



Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application for review to the ADRP of a review of a ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

¹ By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

² As defined in section 269ZX *Customs Act 1901*.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: **Zhejiang Jinfei Kaida Wheel Co., Ltd (Jinfei Kaida).**

Address: **No 800. Xianhua South Street, Industrial Park Jinhua City, Zhejiang, People's Republic of China.**

Type of entity (trade union, corporation, government etc.): **Limited liability company.**

2. Contact person for applicant

Full name: **He Dongting**

Position: **Vice General Manager**

Email address: **jinfeikaida@163.com**

Telephone number: **0086-579-82523262**

Please note that all communications in relation to this application are requested to take place with and through Jinfei Kaida's legal representatives. For contact details please refer to Part E of this application.

3. Set out the basis on which the applicant considers it is an interested party

Pursuant to Section 269ZZC of the *Customs Act 1901* ("the Act") a person who is an interested party in relation to a reviewable decision may apply for a review of that decision. The reviewable decision in this case relates to the continuation of anti-dumping measures made under Section 269ZH(1). Under Section 269T of the Act an "*interested party*" for the purpose of that kind of a reviewable decision is defined as including, amongst others, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application; any person who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that have been, or are likely to be, exported to Australia.

Jinfei Kaida is a manufacturer and exporter, to Australia, of the goods to which the decision relates, namely aluminum road wheels. Jinfei Kaida is thus an "*interested party*" for the purposes of the Act and this application.

4. Is the applicant represented?

Yes ☒ No

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

☐ Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐ Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐ Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐ Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐ Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐ Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐ Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☒ Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

6. Provide a full description of the goods which were the subject of the reviewable decision

The goods subject of the reviewable decision are:

aluminium road wheels for passenger motor vehicles, including wheels used for caravans and trailers, in diameters ranging from 13 inches to 22 inches. The goods include finished or semi-finished aluminium road wheels whether un-painted, painted, chrome plated, forged or with or without tyres.

The goods do not include aluminium wheels for go-carts and all-terrain vehicles.

7. Provide the tariff classifications/statistical codes of the imported goods

The goods are classified to the following tariff sub-headings in Schedule 3 of the Customs Tariff Act 1995:

- 8708.70.91 (statistical code 78).
- 8708.70.99 (statistical code 80).
- 8716.90.00 (statistical code 39).

8. Provide the Anti-Dumping Notice (ADN) number of the reviewable decision

If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

Anti-Dumping Notice No. 2017/75

9. Provide the date the notice of the reviewable decision was published

The reviewable decision was dated 16 June 2017 but was not published until 19 June 2017, as evidenced by the following which has been extracted from the Anti-Dumping Commission website (see "Date Loaded"):

Continuation - Case 378

Certain Aluminium Road Wheels Exported from the People's Republic of China

No.	Type	Title	Date Loaded
033	Notice	Findings of the Inquiry regarding the Continuation of Anti-Dumping Measures (PDF 1.0MB)	19/06/2017
032	Report	Final Report - REP 378 (PDF 1.2MB)	19/06/2017

****Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application****

See Attachment A

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☒

See Attachment B, in respect of which confidential and non-confidential versions have been provided.

- 10. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.**

- 11. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 0.**

- 12. Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.**

Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

PART D: DECLARATION

The applicant/the applicant's authorised representative ~~[delete inapplicable]~~ declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected;
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:



Name: **Charles Zhan**

Position: **Senior Associate**

Organisation: **Moulis Legal**

Date: **19/07/2017**

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative

Full name of representative: **Charles Zhan**

Organisation: **Moulis Legal**

Address: **6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
Australian Capital Territory
Australia 2609**

Email address: **charles.zhan@moulislegal.com**

Telephone number: **+61 2 6163 1000**

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

See Attachment C.

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:.....
(Applicant's authorised officer)

Name:

Position:

Organisation

Date: / /



19 July 2017

In the Anti-Dumping Review Panel

Application for review Aluminium road wheels exported from China

Zhejiang Jinfei Kaida Wheel Co., Ltd

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Introduction

Anti-dumping measures applicable to aluminium road wheels (“the goods” or “ARW”) exported from China were originally established following a decision by the Minister for Home Affairs to impose dumping and countervailing duties (“the anti-dumping measures”) on 5 July 2012, following an investigation by the then Australian Customs and Border Protection Service.

On 15 September 2014, the ADC initiated a review of the anti-dumping measures (“Review 263”) in respect of the goods exported from China by all exporters. As a result of the review, the Parliamentary Secretary to the Minister for Industry, Innovation and Science (“the Parliamentary Secretary”) decided on 22 October 2015 to accept the recommendations and reasons for the recommendations, including all the material findings of facts or law set out in the Commission’s final report to the Parliamentary Secretary in Review 263 (“Report 263”), and thereby decided to alter the dumping duty and

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countervailing duty notices in relation to the goods exported from China.¹

On 27 October 2016, the ADC initiated an inquiry (“the Inquiry”) into whether the continuation of the anti-dumping measures is justified. As a result of the inquiry, the Parliamentary Secretary decided on 19 June 2017 to accept the recommendations and reasons for the recommendations, including all the material findings of facts or law set out in the Commission’s final report to the Parliamentary Secretary for the Inquiry (“Report 378”), and thereby decided to:

- secure the continuation of the anti-dumping measures applicable to the goods exported from China (with the exception of those measures relating to CITIC Dicastal Co., Ltd (“CITIC”); and
- after 4 July 2017, alter the anti-dumping measures “*as if different variable factors have been fixed relevant to the determination of duty*”.

Specifically, the Parliamentary Secretary decided to publish a notice under subsection 268ZH(1)(b) of the *Customs Act* 1901 (“the Act”) in relation to the goods exported from China.² This notice had the effect of continuing the anti-dumping measures on exports from China with the exception of those exported by CITIC, and with different variable factors fixed for the determination of duty.

Zhejiang Jinfei Kaida Wheel Co., Ltd (“Jinfei Kaida”) is a Chinese manufacturer and exporter of ARW.

Jinfei Kaida seeks review by the Anti-Dumping Review Panel (“the Review Panel”), under Sections 269ZZA(1)(d) and 269ZZC, of the decision (or decisions) made by the Parliamentary Secretary to secure the continuation of the anti-dumping measures in relation to Jinfei Kaida and to fix different variable factors relevant to the determination of duty, as outlined in this application.

In this application Jinfei Kaida submits that the Parliamentary Secretary, on the recommendation of the Commission, erred in the determination of normal value, and ultimately the determination to continue the measure as if different variable factors have been fixed in respect of it. Specifically, the ground of review relates to the Commission’s calculation of the normal value for Jinfei Kaida based on a methodology designed to achieve a particular dumping margin, namely 7.8%, being the same margin the Commission determined in Review 263. That calculation should have been based on the relevant information obtained by the Commission in the Inquiry. We submit that there is no legal or factual justification to

¹ A reference to a “Section”, “Subsection” or “Subparagraph” in this Application is a reference to a Section, Subsection or Subparagraph of the Act, unless otherwise specified.

² A reference to a “Section”, “Subsection” or “Subparagraph” in this Application is a reference to a Section, Subsection or Subparagraph of the Act, unless otherwise specified.

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calculate the normal value or the dumping margin in the manner adopted by the Commission.

We now address the requirements of both the form of application that has been approved by the Senior Member of the Review Panel under Section 269ZY, and of Section 269ZZE(2), in relation to Jinfei Kaida's grounds of review, being those requirements not already addressed within the text of the approved form itself, which Jinfei Kaida has also completed and lodged with the Review Panel.

10 Grounds – the normal value/variable factors was not determined correctly

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision

(a) Procedural background

Jinfei Kaida was one of the Commission's three "selected exporters" for the Inquiry. Jinfei Kaida provided its response to the Exporter Questionnaire on 5 December 2016. Jinfei Kaida then accommodated the Commission's on-site verification visit in January 2017. Jinfei Kaida was fully cooperative during the Inquiry, and was *not* considered to be an uncooperative exporter under Section 269TACAB of the Act.

The Commission's determination of the variable factors and dumping margin applicable to Jinfei Kaida for the purpose of the Inquiry changed at different stages of the Inquiry. For the purpose of giving the Review Panel a full picture of the issues, it is useful to review the Commission's determinations in these various stages.

- **Stage 1 – Review 263 (previous margin):** as a result of Review 263, the Minister determined a dumping margin of **7.8%** for Jinfei Kaida, based on Jinfei Kaida's export price during the review period under Section 269TAB(1), and a normal value under Section 269TAC(6) using "all relevant information".³ The relevant information was Jinfei Kaida's cost and profit data as verified by the Commission. The variable factors and the resulting dumping margin determined in Review 263 was the operative and applicable variable factors for Jinfei Kaida's exports prior to the Minister's decision to alter the variable factors for Jinfei Kaida at the conclusion of the

³ Report 263 explains that "*Subsection 269TAC(6) of the Act was used as the company exported purchased goods, but was unable to provide CTM data for those goods.*" Nonetheless the normal value is still determined based on Jinfei Kaida's own cost information.

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Inquiry.

- **Stage 2 – the Commission’s Verification Report for Jinfei Kaida in the Inquiry (“the Verification Report”)**: the Commission determined a dumping margin of negative 9.8%, calculated on the basis of Jinfei Kaida’s own export price (“ascertained export price” or “AEP”) under Section 269TAB(1)(a), and a constructed normal value using “all relevant information available” under Section 269TAC(6). The relevant information was “the highest unit amount for ‘cost to make’ for each model grouping” of Jinfei Kaida, as verified by the Commission. In doing so, the Commission noted:⁴

Having verified Jinfei Kaida’s CTM spreadsheet to audited financial statements, the verification team is satisfied that the revised CTM spreadsheet contains aggregate cost data that is complete. However, the verification team is not satisfied that it is accurate.

...

However, having consideration to material provided during the verification visit, the verification team concludes that Jinfei Kaida was unable to demonstrate how the detailed monthly unit cost data (by model) could be traced to source documents.

- **Stage 3 – Statement of Essential Facts No 378 (“the SEF” or “SEF 378”) in the Inquiry**: the same dumping margin of **7.8%** and the corresponding variable factors as was operative after Review 263 was to be maintained for Jinfei Kaida. At the same time, the Commission proposed to recommend that the AEP be changed to reflect Jinfei Kaida’s export price during the inquiry period as determined under Section 269TAB(1)(a) of the Act. The basis for doing this was described as follows:⁵

The Commission has considered all relevant information provided by Jinfei Kaida and the other selected exporters, and finds that, at this point in time, it is unable to establish a normal value based on the information obtained from the selected exporters.⁵⁵

...

Having regard to the findings made in relation to normal value, the Commission is unable to make any assessment of dumping margins for the goods exported to Australia by the selected exporters, and by extension residual and uncooperative and all other exporters.

and

Given the findings in Chapter 7 with regard to the calculation of normal values for the

⁴ See, the Verification Report, at page 8.

⁵ See, the SEF, at pages 38 and 40

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selected exporters, the Commissioner considers that no dumping margins are able to be established. Noting that material injury will be experienced by the Australian industry if the anti-dumping measures are not continued, the Commissioner considers that the most appropriate course of action in the circumstances is to:

- *make no change to the variable component of dumping duty (that is, the existing dumping margins are to continue);*
- *alter the variable component of countervailing duty so that it reflects the Commission's findings during this inquiry; and*
- *alter the ascertained export price for all exporters, such that the fixed component of the duty reflects the Commission's findings in this inquiry.*

[underlining supplied]

The only explanation for the Commission's change of position from the Verification Report to the SEF is provided in a footnote, which essentially advises that the Commission has changed its mind:⁶

[Footnote 55] The Commission notes that the verification report for Jinfei Kaida nevertheless calculated a normal value, based on the approach taken by the verification team (using the highest unit cost to make for each model grouping). The case team has now concluded that this is not the correct and preferable approach in the circumstances.

- **Stage 4 – Report 378/Minister's final decision:** at this final stage the Commission changed its decision regarding the calculation of dumping margin for Jinfei Kaida again, albeit achieving the same practical outcome as was achieved in the SEF. In Report 378, the Commission determined a dumping margin of **7.8%** - being the same dumping margin as determined in Report 263 and in the SEF. However, different to the SEF (which decided that the normal value and dumping margin could not be worked out), Report 378 states that the dumping margin was calculated for Jinfei Kaida based on Jinfei Kaida's own export price as the ascertained export price, and a normal value calculated under Section 269TAC(6), described as follows:⁷

The Commission has considered all relevant information, and has elected to establish a normal value for this inquiry by indexing the normal value already established for Jinfei Kaida in REP 263 by the percentage change in ascertained export prices between the two cases.

Report 378 did not provide any reasons for the change of decisions from the SEF in relation to

⁶ See the SEF, at page 38.

⁷ See Report 378 at page 46.

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the calculation of normal value and dumping margin for Jinfei Kaida. However we note that the following comments were included in Report 378 as a footnote in relation to another selected exporter, CITIC. Given that the ADC adopted the same method for determining variable factors for CITIC as for Jinfei Kaida in both the SEF and Report 378, we consider that such comment would equally apply to Jinfei Kaida:⁸

[Footnote 71] The Commission has reflected on the approach taken in SEF 378, and the then decision to not calculate a normal value. The Commission now considers that the approach set out in this section is the correct and preferable approach.

The Commission's shifts of positions between different stages of the Inquiry provide the Review Panel with useful context in considering whether the decision subject to review is correct or preferable, and in considering what should be the correct or preferable decision. One or other of these positions may be the correct or preferable one – but surely not all of them.

(b) Normal value and dumping margin have not been determined correctly

As shown in Report 378, and in the summary regarding the “Stage 4” dumping margin discussed above, the Minister claims to have determined a new export price under Section 269TAB(1)(a) and a new normal value for Jinfei Kaida according to Section 269TAC(6), which is said to have resulted in a dumping margin of 7.8%. Further, the Minister decided to continue the anti-dumping measures in relation to exports by Jinfei Kaida as if the different variable factors were fixed according to these new determinations.

We draw the Review Panel's attention to the fact that the same dumping margin 7.8% have been determined for Jinfei Kaida in:

- Review 263;
- the SEF; and
- Report 378

⁸ Ibid, at page 44.

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Jinfei Kaida understands that the AEP determined by the Minister in Report 378 is [CONFIDENTIAL TEXT DELETED – amount] per piece.⁹ This is the same amount as the Commission determined in the Verification Report and the SEF.

Jinfei Kaida also understands that the AEP determined by the Minister in Review 263 is [CONFIDENTIAL TEXT DELETED – amount] per piece. The normal value determined by the Minister in that review, which generated the 7.8% dumping margin, was [CONFIDENTIAL TEXT DELETED – amount].

Obviously the AEP in Report 378 is different to ([CONFIDENTIAL TEXT DELETED – comparison]) the AEP in Review 263. It is therefore curious as to how the same dumping margin can be achieved for different AEPs? The answer lies in the curious explanation provided in Report 378, namely:

The Commission has considered all relevant information, and has elected to establish a normal value for this inquiry by indexing the normal value already established for Jinfei Kaida in REP 263 by the percentage change in ascertained export prices between the two cases.

We submit that this method is not the correct or preferable method for determining normal value under Section 269TAC(6) of the Act, as it suffers from a number of flaws.

Firstly, we advise the Review Panel that the so-called “indexing” method is simply a roundabout way of stating that the Commission has worked out the normal value it purported to calculate under Section 269TAC(6) by way of calculating an amount based on Jinfei Kaida’s new AEP and the dumping margin it intended to achieve and impose. That is, the normal value is determined by the dumping margin. Applying such method, the Commission can work out whatever normal value it wishes to ascertain – whether that be a normal value that could support a negative 10% dumping margin, or a normal value that could support a 100% dumping margin. With respect, the Act prescribes that the dumping margin must be worked out based on the variable factors the Minister determines under the law. The Act does not allow the Minister to work out the variable factors based on the dumping margin. To do so is to work backwards from the result, rather than to arrive at a result pursuant to the calculation of different amounts each of which has been duly determined under the Act. The Minister purported to determine the normal value in accordance with Section 269TAC(6), which provides:

Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding

⁹ Jinfei Kaida has not been provided with any margin calculation attached to Report 378. However we expect that the same export price as stated in the Verification Report has been determined, as there is no indication of otherwise.

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subsections (other than subsection (5D)), the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.

We submit that the dumping margin determined by the Minister for Jinfei Kaida in Review 263, which was worked out based on the export price and normal value for the period of 1 July 2013 and 30 June 2014, is not relevant information for the purpose of working out the normal value associated with the ARW exported by Jinfei Kaida during the inquiry period of 1 July 2015 and 30 June 2016.

Secondly, to address the so called “indexing” exercise itself, we advise that the “*the percentage change in ascertained export prices*” cannot be regarded as relevant information for the purpose of the calculation of a normal value. Obviously, export price and normal value are different concepts. Export price is mainly driven by the market condition in the export destination market, the price negotiation between Jinfei Kaida and its customers, and Jinfei Kaida’s cost of production. On the other hand, normal value is only driven by Jinfei Kaida’s cost of production (and the “uplifted cost” in this matter), and the profit amount determined by the Commission based on conditions in the exporting country’s domestic market. Accordingly, the decision to work out Jinfei Kaida’s normal value for the inquiry period based on changes in export price does not have any apparent logical, legal or factual basis.

In any case, if the Commission indeed examined Jinfei Kaida’s export prices in currency used for those transactions, which is a more meaningful measure of “export price” – from [CONFIDENTIAL TEXT DELETED – amount] to [CONFIDENTIAL TEXT DELETED – amount] – it would show that the resulting indexed normal value should lead to a dumping margin of [CONFIDENTIAL TEXT DELETED – margin], not 7.8%.

Thirdly, even if we assume that the normal value determined in Review 263 can be regarded as relevant information for the Inquiry, and that an indexing exercise is appropriate for the purpose of working out normal value under Section 269TAC(6), then such indexing should at least be conducted based on information or factors which are actually relevant for normal value. In this regard, it would appear that factors such as the movement in LME based aluminium benchmark costs between Review 263 and the Inquiry would have been much more informative and relevant for normal value determination, given the apparent significance of aluminium raw material cost to normal value in the mind of the Commission.

Indeed, the fact that the benchmark aluminium cost for the inquiry period has been much *lower*, rather than *higher* than the benchmark aluminium cost in Review 263 should further demonstrate the *irrelevance* of using the export price change as a measure of indexing normal value – which resulted in [CONFIDENTIAL TEXT DELETED – comparison effect] normal value in the Inquiry as compared to Review 263, which is inconsistent with the trend of raw material costs.

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Lastly, regarding the identification of “relevant information” for the purpose of working out normal value under Section 269TAC(6), we draw the Review Panel’s attention again to the Commission’s change of position concerning Jinfei Kaida between SEF 378 and Report 378. As demonstrated above, in both SEF 378 and Report 378 the Commission decided to impose a dumping margin of 7.8% for Jinfei Kaida with a new AEP. In particular, the Commission intended to do so in the SEF despite its finding that variable factors could not be worked out, therefore should remain unchanged. Relevantly, it would appear that a key factor contributing to the Commission’s view that it was not possible to work out normal value, and which led to the Commission proposing to make no change to the dumping duty for all exporters concerned in the SEF, was the Commission’s view that it was *“unable to establish normal value for any of the selected exporters”*, specifically:

- for Jinfei Kaida, the Commission’s view that it was not satisfied with the relevance and accuracy of Jinfei Kaida’s unit cost of production in relation to each model in each month;¹⁰
- for CITIC, the Commission’s view that it was satisfied that sufficient information was furnished to enable normal value calculation;¹¹ and
- for Zhejiang Yueling Co., Ltd, (“Zhejiang Yueling”), the fact that Commission had not concluded the verification, and was *not yet* satisfied with the cost information provided by Zhejiang Yueling at the time of the SEF.¹²

However, the circumstances underlying the Commission’s consideration changed after the publication of SEF. At the time of issuing Report 378, the Commission has obtained information for establishing normal value from one selected exporter, which the Commission had verified. The Commission was satisfied that the data - namely the information the Commission obtained from Zhejiang Yueling - was relevant, sufficient and accurate. This means that the relevant information available to the Commission before the preparation of Report 378 was critically different to the situation underlying the SEF. The Commission/ Parliamentary Secretary were obliged to have regard to that relevant information in the establishment of normal value under Section 269TAC(6) of the Act.

Jinfei Kaida submits that the verified information from Zhejiang Yueling must be regarded as the most and only relevant and preferable information to use under Section 269TAC(6) for determining the normal

¹⁰ See the SEF, at page 38

¹¹ Ibid, at page 37

¹² Ibid, at page 39

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value for Jinfei Kaida. Jinfei Kaida was a cooperative exporter whose information was denied because of some concern on the part of the Commission as to its “relevance” and “accuracy”. However instead of then going on to use the information which was therefore the most relevant, it turned to some indexing methodology which has no foundation in the Act and which indeed confounds the concept of normal value as it is defined under the Act.

In summary, we respectfully submit that the Minister has relied on irrelevant information for the purpose of calculating normal value, being:

- the dumping margin for Jinfei Kaida in Review 263;
- the intention to have the same dumping margin from Review 263 apply to Jinfei Kaida’s new export price for the Inquiry period;¹³ and
- the percentage change in Jinfei Kaida’s export price in RMB terms between the review period for Review 263 and the Inquiry period.

Further, we submit that the Minister has failed to have regard to what is clearly and appropriately “relevant information” for the purpose of calculating a normal value for Jinfei Kaida, such as:

- the percentage change/movement in the benchmark aluminium costs between Review 263 and the Inquiry; and
- the verified information from selected exporters in the Inquiry.

Therefore, we submit that the Minister has not determined the normal value for Jinfei Kaida correctly as required by Section 269TAC(6) of the Act and that this led to the Minister’s decision to incorrectly fix different variable factors for duty purposes under Section 269ZHG(4)(a)(iii).

11 Correct or preferable decision

Identify what, in the applicant’s opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10

Based on the ground addressed under 10(b) above, we submit that the correct or preferable decision is that the Minister should work out the normal value under Section 269TAC(6) of the Act by having regard

¹³ We argue that such an intention existed, as indicated by the Commission’s approach to assign dumping margin in the SEF, and its decision to work out a normal value backward from the export price and dumping margin.

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to information which is genuinely relevant for the purpose of determining the normal value for Jinfei Kaida's exports during the inquiry period. By relevant information, we refer to:

- the verified information concerning normal value obtained and examined from selected exporters by the Commission, which the Commission was satisfied as relevant, sufficient and accurate, being the information of Zhejiang Yueling; and
- the movement in major raw material costs as reflected in the Commission's LME based benchmark aluminium cost between Review 263 and the Inquiry.

On this basis, the Parliamentary Secretary may still decide to secure the continuation of the anti-dumping duties in relation to Jinfei Kaida after the expiry day, but will have different variable factors fixed based on the correct ascertained export price and ascertained normal value as properly determined for the inquiry period.

Alternatively, if the Review Panel considers that the Commission/Parliamentary Secretary would still be correct to consider that it is unable to work out the normal value and dumping margin for Jinfei Kaida, then it is also open to the Parliamentary Secretary to make his decision under Section 269ZH(4)(a)(i) of the Act, by securing the continuation of the anti-dumping measures but without fixing different variable factors with respect to Jinfei Kaida.

12 Material difference between decisions

Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision

As mentioned in 11 above, the Review Panel is requested to recommend that the Minister make the correct and/or preferable decision in relation to the determination of Jinfei Kaida's normal value and dumping margin, as opposed to the current decision which we say is clearly incorrect and unlawful. The difference between the two decisions is material.

Jinfei Kaida does not have information pertaining to the selected exporter whose information was verified and which satisfied the Commission for the purpose of determining the normal value for the Inquiry with respect to that exporter. However it does have information regarding the movement of its own raw material costs and the LME based benchmark aluminium costs, as provided by the Commission in Review 263 and the Inquiry. For example the differences in Chinese aluminium prices between the two different periods can be illustrated in the following charts:

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- for the Inquiry:¹⁴

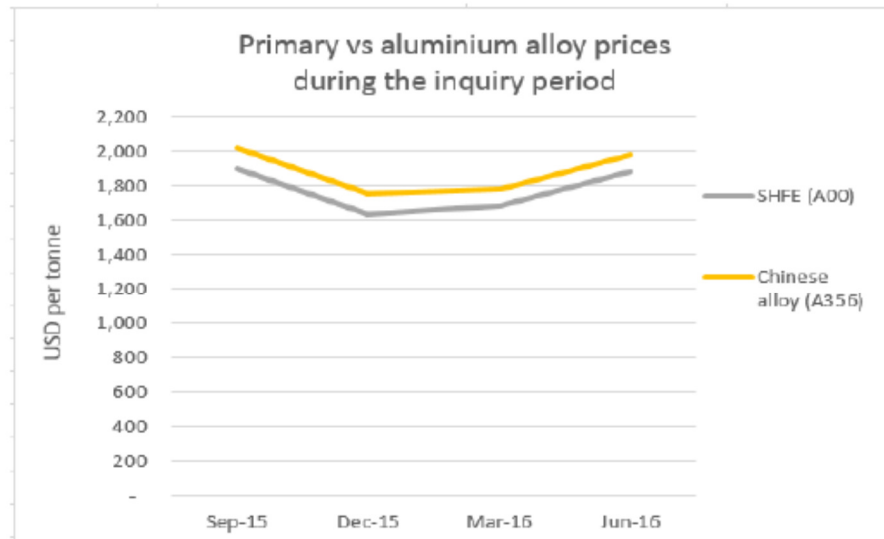


Figure 25 – difference between primary and alloyed aluminium (inclusive of VAT) during inquiry period

¹⁴ See Report 378, at page 100

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- for Review 263:¹⁵

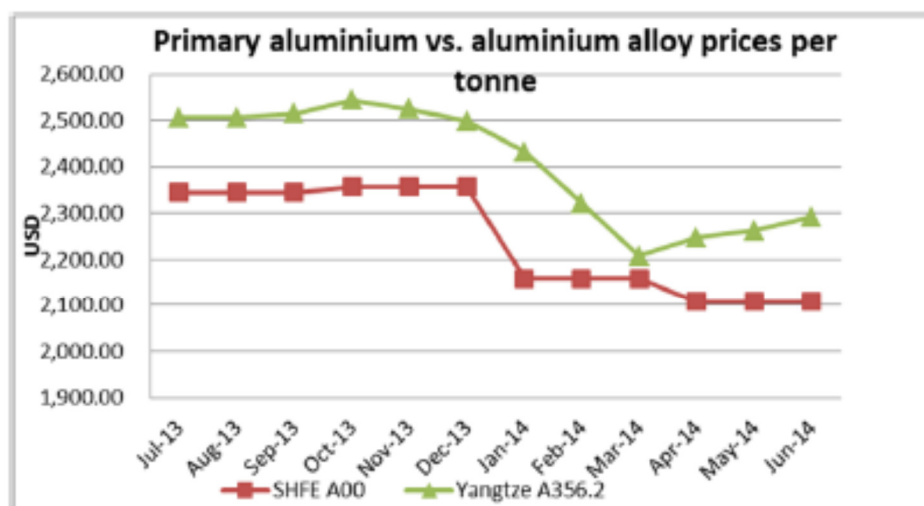


Figure 1: Chart showing the difference between primary aluminium and alloyed aluminium during the review period.

As seen above, the lowest SHFEA000 aluminium price during the inquiry period was around RMB1,600, as compared to RMB 2,100 in Review 263. The difference is more than 31%. On the other hand, based on the Commission's own calculation, the difference between Jinfei Kaida's own cost of raw material and the Commission's benchmark aluminium cost for the Inquiry is only **[CONFIDENTIAL TEXT DELETED – percentage]**.¹⁶ Accordingly, the cost differences between Review 263 and the Inquiry indicate that Jinfei Kaida's normal value for the inquiry period was materially *lower* in the inquiry period than for the review period in Review 263. Applying this logic would lead to a materially different outcome to that generated by the method adopted in Report 378, which saw an **[CONFIDENTIAL TEXT DELETED – effect]** in normal value for the inquiry period. On the other hand, Jinfei Kaida's export price during the inquiry period was **[CONFIDENTIAL TEXT DELETED – comparison]** in Review 263.

Accordingly, given the overall lower cost in the inquiry period as compared to the review period in Review 263, and Jinfei Kaida's **[CONFIDENTIAL TEXT DELETED – level]** export price in the inquiry period, Jinfei Kaida considers it reasonable to expect that the normal value and ultimately the dumping margin worked out for Jinfei Kaida based on all relevant information should be lower than 7.8% as

¹⁵ See Report 263, at page 84

¹⁶ See Verification Report, Appendix 4 – CTM uplifted

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determined in Report 378, and almost certainly negative. The difference in the dumping margin that will be arrived at by deciding this matter in the correct or preferable way is therefore materially different to the current dumping margin.

Further, in relation to the alternative “correct or preferable decision” that could be made under Section 269ZHG(4)(a)(i), in which is that the same variable factors as were determined in Review 263 should remain in place. Whilst the dumping margin expressed in Review 263 and Report 378 is the same, the corresponding variable factors are different – as demonstrated at Part 10(b) above. The different variable factors, specifically, the AEP, have a direct impact on the determination of dumping duty due to the use of “combination duty” method, which set the AEP as the benchmark for duty collection. As shown above, the AEP determined in Review 263 is **[CONFIDENTIAL TEXT DELETED – comparison]** than AEP determined by Report 378, by about **[CONFIDENTIAL TEXT DELETED – percentage]**. Accordingly, the difference between the two decisions is material.

Conclusion and request

The decision to which this application refers is a reviewable decision under Section 269ZHG(1) of the Act. Where references are made to the Commission and its recommendations, it is those recommendations which were accepted by the Parliamentary Secretary and form part of the reviewable decision that our client seeks to have reviewed.

Jinfei Kaida is an interested party in relation to the reviewable decision.

Jinfei Kaida’s application is in the approved form and has otherwise been lodged as required by the Act.

We submit that Jinfei Kaida’s application is a sufficient statement setting out its reasons for believing that the reviewable decisions are not the correct or preferable decisions, and that there are reasonable grounds for that belief for the purposes of acceptance of its application for review.

This application contains confidential and commercially sensitive information. An additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information is included as an Attachment to the application.

The correct or preferable decision that should result from the grounds that Jinfei Kaida has raised in the application, and their individual effect on the outcome of each, are dealt with in 10 and 11 above.

Accordingly, being fully compliant with the requirements of the Act, Jinfei Kaida requests the Review Panel to undertake the review of the reviewable decision, as requested by this application, under

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Section 269ZZK of the Act.

The Review Panel is requested to recommend to the Parliamentary Secretary that, in accordance with Section 269ZZM the reviewable decision (being the decision to publish notices under Sections 269ZHG(1) and (4)(a)(iii)) be revoked and substitute a another decision to publish a notice that declares the Minister's decision to secure the continuation of the anti-dumping measures in the same terms as that made on 19 June and with effect from that date but amended so that the continuation of the anti-dumping measures is so secured, and that in relation to the dumping duty notice:

- the Minister is to make a new determination taking into account the correct or preferable determination of variable factors to be fixed for Jinfei Kaida under Section 269ZHG(4)(a)(iii); or
- the Minister is to make a new determination, that the notice continues in force after the expiry day under Section 269ZHG(4)(a)(i), without changes to the variable factors

Lodged for and on behalf of Zhejiang Jinfei Kaida Wheel Co., Ltd

**Charles Zhan
Senior Associate**

Moulis Legal