Australian Government

Anti-Dumping Commission

Anti-Dumping Commission
Customs House
5 Constitution Ave
CANBERRA ACT 2601

Mr Lin Yang
Senior Partner, Rayyin Lawyers
Room 501, 05/F, Office Tower 2
Kunsha Center
No. 16 Xinyuanli
Chaoyang District
Beijing 100027

By email: **yanglin@rayyinlawyer.com**

Dear Lin,

INVESTIGATION INTO THE ALLEGED DUMPING AND SUBSIDISATION OF CERTAIN DEEP DRAWN STAINLESS STEEL SINKS EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

I write regarding the submission dated 17 September 2014, lodged by you on behalf of your clients:

- Zhongshan Jiabaolu Kitchen and Bathroom Products Co., Ltd (Jiabaolu);
- Flowtech Co., Ltd (Flowtech); and
- Zhongshan Flowtech Co., Ltd (Zhongshan Flowtech).

This submission focussed on the methodology adopted by the Anti-Dumping Commission (the Commission) in the Verification Visit Report for the above entities, and requested the re-assessment and amendment of the approach of that report to several matters

I also refer to discussions held with you on 25 September 2014 at the Commission's offices in Canberra, during which the specifics of your submission were discussed. A record of that meeting is available on the Commission's Public Record.

As you are aware, the Commission has considered the matters raised in the abovementioned submission and during our meeting, and accepted some alterations to the approach taken in the Verification Visit Report. This has resulted in a decrease in the dumping margin calculated for Jiabaolu (the exporter of deep drawn stainless steel sinks supplied to Australia via the other two entities) from 28.6% to 22.5%.[1]

The change to Jiabaolu's dumping margin was notified on 24 October 2014 in Anti-Dumping Notice (ADN) No. 2014/115. This ADN advised interested parties of a revision to rates of preliminary anti-dumping measures (securities) applicable to imports of deep drawn stainless steel sinks from China from that date.

[1] This change was also driven by an amendment to Jiabaolu's dumping margin calculations to correct an error identified by the Commission in reviewing those calculations.

Details of the Commission's consideration of your submission will be released in the Statement of Essential Facts (SEF) for this investigation, due to be placed on the Public Record on or by 5 January 2014. However, you have requested details of the Commission's assessment prior to the publication of the SEF.

Consequently, I have outlined the Commission's assessment of the matters raised by Jiabaolu in its response to the company's Exporter Verification Report in **Appendix A** to this letter. As the investigation is ongoing, please note that the assessment in Appendix A may not represent the Commission's final position on these matters.

Appendix A should be read in conjunction with Jiabaolu's Exporter Verification Report and Preliminary Affirmative Determination (PAD) 238.

Should you have any questions concerning this matter, please contact me on telephone number +61 2 6275 6173, fax number +61 2 6275 6990 or email operations2@adcommission.gov.au.

Yours sincerely,

Andrea Stone
Manager, Operations 2
Anti-Dumping Commission

21 November 2014

APPENDIX A – ASSESSMENT OF MATTERS RAISED BY JIABAOLU AND ASSOCIATES IN RESPONSE TO THE JIABAOLU EXPORTER VERIFICATION REPORT

1) The exporter's business model

Jiabaolu submitted that its Australian export business model should be taken into account by the Commission when determining whether the goods exported to Australia by the company were at dumped prices.

Jiabaolu highlighted the fact that it operates under an exclusive supply arrangement with its Australian customer, where price is set and only modified with movements in raw material prices. Jiabaolu also noted that it is therefore not able to 'enlarge its sales to Australian market by dumping…[as] neither the sales price nor the sales quantity in under the control of the Exporter'.

The Commission considers that the operation of the business model described by Jiabaolu does not preclude the goods exported to Australia from having been sold at dumped prices. The Commission's assessment as to whether the goods exported by Jiabaolu have been dumped is made based on the objective analysis of the company's relevant financial data, and no amendment to Jiabaolu's dumping margin has been made to account for the Australian business model described by Jiabaolu.

2) Price of scrap to be uplifted

Jiabaolu submitted that, because the Commission has determined that the stainless steel purchase prices incurred by Chinese exporters of deep drawn stainless steel sinks did not reflect competitive market costs, the Commission should 'logically determine' that the scrap price has also been affected by the interventions of the Government of China (GOC). Consequently, the actual price received for scrap incurred by Jiabaolu should be discarded and 'the same uplift calculation' be applied to the scrap price as was applied to the company's stainless steel raw materials used to manufacture deep drawn stainless steel sinks.

Jiabaolu's reasoning for requesting this amendment is due to the fact that the company generates revenue by making sales of stainless steel scrap, the revenue for which has been used to offset the company's costs of manufacture.

In the questionnaire forwarded to the GOC, the Commission sought the following information relevant to the scrap market in China:

- Import quantity by volume and value;
- Export quantity by volume and value;
- Corporate tax rate for scrap steel traders;
- Any applicable export tariff rates and/or quotas;
- Applicable VAT export rebate rates;
- In relation to the *Price Law of the People's Republic of China* (the Price Law), what "price regulation fund" regulations and "price monitoring" have applied to scrap steel since 1 July 2006; and
- Identification of any GOC initiatives or policies that affect scrap steel

The GOC did not respond to any of these questions. The Commission considers the above information relevant to its understanding of the scrap steel market in China.

While the Commission will continue to consider this issue leading up to the publication of the Statement of Essential Facts, at this stage the Commission is not satisfied there is sufficient positive evidence to warrant an adjustment to the scrap prices reflected in the records of Chinese manufacturers of deep drawn stainless steel sinks.

The Commission has therefore not made any amendment to Jiabaolu's dumping margin calculations to account for an uplift to the revenue received for stainless steel scrap in offsetting Jiabaolu's cost to manufacture.

3) Discarding of model costs

Jiabaolu's submission noted that, in the Exporter Verification Report and associated analysis, the Commission made amendments to Jiabaolu's manufacturing costs by model recorded in the company's accounts and submitted in its response to the Exporter Questionnaire. These amendments sought to mitigate observed anomalies ('spikes') in Jiabaolu's cost calculations for certain models, which the company submitted are likely due to accounting corrections at model level to account for errors in the previous month's recorded manufacturing costs, accompanied by low production volumes in the corrected months.

Jiabaolu submits that the Commission's recalculation of Jiabaolu's costs rejects the existing model costs kept in Jiabaolu's normal course of business, which it considers is not acceptable. Jiabaolu relies on Article 2.2.1.1 of the WTO Anti-Dumping Agreement (AD Agreement) and Regulation 181(2) of the *Customs Regulations 1926* (the Regulations), to support its view (it is observed that Jiabaolu likely intended to reproduce Regulation 180(2), which relates to manufacturing costs, whereby 181(2) refers to selling, general and administrative costs).

Jiabaolu submits that the Commission should therefore not disregard the model-level manufacturing costs as submitted by Jiabaolu in their entirety, but instead a 'limited adjustment' to correct the issues identified with costs could be. Jiabaolu submits that it is adequate to make an adjustment only to certain models or months where the production cost is abnormal.

Jiabaolu also submits that the Commission could use Jiabaolu's full period of investigation (i.e. yearly weighted average) manufacturing costs for impacted models in its analysis instead of the monthly costs submitted for those models.

The Commission considers that neither Article 2.2.1.1 nor the provisions of the Regulations limit the amendment of costs submitted by an exporter, even when kept in accordance with applicable accounting principles in the ordinary course of business, where the costs as submitted/recorded do not reasonably reflect the competitive market costs associated with the manufacture and sale of like goods. Where the Commission considers unreasonable elements exist in an exporter's costs, the Commission is able to make amendments that result in the costs being more reasonably reflective of the cost to make and sell those goods.

In this instance, the Commission has observed 'spikes' in Jiabaolu's recorded costs of manufacture, which Jiabaolu has attributed to accounting corrections (see above and the Jiabaolu Exporter Verification Report). The Commission considers that these spikes have resulted in Jiabaolu's manufacturing costs not reasonably representing the true cost to make and sell those goods, and hence an amendment to the incurred (and submitted) costs is deemed necessary.

In terms of the methodology applied by the Commission to make this amendment, the Commission has considered whether there is a more reasonable method to apply to amend these costs to make them reasonably reflective of the costs incurred in the manufacture of deep drawn stainless steel sinks. However, based on the information available, there is no more reasonable method of amending Jiabaolu's submitted costs of manufacture than the methodology applied in the company's Verification Report.

In particular, the Commission has considered the following options:

1. Attributing a portion of the relevant monthly model's costs to the previous month's model costs (where Jiabaolu submits it should have been more accurately posted). The Commission is not in possession of verified information to confirm that this is the reason for the cost spikes. In addition, the Commission is not able to perform this re-attribution accurately, as it is not clear what proportion of the cost component that causes a spike should be attributable to the previous month, and which should remain in the month where the correction was made.

2. The use of investigation period (as opposed to quarterly) weighted average costs in cases where 'spikes' have occurred, as submitted by Jiabaolu. The Commission considers that this does not satisfy the requirement to perform ordinary course of trade comparisons based on costs relating to particular sales at the point in time at which they were made, and hence cannot be accepted.

Consequently, the Commission accepts the approach taken in the Verification Visit Report as the most reasonable way of re-calculating Jiabaolu's costs of manufacture to more accurately reflect the company's cost to make deep drawn stainless steel sinks.

4) 'Backing out' of accessories

In its response to the Exporter Questionnaire and during the verification visit, Jiabaolu submitted that, in conducting a comparison between the company's normal values and export prices, the Commission should 'back out' the cost and price of accessories supplied alongside Jiabaolu's deep drawn stainless steel sinks. This is due to the fact that Jiabaolu is unable to arrive at costs for comparison with export prices that accurately include the cost of accessories sold with each deep drawn stainless steel sink.

In the company's Exporter Verification Report, the Commission does not take the approach submitted by Jiabaolu, and includes both the cost and price of accessories in undertaking normal value calculations for the company.

Jiabaolu considers that the Commission has adopted the approach in the Exporter Verification Report due to an assessment that, because the goods description encompasses deep drawn stainless steel sinks whether or not they were sold with accessories, it is unable to remove accessories from its assessment of Jiabaolu's dumping.

Jiabaolu submits that the Commission confuses the two issues of 'goods description' and 'comparison method'. Jiabaolu considers that, to ensure an 'apples to apples' comparison, the costs of accessories must be backed out of the equation.

Jiabaolu highlights that the inclusion of accessory costs in the calculation is impacted by the fact that accessories are not accurately allocated to each model in Jiabaolu's costs (i.e. they are allocated based on steel weight consumed in the production of each model, instead of an actual allocation of which accessories relate to which model).

The Commission considers that there is no provision for it to divide the products sold by Jiabaolu to Australia into segments of sinks and accessories and conduct a dumping assessment based wholly on the sink itself, as the sink with accessories combined is intrinsically 'the goods' as a whole.

The Commission has therefore maintained the approach of including the cost and price of these accessories in calculating the dumping margin for Jiabaolu.

5) Discarding of Asian MEPS International prices in substitute stainless steel costs

In calculating the dumping margin for Jiabaolu (and all other exporters), the Commission has adopted a benchmark stainless steel raw materials price to uplift the cost of stainless steel actually incurred by Chinese exporters. This benchmark is comprised of a composite (average) price of MEPS International (MEPS) European and North American stainless steel prices. This composite price excludes Asian MEPS prices of stainless steel as this price includes Chinese prices, which the Commission considers are representative of adequate remuneration for stainless steel coil.

Details of this assessment are contained in PAD 238.

Jiabaolu submits that, if a MEPS price is used, there is no justification for not including Asian MEPS prices in any MEPS composite price as the inclusion of Chinese prices in this Asian MEPS price does not lead to a conclusion that the Asian prices are distorted.

The Commission reject this claim and considers that:

- the Chinese price of stainless steel coil is not representative of adequate remuneration for stainless steel coil; and
- any benchmark adopted must necessarily not include data that does not represent adequate remuneration of stainless steel, as to do would contaminate the benchmark with prices that are not considered to be reasonable.

The Commission has therefore not made an amendment to the benchmark price of stainless steel applied to Jiabaolu's costs to include Asian MEPS prices in that price.

6) Profit calculation

Jiabaolu's submission addresses the reasonableness of the level of profit used in determining Jiabaolu's dumping margin. Jiabaolu reproduces Article 2.2 of the AD Agreement, which provides that, in constructing normal values, a reasonable amount for profit may be included in the construction.

Jiabaolu also refers to Regulation 181A(4), which reads:

> *(4) If:*
>
> *(a) the Minister uses a method of calculation under paragraph (3)(c)* [construction] *to work out an amount representing the profit of the exporter or producer of the goods; and*
>
> *(b) the amount worked out exceeds the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export;*
>
> *the Minister must disregard the amount by which the amount worked out exceeds the amount of profit normally realised by other exporters or producers.*

Jiabaolu highlights that any profit used by the Commission must therefore be 'reasonable and must not exceed the amount of profit which would normally be realised by the manufacturers in the same industry'. Jiabaolu infers that it does not consider the amount of profit determined by the Commission using the above methodology meets either of these requirements.

Jiabaolu also highlighted issues with the Commission's approach taken in the Exporter Verification Report, being:

- the calculation of profit is necessarily impacted by the Commission's approach to Jiabaolu's costs (reallocation to eliminate the impact of cost spikes) as discussed above;
- issues with its domestic rebates which may be impacting profit analysis; and
- the actual profit ratio that Jiabaolu aims to achieve on its Australian sales is much lower than the amount calculated by the Commission.

Jiabaolu suggests using the whole company's profit from its income statement and has submitted calculations for this purpose.

As highlighted by Jiabaolu, requirements for determining profit for constructing a normal value are provided for by Regulation 181A. The Commission's policy and practice relating to the determination of profit is also contained in the *Dumping and Subsidy Manual.*

Regulation 181A(4) only operates where the Commission has calculated profit under paragraph (3)(c) of that Regulation, which is where, if profit is unable to be calculated under paragraph 2 or any of the preceding provisions in paragraph 3, the Commission may use 'any other reasonable method and having regard to all relevant information'. In contrast, the Commission has calculated Jiabaolu's profit in line with Paragraph 2 of Regulation 181A. Paragraph 4 therefore does not apply in Jiabaolu's case.

Where it is possible and reasonable to do so, the amount of profit to be used in constructing normal values should be established in accordance with Paragraph 181A(2) of the Regulations, relying on actual sales and cost to make and sell data of exporters to determine a profit on domestic sales of like goods made in the ordinary course of trade. As outlined above, the Commission used this method to determine Jiabaolu's profit for the purposes of the Exporter Visit Report.

In light of Jiabaolu's submission, the Commission has considered whether this approach is reasonable, or whether another approach provided for by the Regulations should be used.

In the case of rebates, Section 7.4.4 of Jiabaolu's Exporter Verification Report considers that Jiabaolu's inability to accurately allocate rebates to the applicable invoice may result in a higher profit being calculated on sales of like goods made in the ordinary course of trade. However, the Exporter Verification Report also highlights Jiabaolu's acknowledgement of this, and its inability to correct this issue.

Due to the nature of the issue associated with Jiabaolu's rebates, the Commission is unable to accurately assess the true impact of this issue on Jiabaolu's profit calculations. Regardless, the Commission does not consider that this issue with Jiabaolu's sales data is likely to impact a profit assessment based on sales of like goods in the ordinary course of trade to such an extent that such an assessment is no longer reasonable.

In relation to the amendment to Jiabaolu's costs used to determine profit, the amendments made to the costs as submitted have been applied to arrive at more reasonable costs for the purposes of Jiabaolu's dumping assessment (discussed in detail above). The amended costs are considered more reasonable for use in determining Jiabaolu's profit than the uncorrected costs with 'spikes' included, which the Commission considers to be an inaccurate assessment of Jiabaolu's profit. Thus, although Jiabaolu is correct in observing the Commission's approach to amending its costs has impacted the assessment of profit for constructed normal value, this has been done in a way to make that assessment more reasonable and accurate, and does not lead the Commission to consider that the approach taken to determining Jiabaolu's profit is unreasonable.

Using the whole company's profit figure is not reasonable in the circumstances because this profit necessarily includes profit on sales of products that were not the goods (particularly fabricated sinks, which make up a large proportion of Jiabaolu's sales volumes) as well as sales to all markets (including exports). This profit can therefore not reasonably be considered to be reflective of the profit achieved on sales of like goods in the domestic market, which is the intended profit for constructed normal values.

The Commission has therefore maintained the approach of calculating profit undertaken in Jiabaolu's Exporter Verification Report in calculating the dumping margin for Jiabaolu.

7) 'Other' adjustments

a) Coil slitting costs

For the purposes of the Jiabaolu Exporter Verification Report (and the reports of other selected cooperating exporters) the Commission determined a slitting cost extra to adjust the MEPS composite stainless steel price based on a contractual price between one exporter and a supplier of slit and un-slit 304 stainless steel, to determine a price for slit stainless steel (as the MEPS price only represented stainless steel in coil form).

Jiabaolu contended that this contracted price may not reflect the commercial reality of the slitting costs incurred by exporters, and instead submitted that the Commission use the actual verified difference in prices incurred.

The Commission agrees with Jiabaolu's submission that a single contracted price may not accurately reflect the cost of slitting stainless steel actually incurred in China across exporters and transactions. The Commission has therefore determined a per tonne adjustment to the MEPS benchmark price to arrive at a benchmark for slit 304 stainless steel, based on the annual average verified price difference between slit and un-slit product purchased at the same time by the one exporter from the same supplier of slit and un-slit stainless steel (being the only exporter whose data allowed for this isolation and comparison).

b) VAT rebate adjustment

Jiabaolu refers to the method by which the Commission has applied an adjustment to that exporter's normal value for differences in VAT amounts refunded between domestic and export sales of deep drawn stainless steel sinks. In performing that adjustment in the Exporter Verification Report, the Commission applied a higher rate of upwards adjustment to normal value for sales made via 'export channel 2', where it was considered that any VAT rebate reclaimed does not in fact pass to the exporter, but to an intermediary involved in the export process of sales via that channel.

Jiabaolu disagrees with this assessment as, regardless of the sales channel a VAT 'loss' is incurred, and hence an adjustment should be made to each channel. Jiabaolu has since advised that this VAT loss incurred by the intermediary is recorded in that company's selling, general and administrative costs.

In Jiabaolu's Exporter Verification Report the Commission made an adjustment to normal value to account for the selling, general and administrative costs incurred by the two intermediaries used by Jiabaolu to export its goods to Australia. As the VAT loss is included in these selling, general and administrative costs, the Commission considers that the VAT loss on sales made via channel 1 is already accounted for in Jiabaolu's dumping calculations. No further adjustment is considered to be warranted.

The Commission has therefore maintained the approach of adjusting Jiabaolu's normal value for differences in VAT amounts between domestic and export sales taken in the Exporter Verification Report in calculating the dumping margin for Jiabaolu.

c) Domestic selling expenses

Jiabaolu notes that a downwards adjustment to normal value has not been performed in Jiabaolu's dumping calculations to account for domestic marketing expenses incurred in selling like goods domestically that are not attributable to Australian sales. This is due to the fact that the Exporter Verification Report considers that Jiabaolu has been unable to quantify this adjustment accurately.

Jiabaolu submits that this has been quantified in the company's Exporter Questionnaire in its 'other costs' calculation for domestic sales, and hence the adjustment should be made.

The Commission considers that a downwards adjustment to normal value to account for domestic selling expenses is warranted. This amendment has been made in Jiabaolu's revised dumping margin calculations.

d) Allocation of selling, general and administrative costs

As noted in Jiabaolu's Exporter Verification Report, the Commission has undertaken a re-allocation of Jiabaolu's selling, general and administrative costs to allocate these based on sales units, as opposed to sales weight (as submitted).

Jiabaolu has contested this approach, submitting that it considers the original approach of allocating these costs based on sales weight is more appropriate than using units. This is due to the fact that inland transport costs are linked to weight as heavier models are generally more expensive and packed in paper boxes, which cost more to transport than stacked sinks. Further, Jiabaolu reiterates the point (made in the Exporter Verification Report) that more 'selling effort' goes in to heavier, more expensive sinks and thus more selling, general and administrative costs should be allocated to these sinks.

The Commission rejects Jiabaolu's submission that heavier sinks carry greater sales effort. The reasons for this are detailed in the Exporter Verification Report, and relate to the fact that the sales effort to sell more expensive sinks does not sit with Jiabaolu but its customers and further entities downstream in the sale chain.

The Commission considers that all selling, general and administrative expenses except transportation (discussed below) are more reasonably allocated on the basis of sales units than on sales weight, and has not amended the approach taken in the Exporter Verification Report.

The Commission accepts that it may be the case that heavier sinks sold by Jiabaolu incur greater transportation fees (as these can generally be attributed to the weight of the goods transported to the physical volume they involve e.g. one truckload). However, transportation costs are only one cost within a multitude of selling, general and administrative costs incurred by Jiabaolu (and the trading intermediaries) in selling the goods to Australia or on the domestic market. In fact, the Commission's assessment shows that Jiabaolu's domestic selling costs (which are not comprised solely of transportation costs) account for less than 10% of total selling, general and administrative costs incurred when selling products in China. The bulk of Jiabaolu's incurred selling, general and administrative costs are not transportation expenses.

The Commission therefore considers that the impact of isolating and reallocating transport expenses incurred by Jiabaolu on the basis of weight would be insignificant in any case.