

Case Manager
Trade Remedy and Investigation Bureau
Ministry of Commerce
2 East ChangAn Road,
Beijing, China

Dear Sir/Madam,

Re: Dumping investigation into exports of certain Australian wines to China – Preliminary Determination - Submission

I refer to the Ministry of Commerce's (**MOFCOM**) preliminary determination of 27 November 2020 (**Preliminary Determination**) in this dumping investigation into exports of certain Australian wines to the People's Republic of China (**China**).

In particular, I refer to dumping margin of 160.6% calculated for Australian exporters who, while co-operating in the investigation, were not selected by MOFCOM for investigation in accordance with the sampling process (**non-selected exporters**).

MOFCOM has stated that the preliminary dumping margin for these non-selected exporters was determined as follows:

"In accordance with the Anti-Dumping Regulations and the Provisional Rules on Sampling in Anti-Dumping Investigations, the Investigating Authority decided that for Australian producers who have submitted registration questionnaires and dumping sampling questionnaires within the deadline but have not been selected, the weighted average margin of the sampled companies shall be used to determine the dumping margin." (emphasis added) (at p.58, English translation)

This determination of a preliminary dumping margin is pursuant to Article 13 of the Provisional Rules on Sampling in Anti-Dumping Investigations (**Provisional Rules**), which provides as follows:

"Article 13 The dumping margin for responding exporters and producers who are not subject to the individual examination shall be determined on the basis of the weighted average dumping margin determined for the sampled exporters and producers."

We agree this is consistent with Article 9.4 of the WTO Anti-Dumping Agreement. That Article prohibits the dumping margin of non-selected exporters from exceeding the weighted average dumping margin of sampled exporters pursuant to sampling in accordance with Article 6.10 of the WTO Anti-Dumping Agreement. However, that article does not specify any particular method for determining a dumping margin for non-selected exporters – only the maximum permitted level of the dumping margin.

While Article 13 of the Provisional Rules stipulates that a weighted average methodology is to be used in determining a preliminary dumping margin for non-selected exporters, Article 41 of the Anti-Dumping Regulation provides that a dumping margin is to be determined in 'a reasonable way':

"Article 41 Anti-dumping duties shall be determined separately on the basis of the margin of dumping established for each individual exporter. Where it is necessary to impose an anti-dumping duty on the dumped imports of an exporter who has not been included in the ongoing examination, an anti-dumping duty applicable to the exporter shall be determined in a reasonable way."

We believe that it is not ‘reasonable’ to use a weighted average dumping margin for non-selected exports in the preliminary determination for the reasons set out below.

There were many exporters who have fully co-operated with MOFCOM in the investigation in the expectation that any reasonable analysis of the information they provided would clearly demonstrate they were not ‘dumping’ wine into China. MOFCOM issued Exporter Questionnaires to the selected exporters to obtain information and evidence from those exporters relevant to determining their respective dumping margins. In most cases that information would be verified and used to determine the dumping margins for the selected exporters.

In such circumstances, it was reasonable for non-selected exporters to expect that such information would be used to determine the dumping margins for the selected exporters. Such information would reflect ‘normal values’ consistent with domestic selling prices of comparable wines by the selected exporters in the Australian wine market, which market has always been an open, competitive market on any analysis. Consequently, it was reasonable to expect that dumping margins for selected exporters would be negative or negligible.

However, in this case, for the reasons set out in the preliminary declaration, MOFCOM decided to reject the information provided by the ‘sampled exporters in their responses to the Exporter Questionnaire and, instead, to determine dumping margins on the basis of ‘best available information’ in accordance with Article 21 of the Anti-Dumping Regulation.

Australian Grape and Wine and the non-sampled exporters are not in a position to comment on the rejection of the information provided by the selected exporters because such responses to the Exporter Questionnaires are confidential to the selected exporters. However, Australian Grape and Wine is surprised with the rejection of such information as, to the best of its knowledge and belief, the information provided by selected exporters was complete, accurate and verifiable.

Further, if there were any deficiencies with such information provided by a selected exporter, Australian Grape and Wine is unaware whether the selected exporter was informed of such deficiency and provided with an opportunity to explain and rectify it. Nor does Australian Grape and Wine understand why, in such circumstances, the information was disregarded when each of the selected exporters obviously acted to the best of their respective ability.

We also believe that at the evidence supplied by the non-sampled exporters to MOFCOM provides ‘the best available information’ to determine the dumping margin for those exporters and should be used to determine their individual dumping margins (if any).

We believe in the case of the non-selected exporters, a preliminary dumping margin of 160.1%, however determined, is not reasonable. Such a preliminary dumping margin claims that exports of the subject goods to China by non-selected exporters are at export prices 160.1% less than their ‘normal value’. In other words, the ‘normal value’ of the wines exported to China by the non-selected exporters is 160.1% higher than their export prices. This is manifestly and verifiably incorrect as MOFCOM would be aware. The information supplied to MOFCOM by the non-selected exporters in responses to the sampling questionnaire clearly demonstrates this point.

Non-selected exporters provided to MOFCOM information concerning their domestic and export sales, both in terms of prices and volumes, in response to the sampling questionnaires. While that information was obtained by MOFCOM for the purposes of the sampling process, it nevertheless is the ‘best information available’ regarding the domestic and export sales of non-selected exporters.

Importantly, that information accurately reflects the comparable price of wines in containers of capacity of 2 litres or less destined for consumption in the exporting country, namely, Australia.

That information clearly indicates that there is not a 160.1% difference between the export prices of non-selected exporters and their domestic selling prices (i.e. normal values) of comparable wines. In other words, that information verifies that the 160.1% preliminary dumping margin is not correct. Therefore, the determination of that preliminary dumping margin for non-selected exporters based on the weighted average dumping margin for selected exporters cannot be 'reasonable'.

Further verification that the preliminary dumping margin for non-selected exporters is incorrect and not reasonable is in the publicly available retail prices of the non-selected exporters' wines in the Australian wine market. Wine in containers of 2 litres or less (e.g. 750 ml bottles or 1 litre wine casks) is a consumer product, not a commodity product, and the point of competition is at the retail level of trade. It is at this point that consumers purchase such wine products.

The domestic selling prices of the wines in containers of 2 litres or less at those retail sites (i.e. their normal values) is obviously not 160.1% greater than their export prices. It is noted that in the preliminary determination MOFCOM has not found that a 'particular market situation' exists in the Australian wine market and unless and until it makes a finding of fact supported by evidence, such a situation does not exist notwithstanding any claims to the contrary. Therefore, it is appropriate to use the domestic selling prices of wines in containers of 2 litres or less in that market for the purposes of a preliminary determination, either for determining 'normal values' or for determining that the 160.1% preliminary dumping margin for non-selected exporters is incorrect and the method used to determine it is not reasonable or both.

Australian Grape and Wine, therefore, respectfully requests that:

- (i) the preliminary determination and the provisional measures concerning the dumping margin for non-selected exporters be withdrawn immediately as being invalid; and
- (ii) redetermine the preliminary dumping margin for the non-selected exporters based on 'best available information', namely, the information provided by those exporters to MOFCOM, being the comparable prices of wines in containers of capacity of 2 litres or less sold by the non-selected exporters for consumption in Australia.

It is submitted that determination of a preliminary dumping margin in accordance with paragraph (ii) above is 'reasonable' and supported by the 'best available evidence'.

If there any questions regarding this submission or further information or clarification is required on any of the matters raised herein, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Anthony Battaglione", with a long horizontal flourish extending to the right.

Anthony Battaglione
Chief Executive

