



Australian Government
**Department of Industry,
Science and Resources**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**STATEMENT OF ESSENTIAL FACTS
NO 580A**

**ALLEGED DUMPING OF COPPER TUBE
EXPORTED TO AUSTRALIA FROM
THE SOCIALIST REPUBLIC OF VIETNAM**

1 September 2023

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ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
the ADRP Decision	<i>ADRP Decision No 152</i>
CBSA	Canada Border Services Agency
China	the People's Republic of China
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	cost to make
CTMS	cost to make and sell
the Customs Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
EPR	electronic public record
FOB	Free On Board
the goods	the goods the subject of the application (also referred to as the goods under consideration)
Hailiang	Hailiang (Vietnam) Copper Manufacturing Company Limited
Hailiang Australia	Hailiang Copper (Australia) Pty Ltd
Hailiang HK	Hong Kong Hailiang Metal Trading Limited
injury analysis period	from 1 January 2016
investigation period	1 January 2020 to 30 December 2020
the Manual	<i>Dumping and Subsidy Manual</i>
MCC	model control code
the Minister	the Minister for Industry and Science
MM Kembla	Metal Manufacturers Pty Ltd trading as MM Kembla
OCOT	ordinary course of trade
PAD	Preliminary Affirmative Determination
PAD Direction	<i>Customs (Preliminary Affirmative Determinations) Direction 2015</i>
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REQ	response to the exporter questionnaire
RFI	request for information
ROK	Republic of Korea

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SEF	statement of essential facts
SEF 580	<i>Statement of Essential Facts No 580</i>
SG&A	selling, general and administration
TER 580	<i>Termination Report No 580</i>
Vietnam	Socialist Republic of Vietnam

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

Metal Manufactures Pty Ltd trading as MM Kembla (MM Kembla) applied to have a dumping duty notice placed on imports of copper tube (the goods) exported to Australia from the Socialist Republic of Vietnam (Vietnam). MM Kembla claims that the Australian industry producing like goods has suffered material injury because the goods are dumped.

This report follows a 7 July 2022 decision of the Anti-Dumping Review Panel (ADRP) to revoke a 4 March 2022 decision of the Commissioner of the Anti-Dumping Commission (the Commissioner) to terminate the investigation.¹

With the assistance of the Anti-Dumping Commission (the commission), the Commissioner provides this statement of essential facts (SEF) in accordance with section 269ZZT(2) of the *Customs Act 1901* (the Act)² and the investigation is resumed upon the publication of this report.

Based on the findings in this report, the Commissioner is proposing to terminate the investigation in relation to all exporters from Vietnam.³

1.1.1 Authority to make decision

Division 2 of Part XVB describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner when conducting investigations in relation to the goods covered by an application under section 269TB(1).

1.2 History of investigation

1.2.1 Application

On 22 March 2021, the Commissioner initiated this investigation after considering MM Kembla's application for the publication of a dumping duty notice.

1.2.2 Termination decision

On 4 March 2022, the Commissioner terminated the investigation in its entirety. The Commissioner's reasons for terminating the investigation are contained in *Termination Report No 580* (TER 580).⁴

1.2.3 ADRP decision to revoke the termination decision

On 7 July 2022, the ADRP revoked the Commissioner's termination decision.⁵

¹ *ADRP Decision No 152*, available on the [ADRP website](#).

² All legislative references in this report are to the *Customs Act 1901* unless otherwise specified.

³ Chapter 1.3 details reasons for the Commissioner's proposal.

⁴ Electronic public record (EPR) for case 580, TER 580 (document no [020](#)) and Anti-Dumping Notice (ADN) No 2022/024 (document no [021](#)).

⁵ *ADRP Decision No 152*, available on the [ADRP website](#).

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ADRP Decision No 152 (the ADRP Decision)⁶ determined the following grounds of review in the Commissioner's favour as being correct or preferable decisions:

- That the invoice date for fair comparison was appropriate and, relatedly, that a section 269TAC(8) adjustment was not required to account for copper volatility or hedging costs.

The ADRP did not agree with the Commissioner's determinations in respect of the following grounds:

- To not include International Standards, wall thickness or outside diameter (having regard for the process known as 'drawing thin') as a separate category in the model control code (MCC) structure. Or, in the alternative, not making appropriate specification adjustments in the comparisons of normal value and export price, to account for these factors, was not the correct or preferable decision.⁷
- That the commission was satisfied that an adjustment to normal value for differences in capping and cleaning costs was unnecessary, was not the correct or preferable decision.⁸
- The profitability of Hailiang Copper (Australia) Pty Ltd (Hailiang Australia) and the related finding of the arms length nature of the export sales between Hong Kong Hailiang Metal Trading Limited (Hailiang HK) and Hailiang Australia, was not the correct or preferable decision.⁹

As a result of its findings in relation to the above grounds, the ADRP was not able to determine whether dumping margins had been correctly calculated, and whether the Australian industry had suffered material injury due to dumped imports. It was on the basis of these determinations that the ADRP revoked the Commissioner's termination decision.

1.2.4 Resumption of investigation and statement of essential facts

Section 269ZZT(2) states that, as soon as practicable after the reviewable decision to terminate an investigation has been revoked, the Commissioner must publish a SEF.

The investigation resumes following the publication of this SEF and interested parties have 20 days to make submissions after its publication. The Commissioner will then provide a report to the Minister for Industry and Science (the Minister) with recommendations on whether to publish a dumping duty notice (unless the Commissioner decides to terminate the resumed investigation earlier).

In formulating this SEF, the Commissioner has had regard to the ADRP Decision, the application, and submissions concerning publication of the notice that the commission received. The Commissioner may also have regard to any other matters considered relevant.¹⁰

⁶ A number of grounds were advanced by MM Kembla with many overlapping and repetitive in nature. The reader is referred to the report for the ADRP Decision for particulars of the grounds alleged and the member's detailed assessment.

⁷ ADRP Decision, Ground 2.1.

⁸ ADRP Decision, Ground 2.2.

⁹ ADRP Decision, Ground 3.

¹⁰ Section 269TDAA(2)(b).

1.2.5 Report to the Minister

The Commissioner must provide his report and recommendations to the Minister within 45 days, and preferably as expeditiously as possible.

1.3 Preliminary findings and conclusions

The Commissioner's preliminary findings and conclusions in this SEF rely on the available information at this stage of the investigation. The following discussion summarises the findings, which are set out in further detail throughout the report.

The commission notes that the ADRP's review of the Commissioner's termination decision affirmed the commission's approach in relation to some grounds. Those grounds are therefore unnecessary to revisit, and this SEF has confined its assessment to the matters which remain contested.

In summary, the additional information and evidence obtained by the commission to address the outstanding grounds raised by the ADRP has not materially altered the ultimate outcome of the investigation. Although the commission has reconsidered the information and evidence previously obtained and adopted some new findings, the commission recommends that the investigation be terminated in its entirety.

1.3.1 The goods, like goods and the Australian industry (Chapter 3)

Submissions received from the sole member of the Australian industry, MM Kembla, argued that the exporter's domestic market sales of copper tube are not 'like goods'. MM Kembla's claims largely rest on the observation that the exporters' domestic sales of copper tube are produced to a standard that is different to the Australian standards applicable to the exported goods.

MM Kembla further submits that the MCC structure applied in this investigation lacks the required categories for copper tube diameter and wall thickness.

MM Kembla also contends the exporters' normal values should be determined using the cost based constructed method under section 269TAC(2)(c), and these normal values be adjusted to take account of various product attributes that create differences between the exporters' domestic copper tube and their Australian market tubes.

The matters relating to like goods, the MCC structure and normal value adjustments were raised in MM Kembla's submissions prior to the Commissioner terminating the dumping investigation. These same matters were examined in the ADRP's review of the Commissioner's termination decision.

In preparing this report, the commission has undertaken a complete re-examination of the matters raised by MM Kembla. This includes having regard to information before the Commissioner when the investigation was first terminated, and new information obtained from interested parties since the ADRP revoked the Commissioner's decision.

After considering the available information and new evidence, the Commissioner is satisfied of the following (Chapters 3.4 and 3.5):

- the exporters' domestic market sales of copper tube are 'like goods' to the goods exported to Australia.
- the MCC structure as it was first presented in *Statement of Essential Facts No 580* (SEF 580) was generally appropriate to permit a fair comparison between export prices and normal value but has been adjusted to include a new category for tube sizes common to the exporters' domestic and Australian markets.

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- the addition of new MCC categories for outside diameter and wall thickness, with sub-categories for the range of dimensions in Australian standards is not warranted.
- the available volume of like goods sold by the exporters in the ordinary course of trade (OCOT) was sufficient to determine normal values for the exported goods under section 269TAC(1).
- claimed normal value adjustments due to differences between like goods and the goods were considered and assessed as unnecessary with respect to the attributes of international standards, wall thickness, outside diameter, 'drawing thin' and fabrication cost.

Having regard to MM Kembla's application, verification of cooperating exporter questionnaire responses, and the findings outlined for Investigation 557¹¹, the Commissioner is satisfied copper tube locally produced in Australia is 'like' to the goods the subject of the application and is satisfied that there is an Australian industry, comprised solely of MM Kembla, producing those like goods.¹²

1.3.2 Australian market

Having regard to data relied on for Investigation 557 and the initiation of this investigation, the Commissioner is satisfied that manufacturers from Australia, Vietnam, the People's Republic of (China) and the Republic of Korea (ROK) are the predominant suppliers of the Australian market for copper tube.¹³

1.3.3 Dumping investigation (Chapter 4)

The following table summarises the dumping margins calculated for the export of the goods from Vietnam.

Country	Exporter	Dumping margin
Vietnam	Hailiang (Vietnam) Copper Manufacturing Company Limited	0.0%
	Uncooperative exporters	1.3%

Table 1 Summary of dumping margins

With respect to the dumping margins presented above, the Commissioner was required to re-examine a number of matters raised in submissions by MM Kembla and identified by the ADRP as not being the correct or preferable decision. The following summarises the Commissioner's findings with respect to each matter.

- The copper tubes sold into the exporter's domestic market comprise 'like goods'. The circumstances relating to these sales satisfy the conditions set out in section 269TAC(1) in relation to the determination of normal value. This includes consideration of the manufacturing practice known as 'drawing thin'.
- Price analysis relating to the product attributes of wall thickness and outside diameter confirms fair comparison between the price of the goods and like goods is not compromised despite the prices of these goods not being in respect of identical goods (due to differing tube sizes).

¹¹ See *MM Kembla Verification Report* at EPR 557, document no 026.

¹² The investigation period for Investigation 557 and 580 have a six month overlap.

¹³ See *Consideration Report No. 580* at EPR 580, document no 002.

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- Export transactions between Hailiang (Vietnam) Copper Manufacturing Company Limited (Hailiang) and its related party Australian importer, Hailiang Australia, are arms length.
- The export price for Hailiang's sales to all Australian customers is based on the price paid by the customer for the goods less any costs, charges or expenses arising in relation to the goods after exportation.
- A review of accounting records for Hailiang and its related trading intermediary, Hailiang HK, found neither entity provided rebates to Australian importers of the goods during the investigation period. This finding is counter to the MM Kembla evidence that demonstrates rebates were given in relation to exports of copper tubes product that are not within the scope of this investigation.

1.3.4 Economic condition of the Australian industry

The Commissioner has not completed a final assessment of the Australian industry's economic condition for the purpose of this report. This is because the dumping margins determined for all exporters from Vietnam are negligible, i.e. below 2%.

1.3.5 Has dumping caused material injury?

As the margins of dumping for the goods exported from Vietnam are negligible, i.e. below 2%, the commission has not completed a causation assessment.

1.3.6 Proposal to terminate investigation (Chapter 5)

On the basis of the findings in Chapter 4, the Commissioner must terminate the investigation in relation to all exporters from Vietnam (per section 269TDA(1), as there is either no dumping or the dumping margins are negligible).

Based on the findings in this SEF, and subject to any submissions received in response, the Commissioner proposes to terminate the investigation in its entirety.

1.4 Preliminary affirmative determination

In accordance with section 269TD, the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice, or if satisfied that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation of the goods into Australia.

A PAD may be made no earlier than day 60 of the investigation. The Commonwealth may require and take securities at the time a PAD is made or at any time during the investigation after a PAD has been made if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

In accordance with the *Customs (Preliminary Affirmative Determinations) Direction 2015* (PAD Direction), 60 days after the initiation of such an investigation, the Commissioner must either make a PAD or publish a status report outlining the reasons why he has not made a PAD.

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The Commissioner published his Day 60 status report for this investigation on 21 May 2021.¹⁴ The Commissioner's status report advises that there were not sufficient grounds to make a PAD as they had not yet ascertained that:

- the goods exported to Australia from Vietnam have been dumped and
- the dumped goods from Vietnam have caused material injury to the Australian industry producing like goods.

The PAD Direction requires the Commissioner to reconsider making a PAD after the publication of a status report at least once prior to the publication of the SEF. The Commissioner reconsidered whether to make a PAD prior to the 29 October 2021 publication of SEF 580. The available evidence at the time did not establish sufficient grounds for the publication of a PAD.

In conjunction with the preparation of this SEF, the Commissioner has once again considered whether to make a PAD. After having regard to further information received since this investigation was terminated, it appears the circumstances preventing publication of a PAD in the earlier stages of the investigation remain current at the time of publishing this SEF. The Commissioner concludes the available evidence does not establish sufficient grounds for publication of a PAD.

1.5 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his recommendations to the Minister. It is important to note that the SEF may not represent the final views of the Commissioner. Interested parties can make a submission in response to this SEF by no later than **21 September 2023** (being 20 days after publishing this SEF).

The Commissioner's recommendations to the Minister will consider submissions in response to this SEF. The Commissioner is not obliged to have regard to submissions received after the due date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.

Interested parties should preferably email their submissions to:

investigations1@adcommission.gov.au. Alternatively, interested parties may post their submissions to:

Director, Investigations Unit 1
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
AUSTRALIA

Submissions containing confidential information must be clearly marked 'OFFICIAL: SENSITIVE'. Interested parties must lodge a non-confidential version of their submission, clearly marked 'PUBLIC RECORD'.

The electronic public record (EPR) contains non-confidential submissions by interested parties, the non-confidential versions of the commission's verification reports and other publicly available documents. The EPR and a guide on how to make a submission is available online at www.adcommission.gov.au.

Interested parties should read this SEF in conjunction with other documents on the EPR.

¹⁴ EPR 580, document no [004](#).

2 BACKGROUND

2.1 Initiation

On 10 February 2021, MM Kembla lodged an application under section 269TB(1) seeking the publication of a dumping duty notice in respect of copper tube exported to Australia from Vietnam. MM Kembla provided further information in support of the application under section 269TC(2A) on 26 February 2021.

MM Kembla alleged that the Australian industry has experienced material injury caused by exports of copper tube from Vietnam. MM Kembla alleged that the Australian industry has experienced material injury in the form of:

- price depression
- price suppression
- loss of profits
- reduced profitability
- reduced cash flow
- reduced employment
- reduced capacity utilisation
- reduced return on investment and
- reduced ability to raise capital.

The commission was satisfied that the application complied with section 269TB(4). The Commissioner initiated the investigation on 22 March 2021. ADN No. 2021/041 and *Consideration Report No 580* provide further details relating to the initiation of the investigation.¹⁵

In respect of the investigation:

- the investigation period for the purpose of assessing dumping is 1 January to 31 December 2020¹⁶ and
- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped goods is from 1 January 2017 (the injury analysis period).

2.2 Conduct of the investigation

2.2.1 Termination of investigation

The Commissioner previously terminated the investigation on 4 March 2022.¹⁷ The Commissioner's decision to terminate followed publication of SEF 580 on 29 October 2021.¹⁸

¹⁵ EPR 580, document nos. [002](#) and [003](#).

¹⁶ Section 269T(1).

¹⁷ EPR 580, TER 580 (document no [020](#)) and ADN No 2022/024 (document no [021](#)).

¹⁸ EPR 580, document no [014](#).

2.2.2 Summary of ADRP Review

MM Kembla’s application to the ADRP sought to have the Commissioner’s termination decision revoked.

The ADRP announced its intention to conduct a review on 21 April 2022.¹⁹ The ADRP’s notice outlines the reviewable decision the subject of MM Kembla’s application.

The ADRP published its decision and related report about MM Kembla’s application on 7 July 2022.²⁰ The ADRP revoked the Commissioner’s decision to terminate the investigation under sections 269TDA(1)(b)(i) and (ii) of the Act.

Whilst the ADRP did not affirm the Commissioner’s decision to terminate the investigation, it agreed with several of the findings made by the Commissioner in relation to certain grounds put by MM Kembla’s application for review. In particular, the ADRP concluded that a number of findings in TER 580 and SEF 580 are correct or preferable. These findings are summarised in Table 2 below.

Decision No	Ground No	Ground Description	Entity	Commissioner finding	ADRP Decision reference
152	1	Selection of invoice date as date of sale	All exporters	Select invoice date	Para 45
	2(iii)	Adjust for copper price volatility	All exporters	Adjustment not warranted	Para 106

Table 2 Summary of correct and preferable findings by the Commissioner

As a result of the ADRP supporting these previous findings, the commission has not re-examined these matters in this SEF.

2.2.3 Australian industry

MM Kembla is the sole manufacturer of copper tube in Australia. The commission has visited MM Kembla’s manufacturing facilities during the current investigation.²¹ Further information regarding verification of MM Kembla’s data and observations regarding its production process are outlined in the verification report prepared for Investigation 557.²² The commission did not prepare a specific verification report for this investigation on the basis that the period of investigation overlaps with the period examined by Investigation 557.

No additional Australian industry manufacturers of the goods identified themselves to the commission following the initiation of the investigation, nor were additional Australian industry manufacturers identified by the commission.

The commission is satisfied MM Kembla constitutes the entire Australian industry producing like goods in Australia.

¹⁹ [ADRP Public Notice – Intention to conduct a review 21 April 2022.](#)

²⁰ [ADRP Decision.](#)

²¹ EPR 580, document no [026](#) (site visit and additional verification).

²² EPR 557, document no [026](#) (site visit and additional verification).

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2.2.4 Exporters

The commission identified the exporters with the largest volume of exports of the goods in the investigation period, in the Australian Border Force (ABF) import database. The commission contacted these exporters and invited them to participate in the investigation. The commission received an exporter questionnaire response from Hailiang and undertook verification of this exporter.

2.2.5 Importers

The commission identified the importers with the largest volume of imports of the goods in the investigation period, in the ABF import database. The commission contacted these importers and invited them to participate in the investigation. The commission received an importer questionnaire response from Hailiang Australia and undertook verification of this importer.

2.3 Submissions received from interested parties

Table 3 below outlines a summary of the submissions from interested parties after the investigation was resumed and prior to the publication of this SEF. The commission has considered the points raised in these submissions in preparing this SEF.

EPR no	Interested party	Key issues raised	Date received
10	MM Kembla	Response to Hailiang verification report findings. <ul style="list-style-type: none"> • III. Copper price volatility hedging costs • IV. Copper price volatility adjustment • V. USDOC investigation finding of dumping • VI. Hailiang Australia sales <ul style="list-style-type: none"> ○ a) Assessment of profitability ○ b) Rebates • VII. Price undercutting analysis in SEF 557 • VIII. Like goods assessment <ul style="list-style-type: none"> ○ a) Product standards <ul style="list-style-type: none"> ▪ (i) Different standards <ul style="list-style-type: none"> • (a) Refrigeration tube sizes • (b) Capping MCC • (c) Incorrect surrogates ▪ (ii) Working pressure ▪ (iii) Cleaning ▪ (iv) Temper ▪ (v) WT tolerance ▪ (vi) Non-mandatory standards ▪ (vii) Non-compliant AU imports ▪ (viii) Canada Border Services Agency (CBSA) findings • IX. Normal value adjustments <ul style="list-style-type: none"> ○ (i) Scrap ○ (ii) Copper cost ○ (iii) Draw thin ○ (iv) Capping and cleaning ○ (v) Fabrication costs ○ (vi) Domestic rebates in Vietnam 	01/10/2021
13	Hailiang	<ul style="list-style-type: none"> • Response to MM Kembla submission at EPR 010 • Concerns with timing of issues raised by MM Kembla • Copper price setting 	15/10/2021

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EPR no	Interested party	Key issues raised	Date received
		<ul style="list-style-type: none"> • Domestic sales process in Vietnam • Copper price volatility • USDOC dumping investigation findings <ul style="list-style-type: none"> ○ Use of surrogate country information by USA • Hailiang Australia profit • Rebates • Undercutting • Comments on like goods assessment • Capping MCC • Surrogate normal value models • Working pressure differences • Cleaning • Temper • WT tolerance • Non-mandatory standards in Vietnam • Fabrication cost differences • Domestic rebates • Various points on MM Kembla claims for certain normal value adjustments 	
15	MM Kembla	<ul style="list-style-type: none"> • Response to Hailiang submission [EPR 013] • Copper price setting and price volatility • Discussion on deductive export price analysis • Further minor comments on price undercutting, product standards and capping MCC. • Reiterates the relevance of scrap cost recognition and the practice of drawing thin for making normal value adjustments. 	15/11/2021
16	MM Kembla	<ul style="list-style-type: none"> • Response to findings in SEF 580 • Comments on like goods finding and rationale for normal value adjustments [similar to points raised in EPR 010] • Reiterates the case for adjustments for cleaning and capping and fabrication costs [similar to points raised in EPR 010] • Copper price volatility • Arms length assessment for sales to Hailiang Australia and off invoice rebates 	18/11/2021
17	Hailiang	Support for SEF 580 findings and request for termination of investigation.	18/11/2021
23	MM Kembla	Submission on ADRP Decisions	14/09/2022
24	Hailiang	Outline of differences between tube standards	03/11/2022
25	MM Kembla	Fair comparison regarding unit of measure for price	25/01/2023

Table 3 Submissions received

3 THE GOODS AND LIKE GOODS

3.1 Preliminary finding

The Commissioner considers locally produced copper tube comprises 'like goods' to the goods under consideration. The Commissioner also considers that, despite differences in the standards applying to copper tubes produced by the exporters, their exports to Australia are 'like' to the goods sold in their domestic markets.

3.2 Legislative framework

Section 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, amongst other things, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are 'like' to the imported goods. Section 269T(1) defines like goods as:

Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

An Australian industry can apply for relief from injury caused by dumped or subsidised imports, even if the goods it produces are not identical to those imported. The industry must, however, produce goods that are 'like' to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness
- ii. commercial likeness
- iii. functional likeness
- iv. production likeness.

3.3 The goods

3.3.1 Goods subject of the application

The goods the subject of the application (the goods) are:

Round seamless copper tube complying with Australian Standard AS 1432, Australian and New Zealand Standard AS/NZS 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

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3.3.2 Tariff classification

The goods are generally classified to tariff subheading 7411.10.00 (statistical code 11) in Schedule 3 to the *Customs Tariff Act 1995*.

This tariff classification and statistical code may include goods that are both subject and not subject to this investigation. The listing of this tariff classification and statistical code is for convenience or reference only and does not form part of the goods described above. Please refer to this description for authoritative detail regarding goods, the subject of this investigation.

3.4 Model control codes

The commission has used a MCC structure in order to identify key characteristics for, among other things, model matching when comparing export prices and normal values. The basis for using a MCC structure and the commission's practice is explained in the *Dumping and Subsidy Manual* (the Manual).

All interested parties participating in this inquiry were requested to provide sales and cost data across all categories in accordance with the MCC structure detailed in Table 4.

Item	Category	Subcategory	Identifier
1	Standard	Copper tubes used for plumbing, gas fitting, drainage and/or medical gas applications (e.g. copper tube manufactured to AS 1432)	P
		Copper tubes used for refrigeration and air conditioning applications (e.g. copper tube manufacture to AS/NZS 1571)	R
		Copper tubes used for engineering purposes (e.g. copper tube manufactured to AS 1572)	E
2	Temper	Hard (Hardness (HV/5): 100 minimum)	H
		Bendable or Half Hard (Hardness (HV/5): 71 – 99)	B
		Soft or Annealed (Hardness (HV/5): 70 maximum)	S
3	Lagging	Lagged	L
		Unlagged	U
4	Capping	Capped	C
		Uncapped	U
5	Form	Straight	S
		Coiled	C
6	Finned or internally grooved	Finned	F
		Internally grooved	G
		Plain (not finned or grooved)	P

Table 4 MCC Structure

The application of the MCCs was the subject of numerous submissions during the investigation, and was a particular area of relevance in the ADRP Decision. As a result, the commission has examined all of these issues in the following sections.

3.4.1 Submissions on the MCC structure

MM Kembla

Several submissions by MM Kembla during the investigation contend that copper tube sold in the domestic market of Vietnam are either not 'like goods', or alternatively, that the price of the exporter's domestic sales require adjustments to ensure fair comparison.²³

MM Kembla's position is based on claimed differences between copper tube products produced to comply with standards relevant to the Australian market and those produced to comply with apparently differing standards, or in some cases, no standards, for an exporter's domestic market. Such claimed differences relate to:

- tube size
- safe working pressure
- copper chemical composition
- allowable production tolerance on outside diameter, wall thickness and drawing thin
- differences in fabrication costs due to tube sizing
- tube capping and cleaning requirements
- product marking and labelling and
- whether product standard is mandatory within certain markets.

MM Kembla proposes that the commission should expand the MCC structure so that it includes new categories for outside diameter and wall thickness, broken down further into sub-categories to reflect the various sizing ranges / tolerances specified in the relevant Australian standards.²⁴

Hailiang

Hailiang's response to the exporter questionnaire (REQ) recommended removing the MCC category for capped tubes.²⁵ Hailiang also made a submission to address MM Kembla's claims of differences between tubes for the Vietnamese domestic market and the Australian market.²⁶ Hailiang essentially concluded by encouraging the commission to reject MM Kembla's claims on the ground that there are no major differences.

In its submission following the ADRP Decision, Hailiang further outlines its views on the similarities between tubes produced for its domestic and Australian markets and again concludes there are no significant differences. This includes product attributes relating to chemical composition, allowable tolerance on outside diameter and wall thickness, and tube cleaning requirements.²⁷

3.4.2 ADRP commentary on the application of the MCC in TER 580

In its review of the Commissioner's decision to terminate the dumping investigation, the ADRP concluded that the commission did not make the correct of preferable decision in relation to the following grounds of review.

²³ EPR 580, document nos 010, 015, 016, 023 and 025.

²⁴ EPR 580, document no 023, pp.15-16.

²⁵ EPR 580, document no 005, Question C-3, p.14,

²⁶ EPR 580, document no 013.

²⁷ EPR 580, document no 024.

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1. Application of the MCC structure and consideration of international standards.²⁸
2. Differences arising due to the practice of drawing thin and characteristics of outside diameter and wall thickness.²⁹

Each of the above grounds concerned the sales of like goods in the domestic market of Vietnam and whether the commission correctly accounted for certain physical differences between tubes sold into the domestic market and whether it compared them accurately with those exported to Australia. MM Kembla's ADRP application grounds relating to like goods were essentially identical for all exporters from Vietnam, China and the ROK (i.e. those exporters subject to Investigation 557).

The ADRP reviewed the grounds together because the member considered that the physical characteristics of wall thickness and outside diameter are closely related.³⁰ In relation to each of the grounds listed above, the ADRP concluded that:

that the [commission] did not properly address and consider MM Kembla's detailed claims for appropriate adjustments relating to the physical differences arising from differing Standards (including [wall thickness]) affecting costs and price comparability.³¹

The ADRP further concluded that the commission's decision to exclude international standards or wall thickness as a category in the MCC structure, or alternatively, by not making appropriate adjustments for the comparison of normal value and export price, was not the correct or preferable decision.³²

3.5 Commission analysis of key claims

Having regard to the ADRP's conclusions, the submissions of MM Kembla and the exporters' REQs and submissions, the commission considers it necessary to address the following three key issues.

1. Are the exporters' country of origin domestic sales sufficiently alike to their Australian exports of the goods?
2. Does the MCC structure include the necessary categories and sub-categories to achieve a fair comparison between the normal value and export price of the goods?
3. Do any differences between the goods and the like goods warrant normal value adjustments under section 269TAC(8)?

To answer these questions, the commission considers it necessary to first provide some context about the role of standards and the meaning of drawing thin. This is because the majority of MM Kembla's various claims in submissions, and grounds for review with the ADRP, have centred on the issues of differing standards and the related manufacturing practice of 'drawing thin'.

International and Australian standards

The application of standards are a common feature of most markets:

²⁸ ADRP Decision, Ground 2(i).

²⁹ ADRP Decision, Ground 2(iv).

³⁰ ADRP Decision, para 49.

³¹ ADRP Decision, para 75.

³² ADRP Decision, para 76.

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International standards are one way to overcome technical barriers in international commerce caused by differences among technical regulations and standards developed independently and separately by each nation, national standards organisation, or business. Technical barriers arise when different groups come together, each with a large user base, doing some well established thing that between them is mutually incompatible. Establishing international standards is one way of preventing or overcoming this problem.³³

Different jurisdictions implement standards which are relevant to their particular circumstances. In the context of copper tubes, the relevant Australian standards (AS 1432, AS/NZS 1571 and AS 1572) set out the physical and performance characteristics of copper tubes for use in the Australian market. The standards are generally expressed in terms of defined copper content, wall thicknesses and outside diameters, a combination of which will achieve a particular performance outcome (e.g. ability to withstand a defined pressure). As a result of variability in manufacturing processes, the standards also assign tolerances to product dimensions. The standards also specify other product attributes relating to labelling, tube cleanliness and working pressure.

The Australian standards are similar to, but also differ from, the standards applicable to copper tubes produced and sold in Vietnam. For example, MM Kembla's submission of 1 October 2021 describes how the tube sizes prescribed in ASTM B280 are different to those in AS/NZS 1571 (refrigeration).³⁴ As an example of the sorts of characteristics that are dictated by the various standards, AS/NZS 1571 refers to the following key attributes:

- chemical composition (percentage of copper and phosphorus levels)
- temper (a designation comprising O (annealed), ½ H or H (hard drawn), based on minimum and maximum Vickers hardness)
- dimensions and tolerances (outside diameter and wall thickness combinations, including tolerances to each)
- form (lengths or coils)
- length tolerances (minimum and maximum lengths of straight and coiled tube)
- end sealing (tubes shall be either capped, plugged, crimped or otherwise packaged in order to maintain the internal cleanness under normal conditions of handling and storage)
- cleanness (measured by the maximum allowable residue of the internal surface)
- safe working pressure (the recommended maximum continuous pressure to which the tubes shall be subjected for the design life of the installation)
- roundness (for tubes ½ H and H in straight lengths shall not vary from the mean diameter by more than 1%)
- limitations on the minimum wall thickness of tubes being flared
- freedom from defects - smooth and free of defects detrimental to its subsequent processing and end use
- marking - each batch of tube to be marked or tagged with manufacturers name or trademark.

Whilst there is no specific requirement that a product sold in the Australian market must conform to the relevant Australian Standard, failure to use a compliant product (e.g. in a plumbing application) may expose the supplier / installer to liability for any loss or damage arising from the use of a non-compliant product.³⁵ Further, selling a product which is

³³ Wikipedia entry on international standards, https://en.wikipedia.org/wiki/International_standard.

³⁴ EPR 580, document no [010](#), Section VIII Like Goods, p.16.

³⁵ Refer to WaterMark certification website <https://watermark.abcb.gov.au/consumers/what-watermark>

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described as meeting a particular standard but which, in fact, does not, may expose the seller to liability for a breach of warranty or a breach of Australia's consumer laws. In all of these instances, any remedy is available through civil action between the relevant parties.

The commission does not assess whether products described as meeting a particular standard do, or do not, actually meet that standard. The commission's role is to assess whether the goods sold in an exporter's domestic market are 'like' to the goods it exported to Australia, and to the extent that they are appropriately comparable for the purpose of calculating a dumping margin.

Drawing thin

Australian and international standards specify the acceptable tolerance between nominal dimensions and the allowable maximum and minimum values for a given dimension, e.g. outside diameter or the wall thickness. The nominal value of a dimension may be specified in product standards or by agreement between the manufacturer and a customer. The tolerance assigned to a dimension indicates how far the manufacturing process can allow the actual dimensions of a finished good to deviate from its nominal dimension.

The basic concept of 'drawing thin' relates to when the *actual* wall thickness of a copper tube may be less than the *nominal* thickness.

In relation to product standards, the amount of drawing thin is specified. For example, the Australian standard AS/NZS 1571 for refrigeration tube assigns a tube wall thickness tolerance of +/- 10% from the nominal dimension. If the nominal dimension is 1.0 mm, the actual wall thickness of the finished product may be in a size anywhere between 0.9 to 1.1 mm. Drawing thin in this example has occurred when the tube is produced with a wall thickness of less than 1.0 mm. If drawing thin results in the tube being less than the minimum allowable 0.9 mm it is considered as being outside of specification. Drawing thin can occur due to factors such as reduced outside diameter, larger internal diameter or a combination of the two. Figure 1 below shows a cross section of a tube denoting the nominal wall thickness of 1.0 mm and a line showing minimum allowable wall thickness of 0.9 mm.

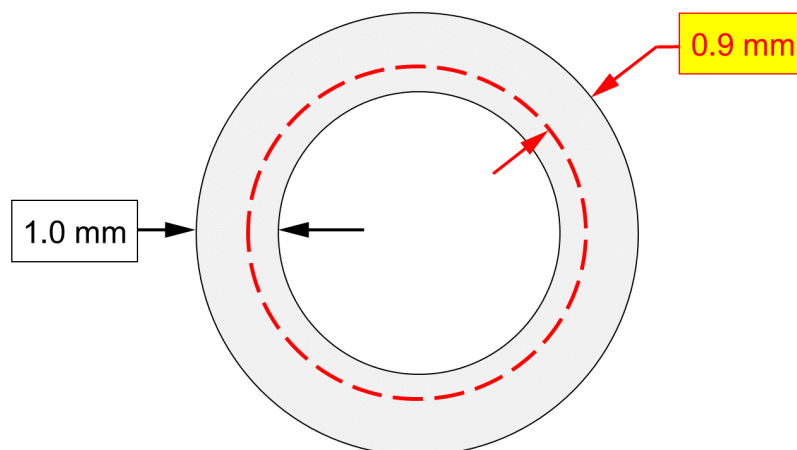


Figure 1 Example of tube with drawing thin wall thickness

Drawing thin allows for the tube to be produced with a lesser amount of copper whilst ensuring it still remains within specification. This provides the manufacturer with a cost saving opportunity which may or may not be passed onto a customer in the form of lower prices. Tube may not properly function if the wall thickness is lower than the minimum specified in standards. Failure modes in the form of tube splitting or sub-standard working pressure could occur.

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MM Kembla's submissions claim the exporter's domestic sales of tube are drawn thin by an amount that would not be acceptable by Australian standards. MM Kembla considers this either disqualifies the domestic sales as a like good, or at least warrants normal value adjustments. The commission notes MM Kembla's claim is based on observations for Australian tube imports.³⁶

The commission has examined the drawing thin issue by requesting production data from the exporters. This information revealed the level of drawing thin for the exporter's domestic market tubes was within the range specified by Australian standards. Not only are the exporter's domestic and Australian tube like with respect to the issue of drawing thin, there are no grounds to warrant normal value adjustments.

Connection between standards, drawing thin, wall thickness and outside diameter

The volume of copper in any given length of tube is a function of copper density, wall thickness and outside diameter. The quantity of copper is measured in kilograms, but this means that it is important to know whether the dimensions of the copper tube have been reported in actual or nominal measurements.

The commission understands that vendors report the size of a tube in its nominal measurements. Variation in the manufacturing process causes the amount of copper based on nominal dimensions to differ from the amount of copper present in a tube's actual finished state. The weight of the products can be reported in the nominal state or the actual state. The difference between these two values is an indicator of whether the product may be drawn thin.

Further, it is clear that differences between copper tube produced to differing standards which are relevant to domestic and export sales, respectively, are likely to result in different dimensions of those copper tubes. The question posed by MM Kembla and the ADRP is whether the differences in standards are so material that the domestic and export sales are not alike.

3.5.1 Are the exporters' country of origin domestic sales like to their Australian exports of the goods?

The commission's assessment of like goods is not undertaken to determine whether an exporter's domestically sold goods meet Australian standards. Rather, the commission's Manual provides that:

If the goods are found not to be identical, it is necessary to determine whether the goods would still fall within the ambit of goods having characteristics closely resembling those of the goods under consideration. To determine whether the goods are goods having characteristics closely resembling those of the goods under consideration, the factors outlined below will be considered.³⁷

The Manual then goes on to explain the factors that the commission may consider for assessing if domestic sales by an exporter have characteristics closely resembling the exported goods:

- physical likeness
- commercial likeness
- functional likeness

³⁶ EPR 580, document no. 010, Item (vii), pp. 22-23.

³⁷ Chapter 2.2 of the Manual.

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- production likeness
- other considerations (e.g. matters raised by interested parties or identified by the commission).

In response to the publication of Hailiang's verification report, a submission by MM Kembla expresses disagreement with the finding that Hailiang's domestic sales and export sales are like goods.³⁸ MM Kembla makes note of the finding that domestic and exported tube can be used interchangeably. MM Kembla's position is generally based on the existence of differences between the standard of tube Hailiang produces for its domestic and Australian markets. The submission details differences specific to a range of product attributes such as wall thickness, cleaning requirements, metal temper, manufacturing tolerance, and working pressure.

MM Kembla's submission also outlines the following in relation to its contention that the exporter's domestic sales are not like goods:

- Normal values for Hailiang are incorrectly determined under section 269TAC(1) and should be determined under 269TAC(2)(c).
- The CBSA's findings into dumped and subsidised goods exported from China.
- The commission's previous findings on applicable standards in relation to polyvinyl chloride flat electric cables exported from China are relevant to the determination of normal values.³⁹

Following publication of SEF 580, MM Kembla made various submissions expressing a view that if an exporter's domestic goods do not meet Australian standards, they are not properly comparable to exports that do.⁴⁰

MM Kembla's submission's post SEF 580 reiterate its earlier submissions regarding the commission's like goods assessment.⁴¹ This includes performing adjustments under section 269TAC(8) and contending that normal value should be constructed under section 269TAC(2)(c).⁴² MM Kembla claims the commission will not identify the exporter making domestic sales of like goods or the available volume of like goods will not be sufficient to satisfy the criteria in section 269TAC(1).⁴³

Submissions by Hailiang generally indicate support with the finding that its domestic sales are like to their Australian sales.⁴⁴

³⁸ EPR 580 document no 010, Section VII, pp.14-25.

³⁹ EPR 469, document no [019](#) (exporter verification report). The commission has not examined this claim further, noting that the particular factual circumstances of that investigation can be readily distinguished. In that investigation, domestic and export sales differed substantially - there were no sales of the good in the domestic market, domestic sales were of markedly different cable types, and the goods were almost exclusively exported to Australia. As with any like goods assessment, it is a question of fact and degree.

⁴⁰ See, for example, EPR 580 document nos 016 and 023.

⁴¹ EPR 580 document no 016, 023. 025.

⁴² MM Kembla's reference to normal value adjustments under section 269TAC(8) would mean normal values are determined under section 269TAC(1) rather than a cost based constructed normal value determined under section 269TAC(2)(c). In the case of a constructed normal value, adjustments are performed under section 269TAC(9).

⁴³ EPR 580 document no 023, p. 3 and document no 025, p.2.

⁴⁴ EPR 580 document nos 013 and 024.

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The following outlines a re-examination of the available information for assessing whether Hailiang's domestic sales of copper tube are like goods. This includes having regard for the matters raised in submissions by interested parties, the ADRP review findings, and further information received in request for information (RFI) responses from the Australian industry and Hailiang.

The commission's examination of Hailiang's domestic market sales of tubes finds they are of standards or specifications that are different to the exporter's Australian sales. This means Hailiang's domestic sales are *not* identical to the goods in all respects.

Although Hailiang's domestic sales are not of identical goods in all respects, a closer analysis reveals there is considerable overlap in the requirements of Australian standards and other international standards. Overlap was seen in relation to copper grade, the requirement to clean certain tubes and the material temper. In contrast, deviation was found in relation to relevant tube sizing (including wall thickness and outside diameter), manufacturing tolerances and product labelling.

The commission's detailed assessment of each factor is outlined below.

Physical likeness

Except for tube size and the related attribute of safe working pressure, Hailiang's sales of domestic and Australian market tubes, within the same MCC, exhibit little to no variation in terms of their physical likeness for a number of product attributes. This includes copper grade (or chemical composition), material temper, shape and appearance. It also includes other factors such as whether the tubes are cleaned, if the tube is fitted with a cap to prevent the ingress of contaminants after production and whether the tube is coated with a synthetic outer layer (lagging).

The above finding also applies to exported models where the commission has used surrogate models as the basis for a normal value.⁴⁵ The surrogate model selected by the commission was generally of the same physical characteristic as the exported model in terms of the MCC composition. Where a mismatch between MCCs was present, a cost based specification adjustment was considered appropriate to ensure the resulting normal value reflected the price of a tube with the relevant attributes in terms of MCC sub-categories.⁴⁶

Further to the above MCC mismatch, where a domestic refrigeration tube was used as a surrogate for a plumbing export tube, the commission has had regard to differences between the relevant tube standards with respect to chemical composition, temper and tube cleaning. MM Kembla raises its concerns on this issue in submissions to the investigation.⁴⁷ The following explains the commission's detailed approach to surrogate model selection.

The commission found Hailiang's domestic sales of refrigeration tube were of the same chemical composition as its export sales of plumbing tube.⁴⁸

⁴⁵ The relevant export models are P-B-U-U-S-P, P-H-U-C-S-P and P-H-U-U-S-P.

⁴⁶ See normal value adjustments in Chapter 4.2.2.

⁴⁷ EPR 580, document nos 010 and 016.

⁴⁸ See product attribute study, worksheet 'Composition' in Confidential Attachment 1.

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For one export model in the plumbing specification (P-B-U-U-S-P) it was necessary to use a surrogate model with a different temper (R-H-U-C-S-P), i.e. B vs H.⁴⁹ The quantum of the adjustment was based on the cost of production differences observed for tubes in the B and H MCC category for temper. Although the price and cost differences between the two tempers was observed to be marginal, the commission finds the existence of physical temper differences warrants adjustment.⁵⁰

As for the differences between standards for the attribute of tube cleaning, Hailiang's RFI response details that it cleans all tubes, regardless of the end use, and it does not use any market specific processes.⁵¹ Hailiang's explanation satisfies the commission it is appropriate to use the normal value of a refrigeration tube as the surrogate for a plumbing tube. Based on Hailiang's RFI response it appears its tube cleaning processes are universal to all tubes and thus no physical or production differences arise on the product attribute of tube cleaning.

In relation to tube size, Hailiang's domestic sales for each model are in a mix of sizes (i.e. differing combinations of outside diameter and wall thickness, length). Some sizes were identical to or closely resembled the tube sizes exported to Australia, and others were not.⁵² As safe working pressure is a function of tube size, Australian and domestic sales of tubes in different sizes are not identical in terms of their safe working pressure. Two tubes of the same size (assuming no variation in copper grade or hardness) will have the same safe working pressure, regardless of market.

The commission notes MM Kembla's submissions detailing the result of quality checks on imported tube that is marketed as conforming to Australian standards.⁵³ It also urges the export price be adjusted to account for the non-compliant condition of imported goods.

The commission considers that MM Kembla's submission does not address the issue of whether Hailiang's domestic sales are like to its export sales. The question of likeness is not necessarily based on the observation that Hailiang's Australian exports are potentially not compliant with the Australian standard.⁵⁴

Although MM Kembla's submission urges the export price be adjusted, there are no provisions in the Act that permit export price adjustments for goods that do not comply with a goods description specified by an applicant seeking an anti-dumping notice. The commission considers the goods exported from Vietnam comply with Australian standards for the purpose of conducting this investigation.

The commission is similarly unable to effect an adjustment to normal value for differences between attributes that are not present in either the exported goods or the exporter's domestic market goods.

⁴⁹ Domestic model R-B-U-C-S-P was considered inappropriate on account there were no domestic sales in the relevant tube sizes.

⁵⁰ See product attribute study, worksheet 'GP6 Sample' and 'Cost profiles' in Confidential Attachment 1.

⁵¹ Hailiang response to 16 December 2022 RFI at Question C-1(a) to (d).

⁵² See product attribute studies, worksheet 'Tube Size' in Confidential Attachment 1.

⁵³ EPR 580 document no 010, Part VIII (vii), p. 23, and Part X, p.29.

⁵⁴ MM Kembla's testing results present a circumstance that is counter to the description of the goods in its application. MM Kembla's application states the goods must comply with one of three different Australian standards.

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Noting that the MCC structure is designed to properly account for relevant variations which exist across the key physical properties of copper tubes, the domestic sales and the Australian export sales are physically alike.

Commercial likeness

The evidence gathered by the commission establishes that the prices of copper tubes on the exporter's domestic and Australian sales invoices is based on the same unit of measure, i.e. kilograms. Hailiang uses the same price setting mechanism for its domestic and Australian markets. The cost of copper (over 90% of the total production cost) is the key determinant of prices for copper tubes in both markets.

Notwithstanding differences between how sales in the different markets might occur (e.g. differing payment terms offered, level of trade and the like), the commission is satisfied that Hailiang's domestic and Australian sales of copper tubes are commercially alike.

Functional likeness

The commission's assessment is that Hailiang's sales of copper tube into its domestic markets are functionally alike to its Australian exports in terms of intended end use and the general purpose of the product. They both perform the same essential function, being the transmission of fluids and gasses.

MM Kembla submits Hailiang's domestic tubes are not like to its Australian market tubes due to differences in the size of tube made for either market. MM Kembla considers this is relevant to assessment of functional likeness.

In the case of Australian market tubes, Australian standards prescribe certain tube sizes whereas other international standards prescribe different tube sizes. Tube size is important in the Australian market because it provides for a reliable system around which other complementary products are designed and produced. It also relates to the product attribute of safe working safe working pressure and other functional requirements such as tube flaring. Use of tube sizes that are not prescribed in Australian standards are unlikely to function in the Australian market context.

The commission has observed a large range of tube sizes made for sale in Hailiang's domestic market. The range of tubes available in Hailiang's domestic market were within the description of the goods developed for this investigation. Within the broader range of tube sizes was a sub-set of tube sizes that were closely resembling to the size of Hailiang's Australian sales.

Whilst it is correct that Hailiang's domestic tubes may not be functionally alike in respect of tube size, product attribute analysis found tubes of different sizes displayed little to no variation in price when examined at the sales invoice level.⁵⁵ This demonstrates that functional differences do not lead to price differences. As a result, the commission considers functional differences arising due to tube size does not prevent a fair comparison between export price and normal value.

Production likeness

The commission is satisfied that the process used to produce copper tube for the exporters' respective domestic markets are essentially identical to the processes used to produce copper tubes for the Australian market.

⁵⁵ See product attribute study, worksheets 'GP6 Sample', 'GP8 Sample' and worksheets 1 to 5 in Confidential Attachment 1.

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The process of drawing copper into copper tubes is well established, with little variation in methodology between producers. The variation in production processes which produce tubes to different sizes, product standards and customer requirements are controlled in the same way, regardless of the destination market.

RFI responses from Hailiang provided information about its processes relating to the cleaning and capping process for tubes.⁵⁶ This information satisfied the commission that the production process for Hailiang's domestic and export sales with respect to capping and cleaning of tubes have no material differences.

Conclusion

On balance, the commission's assessment is that the copper tubes produced by Hailiang for its domestic markets are like to the copper tubes exported to Australia.

It is evident that copper tubes for both domestic and Australian markets share many characteristics that are identical, or which bear a close resemblance. Notwithstanding the presence of differences such as tube size and working pressure, the commission considers Hailiang's domestic sales are physically like to the exported goods. The commission also found that Hailiang's sales of domestic and Australian tubes were commercially alike in terms of how prices are set, units of measure, levels of trade, routes to market and with similar customer bases.

Although the commission identified attributes that are common between Hailiang's domestic and Australian market tubes, it is not correct to conclude that they are interchangeable. This is because Australian standards prescribe certain tube sizes for use in the Australian plumbing and refrigeration sectors. Products that interface with tubes to Australian standards are similarly designed to accommodate the standard tube sizes. Tube sizes outside of the range specified in Australian standards are unlikely to function properly in their intended application, or they would not satisfy other requirements such as safe working pressure.

Whilst the commission found Hailiang's domestic sales relate to tubes that did not correspond to all the sizes specified in Australian standards, there were sufficient volumes of tubes that were identical or closely resembling. It is important to recognise that the like goods assessment for an exporter's domestic sales encompasses all product attributes and is not based on any single factor. The commission does not consider the existence of differences in relation to one product attribute means an exporter's domestic sales cannot be assessed as being 'like'.

The commission further considers the existence of differences doesn't necessarily mean that the goods sold in the OCOT in the country of export are so radically different as to merit a constructed price. Similarly, the exported goods solely need to fit flexibly within the nominal specifications to meet the Australian standards without needing to be identical. The commission notes that differences which exist between copper tubes for the domestic and export markets can be captured in the MCC structure, allowing for a fair comparison. The following section examines whether the MCC structure shown as Table 4 is appropriate for this investigation.

⁵⁶ Hailiang response to 16 December 2022 RFI at Question C-1.

3.5.2 Does the MCC structure include the necessary categories and sub-categories to achieve a fair comparison between the normal value and export price of like goods?

The commission's approach to model matching is described in chapter 14 of the Manual:

The Commission undertakes model matching using a MCC structure to identify key characteristics that will be used to match models of the goods exported to Australia and like goods sold domestically in the country of export. 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. An assessment such as this may be required, for example, where the models sold domestically and the models exported to Australia are different.

In each case, the commission assesses the relevant effect on *pricing* that different physical characteristics have for a given good. Typically, as raw material costs are a significant influencer of prices, there is often a close relationship between the cost to make the goods and prices.

In preparing to initiate a case, the commission uses any previous experience with the goods and the advice of the applicant to identify the most likely relevant categories for inclusion in the MCC structure.

The *application* of the MCC structure is specific to the circumstances of each exporter, having regard to their own accounting information and any other relevant evidence. The commission tests the data presented by each exporter as part of the verification process to identify which MCC characteristics have a meaningful impact on prices. This means the MCC structure can be narrowed, or expanded, as needed to ensure a fair comparison between domestic and export sales for each exporter.

In this case, the commission has performed a product attribute analysis to ascertain whether the MCC structure is appropriate for Hailiang. The analysis had regard to the following information:

- differences between product standards reported by Hailiang
- verification of Hailiang's questionnaire response
- information provided in RFI responses from Hailiang
- the price and cost trends relevant to Hailiang's domestic and Australian sales
- a visit to MM Kembla in November 2022 and information it provided in its application, submissions and in response to the commission's further requests, and
- relevant submissions by other interested parties.

The following outlines the commission's findings in relation to each category in the MCC structure and addresses specific claims made by MM Kembla in relation to additional MCC categories.

Standard

This category essentially captures the intended end use of the tube. Since tube end use equates to certain product standards, it also ensures tube of similar standards are compared, i.e. plumbing, refrigeration and engineering purposes. Results were mixed as to whether tubes made to different standards had distinct prices. MM Kembla's sales

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displayed clear price differences between tubes mapped to each of the three sub-categories in the Standard MCC category.⁵⁷ There was less variation in Hailiang's case.⁵⁸

Notwithstanding the outcome of a price analysis, standards also specify other important product attributes such as copper grade, temper and other factors such as tube cleanliness. The commission found the Standard MCC category useful for ensuring goods and like goods of the same copper grade were appropriately compared.

Using Hailiang's reported product standards and product information, the commission confirmed the grade of copper relevant to Hailiang's domestic and Australian sales were like for like in any given MCC sub-category. This includes normal values that rely on surrogate model information.

For example, MCC subcategory 'R' relates to tubes made to comply with refrigeration tube standards or used in applications requiring refrigeration tube. Refrigeration tube Australian standard AS 1571 requires a copper grade that contains 99.9% copper and between 0.015 – 0.040% phosphorus. Other international refrigeration tube standards such as GB/T 17791 (China), JIS H 3300 (Japan) and ASTM B280 (USA) specify use of the same copper grade.

RFI responses from Hailiang explain that certain information in its internal product codes reflected different copper grades.⁵⁹ The commission has used Hailiang's RFI response to gain assurance that goods and like goods sales mapped to each sub-category were of the same copper grade.⁶⁰ This mitigated the risk of comparing goods and like goods of different grades in the case of some product standards permitting use of more than one copper grade, e.g. China, Japan, ASTM.

Temper

Analysis of prices shows little to no variation brought about by tubes of differing temper.⁶¹ Although tube temper does not seem to be a price determinant, it does relate to certain physical differences that are defined in product standards.

In a similar approach to verifying the grade of copper, temper was further verified by using information in the exporter's RFI responses and internal product codes.⁶² Product descriptions had notations that revealed the temper of the material and permitted this to be cross referenced to various tube standards. This ensured tube sales mapped to a certain temper sub-category possessed similar mechanical properties with respect to temper.

The commission found the temper categories between various standards did not cover the same range of hardness as the temper ranges identified in the MCC structure, although there is sufficient overlap between standards.⁶³ This satisfies the commission that the sub-categories for temper ensure goods and like goods are appropriately compared.

⁵⁷ See MM Kembla product attribute study worksheet 'Standards' in Confidential Attachment 2.

⁵⁸ See product attribute studies, worksheets 'GP-6 Sample' and 'GP-8 Sample' in Confidential Attachment 1.

⁵⁹ Hailiang response to 16 December 2022 RFI at Question D-1.

⁶⁰ See product attribute study, worksheet 'Composition' in Confidential Attachment 1.

⁶¹ See product attribute study, worksheets 'GP-6 Sample' and 'GP-8 Sample' in Confidential Attachment 1.

⁶² Hailiang 16 December 2022 RFI at Question D-2 and D-3.

⁶³ See product attribute study, worksheet 'Temper' in Confidential Attachment 1.

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Lagging

Lagging involves covering the copper tube in a layer of polyethylene or some other synthetic material. The commission observed the lagging process in a visit to MM Kembla in November 2022. The commission is satisfied that lagging involves additional and distinct production processes and costs. MM Kembla's sales of tubes with lagging consistently had a higher price than tubes with no lagging. Hailiang did not report sales of lagged tube.

Capping

Hailiang's REQ proposed that the capped tube MCC was unnecessary in its circumstances.⁶⁴ Verification of Hailiang's data concluded that the MCC category for capped tubes should be removed.⁶⁵

After having regard to information supplied in RFI responses from Hailiang, the commission identified that fitting a cap entails more than the mere cost of the plastic caps.⁶⁶ Hailiang's RFI responses and the commission's observation of MM Kembla's own processes confirm that inclusion of the Capping category also reflects the manufacturing overheads and direct labour expenses associated with tube cleaning and installation of the cap.

Price analysis further confirms that tubes in the capped specification exhibit slightly different prices when compared to uncapped goods of other similar characteristics.⁶⁷ On the basis of this analysis it is appropriate to re-instate a Capping category in the MCC structure. This reverses the commission's earlier findings in SEF 580 and TER 580.

Form

The commission understands the form of the tube is a cost driver and price determinant. It also represents clear differences in physical characteristics as the tube form can be in either a straight tube or in a coil. Tubes in different forms require their own kind of production processes. There were no exports of tube in coil form, nor was tube sold by the Australian industry in that form.

Finned, internally grooved or plain

All of Hailiang's domestic and Australian sales involve tube with a 'plain' surface geometry. Further consideration of this product attribute is not relevant.

Wall thickness and outside diameter

MM Kembla has proposed in a submission to the commission after the ADRP revoked the Commissioner's termination decision that the MCC structure should be altered to include wall thickness and outside diameter as relevant categories for model matching.⁶⁸ MM Kembla specifically states that the two new MCC categories, one each for wall thickness and outside diameter, contain a subcategory for all the different wall thickness and outside

⁶⁴ EPR 580, document no 005, Question C-3, pp.14-15.

⁶⁵ See Hailiang Verification Report, EPR 580, document no 009, Chapter 2.2.1, p. 5.

⁶⁶ Hailiang 16 December 2022 RFI at Questions C-1.

⁶⁷ See product attribute study, worksheet '*Capping Price Effect*' in Confidential Attachment 1.

⁶⁸ EPR 580, document no 023, pp.12-13.

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diameter dimensions that are covered in the goods description and specified by Australian standards.

Matters concerning recognition of outside diameter and wall thickness were considered by the ADRP in its review although it is not clear to the commission whether the precise nature of MM Kembla's submission to the investigation was tabled in the same way during the ADRP review.⁶⁹ The ADRP's comments on this issue appear to focus on normal value adjustments rather than the adequacy of the MCC structure itself, but it has commented on whether the commission's formulation of MCCs accounted for the 'very real physical differences related to different International Standards (such as, WT or 'drawing thin')'.⁷⁰

The following outlines the commission's further consideration of the MCC structure within the context of MM Kembla's submission concerning wall thickness and outside diameter, and the ADRP's assessment of MCC structure.

An examination of Hailiang's tube prices at the invoice level shows the price per kilogram for different tube sizes is generally comparable, particularly when examined by wall thickness.⁷¹ This pattern in pricing is consistent across Hailiang's domestic and Australian markets and is also present in MM Kembla's sales data.⁷²

Using data in RFI responses from Hailiang, the commission was able to assess the level of production variation with respect to tube sizes produced for the exporters' domestic market.⁷³ Tubes in the sample selected for examination displayed variation that was within the amount permissible under Australian standards.⁷⁴

The finding on production variation counters MM Kembla's claim that the level of drawing thin for Hailiang's domestic sales is higher than the level for its Australian sales.⁷⁵ MM Kembla argued that this difference causes the cost of production for domestic sales to be lower (due to lower metal content) than the cost associated with Australian sales that are supposed to conform to Australian standards and contain more metal.

Whilst it is correct that domestic MCCs include a number of tube sizes that are not exported to Australia, excluding those particular tube sizes produces an immaterial change to the overall normal value for each MCC that is exported to Australia.⁷⁶ This leads the commission to conclude that differences in tube size do not prevent a fair comparison between export price and normal value.

Since safe working pressure is a function of tube size, it is also the case that not all domestic tube sizes will be physically alike in respect of this attribute. The commission's evidence shows that tube size does not appear to be a price determinant. As tube size and working pressure are linked, the commission is satisfied that differences in working pressure do not prevent a fair comparison between export price and normal value.

Conclusion

⁶⁹ ADRP Decision, paras 67-76.

⁷⁰ ADRP Decision, para 71.

⁷¹ See product attribute study, worksheets '*GP-6 Sample*' and '*GP-8 Sample*' in Confidential Attachment 1.

⁷² See MM Kembla product attribute study, worksheet '*Tube Size*' in Confidential Attachment 2.

⁷³ Hailiang response to 20 February 2023 RFI at Question 1(c).

⁷⁴ See Production Tolerance Analysis in Confidential Attachment 3.

⁷⁵ ADRP Decision, paras 61-62.

⁷⁶ See product attribute study, worksheet '*Sensitivity Analysis*' in Confidential Attachment 1.

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The commission is satisfied that the MCC structure devised for this investigation is appropriate. It ensures the key characteristics present in the exporters' copper tube sales for their domestic and Australian markets are properly comparable.

The MCC structure also provides a framework through which to make certain adjustments under section 269TAC(8), to account for differences in timing and specifications. Further commentary on adjustments is in chapter 3.5.3.

With respect to tube size, although the commission considers the MCC structure is appropriate, it remains the case that domestic model MCCs included tube sizes that Hailiang did not export to Australia. To ensure Hailiang's normal values reflect the size of tubes exported to Australia in each MCC, the commission has added a tube size MCC category. However, the commission does not agree is it necessary for this new category take the form outlined in MM Kembla's submission.⁷⁷

Analysis of the relationship between price and cost for different tubes sizes supports a conclusion that there is no practical benefit in adopting MM Kembla's proposed new MCC categories. It also carries the risk of causing the model matching process to become so complex as to render the task unworkable. Is it also relevant to highlight that difficulties associated with an overly complex model matching regime would not override the finding that each exporter satisfies the criteria for their normal value to be determined under section 269TAC(1), i.e. the exporter made domestic sales of like goods in a sufficient volume.

The new MCC category contains two sub-categories to capture the tube sizes exported to Australia versus those that are not. Excluded domestic tube sizes are still like goods in the broader sense but on the attribute of tube size, the commission considers some tube sizes to be more closely resembling the exported goods. Excluded tubes sizes are otherwise like or closely resembling with respect to all other MCC categories.⁷⁸

The table below details the new MCC category added to the MCC structure at Table 4. This new category is applicable to all subject exporters.

Item	Category	Subcategory	Identifier
7	Tube size	Identical and closely resembling tube sizes common to exporter's Australian and domestic market.	AU
		Tube sizes exclusive to exporter's domestic market.	EX

Table 5 New MCC structure category for tube size

3.5.3 Do any differences between the goods and the like goods warrant further normal value adjustments under section 269TAC(8)?

In addition, or in the alternative, to its submissions that Hailiang's domestic sales are not like to its exports to Australia, MM Kembla submits that differences in the degree to which copper tubes are drawn thin, or differ in terms of wall thickness or outside diameter, for sales to differing markets warrants an adjustment to normal values under section 269TAC(8). MM Kembla also claims adjustments are necessary to account for the cost of tube cleaning requirements specified by Australian standards.⁷⁹

⁷⁷ EPR 580, document no 023, pp.12-13.

⁷⁸ Tube sizes selected for the 'AU' sub-category are outlined on worksheet 'Tube size' in Confidential Attachment 1.

⁷⁹ EPR 580, document nos 010, 016, 023.

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MM Kembla alleges that differences in production cost occur because of tube produced to different standards and sizes, which are subject to varying levels of drawing thin. MM Kembla claims that tubes for Hailiang's domestic market have a lower production cost, because the level of drawing thin for those tubes is higher than the level present in its tubes for the Australian market (i.e. the tubes sold in the country of export have less copper content than the tubes exported to Australia). MM Kembla submits that Hailiang's domestic market tubes are cheaper to produce as they contain less copper and have a material cost that is lower than tubes for the Australian market.

MM Kembla's various submissions to the investigation and its discussions with the ADRP allege that tubes with a thinner wall thickness and lower overall weight is a cause for higher fabrication costs. MM Kembla has provided figures to the investigation where it calculates reducing conversion costs as the linear weight of the tube increases.⁸⁰

MM Kembla has also argued that the cost of cleaning associated with tubes produced for the Australian market is higher than the cost for Hailiang's domestic market tubes. It contends this creates a point of difference that warrants a normal value adjustment.

MM Kembla emphasises the materiality of cleaning expenses relative to the overall cost of production for tubes produced to the refrigeration standard AS/NZS 1571.⁸¹ MM Kembla provides data in submissions to support its view.⁸²

Commission's analysis

In chapter 3.5.1, the commission found that Hailiang's domestic and export sales of the goods are like for the purposes of this investigation and different wall thicknesses and outer diameters did not have any material impact on price.

The commission also tested MM Kembla's drawing thin claims by using Hailiang's production data for a sample of tube sizes which are common to its domestic and Australian markets. The finished goods measurements indicated a level of drawing thin that was within the limits specified by Australian standards.⁸³

The commission has further analysed cost of production data for tubes mapped to MCCs relevant to Australian exports by Hailiang.⁸⁴ The commission notes that production costs presented for verification by Hailiang listed costs at the product code level and satisfy section 43 of the *Customs (International Obligations) Regulation 2015* (the Regulation), in so far as they reasonably reflect the cost of production.

The unit cost of production for Hailiang' Australian market tubes was in fact *lower* than the domestic market tubes in many cases, or was otherwise comparable with domestic tube production costs. It was also evident that the trend in production costs was not consistent with MM Kembla's claimed relationship between linear weight and cost of production where cost of production decreases with increasing linear weight.

Having established that fabrication costs are comparable across tubes of different wall thickness and outside diameter, and that prices are otherwise unaffected by these

⁸⁰ ADRP Decision, para 56 [fn]18.

⁸¹ EPR 580, document nos 010, p.20 and 023, p.14

⁸² See Confidential Attachment 7 to EPR 580, document nos 010 and 023.

⁸³ See Production Tolerance Analysis in Confidential Attachment 3.

⁸⁴ See product attribute study, worksheet 'Cost Profiles' in Confidential Attachment 1.

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differences, the commission is satisfied that no specification adjustment for drawing thin (as claimed by MM Kembla) is warranted.

The ADRP had previously found MM Kembla's submissions on physical differences due to standards to be persuasive.⁸⁵ The commission's assessment is that this view is not supported by Hailiang's verified data.

The commission examined the effect on normal values if they were to exclude from the calculations the exporter's domestic sales of tube sizes that were not identical to or closely resembling the goods exported to Australia. Some minor variation occurred, but otherwise the resulting change to normal values was immaterial overall.⁸⁶ In the commission's view, this outcome supports earlier findings that the volume of copper present in the tube is the key driver of price. As the calculations are based on weight, they already capture any variability which may or may not exist in drawing thin. The sensitivity analysis is persuasive evidence for concluding that tube size is not a factor affecting prices, and there is no basis for further adjustment.

The commission has also assessed MM Kembla's various claims about the cost of capping and cleaning by having regard to information obtained in MM Kembla's 24 January 2023 RFI response, MM Kembla's monthly production data examined during verification,⁸⁷ and in a RFI response from Hailiang.

Hailiang's RFI response explains that it uses the same processes for cleaning and capping tubes, regardless of the standard or market for which they are produced. This means there is no need to ensure costs reflect tubes made to particular standards, as MM Kembla has argued.⁸⁸

The evidence gathered in relation to capping and cleaning satisfies the commission that the exporter's production process in respect of cleaning and capping is the same or closely resembling for tubes sold into its Australian and domestic markets. As the MCC structure already captures tubes with or without a cap, there is no further need to perform normal value adjustments in relation to capping or cleaning.

Conclusion

Noting the information provided by exporters includes details on actual wall thickness, actual outside diameter and actual weight, there is no basis for taking specific account of drawing thin in the MCC structure nor the dumping margin calculations.

Where domestic and export sales transactions map to the same MCC codes, the resulting comparison between export prices and normal values is appropriate. Where there is no domestic MCC available, the commission has used another closely resembling MCC as a surrogate normal value and adjusted it to account for specification differences between the surrogate MCC and the export MCC. The MCC structure also has a new category to ensure only the tube sizes common to the exporter's domestic and Australian market are compared in the dumping margin calculation.⁸⁹

⁸⁵ ADRP Decision, para 74.

⁸⁶ See product attribute studies, worksheet 'Sensitivity Analysis' in Confidential Attachment 1.

⁸⁷ MM Kembla Verification Report Work Program Attachment GP12-A.

⁸⁸ Hailiang response to 16 December 2022 RFI at Question C-1.

⁸⁹ See Chapter 3.5.2

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The commission has also ascertained the cleaning and capping processes and costs associated with capped tube are similar across tubes for the exporter's domestic and Australian markets.

As a result, a normal value adjustment under 269TAC(8) is not warranted in relation to the factors of drawing thin, tube dimension, capping and cleaning or tube size. Adjustments relating to other factors are described for each exporter in Chapter 4.

3.6 Australian industry production of like goods

This section sets out the commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods under consideration and are therefore 'like goods'. For the purposes of the findings below, the commission has relied upon information obtained from the verification of MM Kembla's manufacturing facilities and prior findings of the commission.

3.6.1 Physical likeness

The commission has found that the physical characteristics of the locally produced and imported copper tube are similar, being of similar appearance, shape and dimension, namely round copper tube 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.

3.6.2 Commercial likeness

The commission has found that the locally produced and imported goods are commercially alike, as they are sold to common customers within the same market sectors.

3.6.3 Functional likeness

The commission has found that the locally produced and imported goods are functionally alike as they perform the same functions and are used in the same applications (and are interchangeable where they meet specific Australian standards). These include use in plumbing, refrigeration, medical, lagged and insulated tubing.

3.6.4 Production likeness

The commission has found that the locally produced and imported goods are manufactured in a similar manner, involving similar raw materials (cathode copper) and manufacturing processes and finish treatment (i.e. annealing) to the applicable Australian standards.

3.6.5 Like goods assessment

The commission considers that copper tube manufactured by the Australian industry has characteristics closely resembling the goods exported to Australia for the following reasons:

- the primary physical characteristics of the goods and locally produced goods are similar
- the goods and locally produced goods are commercially alike, as they are sold to common users, and directly compete in the same markets
- the goods and locally produced goods are functionally alike, as they have a similar range of end uses, and
- the manufacturing process for locally produced goods and the goods is similar.

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The Commissioner is satisfied that the Australian industry for copper tube produces like goods to the goods, the subject of the application, as defined in section 269T(1).

4 DUMPING INVESTIGATION

4.1 Preliminary findings

The commission has re-examined the evidence and information provided for making the findings in TER 580 and new information obtained since the investigation was referred back to the commission by the ADRP. Using the methodologies described in this chapter, the commission has calculated the following dumping margins for the goods exported to Australia from Vietnam.

Country	Exporter	Dumping margin
Vietnam	Hailiang	0.0%
	Uncooperative exporters	1.3%

Table 6 Preliminary dumping margins

4.2 Legislative and policy framework

In the report to the Minister under section 269TEA(1), the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Minister must be satisfied of in order to publish a dumping duty notice is that exporters have exported dumped goods to Australia.

Section 269TDA(1) also requires that the Commissioner must terminate the investigation, in so far as it relates to an exporter, if satisfied that the exporter has not dumped the goods, or there has been dumping during the investigation period, but the dumping margin is less than 2%.

Dumping occurs when an exporter exports a product from one country to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC, respectively.

4.2.1 Export price

The export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods comprise ‘arms length’ transactions under section 269TAA. Section 269TAB(1)(a) generally provides that, subject to certain conditions, the export price of any goods exported to Australia is the price paid (or payable) for the goods by the importer, where the goods have been exported to Australia otherwise than by the importer, and have been purchased by the importer from the exporter in arms length transactions.

Where the conditions in section 269TAB(1)(a) are not met, such as when the export transactions are not arms length or the importer(s) have not purchased the goods from the exporter, the export price is determined under sections 269TAB(1)(b) or (c).

Section 269TAB(3) provides that, where the export price cannot be established under the preceding provisions, the export price is determined by having regard to all relevant information.

4.2.2 Normal value

The normal value is determined in accordance with section 269TAC. Section 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid (or

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payable) for like goods sold in the OCOT 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.

If one of the circumstances set out in sections 269TAC(2)(a) or (b) is present, such as where there is an absence or low volume of relevant sales of like goods in the market of the country of export, or there is a particular market situation, section 269TAC(1) may not be used. In this instance, the normal value of the goods is to be calculated through either a constructed normal value under section 269TAC(2)(c) or using prices of like goods exported to a third country under section 269TAC(2)(d).

Section 269TAC(6) provides that, where the normal value cannot be established under the preceding provisions, the normal value is determined by having regard to all relevant information.

4.2.3 Dumping margin

Dumping margins are determined under section 269TACB. For all dumping margins calculated for the purposes of this investigation, the commission compared weighted average Australian export prices with the corresponding quarterly weighted average normal values for the investigation period in accordance with section 269TACB(2)(a).

4.3 Treatment of tube capping and cleaning expenses

MM Kembla made several submissions and statements regarding the recognition and treatment of production costs reported for the installation of protective caps used to seal the opening at each end of the tube. MM Kembla's submissions are summarised as follows.

1 October 2021⁹⁰

- Deletion of the MCC category for capping incorrectly ignores the material cost of capping and cleaning refrigeration specification tube.
- Provision of MM Kembla's cost data concerning the production of tubes that conform to Australian refrigeration standard AS/NZS 1571 and are fitted with a cap.⁹¹
- General discussion concerning the relevance of cleaning requirements for tubes conforming to Australian refrigeration standard AS/NZS 1571.
- Relevance of cleaning costs when using a refrigeration model as the surrogate for an exported plumbing model, i.e. differences between Australian standard AS 1432 (plumbing) and AS/NZS 1571 (refrigeration).
- Explanation of the cleaning requirements for tube to ASTM B280 versus AS/NZS 1571.
- Estimate of cleaning costs for tube with a temper in the 'Half Hard' or 'Bendable' categories.⁹²

⁹⁰ EPR 580, document no 010.

⁹¹ By reference to its 14 May 2021 submission to Investigation 557 at EPR 557, document no 023 (Confidential Attachment 7).

⁹² See Confidential Attachment 13 to the submission.

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12 November 2021⁹³

- Comments in response to Hailiang's questionnaire response that explains issue identifying costs for tube cleaning, capping and direct labour and how Hailiang can claim these costs are immaterial when it cannot identify such costs.
- MM Kembla contends Hailiang recognises costs for capping as being a packaging expense.
- Costs for capping and cleaning of tubes should be recognised in normal values by way of an upwards adjustment.

18 November 2021⁹⁴

- Further discussion regarding Hailiang's disclosures with respect to identification of tube capping costs.⁹⁵
- MM Kembla reiterates its concerns about Hailiang's ability to accurately report costs for tube capping and cleaning.

14 September 2022⁹⁶

- MM Kembla details the matters raised in its submissions prior to the Commissioner deciding to terminate the investigation. This includes statements regarding the following:
 - MM Kembla's evidence to support that tube cleaning and capping costs are material.
 - the exporter's records regarding recognition of cleaning and capping costs.
 - the commission's verification findings on the materiality of cleaning and capping costs, i.e. that they are not material with respect to Hailiang.

MM Kembla's representations to the ADRP also argue the cost of cleaning associated with tubes produced for the Australian market is higher than that for Hailiang's domestic market tubes.⁹⁷ MM Kembla provided its own standard cost profiles to emphasise the materiality of cleaning expenses relative to the overall cost of production for tubes produced to the refrigeration standard AS/NZS 1571.⁹⁸

In response to MM Kembla's submissions on cleaning and capping, the commission received the following from Hailiang:

- Hailiang points to the commission-verified cost of the tube cap as being immaterial.⁹⁹
- The cost of cleaning and associated labour, energy and supplemental material costs are properly recorded and included in its submitted production cost data.¹⁰⁰

⁹³ EPR 580, document no 015, pp. 25-27.

⁹⁴ EPR 580, document no 016.

⁹⁵ See Hailiang Verification Report, Chapter 2.2.1, p.5 at EPR 580, document no 009.

⁹⁶ EPR 580, document no 023, p. 4 and pp. 6-7.

⁹⁷ ADRP Decision, para 84-86.

⁹⁸ ADRP Decision, para 149.

⁹⁹ EPR 580, document no 013, Item 10, pp. 9-10.

¹⁰⁰ EPR 580, document no 013, Item 13, pp. 10-11.

Commission assessment

The commission reviewed MM Kembla's materiality claims by analysing the cost data it provided for a selection of tubes made to conform with refrigeration standard AS/NZS 1571.¹⁰¹ The ratios cited by MM Kembla were in respect of total unit fabrication cost rather than total unit production cost inclusive of raw material expenses. Fabrication costs make up 10% of total cost. When total unit cost is factored into the equation, the ratio of cleaning and capping costs is significantly lower.¹⁰² Bill of material data provided by MM Kembla after the commission's November 2022 visit was useful for identifying the direct labour, machine and overhead cost components relevant to capping and cleaning.¹⁰³

The commission also examined Hailiang's production processes relating to capping and cleaning at chapter 3.5.1¹⁰⁴ and in chapter 3.5.2¹⁰⁵. This established Hailiang uses the same processes for cleaning and capping tubes, regardless of the standard or market for which they are produced. The commission relies on these findings for concluding there are no grounds to perform normal value adjustments with respect to cleaning and capping.

Although the commission concludes normal value adjustments are not necessary for the attribute of capping and cleaning, the available information highlights that the exporter's allocation of direct labour and manufacturing overhead expenses may not have been to the required accuracy for tube models that are capped and cleaned.

A review of Hailiang's verification data found the cost of the plastic tube caps was separately reported but the value of other costs relevant to capped tubes was unclear. The other relevant costs being direct labour and manufacturing overhead expenses for the cleaning process that is performed before installation of the cap, and direct labour and manufacturing overhead expenses for installation of the cap.

RFI responses from Hailiang supplied specific information about its cleaning and capping costs that has allowed the commission to address matters such as materiality and basis of allocation. Hailiang's RFI confirms the cost associated with capping and cleaning costs, inclusive of the cost for the plastic cap, direct labour and manufacturing overhead, were of a sufficient value to warrant separate recognition. The materiality of these costs was not of the level claimed by MM Kembla.¹⁰⁶

The commission's assessment of Hailiang's costs included a comparison to data provided by exporters that cooperated with Investigation 557 and exported the goods in a period that overlaps with this investigation. Having regard to the available information about capping and cleaning costs, the commission considers it necessary to amend Hailiang's reported cost of production for its domestic sales of tubes with a cap.

The costs provided by Hailiang have been added to the existing cost to make and sell (CTMS) data reported for sales of capped tubes. The revised CTMS figures have then been used to identify domestic sales of capped tubes made in the OCOT. This ensures the normal value of tubes has regard to the cost of production for the tube and the full cost associated with tube cleaning and capping, not just the cost of the plastic cap itself.

¹⁰¹ See MM Kembla Confidential Attachment 7 to EPR 557, document no 023.

¹⁰² Worksheet 'MM Kembla' in Confidential Attachment 4.

¹⁰³ EPR 580, document no 026.

¹⁰⁴ See 'Production Likeness'.

¹⁰⁵ See 'Capping'.

¹⁰⁶ See Table 2 'Cost Comparison Summary' in Confidential Attachment 4.

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In Hailiang's case, its RFI response reports that all production of tube is subject to cleaning.¹⁰⁷ Based on this disclosure the commission considers the production cost figures reported in G-4 of its REQ reasonably reflect the cost of cleaning, but it is necessary to add direct labour and manufacturing overheads in relation to the capping activity.

The commission considers that taking the steps outlined above ensures section 43 of the Regulation is satisfied, although it may induce a non-material double count of costs that are already included in the initial presentation of Hailiang's CTMS data.

4.4 Dumping assessment – Vietnam

4.4.1 Hailiang (Vietnam) Copper Manufacturing Company Limited

Verification

The commission conducted a remote verification of the REQ from Hailiang. The commission also issued two further RFIs which were received and considered for the findings outlined in this report.

The commission is satisfied that Hailiang is the producer of the goods. The commission is further satisfied that the information provided by Hailiang is complete, accurate and relevant for the purpose of determining the variable factors applicable to its exports of the goods.

A report covering the REQ verification findings is available on the public record.¹⁰⁸

ADRP review and submissions received on export price

MM Kembla submits that transactions between Hailiang and a related Australian importer, Hailiang Australia, are not arms length.¹⁰⁹ MM Kembla's claims centre on the alleged payment of rebates by Hailiang or Hailiang HK to the Australian importers of the goods. This issue is a ground for review in MM Kembla's application to the ADRP.¹¹⁰

In its review of the commission's approach in TER 580, the ADRP concluded that it was not the correct or preferable decision to find sales between Hailiang HK and Hailiang Australia are arms length transactions.¹¹¹ The ADRP cites the following two reasons:

- the profit margin determined on Hailiang Australia's sales of imported goods was not net of 'off-invoice' rebates.¹¹²
- alleged 'off-invoice' rebates paid by Hailiang HK to Australian customers requires further assessment.¹¹³

In MM Kembla's submission made after the ADRP revoked the Commissioner's decision to terminate, it outlines the findings of other investigations as the basis for why it considers

¹⁰⁷ Hailiang response to 16 December 2022 RFI at Questions C-1(c).

¹⁰⁸ EPR 580, document no [009](#).

¹⁰⁹ EPR 580, document nos 010, 016.

¹¹⁰ ADRP Decision, Ground 3.

¹¹¹ ADRP Decision, para 126.

¹¹² ADRP Decision, para 124.

¹¹³ ADRP Decision, para 125.

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Hailiang's sales to Hailiang Australia should not be considered arms length.¹¹⁴ These other investigations relate to findings where the exporter and its related intermediary and Australian customer are all within the same body corporate.¹¹⁵ MM Kembla contends a finding of arms length for a portion of the export supply chain is rare and there is no evidence to demonstrate competitive behaviour between Hailiang and Hailiang Australia.

Commission's assessment

The commission's initial findings that sales between Hailiang and Hailiang HK are not arms length is not contested by MM Kembla or Hailiang.

To address the matters upon which the ADRP based its conclusions, as well as those raised by MM Kembla, the commission obtained further information from Hailiang in two RFI rounds received in February and March 2021. Each RFI sent to Hailiang sought information about the nature of rebates paid by Hailiang or Hailiang HK and Hailiang Australia's operations and selling, general and administration (SG&A) costs. The commission also obtained further information from MM Kembla in relation to its evidence of rebates paid by Hailiang HK.¹¹⁶

Using the new information supplied by Hailiang, as well as information supplied by MM Kembla and existing case records, the commission verified the accounts receivable journals of Hailiang and Hailiang HK to assess the existence of rebates paid to Australian customers. The commission also undertook a complete review of Hailiang Australia's profitability and SG&A expenses during the investigation period, and reconsidered if sales between Hailiang HK and Hailiang Australia were arms length transactions.

As a result of the further work undertaken, the commission finds the following:

- Australian importers of the goods supplied by Hailiang did not receive rebates of any kind.
- The rate of SG&A expense relevant to Hailiang Australia requires an upwards revision.
- The price of Hailiang Australia's sales of the goods it imported from Hailiang in Vietnam were profitable. This assessment takes account of rebates Hailiang Australia gives to its customers.
- Examination of Hailiang HK's accounts receivable data confirms Hailiang Australia paid for all of its purchases in full. The value of the payments matched the invoice value reported for the sale of the goods.
- The sale of the goods by Hailiang to Hailiang HK are not arms length.
- The sale of the goods by Hailiang HK to Hailiang Australia are arms length.
- The export price of the goods exported to Hailiang Australia should be based on the price paid by Hailiang Australia, less importation costs, less an amount of Hailiang HK's SG&A costs and other costs arising after exportation.

The detailed findings on each of the points above are outlined in the following export price assessment.

Export price

¹¹⁴ See *Arms-length Precedent Considerations* in EPR 580, document no 023, pp.16-17.

¹¹⁵ Anti-Dumping Commission Investigations 590 and 578 and United States Department of Commerce Investigation into Seamless Refined Copper Pipe and Tube from the Socialist Republic of Vietnam ([A-552-831 Dated: 8 August 2021](#)).

¹¹⁶ EPR 580, document no 026, MM Kembla Visit File Note, Item 8, pp.11-12.

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The commission considers Hailiang to be the exporter of the goods because it:

- is the principal located in Vietnam, the country of export
- is the manufacturer of the goods
- is named on the commercial invoice as the supplier
- is named as consignor on the bill of lading
- arranges and pays for the inland transport to the port of export
- arranges and pays for the port handling charges at the port of export and
- arranges and pays for the ocean freight and marine insurance.

The commission observes that all of Hailiang's export sales to Australia were made through a related trading entity, Hailiang HK. Hailiang HK then sells the goods to Hailiang's affiliated importer, Hailiang Australia, as well as to unrelated importers.

Off-invoice rebates

MM Kembla provided evidence relating to off-invoice rebates paid by Hailiang HK. MM Kembla's evidence has been examined in relation to the goods, even though it is in respect of a product specifically excluded from the goods description.¹¹⁷ The available information does not support a conclusion that Hailiang HK provided off-invoice rebates for its sales of the goods to Australia customers.

The commission tested MM Kembla's evidence by obtaining the accounts receivable journals of Hailiang HK for entries made in the period 1 July 2019 to 30 June 2021. This information related to all sales of all products, not just the goods. It was also sufficient to enable identification of the rebate cited in MM Kembla's evidence.¹¹⁸ The commission has tested for the existence of rebates paid on sales of the goods by looking for transaction patterns similar to the kind relevant to MM Kembla's evidence.

Hailiang HK's accounts receivable data confirms sales to unrelated parties were paid in full, as the amounts relevant to commercial invoices matched the figures recording receipt of funds.¹¹⁹ The commission was similarly able to reconcile funds received with invoice values for sales to Hailiang Australia.¹²⁰

Hailiang Australia SG&A expenses

Further consideration of Hailiang Australia's arms length assessment involves obtaining additional information about its operational costs. In its February 2023 response to the commission's RFI, Hailiang's related party exporter in China, Zhejiang Hailiang Co., Ltd, outlined details about Hailiang Australia's operational arrangements in Australia. This includes examination of Hailiang Australia's agreements with third party logistics vendors who perform distribution functions on behalf of Hailiang Australia.¹²¹

As a result of the data in Hailiang's RFI response, the commission finds it necessary to increase the value of Hailiang Australia's SG&A expenses compared to those ascertained

¹¹⁷ The commission notes that the rebates the subject of MM Kembla's claim are not the same as those Hailiang Australia gives its customers.

¹¹⁸ See worksheet 'Rebate Evidence' in Confidential Attachment 5.

¹¹⁹ See worksheet 'Assessment' in Confidential Attachment 5.

¹²⁰ See Table 2 on worksheet '20221216 RFI Response' in Confidential Attachment 5

¹²¹ See Investigation 557 Zhejiang Hailiang Co., Ltd response to 20 February 2023 RFI, Part B.

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during verification.¹²² The revised rate of SG&A has been used to assess Hailiang Australia's profitability.¹²³

Hailiang Australia profitability

The commission has re-assessed the profitability of Hailiang Australia's sales and found the company's sales of the imported goods to be profitable. The determination of profit for Hailiang Australia takes account of the higher SG&A costs ascertained above, and rebates Hailiang Australia gave to certain customers.

The commission assessed Hailiang Australia's profit in a sample of importations selected for verification and at the transaction level for all sales in the investigation period. Hailiang Australia reports Hailiang's purchase order information in its Australian sales listing, so the actual cost of the goods in a sale could be traced back to the price on the supplier's sales invoice. The profit margin found in both assessments was comparable, although a higher profit was observed in the examination of all sales.¹²⁴

It was not possible to test whether Hailiang Australia generated a profit on all of its purchases from Hailiang. This is because a large proportion of Hailiang's sales to Hailiang Australia occurred in the final two months of the investigation period. Overall, the volume imported and sold by Hailiang Australia (and captured in the profit assessment) represented about 50% of Hailiang's sales to Hailiang Australia during the investigation period.¹²⁵

Export price arms length assessment

The commission examined the supply of goods by Hailiang to Hailiang Australia, and considers Hailiang HK's purchase of the goods from Hailiang are not arms length transactions. The commission's assessment is that the subsequent sale of the goods by Hailiang HK to Hailiang Australia are arms length transactions.¹²⁶

The commission considers the terms of trade between Hailiang Vietnam and Hailiang HK were not on arms length commercial terms for the following reasons.

Hailiang HK's profit margin in relation to its role in the sale of the goods to Australian customers is insufficient to cover its SG&A expenses. The sale of the goods by Hailiang HK appears to be a pass through transaction, as Hailiang HK does not apply a mark-up over the price it pays Hailiang before selling the goods to Australian customers. The commission has observed the sales by Hailiang HK are denominated in a different currency compared to Hailiang's sales invoice.

The commission concludes the sales of the goods by Hailiang to Hailiang HK are not arms length transactions as the price paid by Hailiang HK appears to be influenced by its relationship with the seller and this price is not suitable for calculating an export price.¹²⁷

¹²² The prior version of SG&A costs is at EPR 580, document no [008](#), worksheet '(b) Sales route spreadsheet' Confidential Appendix 3 'Profitability'.

¹²³ See worksheet '580 SG&A Calc' in Confidential Attachment 6.

¹²⁴ See Hailiang Australia Profitability Analysis worksheets '(a) Sales route spreadsheet' and '(b) Sales' in Confidential Attachment 7.

¹²⁵ See Hailiang Australia Profitability Analysis worksheets '(d) Hailiang VN Selling Price' in Confidential Attachment 7.

¹²⁶ Section 269TAA.

¹²⁷ Section 269TAA(1)(b).

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Examination of Hailiang HK's sales to related importer Hailiang Australia found the circumstances of the sales were comparable to those identified for sales to unrelated entities during the investigation period.

In its RFI response to the commission, Hailiang confirms Hailiang Australia paid for all of its purchases from Hailiang HK in full. Bank statements and accounts receivable journals for Hailiang and Hailiang HK verify its response.¹²⁸

The credit terms Hailiang reported for its Australian sales were generally shorter than the period established by an examination of source documents. This issue was universal for all of Hailiang's Australian customers. The longer credit terms are reflected in Hailiang's normal value by way of an adjustment to account for differences in the terms of sale.

The commission has also reviewed Hailiang's export prices within the context of MM Kembla's submission regarding whether trading between Hailiang and Hailiang Australia represents 'competitive behaviour'.

Examination of Hailiang's revenue shows its sales to Hailiang Australia was profitable. The price paid by Hailiang Australia to Hailiang HK was comparable to Hailiang's unrelated Australian customers. Profitability of Hailiang's sales to Hailiang Australia was tested using Hailiang Australia's selling prices and deducting all supply chain expenses and the cost of goods sold.¹²⁹

Verification of Hailiang's sales of the goods to Australia found its prices were set using competitive market prices for copper as the base, plus a margin for fabrication cost and profit. The pricing mechanism used by Hailiang was common throughout its customer base and mimics the approach of exporters examined for Investigation 557 and by MM Kembla. There is no evidence of internal pricing mechanisms that favour Hailiang's related party customer in Australia.

The available information relevant to this investigation does not support a conclusion that prices of goods sold by Hailiang HK to Hailiang Australia are necessarily influenced or manipulated as a result of these two companies being part of the same body corporate.

As noted above, sales by Hailiang HK to Australian customers were universally insufficient to cover Hailiang HK's own SG&A cost. This was not a circumstance unique to transactions between Hailiang HK and Hailiang Australia. It is more likely due to the arrangements between Hailiang and Hailiang HK which the commission considers is not arms length.

Having regard to the available information, the commission is satisfied that transactions between Hailiang HK and Hailiang Australia are arms length.

In respect of Hailiang HK's sales of the goods to both related and unrelated Australian customers during the investigation period, the commission considers these sales to be arms length as it found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price or
- 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) or

¹²⁸ See Tables 3 and 4 on worksheet 'Assessment' in Confidential Attachment 5.

¹²⁹ See Tables 1 and 2 on worksheet '(f) Export Profit Analysis' in Confidential Attachment 7.

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- the buyer (or an associate of the buyer) was directly (or indirectly) reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.¹³⁰

Export price calculation method

In respect of the export sales of the goods to Australia by Hailiang, Hailiang HK's role as an intermediary means that the importer has not purchased the goods from the exporter. This prevents determination of export prices under sections 269TAB(1)(a) or (b). The commission recommends that the export price be calculated under section 269TAB(1)(c), by having regard to all the circumstances of the exportation. The export price is the price the importer paid for the goods, less amounts for Hailiang HK's SG&A costs and other costs arising after exportation.

Normal value

In respect of Hailiang's domestic sales to both related and unrelated customers during the investigation period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than 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) or
- the buyer (or an associate of the buyer) was directly (or indirectly) reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.¹³¹

The commission considers that all domestic sales made by Hailiang to its domestic customers during the investigation period were arms length transactions.

As detailed in the Hailiang verification report, the commission assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of sales was not less than 5%. The commission has considered the volume of each exported MCC and whether those MCCs were sold domestically in the table below:

Export MCC¹³²	Are there domestic sales?	Is the volume of domestic sales in the same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
P-B-U-U-S-P-AU	No	No	Surrogate MCC R-H-U-C-S-P-AU used, with specification adjustment under section 269TAC(8)
P-H-U-C-S-P-AU	No	No	Surrogate MCC R-H-U-C-S-P-AU used, with specification adjustment under section 269TAC(8)
P-H-U-U-S-P-AU	No	No	Surrogate MCC R-H-U-C-S-P-AU used, with specification adjustment under section 269TAC(8)
R-B-U-C-S-P-AU	Yes	Yes	Domestic sales used under section 269TAC(1)

¹³⁰ Section 269TAA.

¹³¹ Section 269TAA.

¹³² Applies the MCC structure shown at Table 4 as amended with the new category shown at Table 5.

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Export MCC ¹³²	Are there domestic sales?	Is the volume of domestic sales in the same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
R-H-U-C-S-P-AU	Yes	Yes	Domestic sales used under section 269TAC(1)

Table 7 Assessment of Hailiang Domestic Sales¹³³

Adjustments

The commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The commission considers these adjustments to be necessary to ensure a fair comparison between normal values and export prices.

Adjustment type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic inland transport	Deduct an amount for domestic inland transport
Domestic packaging	Deduct an amount for domestic packaging
Domestic ocean freight and insurance	Deduct an amount for domestic ocean freight and insurance
Domestic handling and other expenses	Deduct an amount for domestic handling and other expenses
Export packaging	Add an amount for export packaging
Export inland transport	Add an amount for export inland transport
Export handling and other charges	Add an amount for handling and other charges
Export credit terms	Add an amount for export credit terms
Specification adjustment	Add or deduct an amount for specification differences
Timing differences	Add an amount for timing differences

Table 8 Hailiang Normal Value Adjustments

Submissions on Hailiang normal value adjustment

MM Kembla contends it is necessary to perform certain normal value adjustments to account for differences arising due of the following factors.¹³⁴

- scrap
- copper costs
- drawing thin
- fabrication cost differences allegedly caused by differing standards
- capping and cleaning
- the application of rebates to domestic customers.

With the exception of adjustments relating to scrap and copper costs (because the ADRP's review of the commission's approach in SEF 580 and TER 580 concluded that the commission made the correct or preferable finding), the commission's assessment of each claim is outlined in the discussion below. In summary, the commission does not find grounds to make the adjustments MM Kembla seeks.

Drawing thin

¹³³ See also chapter 3.5.1 on the suitability of domestic models as surrogates for certain normal values.

¹³⁴ EPR 580, document nos 010, 015, 016, 023.

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The commission's assessment in chapter 3.5 concludes that the level of drawing thin in tubes produced for Hailiang's domestic markets was within the range specified by Australian standards. The commission could not find a discernible cost associated with the practice of drawing thin that creates a difference affecting the comparison between export prices and domestic prices.

Fabrication cost difference caused by standards

MM Kembla submits that differences between the dimensions of tube in Australian standard AS/NZS 1571 for the Australian market and tubes to ASTM B280 for the Vietnamese market cause the Australian market tubes to have higher fabrication costs. MM Kembla also claims that Vietnamese producers achieve higher yield and lower reject rates as a result of tube standards in Vietnam being non-mandatory. This allows producers to achieve lower product costs in relation to tubes for the Vietnamese market.¹³⁵

MM Kembla's argument centres on its contention that Australian standards are more strictly applied and enforced, and compliance to those standards is maintained at levels that are higher than the level in the Vietnamese markets.

The cost differences cited by MM Kembla arise through a lower production yield and higher rejection rate for non-compliant Australian product. The commission understands these things involve higher cost due to out of specification tube leading to an increase in scrap costs (lowering yield) and an incremental increase in fabrication cost to meet production orders.

MM Kembla's claim appears to be based on a hypothetical scenario that requires accepting Hailiang's production process should be more expensive than it reports in relation to its Australian tube production.

The commission appreciates the logic behind MM Kembla's proposition regarding the relationship between quality assurance and cost of production, although its evidence does not confirm the specific arrangement in place at Hailiang. Nor does it support that the quality assurance system in place for Hailiang's domestic market tube is necessarily less stringent (or of a lower cost) than its Australian market tube production.

The commission's assessment of like goods in chapter 3.5.1 establishes Hailiang's production process for its domestic and Australian markets have comparable cost profiles and the cost variation between tubes of different sizes was minimal.¹³⁶ This suggests the cost associated with yield loss are likely similar in the production processes for domestic and Australian market tubes.

The commission has also examined evidence that shows production variation of tube for Hailiang's domestic market was minimal.¹³⁷ Hailiang's production process in relation to tube for its domestic and Australian markets appears similarly capable. Hailiang's response to the commission's 16 December 2022 RFI was satisfactory for confirming its quality control process is not specific to any particular product standard.¹³⁸

The available evidence does not support adjusting normal value with respect to yield losses or due to differences in tube size.

¹³⁵ EPR 580, document no [010](#), para (v), pp.27-28.

¹³⁶ Worksheet 'Cost Profiles' in Confidential Attachment 1.

¹³⁷ Worksheet 'Hailiang VN' Confidential Attachment 3.

¹³⁸ Hailiang response to 16 December 2022 RFI, Question D-5, p. 38.

Capping and cleaning costs

Chapter 3.5 details the commission's analysis of the exporter's costs associated with capping and cleaning, in order to address MM Kembla's various claims on the issue.¹³⁹ The results of the analysis satisfied the commission there are no grounds to adjust normal value with respect to capping and cleaning costs.

As the MCC structure for Hailiang now includes a category for capped tubes and the exporter advises there is no market-specific process for cleaning and capping, there is no need to perform further adjustments for this product attribute. Fair comparison between export price and normal value is achieved when domestic and export sales are mapped to the MCC sub-category for 'Capped' tubes.

Further discussion about the treatment of capping and cleaning costs is provided at chapter 4.3.

Domestic market customer rebates

With respect to MM Kembla's contention regarding rebates for domestic sales, it claims to have knowledge of Hailiang paying rebates to its domestic customers in Vietnam and asserts that an increase in normal value is required.¹⁴⁰

The commission takes account of rebates for determining an exporter's net selling prices by requiring such amounts to be reported in the sales listing provide by exporters in their REQ.¹⁴¹ The presence of a rebate is not an adjustment performed under section 269TAC(8). In relation to Hailiang, the commission reviewed the verification of Hailiang's response at D-1.5 of its REQ and confirms that domestic selling prices for the dumping margin calculation are net of rebates.

Dumping margin

The dumping margin in respect of the goods exported to Australia by Hailiang for the investigation period is **0.0%**.

The commission's calculations are included at **Confidential Attachments 8 to 11**.

Submission on how to calculate dumping margin

MM Kembla submits that export prices and normal values should be compared in the price per linear metre rather than per kilogram. MM Kembla claims that price per linear metre is an accurate representation of the price paid per length for the actual amount of copper in the product and the associated fabrication cost. MM Kembla also submits that sales of tube on a per length basis is standard industry practice.¹⁴²

The commission does not agree with MM Kembla in relation to the copper tube industry practice for pricing.

Data obtained for Investigation 557 found exporters value copper tubes for their domestic and Australian sales using a per kilogram unit of measure and rely on the same price setting practice for their domestic and Australian sales.¹⁴³

¹³⁹ EPR 580, document nos 010, 015, 016, 023.

¹⁴⁰ EPR 580, document no 010 Section (vi), p. 28.

¹⁴¹ The Manual, Chapter 15.3, 'Other discounts and rebates', p.60.

¹⁴² EPR 580 document no 025, Section 2, p.2.

¹⁴³ See EPR 557 document no 050, p.2 and document no 041, p.4.

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Verification of Hailiang's REQ found that the prices for its Australian sales use a formula that reflects the market price of copper expressed on either a per kilogram or per tonne basis, plus a mark up to cover fabrication expenses and profit, that is also expressed in a unit of measure being kilogram or tonne.¹⁴⁴

Examination of Hailiang's invoices and order sheets for its domestic sales confirms the unit of measure for the price of goods sold is kilograms.¹⁴⁵ Hailiang's Australian sales documents show a different process where the invoice between Hailiang and Hailiang HK lists sales using kilograms as the unit of measure which is then converted to a piece price on the Australian customer's invoice.¹⁴⁶ The price expressed in kilograms was the same for all tube sizes listed on the invoice. Verification of MM Kembla's sales ascertained that it also uses the same pricing mechanism but uses a pieces unit of measure at the point of sale.

The available information does not support a conclusion that pricing for goods sold in the Australian market is necessarily to any standard. It is apparent that the tube size is less determinative for price setting. Prices were comparable for each tube size sold on the same invoice. This is due to the influence of copper costs which represent over 90% of the total production cost. The remaining cost associated with fabrication is of lesser importance.

4.4.2 Uncooperative exporters – Vietnam

Since Hailiang is the only exporter to have provided a REQ, the commission considers all exporters of the goods from Vietnam, other than Hailiang, to be uncooperative exporters for the purposes of this investigation.

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative exporters, export prices are to be calculated under section 269TAB(3) and normal values are to be calculated under section 269TAC(6).

As Hailiang was the only cooperating exporter of copper tube from Vietnam, the commission has analysed exports by Hailiang to determine whether it would be appropriate to rely on Hailiang's information in calculating variable factors for uncooperative exporters. The commission has compared exports by Hailiang with other exporters of copper tube from Vietnam and observes the following:

- Hailiang is the largest exporter of copper tube from Vietnam.
- Hailiang's verified weighted average Free on Board (FOB) export price is consistent with the weighted average FOB export price for all other exporters reported in the ABF import database.

The commission has had regard to the above analysis and considers that the verified export price of Hailiang is the most relevant information for determining an export price for uncooperative exporters during the investigation period.

The commission has relied on Hailiang's weighted average export price during the investigation period, pursuant to section 269TAB(3).

¹⁴⁴ GP3 in the Verification Work Program for Hailiang

¹⁴⁵ See Hailiang REQ at D-3.

¹⁴⁶ See Hailiang REQ at B-3.

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The commission has determined a normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information. Specifically, the commission has had regard to the normal value calculated for the sole cooperating exporter from Vietnam, Hailiang. This exporter's data is considered an appropriate basis for the uncooperative exporter's normal value as it was subject to a full verification and represents information that is relevant for assessing the domestic market in Vietnam.

In calculating the normal value for uncooperative exporters, downward adjustments relevant to Hailiang have not been applied to uncooperative exporters on the basis it is not possible to ascertain they would be relevant.

The commission has determined the dumping margin for uncooperative exporters is **1.3%**.

The commission's calculations are included at **Confidential Attachments 12 and 13**.

4.5 Summary of dumping margins

The table below sets out a summary of the commission's dumping margins.

Country	Exporter	Dumping margin
Vietnam	Hailiang	0.0%
	Uncooperative exporters	1.3%

Table 9 Summary of dumping margins

4.6 Proposed termination – level of dumping

Section 269TDA(1)(b)(i) provides that the Commissioner must terminate an investigation, in so far as it relates to an exporter of the goods, if satisfied that there has been no dumping by the exporter of any of those goods.

Section 269TDA(1)(b)(ii) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if there has been dumping by the exporter of some or all of those goods, but the dumping margin, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%.

Accordingly, the Commissioner proposes to terminate the dumping investigation in relation to Hailiang (pursuant to section 269TDA(1)(b)(i)) and in relation to all other exporters from Vietnam (pursuant to section 269TDA(1)(b)(ii)).

5 PROPOSAL TO TERMINATE THE INVESTIGATION

Section 269TDA provides for when the Commissioner must terminate an investigation.

Based on the findings in this SEF, and subject to any submissions received in response, the Commissioner proposes to terminate the investigation in relation to:

- Hailiang, on the basis that that there has been no dumping, in accordance with section 269TDA(1)(b)(i), and
- all other exporters from Vietnam, on the basis that there has been dumping, but the margin of dumping is less than 2%, in accordance with section 269TDA(1)(b)(ii).

6 ATTACHMENTS

Confidential Attachment 1	Product Attribute Study - Hailiang
Confidential Attachment 2	Product Attribute Study – MM Kembla
Confidential Attachment 3	Production tolerance analysis
Confidential Attachment 4	Tube cleaning and capping cost study
Confidential Attachment 5	Hailiang Hong Kong accounts receivable study
Confidential Attachment 6	Hailiang Australia SG&A expenses assessment
Confidential Attachment 7	Hailiang Australia profitability assessment
Confidential Attachment 8	Hailiang Export Price
Confidential Attachment 9	Hailiang CTMS
Confidential Attachment 10	Hailiang Normal Value
Confidential Attachment 11	Hailiang Dumping Margin
Confidential Attachment 12	Uncooperative exporter normal value
Confidential Attachment 13	Uncooperative exporter dumping margin