

19 August 2015

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By email

Dear Director

Zhejiang Yueling Co., Ltd

Review of anti-dumping measures concerning aluminium road wheels from China

We have been instructed to contact you on behalf of Zhejiang Yueling Co., Ltd (“Yueling”) in this matter.

The purpose of this letter is to respectfully request the Commission to reconsider its preliminary determinations as communicated to Yueling in emails dated 15 June 2015 (“the 15 June letter”) and 22 July 2015 (“the 22 July letter”), and as subsequently referenced in Statement of Essential Facts No 263 (“the SEF”) that, in summary:

- the information provided by Yueling is unsuitable for the purpose of determining dumping margin and subsidy margin;

and, because of this,

- the dumping margin for Yueling is to be worked out using the highest normal value and the lowest export price as the Commission ascertained based on the information from certain other selected exporters in this review; and
- the subsidy margin for Yueling is to be worked out by reference to the highest unit benefit received by other selected exporters (in relation to Program 1), and the lowest export price.

These preliminary determinations were made despite Commission’s recognition of Yueling being a cooperative exporter in this review.

With respect, Yueling submits that the Commission’s preliminary determinations regarding the unsuitability/unreliability of its data, and the decision to calculate dumping and subsidy margins for Yueling based on the most unfavourable data from secondary source, are unreasonable and unjustified once the facts and circumstances are fairly considered, and once the relevant legal requirements an investigating authority must observe are properly understood.

It is Yueling’s submission that the Commission should accept the information provided by Yueling in this review and should accordingly re-determine the dumping margin and subsidy margin using Yueling’s own data.

The reasons and facts supporting Yueling's submissions are discussed in detail as follows.

A Decision to disregard Yueling's data due to certain issues identified in relation to the Australian sales spreadsheet

Yueling notes that the Commission initially advised Yueling about its decision to disregard Yueling's data on the basis of unsuitability in its 15 June letter. The following was said in that letter:

This decision follows the significant corrections Zhejiang Yueling made to its Australian sales data, which was submitted on 20 May 2015 alongside a response to a request from the Commission for further information.

The Commission views that the nature and scope of the corrections made by Zhejiang Yueling is of concern, because they occurred as a result of verification activities undertaken in relation to a very small sample of the company's total Australian sales. The Commission considers that there is a risk that Zhejiang Yueling's data may contain many other errors that have not yet been identified, and may not be identified even if further detailed verification processes are undertaken.

The Commission has thereby determined that it is not satisfied with the Australian sales data submitted by Zhejiang Yueling, and hence cannot use the company's data as a means of establishing dumping margins for the purposes of this review.

Yueling notes that this letter provided no specific reasons for this dissatisfaction, apart from the perceived "risk" of "errors that have not yet been identified", and the Commission's view that the "nature and scope of the corrections" was "of concern". The 15 June letter gave no indication as to the specific information that may have been required to address that "risk" and "concern".

Nonetheless, Yueling was at pains to try to comprehend the basis of and the causes for the Commission's decision. It provided its response to the Commission almost immediately, on 18 June 2015. Yueling provided additional explanations of the corrections that it had made to the Australian sales spreadsheet, and additional documentation relating to the revised data in the Australian sales spreadsheet to demonstrate the nature of the correction and the accuracy of the information provided.

Yueling then received an email from the Commission on 22 July, attaching the 22 July letter. The 22 July letter further confirmed the Commission's decision to disregard Yueling's data, this time with additional comments advising three "key reasons" for the decision, namely:

[CONFIDENTIAL TEXT DELETED – confidential letter content of observations regarding sales information, as summarised at page 53 of the SEF]

A non-confidential summary of this letter was subsequently adopted in the relevant section of the SEF describing the Commission's preliminary findings.

At the outset, Yueling wishes to express its disappointment that, apart from being advised about the Commission's decision twice in the above mentioned letters, Yueling was not given any opportunity to address any specific "risk" or "concern" the Commission may have perceived as being of such nature that they could result in Yueling's information being disregarded in the determination of dumping and subsidy margins. Put simply, any concerns or questions regarding verifiability of information could have been addressed by Yueling had the Commission simply asked Yueling to do so.

Indeed, Yueling notes that the correction to its Australian sales spreadsheet that it submitted on 20 May 2015 was provided voluntarily and proactively by Yueling as a result of its own internal review of

the EQ response in the course of preparing responses to the Commission's other inquiries. This was done in the spirit of full cooperation and as a responsible participant to the investigation.

Yueling has at all times been committed to providing its cooperation to the Commission in this review. That continues to be the case. Yueling is confident in the suitability of the data it provided to the Commission in this review, and would like to offer further explanations, clarifications and supporting materials, in order to further assist the Commission's understanding and verification of its information, and so that the Commission can reverse its incorrect and unjustified opinion that Yueling's data is unsuitable for dumping and subsidy margin calculation purpose.

B Australian sales spreadsheet – invoice value verification

Yueling confirms that the corrected Australian sales spreadsheet B4.1 as provided to the Commission in its email dated 20 May ("the corrected Australian sales") can be matched with the relevant invoices.

In this regard, as Yueling has already explained, **[CONFIDENTIAL TEXT DELETED – information of confidential spreadsheet]**.

Yueling notes the Commission's reference to **[CONFIDENTIAL TEXT DELETED – invoice number]** as an example in relation to its reason to disregard Yueling's data in the 22 July letter, which was accompanied by the following observation:

[CONFIDENTIAL TEXT DELETED – observation regarding matching of invoice value with source document].

Yueling notes that it provided the relevant sales and account documentation in support of the data reported in the Australian sales spreadsheet regarding **[CONFIDENTIAL TEXT DELETED – invoice number]** in the following documents:

- Exhibit 4.5, the bundle of source documents for selected sales as required by the Commission, on 20 May 2015;
- Exhibit 1-4 - account voucher, provided in email dated 18 June 2015
- Exhibit 2-4 - tax invoice, provided in email dated 18 June, which duplicated the tax invoice already provided in Exhibit 4.5.

It is clear from both Exhibit 4.5 and Exhibit 1-4 that the total value of **[CONFIDENTIAL TEXT DELETED – number]** was charged in relation to this invoice. Within this, **[CONFIDENTIAL TEXT DELETED – number]** related to the goods under consideration ("the Goods"), and **[CONFIDENTIAL TEXT DELETED – number]** related to **[CONFIDENTIAL TEXT DELETED – commercial details]**, which are not the Goods. The total gross invoice value for **[CONFIDENTIAL TEXT DELETED – invoice number]** in the corrected Australian sales is also **[CONFIDENTIAL TEXT DELETED – number]**, which matches with the invoices.

Further, the commercial invoice at page 1, tax invoice at page 3, the Customs declaration at page 4 of Exhibit 4.5, and the accounting voucher at Exhibit 1-4 also show the detailed information relating to:

- individual line/item based invoice values, inclusive of **[CONFIDENTIAL TEXT DELETED – commercial details]**, as covered by this invoice in the Commercial Invoice, which correspond with the **[CONFIDENTIAL TEXT DELETED – number]** lines of data under this invoice as reported in the Australian sales spreadsheet; and

- **[CONFIDENTIAL TEXT DELETED – commercial details]** respectively, also in the tax invoice, the customs declaration form and the Exhibit 1-4 accounting voucher.

Lastly, the two accounting vouchers and the corresponding payment slips at pages 6 to 9 of Exhibit 4.5 also show Yueling being paid for the total amount of the invoice **[CONFIDENTIAL TEXT DELETED – payment details]**, also totalling **[CONFIDENTIAL TEXT DELETED – number]**.¹

Accordingly, Yueling respectfully submits, again, that the data reported in the Australian sales spreadsheet is indeed reliable and is fully supported by the relevant sales and accounting records, as shown in the **[CONFIDENTIAL TEXT DELETED – invoice number]** example.

In addition, not only did Yueling provide source document bundles for the selected transactions required by the Commission, it also provided tax invoices and accounting vouchers voluntarily in relation to the **[CONFIDENTIAL TEXT DELETED – number]** invoices (covering the transactions affected by the corrections to the Australian sales spreadsheet). The provision of these tax invoices and accounting vouchers was to demonstrate that the gross invoice value and **[CONFIDENTIAL TEXT DELETED – trading term]** prices reported in the corrected Australian sales and the source documents could be reconciled. To further assist the Commission’s understanding and satisfaction of the information reported in the corrected Australian sales spreadsheet, Yueling now also provides the commercial invoices in relation to the **[CONFIDENTIAL TEXT DELETED – number]** invoices. These also include a breakdown of the sales values on an item-by-item/line-by-line basis, corresponding with the line-by-line transactional values reported in the Australian sales spreadsheet.² These invoices are attached to this letter, at Appendix 1 **[CONFIDENTIAL ATTACHMENT]**.

Yueling invites the Commission to further review the data and the supporting materials it has provided. We submit that the Commission must be satisfied that the data reported in the corrected Australian sales spreadsheet can be verified against the relevant source documents.³

C Australian sales spreadsheet – [CONFIDENTIAL TEXT DELETED – information from confidential spreadsheet]

In the 22 July letter the Commission mentioned, for the first time, its opinion that the Australian sales spreadsheet:

[CONFIDENTIAL TEXT DELETED – confidential letter content, summarised at page 53 of the SEF]

Yueling would like to offer the following clarification and explanation in relation to these comments.

Firstly, Yueling did not “add” sales **[CONFIDENTIAL TEXT DELETED – sales information]** in the corrected Australian sales spreadsheet. This is demonstrated by comparing the original and corrected Australian sales spreadsheets:

- the total quantity reported under column “O” of the original Australian sales spreadsheet is **[CONFIDENTIAL TEXT DELETED – number]** pieces - the same as the corrected Australian sales;
- the total gross invoice value reported under column “P” **[CONFIDENTIAL TEXT DELETED – trading terms]** of the original Australian sales spreadsheet is **[CONFIDENTIAL TEXT DELETED – number]** - the same is reported under the **[CONFIDENTIAL TEXT DELETED – confidential data]** of the corrected Australian sales;

¹ **[CONFIDENTIAL TEXT DELETED – detailed description of the accounting vouchers].**

² **[CONFIDENTIAL TEXT DELETED – detailed explanation regarding confidential spreadsheet and invoicing method]**

³ **[CONFIDENTIAL TEXT DELETED – detailed explanation regarding reconciliation]**

- the total line of transactions is **[CONFIDENTIAL TEXT DELETED – number]** in the original Australian sales - it is the same total as in the corrected Australian sales.

Therefore it is clear that there was no “addition” of any transactions.

Secondly, Yueling was at loss to comprehend the Commission’s concerns about this matter when having received the 22 July letter. In trying to work out what the Commission’s concern might have been, Yueling further reviewed the information it provided to the Commission and discovered that the reference to the “added” sales **[CONFIDENTIAL TEXT DELETED – commercial information]** might be connected to its **[CONFIDENTIAL TEXT DELETED – sales details]**. Accordingly, Yueling suspects that this may have been the cause of the Commission’s comment regarding this issue.

[CONFIDENTIAL TEXT DELETED – detailed explanation regarding sales information].

[CONFIDENTIAL TEXT DELETED – information regarding certain clerical issues related to the sales information].

D Clarity regarding distribution channel

The last of the three “key reasons” cited by the Commission in confirmation of its decision to disregard Yueling’s information is described in the 22 July letter as follows:

[CONFIDENTIAL TEXT DELETED – confidential letter content, as summarised at page 53 of the SEF]

It is not clear to Yueling, what specific concerns or questions the Commission had regarding **[CONFIDENTIAL TEXT DELETED – commercial arrangement]**.

Yueling notes that it not only responded faithfully to the EQ with regard to export sales arrangements, but that it also responded faithfully to the Commission’s questions specifically regarding distribution arrangements in the Commission’s “additional information requests” dated 1 May, 12 May and 14 May.

In terms of “*costs associated with exporting the goods to Australia*” by Yueling, Yueling notes that it has already identified in the EQ response, and specifically in the Australian sales spreadsheet, **[CONFIDENTIAL TEXT DELETED – details of costs related to export sales]**.

Further, Yueling clarified in its 20 May response that, so far as Yueling is concerned, its Australian sales were made in **[CONFIDENTIAL TEXT DELETED – number]** channels. **[CONFIDENTIAL TEXT DELETED – sales channels]** For sales made in **[CONFIDENTIAL TEXT DELETED – information regarding pricing policy and selling costs]**.

In any case, Yueling respectfully submits that should the ADC have had any questions regarding Yueling’s distribution arrangement, or about Yueling’s response to the Commission’s information requests dated 14 May, it should have asked those questions. The explanations have at all times been simple and straightforward, and there was nothing wrong with the information that was submitted in that regard.

E Treatment of Yueling’s other information and calculation of dumping and subsidy margin

As discussed above, Yueling submits that the Commission cannot regard Yueling’s information as unreliable or unsuitable, on the basis of the potential issues and concerns identified by the Commission in its 22 July letter.

Further, Yueling submits that even if the Commission’s criticism regarding Yueling’s Australian sales

data was valid, it would still be unjustified to also disregard the other information provided by Yueling, including its domestic sales, production, income statement, and the cost to make and sell. Yueling has never been notified at any time during this review that the Commission considered there to be any issue regarding that other information.

Accordingly, without distracting from Yueling's primary submission that the Commission should not disregard Yueling's data at all, Yueling submits that the Commission must not disregard its data which is otherwise unquestioned and verifiable, such as the sales and production volume, cost to make and sell, and domestic sales, for the purpose of the calculation of normal value, a dumping margin and the subsidy margin. Yueling was at all times and remains a fully cooperative exporter – yet it has been prejudiced by the selection of the most adverse and unfavourable data in the calculation of its dumping and subsidy margin, for no good reason.

In this regard, Yueling notes that the Commission seemed to be satisfied with Yueling's cost and accounting records, and considered that the subsidy amount as reported by Yueling was indeed reliable to be used in working out the amount of subsidy received by Yueling. Yet the Commission still refused to recognise, in the allocation of these subsidy amounts for the purpose of working out a subsidy margin, that these clearly reliable and actual subsidy amounts should be attributed to Yueling's equally reliable and actual sales data, and proceeded to have these subsidy amounts *"attributed using the lowest weighted average export price and the lowest relevant turnover figures for other selected exporters"*. With respect, Yueling considers that such approach does not comply with the requirement to use all relevant information – which is clearly different from the "least favourable information" which has been adopted by the Commission.

In relation to the calculation of the subsidy, Yueling would also like to highlight that the finding that Yueling received a countervailable subsidy under Program 1 is clearly incorrect, not the least because the subsidy margin under that program was worked out thereby by *"using highest unit benefit received by other selected exporters"*. In this regard, Yueling refers to its response at Exhibit I-4.4 to the EQ response – [CONFIDENTIAL TEXT DELETED – supplier information].

F Commission's obligation under the Anti-Dumping Agreement

Yueling firmly believes that, in light of the full cooperation it has given in this review and its continued explanations and clarifications, including those provided in this letter, the Commission should be satisfied that the information provided by Yueling in this review is in fact suitable for the purpose of ascertaining an export price and normal value, and for the determination of a dumping margin and a subsidy margin.

It has been raised with the Commission in Yueling's previous correspondence that, in accordance with Article 6.8 of the Anti-Dumping Agreement, determination of Yueling's dumping and subsidy margins can only be made on the basis of "facts available", rather than the facts supplied by Yueling, if Yueling *"refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation"*. These descriptions clearly do not reflect Yueling's record of cooperation and provision of information to the Commission in this review. Yueling has always provided information as requested, and within the timeframe specified. As noted earlier, in fact Yueling went one step further, by proactively providing corrections to its Australian sales data when inaccuracies were discovered. If the Commission considered that certain aspects of Yueling's information required further clarification, or if it needed to have further access to certain information which it considered necessary, it was at all times open to the Commission to make those requests.

Yueling notes the Commission's comments in this regard:

The Commission notes that Zhejiang Yueling has had opportunities, through the submission of the Exporter Questionnaire, and in response to the Commission's requests for further

information dated 1 May 2015 and 15 May 2015, to provide necessary and accurate information to the Commission within a reasonable period.

The Commission further refers to Section 3 of Annex II of the Dumping Agreement, which provides for relevant investigating authorities to take into account:

All information which is verifiable... [and] supplied in a timely fashion...

The Commission has been unable to verify the information provided by Yueling in the exporter questionnaire to source documents provided. Accordingly, the Commission does not consider Yuelings information is 'verifiable'.

Yueling submits that all of the information provided by Yueling is verifiable. Whilst some information may need to be verified by having a better understanding of the supporting information provided, or by seeking further clarifications, explanations, or in some cases, additional source documents, such additional actions required do not render the information "unverifiable". In any case, information can only be verified, or have its "verifiability" assessed, after such verifications are carried out. With respect, an investigating authority cannot make a finding about whether certain information is verifiable, without firstly conducting that verification, and to instead reject the information based on speculation about issues not yet been identified.

Further, Yueling would like to draw the Commission's attention to the other paragraphs in Annex II to the Anti-Dumping Agreement with which an investigating authority is required to comply with in the application of Article 6.8, particularly:

5. Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability.

and,

6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefor, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations.⁴

On our review of all the information and the surrounding circumstances, Yueling has always acted to the best of its best ability in responding to the Commission's information requests. Minor inaccuracies in the information were voluntarily corrected. All of the information provided is verifiable and should not be disregarded. Paragraph 6 of the Annex II specifies the type of actions required to be undertaken by the investigating authority, and the additional opportunity that it must give to an interested party to provide further explanations, before it can decide not to accept certain information provided. As yet those additional steps have not been taken by the Commission, and that opportunity has not been provided to Yueling.

Yueling respectfully requests the Commission to reconsider its opinion regarding the verifiability of Yueling's information, and to take into account the clarifications and explanations that have been

⁴ The importance of the interchanges between an investigating authority and an interested party as prescribed by the Anti-Dumping Agreement, and the requirement on the investigating authority to notify and to provide reasons for its intention to not accept certain information provided by interested party, and to always give the interested party opportunity to provide further explanation in response to any such intention, are emphasised by the Panel in *Egypt – Definitive Anti-Dumping Measures on Steel Rebar from Turkey*(WT/DS211/R).

provided by Yueling.

In the event that the Commission considers that certain information provided by Yueling should be disregarded, Yueling asks the Commission to clearly specify its reasons, and to provide Yueling with the appropriate opportunity to provide further explanations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Zhan', with a long horizontal flourish extending to the right.

Charles Zhan
Senior Lawyer

Encs