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16 December 2019

Commissioner
Anti-Dumping Commission
Level 35, 55 Collins Street
MELBOURNE VIC 3000

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Ref: DDSSSinks Jiabaolu Response to SEF-

Re: 517 Continuation inquiry – deep drawn stainless steel sinks exported from the Peoples Republic of China

Dear Sir

On behalf of our client Zhongshan Jia Bao Lu Kitchen and Bathroom Products Co., Ltd (Jiabaolu) we make the following submission in response to the Statement of Essential Facts 517 (SEF517).

1. Measures to cease to apply to Jiabaolu

This submission is to be read in conjunction with our submission dated 15 November 2019 in which we requested that should the Anti-Dumping Commission (Commission) find that the current antidumping measures (AD Measures) applying to deep drawn stainless-steel sinks exported from the Peoples Republic of China to Australia (SS Sinks) warrant continuation, then, based on the facts and evidence of this case, confirm that:

- any continuation notice for the continuation of the AD Measures would cease to apply to Jiabaolu; and
- Jiabaolu be specifically excluded from any such dumping measures.

While we maintain our position that the facts and evidence of this case confirm that the current measures must be allowed to expire in respect of Jiabaolu, we make the following submission in relation to SEF517.

2. Export price

At 7.7.2 of SEF 517 it is stated that:

The verification team recommends that the export price be calculated under section 269TAB(1)(c) having regard to all the circumstances of the exportation. Specifically, the verification team recommends that the appropriate method of calculating the FOB export price as the price paid by Flowtech to Jiabaolu, with the addition of relevant FOB costs incurred by Flowtech.⁷¹.

The Commission has therefore determined Jiabaolu's export price under section 269TAB(1)(c) having regard to all the circumstances of the exportation in the manner outlined in Jiabaolu's verification report (Underlining added).



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Footnote 71 is added quoting the Commission's policy and practices as an apparent justification of the Commission's methodology:

71 The Manual, p. 30, "Where an intermediary is involved the export price, for the purposes of calculating a dumping or subsidy margin, will be the price received by that exporter when selling to the intermediary (even if the intermediary is in the same country as the exporter)".

A policy is simply that, a policy. It is not law and should not be blithely applied in all circumstance that happen to conform to the wording of the policy. Regard must be had to all factors and circumstances of the exportation in the determination of an export price as is the case in this continuation inquiry. This policy and practice, as applied in this case, are contrary to the Agreement on Implementation of Article VI of the GATT 1994 (The Agreement) and Australia's obligations as a signatory to that agreement.

As a basic principles Dumping is defined in The Anti-Dumping Agreement as the introduction of a product into the commerce of another country at less than its normal value.

Further, as a general rule the export price will normally be based on the transaction price at which the foreign producer sells the product to an importer in the importing country. Section 269TAB of the Customs Act 1901 (the Act) reflects this general rule, that is, the price paid or payable for the goods by the importer.

Each of the subsections of Section 269TAB of the Act provides for the determination of an export price under differing circumstances with the underlying principle of the price paid or payable for the goods by the importer at an arms-length price destined for consumption in the importing country and having regard to all the circumstances of the exportation.

While we are not disputing the export price being calculate pursuant to section 269TAB(1)(c) of the Act we are disputing the methodology proposed by the Commission as it fails to take in to account all of the circumstances of the exportation, contrary to the Commission's claims. The circumstances of the exportation importantly include the price paid by the importer XXXX. It is this price level at which the goods enter the commerce of Australia and is the starting point for the allegation and calculation of price related injury.

Within the Jiabaolu company structure Flowtech Co., Ltd (Flowtech) is xxxxxxxxxxxxxxxxxxxx xxx [Commercial in Confidence business structure]. As verified and confirmed by the Commission in the original investigation, Flowtech is responsible for:

1. Xxxxx xxxxxxxxx with the Australian customer, XXXXXXXXXX Limited (XXXX);
2. Xxxxxxxx xxxx xxxxxxxxx; and
3. Xxxxxxxx xxxx xxxxxxxx [Commercial in Confidence business practices].

Refer to supporting evidence at **Confidential Attachment 1 - Confirmation Flowtech to XXXX** xxxxx xxxxxxxx xxxxxxxx; **Confidential Attachment 2 - Email Flowtech and XXXX xxxxx** xxxxxxxx xxxxxxxx; and **Confidential Attachment 3 - Letter of xxxxxxxxxxxxxxxxxxxx XXXX**.

By proposing a methodology for determining an export price based on Jiabaolu's selling price to Flowtech the Commission has departed from its approach in the original investigation. In the original investigation the Commission correctly had regard to all the circumstances of



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the transaction and correctly established the export price in accordance with section 269TAB(1)(c) as the price paid by the importer, XXXX, to Flowtech.

Flowtech marks-up its purchase price from Jiabaolu when it on sells to its Australian Customer XXXX. Both Flowtech and Jiabaolu, in their respective Exporter Questionnaire responses, presented data that shows that during the investigation period Flowtech marked-up, for example, product code XXXX/XXXXXX by around XX% and product code XXXX/XXXXXX by around XX %. Contrary to the Commission's claim, any adjustment to Jiabaolu's normal value to account for a level of trade differences between export and domestic sales does not account for the price difference between the price Jiabaolu sells to Flowtech and the marked-up price of the goods that Flowtech sells to XXXX at which price the goods enter the commerce of Australia.

In this continuation inquiry by proposing a changed methodology for determining an export price based on Jiabaolu's selling price to Flowtech the Commission is failing to take into account all of the circumstances of the transactions and is understating the price at which the goods enter the commerce of Australia resulting in an unfair assessment of the export price and an overstated dumping margin.

As our submission of 15 November 2019 confirmed, due to a long-term manufacture and supply agreement, the imports from Flowtech are sales that have not been available to the Australian industry since 2007, some 3 years prior to the claimed alleged material injury commencing in the 2010 financial year. As a consequence, such sales cannot be causally linked to any alleged material injury being caused or threatened to the Australian industry. The Agreement requires that a determination of injury must be based on positive evidence and involve an objective examination of the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for like products. In addition, the Agreement requires investigating authorities to consider whether there has been significant price undercutting by the dumped imports.

Dumping is about price discrimination and the methodology being proposed by the Commission appears to countenance such price discrimination. Such a methodology creates an artificially lower notional price paid by the importer and as a consequence:

- artificially inflates the dumping margin;
- exaggerates any margin of price undercutting;
- unfairly overstates the allegation of any price related injury; and
- provides unfair protection to the Australian industry.

The price paid by the importer, XXXX, is the starting price for the competition with the Australian industry and not Jiabaolu's invoice price of the goods sold to Flowtech.

What is the Commission's explanation as to how the price paid by Flowtech to Jiabaolu, when it is not the price paid by the importer to 'compete' on the Australian market, can be deemed to be causing injury to the Australian industry?

When regard is had to all the circumstances of the exportation the export price should be based on the price paid by the importer, that is, the selling price of Flowtech and Zhongshan Flowtech to the importer XXXX. We request that the Commission revert to the methodology

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of the original investigation and reassess the export price in accordance with Section 269TAB(1)(c), having regard to all the circumstances of the transaction, as the price paid by the importer to Flowtech and Zhongshan Flowtech. This is consistent with the methodology adopted in the original investigation and the circumstances have not changed.

4. Particular market situation

Paragraph 7.3.1 of the SEF517 states that:

As a result, the assessment of the steel industry in China has been made on the basis of the following available information;

- *other cases conducted by the Commission;*
- *the original investigation findings;*
- *analysis of the market prices of stainless steel relevant to the inquiry period; and*
- *cost and purchasing data reported by exporters in questionnaire response.*

Having regard to the available information, the Commission considers that the stainless steel costs incurred by deep drawn stainless steel sink manufacturers in China over the inquiry period did not reasonably reflect competitive market costs in terms of section 43(2) of the Regulation.

In addition to the findings of other investigations undertaken by the Commission which also involved the Chinese steel industry, the Commission has compared the prices of stainless steel in China, North America and Europe published by Steel Business Briefing Ltd (SBB) during the inquiry period. The Commission found that the average monthly market price of stainless steel out of China was 30 per cent lower than the combined monthly average price of stainless steel out of North America and Europe.

At paragraph 7.3.2 Competitive market costs substitute

In light of the above finding that the production costs of stainless steel incurred by Chinese exporters of the goods do not reasonably reflect competitive market costs for that input, the Commission has considered how best to determine what a competitive market substitute price for this input in China should be, having regard to all available information.

Based on this 'reasoning' the Commission determined that a 'particular market situation' existed in relation to stainless steel, a major raw material input to the manufacture of SS sinks.

Pursuant to sub-section 269ZHE(1) of the Customs Act 1901 the Commissioner must:

*"... ensure that there is placed on the public record a statement of the facts (the **statement of essential facts**) on which the Commissioner proposes to base his or her recommendation to the Minister concerning the continuation of those measures.*

The Commissioner's finding that a 'particular market situation' exist in relation to stainless steel production in China was not based on facts but merely relied on findings in the original investigation 5 years ago and an investigation period 7 years ago; on findings in other case conducted by the Commission. Examples of those cases were in Footnote 57 of SEF517, namely:



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Report No. 177 – Hollow structural section from China, Report No. 190 – Aluminium zinc coated steel from China, Report No. 198 – Hot rolled plate steel from China, Report No. 237 – Silicon Metal from China, Report No. 300 – Steel reinforcing bar from China, Report No. 301 – Rod in coils from China, Report No. 316 – Grinding balls from China, Report No. 382 – Alloy round steel bar from China, Report No. 441 – Steel Pallet Racking from China and Report No. 466 – Railway wheels from China.

Not one of the examples listed are relevant to this case or to stainless steel production and supply in China.

The Commissioner's findings that *"the production costs of stainless steel incurred by Chinese exporters of the goods do not reasonably reflect competitive market costs for that input"* are not the result of any objective investigation, current facts or positive evidence. The findings are mere speculation and conjecture and simply compound past errors. It is not surprising that the Government of China did not lodge a questionnaire response.

The Commission found that the variable factors in relation to all exporters have changed. If this is the case what causes the Commission to consider that the facts relating to the production costs of stainless steel have not changed?

Further, the Commission stated at paragraph 7.3.2 that for *"the purpose of this inquiry, the Commission does not propose to depart from the approach adopted in the original investigation"*. However, regarding the determination of an export price for our client the Commission readily departed from its approach in the original investigation. Both of these decisions have worked against our client to unfairly inflate the dumping margin attributed to it.

We request that the Commission reassess both our client's export price and the finding that the production costs of stainless steel incurred by Chinese exporters of the goods do not reasonably reflect competitive market costs for that input

We are happy to discuss further and request that if you have any questions regarding this response please contact me on 0411 439 366.

Yours faithfully,

GTR Consulting

Kevin Reilly

Kevin Reilly

Principal