



Australian Government

Anti-Dumping Review Panel

# Application for review of a Ministerial decision

*Customs Act 1901 s 269ZZE*

This is the approved<sup>1</sup> form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 20 May 2019 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party<sup>2</sup> 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

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

## Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 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 completing the withdrawal form on the ADRP website.

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

<sup>2</sup> As defined in section 269ZX *Customs Act 1901*.

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### Contact

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](mailto:adrp@industry.gov.au).

## PART A: APPLICANT INFORMATION

## 1. Applicant's details

Applicant's name:

Jiangsu Jacking Industry Ltd ((hereinafter as "Jacking Industry"), DanyangHengcheng Metal Products Co., Ltd (hereinafter as "Hengcheng"), both of them are producers of the product under investigation.

NanjingJacking International Ltd (hereinafter as "Jacking International"), Jacking (China) Storage Solutions Ltd (hereinafter as "Jacking Solutions"), Jacking (China) Storage Systems Ltd(hereinafter as "Jacking Systems"), all of them are traders and exporters of the product under investigation. The three companies actually share the same office and staffing.

[

The description of one company of Jacking Group ("hereinafter referred as"Company X") has been removed.

]

Meca Racking Solutions Pty Ltd (hereinafter as "Meca"), trader and importer of the product under investigation.

All the above seven companies are referred collectively as "Jacking Group".

Address:

**Head Office:***Meca Racking Solutions Pty Ltd*  
**Address:** 3/49 Calarco Drive Derrimunt VIC 3030

**Head Office:**[ The name and address of Company X") has been removed.

]

**Head Office:***Nanjing Jacking International Ltd;*  
**Address:** Room 901, Tiyu Mansion, No. 42 Gongyuan Road, Nanjing, China

**Head Office:***Jacking (China) Storage Solutions Ltd;*  
**Address:** Room 901, Tiyu Mansion, No. 42 Gongyuan Road, Nanjing, China

**Head Office:***Jacking (China) Storage Systems Ltd;*  
**Address:** Room 901, Tiyu Mansion, No. 42 Gongyuan Road, Nanjing, China

**Factory:***Jiangsu Jacking Industry Ltd*  
**Address:** West Qingfeng Road, Phoenix Industrial Zone, Yanling town, Danyang, China

**Factory:***DanyangHengcheng Metal Products Co., Ltd*  
**Address:** # 6-9 Danyan Road, Yanling Town, Danyang, China

Type of entity (trade union, corporation, government etc.):  
 Corporation

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**2. Contact person for applicant**

Full name: Ying Gu
Position: Manager
Email address: 1779292591@qq.com
Telephone number: 025-68518181

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

<p>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.</p> <p>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; 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.</p> <p>Jacking Group is a manufacturer and exporter, to Australia, of the goods to which the decision relates, namely Steel Pallet Racking. Jacking Group is thus an “interested party” for the purposes of the Act and this application.</p>
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**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:**

Steel Pallet racking, or parts thereof, assembled or unassembled, of dimensionsthat can be adjusted as required (with or without locking tabs and/or slots, and/orbolted or clamped connections), including any of thefollowing – beams, uprights(up to 12m) and brace (with or without nuts and bolts)

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

Thegoods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the Customs Tariff Act 1995:

Tarriff code: 7308.90.00  
Statistical code: 58

**8. Anti-Dumping Notice details:**

Anti-Dumping Notice (ADN) number:Anti-Dumping Notice (ADN) 2019/45

Date ADN was published:The reviewable decision was published on 08 May 2019, as evidenced by the following which has been extracted from the Anti-Dumping Commission website:

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No.	Document type	Title	Last updated
129	Notice - ADN	<ul style="list-style-type: none"><li>• <a href="#">Ministerial Exemption Instrument No. 1 of 2019 [PDF 44.38 KB]</a></li></ul>	08/05/2019
128	Notice - ADN	<ul style="list-style-type: none"><li>• <a href="#">Notice pursuant to subsections 8(5) of the Customs Tariff (Anti-Dumping) Act 1975 [PDF 79.53 KB]</a></li></ul>	08/05/2019
127	Notice - ADN	<ul style="list-style-type: none"><li>• <a href="#">ADN 2019/045 - Findings in relation to a Dumping Investigation [PDF 295.17 KB]</a></li></ul>	08/05/2019
126	Report	<ul style="list-style-type: none"><li>• <a href="#">Final Report - REP 441 [PDF 1.67 MB]</a></li></ul>	08/05/2019

[See Attachment A](#)

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

### 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 application 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.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

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: ☐

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

[See Attachment B, in respect of which confidential and non-confidential versions have been provided.](#)

**10. 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 9:**

[See Attachment B, in respect of which confidential and non-confidential versions have been provided.](#)

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provided.

**11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:**

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

**12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:**

*Do not answer question 11 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.*

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

**13. Please list all attachments provided in support of this application:**

Attachment A-Reviewable Decision  
Attachment B-Grounds for the Application  
Attachment C-Letter of authority

## PART D: DECLARATION

The applicant's authorised representative 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; and
- 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: Steven Yu

Name: Steven Yu

Position: Senior Partner

Organisation: Hiways Law Firm

Date: 4 /June/2019



**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: <a href="#">Steven Yu</a>
Organisation: <a href="#">Hiways Law Firm</a>
Address: <a href="#">69 Dongfang Road, Tower A, 15th Floor, Eton Place, Pudong, Shanghai, 200120, China</a>
Email address: <a href="mailto:yushengxing@hiwayslaw.com">yushengxing@hiwayslaw.com</a>
Telephone number: <a href="#">+86 139 1843 7208</a>

**Representative's authority to act**

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

[See Attachment C-Letter of authority](#)

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:     /     /

# **Attachment A**



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*Customs Act 1901 – Part XVB*

**Investigation number 441**

**Steel Pallet Racking**

**Findings in relation to a dumping investigation exported from  
China and Malaysia**

*Public notice under subsections 269TG(1) and 269TG(2)  
of the Customs Act 1901*

***Anti-Dumping Notice (ADN) 2019/45***

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an investigation into the alleged dumping of steel pallet racking (the goods) exported to Australia from the People's Republic of China (China) and Malaysia.

**The goods:**

The goods the subject of the investigation are:

*Steel Pallet racking, or parts thereof, assembled or unassembled, of dimensions that can be adjusted as required (with or without locking tabs and/or slots, and/or bolted or clamped connections), including any of the following - beams, uprights (up to 12m) and brace (with or without nuts and bolts).*

**Further information**

The goods are adjustable static racking structures capable of carrying and storing product loads, and components used to make static racking structures.

Adjustable racking is a structure typically made from cold-formed or hot rolled steel structural members and includes components such as plates, rods, angles, shapes, sections, tubes and the like. Welding, bolting or clipping are the typical methods to assemble them. It may be racking installed within a building.

A typical storage configuration comprises upright frames perpendicular to the aisles and independently adjustable, positive locking beams parallel to the aisle, spanning between the upright frames, and brace designed to support unit load actions.

The racking layout and components used are designed to get the best efficiency for the shape and volume of the items stored. The applicable Australian Standard is AS4084-2012.

The Commissioner reported his findings and recommendations to me in *Anti-Dumping Commission Report No. 441* (REP 441). REP 441 outlines the investigation carried out and recommends the publication of a dumping duty notice in respect of the goods exported from China and Malaysia.

The method used to compare export prices and normal values to determine whether dumping has occurred and to establish the dumping margins was to compare the weighted average of export prices with the weighted average of corresponding normal values over the investigation period pursuant to subsection 269TACB of the *Customs Act 1901* (the Act). The export prices were established under subsection 269TAB of the Act. The normal values were established under subsection 269TAC of the Act.

Particulars of the dumping margins determined and an explanation of the methods used to compare export prices and normal values to establish each dumping margin are set out in the following table:

Country	Exporter	Dumping Margin	Method to establish dumping margin
China	Dexion (Shanghai) Logistics Equipment Co., Ltd (Dexion China)	33.7%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period. Refer to REP 441 for further details.
	Changzhou Tianyue Storage Equipment Co., Ltd	78.6%	
	SSI Schaefer System International (Kunshan) Co. Ltd.	72.7%	
	Jiangsu Jrracking Industry Ltd and Danyang Hengcheng Metal Products Co., Ltd (Jrracking Group)	60.1%	
	Residual Exporters	77.0%	
	Uncooperative exporters (other than Jrracking Group and Dexion China)	110.3%	
Malaysia	Schaefer Systems International Sdn Bhd	4.6%	
	Uncooperative exporters	4.8%	

I, KAREN ANDREWS, the Minister for Industry, Science and Technology, have considered, and accepted, the recommendations of the Commissioner, the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in REP 441.

I am satisfied, as to the goods that have been exported to Australia, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods would or might have been caused if securities had not been taken. Therefore under subsection 269TG(1) of the Act, I DECLARE that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) applies to:

- (i) the goods; and
- (ii) subject to section 45 and subsection 269TN(2) of the Act, like goods that were exported to Australia for home consumption on or after 19 June 2018, which is when the Commonwealth took securities following the Commissioner's Preliminary Affirmative Determination published on 18 June 2018 under section 269TD of the Act, but before the publication of this notice.

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to an Australian industry producing like goods has been caused. Therefore under subsection 269TG(2) of the Act, I DECLARE that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from China and Malaysia.

The considerations relevant to my determination that dumped goods from China and Malaysia have materially injured the Australian steel pallet racking industry are the size of the dumping, the effect of dumped imports from China and Malaysia on prices in the Australian market and the consequent impact on the Australian industry including:

- loss of sales volume;
- loss of market share;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced revenue;
- declining asset value;
- reduced capital investment;
- reduced return on investment;
- reduced employment and wages;
- reduced capacity;
- reduced capacity utilisation; and
- reduced cash flow.

In making my determination, I have considered whether the Australian industry is being injured by a factor other than the exportation of dumped goods, and I have not attributed injury due to any other factor other than the exportation of those dumped goods.

In accordance with subsection 8(7)(a) of the Customs Tariff (Anti-Dumping) Act 1975 (the Dumping Duty Act) I am satisfied that other than beams, uprights and braces of the steel pallet racking, are not offered for sale in Australia by the Australian industry members, and therefore I exempt from interim dumping duty and dumping duty all components or parts of steel pallet racking, other than beams, uprights and braces. Refer to Exemption Notice No.1 of 2019 for further information.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Particulars of the export prices, consideration of non-injurious prices and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice as they may reveal confidential information.

Clarification about how measures and securities are applied to 'goods on the water' is available in ACDN 2012/34, available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

REP 441 and other documents included in the public record may be examined at the Anti-Dumping Commission office by contacting the case manager on the details provided below. Alternatively, the public record is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Enquiries about this notice may be directed to the case manager on telephone number +61 2 6276 1462 or email at [investigations4@adcommission.gov.au](mailto:investigations4@adcommission.gov.au).

Dated this 6<sup>th</sup> day of May 2019



KAREN ANDREWS  
Minister for Industry, Science and Technology

# **Attachment B**

4 June 2019

**In the Anti-Dumping Review Panel**

**Application for Review**

**Steel Pallet Racking Exported from China**

**Jracking Group:** Meca Racking Solutions Pty Ltd (“Meca”), [

The name of Company X has been removed.], Nanjing Jracking International Ltd (“Jracking International”), Jracking (China) Storage Solutions Ltd (“Jracking Solutions”), Jracking (China) Storage Systems Ltd (“Jracking Systems”), Jiangsu Jracking Industry Ltd (“Jracking Industry”) and Danyang Hengcheng Metal Products Co., Ltd (“Hengcheng”). Among them, Jracking International, Jracking Solutions and Jracking Systems are Chinese exporters, Jracking Industry and Hengcheng are producers, [The description of Company X has been removed.

] and Meca is an Australian importer and reseller of the product under consideration.

**1. Introduction**

By way of an application to the Anti-Dumping Commission (“the ADC”) dated “25 August 2017”, Dematic Pty Ltd applied for antidumping investigation into imports of certain steel pallet racking (“steel pallet racking” or “the goods”) from the People’s Republic of China (“China”).

On 13 November 2017, in response to that application, the ADC initiated the subject antidumping investigation in respect of steel pallet racking exported from China.

On 8 May 2019, at the conclusion of the anti-dumping investigation, the Assistant Minister and Parliamentary Secretary to the Minister for Industry, Science and Technology (“the Minister”) decided to impose dumping duties on steel pallet racking exported to Australia from China.

Specifically, the Minister decided to publish notices in relation to steel pallet racking exported from China under Sections 269TG(1) and (2) of the Customs Act 1901 (“the Act”). These notices had the effect of imposing dumping duties on exports from the exporters to which they applied.

Jacking Group is a Chinese manufacturer and exporter of steel pallet racking, and is presently subject to those notices.

Jacking Group seeks review by the Anti-Dumping Review Panel (“the Review Panel”), under Sections 269ZZA(1)(a) and 269ZZC of the Act, of the decision (or decisions) made by the Minister to impose dumping measures against its exports of steel pallet racking to Australia, as outlined in this application.

We now address the requirements of the form of application in relation to each of Jacking Group’s grounds of review, being those requirements not already addressed within the text of the approved form itself.

## **2. Grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:**

Jacking Group seeks a review of a following findings and conclusions which led to the decision by the Minister to ascertain variable factors:

Ground 1: The Minister erred in accepting the ADC’s suggestion by identifying Jacking Group as uncooperative exporter;

Ground 2: The Minister made incorrect decision to accept the ADC’s assessments and determinations with respect to Jacking Group’s cost data;

Ground 3: The Minister erred in accepting the ADC’s suggestion of selecting unreasonable data to compute ANV for Jacking Group;

### **2.1 Ground 1: The Minister erred in accepting the ADC’s suggestion by identifying Jacking Group as uncooperative exporter**

Jacking Group does not agree to this conclusion, and believes it has made tremendous effort to cooperate in the whole proceeding of case. In particular,

- As soon as it heard of the initiation of the investigation on November 2017, Jacking Group established team, compiled data and hired professional firms to prepare exporter questionnaire (REQ);
- On 16 January 2018, Jacking Group submitted its REQ with a combination of 2 producers, 3 related exporters and 2 related trading companies, within the extended deadline;
- On 14 February 2018, Jacking Group provided responses to the 1<sup>st</sup> deficiency letter issued by the ADC on 9 February 2018 (“Response to the 1st Deficiency Letter”);
- On 14 February 2018, Jacking Group also provided responses to



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the 2<sup>nd</sup> deficiency letter – priority items issued by the ADC on 12 February 2018 (“Response to the 2<sup>nd</sup> Deficiency Letter– Priority Items”);

- On 26 February 2018 (within the extended deadline), Jracking Group provided responses to the 2<sup>nd</sup> deficiency letter – remaining items issued by the ADC on 12 February 2018 (“Response to the 2<sup>nd</sup> Deficiency Letter– Remaining Items”);
- On 6 March 2018 (within the extended deadline), Jracking Group submitted response to the deficiency letter issued by the ADC on 22 February 2018 (“Response to the 3<sup>rd</sup> Deficiency Letter”);
- On 23 February 2018, Meca, the related Australian importer accepted the ADC’s on-site verification, for which the ADC is satisfied; 1
- On 2 March 2018, Meca submitted response to the follow-up questions raised by the ADC team;
- While preparing for responses to additional questions, Jracking Group is ready and welcomes verification team from the ADC in Chinese operation sites;
- By recognizing that Jracking Group “has provided a very comprehensive response (Email of 7 March 2018 from the ADC official)”, the ADC informed Jracking that on-site verification was not arranged;
- In spite of that, Jracking Group is prepared to respond to any additional questions and cooperate for remote verification if the ADC chooses to do so; and
- On 12 June 2018, Jracking Group provided response to the ADC’s enquiry for further information which was raised on 6 June 2018 (“Response to the 4<sup>th</sup> Deficiency Letter”);
- On 27 July 2018 and 16 August 2018, Jracking Group provided post preliminary determination submission, through which Jracking Group reconciled the pre-submitted information in further to remove the possible gaps or misunderstanding on the submission;
- Upon the request of Jracking Group, a meeting was arranged in ADC’s office based in Canberra, Australia on 21 August 2018, in which Jracking Group gave a presentation to ADC further clarifying Jracking Group’s constant efforts to cooperate and the reasonableness of the cost information provided;

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<sup>1</sup>As a result, “the verification team recommends that the export price for the goods imported by Meca from Jracking can be established under s.269TAB(1)(a) of the *Customs Act 1901*, using the invoiced price, less post importation costs”. See Verification Visit Report – Importer, Meca Jracking Solutions Pty Ltd (Meca).

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- On 30 August 2018, Jacking Group submitted supplemental comment clarifying in detail the reasons for “comparatively low cost” of the two Chinese producers within Jacking Group;
  - In its submission of 9 October 2018, Jacking Group submitted supplemental comment arguing the combination duty method can result in collection of duties in excess of the dumping margin, contrary to the provisions of Article 9.3 of the WTO Antidumping Agreement, and is therefore unreasonable and unjustifiable;
  - On 26 November 2018, Jacking Group provided Post Statement of Essential Facts (SEF) comments clarifying in detail its rebuttal points on the SEF.

Jacking Group would like to call the Review Panel’s attention that Jacking Group is a group of very sophisticated structure and it involves many companies in fulfilling this task. Within a short period, it had to employ the busy manpower to manually review documents, fill into templates and reconcile among them. For example, for a single sale, it had to review the invoice line by line (as there are many different types of products), fill into the table with selling prices from the factories to the Chinese exporters, and then from one of the two trading companies to the end customers. It is not an easy task but with limited resources Jacking Group managed to complete the exercise within the given deadline.

Similarly or even more time consuming part is the reporting of the cost of manufacturing by Jacking Industry and Hengcheng. As previously disclosed, Jacking Industry and Hengcheng maintain paper record, and keeps manual accounting. In its normal course of business, it does not segregate cost and expenses by market or product, but only maintain a single cost for every different product (by weight of the product). That brings challenges when they are to report cost to make (CTM) as well as selling, general and administrative costs (SG&A) separated by market and product. More importantly, the products are non-standard but customer-tailored. Therefore, Jacking Industry and Hengcheng had to develop method based on purchase and production record to allocate cost into different categories among different markets.

Each company in Jacking Group is small and maintains limited manpower (to save cost). Thus, it did not have sufficient manpower to complete this task without extra workload. Besides, it was the busiest time for the financial, accounting and sales staff when the REQ was due, and the most important and longest holiday around the time when the responses to the deficiency letters were due.

Moreover, ADC has determined, in accordance with subsection 8(b)(ii) of the Customs Direction, that Jacking Group is an uncooperative exporter, as defined in subsection 269T(1).

According to *the Customs (Extensions of Time and Non-cooperative) Direction 2015*, which is made under subsection 269T(1) of *the Customs Act 1901*, the ADC must determine an entity to be a non-cooperative entity for the purposes of section 269TAACA, on the basis that ***no relevant information was provided*** in a reasonable period<sup>2</sup>.

Through the email of 7 March 2018 from the ADC official, the ADC informed Jracking Group that on-site verification was not arranged due to Jracking Group “has provided a very comprehensive response”. If ADC considers that non-relevant information is provided by Jracking Group, or that there is other information that is more relevant, ADC should inform Jracking Group to further provide supplemental information instead of confirming the comprehensiveness of its response submitted. Moreover, ADC also stated clearly in the PAD and SEF that it found Jracking Group’s verified export sales data, particular to its own exports of the goods to Australia in the investigation period, was the most relevant information for determining export price for Jracking Group, which shows that at least the information for determining export price provided by Jracking Group is confirmed by ADC relevant to the investigation, although in the view of Jracking Group, all information contained in its responses are actually relevant.

Nevertheless, Jracking Group undertook every possible endeavour to submit relevant information and address questions and concerns the ADC had during the course of investigation. Jracking Group hopes this could be recognized and fairly rewarded by the Review Panel.

## **2.2 Ground 2: The Minister made incorrect decision to accept the ADC’s assessments and determinations with respect to Jracking Group’s cost data**

Jracking Group does not agree to the ADC’s conclusion that there appears to be “significant deficiencies” in the cost data Jracking Industry and Hengcheng submitted through comparing various cost and expenses between Jracking Group and “other sampled Chinese exporters whose data was verified by the Commission on-site”, and then determined that Jracking Group’s export questionnaire responses for establishing normal value were unreliable and unable to determine whether an average of the other cooperative Chinese exporters’ costs is necessarily indicative of Jracking Group costs, and consequently determined Jracking Group’s normal value under subsection 269TAC(6), using the highest weighted average normal value for the entire investigation period from the selected exporters, excluding any favourable downward adjustments made to that figure. As detailed in the Benchmark Verification Report issued by the verification team on 18 June 2018, the Australian CTMS spreadsheets submitted by Jracking Industry and Hengcheng are considered unreliable due to

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<sup>2</sup>[https://www.adcommission.gov.au/adssystem/referencematerial/Documents/Customs%20\(Extensions%20of%20Time%20and%20Non-cooperation\)%20Direction%202015.pdf](https://www.adcommission.gov.au/adssystem/referencematerial/Documents/Customs%20(Extensions%20of%20Time%20and%20Non-cooperation)%20Direction%202015.pdf)

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which are lower than the other verified Chinese exporters.

First of all, Jracking Group has fully cooperated with the ADC to provide accurate and reliable cost data which addresses the questions outlined in the original export questionnaire and the deficiencies set out in the deficiency letters. In the initial REQ, Jracking Industry and Hengcheng submitted CTMS for domestic sales and export to Australia products respectively (see Exhibit G-3 and G-4). In the Response to the 3<sup>rd</sup> Deficiency Letter, Jracking Industry provided CTMS for domestic sales and export to Australia, by the POI and with breakdown by quarter respectively (See Exhibit 3SSG-1). Similarly Hengcheng did so (See Exhibit 3SSG-2). In order to present detailed calculation of the CTMS and reconcile different pieces of the elements, Jracking Industry and Hengcheng provided supporting documents (calculation worksheets) in Exhibit 3SSG-3 and Exhibit 3SSG-4 respectively. In the post preliminary determination submission submitted on 27 July 2018, Jracking Group explained in more details of the relationship among the worksheets pre-submitted and provided supporting documents (calculation worksheets) in Exhibit PPC-1, Exhibit PPC-2, Exhibit PPC-3 and Exhibit PPC-4 respectively. In the meeting held in ADC's office based in Canberra, Australia on 21 August 2018, Jracking Group gave a presentation to ADC further clarifying the reasonableness and reliable of the cost information provided. On 30 August 2018, Jracking Group submitted supplemental comment clarifying in detail the reasons for "comparatively low cost" of Jracking Industry and Hengcheng.

Furthermore, Jracking Group would like to draw the Review Panel's attention to article 2 and Annex II of *the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*<sup>3</sup> (WTO Agreement), which specifically requires that the authorities shall consider the costs provided by the exporter/producer appropriately.

*For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods*

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<sup>3</sup> Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, website: <https://www.adcommission.gov.au/adssystem/referencematerial/Documents/AgreementonImplementationofArticleVI.pdf>

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*and allowances for capital expenditures and other development costs.*

-- Article 2.2.1.1, WTO Agreement

*The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.*

-- Article 2.4, WTO Agreement

*Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability.*

-- Paragraph 5 of Annex II, WTO Agreement

As repeatedly clarified in the investigation proceeding and proved through several reconciliation charts and documents, the Australian CTMS spreadsheets submitted by Jacking Industry and Hengcheng are indeed provided based on their own records and such records are in accordance with the generally accepted accounting principles of the People's Republic of China, therefore, which shall be fully considered and applied by the ADC in determining normal value of Jacking Group.

As a matter of practice, Jacking Group is possible and has tried every effort to evident all the information provided by its own producers truly reflecting their own account records and such records are in accordance with the generally accepted accounting principles in China, which can reasonably reflect the costs associated with the production of the product under consideration. However, it seems an unreasonable burden for Jacking Group to satisfy the ADC through proving its relatively low cost compared with others. Nevertheless, in the meeting held on 21 August 2018 and the supplemental submission on 30 August 2018, Jacking Group has tried from the respect of industry experience to clarify in details the reasons for "comparatively low cost" of its two Chinese producers.

It is unreasonable and abnormal for the ADC to determine the cost provided by an exporter/producer unreliable and then totally disregard it simply due to its comparatively low cost. Consequently, ascertained normal value (ANV) for Jacking Group shall be re-calculated based on its own data. Overall, Jacking Group would like to reiterate its position that Jacking Group is cooperative, and hope that the Review Panel could accept its cost in calculating dumping margin through the review.

### **2.3 Ground 3: The Minister erred in accepting the ADC's suggestion of selecting unreasonable data to compute ANV for Jacking Group**

As a remedy, Jacking Group puts forward arguments in its submission dated 27 July 2018:

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*Alternatively, if the ADC insists to ignore Jacking Group's cost (that does not indicate that Jacking Group agrees to such approach), **it should use the weighted average cost of the three sampled Chinese exporters, rather than the highest among them.** Again, products are different by customer, exporter and producers for various reasons. If the ADC insists to do so, it shall take into consideration of such elements to fairly adjust the differences before it makes comparison.*

In response to that, the ADC provides its assessment in its SEF that:

*The Commission is unable to determine whether an average of the other cooperative Chinese exporters' costs is necessarily indicative of Jacking Group costs.*

Jacking Group would like to draw the ADC's attention to the paragraph 7 of Annex II of the WTO Agreement:

*If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with **special circumspection.***

-- Paragraph 7 of Annex II, WTO Agreement

The fact reminds that the ADC is under the obligation to take the appropriate procedural step to confirm the reliability and appropriateness of the information from a secondary source applied for purpose of its determination for Jacking Group in the investigation. This issue the ADC addressed in the SEF is unfound and should be cleared with further explanation. If the ADC is unable to determine whether an average of the other cooperative Chinese exporters' costs is necessarily indicative of Jacking Group costs, how could the ADC to determine the method it applied currently is reliable and appropriate.

Given to the clarification and arguments above, Jacking Group urges the Review Panel to revoke the reviewable decision that Jacking Group is "uncooperative" and abandon the method it used to compute ANV for it. Instead, it should rely on more accurate, reasonable and fair data to compare with the exporter price.

### **3. The Correct and Preferable Decisions:**

Jacking Group contends that the correct and preferable decisions to the challenged findings are:

Ground 1: Jacking Group considers that it has demonstrated its strong will and action to fully cooperate with the investigation, thus should never be "punished" if not



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rewarded. The correct and preferable decision is to identify Jacking Group as a cooperative exporter.

Ground 2: Jacking Group disputes the ADC's assessment and determination in ignoring Jacking Group's complete, reliable and reconcilable CTM. The correct and preferable decision ought to be that Jacking Group's own costs of production should be used in the construction of normal value.

Ground 3: The correct and preferable decision ought to be that If Jacking Group's cost is insisted to be ignored (that does not indicate that Jacking Group agrees to such approach), it is the weighted average cost of the three sampled Chinese exporters that shall be used to compare with the exporter price of Jacking Group, rather than the highest among them.

#### **4. Reasons Why the Proposed Decisions are Materially Different from the Reviewable Decision**

Ground 1: The proposed decision is materially different to the reviewable decision as a finding that Jacking Group is a cooperative exporter would have allowed the Minister to fully use Jacking Group's own data in calculating its dumping margin.

Ground 2: The proposed decision that the normal value for Jacking Group should be determined based on its own cost data would generate a materially different dumping margin (no dumping at all).

Ground 3: The proposed decision would have resulted in a commensurable decrease in the corresponding dumping margin. This would have resulted in a substantially lower imposed dumping duty rate.

# **Attachment C**



## Letter of authority

Full name of representative: Steven Yu
Organisation: Hiways Law Firm
Address: 69 Dongfang Road, Tower A, 15th Floor, Eton Place, Pudong, Shanghai, 200120, China
Email address: yushengxing@hiwayslaw.com
Telephone number: +86 139 1843 7208

I hereby declare that the person named above is authorised to act as the following companies' representative in relation to this application and any review that may be conducted as a result of this application.

Meca Racking Solutions Pty Ltd;

[REDACTED]; The name of Company X has been removed.

Nanjing Jacking International Ltd;

Jacking (China) Storage Solutions Ltd;

Jacking (China) Storage Systems Ltd;

Jiangsu Jacking Industry Ltd and

Danyang Hengcheng Metal Products Co., Ltd

Signature: 顾莹

Name: Ying Gu

Position: Logistic Manager

Date: 4/June/2019