



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

Mr Paul O'Connor
Member, Anti-Dumping Review Panel
c/- ADRP Secretariat
GPO Box 2013
Canberra City ACT 2601

By e-mail: ADRP@industry.gov.au

Dear Mr O'Connor,

**CERTAIN ALUMINIUM ROAD WHEELS
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

I write with regard to the public notice published on 11 August 2017 advising your intention to review the decision of the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary) to publish a notice under subsection 269ZHG(1)(b) of the *Customs Act 1901*¹ (the Reviewable Decision). The Reviewable Decision was published on the Anti-Dumping Commission (Commission) website on 19 June 2017, referred to in Anti-Dumping Notice No. 2017/75.

I understand that the Commission has provided you with the work programme relevant to its analysis of Zhejiang Jinfei Kaida Wheel Co., Ltd (Jinfei Kaida), the applicant for this review. Please do not hesitate to ask if you require any further relevant information (as defined in section 269ZZK) associated with this matter.

I have considered the application for the Reviewable Decision and have decided to make some comments on the various grounds raised therein. Please find attached my comments (**Attachment A** refers), which I submit for your consideration.

I remain at your disposal to assist you in this matter, and I and / or officers from the Commission would be happy to participate in a further conference if you consider it appropriate to do so.

Yours sincerely,

Paul Sexton
Acting Commissioner, Anti-Dumping Commission

11 September 2017

¹ All references are to the *Customs Act 1901* unless otherwise stated.

Attachment A

I make the following submissions in response to the grounds set out in the notice published on 11 August 2017. These grounds are with respect to the consideration by the Anti-Dumping Review Panel (ADRP) of the Reviewable Decisions of the Parliamentary Secretary and reported in *Anti-Dumping Commission Report No. 378* (REP 378).

I have grouped my submissions by reference to the grounds raised by the applicant. I remain of the view that, having given due consideration to the matters raised by the applicant, and addressed in this Attachment, the approach taken in the continuation inquiry, and as outlined in REP 378, ought to be considered as being consistent with the relevant legislation and has resulted in the correct and preferable decision.

I make specific observations in respect of each ground as follows.

GROUND ONE – by using the indexing methodology based on changes in ascertained export prices between the previous review and the continuation inquiry, the Minister had regard to information that does not fall within the term “all relevant information” within subsection 269TAC(6)

As set out in section 7.7.2 of REP 378, the Commission relied on subsection 269TAC(6) to calculate a normal value by reference to all relevant information. Specifically, the Commission established a normal value by indexing the normal value already established for Jinfei Kaida in the previous review of measures for aluminium road wheels (as set out in *Anti-Dumping Commission Report No. 263* (REP 263)) by the percentage change in ascertained export prices between the two cases.

The applicant submits that the calculation of normal value should have been based on other relevant information obtained by the Commission in the inquiry, arguing that there is no legal or factual justification to calculate the normal value or the dumping margin in the manner adopted by the Commission.

The Commission notes that the phrase “relevant information” is not defined in the *Customs Act 1901*. The *Dumping and Subsidy Manual* (the Manual) touches on the calculation of normal value based on all relevant information, although it is expressed in the context of circumstances where information is unreliable or an exporter has not cooperated.² The Commission considers that the Manual nevertheless provides some guidance relevant to these circumstances. Specifically, the Manual provides a non-exhaustive list of other sources of relevant information which regard can be had to when applying subsection 269TAC(6), including information from earlier dumping investigations.³

² Chapter 13, pages 58 to 59 refer.

³ Other examples of “relevant information” includes price lists supported by information from independent sources, trade publications, trade statistics, industry publications / reports, information in the application for the measures and information gathered from other countries subject of the same investigation.

Mr O'Connor drew two World Trade Organization decisions to the Commission's attention which provide further views on the interpretation of the expression "relevant information". These cases are:

- *Mexico – Definitive Anti-Dumping Measures on Beef and Rice* (complaint with respect to Rice), a decision of the Appellate Body on 29 November 2005;⁴ and
- *United States – Countervailing Measures on Certain Hot Rolled Carbon Flat Steel Products from India*, a decision of the Appellate Body on 8 December 2014.⁵

The Commission considers that its approach in the continuation inquiry is consistent with these cases. The Commission has understood that subsection 269TAC(6) effectively confers a broad discretion to identify and rely on other information for the purpose of establishing a relevant normal value, however, this is impliedly bounded by being information which is most relevant to the circumstances of the affected exporter(s). The Commission considers that a broad range of information may be "relevant" (including information obtained in a previous investigation), but that the suitability of that information varies depending on the circumstances of the case being conducted. In most respects, the difficulties associated with subsection 269TAC(6) are practical ones: what information is actually available, to what degree is it reliable, and to what degree is it applicable to the circumstances of the case (subject to any further adjustment which may be required)?

GROUND TWO – the Parliamentary Secretary failed to have regard to other relevant information in calculating normal value, including:

- **the percentage change/movement in the benchmark aluminium costs between the review of measures (REP 263) and the inquiry; and**
- **the verified information from a selected exporter that the Commission had accepted as being relevant, sufficient and accurate.**

To provide some context, the Commission notes that the shifting positions taken on the appropriate methodology to establish a normal value for Jinfei Kaida during the inquiry was a function of an evolving understanding of what data might be available and reliable for this purpose.

Having completed on-site verification of CITIC Dicastal Co., Ltd (CITIC Dicastal) and Jinfei Kaida, the visit teams could not be satisfied that the cost data submitted by either of those exporters was accurate. A copy of the confidential work programme outlining the issues identified in relation to the verification of Jinfei Kaida is provided for reference at **Attachment B**. At that time, the approach taken by the visit team was consistent with that proposed to be taken for CITIC Dicastal, and Jinfei Kaida's visit report was published on this basis on 21 February 2017.⁶

⁴ WT/[DS295](#)/AB/R, paragraphs 285 to 295 refer.

⁵ WT/[DS436](#)/AB/R, paragraphs 4.410 to 4.426 refer.

⁶ A draft report for the CITIC Dicastal visit was provided to that company on or about 24 February 2017.

However, following concerns raised by CITIC Dicastal in relation to the first draft of the report, the team for that visit (in consultation with the case team, and other relevant staff) reconsidered its approach and, pursuant to subsection 269TAC(7), elected to disregard all of the unit costs of production for each model and each month because it found those costs to be unreliable. As a result, the team did not establish a normal value using CITIC Dicastal's information. This revised approach is outlined in the second draft version of the CITIC Dicastal report dated 6 March 2017.⁷ The case team noted that the same issue had been identified in the verification of Jinfei Kaida's information, which called into question the approach taken in the visit report.⁸

Having determined that Jinfei Kaida's cost data was unreliable for the purpose of constructing a normal value under subsection 269TAC(2)(c) (section 7.7.2 of REP 378 refers), the Commission considered what relevant information was available in order to ascertain a normal value under subsection 269TAC(6). However, there were a number of practical considerations to take into account:

- the cost and price of aluminium road wheels vary for reasons other than the diameter and finish of each piece (which were the chief model matching criteria used). So, "17-inch painted" wheels will be inclusive of a range of designs, and each design will have a differing aluminium and alloy content and a differing manufacturing complexity, all of which impacts on cost. This therefore makes the comparison of wheels produced by one exporter with those produced by another exporter largely arbitrary;
- the production of wheels at one point in time may not be comparable with the production of wheels at another, given that designs (and therefore the cost of producing those designs) will change from period to period. This is consistent with details provided during the on-site verification by Jinfei Kaida around the different drivers of price;⁹
- the domestic price information for CITIC Dicastal was inherently unsuitable, noting the substantial emphasis of CITIC Dicastal on supplying wheels to original equipment manufacturers, whereas Jinfei Kaida (and Zhejiang Yueling Co., Ltd (Yueling)) sold predominantly to the aftermarket. There was an insufficient evidentiary basis on which to quantify a potential level of trade adjustment; and
- whilst the verification of Yueling's data was able to be completed successfully, the volumes of comparable models sold suggested that Yueling's and Jinfei Kaida's domestic markets differed. Further, a number of models manufactured by Jinfei Kaida, albeit of a proportionally minor volume, were not manufactured by Yueling during the inquiry period. For the reasons already outlined above, the Commission

⁷ Note that, for the reasons outlined at Section 7.6 of REP 378, the CITIC Dicastal visit report was never published.

⁸ The change in approach was because, having decided that the relevant costs were unreliable, it did not make sense that the Commission would nevertheless rely on those same costs for the purpose of its calculations.

⁹ Further, cost information provided by cooperating exporters suggested there were a number of different "kilograms per piece" reported for each model. For example, for 17 inch painted wheels (the highest volume model exported to Australia by Jinfei Kaida) there were 29 different weight amounts, ranging from 9.68 to 11.48 kilograms per piece. For 17 inch painted wheels exported by Yueling, there were five different weight amounts, ranging from six to ten kilograms per piece.

considered that relying on Yueling's data in order to ascertain a normal value for Jinfei Kaida would be an inherently arbitrary process.

Prior to publication of the statement of essential facts (SEF 378), the case team considered the options available for calculation of normal values under subsection 269TAC(6) for CITIC Dicastal and Jinfei Kaida. These options included indexing the normal value last ascertained in REP 263 by reference to the movement in the London Metal Exchange (LME) aluminium benchmark cost between REP 263 and the inquiry. However, this approach was not preferred because, as explained above, the production of wheels at one point in time may not be comparable with the production of wheels at another, which means that comparison to a benchmark has limited application. Further, the Commission's analysis of movements in the LME and the Chanjiang River Exchange, when compared to Jinfei Kaida's prices to the Australian market, suggested there was little correlation between prices and aluminium costs (as shown in *Confidential Attachment 6* to REP 378).

As a result, the Commission was faced with few reliable mechanisms to establish a normal value for Jinfei Kaida under subsection 269TAC(6). Whilst some consideration was given to recommending that the dumping duty notice remain unaltered as it applied to Jinfei Kaida, the Commission was concerned that to do so would ignore the variable factor that had been reliably ascertained, being the export price; further, as the ascertained export price had increased since REP 263, to leave the notice unchanged in respect of Jinfei Kaida would have provided a more beneficial outcome in circumstances where the normal value was unable to be verified.¹⁰ Ultimately, the Commissioner recommended (and the Parliamentary Secretary agreed) that the preferable approach in the circumstances was to index the normal value by the percentage change in ascertained export prices between REP 263 and REP 378, which at least had the virtue of relying on Jinfei Kaida's own information.

Jinfei Kaida did not make any submissions during the inquiry suggesting that its normal value should have been ascertained by reference to other exporters' data.¹¹ As a general observation, the Commission submits that while a different approach could have been taken (such as the ones contended for by the applicant), it does not necessarily follow that those alternative approaches would have been preferable in these particular factual circumstances.

¹⁰ The same considerations applied to calculating the variable factors for CITIC Dicastal.

¹¹ Jinfei Kaida's submission ([Document 023](#) on the public record) merely advocated the approach taken by the visit team rather than the then most recent approach taken in SEF 378.