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By email

Dear Panel Member

Review of Ministerial decision – aluminium road wheels

Interested party submission of Zhejiang Yueling Co., Ltd

We refer to the invitation of the Anti-Dumping Review Panel (“the Panel”) to the Anti-Dumping Commission (“the ADC”) to comment on the application (“the Application”) lodged by Zhejiang Yueling Co., Ltd (“Yueling”), and the ADC’s letter to the Panel dated 19 January 2016, enclosing “its responses to the issues raised by the applicants” (“the ADC’s letter”).

In accordance with its rights as an interested party under Section 269ZZJ of the *Customs Act 1901* (“the Act”), Yueling wishes to address the various statements in the ADC’s letter for consideration by the Panel.

The ADC was invited to comment on the following aspect of the Application:

The ADRP invites the Anti-Dumping Commission (the Commission) to comment on the applications. These comments will assist the ADRP’s consideration of the claims made in the application. It would be of assistance to the ADRP’s initial consideration of the applications if the comments would please address the following, as relevant:

- 1. Identify any information provided with, or referred to in the application that, in the view of the Commission, is not relevant information as defined in s.269ZZK(6) of the Customs Act 1901.*
- 2. Identify any factual claims in the application that the Commission disputes, and refer to relevant information in that regard.*
- 3. Provide some commentary on the grounds of the application, referring to relevant information.*
- 4. If it seems appropriate, any additional background information in relation the matter, including referring to any relevant policy position or guidelines which had an impact on the decision under review.*

Before we address some of the specific claims and new information referred to in the ADC’s letter,

Yueling wishes to point out that the ADC's letter¹ does not appear to dispute any factual claims made by Yueling in the Application. Rather, the ADC's letter essentially repeats the views previously expressed by the ADC in its various letters to Yueling, the Statement of Essential Facts ("SEF 263"), and the final report to the Minister in this matter ("Report 263").

Further, with a few exceptions which we will specifically address below, the ADC's letter does not contain any new explanation or views which have not already been addressed in detail by Yueling in the Application. The ADC's comments merely confirm the circumstances which led to the findings which Yueling argues to have been incorrect and unreasonable in the Application, and which the Panel has decided to review. The re-statement of the ADC's views in its letter must bear no additional value or weight in the Panel's objective examination of the Application.

We now turn to consider some of the specific claims presented in the ADC's letter.

A Whether information in B-4 of the Application is "relevant information"

The ADC letter identified one piece of information which it claims not to be "relevant information" in with the terms of Section 269ZZK(6) of the Act, being:

(in relation to the information and claim presented at B-4 of Yueling's Application) *The data presented by Zhejiang Yueling in relation to the involvement of a third party in relation to export sales to two importers [importer names] – was not submitted during review 263.*²

[square bracketed text is the information claimed to be confidential in the original]

Section 269ZZK(6) provides, in relevant part:

(6) *In this section:*

"relevant information" means:

...

(c) if the reviewable decision was made because of an application under subsection 269ZA(1) or a request under subsection 269ZA(3) - the information the Commissioner had regard to, or was, under paragraph 269ZDA(3)(a), required to have regard to, when making the findings set out in the report under section 269ZDA to the Minister in relation to the making of the reviewable decision;

...

The ADC's comments in the right hand column of the section concerning B-4 of the Application indicates that the information presented by Yueling at B-4 of its Application is a correct guess³ by Yueling of the information and arrangement which the ADC claims to have been "lacking of clarity" and of which Yueling "should have been aware":

In relation to the Commission's specific concerns regarding this matter, the Commission agrees that Zhejiang Yueling was correct in suggesting (in its application to the ADRP) that

¹ Only "Attachment A", the non-confidential from of the ADC's comment was made available on the ADRP's website on 20 January 2016. Following Yueling's request, a "releasable to ADRP, Zhejiang Yueling" version of the "Attachment A" of the ADC's letter was provided to Yueling on the same day. Yueling's comments in this submission are made on the basis of the ADC's letter available to Yueling.

² Attachment A of the ADC's letter, at Page 8

³ See pages 12 to 18 of the Application in relation to the analysis and the self-investigation process undertaken by Yueling in trying to guess the ADC's allegation concerning lack of clarity in distribution channel – due to the non-disclosure and lack of transparency on the part of the ADC.

the Commission was concerned about the lack of clarity around the distribution arrangement involving sales to importers [importer name] and [importer name] via [importation arrangement]. The Commission observed in those importers' questionnaires that [information submitted in confidential importer questionnaires]. Data collected by Australian Border Force pertaining to imports by both companies during the investigation period (Attachment 12) clearly showed that [confidential information relating to importers].

[square bracketed text is the information claimed to be confidential in the original]

The ADC's comments therefore appear to suggest that the information presented by Yueling that the ADC claims not to be "relevant information is reflective of information that was possessed by the ADC at the time. The ADC appears to have used this information to justify its decision to disregard *all* of Yueling's information for the purpose of determining export price and normal value, on the basis that such information was not provided by Yueling. With respect, this is remarkable in its illogicality. The information is clearly relevant information for the purpose of this review. Such information does not become irrelevant, simply because it was *not known to*, and was therefore not provided by, Yueling during Review 263.

In relation to the ADC's comments that:

These facts indicated [importation arrangement], and as a result Zhejiang Yueling should have been aware of its existence and should have proactively explained the nature of the company's involvement to the Commission. For example, if [importation arrangement] is as described in Zhejiang Yueling's ADRP application, Zhejiang Yueling should have explained this in question B-2(e) of the EQ which seeks information regarding export price negotiations. In addition, the Commission notes that Zhejiang Yueling eventually provided information relating to other [importation arrangements].

[square bracketed text is the information claimed to be confidential in the original]

Due to the continued non-disclosure of parts of the text on confidentiality grounds, it is not possible for Yueling to fully understand the ADC's claims. Nonetheless, it appears to Yueling that the ADC is repeating its view concerning the involvement of a third party in sales to **[CONFIDENTIAL TEXT DELETED – identity of customers]**. In this regard, we respectfully refer the Panel to B-4 of the Application, which painstakingly explains the circumstances and addresses the ADC's claims. B-4 clearly sets out the information Yueling was aware of during the review and the information of which it was not aware. In particular, Yueling submitted:⁴

As submitted by Yueling in its SEF Submission, this is another example of an issue that could have been clarified or addressed by Yueling if the ADC had simply asked the question. In any case, in providing information as requested by the ADC, Yueling can only provide information that is known to it. Further, Yueling cannot and should not be expected to successfully guess what the ADC wants or what issues or concerns the ADC has in mind. The ADC was obliged to clearly communicate such concerns to Yueling, should it seek to rely upon them in disregarding Yueling's information, and not to disregard Yueling's information based on unsupported and illogical suspicions.

*The finding that Yueling's information can be disregarded due to some "lack of clarity" on Yueling's export sales channel is simply incorrect and unjustified. It appears that the ADC, after all, did have clarity about the distribution channel, from its own sources. Yueling did not fail in any obligation to provide clarity when so far as it was concerned everything it advised the ADC was entirely clear. The arrangements made by **[CONFIDENTIAL TEXT DELETED – commercial arrangements of Yueling's Australian customers]** were not known to Yueling*

⁴ The Application, page 17

If there is indeed any lack of clarity, it was a result of the ADC's decision not to clarify its concerns with Yueling, rather than any refusal by Yueling to disclose information to the ADC or to impede the investigation. Yueling did not refuse to provide any information and did not impede the investigation.

In Report 263 the ADC comments that "it [is] reasonable to expect exporters to have a strong understanding of the methods through which they sell and distribute goods to Australia". At all relevant times Yueling did have a strong and complete understanding of how it sold the goods to Australia. The arrangements entered into by its [CONFIDENTIAL TEXT DELETED – identity of customers] were not Yueling's arrangements and have nothing to do with Yueling.

[emphasis added]

In relation to the ADC's comment that Yueling "eventually provided information relating to other **[importation arrangements]**", it is not clear to Yueling the relevance or the intention of such comment. In any case, Yueling notes that it provided information regarding **[CONFIDENTIAL TEXT DELETED – identity of customer]** in its response to the Commission's request for further information as referred to in Confidential Attachment 4 of the ADC's letter. If anything, the open disclosure of such information showed that Yueling did provide the information as was requested by the ADC, so far as it was in possession of that information. As explained in B-4 of the Application, Yueling was not aware of the arrangements entered into by its other customers, namely **[CONFIDENTIAL TEXT DELETED – identity of customers]**, and **[CONFIDENTIAL TEXT DELETED – arrangements of Yueling's Australian customers]**.

The ADC further comments:

*In relation to Zhejiang Yueling's claims that the Commission should have provided it with information about a potential **[importation arrangement]**, as shown in the Commission's Dumping Commodity Register, the Commission notes that it is an exporters responsibility to provide the information requested by the Commission.*

[square bracketed text is the information claimed to be confidential in the original]

With respect, the ADC's comments continue to miss the point. In this regard we respectfully refer to the following submission in the Application:

[CONFIDENTIAL TEXT IN THE APPLICATION - additional comments regarding the table of confidential information]

B Allegations concerning the reliability of Yueling's information

We have reviewed the ADC's letter with regard to the claimed unreliability of Yueling's information and consider that it does not add anything new to the views the ADC expressed in its various letters to Yueling advising its decision to disregard Yueling's information, and in SEF 263 and Report 263. The alleged deficiencies or inaccuracies of the data provided by Yueling have all been addressed in the respective sections of the Application, and in the submissions provided by Yueling during Review 263 – especially Yueling's submission in response to SEF 263 ("Yueling's SEF submission"). It is neither necessary nor desirable for us to repeat those explanations and submissions again, and we recommend them to you.

Nonetheless we would like to offer these brief observations regarding the allegations concerning the reliability of Yueling's information in the ADC's letter:

1. Regarding point 1 at page 6 of the ADC's letter – please refer to page 3 of Yueling's SEF

- submission”)
2. Regarding point 2 at page 6 of the ADC's letter – please refer to pages 5 and 6 of Yueling's SEF submission.
 3. Regarding point 3 at page 7 of the ADC's letter, we have the following observations:
 - Firstly, Yueling notes that this is a new allegation that has not been referred to by the ADC in any previous communication with Yueling, or in the SEF 263, or in Report 263.
 - Secondly, and on the basis that the ADC's comments appear to suggest that the importer data was provided by **[CONFIDENTIAL TEXT DELETED – identity of customers]**, Yueling understands that the ADC did not contact either importer to verify or clarify the information provided in their response to their respective importer questionnaires. The ADC also did not make any attempt to clarify any such “differences” or contact Yueling to “match” with Yueling's information. Once again, there was no attempt by the ADC to verify such information or validate its concerns.
 - Thirdly, based on what Yueling has now managed to piece together about the sales arrangement made by **[CONFIDENTIAL TEXT DELETED – arrangements of Yueling's Australian customers]**, it would appear that the discrepancies are completely explicable. However this is not the point, in that any differences between the data provided by Yueling and that from **[CONFIDENTIAL TEXT DELETED – identity of customers]** cannot automatically be used as a basis to label Yueling's data as being incorrect or unreliable. It is entirely possible that the data provided by the importer/s was incorrect, or that both the importer data and Yueling's data are correct and reliable.
 - Fourthly, the ADC's view that Yueling's invoices should be regarded as unreliable simply because they did not match unverified importer data highlights the unreasonableness and incorrectness in the ADC's finding.
 4. Regarding the ADC's comments concerning its basis to disregard costs and other data at pages 7 and 8 – Yueling notes that the comments do not address Yueling's submission in the Application, and offer no logical or factual basis for the ADC's view, apart from saying that it is “highly likely” that the information provided by Yueling was inaccurate and unreliable. In light of this, we respectfully refer the Panel to pages 10 to 12 of Yueling's Application.
 5. Regarding the ADC's comment concerning B-4 of the Application, Yueling has already addressed these comments above at A.
 6. Regarding the ADC's comment concerning Section C of Yueling's Application, Yueling notes that the ADC's comment have not addressed Yueling's submission in any way.
 7. Regarding the ADC's comment concerning D-1 of Yueling's Application, it appears to Yueling that the ADC does not understand Yueling's comment in relation to the relevance of Section 269TAACA. We again refer the Panel to D-1 of the Application. Yueling maintains the view that *“the decision not to use Yueling's information in the calculation of [the] amount of subsidy received by Yueling is incorrect and unlawful”*.
 8. Regarding the ADC's comments concerning D-2 of the Application, we have the following observations:
 - a. The comment that the inconsistency in the ADC's methodology is somehow defensible because the information regarding the subsidies was relatively simple and verifiable is flawed. Whether data is complex or simple should have no bearing on the relevance of the data and the legal obligation on the ADC to calculate the amount of subsidy in accordance with the relevant information concerning Yueling, unless circumstances prescribed under Section 269TAACA apply.
 - b. In relation to the flaws in the ADC's logic and calculation of the amount of subsidy for Yueling under programs other than Program 1, Yueling again refers to D-1 and D-2 of

the Application. In particular, the unlawful nature of the disregarding of Yueling's information in the calculation was demonstrated in detail at page 26, in particular:

Further, Yueling notes that the ADC's methodology amounts to, on the one hand, accepting Yueling's accounting records and recognising that the subsidy amount as reported by Yueling was indeed reliable for working out the amount of subsidy received by Yueling, yet on the other hand refusing to allocate such amounts by reference to the turnover volume contained in Yueling's own financial records. This methodology is particularly problematic and illogical in the context of these subsidy programs, because the benefit received by Yueling under those programs (the amount of which was accepted by the ADC), were provided to Yueling in most circumstances, by reference to Yueling's particular business performance and financial information. For example, the benefit amount provided under Program [CONFIDENTIAL TEXT DELETED – number] is directly linked to the [CONFIDENTIAL TEXT DELETED – Yueling's actual financial performances]. Therefore it is incorrect, absurd and unjustifiably punitive to work out a per unit actual amount of the subsidy received by Yueling without reference to the actual volume amount as recorded by Yueling – which formed the basis for the receipt of that amount of subsidy in the first place. Indeed, the approach adopted by the ADC means that the "lowest relevant turnover figures" (from other exporters) as used by ADC is not "relevant information" at all – as such volume information would have had nothing to do with the amount of subsidy received by Yueling under each program. Indeed, in the case of some of the local government related subsidy programs, such as Programs [CONFIDENTIAL TEXT DELETED – number]. Yueling understands that it was the only subsidy recipient amongst the selected exporters in this review. Thus, the only "relevant turnover" information for the purpose of determining the per unit amount of subsidy received under such programs for Yueling would have to be the information provided by Yueling.

- c. Yueling notes that the ADC's comments do not address Yueling's submission concerning Program [CONFIDENTIAL TEXT DELETED – number], at page 27 of the Application.
9. Regarding the ADC's comment concerning D-3 of the Application, the ADC does not address any of the legal and factual based claims made by Yueling at D-3 which are fundamental to the finding of the existence of *any* benefit Yueling may be said to have received under Program 1, and the basis to work out the amount of subsidy that can be attributed to Yueling. Accordingly, we respectfully refer the Panel to our submission at D-3 of the Application again. Further, we consider that the comments offered by the ADC highlight the baseless and random nature of the method adopted by the ADC in working out the amount under Program 1.

C Conclusion

The purpose of this submission is to quickly address the ADC's comments and to provide further assistance to the Panel in its review of this matter. In our view, the ADC's comments repeat the same views as those already stated in Report 263. The ADC's comments do not dispute Yueling's factual claims in the Application.

It is the Panel's role to review the issues raised by the Application and to form a view as to whether the findings being reviewed were the correct or preferable. It is the responsibility of the ADRP to consider the merits of the Application and to decide what the correct or preferable decision should have been. Yueling believes that it has comprehensively established that the reviewable decision was incorrect and unreasonable in relation to Yueling.

Accordingly, we respectfully reiterate Yueling's requests in the Application that the ADRP:

- 2 *Recommend that the Minister revoke the reviewable decision and substitute a new decision to be specified by the ADRP, being the variation of the relevant notices by way of fixing different variable factors, being export price, normal value, and the amount of countervailable subsidy received in respect of the goods by Yueling, based on the information provided by Yueling, under Section 269TAB(1), Section 269TAC(1) or (2), and Section 269TACD respectively calculated by the means set out in 3 below.*
- 3 *For the purposes of making the recommendation referred to in 2 above, direct the ADC to undertake a recalculation of the amount of Yueling's export price, normal value and relevant countervailable subsidy received in respect of the goods, in a reinvestigation under Section 269ZZL on the following bases:*
 - (a) *that the ADC must work out Yueling's export price based on the information provided by Yueling;*
 - (b) *that the ADC must work out Yueling's normal value based on the information provided by Yueling;*
 - (c) *that the ADC must work out the amount of countervailable subsidy received by Yueling in relation to the goods based on the information provided by Yueling;*
 - (d) *that the ADC must not consider that Yueling received a countervailable subsidy under Program 1 [CONFIDENTIAL TEXT DELETED – supplier information];,*

and report the recalculations under 3(a), (b) and (c) to the ADRP in its reinvestigation report.

Yours sincerely



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