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Letter

BY EMAIL

To:	Ms. Andrea Stone Mr. An Chew Mr Jukka Mäntynen	Operate 2 Anti-Dumping Commission 5 Constitution Avenue Canberra Act 2601
From:	Leah XIANG Qing SONG	AllBright Law Beijing Office
Date:	12 January, 2015	
Subject:	ADN 238 – Anti-dumping and Countervailing Investigation of Certain deep drawn stainless steel sinks originating in the People's Republic of China Our client: Zhuhai Grand Kitchenware Company., Ltd	
Pages:	1 of 7	

Dear Sirs and Madam,

Please find enclosed attachments containing the comments (limited and non-limited versions) prepared on behalf of our client, **Zhuhai Grand Kitchenware Company., Ltd,** (hereinafter as Grand) on the SEF .

Yours sincerely,

Leah Xiang

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A. I Further submission on dumping margin

It is evident that the Commission did not adjust its position in the SEF in relation to a number of matters raised by Zhuhai Grand in its submission dated 3 November.

We ask the Commission to please deeply reconsider those matters in light of our further, most earnest submissions.

B. I.1 Legal errors in the calculation of VAT adjustment

In our submission dated 3 November, Zhuhai Grand submitted to the Commission that any VAT adjustment should be calculated on actual (achieved) FOB value.

Before we re-visit that point, Zhuhai Grand submits that there should not be any adjustment to the normal value for the purpose of comparing with the VAT free export price. The Commission decided to work out all normal values under Section 269TAC(2)(c) of the Customs Act, and not to use Chinese exporters' actual domestic sales of like goods. Thus, both the export price and the cost based normal value are VAT free – there is no need for any additional adjustment to ensure the fair comparison between normal value and export price. We do not see how it could be said that Zhuhai Grand's export sales somehow would bear more VAT costs than the domestic sales, due to the export VAT refund rate, when both the normal value and the export price that the Commission intends to use for the comparison of export price and normal value are VAT free.

Even if the Commission maintains its view that such an adjustment can be made, then according to Section 269TAC(9) of the Act such an adjustment can only be made "*as... necessary to ensure that the normal value so ascertained is properly comparable with the*

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export price of those goods". Zhuhai Grand does not agree with the need for adjustment – as explained above. But if the Commission continues to believe that an adjustment is required to account for the proportion of non-refundable VAT incurred for export sales, such adjustment should be determined by reference to the actual expenses incurred from the export sales. Therefore, determining the adjustment required to compare the export price (which the Commission considers to carry an 8% non-refundable VAT cost) to the normal value (which has been worked out on a VAT free basis), the necessary adjustment is most appropriately worked out by reference to the export price itself.

We submit that to calculate the VAT adjustment in accordance with the constructed normal value based on uplifted cost, rather than Zhuhai Grand's true costs or export price, would clearly result in an overstated non-refundable VAT related cost component for adjustment purpose. Any VAT expenses incurred by Zhuhai Grand on exportation of the goods only relate to its actual raw material purchase costs, and *not* the surrogated costs as used by the Commission in the normal value construction. Calculating the VAT adjustment in the way as presently proposed by the Commission exceeds the "as are necessary" level required by the Act, because Zhuhai Grand did not incur the amount adjusted.

Further, Zhuhai Grand notes the Commission's comment in the SEF that:

> *In constructing Zhuhai Grand's normal value, it is the Commission's intention to derive a normal value for the goods if they had been sold domestically, and to undertake appropriate adjustments to that normal value to account for differences between export and domestic sales of those goods if sold at that normal value. It is therefore logical that any adjustment applied to normal value for differences in VAT across markets be applied to the full constructed normal value, determining the rate of the*

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adjustment had the goods been exported at that normal value.

Zhuhai Grand considers that the Commission misunderstood the legal basis for the making of adjustment under Section 269TAC(9). The purpose of making any adjustment is to ensure fair comparison between normal value and export price. The only justification for making a non-refundable VAT adjustment is that the export sales may have incurred more VAT expenses than the domestic sales which the seller would collect the VAT from its domestic customer. Such adjustment is a cost-based adjustment, and given that it is a cost assumed to be incurred for exportation, it must also be determined by reference to export price/cost. It is not clear to Zhuhai Grand as to the legal basis for an adjustment to be determined on assumption that "*had the goods been exported at that normal value*". This is especially the case when the Commission decides to calculate a normal value that disregarded Zhuhai Grand's actual costs of production.

C. I.2 Mathematical error in the calculation of VAT adjustment

As stated in the SEF, the Commission considered that:

> *a positive adjustment of 8% was be made to normal value in relation to the residual export Value Added Tax (VAT) expense that is incurred for certain export sales but not domestic sales, along with other adjustments considered necessary for fair comparison with export prices, in accordance with Section 269TAC(9).*

However, instead of just applying the 8% to the VAT-exclusive normal value, to address the "difference" the Commission worked out the positive adjustment with the following formula:

Non-refundable VAT adjustment = unadjusted normal value / (1-8%) – unadjusted

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normal value

Assuming the unadjusted (VAT-free) normal value is 100, a positive adjustment of 8% to the normal value should be 100 times 8%, equals 8. However, applying the Commission's method, the result is as follows:

100/(1-8%) – 100

= 100/92% - 100

= 8.7

8.7/100*100% = 8.7%

Thus, the formula used by the Commission in the margin calculation spreadsheet mistakenly inflated the adjustment ratio from 8% to 8.7%.

Zhuhai Grand again submits that the formula used is incorrect for the purpose of calculating the non-refundable VAT adjustment. Could you please review this very carefully because it seems to be quite obvious to us?

D. I Further submission on subsidy margin

With utmost respect, Zhuhai Grand must say that it cannot accept the Commission's finding that Guangdong Metal is a public body for the purpose of determining whether the sales of stainless steel coil by Guangdong Metal to Zhuhai Grand amount to a provision of

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countervailable subsidy.

Zhuhai Grand considers that the Commission's finding Guangdong Metal is a "public body" is not supported by any factual or legal evidences.

More importantly, Zhuhai Grand rejects the finding that it has "benefited" from a "subsidy" provided to it by Guangdong Metal on the basis that Guangdong Metal, as a steel trader and not a manufacturer, sold the stainless steel coil to Zhuhai Grand.

Zhuhai Grand considers that it should suffice to point out the following facts:

- As the Commission is aware, the "public body" to which Zhuhai Grand purchased the allegedly subsidised stainless steel – Guangdong Metal is not even a manufacturer of those products.
- The stainless steel coil as purchased by Zhuhai Grand from Guangdong Metal was manufactured by Zhangjiagang Pohang Stainless Steel Co., Ltd which is a private (foreign invested) company, built by POSCO (Pohang Iron and Steel Co., Ltd, Korea)(covering 82.5% shares), is the biggest enterprise producing cold-rolled stainless steel at present in China. The business of the stainless steel is as follows:
- Zhangjiagang Pohang Stainless Steel Co., Ltd imports of steel feed from its parent company, POSCO Korea, and then manufacture the Stainless steel plate in coils;
- Posco Steel Fosan Processing Corp, purchases the Stainless steel plate in coils from its related company Zhangjiagang Pohang Stainless Steel Co., Ltd,

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and then cut the coils as per the requirement of its customer;

- Guangdong Metal purchases the coils from Posco Steel Fosan Processing Corp;
- Guangdong Metal charges a premium to Zhuhai Grand on top of the price of the stainless steel coil it purchased from Posco Steel Fosan Processing Corp. Please see attached document （Confidential）, which shows that Guangdong Metal made a [Confidential]% profit for selling the stainless steel coil it purchased from Posco Steel Fosan Processing Corp to Zhuhai Grand.
- Zhuhai Grand notes that, as a matter of fact, and despite the Commission's lengthy analysis on "public body" and "adequate remuneration", the Commission made the finding that Zhuhai Grand received subsidy by way of purchasing stainless steel coil from Guangdong Metal, on the sole basis that Guangdong Metal is a state invested company who traded the stainless steel coil. Zhuhai Grand would not be regarded as being "subsidised" under the so called "Program 1" had it purchased the stainless steel directly from Posco Steel Fosan Processing Corp – which had it done directly would have been at a cheaper price.

The Commission should find that Zhuhai Grand cannot be said to have benefited from such "subsidy program" because the manufacturer of the goods acquired by Zhuhai Grand is not an SIE nor a public body.