) and (2) of the Act.

C. Third Ground – not the correct or preferable decision involving arms length sales between Hailiang Hong Kong and Hailiang Australia

10. Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

The Commissioner determined in Report 580 that sales between Hailiang Vietnam's affiliate buyer Hailiang HK and sales to Hailiang Australia were at arms-length because there was 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.

In response to MMK's requests that a deductive export price assessment be made in respect of the sales from Hailiang Vietnam to Australia (via the Hailiang HK affiliate) the Commissioner concluded that a deductive export price assessment was not "necessary" and the transactions were found to be "arms length" between the exporter and the importer.

These statements are made in Report 580 although it was determined the sales between the exporter and the Hong Kong based affiliate trader were not at arms length.

The Commissioner determined that the selling price between Hailiang Vietnam and Hailiang HK did not appear to be sufficient to cover its selling, general and administration (SG&A) expenses. The Commissioner has decided that in order to calculate the export price for Hailiang Vietnam the Commissioner has used "*the price paid by the importer less an amount of HK Hailiang's SG&A costs and other prescribed deductions for costs arising after exportation*"¹³.

MMK submits that the Commissioner's recommendation on export price for Hailiang Vietnam is not the correct or preferable decision.

Subsection 269TAA(1) of *the Act* states:

"For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:

- (a) There is any consideration payable for or in respect of the goods other than their price; or*
- (b) The price appears 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; or*
- (c) In the opinion of the Minister the buyer, or an associate of the buyer, will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price."*

The existence of rebates paid by the exporter to Australian customers (the Commissioner has stated in Report 580 that these were taken account of, although MMK understands some rebates are payable post importation of the goods), along with the fact that the selling price from Hailiang Vietnam to HK Hailiang did not recover all costs, categorizes the export sales by Hailiang Vietnam as 'non arms length'. The Commission rejected MMK's representations on these points and maintained that the selling price from HK Hailiang to Hailiang Australia could be considered arms-length. This was incorrect.

¹³ Report 580, P.22.

The Commission contends that it “*is in possession of actual costs and selling prices that were used in Hailiang Australia’s profitability assessment*”¹⁴. The Commission stated “*that off-invoice rebates have been considered in its assessment of the ‘arms length’ nature of transactions and in profitability calculations of the importer*”¹⁵. MMK disagrees.

It is not in the interests of the importer Hailiang Australia to indicate the full extent of rebates provided by its related-party entity for the exported goods. MMKa notified the Commission in the context of exporter briefings that the Chinese parent Zhejiang Hailiang provides rebates to some Australian customers. [Redacted – commercially sensitive information about rebates provided by Chinese parent company].

It is evident that the off-invoice rebates represent a consideration other than price and that at least one of the provisions of s 269TAA(1) has been met. A further requirement, identified in s 269TAA(1)(b), is also met as the selling price between Hailiang Vietnam and HK Hailiang clearly affects the selling price as it is determined at less than full cost recovery.

The Commissioner’s acceptance that the selling price from HK Hailiang to Hailiang Australia is arms length is incorrect. It is not in the interests of Hailiang Australia to provide full disclosure of off-invoice rebates. MMK has had a commercial relationship with the Chinese parent Zhejiang Hailiang (as reflected in the exchanges with Zhejiang Hailiang in the exporter briefing in Invest 557 confirming the payments of off-invoice rebates) and has evidenced the existence of the rebates to the Commission.

The payment of the off-invoice rebates renders selling prices between Hailiang HK and Hailiang Australia non arms length. MMK firmly views the Commissioner’s decision as incorrect and not the preferable decision.

The Commission has refused to consider MMK’s representations that Hailiang Australia’s selling prices are not arms length, preferring instead to examine only whether the selling price from HK Hailiang to Hailiang Australia is recovered in Hailiang Australia’s customer selling prices. The Commission’s methodology fails to consider the full effects of the export transactions from the manufacturer (Hailiang Vietnam) via its related-party trader and related party Australian importer.

MMK has contended that, by virtue of the off-invoice rebates paid by the Chinese parent company Zhejiang Hailiang and the below cost selling price from Hailiang Vietnam to HK Hailiang, the export selling prices for goods manufactured by Hailiang Vietnam to Australia are non-arms length. The decision is, therefore, not the correct or preferable decision.

11. Grounds in support of the decision

Set out how the grounds raised in Question 10 support the making of the proposed correct or preferable decision.

The grounds raised in Question 10 confirm that the export price from Hailiang Vietnam to HK Hailiang is influenced by the commercial relationship between the related parties. Further, the off-invoice rebates that are paid by the Chinese parent company Zhejiang Hailiang confirms that there is a consideration payable other than the selling price and that export prices (for Hailiang Vietnam) cannot be determined based upon price paid by the Australian importer less deductions and the SG&A amount not included in the selling price between Hailiang Vietnam and HK Hailiang.

12. Material difference between the decisions

Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.

The acceptance of the selling price between HK Hailiang and Hailiang Australia as ‘arms length’ is incorrect as it is an artificially determined selling price between two related parties that when

¹⁴ Termination Report No. 557, Paragraph 6.3.2, P. 36.

¹⁵ Termination Report No. 557, Paragraph 6.3.2, P. 37.

contrasted with a deductive export price calculation does not recover all costs associated with the manufacture and sale of the exported goods.

MMK has recommended a deductive export price methodology in the circumstances of sales affected by a commercial relationship (i.e. Hailiang Vietnam via HK Hailiang to Hailiang Australia) will result in a lower determined export price that does not recover all of the costs associated with the manufacture and export of the goods to Australia (and is lower than the export prices that have been declared by the exporter).

D. Fourth Ground – not the correct or preferable decision involving the determination of material injury

10. Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

The Commissioner's decision that dumping (and subsidization) had not caused material injury to the Australian industry is not the correct or preferable decision.

The decision is premised on the Commission's finding that exports of copper tube from Vietnam were not exported to Australia at dumped prices. MMK submits that had the Commissioner incorrectly determined normal values for Hailiang Vietnam (i.e. without appropriate adjustments to fairly compare the domestic and exported goods) and that once corrected the Commissioner could not have reached the conclusion that he did in relation to material injury.

The Commissioner correctly assessed that the selling prices of imported seamless copper tube undercut the Australian industry's selling prices by between 7 and 55 per cent. The Commissioner also concluded that MMK had suffered injury in the form of price depression, price suppression, reduced profit and profitability in the investigation period.

Once it is accepted (as it should be for reasons outlined above) that the price undercutting was achieved to a significant extent by dumping of exports of copper tube from Vietnam to Australia, the conclusion is that the injury found by the Commissioner was attributable at least in part to dumping.

The decision that the Australian industry has not suffered material injury from the dumped is not the correct or preferable decision.

11. Grounds in support of the decision

Set out how the grounds raised in Question 10 support the making of the proposed correct or preferable decision.

Correctly understood, the price undercutting of between 7 and 55 per cent confirmed by the Commissioner during the 2019-20 investigation period was at least in part attributable to dumping at significant margins. That dumping is thus a cause of the injury identified by the Commissioner, which is considered material.

12. Material difference between the decisions

Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.

As the Commissioner's analysis of material injury was premised on an absence of dumping (but found, correctly, that injury had occurred), the result of the analysis will necessarily be different – leading to a conclusion that material injury has been caused by dumping – if some or all of MMK's arguments above in relation to the ascertainment of normal value and export price are accepted. This would lead to a decision not to terminate the investigation and recommend the imposition of interim dumping duties on exports of copper tube from Vietnam to Australia.

A. Request

The decision of the Commissioner to terminate Investigation 580 is a reviewable decision under s.269ZZN. MMK is an interested party to Investigation 580 and was the applicant for anti-dumping measures on certain copper tube exported to Australia from Vietnam.

MMK considers that it has detailed the relevant considerations in its grounds for appeal that demonstrate the Commissioner's decision concerning the determination of normal values for Hailiang Vietnam (and the uncooperative exporters) is not the correct or preferable decision. The correct and preferable decision is detailed in 11 above (on each ground of appeal). MMK has also demonstrated that the date of contract is the correct date for fair comparison purposes and that the sales between Hailiang HK and Hailiang Australia are not arms length.

Finally, MMK has outlined that when the identified matters (order date, adjustments to normal values, arms-length nature of sales) are corrected, the Commissioner would be able to establish that the dumping from Vietnam has caused material injury to the Australian industry manufacturing like goods.

The ADRP is requested to conduct a review of the Commissioner's termination decision and revert the matter back to the Commissioner for re-investigation so that he may publish a Statement of Essential Facts involving the determination of normal values on relevant information for the determination of correctly adjusted normal values for copper tube exported to Australia from Vietnam (by cooperative and uncooperative exporters).