

Anti-Dumping Commission response

**Applications for Review of Decision relating to Certain Aluminium Road Wheels
exported from the People's Republic of China**

PUBLIC RECORD

Abbreviations

ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
the Act	<i>Customs Act 1901</i>
Applicants	Zhejiang Yueling Co., Ltd (Zhejiang Yueling) and Pilotdoer Wheel Co. Ltd (Pilotdoer)
Commission	the Anti-Dumping Commission
China	the People's Republic of China
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping Act) 1975</i>
EQ	Exporter Questionnaire
Parliamentary Secretary	Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
Pilotdoer	Pilotdoer Wheel Co. Ltd
REP 263	<i>Final Report No. 263</i>
Review 263	<i>Review of Measures No. 263</i>
SEF 263	<i>Statement of Essential Facts No. 263</i>
██████████	██████████ [importation details]
██████████	██████████ [Importer name]
Zhejiang Yueling	Zhejiang Yueling Co., Ltd

Key points of note in reading responses to Applicant claims

- (i) Whilst the Anti-Dumping legislation (Part XVB of the *Customs Act 1901*¹ ('the Act') and the *Customs Tariff (Anti-Dumping Act) 1975* (the 'Dumping Duty Act')) refers to the Minister, for the purposes of this response all references to the Minister or Parliamentary Secretary are used interchangeably. This approach reflects the Minister for Industry, Innovation and Science's delegation of responsibility for Ministerial decision-making on operational anti-dumping matters (under the Act and the Dumping Duty Act) to the Parliamentary Secretary to the Minister for Industry, Innovation and Science.
- (ii) On 22 October 2015, after the Commissioner completed *Review of Measures No. 263* (Review 263) and provided his Final Report (REP 263) to the Parliamentary Secretary, the Parliamentary Secretary published a notice declaring that the original dumping duty notice and countervailing duty notice are to be taken to have effect as if different variable factors had been fixed in relation to all exporters of certain aluminium road wheels (ARWs) exported to Australia from the People's Republic of China (China).²
- (iii) Two interested parties (the Applicants), both exporters from China, sought review of this decision to the Anti-Dumping Review Panel (ADRP). The applicants are Zhejiang Yueling Co., Ltd (Zhejiang Yueling) and Pilotdoer Wheel Co. Ltd (Pilotdoer).
- (iv) On 22 December 2015, the ADRP invited the Anti-Dumping Commission (the Commission) to comment on the claims made in the review applications.

The Commission has identified information it considers to not be *relevant information* as defined in subsection 269ZZK(6) of the Act in column 3 of the following tables. Column 4 includes any factual claims in the application that are disputed by the Commission, as well as commentary on the grounds of the application and additional background on the matter.

- (v) In drafting this response, the Commission has had regard to all information submitted to it during the review up until the day that *Final Report No. 263* (REP 263) was submitted to the Parliamentary Secretary. This information includes the *Statement of Essential Facts No. 263* (SEF 263), submissions from interested parties, and confidential correspondence with the applicants. In drafting this response the Commission has also had regard to analysis it performed during the review. The Commission confirms that, in drafting this response, no new information (that was not considered during the review) has been considered.

¹ Unless otherwise stated, all legislative references in this response are to the *Customs Act 1901*

² Anti-Dumping Notice 2015/113 refers

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(vi) This response is presented in a confidential and non-confidential format.

The Commission invites the ADRP to consider and read in full SEF 263 and REP 263 as well as information on the electronic public record to provide additional context to the information provided in this response.

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Response to Zhejiang Yueling’s Application for an ADRP review

1. Claim	2. No. ³	3. Information that is not relevant ⁴	4. Claims disputed by the Commission, additional background or other commentary
Zhejiang Yueling was deemed a cooperative exporter and hence should not have received a dumping or subsidy margin calculated in a similar manner used to determine margins for uncooperative exporters.	B 1	Nil	<p>Refer to Appendix A, section 4 of REP 263, for a non-confidential discussion of the Commission’s determinations in relation to Zhejiang Yueling’s data and the legal basis upon which Zhejiang Yueling’s calculations were undertaken.</p> <p>Other sections in REP 263 may also provide relevant information:</p> <ul style="list-style-type: none"> - 4.5.1, for Zhejiang Yueling’s export price calculation; - 4.6.6, for Zhejiang Yueling’s normal value calculation; and - 4.7, for Zhejiang Yueling’s dumping margin calculation.
Zhejiang Yueling’s data was reliable and hence should not have been treated as unreliable.	B 3	Nil	<p>A high level summary of events showing the Commission’s unsuccessful efforts to obtain satisfaction with the reliability of Zhejiang Yueling’s data is shown below.</p> <ul style="list-style-type: none"> - On 8 December 2014, Zhejiang Yueling submits its Exporter Questionnaire (EQ; Attachment 1). (The Australian sales spreadsheet submitted in Zhejiang Yueling’s EQ is at Attachment 2). - On 1 May 2015, the Commission requested additional information for the purpose of verifying information contained in the EQ. - On 11 May 2015 Zhejiang Yueling provides a response to a request for further information (Attachment 3). - On 14 and 15 May 2015, the Commission requested additional information for the purpose of verifying data contained in Zhejiang Yueling’s response to the EQ. - On 20 May 2015, Zhejiang Yueling provides a response to follow-up requests for further information (Attachment 4). Zhejiang Yueling submits, at that time, a revised Australian Sales spreadsheet (Attachment 5) which contains [redacted] [information previously deemed by Zhejiang Yueling to be confidential]. - On 15 June 2015, after reviewing all information and data provided by Zhejiang Yueling, the Commission provided Zhejiang Yueling with initial advice that it was not satisfied with the company’s data (Attachment 6). - On 18 June 2015 Zhejiang Yueling responds to the above letter, arguing that the its data should not be considered unreliable, and giving some explanation about why its Australian sales spreadsheet had changed. Zhejiang Yueling also submitted various value added tax (VAT) invoices which it claimed would show that the Australian sales

³ This column refers to the relevant section in Zhejiang Yueling’s application, which the Commission is responding to.

⁴ As defined in subsection 269ZZK(6) of the *Customs Act 1901*.

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1. Claim	2. No. ³	3. Information that is not relevant ⁴	4. Claims disputed by the Commission, additional background or other commentary
			<p>spreadsheet could be verified (<u>Attachment 7</u>).</p> <ul style="list-style-type: none"> - On 22 July 2015, the Commission responds to Zhejiang Yueling's letter of 18 June 2015, providing more detail around why its data was considered unreliable (<u>Attachment 8</u>). - On 30 July 2015, the Commission releases Statement of Essential Facts (SEF) 263⁵ stating the preliminary decision that Zhejiang Yueling's data is not reliable. - On 19 August 2015, Zhejiang Yueling responds to the Commission's letter dated 22 July 2015, arguing that Zhejiang Yueling's data should not be considered unreliable (<u>Attachment 9</u>). - The Commission refutes the claims in Zhejiang Yueling's letter dated 19 August 2015, via Final Report 263, released on 22 October 2015.⁶ <p>As previously mentioned, appendix A, section 4 of REP 263 contains a non-confidential discussion of the Commission's determinations in relation to Zhejiang Yueling's data and the legal basis upon which Zhejiang Yueling's calculations were undertaken. Further discussion in relation to why Zhejiang Yueling's data was deemed to be unreliable is included below.</p> <ol style="list-style-type: none"> 1. The Commission was concerned by the fact that Zhejiang Yueling's Australian sales spreadsheet initially contained incorrect information regarding [redacted] [sales terms] invoice values. Invoice values are key to determining a company's export price and dumping margin, and the Commission thereby considers errors of this nature to be particularly concerning. In addition, Zhejiang Yueling's explanation of why these errors initially occurred was vague and hence a cause for concern – particularly noting that the errors were only corrected following the Commission's efforts to verify the Australian sales data against selected customer invoices. 2. Zhejiang Yueling's <u>revised</u> (i.e. "corrected") Australian sales spreadsheet (dated 20 May 2015) clearly contained errors. Background to this issue is below. <ul style="list-style-type: none"> - Invoice ([redacted] [invoice number], at <u>Attachment 10</u> and submitted on 20 May), did not match the Australian sales spreadsheet provided in Zhejiang Yueling's EQ. The customer name of the invoice ([redacted] [customer name]) did not match the customer name on the initial Australian sales spreadsheet (which had a customer name of [redacted] [customer name]) In addition, [redacted] [customer details]. No explanation was provided to explain why these discrepancies had occurred. - On 20 May 2015, Zhejiang Yueling submitted, alongside the invoices, a revised Australian sales spreadsheet. - Zhejiang Yueling erroneously amended its Australian sales spreadsheet to include all sales to [redacted] [customer details].

⁵ SEF 263 is available at <http://adcommission.gov.au/cases/EPR%20251%20%20300/EPR%20263/040%20-%20Report%20-%20SEF%20263.pdf>.

⁶ REP 263 is available at <http://adcommission.gov.au/cases/EPR%20251%20%20300/EPR%20263/051%20-%20Final%20Report.pdf>.

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1. Claim	2. No. ³	3. Information that is not relevant ⁴	4. Claims disputed by the Commission, additional background or other commentary
			<p>3. The Commission had other concerns around the accuracy of the sales values in the corrected Australian sales spreadsheet. The Commission undertook some analysis of the invoices provided by Zhejiang Yueling on 18 June 2016 and found that some invoices did not match the total sales values, or shipping terms which were submitted by one importer. In addition, [REDACTED] [REDACTED] [confidential information submitted by an importer]. The analysis showing these differences (and evidence of data submitted by the relevant importer) is included at Attachment 11.</p> <p>As noted in REP 263, the Commission acknowledged Zhejiang Yueling did provide (in its letter dated 19 August 2015) further explanation in relation to some instances where the Commission was unable to match certain sample invoices with the company's Australian sales spreadsheet. However, the concerns in relation to the inability to match Zhejiang Yueling's data with importer data provided an additional indication that the sales values included in the Australian sales spreadsheet was unreliable, as the Commission was not satisfied that the actual export price of the goods was reflected in the spreadsheet. It also indicated the potential involvement of third parties (potentially traders) in relation to the importation of the goods to Australia. Refer to the below section for further discussion on this matter.</p> <p>The purpose of verification is to verify the accuracy of the data provided by the exporter. In some circumstances, it is practice to allow an exporter to make minor corrections to its data: it is not the role of the Commission, or the purpose of verification to provide information to enable an exporter to correct its own data.</p> <p>The Commission views that points 1 and 2 above provided the Commission with sufficient satisfaction that the company's Australian sales data was unreliable. However, when considered in the context of point 3 above, as well as the issues around lack of transparency regarding Australian sales and distribution processes (discussed in the below section), the Commission views that it evidently had sufficient cause to deem Zhejiang Yueling's data as unreliable.</p> <p>The Commission further views that its detailed explanation above undermine the claims made by Zhejiang Yueling's application that "the ADC's decision to disregard Yueling's information was based on nothing but a series of unsubstantiated and unexplained potentialities" and that "the ADC... did not undertake any verification to establish whether there are any inaccuracies".</p> <p>As previously noted, Attachment A, section 4 of REP 263 contains further non-confidential information in relation to the determinations made regarding Zhejiang Yueling.</p>
The Commission should not have disregarded Zhejiang Yueling's	B 3	Nil	<p>As stipulated on page 59 of REP 263, the Commission views that a lack of reliability within the Australian sales spreadsheet could have impacted on the reliability of cost to make and sell data submitted by Zhejiang Yueling.</p> <p>On the basis that the Commission found the Australian sales spreadsheet contained inaccuracies, the cost to make data</p>

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1. Claim	2. No. ³	3. Information that is not relevant ⁴	4. Claims disputed by the Commission, additional background or other commentary
cost and other data, even if it found the company's Australian sales spreadsheet to be unreliable.			<p>provided is also highly likely to contain inaccuracies and therefor the Commission determined it was unreliable under section 269TAC(7) and could not be used to construct a normal value.</p> <p>For this reason, the Commission viewed that there was insufficient information to determine normal values for Zhejiang Yueling under subsection 269TAC(2)(c) of the Customs Act (the Act), and instead calculated normal values under 269TAC(6) of the Act.</p>
It was unreasonable for the Commission to determine that a lack of clarity on its part, in relation to distribution arrangements for goods exported by Zhejiang Yueling to Australian customers, should affect the reliability of the company's data.	B 4	<p>The data presented by Zhejiang Yueling in relation to the involvement of a third party in relation to export sales to two importers [redacted] [importer names] – was not submitted during review 263.</p>	<p>The Commission sought information from Zhejiang Yueling in relation to Australian sales arrangements via the EQ, 1 May 2015 and 14 May 2015. Information about distribution methods is essential to determining accurate export prices and normal values. If there are specific types of trading or distribution arrangements and these arrangements involve an additional cost for the exported goods, this can necessitate adjustments to a company's normal values, or even adjustments to a company's export price. Uncertainties around distribution arrangements create uncertainties around the accuracy (and thereby reliability) of export price and normal value calculations, based on an exporter's data.</p> <p>In relation to the Commission's specific concerns regarding this matter, the Commission agrees that Zhejiang Yueling was correct in suggesting (in its application to the ADRP) that the Commission was concerned about the lack of clarity around the distribution arrangement involving sales to [redacted] [importer name] and [redacted] [importer name] via [redacted] [importation arrangement]. The Commission observed in those importers' questionnaires that [redacted] [information submitted in confidential importer questionnaires]. Data collected by Australian Border Force pertaining to imports by both companies during the investigation period (Attachment 12) clearly showed that [redacted] [confidential information relating to importers].</p> <p>These facts indicated [redacted] [importation arrangements], and as a result Zhejiang Yueling should have been aware of its existence and should have proactively explained the nature of the company's involvement to the Commission. For example, if [redacted] [importation arrangement] is as described in Zhejiang Yueling's ADRP application, Zhejiang Yueling should have explained this in question B-2(e) of the EQ which seeks information regarding export price negotiations. In addition, the Commission notes that Zhejiang Yueling eventually provided information relating to other [redacted] [importation arrangements]).</p> <p>In relation to Zhejiang Yueling's claims that the Commission should have provided it with information about a potential [redacted] [importation arrangement], as shown in the Commission's Dumping Commodity Register, the Commission notes that it is an exporters responsibility to provide the information requested by the Commission.</p>
The ADC's decision	B 5	Nil	The Commission disagrees with this submission. As discussed in response to claim B3(a), the Commission gave Zhejiang

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1. Claim	2. No. ³	3. Information that is not relevant ⁴	4. Claims disputed by the Commission, additional background or other commentary
to disregard the information provided by Yueling, and the insufficient opportunities given by Zhejiang Yueling to provide information sought by the Commission, breaches Article 6.8 of the Anti-Dumping Agreement.			<p>Yueling at least three opportunities to present necessary information in a reasonable period (via an exporter questionnaire, and two responses to Commission requests for additional information).</p> <p>As previously noted, Appendix A, section 4 of REP 263 contains further non-confidential information in relation to the determinations made regarding Zhejiang Yueling.</p>
Yueling's dumping margin must be worked out based on its own information.	C	Nil	<p>Refer to Attachment A, section 4 of REP 263, and responses to sections B1, B3, B4 and B5 above, for more information regarding why the Commission deemed Zhejiang Yueling's data unreliable for the purposes of determining a dumping margin, and the legislative basis through which the Commission calculated Zhejiang Yueling's dumping margin in REP 263.</p>
Yueling's information cannot be disregarded for its subsidy margin.	D 1	Nil	<p>Refer to Appendix C of REP 263 for a non-confidential discussion of the methodology the Commission used to calculate Zhejiang Yueling's subsidy margin.</p> <p>In relation to the legislation applicable to the determination of Zhejiang Yueling's subsidy margin for program 1, the Commission views that only sections 269TACC and 269TACD of the Act have any relevance to the determination of a subsidy margin. (Section 269TAACA, which Zhejiang Yueling referred to in its application to the ADRP, relates to non-cooperative exporters and hence is not considered relevant.)</p> <p>The Commission notes that section 269TACC of the Act stipulates the means through which the Parliamentary Secretary determines whether a financial contribution confers a benefit, and the guidelines around what benefits and financial contributions are.</p> <p>The more relevant information in relation to the applicability of the legislation to Zhejiang Yueling's subsidy margin is subsections 269TACD(1) and (2) of the Act, which stipulate that:</p> <p style="padding-left: 40px;"><i>"If the Minister is satisfied that a countervailable subsidy has been received in respect of goods, the amount of the subsidy is an amount determined by the Minister in writing.</i></p> <p style="padding-left: 40px;"><i>After the amount of the countervailable subsidy received in respect of goods has been worked out, the Minister</i></p>

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1. Claim	2. No. ³	3. Information that is not relevant ⁴	4. Claims disputed by the Commission, additional background or other commentary
			<p style="text-align: center;"><i>must, if that subsidy is not quantified by reference to a unit of those goods determined by weight, volume or otherwise, work out how much of that amount is properly attributable to each such unit."</i></p> <p>The Commission notes that for subsidy program 1 the Minister determined an amount of the subsidy in writing, based on the highest unit benefit received by other selected exporters. Benefits were attributed using the lowest weighted average export price for other selected exporters who received benefits under subsidy programs. The Commission viewed that this approach was reasonable under the circumstances, and was compliant with subsections 269TACD(1) and (2) of the Act.</p>
Calculation of the amount of subsidy under programs other than Program 1	D 2	Nil	<p>Refer to the response to claim D 1 above.</p> <p>In relation to Zhejiang Yueling's claim that it is inconsistent to disregard detailed sales and cost data, whilst relying on the company's information about the amount of countervailable subsidies received, the Commission disagrees with this claim. The Commission notes that sales and cost data is based on complex information drawn from the company's accounting systems, while the information Zhejiang Yueling provided in relation to subsidies was relatively simple and verifiable. This is reflected in the bank slips provided by Zhejiang Yueling in its Exporter Questionnaire (<u>Attachment 13</u>), which contained the information the Commission used to determine the amount of subsidies received by Zhejiang Yueling. Irrespective of this claim, the Commission views its approach is reasonable and compliant with relevant legislation (subsection 269TACD(2)).</p>
Calculation of the amount of subsidy under Program 1	D 3	Nil	<p>Refer to the response to claim D 1 above for general discussion around the legal basis for the calculation of Zhejiang Yueling's subsidy margin.</p> <p>In relation to Zhejiang Yueling's claims that its aluminium purchase data should have been used to determine a rate for subsidy program 1, the Commission notes that for subsidy program 1 to have been attributed appropriately using Zhejiang Yueling's data, the Commission would have been required to use Zhejiang Yueling's export sales volumes to undertake the attribution. As Zhejiang Yueling's export sales data was unable to be used as it was deemed unreliable, the Commission would have needed to substitute those sales volumes with another amount, likely based on the lowest sales volumes of another exporter. Doing so would have resulted in a very large unit rate of subsidy for subsidy program 1, as [redacted] [confidential information regarding exporters' raw materials data], The Commission determined it was more reasonable in this instance to use the highest unit rate of subsidy which was calculated for other selected exporters, noting that this approach would lead to a more reasonable determination in relation to the unit amount of subsidisation for program 1 (as that exporter's total amount of subsidisation was proportionate to its total turnover volumes). This amount was then attributed using the lowest weighted average export price for other exporters⁷, leading to a (what the Commission considers to be) a reasonable amount of countervailable subsidy in respect of Zhejiang Yueling.</p>

⁷ In Appendix C, Section 5 of REP 263, it is stated that "For program 1, the value of the subsidy was determined using the highest unit benefit received by other selected exporters. Benefits were attributed using the lowest weighted average export price and the average relevant turnover volumes for other selected

Response to Pilotdoer’s Application for an ADRP review

1. Claim	2. No.	3. Irrelevant information ⁸	4. Claims disputed by the Commission, additional background or other commentary
<p>Pilotdoer’s domestic sales data should have been used to determine a rate of profit, because there were sufficient domestic sales made in the ordinary course of trade during the review period.</p>	<p>N/A</p>	<p>Nil</p>	<p>The Commission acknowledges that Pilotdoer appears to have correctly asserted that the Commission erred in its application of the ordinary course of trade test, when determining profit under subsection 45(2) of the Customs (International Obligations) Regulation 2015, by comparing the amount of sales made in the ordinary course of trade with export sales volumes, rather than domestic sales volumes.</p> <p>The Commission still believes that Pilotdoer’s domestic sales may still have occurred outside the ordinary course of trade, having observed the company’s proposed rate of profit is [REDACTED] [profit details] (as shown in the table at Attachment 14). The Commission views that this issue could warrant further investigation, and will consider how to address this issue.</p> <p>For a discussion of the Commission’s determination of profit in relation to Pilotdoer as part of review 263, refer to pages 51 to 52 of REP 263.</p>

exporters who received benefits under subsidy programs.” The Commission notes that the inclusion of the reference to using the “average relevant turnover volumes for other selected exporters who received benefits under subsidy programs” was an error. The Commission only attributed program 1 using the unit rate of subsidy as determined for another selected exporter, and the lowest weighted average export price applicable to other selected exporters.

⁸ As defined in subsection 269ZZK(6) of the *Customs Act 1901*.

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CONFIDENTIAL ATTACHMENTS	
Confidential Attachment 1	Zhejiang Yueling's exporter questionnaire
Confidential Attachment 2	Zhejiang Yueling's Australian sales spreadsheet, submitted in the company's exporter questionnaire
Confidential Attachment 3	Zhejiang Yueling's response to a request for information, dated 11 May 2015
Confidential Attachment 4	Zhejiang Yueling's response to a request for information, dated 20 May 2015
Confidential Attachment 5	Zhejiang Yueling's corrected Australian sales spreadsheet, dated 20 May 2015
Confidential Attachment 6	Initial letter from the Anti-Dumping Commission to Zhejiang Yueling, dated 15 June 2015
Confidential Attachment 7	Zhejiang Yueling's response to the Anti-Dumping Commission's letter dated 15 June 2015
Confidential Attachment 8	Second letter from the Anti-Dumping Commission to Zhejiang Yueling, dated 22 July 2015
Confidential Attachment 9	Zhejiang Yueling's response to the Anti-Dumping Commission's letter dated 22 July 2015
Confidential Attachment 10	Customer invoice provided by Zhejiang Yueling
Confidential Attachment 11	Comparison of importer and exporter data
Confidential Attachment 12	(Then) Australian Border Force data, pertaining to imports from [REDACTED] [importer details]
Confidential Attachment 13	Evidence of Grants received by Zhejiang Yueling
Confidential Attachment 14	[REDACTED] [profit data]