

Our ref: **ATH:20191067**  
Your ref:

Direct dial: 03 9321 7851  
Direct email: ahudson@rigbycooke.com.au  
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23 August 2019

The Director  
Investigations 3  
Anti-Dumping Commission  
GPO Box 2013  
CANBERRA ACT 2601

**By Email: investigations3@adcommission.gov.au**

Dear Sir/Madam,

**Caroma Industries Limited t/a GWA Bathrooms and Kitchens (GWA) Submission to Continuation Inquiry No. 517 into Anti-Dumping measures on deep drawn stainless steel sinks exported to Australia from the People's Republic of China (Inquiry) NON-CONFIDENTIAL VERSION**

We act for GWA in this Inquiry.

We are instructed to make submissions in response to the Application for the Continuation of Dumping and/or Countervailing Notice lodged by Oliveri Solutions Pty Ltd (**Oliveri** or **Applicant**) and published on the Electronic Public Record (**EPR**) on 3 July 2019 (**Application**).

We note initial submissions were due to be lodged with the ADC by 9 August 2019 and refer to an email chain sent 7 August 2019 between Mr Gavin Crooks of the ADC and our office which states that GWA's submission will be accepted by the ADC after 9 August 2019 in circumstances where acceptance and consideration of the submission will not delay the progress of the Inquiry and in particular the publication of the Statement of Essential Facts (**SEF**).

We submit that, in accordance with subsection 269ZHE(3) of the *Customs Act 1901* (**Act**), as the SEF is not due to be published until 21 October 2019 it is highly unlikely that consideration of this submission would delay the progress of the Inquiry of the SEF's publication. As such, we request that this submission be considered by the ADC.

**1 Background**

1.1 GWA is an Australian supplier of bathroom and kitchen fixtures and fittings for residential and commercial premises.

1.2 GWA participated in the original investigation number 238 (**Original Investigation**) into deep drawn stainless steel sinks from China as did its supplier [REDACTED]

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[REDACTED] [DETAILS OF GWAS'S SUPPLIER].

1.3 GWA supplies a variety of sink products to retail stores in the Australian market including products branded as follows:

- (a) Caroma and;
- (b) Clark.

**(Goods)**

1.4 These brands have been operating in the Australian market for in excess of 60 years.

1.5 The kitchen sinks imported by GWA come in a range of styles and sizes. GWA also imports products such as sanitaryware, baths, bathroom accessories, kitchen accessories, taps and showers.

1.6 We note that the description of the goods under consideration (**GUC**) is as follows:

- (a) *Deep drawn stainless steel sinks with a single deep drawn bowl having a volume of between 7 and 70 litres (inclusive), or multiple drawn bowls having a combined volume of between 12 and 70 litres (inclusive), with or without integrated drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel and whether or not including accessories.*
- (b) *Stainless steel sinks with multiple deep drawn bowls that are joined through a welding operation to form one unit.*
- (c) *Deep drawn stainless steel sinks whether or not they are sold in conjunction with accessories such as mounting clips, fasteners, seals, sound-deadening pads, faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories."*

**(Description of the GUC)**

1.7 Our client's position on the Description of the GUC is discussed further below.

1.8 Significant detail in relation to our client's business was provided to the ADC at the verification visit held on 8 August 2019 with further information detailed in the verification report published in relation to our client in the Original Investigation.

## 2 Preliminary Issues

2.1 We refer to the Anti-Dumping Notice No. 2019/86 (**Notice**) issued in this matter. We note that the Notice refers to subsection 269TACAA(1) of the Act which permits the ADC to use a sample of exporters when determining dumping and countervailing margins in circumstances where the number of exporters from a certain country is so large that it is not practicable to examine the exports of all of those exporters. We

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note our client's supplier, [REDACTED] [GWA'S SUPPLIER]. We are instructed to request that the ADC confirm that [REDACTED] [GWA'S SUPPLIER] and GWA's actual data will be used when the ADC is making its calculations.

- 2.2 We note that the Application makes reference to calculations the Applicant has made based on information provided to it through a third party subscription service. The Application used this information to calculate alleged dumping margins for a twelve month period between February 2018 and March 2019. The Applicant has used constructed normal values to calculate those margins.
- 2.3 The calculations and information used by the Applicant to make its calculations have been heavily redacted in the Application. As a result we are not able to respond directly to the Applicant's claims on this point.
- 2.4 We are however, instructed that our client does not consider it appropriate for constructed normal values to be used in its case in circumstances where it has already provided significant financial information to the ADC which the ADC has verified and our client is willing to provide any further information it may require.
- 2.5 We are also instructed that our client's Chinese supplier is cooperating with the ADC in this Inquiry. As such, the information the ADC would require to make calculations based on actual values has been or will be provided in a reliable and timely manner. Accordingly, we do not consider the constructed values used by the Applicant in its Application to be applicable to our client.
- 2.6 Further, our client considers certain products sold by [REDACTED] [GWA'S SUPPLIER] to the domestic Chinese market to be comparable to products exported to Australia by [REDACTED] [GWA'S SUPPLIER]. Accordingly, we are instructed that our client does not consider it appropriate for the ADC to undertake any model matching exercise when calculating normal value in relation to our client's Goods. Our client would be willing to provide additional information on this point if required.
- 2.7 We also wish to emphasise that our client has to date, and intends to continue, cooperating fully with the ADC in this Inquiry and considers itself to be a cooperative party to the Inquiry.
- 2.8 Finally, we refer to submissions made to the Original Investigation by GWA and the findings of the ADC in the Final Report to the Original Investigation. We note that the Original Investigation specifically excluded certain products described as "...*stainless steel sinks with fabricated bowls*." It was also found and is stated in that Final Report that laundry cabinets are not the GUC and should not be considered accessories to the GUC. We are instructed to request confirmation from the ADC that those products will continue to remain exempt from the description of the GUC.
- 2.9 Our client's detailed response to the Application is discussed below.

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## 3 Response to the Application

### *Description of the GUC and Constructed values*

- 3.1 We are instructed that our client considers the Description of the GUC to be overly broad. There is significant product variation in this market and the Description of the GUC is worded in such a way as to capture an overly large sample of products. We are instructed that the significant product variation has an effect on pricing and market demands. A blanket application of measures to a range of products does not appropriately take into account the nuances of pricing, market share and competition in relation to each product and so is likely to lead to perverse outcomes on a product by product basis. As such, we request that the Description of the GUC be narrowed.
- 3.2 We also understand, based on the ADC's findings in the Original Investigation, that figures on local cost to make and sell in China were not used as a particular market situation was found to exist. We are instructed that our client does not consider a particular market situation to currently exist in the Chinese domestic market. In particular, our client does not consider the use of constructed values based on the MEPS based average for North American and European prices alone (as used in the Original Investigation) to be appropriate and requests that actual prices be used to determine cost to make and sell, normal value and export price.
- 3.3 We refer to the submission made by Mr Trevor Smith of GWA on 18 December 2014 to the Original Investigation and reiterate the contents of that submission. Further, we note that the existence of a particular market situation in China is not raised in the Application. Accordingly, we request that the ADC confirm that constructed values will not be used in its calculations in this Inquiry.

### *Australian Market*

- 3.4 We are instructed to make the following general comments in response to the Applicant's claims in relation to the Australian market:
- (a) We are instructed that the current Australian market for the GUC is strong and growing. There has been significant demand in the market for the GUC and, to the best of our client's knowledge, members of the Australian market, including the Australian industry have been performing well.
  - (b) Our client does not consider the conclusion that the Applicant has suffered material injury as a result of dumping in circumstances where the market is strong and demand is significant to be accurate. In such an environment, where there is nothing but opportunity to perform well in a competitive market, it is unlikely that imported goods would be the cause of any material injury that the Applicant claims it may have suffered. Instead it is more likely that other factors internal to the manner by which the Applicant is conducting its business or specific to the domestic market are the cause of any alleged material injury.
  - (c) Further, if generally members of the Australian market (both importers and the broader Australian industry) are performing well and the market is growing we

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submit that the measures have served their purpose by levelling the playing field in the market. We do not consider it to be an accurate conclusion that removal of the measures would automatically cause Chinese exporters to lower their prices particularly in a growing market with high demand where this would be unnecessary and potentially detrimental to their businesses. Any continuation of Chinese exports at consistent levels with the original investigation period is more likely the result of the growth in the market.

- (d) As such, we request that the ADC considers the changes in the Australian market as compared to the Original Investigation in this Inquiry.

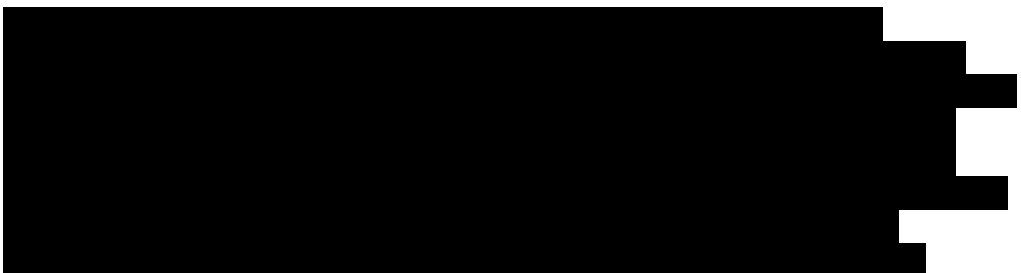
*GWA's presence in the market*

3.5 We are instructed to make the following comments in relation to GWA's specific circumstances:

- (a)   
[DETAILS OF GWA'S BUSINESS STRUCTURE]

- (b)   
[INFORMATION IN RELATION TO GWA'S BUSINESS STRUCTURE].

- (c)   
[INFORMATION IN RELATION TO GWA'S BUSINESS STRUCTURE]

- (d) 

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[REDACTED] [COMMERCIALY SENSITIVE INFORMATION TO GWA'S BUSINESS OPERATIONS]

[REDACTED] [COMMERCIALY SENSITIVE INFORMATION TO GWA'S BUSINESS OPERATIONS]

[REDACTED] [COMMERCIALY SENSITIVE INFORMATION TO GWA'S BUSINESS OPERATIONS]

## 4 Ongoing Supply

- 4.1 We refer to section 4(i)b of the Application in which the Applicant states that based on comparison of normal values and export prices, the Australian industry understands that exporters have maintained distribution links to Australia and have continued to export the GUC to Australian at dumped prices.
- 4.2 We also refer to the Notice which cites the Applicant's reference to the applications for review of measures and/or accelerated reviews and final determinations of duty as indicative that Chinese exporters intend to continue to export the GUC to Australia in future.
- 4.3 First, we reject the conclusion that the GUC are exported to Australia from China at dumped prices. Secondly, we do not accept that, simply because Chinese exporters continue to export the GUC to Australia, this is not in any way indicative that dumping is occurring or that, if dumping is occurring (which we dispute), this is causing material injury to the Australian Industry.
- 4.4 Further, as discussed above, we consider any continued Chinese exports of the GUC from China to be the consequence of a strong domestic market and the ordinary forces of global trade. We do not consider it reasonable or within the terms of the World Trade Organisation Anti-Dumping Agreement (**Anti-Dumping Agreement**) for all foreign exports to be expected to cease when measures are put in place.
- 4.5 Any such expectation is contrary to the principles of a global marketplace and would result in the creation of unfair advantages to domestic manufacturers which do not take into account the reliance local business has on imports in order to operate. It is not the purpose of anti-dumping measures to eliminate imported goods from the market and is instead only to level the playing field in the market, which our client considers to have occurred.

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## 5 Investigations by other countries

- 5.1 We refer to the Applicant's comments in relation to anti-dumping and countervailing actions brought by other countries. The Applicant refers to the US continuation of measures and the Canadian, Mexican and South African safeguard actions.
- 5.2 We are instructed that our client does not consider these investigations to be relevant to the current Inquiry. While we accept that other countries, including Canada and the US have imposed measures on similar goods imported from China, we consider those measures to be the result of the specific circumstances in those countries.
- 5.3 We do not consider the fact that other countries have imposed measures on the GUC or goods similar to the GUC to be conclusive proof that dumping is occurring in Australia or that dumping, if it is occurring, which we dispute, will continue. The imposition of measures by other countries also certainly does not have any bearing on whether the Australian industry is suffering material injury caused by any alleged dumping.
- 5.4 Further, the Applicant refers to the finding in the Canadian investigation that there exists in China significant excess capacity in relation to the GUC and states that "*due to the geographical proximity of Australia to China, it is reasonable for the Australian industry to believe that this excess capacity will continue to be directed towards Australia*".
- 5.5 We do not accept that this conclusion is reasonable as geographical proximity is not a central driving force behind the volume of the GUC imported to Australia. The central driving forces are the market pressures of supply and demand. There is no reason to assume, nor has the Applicant presented any evidence to substantiate its claim that, any excess capacity that may exist in China would be disproportionately directed towards Australia. The fact of the dumping investigations in other countries instead indicates that any excess capacity is highly likely to be directed towards those jurisdictions as a consequence of supply and demand.

## 6 Conclusions

- 6.1 We are instructed that our client does not consider the continuation of measures to be necessary in circumstances where the market is experiencing strong growth and high demand and the members of the market are performing well. Indeed, the continuation of measures would give an unreasonable advantage to the Applicant.
- 6.2 Our client does not consider there to be dumping to be occurring and if there is dumping occurring (which we dispute) it is not the cause of any material injury the Australian industry may be suffering. Further, we submit that our client as a wholesaler is not the cause of any material injury the Applicant may be suffering and any injury that may be occurring is the result of the Applicant's own actions and not the result of Chinese imports.
- 6.3 We are also instructed that our client does not consider any ongoing supply by Chinese exporters to be indicative of any continuation in alleged dumping as this is more likely the result of increased demand in the Australian market as a result of

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growth in the sector. It is not the purpose of anti-dumping measures to eliminate exports to a market.

6.4 Our client also requests that the ADC:

- (a) confirm that constructed values will not be used in relation to its imports in circumstances where reliable and detailed data is available from both GWA and its Chinese supplier and no particular market situation currently exists in China in respect of the GUC;
- (b) confirm that the goods excluded from the Original Investigation will continue to be excluded from this Inquiry;
- (c) disregard any investigations that may be taking place or have taken place in other countries on the basis that they are not relevant to this Inquiry;
- (d) narrow the Description of the GUC as it is currently overly broad and likely to lead to unintended consequences on a product by product basis; and
- (e) confirm that no model matching process will be undertaken with respect to its Goods.

We would be pleased to provide the ADC with any further information it may require.

Yours faithfully



Andrew Hudson  
Partner