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17 December 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) in response to Statement of Essential Facts
NON-CONFIDENTIAL VERSION

We refer to the Statement of Essential Facts (**SEF**) published on the Electronic Public Record (**EPR**) on 27 November 2019.

We are instructed to make the submissions as follows in response to the SEF.

Please note all enclosures are confidential.

1 Causation of material injury

[REDACTED] [COMMERCIALLY SENSITIVE INFORMATION
IN RELATION TO SUPPLIER]

1.1 We refer to the submission [REDACTED]
[REDACTED]. [COMMERCIALLY SENSITIVE INFORMATION IN RELATION TO
SUPPLIER]

1.2 We are instructed that GWA agrees with and endorses [REDACTED] submission.
[REDACTED]

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[REDACTED]
[CONFIDENTIAL AND COMMERCIALY SENSITIVE INFORMATION IN RELATION TO GWA'S SUPPLIER AND BUSINESS STRUCTURE]

[REDACTED]
[CONFIDENTIAL AND COMMERCIALY SENSITIVE INFORMATION IN RELATION TO GWA'S SUPPLIER AND BUSINESS STRUCTURE]

1.4 As such, as:

[REDACTED]
[CONFIDENTIAL AND COMMERCIALY SENSITIVE INFORMATION IN RELATION TO GWA'S SUPPLIER AND BUSINESS STRUCTURE]

[REDACTED]
[CONFIDENTIAL AND COMMERCIALY SENSITIVE INFORMATION IN RELATION TO GWA'S SUPPLIER AND BUSINESS STRUCTURE]

any material injury which the Australian industry may be suffering (which we dispute) could not have been caused by our client or its supplier.

1.5 On that basis and the submissions set out below, we request that the Inquiry be terminated in relation to our client and [REDACTED] [GWA SUPPLIER]

Other causes

1.6 We refer to section 6.8 of the SEF and the ADC's discussion of factors causing injury to the Australian industry other than dumping. We note that the ADC has identified several other factors which are likely to be contributing to any injury the Australian industry may be suffering including:

- (a) downturn in Australian building construction;
- (b) trends towards fabricated stainless steel sinks and moulded granite sinks; and
- (c) the impact of OEM sinks sales.

[REDACTED]
[REDACTED] [COMMERCIALY SENSITIVE INFORMATION]

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[REDACTED]
[REDACTED]
[REDACTED] [COMMERCIAL SENSITIVE INFORMATION]

1.9 The other factors identified are discussed in further detail below.

2 Calculation of normal value

2.1 We are instructed that our client does not intend to make further detailed submission in relation to the calculation of normal value as it considers it appropriate for its supplier to make those submissions if it chooses.

2.2 However, we do refer to the recent World Trade Organisation (WTO) decision in relation to Australia's anti-dumping investigation into A4 copy paper which was disputed by Indonesia.

2.3 We note that the WTO determined that Australia had acted inconsistently with Article 2.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement)* in finding that a particular market situation existed in Indonesia and then failing to assess the effect of the particular market situation on the domestic price in relation to the effect on the export price before resorting to substituted or constructed values. As it was found by the WTO that Australia had acted inconsistently with Article 2.2 of the Anti-Dumping Agreement, the WTO also found that, by failing to take into consideration the effect of the particular market situation, there was no basis to substitute costs as the rejection of the actual costs provided by Indonesian producers was inconsistent with Article 2.2.1.1 of the Anti-Dumping Agreement.

2.4 The WTO also found, in relation to a certain exporter that there was no reasoned and adequate explanation, as to why substitute costs that included a profit component were included in relation to a producer which produced its own pulp inputs. There was also found to be no reasoned and adequate explanation as to why substitute woodchip costs in conjunction with other recorded pulp costs which were not affected by the particular market situation were not used in relation to a particular exporter.

2.5 In the circumstances and in light of the WTO's findings, we request that the ADC review the methods used by it to construct [REDACTED] [GWA'S SUPPLIER] normal values in this inquiry in order to ensure they are consistent with the Anti-Dumping Agreement and Australia's obligations under that agreement.

3 Modelling and product specifications

3.1 We refer to section 3.4 of the SEF and the ADC's use of a model control code (MCC) structure. We are instructed that our client maintains its position that the use of an MCC in this Inquiry is not appropriate and repeats its submission that it is possible for certain products sold by [REDACTED] [GWA'S SUPPLIER] in the domestic Chinese market to be compared to products exported to our client in Australia.

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3.2 Our client submits that the significant variation in products in this market means that goods which may be similar are not necessarily substitutable. While we note that the ADC has referred to certain characteristics of the goods (such as number of bowls, drainer boards and the total capacity of the sink) we are instructed that due to the significant variation between products a general comparison of the factors listed above is not sufficient to create a model which accurately reflects the range of products supplied. For example, this model does not take into account material thickness which we are instructed has an effect on pricing and can vary from [REDACTED] [MILLIMETRES] to [REDACTED] [MILLIMETRES] across products in the range.

3.3 We are instructed that by reducing the goods to these three main characteristics other variations which influence the price of the goods have not been accounted for.

4 Australian Market

4.1 We refer to section 5 of the SEF which discusses the Australian market. We note that in paragraph 5.6.2 the ADC states that it has relied on ABS data relating to Australian building construction starts and contrasted that data with the trends in market size and the Australian industry's sales.

4.2 We are instructed that use of data relating to "construction starts" is not appropriate and does not provide an accurate indication of how sales of the goods are related to demand in construction. This is because the goods are fixtures which are installed at the end of a build and not at the beginning. As such, the ADC's comparison of the sales and construction data cannot be accurate.

4.3



[CONFIDENTIAL AND COMMERCIALY SENSITIVE MARKET DATA]

4.4 We note that, the Australian industry has submitted that demand for the goods is inelastic and that change in price will not change demand for the product. The ADC states in paragraph 5.6.2 of the SEF that it considers the Australian industry's submission on that point to be reasonable. However, in paragraph 9.5.2 of the SEF in relation to like effects on volume the ADC states:

"At section 5.6.2 in relation to demand variability, the Commission refers to Australian industry's position which considers that demand for sinks is inelastic and that a change in price will not change demand for the product. Whilst the Commission does not disagree with the Australian industry on this point, it does consider that the market share obtained by Chinese exporters of the goods would increase or decrease if a customer's purchasing decision was based on price."

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Lower priced deep drawn stainless steel sinks subject to measures imported from China hold a significant share of the Australian deep drawn stainless steel sinks market. Therefore, it is likely that further reductions in prices would lead to increased demand for and market share in relation to these imported products."

4.5 We consider the above statements to be contradictory. The ADC has acknowledged that demand for the goods is not dependant on price however, has taken the position that in a hypothetical scenario where the demand was based on price the Chinese market share would be likely to increase. We consider this conclusion to be based on supposition and assumption with no supporting information or evidence and do not consider it appropriate.

4.6 In paragraph 5.8 of the SEF the ADC concludes that the key drivers of deep drawn stainless steel sink sales have remained present and have not diminished since measures were imposed.

[REDACTED]. [CONFIDENTIAL AND
COMMERCIALY SENSITIVE MARKET DATA] Accordingly, we submit that, any
material injury that the Australian industry is suffering

[REDACTED] [CONFIDENTIAL
AND COMMERCIALY SENSITIVE MARKET DATA]

4.7 We further note that the ADC has rejected our client's submission that the Australian market is strong and has relied on its findings that the Australian market has contracted in recent years.

[REDACTED] [CONFIDENTIAL AND COMMERCIALY SENSITIVE
MARKET DATA]

5 Continuation of measures

5.1 The ADC, in section 9 of the SEF states that it believes that if the measures were to cease, dumping, subsidisation and material injury would continue or reoccur. We are instructed that our client disputes this finding for the following reasons.

[REDACTED] [CONFIDENTIAL AND COMMERCIALY
SENSITIVE INFORMATION IN RELATION TO GWA'S BUSINESS STRUCTURE]

5.3 We refer to paragraph 9.4.4 of the SEF in which the ADC refers to the "surplus capacity" it has identified with cooperating exporters. The ADC has assumed that all exporters have surplus capacity based on information gathered from the cooperating exporters. We do not consider this to be a reasonable assumption in circumstances where it is made absent any substantive evidence in relation to the circumstances of the non-cooperative and residual exporters.

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- 5.4 Further, the ADC's conclusion that this surplus capacity is likely to result in increased export volumes should the measures expire is speculation again based on no evidence.



[CONFIDENTIAL MARKET DATA AND
COMMERCIALLY SENSITIVE INFORMATION IN RELATION TO GWA'S BUSINESS
STRUCTURE]

- 5.5 We refer to paragraph 9.4.5 of the SEF. We are instructed that our client disputes the ADC's statement that if the measures were to expire Australian importers would be able to pass on price cuts to Australian end users. It does not necessarily follow that, if the measures expire, Chinese exporters would suddenly reduce their prices and that Australian importers would pass that cost reduction on to Australian end users in order to increase market share.

5.6



[CONFIDENTIAL MARKET DATA] Accordingly, we submit that the conclusion that if the measures expire prices on imported goods will drop is overly simplistic and does not necessarily apply to these goods in these circumstances.

6 Material Injury

- 6.1 We refer to section 9.6 of the SEF and the *Ministerial Direction on Material Injury 2012 (Ministerial Direction)*. We note that the ADC has acknowledged, and that the Ministerial Direction states, that in circumstances where other factors which may be causing injury are present, injury caused by dumping must be material in degree.

- 6.2 The Ministerial Direction also clearly states "*I direct that identification of material injury be based on facts and not on assertions unsupported by facts.*" Material injury can also only be found where it is **not** immaterial, insubstantial or insignificant and injury should not be attributed to dumping when other factors are in fact the cause.

6.3



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[REDACTED] [CONFIDENTIAL AND COMMERCIALY SENSITIVE MARKET DATA]

6.4 Further, we do not consider any injury the Australian industry may have suffered to be significant, material or substantial as the Australian industry has maintained its market share and production volumes throughout the inquiry period. [REDACTED]

[REDACTED] [CONFIDENTIAL MARKET INFORMATION/DATA]

6.5 Accordingly, we do not consider the ADC's findings that material injury has occurred and will continue to occur as a result of dumping and subsidisation to be accurate or appropriate in the circumstances.

7 [REDACTED] [COMMERCIALY SENSITIVE INFORMATION]

[REDACTED] [COMMERCIALY SENSITIVE INFORMATION]

[REDACTED] [COMMERCIALY SENSITIVE INFORMATION]

[REDACTED] [COMMERCIALY SENSITIVE INFORMATION]

[REDACTED] [COMMERCIALY SENSITIVE INFORMATION]

[REDACTED]

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[REDACTED]

[REDACTED] [COMMERCIALY SENSITIVE INFORMATION]

7.6

[REDACTED] [COMMERCIALY SENSITIVE INFORMATION]

8 Description of Goods Under Consideration

8.1 We refer to paragraph 3.3.2 of the SEF and the ADC's position that the description of the goods cannot be narrowed in a continuation inquiry and that the MCC structure used is sufficient to account for product variation.

8.2 We refer to and repeat our client's arguments in relation to the description of the GUC set out in its submission dated 23 August 2019. We are instructed that our client maintains its position that the description of the GUC is overly broad and cannot appropriately account for product variation.

9 Conclusions

9.1 As discussed above, we submit that:

[REDACTED]

[REDACTED] [COMMERCIALY SENSITIVE INFORMATION IN RELATION TO SUPPLIER AND GWA BUSINESS STRUCTURE]

(b)

[REDACTED] [CONFIDENTIAL MARKET INFORMATION]

(c) the calculation of normal value in this Inquiry should be reviewed in light of the WTO's recent decision on the A4 paper anti-dumping investigation;

(d) it is not appropriate to apply an MCC structure in circumstances where significant product variation means that any model used is likely to be inaccurate;

[REDACTED] [CONFIDENTIAL MARKET INFORMATION]

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[REDACTED]

[CONFIDENTIAL

MARKET INFORMATION]

(g) there is no evidence to substantiate the assumption that any surplus capacity held by Chinese exporters would be directed to the Australian market if the measures were to expire; and

(h)

[REDACTED]

[COMMERCIALLY SENSITIVE INFORMATION]

9.2 Accordingly, we request that the Inquiry and so the measures be terminated in respect of GWA and [REDACTED].[GWA SUPPLIER]

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

Yours faithfully



Andrew Hudson
Partner

Encl.