



# 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 19 February 2020 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 to the ADRP for 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.

### **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).

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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*.

## **PART A: APPLICANT INFORMATION**

### **1. Applicant's details**

Applicant's name:	Zhuhai Grand Kitchenware Co., Ltd ("Zhuhai Grand")
Address:	155 Airport West Road Jinwan District Zhuhai City China
Type of entity (trade union, corporation, government etc.):	Zhuhai Grand is a company.

### **2. Contact person for applicant**

Full name:	Charles Zhan
Position:	Senior Associate
Email address:	<a href="mailto:Charles.Zhan@moulislegal.com">Charles.Zhan@moulislegal.com</a>
Telephone number:	+61 2 6163 1000

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

<p><b>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.</b></p> <p><b>The reviewable decision in this case relates to the decision of the Minister for Industry, Science and Technology to continue the anti-dumping measures applied to the export of deep drawn stainless steel sinks by Zhuhai Grand from China to Australia under section 269ZHG(1) of the Act.</b></p> <p><b>Under Section 269ZX 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 reviewable decision; 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.</b></p> <p><b>Zhuhai Grand is a manufacturer of the goods to which the decision relates, namely deep drawn stainless steel sinks, which was exported to Australia from China during the original investigation and in the inquiry period in the continuation inquiry undertaken by the Commission. Zhuhai Grand is thus an "interested party" for the purposes of the Act and this application.</b></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:**

- |  |  |
|--|--|
| <input type="checkbox"/> Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice                      | <input type="checkbox"/> Subsection 269TL(1) – decision of the Minister not to publish duty notice   |
| <input type="checkbox"/> Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice        | <input type="checkbox"/> Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures                         |
| <input type="checkbox"/> Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice               | <input type="checkbox"/> Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry                            |
| <input type="checkbox"/> Subsection 269TK(1) or (2) – decision of the Minister to publish a third country countervailing duty notice | <input checked="" type="checkbox"/> Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures |

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed.**

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

**The goods the subject of the reviewable decision, as described in the initiation Notice (ADN 2019/86) for Continuation Inquiry 517 are:**

*Deep drawn stainless steel sinks with a single deep drawn bowl having a volume of between 7 and 70 litres (inclusive), or multiple drawn bowls having a combined volume of between 12 and 70 litres (inclusive), with or without integrated drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel and whether or not including accessories;*

*stainless steel sinks with multiple deep drawn bowls that are joined through a welding operation to form one unit; and*

*deep drawn stainless steel sinks whether or not that are sold in conjunction with accessories such as mounting clips, fasteners, seals, sound-deadening pads, faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.*

*Stainless steel sinks with fabricated bowls are excluded from the goods covered.*

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

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

**7324.10.00 statistical code 52 (sinks and wash basins, of stainless steel)**

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

Anti-Dumping Notice (ADN) number:	<b>Anti-Dumping Notice No 2020/003</b>
Date ADN was published:	<b>27 February 2020</b>

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

**Please refer to Attachment 1 – ADN 2020/03.**

## 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:**

Please refer to Attachment 2.

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:**

Please refer to Attachment 2.

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

Please refer to Attachment 2.

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.*

Please refer to Attachment 2.

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


The attachments provided in support of this application are:

- Attachment 1 – Zhuhai Grand ADRP application – ADN 2020/03;
- Attachment 2 – Zhuhai Grand ADRP application – grounds for review; and
- Attachment 3 – Zhuhai Grand ADRP application – letter of authority.

## 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; 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:	
Name:	<b>Charles Zhan</b>
Position:	<b>Senior Associate</b>
Organisation:	<b>Moulis Legal</b>
Date:	<b>30 March 2020</b>

## 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:	<b>Charles Zhan</b>
Organisation:	<b>Moulis Legal</b>
Address:	<b>6/2 Brindabella Circuit Brindabella Business Park Canberra International Airport ACT Australia 2609</b>
Email address:	<a href="mailto:Charles.Zhan@moulislegal.com"><u>Charles.Zhan@moulislegal.com</u></a>
Telephone number:	<b>+61 2 6163 1000</b>

**Representative's authority to act**

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

**Please refer to Attachment 3 – Zhuhai Grand ADRP application – 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: / /





# **ANTI-DUMPING NOTICE NO. 2020/003**

*Customs Act 1901 – Part XVB*

## **Deep Drawn Stainless Steel Sinks**

**Exported to Australia from the People's Republic of China**

### **Findings of the Continuation Inquiry No. 517 into Anti-Dumping Measures**

***Public Notice under section 269ZHG(1) of the Customs Act 1901 and sections 8(5), 8(5BA), 10(3B), and 10(3D) of the Customs Tariff (Anti-Dumping) Act 1975***

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an inquiry, which commenced on 3 July 2019, into whether the continuation of the anti-dumping measures in the form of a dumping duty notice and countervailing duty notice applying to deep drawn stainless steel sinks exported to Australia from the People's Republic of China (China) is justified.

Recommendations resulting from that inquiry, reasons for the recommendations, and material findings of fact and law in relation to the inquiry are contained in *Anti-Dumping Commission Report No. 517 (REP 517)*.

I, KAREN ANDREWS, the Minister for Industry, Science and Technology, have considered REP 517 and have decided to accept the recommendation and reasons for the recommendation, including all the material findings of facts and law set out in REP 517.

Under section 269ZHG(1)(b) of the *Customs Act 1901* (the Act), I declare that I have decided to secure the continuation of the anti-dumping measures currently applying to deep drawn stainless steel sinks exported to Australia from China.

I determine that pursuant to section 269ZHG(4)(a)(iii) of the Act, the dumping duty notice continues in force after 26 March 2020 (the specified expiry date), but that after this day, the notice has effect as if different specified variable factors had been fixed in relation to all exporters generally relevant to the determination of duty as specified in REP 517.

I determine that in accordance with section 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), and the *Customs Tariff (Anti-Dumping) Regulation 2013* (the Regulation), the amount of interim dumping duty payable on goods the subject of the dumping duty notice is an amount worked out in accordance with:

- (i) for Guangdong Cresheen Smart Home Co Ltd and Zhongshan Jiabaolu Kitchen & Bathroom Products Co Ltd; the floor price duty method, as specified in section 5(4) of the Regulation; and

(ii) for all other exporters; the *ad valorem* duty method, as specified in section 5(7) of the Regulation.

I determine that pursuant to section 269ZH(4)(a)(iii) of the Act, the countervailing duty notice continues in force after 26 March 2020 (the specified expiry date), but that after this day the notice has effect in relation to all exporters (excluding Primy Corporation Ltd and Zhongshan Jiabaolu Kitchen & Bathroom Products Co Ltd) as if different specified variable factors had been fixed relevant to the determination of duty as specified in REP 517.

I direct that pursuant to section 10(3B)(a) of the Dumping Duty Act, the interim countervailing duty referred to in section 10(3A) of the Dumping Duty Act in respect of certain deep drawn stainless steel sinks exported from the People's Republic of China by all exporters (excluding Primy Corporation Ltd and Zhongshan Jiabaolu Kitchen & Bathroom Products Co Ltd) be ascertained as a proportion of the export price of those particular goods.

Pursuant to section 8(5) of the Dumping Duty Act (for Primy Corporation Ltd and Zhongshan Jiabaolu Kitchen & Bathroom Products Co Ltd), and pursuant to sections 8(5BA) and 10(3D) of the Dumping Duty Act (for all other exporters), I have had regard to the desirability of fixing a lesser amount of duty. If the non-injurious price of goods of that kind as ascertained or last ascertained for the purposes of the dumping duty notice and countervailing duty notice is less than the normal value of goods of that kind as so ascertained, or last so ascertained, a lesser amount of interim dumping duty and interim countervailing duty is fixed such that the sum of:

- (i) the export price of goods of that kind as so ascertained, or last so ascertained;
- (ii) the amount of the interim countervailing duty as so fixed; and
- (iii) the amount of interim dumping duty as fixed under section 8 of the Dumping Duty Act,

does not exceed that non-injurious price of goods of that kind as ascertained.

Particulars of the dumping and subsidy margins established for each of the exporters and the effective rates of duty are also set out in the following table.

Exporter	Dumping Margin	Subsidy Margin	Effective rate of interim countervailing duty and interim dumping duty*	Duty Method
Guangdong Cresheen Smart Home Co Ltd	negative 12.3%	0.0% (less than 0.05%)	0%	Floor price (Dumping)
Zhongshan Jiabaolu Kitchen & Bathroom Products Co Ltd	negative 6.8%	N/A	0%	Floor price (Dumping)
Primy Corporation Ltd	9.8%	N/A	9.8%	Ad valorem (Dumping)
Rhine Sinkwares Manufacturing Ltd Huizhou	18.0%	0.3%	18.3%	Ad valorem (Dumping) Proportion of export price (Countervailing)

Exporter	Dumping Margin	Subsidy Margin	Effective rate of interim countervailing duty and interim dumping duty*	Duty Method
Zhuhai Grand Kitchenware Co Ltd	13.4%	2.4%	15.8%	Ad valorem (Dumping) Proportion of export price (Countervailing)
Residual exporters#	7.4%	3.1%	10.5%	Ad valorem (Dumping) Proportion of export price (Countervailing)
Uncooperative, non-cooperative and all other exporters	53.9%	6.3%	60.2%	Ad valorem (Dumping) Proportion of export price (Countervailing)

\* The calculation of combined dumping and countervailing duties is not simply a matter of adding the dumping and subsidy margins together for any given exporter, or group of exporters. Rather, the collective interim dumping duty and interim countervailing duty imposed in relation to the goods, is the sum of:

- the subsidy rate calculated for all countervailable programs, and
- the dumping rates calculated, less an amount for the subsidy rate applying to Program 1.

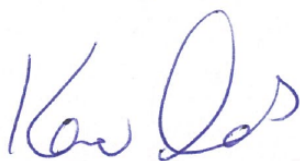
# As specified in REP 517. Ningbo Afa Kitchen and Bath Co Ltd; Jiangmen New Star Hi-Tech Enterprise Ltd; Franke (China) Kitchen System Co Ltd; Elkay (China) Kitchen Solutions Co Ltd; Xinhe Stainless Steel Products Co Ltd; Shengzhou Chunyi Electrical Appliances Co. Ltd; Guangdong Yingao Kitchen Utensils Co. Ltd; Guangdong Dongyuan Kitchenware Industrial Co Ltd; Taizhou Boland Kitchenware Co Ltd

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel ([www.adreviewpanel.gov.au](http://www.adreviewpanel.gov.au)), in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

REP 517 has been placed on the public record, which 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 3 8539 2418, fax number +61 3 8539 2499 or email [investigations3@adcommission.gov.au](mailto:investigations3@adcommission.gov.au).

Dated this 27<sup>th</sup> day of February 2020.



KAREN ANDREWS  
Minister for Industry, Science and Technology



30 March 2020

## Application for review

### Deep drawn stainless steel sinks from China

#### Zhuhai Grand Kitchenware Co., Ltd.

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## A Introduction

By way of notice published 3 August 2019, the Anti-Dumping Commission (“the Commission”) initiated a continuation inquiry under section 269ZHD(4) of *the Customs Act 1901* (“the Act”) concerning anti-dumping measures, in the form of a dumping duty notice and a countervailing duty notice, applying to

the export of deep drawn stainless steel sinks (hereafter “stainless steel sinks” or “the GUC”) exported to Australia from China (“Continuation 517”).<sup>1</sup>

The original investigation, to which the anti-dumping measures relate, was applied for by Tasman Sinkware Pty Ltd, and led to the imposition of anti-dumping measures on 26 March 2015 (“Investigation 238”).<sup>2</sup>

By way of notice published on 12 April 2019, the Commission invited certain persons to apply for continuation of the subject anti-dumping measures.<sup>3</sup> The measures were due to expire on 26 March 2020.

On 11 June 2019, in response to the Commission’s invitation, Oliveri Solutions Pty Ltd<sup>4</sup> (“Oliveri”) applied for the continuation of the anti-dumping measures.

The subject matter of the continuation inquiry was described by the Commission as follows:

*...whether the continuation of anti-dumping measures, in the form of a dumping duty notice and a countervailing duty notice, in respect of deep drawn stainless steel sinks (stainless steel sinks, the goods) exported to Australia from the People’s Republic of China (China) is justified.*<sup>5</sup>

By way of notice made under Section 269ZHG(1) of the Act,<sup>6</sup> signed on 27 February 2020 and published on 28 February 2020, the Minister for Industry, Science and Technology (“the Minister”) declared that she had decided to secure the continuation of the anti-dumping measures applying to the goods exported to Australia from China.<sup>7</sup>

The Minister confirmed that in making her decision she had:

*...considered REP 517 and [had] decided to accept the recommendation and reasons for the recommendation, including all the material findings of facts and law set out in REP 517.*<sup>8</sup>

In making that decision, the Minister also decided to amend the variable factors applying to subject exporters, stating:

*I determine that pursuant to section 269ZHG(4)(a)(iii) of the Act, the dumping duty notice continues in force after 26 March 2020 (the specified expiry date), but that after this day, the notice has effect as if different specified variable factors had been fixed in relation to all exporters generally relevant to the determination of duty as specified in REP 517.*<sup>9</sup>

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<sup>1</sup> Anti-Dumping Notice 2019/86.

<sup>2</sup> Anti-Dumping Notice 2015/41.

<sup>3</sup> Anti-Dumping Notice 2019/49.

<sup>4</sup> Oliveria was Tasman Sinkware Pty Ltd prior to December 2018.

<sup>5</sup> Anti-Dumping Notice 2019/86 at page 1.

<sup>6</sup> And under Sections 8(5), 8(5BA), 10(3B), and 10(3D) of the *Customs Tariff (Anti-Dumping) Act 1975*.

<sup>7</sup> Anti-Dumping Notice 2020/003.

<sup>8</sup> Anti-Dumping Notice 2020/003 at page 1. “REP 517” is a reference to the Final Report published with respect to Continuation 517 (hereafter “Report 517”).

<sup>9</sup> Anti-Dumping Notice 2020/003 at page 1.

Zhuhai Grand Kitchenware Co., Ltd (“Zhuhai Grand”) is a Chinese manufacturer and exporter of the GUC.

The effect of the Minister’s decision was to secure the continuation of anti-dumping measures for all subject exporters, based on new variable factors that were established in Continuation 517. With respect to Zhuhai Grand, a dumping margin of 13.4% and a subsidy margin of 2.4% were determined.

As outlined in this application, Zhuhai Grand seeks review by the Anti-Dumping Review Panel (“the Review Panel”), under Sections 269ZZA(1)(d) and 269ZZC of the Act, of the decision of the Minister to continue the anti-dumping measures, and relatedly to determine revised variable factors, with respect to the exportation of the goods by Zhuhai Grand from China to Australia.

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

## **B First ground – incorrect dumping margin determination due to methodological calculation errors**

### **9 Grounds**

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

Zhuhai Grand submits that the normal value determined in Report 517 is affected by clerical and logical errors.

#### **a Clerical error**

Firstly, there appears to be a clerical error in the dumping margin stated in Report 517. Based on the calculation provided to Zhuhai Grand from the Commission dated 29 January 2020, the dumping margin stated in the confidential “517 Appendix 5 Dumping Margin” is 13.2%, and not 13.4% as stated in Report 517. Zhuhai Grand believes the latter to be a clerical error.

#### **b Logical error**

As stated in Report 517, the Commission calculated a normal value corresponding to Zhuhai Grand’s exportation of the GUC to Australia, based on Zhuhai Grand’s domestic sales of like goods in the ordinary course of trade under Section 269TAC(1) of the Act.

In determining the normal value, the Commission used a Model Control Code (“MCC”) in order to classify and “group” the domestic and exported goods. Products under the same MCC were then considered to be “matched” as “like goods” for normal value calculation purposes. At the same time, Report 517 openly concedes that the MCC matching of the GUC is itself insufficient to reflect the great variances and differences in physical characteristics between different models of products falling into any particular domestic MCC on the one hand and its “matching” export MCC on the other hand. Accordingly, adjustments were required to take into account the following factors:

- Where the normal value for the GUC exported to Australia was based on domestic sales having the same MCC – the Commission recognised that there were still significant physical differences between exported models and the domestic sales under the “same” MCC, due to the relatively broad criteria of the MCC and the large variances between different stainless steel sink models according to customer requirements. Accordingly, the Commission decided that a physical difference-based adjustment was warranted, as reflected in steel cost.
- Where the normal value for the GUC exported to Australia was not based on domestic sales having the same MCC - the Commission recognised that the physical differences between the identical model and the surrogate model required adjustment, having regard to the cost differences between the MCCs.

Zhuhai Grand does not disagree with the rationale for applying such adjustments. However, we observe that the mathematical formulae used to calculate such adjustments are logically flawed.<sup>10</sup>

In particular, we refer to the Commission’s calculation of the adjustment where the domestic sales of a “surrogate model” was identified as the basis of the normal value. For such adjustment, the Commission stated that it calculated the adjustment as follows:

*To arrive at a market value for the specification difference between the export MCC and surrogate MCC, the Commission firstly worked out the difference in the cost of production reported by the exporters in relation to the relevant MCCs exported to Australia and then added to this result each exporter’s profit margin (as a percentage of cost) realised on domestic sales of like goods sold in OCOT. [underlining supplied]*

We submit that the focus on only the cost of *exported goods* for such calculation is incorrect for the required purpose. Because the normal value is based on Zhuhai Grand’s *domestic sales* of like goods, and because the adjustment is being made to account for the differences between the product sold in the *domestic market* due to the use of a surrogate, the adjustments should reflect the differences between the surrogate *domestic sales* products and the cost of production of the exported goods, and not between the cost of production of two *export* models. Further, for the normal value of any MCC which is based on a surrogate MCC, and once the required correction as proposed here is made, there should no longer be any additional adjustment based on the differences between export and domestic cost of the same MCC. This is because the normal value is based on a surrogate model and not on domestic sales of that same MCC.

This logical/calculation error has caused the normal value to be overstated, and has inflated the dumping margin determined for Zhuhai Grand’s exports by about 3%.

## 10 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 9:**

Zhuhai Grand submits that the correct and preferable decision is for the adjustments made under Section 269TAC(8) of the Act to properly and correctly address the differences between the exported

<sup>10</sup> We refer to the calculation as included in “(a) TAC(8) Adjustments” worksheet within the confidential spreadsheet “517 Zhuhai Appendix 4 Normal value”.

goods and the domestic sales of like goods, by reference to the differences between the cost of production between the exported goods and the domestic sales.

## 11 Grounds in support of decision

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

The grounds raised in question 9 support the making of the proposed correct or preferable decision by demonstrating that the adjustment, as applied, is based on a logical error that overstates the determined dumping margin.

## 12 Material difference between the decisions

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

Based on Zhuhai Grand's estimation, the making of the correct or preferable decision referred to under 10 above would result in a decision that is materially different from the reviewable decision, because it would result in changes to the variable factors and a reduction to the dumping margin with respect to the exported goods.

Zhuhai Grand estimates that the combined effect of these correct or preferable decisions would be to reduce the dumping margin by about 3%.

## C Second ground – incorrect dumping margin determination due to failure to use cost in country of export, and incorrect decision to continue the measures as a result

### 9 Grounds

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

As identified above, the Commission considered that the normal value of the GUC exported by Zhuhai Grand to Australia should be determined by reference to Zhuhai Grand's domestic sales of like goods in the ordinary course of trade in the country of export, being China, under Section 269TAC(1) of the Act.

Report 517 also confirms that *"there was no finding of a particular market situation"* with respect to Zhuhai Grand or other Chinese exporters' domestic sales of like goods. That is to say, the Commission did not consider that Zhuhai Grand's domestic sales were *"not suitable"* for normal value purposes under Section 269TAC(2)(a)(ii) of the Act.

The sales and cost records as reported by Zhuhai were verified by the Commission as being complete, relevant and accurate.<sup>11</sup> Importantly, Report 517 also confirms that Zhuhai Grand's cost record was

<sup>11</sup> EPR517-21 at pages 11 to 15.



kept in accordance with generally accepted accounting principles, and that the costs recorded therein reasonably reflected the cost associated with the production of like goods in China. Report 517 states:

*For the purpose of this inquiry, the Commission is satisfied that the production records of all of the selected exporter complied with section 43(2)(b)(i) of the Regulation in so far that they were kept in accordance with generally accepted accounting principles in the country of export.*

*However, section 43(2) of the Regulations includes a second consideration relating to whether exporter's records reasonably reflect competitive market costs associated with the production or manufacture of like goods.*

*In examining the production costs reported by the exporter in this inquiry, the Commission examined production cost data which contained amongst other things, the costs relating to the consumption of stainless steel. Through the verification of each exporter's production data, the Commission found that the stainless steel production costs in each exporter's production records were a reasonable reflection of the price paid to their stainless steel suppliers. To this extent, the Commission is satisfied that the cost of production records reasonably reflect the costs associated with the production of like goods.*

In other words, the Commission acknowledged that Zhuhai Grand's cost record met both of the preconditions prescribed by Article 2.2.1.1 of the WTO *Anti-Dumping Agreement* ("the ADA"), which states:

*...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...*

Despite this, it was decided by the Commission in Report 517 to reject Zhuhai Grand's cost record for the production of the GUC and like goods insofar as the cost of stainless steel was concerned, and instead to replace that cost in Zhuhai Grand's cost of production with a basket of foreign stainless steel costs. Report 517 describes this as a "*benchmark SBB European and North American average price, on delivered terms, for grade 304 stainless steel CRC*" ("the non-China surrogate cost").

Stainless steel is the major cost input for the production of the GUC. The substitution of Zhuhai Grand's actual cost of stainless steel with this non-China surrogate cost resulted in an artificial increase in Zhuhai Grand's cost of stainless steel of more than 30%. This artificial distortion of Zhuhai Grand's costs in turn affected the correctness of the Commission's identification of the universe of Zhuhai Grand's domestic sales in the ordinary course of trade ("OCOT") for normal value determination purposes, because the higher costs rendered a large number of profitable domestic sales unprofitable. Because those sales did not pass the OCOT test under Section 269TAAD, Zhuhai Grand's normal value and dumping margin were overstated. Zhuhai Grand submits that the cost determination in Report 517 is incorrect at law, and legally and factually unreasonable.

It is well-established in WTO jurisprudence that an investigating authority is obliged to use the exporter's cost record, provided that the two preconditions identified in Article 2.2.1.1 are met.<sup>12</sup> In any case, Article 2.2 requires an investigating authority to use the cost in the country of export.<sup>13</sup> Such requirements extend to the cost used for conducting the OCOT test as prescribed under Article 2.2.1 in the same manner as it applies to the determination of a cost based "constructed normal value".<sup>14</sup>

This position was recently reconfirmed in the WTO panel report regarding anti-dumping measures imposed by Australia on imports of A4 copy paper from Indonesia ("DS529"). The panel report in DS529 states:

*7.132 The expression "cost of production in the country of origin" in this provision has been understood as "a reference to the price paid or to be paid to produce something within the country of origin". Normally, and as reflected in the obligation set out in the first sentence of Article 2.2.1.1, the cost of production in the country of origin should be calculated on the basis of cost information from an exporter's own records. However, as explained by the Appellate Body in EU – Biodiesel (Argentina):*

*In circumstances where the obligation in the first sentence of Article 2.2.1.1 to calculate the costs on the basis of the records kept by the exporter or producer under investigation does not apply, or where relevant information from the exporter or producer under investigation is not available, an investigating authority may have recourse to alternative bases to calculate some or all such costs. [footnote omitted]*

*7.133. We recall that the ADC did not use Indah Kiat's and Pindo Deli's pulp costs to calculate their respective costs of production of A4 copy paper for the purpose of constructing normal value. We have found in the previous section that in disregarding Indah Kiat's and Pindo Deli's costs, the ADC acted inconsistently with the first sentence of Article 2.2.1.1. Accordingly, in the light of the above Appellate Body statement from EU – Biodiesel (Argentina), with which we agree, there was no legal basis for the ADC to have used third-country export prices of pulp as a proxy for Indah Kiat's and Pindo Deli's pulp costs when constructing normal value of A4 copy paper under the terms of Article 2.2. It follows that the ADC's use of Brazilian and South American export prices of pulp to China and Korea as a starting point for the calculation of the costs of pulp in Indonesia was inconsistent with Article 2.2.*

Likewise, Section 269TAAD(4) and Regulation 43 of the *Customs (International Obligations) Regulation 2015* ("the Regulation") require the Minister to calculate the cost of production *in the country of export*, having regard to certain prescribed factors. Therefore, assuming *arguendo* that the Commission is correct to recommend that the Minister's obligation to use Zhuhai Grand's cost record under Regulation 43(2) does not apply, the Minister is not *precluded* from using the costs recorded therein. What we mean by this is that the Minister is still obliged to work out an amount to be the cost of production *in the country of export*, and not simply surrogate a foreign cost.

With respect, in our view Report 517 completely contravenes the requirement to use Zhuhai Grand's cost record, given that such record was kept in accordance with generally accepted accounting

<sup>12</sup> See, for example, Appellate Body Report, *EU – Biodiesel (Argentina)*, at 6.37 and 6.56, and Appellate Body Report, *Ukraine – Ammonium Nitrate*, at 6.102.

<sup>13</sup> See Appellate Body Report, *Ukraine – Ammonium Nitrate*, at 6.89.

<sup>14</sup> *Ibid.*

principles in China, and reasonably reflected the costs associated with Zhuhai Grand's production of the GUC. Further, Report 517 opts to determine the cost of production for Zhuhai Grand by using a stainless cost that is as unrelated to costs in country of export as it possibly could be:

*Having regard to the available information in this inquiry, and in particular;*

- *the result of the Commission's comparison of the price of stainless steel in the Chinese, North American and European markets; and*
- *the influence of the GOC on the Chinese steel market;*

*the Commission is not satisfied that the stainless steel costs contained within each exporter's production records reflect what the Commission considers to be a competitive market cost in terms of section 43(2)(b)(ii) of the Regulation.*

...

*In light of the above finding that the production costs of stainless steel incurred by Chinese exporters of the goods do not reasonably reflect competitive market costs for that input, the Commission has considered how best to determine what a competitive market substitute price for this input in China should be, having regard to all available information.*

*For the purpose of this inquiry, the Commission does not propose to depart from the approach adopted in the original investigation which applied a benchmark price that was considered to be representative of 'adequate remuneration' for the purposes of determining a benefit under Subsidy Program 1 - Raw materials provided by the Government at Less than Adequate Remuneration.*

*The Commission considers that the factors taken into account in selecting the benchmark in the original investigation remain applicable in this inquiry, including that the benchmark:*

- *includes only data related to prices of 304 CRC stainless steel; and*
- *does not include any Asian pricing data that may be unreasonable due to the influence of exported Chinese 304 CRC stainless steel in the region.*

*For the purpose of this inquiry the benchmark price used for Program 1 and the stainless steel cost substitute in relation to section 43(2) of the Regulation relies on the average price of grade 304 stainless steel CRC for North America and Europe published by SBB.<sup>15</sup> [footnote omitted] [underlining supplied]*

We provide the following comments in relation to the cost surrogation approach adopted in Report 517.

**Firstly**, the Commission's insistence that it "*not depart from the approach adopted in the original investigation*" and its determination of a "*benchmark price that was considered to be representative of 'adequate remuneration' for the purposes of determining a benefit under Subsidy Program 1*" are neither relevant nor appropriate with respect to Zhuhai Grand.

As Report 517 confirms, Zhuhai Grand did not receive any subsidy under Program 1. Further, insofar as Report 517 attempts to argue that a foreign cost benchmark suitable for a subsidy investigation is also a

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<sup>15</sup> Report 517, at page 53.

relevant consideration for the determination of cost in the country of export for an anti-dumping investigation, such an argument has been clearly rejected by the WTO Appellate Body:

*We acknowledge that Article 2.2 of the Anti-Dumping Agreement and Article 14(d) of the SCM Agreement bear certain textual similarities. Article 2.2 refers to the cost of production "in the country of origin" and Article 14(d) to the adequacy of remuneration to be determined in relation to prevailing market conditions "in the country of provision". Article 14(d), however, also contains the phrase "in relation to prevailing market conditions", which is not found in Article 2.2.403 Importantly, these two provisions do not serve the same function. The function of Article 14(d) of the SCM Agreement is to ascertain the benefit conferred on the recipient of a subsidy by, inter alia, the governmental provision of goods and services. By contrast, Article 2.2 of the Anti-Dumping Agreement concerns the establishment of normal value when it cannot be determined on the basis of domestic sales.404 In light of these differences, the Appellate Body's findings with respect to Article 14(d) of the SCM Agreement in US – Softwood Lumber IV do not speak to the costs that may be used to construct normal value under Article 2.2 of the Anti-Dumping Agreement. Therefore, in our view, the Panel did not err in its interpretation of Article 2.2 in considering that these Appellate Body findings were not relevant to its interpretative exercise.405 In light of the foregoing, we reject Ukraine's claim challenging the Panel's interpretation of Article 2.2 of the Anti-Dumping Agreement. 16*

**Secondly**, we draw the Review Panel's attention to the decision of the Federal Court in *Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* ("Changshu Longte"). In *Changshu Longte*, the Full Court considered the legal meaning and requirement of a determination of the "cost of production... in the country of export" in the context of Section 269TAC(2)(c)(i) of the Act:

*Section 269TAC(2)(c)(i) requires the decision-maker to undertake the statutory task of determining the "cost of production... in the country of export" and the decision-maker must undertake that task in a way authorised by the statute. In that respect:*

*(a) If a decision-maker uses pricing information from some other country or market to determine the cost of production in the country of export without:*

*(i) turning his or her mind to the question whether that foreign pricing information was relevant and appropriate to a determination of the "the cost of production ... in the country of export"; or*

*(ii) giving genuine consideration (as to which see *Carrascalao v Minister for Immigration and Border Protection* (2017) 252 FCR 352 at [31] to [34]) to that issue,*

*then the decision-maker might be shown not to have undertaken the task contemplated by the statute or to have done it an unauthorised way.<sup>17</sup> [underlining supplied]*

The Full Court's finding that the cost of production so determined must relate to and represent the relevant and appropriate cost *in the country of export* under Section 269TAC(2)(c)(i) is equally

<sup>16</sup> See *Ukraine – Ammonium Nitrate*, at para 6.118.

<sup>17</sup> [2019] FCAFC 122, at para 93(4).

applicable, via Section 269TAC(5A) of the Act, to the determination of cost in the context of Section 269TAAD.

Report 517's use of the North America and European based non-China surrogate cost and its plain admission that such cost was chosen so as to "*not include any Asian pricing data that may be unreasonable due to the influence of exported Chinese 304 CRC stainless steel in the region*" exemplifies what the Full Court in Changshu Longte considered would be an *unauthorised* cost determination. Report 517 is predicated on the assumption that the costs in none of the countries within the geographical proximity of China were "*relevant and appropriate*" to determining the cost of production in China as the country of export of the GUC. This amounts to a finding that costs in Asian markets (in this case, steel costs) do not themselves reasonably reflect competitive market costs, in that region, in the face of report after report issued by the Commission which happily conclude the opposite. It also amounts to a finding that it is "*relevant and appropriate*" to use steel costs discovered in markets outside the region of which China is part. Moreover, Report 517 expressly intends that the non-China surrogate cost be *unlike* and *unrelatable* to China's, by selecting it from markets that are highly dissimilar in terms of their economic development and economic interactions, instead of selecting it from nearby Asian markets that are far more *like* those of China in economic, societal and cultural terms.

The cost surrogation approach evinced by Report 517 with respect to Zhuhai Grand is wrong at all levels. It is unreasonable, highly discriminatory and beyond power. By adopting an irrelevant consideration – the use of costs that are *irrelevant and inappropriate* to the country of export, when the Federal Court says that costs should be *relevant and appropriate* to the country of export should be used – it erects a trade barrier against Chinese exports by using higher costs than those of any of its nearby Asian trading nations. Fatally, it highlights that the cost determination process gave no genuine consideration to determining the cost of production in the country of export. Conversely, it took into account an entirely antithetical consideration, namely that "*Asian pricing data*" – routinely accepted by the Commission in all other investigations – "*may be unreasonable due to the influence of exported Chinese 304 CRC stainless steel in the region*".

Accordingly, we respectfully submit that Report 517's decision not to use Zhuhai Grand's cost record for the cost of stainless steel input, and not to determine the cost of production in relation to the cost of production in China, is wrong. It is neither the correct nor preferable decision.

The correct dumping margin – whether based on Zhuhai Grand's own cost record for the cost of stainless steel input, or a reasonable "*relevant and appropriate*" cost of production in China, if that is what the ADRP should decide – will most likely show that Zhuhai Grand's export prices have not been "dumped". This in turn would require a reassessment of the decision to continue the measures as against Zhuhai Grand, because the informational foundation for the Minister's decision with respect to Zhuhai Grand will have radically changed.

Of necessity, and on Zhuhai Grand's application as requested herein, the ADRP is asked then to consider this reassessed negligible/no-dumping margin, and what it indicates with respect to the likelihood of future dumping by Zhuhai Grand and a recurrence of the injury that the measures were intended to prevent. As a private kitchenware manufacturer Zhuhai Grand has a clear commercial goal of trying to maximise the profitability of its business. Its competitive non-dumping position would count against any probability that Zhuhai Grand would re-engage in exports to Australia at dumped prices that would materially injure the Australian industry.

## 10 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 9:**

Zhuhai Grand submits that the correct and preferable decision is to use Zhuhai Grand’s cost record as the cost of production for the GUC and like goods. In any case, such cost, even if based on some form of “foreign data” based surrogate must be capable of reflecting the cost of production in the country of export, being China. This is as required by Section 269TAA of the Act, Articles 2.2, 2.2.1 and 2.2.1.1 of the ADA, and the Federal Court in *Changshu Longte* in its reference to giving genuine consideration to the question of what is relevant and appropriate.

Zhuhai Grand requests the Review Panel to find that the “*benchmark SBB European and North American average price, on delivered terms, for grade 304 stainless steel CRC*” does not meet the applicable legal requirements, and is not a correct nor preferable cost to adopt in determining the normal value for Zhuhai Grand. This decision would:

- lead to the determination of new variable factors with respect to Zhuhai Grand’s exports of the GUC to Australia; and
- further, cause the ADRP to reconsider the decision to continue the measures as against Zhuhai Grand and to recommend to the Minister that that decision be revoked, and instead that the measures be allowed to expire.

## 11 Grounds in support of decision

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

The grounds raised in question 9 support the making of the proposed correct or preferable decision by demonstrating that the decision not to use Zhuhai Grand’s cost record or a cost in China for the cost of stainless steel input is incorrect and not preferable, and has resulted in the calculation of an inflated the dumping margin. That finding would also change the informational foundation of the Minister’s decision to continue the measures as against Zhuhai Grand, and in our submission should lead to the revocation of that decision.

## 12 Material difference between the decisions

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

Based on Zhuhai Grand’s estimation, the making of the correct or preferable decision referred to under 10 above would result in a decision that is materially different from the reviewable decision, because it would result in changes to the variable factors and a reduction to the dumping margin with respect to the exported goods. Zhuhai Grand estimates that effect of the proposed decision – on the basis that the actual costs recorded in Zhuhai Grand’s cost record are to be used as the cost of production - would show that Zhuhai Grand’s dumping margin is *negative*, ie that Zhuhai Grand did not engage in any dumping in the period concerned.

If the ADRP should consider it suitable to use foreign data to determine the applicable Zhuhai Grand costs, these costs should nonetheless reflect the cost of production in the country of export, being China. A potentially suitable source of such data is more likely to be obtained from regions with close geographical, economic and societal similarities to China in East and South East Asia.

The revocation of the decision to continue the measures as against Zhuhai Grand would be materially different to the present position, as arises from the Ministers decision, which is that those measures continue to apply to Zhuhai Grand.

## **D Conclusion and request**

The decisions to which this application refers are reviewable decisions under Section 269ZZA of the Act. Where references are made to the Commission and its recommendations, it is those recommendation which were accepted by the Minister and form part of the reviewable decision that Zhuhai Grand seeks to have reviewed.

Zhuhai Grand is an interested party in relation to the reviewable decisions.

Zhuhai Grand's application is in the prescribed form and has otherwise been lodged as required by the Act.

We submit that the 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.

The correct and preferable decisions that should result from the grounds that are raised in the application are dealt with and detailed above.

Lodged for and on behalf of Zhuhai Grand Kitchenware Co., Ltd. by:

**Charles Zhan**  
Senior Associate

**Macky Markar**  
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# 珠海广金厨具有限公司

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MARCH 30,2020

Anti-Dumping Review Panel  
c/- Legal, Audit and Assurance Branch  
Department of Industry, Innovation and Science  
10 Binara Street  
Canberra  
Australian Capital Territory 2601

Dear Review Panel

## **Application for review of Ministerial decision regarding Inquiry 517 Deep draw stainless steel sinks from China**

Zhuhai Grand Kitchenware Co., Ltd. ("Zhuhai Grand") is a company that is directly concerned with the manufacture in China and the exportation to Australia of the abovementioned goods.

We confirm that we have retained the law firm of Moulis Legal to represent Zhuhai Grand's interests for the purposes of our application to the Anti-Dumping Review Panel in respect of the abovementioned decision, and for the review that is initiated as a consequence of that application.

Please give Moulis Legal the same assistance and consideration in relation to the provision of information and cooperation in this matter as you would Zhuhai Grand itself.

The lead contact person at Moulis Legal is Mr Charles Zhan. His email address is [charles.zhan@moulislegal.com](mailto:charles.zhan@moulislegal.com), and he can be contacted by telephone on +61 2 6163 1000.

Please contact him directly with any inquiries.

Yours faithfully

LUO YAOTING

General manager

