

Brief on China's initiation of an anti-dumping investigation and possible countervailing duties investigation into Australian wine in China

Issue

The China Alcoholic Drinks Association (CADA) has requested the Chinese Ministry of Commerce (MOFCOM) to launch separate anti-dumping and countervailing duties investigations on Australian wine in China. MOFCOM has agreed to proceed with an anti-dumping investigation and flagged a potential countervailing duties investigation.

Background

MOFCOM advised the Australian Government that it has accepted the application and will kick off the anti-dumping investigation. The case, in a normal situation, will be closed by 18 August 2021, but the investigation may be extended to 18 February 2022. The product under investigation is HSC 2204.21.00 (bottled wine in under 2 litre packages) and the year of investigation for determining dumping is calendar year (CY) 2019 and for determining injury to the Chinese domestic industry is CY2015–2019. Ten Australian companies were named in the application.

Australian Grape & Wine is working with the Australian Government, the Department of Foreign Affairs and Trade (DFAT), the Department of Agriculture, Water and the Environment (DAWE), and Wine Australia to work out what is the mix of companies that will provide a fair representation of Australian wine exports to China. Other companies may be drawn into this process and called on to supply information and they will need to register (both electronically and in writing in Chinese) within 20 days of the announcement of the investigation.

We understand that the Chinese Government is likely to launch a parallel investigation into subsidies (countervailing duties) within Australia. This is likely to occur in the very near future. The Australian Government has accepted the invitation to pre-initiation consultations on 27 August 2020 and we could expect the initiation of the investigation shortly thereafter.

There are two separate issues raised here.

1. **Anti-dumping.** If a company exports a product at a price lower than the price it normally charges in its own home market, it is said to be 'dumping' the product. Broadly speaking, the World Trade Organization (WTO) Anti-Dumping Agreement allows governments to act against dumping where there is genuine ('material') injury to the competing domestic industry caused by those dumped imports. In order to do that, the government has to be able to show that dumping is taking place, calculate the extent of dumping (how much lower the export price is compared to the exporter's home market price), and show that the dumping is causing injury or threatening to do so. Anti-dumping duties are imposed on an individual exporter basis but where there are many exporters, the examination may be limited ('sampling').

The Chinese Government will issue a detailed questionnaire to all interested parties that have registered, with a timeline for responses in 37 days to the nominated companies. The questionnaire will be in Chinese and the responses will also be required in Chinese. These will require a lot of detailed confidential information around cost of production and costs of sales. We understand that two separate questionnaire responses must be submitted – a confidential submission containing confidential information and a non-confidential/public version for publication on the MOFCOM website. If the questionnaire is not completed to the satisfaction of MOFCOM, then the company will be deemed 'uncooperative'.

2. **Countervailing duties.** Similarly, in response to an application from a domestic industry, a country can launch a countervailing duty investigation and ultimately charge extra duty (known as 'countervailing duty') on subsidised imports that are found to be hurting domestic producers. Countervailing duty can only be charged after the importing country has conducted a detailed investigation like that required for anti-dumping action.

CADA (the applicant) has cited a range of Australian Government programs, most of which were also raised in the Barley action (see below), with the addition of the Wine Equalisation Tax, the associated WET rebate, and other wine-specific measures.

Possible outcomes

If the investigation finds that dumping has occurred and injury has been caused to the domestic Chinese industry, additional import duties may be imposed. CADA has claimed an anti-dumping margin of 202.70 per cent and combined with an unspecified subsidy margin could amount to duties of around 290 per cent (comprising of a range of different proposed measures).

It is important to note that an anti-dumping duty is an additional duty covering specified goods originating in, or exported from, named **countries or exporters**. It is chargeable in addition to, and independent of, any other duty to which the imported goods are liable (which, in the case of wine, is none as wine is duty free under the China–Australia Free Trade Agreement). As noted above, it is applied on an individual exporter basis, but often with a so-called 'all others' rate where sampling is undertaken. This means different companies may have differing rates of duty.

Similarly, countervailing duty is applied to either countries (their entire sector) or individual exporters.

If China finds that dumping, injury, and a causal link existed during the period of investigation, and the imposition of anti-dumping duty conforms with China's 'public interest', MOFCOM may assign individual anti-dumping duty rates to each foreign responding company. Chinese Customs would collect anti-dumping duties on the imported subject merchandise.

In the worst-case scenario, provisional measures in the form of tariffs can be imposed in a shorter timeframe, but not until at least 60 days after the initiation of the action on 18 August 2020 and only where there is first a preliminary affirmative determination that such measures are necessary to prevent injury to the domestic industry during the investigation. Provisional measures could only remain in place for four months.

Next steps

1. The anti-dumping investigation was launched on 18 August 2020

2. **Initiation and Registration** (what DFAT and/or the companies either named or wishing to participate need to do in response):

- All companies wishing to participate (including the 10 named) need to register within 20 days after the official notice of initiation.
- The 10 companies and any other registered ones provide overall data of production output, export volume and value.
- DFAT and Australian Grape & Wine will comment on the initiation notice and/or the scope of the subject merchandise.

3. Issuance of Questionnaire:

- MOFCOM will issue a questionnaire within 10 working days after the deadline of registration. DFAT will translate the questionnaires into English, which will take up to 8 days. Note DFAT will not translate into Chinese the replies from interested parties/Australian industry.
- The questionnaire will contain all questions/data inquiries regarding the dumping and injury investigations.

3. Submission of the Questionnaire Responses:

- The 10 companies and any other registered ones have 37 days to complete the questionnaire response (limited opportunity for extension of this deadline). This requires major input from the companies under investigation.
- Companies may request extensions to submit replies, but companies should expect neither a significant time-extension, nor a consistent approach to the provision of extensions. Such requests must be lodged around 7 days prior to the deadline.

General information

Registration and submission of details will need to be done in Chinese. The stakeholders participating in the investigation are required to provide certification as well as basic information about their identity based on the Template for the Registration for the Investigation and the explanatory materials.

The Reference Template for the Registration for the Investigation can be downloaded from the website of the Trade Remedy and Investigation Bureau of MOFCOM.

Companies that wish to register for this anti-dumping investigation should contact Australian Grape & Wine. They will need to submit an electronic version through the 'Trade Remedy Investigation Information Platform' (<https://etrb.mofcom.gov.cn>) and, at the same time, submit the written version as required by MOFCOM. The content of the electronic version and the written version should be the same, and the formats should be consistent.

Australian Grape & Wine is working closely with the Australian Government, DFAT, DAWE and Wine Australia. We will provide translated copies of materials, assist in preparation of submissions and translations. We know that many small companies will not have the resources to undertake submissions. We will do everything possible to prepare the submissions for them.



It is very important that we have full cooperation from all companies named (and thank you to everyone) as a lack of cooperation will cause problems for all parties and is likely to have flow on impacts for the entire sector. The material provided will be extensive and much will be commercial-in-confidence.

As mentioned above, it may be in Australia's interests for additional (unnamed companies) to participate in this process. This may enable a representative sample of companies to ensure we can defend Australia's interests, and we are working with DFAT to consider the appropriate approach. We will also need to collect cost of production data across different regions to successfully defend the allegations.

We are in regular communication with DFAT and will provide regular updates to the industry on this very serious issue.

Tony Battaglione
21 August 2020

Background

The Australian barley industry recently underwent an 18-month investigation, resulting in MOFCOM ruling that both injurious dumping, and subsidisation had occurred.

On 19 May 2020 it imposed a combined 80.5 per cent tariff on Australian barley, comprised of a 73.6 per cent anti-dumping duty and a 6.9 per cent countervailing duty. While the Australian Government has the right to contest the ruling via the WTO's Dispute Settlement process, it has not announced it would do so.