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26 July, 2019

Ms Jaclyne Fisher
Panel Member
Anti-Dumping Review Panel
GPO Box 2013
Canberra ACT 2601

Re: Review of Minister's Decision – Steel Pallet Racking (ADN 2019/45)

Dear Ms. Fisher,

We have considered the ADRP's proposal to conduct a review of the Minister's Decision published on the ADRP website 28th June 2019 (Reference 2019/103) along with the grounds considered to be reasonable grounds for the Reviewable Decision not being the correct or preferable decision.

Jacking Group, contains Meca Racking Solutions Pty Ltd ("Meca"),

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], Nanjing Jacking International Ltd ("Jacking International"), Jacking (China) Storage Solutions Ltd ("Jacking Solutions"), Jacking (China) Storage Systems Ltd ("Jacking Systems"), Jiangsu Jacking Industry Ltd ("Jacking Industry") and Danyang Hengcheng Metal Products Co., Ltd ("Hengcheng"). Among them, Jacking International, Jacking Solutions and Jacking Systems are Chinese exporters, Jacking Industry and Hengcheng are producers,

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

Jacking Group makes the submissions set out below:

1. Grounds on which Jacking Group 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 Jracking Group as uncooperative exporter;

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

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

2. Further explanations on the Grounds

Ground 1: The Minister erred in accepting the ADC's suggestion by identifying Jracking Group as uncooperative exporter

Jracking 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, Jracking Group established team, compiled data and hired professional firms to prepare exporter questionnaire (REQ);
- On 16 January 2018, Jracking 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, Jracking Group provided responses to the 1st deficiency letter issued by the ADC on 9 February 2018 ("Response to the 1st Deficiency Letter");
- On 14 February 2018, Jracking Group also provided responses to the 2nd deficiency letter – priority items issued by the ADC on 12 February 2018 ("Response to the 2nd Deficiency Letter– Priority Items");
- On 26 February 2018 (within the extended deadline), Jracking Group provided responses to the 2nd deficiency letter – remaining items issued by the ADC on 12 February 2018 ("Response to the 2nd 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 3rd 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

¹As 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

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- 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 4th 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;
 - On 30 August 2018, Jracking Group submitted supplemental comment clarifying in detail the reasons for “comparatively low cost” of the two Chinese producers within Jracking Group;
 - In its submission of 9 October 2018, Jracking 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, Jracking Group provided Post Statement of Essential Facts (SEF) comments clarifying in detail its rebuttal points on the SEF.

Jracking Group would like to call the Review Panel’s attention that Jracking 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 Jracking 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 Jracking Industry and Hengcheng. As previously disclosed, Jracking 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, Jracking 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 Jracking 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 Jracking 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.²

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 no 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

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

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.

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 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 3rd 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, Jacking Group gave a presentation to ADC further clarifying the reasonableness and reliability of the cost information provided. On 30 August 2018, Jacking Group submitted supplemental comment clarifying in detail the reasons for "comparatively low cost" of Jacking Industry and Hengcheng.

Furthermore, Jacking 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*³ (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 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

³ 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>

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 Jracking Group.

As a matter of practice, Jracking 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 Jracking 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, Jracking 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 Jracking Group shall be re-calculated based on its own data. Overall, Jracking Group would like to reiterate its position that Jracking Group is cooperative, and hope that the Review Panel could accept its cost in calculating dumping margin through the review.

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

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

Alternatively, if the ADC insists to ignore Jracking Group's cost (that does not indicate that Jracking 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 Jracking Group costs.

Jracking 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. Conclusion

For the reasons set out above, it is evident that the ADC has not applied the correct decision to Jacking Group:

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;
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);
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.

If you have any queries please let me know.

Yours faithfully

Steven Yu & Baijun Xu