Case Managers
Trade Remedy and Investigation Bureau
Ministry of Commerce
2 East Chang An Road,
Beijing, China

Non-Confidential

Dear Case Managers,

Re: Dumping investigation into exports of certain Australian wines to China – 'Particular Market Situation' and Normal Value

I refer to the submission made by Australian Grape & Wine dated 7 September 2020, which has identified a number of deficiencies in China Alcoholic Drinks Association's (CADA or Applicant) application (Application) for a dumping investigation into exports of Australian wines to the People's Republic of China.[1] Given these deficiencies, it is unfortunate that the Ministry of Commerce (MOFCOM) has decided to initiate the investigation. This submission provides more detailed analysis and evidence on the issues relating to the claim of "particular market situation" and the determination of normal value with an aim to providing further assistance to MOFCOM in investigations of these issues.

1. Introduction

I would like to start by acknowledging the Government of China's (GOC) success in economic reforms and opening-up and constant support for the rules-based multilateral trading system. The GOC's "*White Paper on China and the World Trade Organization*", published by the State Council in June 2018, has demonstrated the GOC's firm commitments to furthering trade liberalization and continuing to be "*an active participant, strong supporter and major contributor in the multilateral trading system*."[2] In fulfilling these commitments, the GOC has taken significant efforts to implement WTO obligations and has maintained a record of compliance with the rulings of the WTO dispute settlement mechanism.[3] Amid the ongoing crisis in the WTO, the GOC has endeavoured to protect the value and integrity of the organization, calling on all countries to work together to maintain "*the predictability of international trade and the stability of the multilateral trading system*" that the dispute settlement mechanism has served to provide for decades.[4]

This sustained position of the GOC reinforces this association's belief and confidence that this investigation will be conducted in a way that maintains the spirit of free trade, as opposed to protectionism, and that pays full respect to WTO rules including case law developed by WTO panels and the Appellate Body. The decisions of the WTO tribunals, particularly those of the Appellate Body, have made fundamental contributions to safeguarding the stability and predictability of world trade rules, which should be observed in this investigation. Although the Appellate Body is currently dysfunctional due to the US blockage of the

[1] Application for Anti-dumping Investigation of the Wine Industry of the People's Republic of China by the China Liquor Industry Association, filed 6 July 2020 (hereinafter 'Application').
[2] Government of the People's Republic of China, *White Paper on China and the World Trade Organization* (PRC State Council, June 2018) (hereinafter 'PRC White Paper'), available at: http://english.www.gov.cn/archive/white_paper/2018/06/28/content_281476201898696.htm
[3] Weihuan Zhou, *China's Implementation of the Rulings of the World Trade Organization* (Oxford and Portland, Oregon: Hart Publishing, 2019).
[4] See supra note 2, PRC White Paper.

appointment of new Appellate Body members, the GOC has reiterated its opposition to the US behaviour and maintained strong support for the Appellate Body. In fact, Ms Hong Zhao of China is the only remaining Appellate Body member at this stage. This provides another reason for this association's belief that MOFCOM will respect the relevant rulings of the Appellate Body or, in the absence of such rulings, the adopted rulings of WTO panels in this investigation.

2. Particular Market Situation, Causation and Proper Comparison

In its Application, the Applicant claimed, in effect, that Australia's wine industry has a "particular market situation" (PMS) rendering Australian domestic prices of wine distorted and, hence, unreliable or unsuitable for comparison with export prices.[5] According to the Application, the claimed PMS is caused by Australian governments' policies that provide a range of subsidies for the wine industry.[6] I submit that there are a number of deficiencies in the Application in this respect that require further investigation, which investigation must be based on an objective assessment and supported by positive evidence.

First, the PMS claim is entirely based on alleged industrial policies and subsidy programs, namely, actions of Australian government, which are enumerated in the Application. Whether these actions exist and have actually conferred a benefit to Australian winemakers is the subject of a concurrent subsidy investigation that MOFCOM initiated on 31 August 2020. Even accepting that these actions exist and the subsidies have actually been received by Australian wine producers and exporters under investigation, it is submitted that these actions and subsidies should be addressed under the countervailing investigation, instead of as a matter of dumping. As will be explained below, this is in line with the GOC's own position on the distinction between the functions of anti-dumping duties and countervailing duties.

As is apparent, there is a lack of definition of the term 'PMS' under Article 2.2 of the WTO Anti-Dumping Agreement or any other WTO agreement. Before the WTO, this term was considered only in the last GATT dispute, namely, *EEC – Cotton Yarn*.[7] However, the GATT panel in that dispute did not provide any clarity on the meaning and scope of PMS. Since then, WTO tribunals have never considered the issue of PMS until a very recent dispute involving Australia's anti-dumping investigation into A4 Copy Paper exported from Indonesia (hereinafter 'A4 Copy Paper' dispute). In that case the WTO panel made a number of observations:

(1) the term "*cannot be interpreted in a way that comprehensively identifies the circumstances or affairs constituting the situation that an investigating authority may have to consider*";[8]
(2) the market situation must be "*distinct, individual, single, specific*";[9] and
(3) a PMS does not necessarily exclude "*any situation that arises from a subsidy or other governmental action*."[10]

Thus, the panel found that government intervention and price distortions in an upstream input market 'may' constitute a PMS. Although this finding is controversial, it was adopted by WTO Members and hence should be treated as the current law until it is modified or reversed by the Appellate Body.

[5] See supra note 1, Application, p. 25.
[6] See supra note 1, Application, pp. 29-48.
[7] GATT Panel Report, *EC – Imposition of Anti-Dumping Duties on Imports of Cotton Yarn from Brazil*, 42S/17 (adopted 30 October 1995).
[8] WTO Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper*, WT/DS529/R (adopted 27 January 2020) para. 7.21.
[9] WTO Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper*, WT/DS529/R (adopted 27 January 2020) para. 7.21.
[10] WTO Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper*, WT/DS529/R (adopted 27 January 2020) para. 7.57.

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However, we believe that the position of the GOC on this issue is preferable. In its 3rd party submission in the A4 Copy Paper dispute, the GOC argued:

> "*The Anti-Dumping Agreement addresses issues of pricing behaviour of individual foreign exporters or producers, and, in contrast, the SCM Agreement addresses financial contribution by government which confers benefit. There are legally distinct disciplines applicable to a Member's use of anti-dumping duties and its use of countervailing duties. A Member does not have discretion to interpret a provision in one of the Agreements to address the subject issue of the other.*"[11]

Given the concurrent subsidy investigation, the alleged Australian policies and subsidy programs should and can be addressed more properly under that investigation, whereas the anti-dumping investigation should focus on investigating pricing behaviour of Australian wine exporters.

In this regard, there is no evidence to show that Australian wine exporters have engaged in price discrimination in their export pricing of Australian wines exported to China during the period of investigation (POI) or, more specifically, in a manner whereby the export prices are less than domestic prices in the Australian wine market. Both domestic and export prices are determined by market forces due to the fierce competition in the domestic Australian wine market and the high demand in the Chinese market for domestic and imported wines, amongst other market factors. The evidence included in the Application itself shows that Australian export prices were consistently and substantially higher than the prices of other foreign wines exported to China.[12]

Second, if MOFCOM decides to deviate from its position on the distinct functions between anti-dumping duties and countervailing duties, and instead to consider the issue of PMS based on the alleged government actions as part of the anti-dumping investigation, then it is submitted that the Application provided no evidence to establish a causal link between the alleged PMS and any claimed distortions in Australia's domestic wine price. The Application merely assumes that the alleged PMS has caused price distortions without any objective assessment based on positive evidence. In initiating this investigation, MOFCOM accepted this assumption without investigating the adequacy of evidence which is required under Articles 5.2 and 5.3 of the Anti-Dumping Agreement. Such an assumption is untenable.

For example, some of the alleged subsidy programs are provided to support the export of wines, such as Wine Export Grants, or access to water and infrastructure for farmers in general and more relevantly for the cultivation of grapes, such as the Sustainable Rural Water Use and Infrastructure Program. It is unclear how these subsidies may have artificially lowered the domestic price of wine. An export subsidy, for instance, typically causes domestic prices to increase due to more of the product being exported and, consequently, less wine available for domestic consumption.[13] Such subsidies, therefore, could not cause the kind of distortions alleged in the Application and hence could not justify the imposition of anti-dumping duties.

An input subsidy (e.g. a subsidy for the cultivation of grapes) may or may not flow through to the price of final product (e.g. wine). In the context of countervailing investigations, the Appellate Body has stressed that such "flow through" must be established by evidence and must not be assumed.[14] An assumption of "pass through"

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[11] WTO Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper*, Addendum, WT/DS529/R/Add.1 (adopted 27 January 2020) at Annex C-1, Integrated Executive Summary of the Arguments of China, p. 64, [12] at 65.
[12] See supra note 1, Application, p. 72.
[13] WTO, *World Trade Report 2006: Exploring the Links between Subsidies, Trade and the WTO* (Geneva: WTO, 2006) p. 57, available at: https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report06_e.pdf.
[14] Appellate Body Report, *United States – Final Countervailing Duty Determination with respect to Softwood Lumber from Canada*, (WT/DS257/AB/R(adopted 17 February 2004, paras. 141-143.

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would not justify the imposition of countervailing measures on the end product when the subsidy is granted to an upstream industry.

This reasoning also applies to anti-dumping investigations. In the absence of evidence to show that an alleged subsidy in an upstream market has actually distorted the price of the end product, it would be unjustifiable to impose anti-dumping measures on the end-product. The fact that an input subsidy may have caused a PMS in an upstream market (e.g. the market for grapes) does not justify a finding that that market situation has distorted the prices of wines in the downstream market. This causal link must be established, not assumed.

I trust that MOFCOM will further examine these issues in this investigation to determine whether the Australian policies and subsidy programs have actually lowered Australian domestic wine price, and if so, the magnitude of any such distortion. I note, again, that the Application failed to provide sufficient evidence on this issue.

Third, the Application ignored the legal requirement of a "proper comparison" under Article 2.2 of the Anti-Dumping Agreement. We note that Article 4.2 of China's Anti-Dumping Regulation (2004), [15] which incorporates Article 2.2 of the WTO Anti-Dumping Agreement, makes no reference to PMS or "proper comparison", the phrases employed under Article 2.2 of the WTO Anti-Dumping Agreement. The Application does not identify any legal basis under the Chinese regulation in the request for an investigation of PMS.

I note that in the recent anti-dumping investigation into NPA exported from the United States, MOFCOM made a preliminary determination of the existence of PMS based on Article 6 of China's Anti-Dumping Regulation. According to the determination, Article 6 provides the legal basis for MOFCOM to consider *all* factors that may affect price comparability.[16] Article 6, however, is the corresponding provision of Article 2.4 of the WTO Anti-Dumping Agreement, which governs the issue of "fair comparison" between normal value and export prices that have already been established. In other words, while the determination of PMS and "proper comparison" provides the basis for the determination of normal value, the assessment of "fair comparison" is a different matter. "Fair comparison" becomes relevant only *after* a normal value has been determined under Article 4.2 of China's Anti-Dumping Regulation or Article 2.2 of the WTO Anti-Dumping Agreement. In *EU – Biodiesel*, the Appellate Body has endorsed this distinction by emphasizing the different functions that Articles 2.2.1.1 and 2.4 of the WTO Anti-Dumping Agreement respectively serve: "*the former assists an investigating authority in the calculation of costs for purposes of constructing the normal value; whereas the latter concerns the fair comparison between the normal value* and *the export price*". [17] This decision shows clearly that the establishment of a normal value under Article 2.2 is distinct from the making of any adjustments needed to ensure "fair comparison".

Therefore, the use of the element of "fair comparison" as a basis for the assessment of PMS and for the *determination* of a normal value triggers an issue of WTO-inconsistency. In this investigation, the Application has clearly confused the requirement of "proper comparison" and the requirement of "fair comparison" without providing any analysis of the former, nor any evidence.

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[15] 《中华人民共和国反倾销条例》(2001) [Anti-Dumping Regulation of the People's Republic of China 2001], Decree No 328 of the State Council, promulgated on 26 November 2001 and effective on 1 January 2002; as amended by Decree No 401 of the State Council, promulgated on 31 March 2004 and effective on 1 June 2004.

[16] 商务部公告 2020 年第 25 号关于原产于美国的进口正丙醇反倾销调查的初步裁定[Ministry of Commerce of China, 'Preliminary Determination on An Anti-Dumping Investigation into N-Propanol Exported from the United States', Notice No. 25] (17 July 2020), p 10-11, available at: www.mofcom.gov.cn/article/b/c/202007/20200702983873.shtml.

[17] Appellate Body Report, *European Union–Anti-Dumping Measures on Biodiesel from Argentina,* WT/DS473/R (adopted 26 October 2016) para. 6.48.

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On the test of "proper comparison", Australian Grape and Wine strongly agrees with GOC's longstanding position that when a PMS is found to exist, that finding, in itself, does not justify deviation from the use of domestic prices to establish normal values. Most recently in the A4 Copy Paper dispute, the GOC's 3rd party submission has reiterated and refined that position as follows:

> *"Article 2.2 provides that only when the domestic sales impacted by the particular market situation "do not permit a proper comparison", would the domestic sales prices be disregarded for the determination of normal value. The purpose of such comparison is for the determination of dumping and dumping margins. Thus, the features of the market that do not have impact on the domestic price of like product in a way that affects its comparison with the export price could not reasonably be interpreted as "particular" under Article 2.2, even they might be special or distinguishable in one way or another.*
>
> *The word "proper" modifies the word "comparison", not the individual variables per se of "comparison", i.e., the domestic price or the export price. It follows that the investigating authority is required to examine, not whether the "particular market situation" resulted in the domestic price being proper or accurate, but its comparison with export price being proper or accurate.*
>
> *Whether a "comparison" is "proper" would need to be assessed as to whether it is apt to reveal "dumping", i.e., different pricing strategy by an individual exporter or producer in its domestic market and export market, in order to determine if there is "international price discrimination" that warrant the application of antidumping measure. Any government behaviour that does not affect the different pricing strategy by individual exporter or producer in the domestic market and export market would not affect the "proper comparison" for the purpose of revealing "dumping"."*[18] (emphasis added)

Thus, there is no doubt that the GOC takes a strong position, and rightly so, that the test of "proper comparison" is essential to the determination of whether domestic prices should be used for a comparison with export prices for the determination of dumping. Given this position, it is hard to understand why MOFCOM decided to initiate the investigation as the Application does not provide any assessment, nor any evidence, on whether the alleged PMS may affect the "proper comparison" between Australian domestic prices of wine and export prices.

The GOC's position was endorsed in the adopted panel report in the A4 Copy Paper dispute. The panel ruled:

> *"This assessment is necessary because … while a particular market situation may have an effect on both domestic and export prices, it does not follow that the impact on domestic and export prices will be the same. If the investigating authority finds that because of a particular market situation a proper comparison of the domestic price and the export price is not permitted, it is required to give a reasoned and adequate explanation of its conclusion."*[19]

This ruling effectively imposes an obligation on investigating authorities to examine the degree of impact of an identified PMS on domestic and export prices. This ruling indicates that if a PMS has lowered domestic and export prices to the same degree, then the comparability of domestic prices would not be affected and, therefore, must be used in the determination of dumping.

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[18] WTO Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper*, WT/DS529/R (adopted 27 January 2020) p. 64.

[19] WTO Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper*, WT/DS529/R (adopted 27 January 2020) para. 7.76.

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If, on the other hand, the PMS has had a larger or exclusive impact on the domestic price only, then a proper comparison between the two prices may be precluded, justifying recourse to an alternative approach to the determination of dumping margins. Any such justification, however, requires investigation into how and to what extent the PMS has affected pricing in the domestic market, that is, domestic prices, but not pricing in the export markets, that is, export prices. This investigation must be based on evidence supporting a finding of fact of such pricing discrimination. The Application failed to address this and, therefore, is deficient in its treatment of PMS and the requirement of a "proper comparison".

This assessment of whether a PMS has had an asymmetric impact on domestic prices vis-à-vis export prices is essential to ensure domestic prices are used for the determination of normal values as long as the market situation does not affect the calculation of dumping margins. In examining the effect of domestic subsidies in *US – Anti-Dumping and Countervailing Duties (China)*, the Appellate Body has adopted such a position:

> *"… domestic subsidies will, in principle, affect the prices at which a producer sells its goods in the domestic market and in export markets in the same way and to the same extent. Since any lowering of prices attributable to the subsidy will be reflected on both sides of the dumping margin calculation, the overall dumping margin will not be affected by the subsidization. In such circumstances, the concurrent application of duties would not compensate for the same situation, because no part of the dumping margin would be attributable to the subsidization. Only the countervailing duty would offset such subsidization".*[20] (emphasis added)

Since the Application is predominantly concerned about domestic subsidies allegedly provided by the Australian government to the wine industry, it has failed to explain how these subsidies have affected domestic wine prices and export prices asymmetrically to render the former unsuitable for a "proper comparison". The Appellate Body's decision also suggested strongly that such subsidies and their impact on trade should be addressed through countervailing measures rather than anti-dumping measures. This supports our submission above that Australia's government policies and subsidies should be addressed under the concurrent countervailing investigation, not as a matter of dumping.

In addition, Australian Grape and Wine notes that the GOC takes an even more nuanced view on how the test of "proper comparison" should be conducted. This view was expressed lately in the GOC's 3rd party submission in the A4 Copy Paper dispute as follows:

> *"… the impact of the "particular market situation" needs to amount to a degree that makes the proper comparison of the domestic price to the export price not "allowed" to disregard the domestic price for the determination of normal value. Even if the "particular market situation" might have some different impact on the domestic price and the export price so that they are not directly comparable in all aspects, if it does not lead to such proper comparison impermissible, it would not qualify for method alternative to using the domestic price for the calculation of the normal value."*[21] (emphasis added)

Thus, the GOC believes that investigating authorities must assess not only whether a PMS has had an asymmetric impact on domestic and export prices, but also the degree of such impact on each price to determine whether the difference in the degree is so significant as to preclude a "proper comparison". Australian Grape and Wine agrees with the GOC's position and believes that MOFCOM will carry out this investigation accordingly. In sharp contrast, it seems that the Application has failed to take into account the

[20] Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (adopted 25 March 2011) para. 568.
[21] WTO Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper*, WT/DS529/R (adopted 27 January 2020) p. 64.

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GOC's position on the issues discussed above, nor the relevant WTO rules that the GOC has endeavoured to implement and protect. Given this failure, the Application is significantly deficient and provides no evidence to support further investigation into the alleged dumping of exports of Australian wines to China.

3. Normal Value

The Application is also significantly deficient in its recourse to the alternative approach to determining a normal value. Specifically, the Application seeks to rely on the export price of Chinese wine to Australia during the POI (hereinafter 'Surrogate Price'), claiming that such price is not distorted by the alleged PMS in Australia.[22] I understand that the use of the Surrogate Price is based on Article 4.2 of China's Anti-Dumping Regulation which incorporates, and must be applied in accordance with, the legal standards established in Article 2.2 of the WTO Anti-Dumping Agreement.

Where domestic prices are unavailable or unreliable for use to determine normal values, Article 2.2 of the WTO Anti-Dumping Agreement provides two alternative approaches for such determination:

(1) a comparable price of the like product when exported to an appropriate third country, provided that this price is representative; or

(2) with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits (i.e. a Constructed Normal Value).

It is evident that the Application relies on the first alternative approach. However, the Application provides no explanation or evidence as to why the Surrogate Price is (1) "comparable" and (2) "representative", the two key legal conditions that must be satisfied before the first alternative approach may be employed. Again, both of the conditions require an objective assessment based on positive evidence which is conspicuously lacking in the Application. The Application, therefore, makes it very difficult for MOFCOM to carry out investigations of these issues and ultimately to determine whether the Surrogate Price provides an appropriate "benchmark". To assist MOFCOM's investigation, we provide the following preliminary assessment and evidence.

In determining whether the Surrogate Price is "comparable", at least two factors should be considered. First, if, as the Application claims, the Australian wine market is distorted by government policies and subsidies, then it is only reasonable to observe that such distortion has also impacted on the price of wine imported into Australia from other countries including China. It is hard to imagine that foreign exports would not have needed to adjust or align export prices with Australian domestic prices to be able to enter and compete in Australia's highly competitive wine market. Thus, if MOFCOM accepts the claim that the alleged PMS has caused distortions in Australia's domestic wine price, then it is only reasonable for MOFCOM to accept that the prices at which Chinese wine was sold into the Australian market were similarly distorted. That is, the export prices of Chinese wine into Australia were equally distorted by the alleged market situation in Australia and, consequently, consistent with the position taken in the Application, must be disregarded as being "unfit/unsuitable" as a normal value for the purposes of a 'proper comparison'.

Second, similar government support and subsidies also exist in the Chinese wine industry. According to the Application, China currently has hundreds of wine producers spreading over 20 provinces, autonomous regions or municipal cities.[23] While it is difficult to identify all policies of all local governments that support the Chinese wine industry, to assist MOFCOM's investigation, some typical examples of such policies and subsidies in Ningxia Hui Autonomous Region, Gansu Province, and Yantai, three major regions of wine production in

[22] See supra note 1, Application, p. 25, 27, 28.
[23] See supra note 1, Application, p. 10.

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China are set out below. In all three regions, local governments provide extensive financial and non-financial support for wine production, marketing, training and other related activities. These policies and subsidies are:

Ningxia Hui Autonomous Region

1. transfer of fund to support local wine producers to establish marketing or sale platforms in other major cities. The fund ranges from RMB200,000 to RMB1 million;[24]
2. transfer of fund to support the creation of new vineyards meeting certain high standards and the creation of wine test centres with RMB1 million for each new centre;[25]
3. transfer of fund to support innovation, training and development of human capital;[26]
4. government preferential loans and guarantee for the purchase of new equipment, vineyards upgrade, etc.;[27]
5. allocation of fund (RMB10 million) to support the development of local wine industry particularly in dealing with difficulties that are critical to such development.[28]

Gansu Province

6. Gansu Wine Industry Development Plan (2010-2020) sets out the overarching policy that aims at fostering the development of the wine industry and building world class wine brands. The plan mandates the provincial government to play a leadership role in developing and implementing all necessary supportive policies and to increase existing subsidies such as government funds, loans, guarantee, etc.[29]

Yantai, Shandong Province

7. Similar to the overarching policy in Gansu, the Yantai government published Yantai Wine Industry 13th Five-Year Plan in 2016. The plan set various volume and value targets for the sale of local wines as part of the industrial development goals. To achieve these goals, the plan directs the government to provide increasing support for major activities of local winemakers with a focus on the creation and management of vineyard and winery, research and development, restructuring, brand building and marketing, etc. Government support includes direct transfer of funds, loans, guarantee and other non-financial support.[30]

If needed, we would be willing to provide MOFCOM more evidence in this regard, in case the Applicant may not be willing to do so. In the meantime, we believe the information set out above would be sufficient to show that a wide range of industrial policies and subsidies also exist in the Chinese wine market. We recall that the Application alleges that the Australian government's industrial policies and subsidies have caused distortions in the Australian wine industry making Australian wine prices unreliable for use to determine normal values. If this allegation is accepted, then MOFCOM would need to accept that China's industrial policies and subsidies

[24] 《关于创新财政支农方式加快葡萄产业发展的扶持政策暨实施办法》, available at: www.nxputao.org.cn/zcfg/201801/t20180129_4448795.html.
[25] 《关于进一步完善葡萄产业发展扶持政策的通知》, available at: https://wine.nxu.edu.cn/info/1026/1415.htm.
[26] 《关于进一步完善葡萄产业发展扶持政策的通知》, available at: https://wine.nxu.edu.cn/info/1026/1415.htm.
[27] 《关于进一步完善葡萄产业发展扶持政策的通知》, available at: https://wine.nxu.edu.cn/info/1026/1415.htm.
[28] 《银川市人民政府关于印发银川市加快推进葡萄产业集群化发展实施意见的通知》, available at: www.yinchuan.gov.cn/xxgk/bmxxgkml/szfbgt/xxgkml_1841/zfwj/yzf/201705/t20170503_242409.html.
[29] 《甘肃葡萄酒产业发展规划（2010－2020年）》, available at: www.gansu.gov.cn/art/2010/8/18/art_794_188713.html.
[30] 《烟台市葡萄酒产业"十三五"发展规划》, available at: http://ptjj.yantai.gov.cn/art/2017/1/13/art_1617_664162.html.

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in the Chinese wine industry have also distorted Chinese wine prices including the prices of exported wines. It is followed that the export price of Chinese wine to Australia does not provide a "comparable" benchmark or a "suitable" basis for determining a normal value.

In determining whether the Surrogate Price is "representative", the volume and quality of the Chinese wine exported to Australia in the POI needs to be considered. The Application itself provides no explanation or evidence as to whether the Surrogate Price is "representative" of either the quantity or quality of Chinese wines exported to Australia. The lack of explanation and substantiation suggests that the Surrogate Price was selected not because it was "representative" but, rather, to provide an inflated 'normal value' and, thereby, an artificially high dumping margin.

The Application also seems to misunderstand the scope of the Surrogate Price under the first alternative approach. This approach refers to only the price of "like" Australian wine "exported to an appropriate third country" and does not allow for the use of the export price of other wines in other markets. This limitation is intended to ensure the Surrogate Price used can be representative of the normal value of wine in Australia. In contrast, Chinese export price of wine can in no case be representative of the normal value of wine in Australia.

In light of the above, we submit that the Surrogate Price does not provide a "comparable" nor a "representative" 'price' for the establishment of normal values in this investigation.

4. Conclusion

This submission is intended to assist MOFCOM in subsequent investigations, particularly on the issue of PMS and the determination of normal values. As discussed above, Australian Grape & Wine largely shares the GOC's position on how these issues should be resolved and is confident that MOFCOM will carry out this investigation accordingly and pursuant to the relevant WTO rules and decisions.

In summary, the arguments and evidence advanced in this submission have amply demonstrated that

1. the anti-dumping regime and the countervailing regime serve different functions, and particularly in a joint investigation as such, the effects of subsidies should be addressed under the countervailing investigation, not as a matter of dumping;
2. however, if MOFCOM decides to consider the effects of subsidies also in the anti-dumping investigation, then there needs to be an objective assessment of positive evidence to determine whether and to what extent such subsidies have distorted or artificially lowered the domestic price of wine in Australia;
3. if the above distortion is found to exist, then MOFCOM will need to determine whether such distortion has also affected Australia's wine export price to China and to what extent the distortion has precluded a "proper comparison" between the domestic and export prices;
4. if MOFCOM finds that a "proper comparison" is indeed precluded (which we don't believe should be the case), then the Surrogate Price proposed in the Application must be rejected on the basis that it does not provide a comparable, nor representative, price for the determination of normal value.

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Australian Grape & Wine believes that the Applicant has failed to provide sufficient evidence to support its claims on the issues above and therefore the arguments and evidence provided in this submission would be of assistance to MOFCOM. Australian Grape & Wine will continue to actively cooperate in this investigation including making further submissions to support MOFCOM's investigations.

Please contact me if you have any questions.

Yours sincerely,

Anthony Battaglene
Chief Executive Officer

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