Australian Government
Department of Industry, Science, Energy and Resources

Anti-Dumping Commission

Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601

By EMAIL

Ms Leora Blumberg
Panel Member
Anti-Dumping Review Panel
GPO Box 2013
CANBERRA ACT 2601

Dear Ms Blumberg

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

I write in response to the notice under section 269ZZRB of the *Customs Act* 1901 (Cth) (the Act) provided to me on 30 March 2022. This notice requested further information in respect of a number of grounds (or sub-grounds) of review of the various applications.

Please find at **Attachment A** my response to Sections B to G of the notice. My response reflects the information that was before me at the time of the Reviewable Decisions.

As agreed, a written response to Section A will now be provided to the ADRP by 21 April 2022.

Officers from the Anti-Dumping Commission are available to participate in a conference if you consider it helpful to do so.

Yours sincerely

Dr Bradley Armstrong PSM
Commissioner, Anti-Dumping Commission
13 April 2022

Attachment A

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**

ADRP request (Question B-1):

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

- o the ADC's London Metals Exchange (LME) pricing analysis appeared to be limited to pricing at the "EXW" terms;
- o 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";
- o 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
- o it was unclear whether the SHFE "domestic price" was a delivered price to customers in China.

Commission's response:

1. In relation to the first dot point of the ADRP's request, the commission has compared the LME and Shanghai Futures Exchange (SHFE) pricing on EXW terms and has confirmed that the SHFE prices are generally not lower than the LME prices (as set out below). The commission has also compared the raw material purchases prices of Hailiang, the sole cooperative Chinese exporter, at EXW terms. From this analysis, the commission made the following observations (see **Confidential Attachment 1**):

- In each quarter of the investigation period, the SHFE price was higher than the LME price by up to 3%
- In each quarter of the investigation period, Hailiang's raw material purchase price was higher than the LME price by up to 6%
- In 3 quarters of the investigation period, Hailiang's raw material purchase price was higher than the SHFE price by up to 4%

2. In relation to the second and fourth dot points of the ADRP's request, the commission notes that the SHFE "domestic cathode copper price" examined by the commission was at EXW terms (i.e. not the delivered price to customers in China).

3. In relation to the third dot point of the ADRP's request, there is no reference to the CIF port premium, as the LME and SHFE pricing information before the commission was at EXW terms. The commission did not consider it appropriate to make any adjustment for an import CIF port premium on the LME. If it were to do so, it would also need to adjust the SHFE port premium. We consider the EXW comparison is appropriate.

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**

ADRP request (Question C-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.
Please comment on this apparent contradiction in the information submitted by Zhejiang Hailiang.
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.
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.

Commission's response:

4. In relation to the ADRP's request for comment in relation to the "apparent contradiction in the information submitted by Zhejiang Hailiang", the commission does not consider there to be any contradiction in the statement submitted by Hailiang's submission of 15 October 2021. The verification found that exported copper tube was manufactured from imported copper. The verification also found that the copper used to produce exported goods contained scrap copper. This corresponds with what Hailiang put forward in its submission, and the commission's findings contained in the Hailiang verification report.

5. In relation to the ADRP's request as to "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", the data was verified and translations were requested for that data (i.e. one month). Further, the untranslated text was compared to the translated month. The sheet titled 'Hailiang Scrap July'

(Confidential Attachment 2 provided to the ADRP earlier) contains translations as verified by the commission during the exporter verification. Quantities contained in the bonded material section of this sheet relate to exported copper tube. As observed, July is an example of where the proportion of scrap to cathode copper contained in exported copper tube is higher than for domestic sales.[1]

6. In relation to the ADRP's request for the commission to "elaborate on the ADC's statement in TER 557 that it did not consider adjustments for differences in costs necessary where the same model control codes (MCCs)[2] were used to compare the domestic sales to the export sales, as it did not affect price comparability", the commission examined the specific models included in each MCC category and is satisfied that these contain both domestic and exported models. In determining the MCC structure, the commission will have regard to differences in physical characteristics that give rise to distinguishable and material differences in price. Unit costs may also be taken into account in assessing differences in physical characteristics where the commission is reasonably satisfied that those cost differences affect price comparability.[3]

7. The MCC structure used by the commission in this investigation includes a combination of domestic and export models in each MCC category. Each MCC contains a mixture of domestic and export models with similar prices and costs to each other. Therefore, particular models with lower cost and selling prices were grouped with other models with similar costs and selling prices in each category. As a result, the goods sold domestically with lower costs and prices are grouped in the same category as exported goods with the same or similar costs and prices. The commission therefore considers that the MCC structure allows for a proper comparison between domestic and exported goods when calculating dumping margins.

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

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[1] During verification, the verification team selected the month of July for detailed verification to the accounting records of Hailiang. This part of the verification included Hailiang providing the commission with translations for each account. The commission has compared this translated text with text in other months and confirms that the account headings are the same.

[2] The commission uses a MCC system to set out the different characteristics of the goods which give rise to distinguishable and material differences in price. The MCC is a conceptual framework **used to consider and compare** products falling within the goods description at a granular level. The MCC aims to quantify different characteristics affecting price in those goods to ensure a fair comparison is made between the export price and normal value.

[3] *Dumping and Subsidy Manual – December 2021* (the Manual) at page 48.

MCC category. On each occasion, the commission has found that there are both domestic and exported models, which have the lowest and highest cost within particular MCCs and the weighted average cost, closely aligns with the costs for each specific exported model.

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

10. On the basis of the above, the commission is satisfied that calculating the cost to make using the MCCs gives consideration to both domestic and export models and therefore, no adjustment to the normal value is required.

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**

ADRP Request (Question D-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 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.*

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.

Commission's response:

11. As noted above, the commission established reasons for determining no adjustments were necessary with respect to each of the categories of differences referred to in MM Kembla's submission dated 9 September 2021. The commission examined the specific models included in each MCC category, and is satisfied that these contain both domestic and exported models. The commission is therefore satisfied that through using these MCCs, models with similar costs and selling prices have been compared with one another, regardless of whether these are sold domestically or exported. This accounts for differences in costs as demonstrated by MM Kembla, including those resulting from:

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

12. In determining the MCC structure, the commission will have regard to differences in physical characteristics that give rise to distinguishable and material differences in price. Unit costs may also be taken into account in assessing differences in physical characteristics where the commission is reasonably satisfied that those cost differences affect price comparability.[4]

13. The MCC structure used by the commission in this investigation includes a combination of domestic and export models in each MCC category. Each MCC contains a mixture of domestic and export models with similar prices and costs to one another. Therefore, particular models with lower cost and selling prices were grouped with other models with similar costs and selling prices in each category. As a result, the goods sold domestically with lower costs and prices are grouped in the same category as exported goods with the same or similar costs and prices. The commission therefore considers that the MCC structure allows for a proper comparison between domestic and exported goods when calculating dumping margins.

[4] The Manual at page 48.

14. The commission has ensured that appropriate models are included within each MCC, using verified data from each exporter. The commission is satisfied that:

- for Korean exporters, each MCC contains models that fall within both the applicable domestic standards in Korea and the mandated Australian standards for exported goods with similar selling prices and costs. The MCC categories used ensure that exported models, which may contain higher costs due to being made to Australian standards, are not compared with lower priced models made to domestic standards in Korea.
- for Chinese exporters, each MCC contains models that fall within both the non-compulsory Chinese Standards and the mandated Australian standards for the exported goods with similar selling prices and costs. The MCC categories used ensure that exported models, which may contain higher costs due to being made to Australian standards, are not compared with lower priced models made to non-mandated domestic standards in China.

15. The commission analysed the weighted average 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 there are both domestic and exported models that have the lowest and highest cost within particular MCCs, and the weighted average cost closely aligns with the costs for each specific exported model.

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

17. On the basis of the above, the commission is satisfied that calculating the cost to make using the MCCs gives consideration to both domestic and export models and therefore, no adjustment to the normal value is required for 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**

ADRP request (Question E-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. As requested in the above sub-ground relating to MCCs and international standards, please elaborate on how such a general response adequately addresses MM Kembla's detailed submissions (including quantification of differences) relating to drawing thin.

Commission's response:

18. The commission has set out below some further detail in relation to the commission's response to MM Kembla's submission of 9 September 2021. The commission is satisfied that calculating the cost to make using the MCCs, and by having regards to actual weights, gives consideration to both domestic and export models. No adjustment to the normal value is required for differences relating to copper tube as a result of any drawing thin process.

> MM Kembla's primary position in relation to drawing thin is summarised in the following paragraph:
> *"The thinner the wall thickness and lower the total weight of the product the conversion cost increases on a $/T basis. In MM Kembla's experience every xx% increase in weight equates to $xxx/T reduction in variable conversion cost. The xxx% difference equates to $xxx/t difference across the range due to the difference in the KS D5301 standard and AS1432. This equates to ~xx% difference at the current LME copper cost. This is a material difference and should be a positive adjustment to the Nungwon normal value (so that the dumping margin truly reflects the difference in conversion cost between the domestic and export sales)."*

19. The commission has ensured that the thickness of copper tubing is incorporated into the comparison between export and domestic goods. The commission uses a MCC system to set out the different characteristics of the goods which give rise to distinguishable and material differences in price. The commission considered the MCC structure and whether there should have been a separate category for copper that had undergone a process to reduce wall thickness. Based on information before it, the commission did not determine that thickness (and the associated drawing thin process) was the principle distinguishable and material differences for copper tube. However, differences in thickness that result in different amounts of copper being used (which has a related price and/or cost effect) is addressed through the unit weight figure (as set out below). This also addresses different standards between countries that may result in different weights/thicknesses.

20. The commission has examined the specific models included in each MCC category, and through verification activities ensured that relevant information put forward contained both domestic and exported models. The commission is satisfied that through using these MCCs, models with similar costs and selling prices have been compared with one another, regardless of whether sold domestically or exported. The information received by the commission from the verified exporters included information on weight as part of the unit pricing information.

21. The commission notes that copper is priced on the LME in USD per tonne for export sales. The weight of copper is the primary factor that determines the price of copper tube. The thickness of copper tube via weight of the copper was incorporated into the analysis in the commission's calculation of the dumping margin.

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**

ADRP request (Question F-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). Please provide further clarification in respect of the ADC statement in TER 557 that it examined the capping costs for each cooperative 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.

Commission's response:

22. The commission uses a MCC system to set out the different characteristics of the goods which give rise to distinguishable and material differences in price. The commission used the MCC system to consider and compare products falling within the goods description for copper tube at a granular level, including those of uncapped and capped copper tube, to ensure a fair comparison is made between the export price and normal value.

23. The commission verified capping costs for each specific product code sold by the verified exporters using the MCC framework. The commission conducted a virtual verification with Daejin, Nungwon and Hailiang in May and June 2021. The commission did not identify a material difference in selling price between capped and uncapped copper tube for the verified exporters.

24. The commission examined the specific costs associated with capping within the financial documents of each of the verified exporters. The commission observed that for:

- Daejin, the capping costs were included as part of packaging costs and have been included as part of the cost to make for each respective model. The commission observed that the capping costs for goods with capping made up [redacted] of the total cost to make;[5]

[5] See analysis at **Confidential Attachment 1** at sheet **F-2**.

- Nungwon, the commission observed that the cost differences between capped and uncapped products were [redacted] of the invoice price. The verification confirmed that Nungwon used two caps per product for copper tube;[6]
- Hailiang used polyvinyl chloride (PVC) for capping the copper tube that it produces. The financial costs observed by the commission suggests that the additional costs associated with both the PVC cap were minimal: the capping costs made up less than [redacted] of the total cost to make. The commission noted that given minimal costs associated with uncapped products, in certain instances the capped product was cheaper by between less than [redacted] and [redacted][7]

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**

ADRP request (Question G-1):

The ADC confirmed in TER 557, in response to MM Kembla's submissions, that off-invoice rebates were 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.

Commission's response:

25. Hailiang Australia's profitability of imports assessment has been included in Confidential Attachment 3 to the Hailiang Copper Australia Pty Ltd's (Hailiang Australia's) importer verification report.

26. The commission's initial profitability analysis compared the verified costs to import and sell of selected imports with the net selling price (i.e. net of off-invoice rebates) of the relevant MCC. The commission, for the purposes of this request, has completed an additional profitability analysis comparing the weighted average net invoice prices of all Hailiang Australia's sales over the investigation period, also taking into account all off-invoice rebates, and the weighted average costs to import and sell of the selected imports. This high-level analysis also found that Hailiang Australia was profitable.

27. The commission provides Hailiang Australia's profitability from the investigation and the additional analysis at **Confidential Attachment 1**.

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[6] See analysis at **Confidential Attachment 1** at sheet **F-3**.

[7] See analysis at **Confidential Attachment 1** at sheet **F-1** and the Hailiang Exporter Work Program at pages 20-22 and pages 30-31, provided to the ADRP previously.