

NON-CONFIDENTIAL

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**).

The Preliminary Determination calculated dumping margins on the subject goods at rates ranging from 107.1% to 212.1%. In addition, the Preliminary Determination found that China's domestic industry suffered material injury, and that there was a causal relationship between the material injury and the dumped imports.

Australian Grape and Wine ("AGW") welcomes this opportunity to comment on the Preliminary Determination, and to assist MOFCOM in its further assessment of the circumstances of this investigation.

AGW is concerned about all aspects of the Preliminary Determination, and does not accept the application of provisional measures against imports of the subject goods.

There are a number of deficiencies with the Preliminary Determination, a number of which are detailed in the **Attachment** to this submission. Amongst such deficiencies are that:

- (i) the product under investigation (**PUI**), being wine in containers of a capacity of 2 litres or less, has been misconceived as a 'commodity product' and not, as it is, a consumer product. This has resulted in an incorrect analysis of the material injury claimed to have been suffered by the domestic industry and that injury being caused by the PUI because of dumping and no other cause;
- (ii) the preliminary dumping margins ranging from 107.1% to 212.1% are manifestly incorrect due to being based on constructed normal values using the 'best available information' that do not properly reflect the normal values of goods comparable to the PUI destined for domestic consumption in Australia. The preliminary dumping margins are verifiably incorrect based on the best available information and evidence, including that provided by selected exporters and non-selected exporters as well as that available from publicly available sources including online;
- (iii) there was no reasonable basis for the determination of such preliminary dumping margins on the available information and evidence, which

preliminary dumping margins would suggest that the Australian wine industry is foregoing revenue in the magnitude of AU\$1.3 billion to AU\$2.6 billion by exporting the PUI to China instead of selling them domestically or, alternatively, that the Australian wine industry is insolvent due to those margins being based on constructed normal values, which is manifestly incorrect.

- (iv) there is no evidence to support “material injury” and “causal link” findings in the Preliminary Determination.

AGW wishes to express its appreciation for the opportunity to provide this evidence, and its respect for the procedures underway.

In light of these and the other deficiencies detailed in the **Attachment** to this submission and on the basis of the best available information and evidence, including that provided by selected exporters and non-selected exporters as well as that available from publicly available sources including online, there is no reasonable basis for a preliminary determination that the PUI has been exported from Australia to China exported at dumped prices or at dumped prices with preliminary dumping margins ranging from 107.1% to 212.1%.

Consequently, on this basis could not be preliminary determined that, because of dumping, the PUI had caused material injury to a domestic industry in China producing like goods to the PUI. Further, based on the abovementioned available evidence and information, there is not a reasonable basis to preliminarily determine that any dumping has occurred or injury caused to the Chinese industry.

AGW trusts that MOFCOM will reconsider its Preliminary Determination with the benefit of the evidence and opinions set out in this submission. Indeed, we submit the Preliminary Determination must be disregarded, and the investigation terminated due to insufficient evidence in accordance with China’s Anti-Dumping Regulation. Australian Grape and Wine, therefore, respectfully requests MOFCOM to terminate this dumping investigation.

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", written over a horizontal line.

Anthony Battaglione
Chief Executive

Attachment
Australian Grape and Wine
Submission in Response to Preliminary Determination
Dumping Investigation into Exports of Certain Australian Wines to China

1. Preliminary Dumping Margins

In the Preliminary Determination, MOFCOM made a preliminary finding that exports of certain Australian wines to China during the period of investigation were at dumped prices with preliminary dumping margins ranging from 107.1% to 212.1%.

As MOFCOM would be aware, this preliminary finding means that exports of Australian wines to China were preliminary determined to be at export prices of 107.1% to 212.1% less than their normal values. Looked at another way, Australian wines, according to the preliminary dumping margins, should be being sold in the Australian wine market at prices (i.e. at their normal values) that are 107.1% to 212.1% higher than their export prices (refer Article 2.1 of the WTO Anti-Dumping Agreement).

Australian Grape and Wine respectfully submits that normal values of the PUI exported to China from Australia should be based on prices of comparable prices sold in Australia for domestic consumption or, if such prices are not used for this purpose, normal values determined using some other methodology nevertheless should reflect such prices. This would be consistent with the intent of determining a 'normal value' and be consistent with Article 2.1 of the WTO Anti-Dumping Agreement.

Despite claims by CADA in its application for the imposition of antidumping measures, no 'non-market' or 'particular market situation' exists in the Australian wine market and MOFCOM made no such finding of fact supported by evidence in the Preliminary Determination. Unless and until a finding of fact that a particular market situation exists in the Australian wine market supported by evidence, no such market situation exists and the Australian wine market must be treated as an open, competitive market in the usual way and the prices realized in that market are appropriate for use in this investigation, including in the determination of normal values.

Prices in the Australian wine market are not, nor should be, at the levels suggested by the preliminary dumping margins. Australian wines are not being sold to consumers at the retail level of trade at such inflated prices in Australia and nor should or could they be. This is evident not only from information provided to MOFCOM by selected and non-selected exporters, being some of the 'best available information', but also information that is publicly available in Australia from a variety of sources including online. That information and evidence establishes what prices may reasonably be expected to be obtained in the Australia wine market.

As MOFCOM is no doubt aware, the Australian wine market is an open, competitive market subject to import competition from wines from around the world such as Europe, North America, South America and China. There are no restrictions on imported wines competing in the Australian wine market and they obviously do. This imposes import competition and, importantly, reflects an open, competitive wine market.

Prices in that market bear no resemblance to those determined in the constructed normal values in the Preliminary determination. This fact alone should have alerted MOFCM that there is something fundamentally wrong with its preliminary findings in its Preliminary Determination and, in particular, with its calculation of a constructed normal value that fails to reflect the 'normal value' of the PUI for the reasons set out herein.

2. Product under investigation (PUI)

The PUI was specified in CADA's application to MOFCOM for the imposition of antidumping measures; it was specified in MOFCOM's notice announcing the initiation of this dumping investigation dated 18 August 2020; and in the Preliminary Determination. The PUI was there described as:

"wine in containers holding 2 litres or less"

'Wine in containers of 2 litres or less' consists of wines of varying descriptions and qualities in bottles typically of 750 ml but also, typically, 187, 375 and 500 ml and in wine casks of 1 or 2 litres. That is the PUI. This is the 'product' under investigation – wine in containers holding 2 litres or less - not 'wine' as a product in itself.

Those wine products range in terms of grape variety, blends, vintages, harvest regions, quality, brands, and so on. Each such wine is unique and distinguishable from each other wine. That is the essential nature and characteristic of wines and the aim of each wine maker and vigneron in each country where wine is produced – to produce a unique wine that is distinguishable from all other wines. This is the essential nature of the wine industry in every country in which there is a wine industry including Australia and China.

Wines in containers of 2 litres or less are a 'consumer product'. It is purchased by consumers for consumption. It is produced, marketed and sold according to consumer preferences. It is sold and competes at the retail level of trade, be it at supermarkets, bottle shops, cellar doors or restaurants, being the level of trade at which consumers purchase such products. Evidently, such competition is not exclusively on price but also on a range of other factors such as grape variety, blend, region harvested, vintage, age, quality, brand name, and so on. Each wine in a container of 2 litres or less competes with every other wine on these range of factors and not solely on price. This is not unique to the Australian wine market but in each wine market in every country. It is evident at each and every outlet at which wine products are sold to consumers.

As indicated, the PUI is not a 'commodity product'. It is not like steel, aluminium, clear float glass, paper and other similar commodity products that compete almost exclusively on price. That is, there is little to distinguish one commodity product from another. For example, one hot rolled coil product is indistinguishable from another other than on price or one structural steel section is indistinguishable from another other than on price, and so on. Hence, their being commodity products and traded as such. Further, all of such commodity products are inputs to manufacture of other products. Accordingly, the level of trade at which they compete is not at a retail level. It is higher up in the supply chain, such as manufacturer, distributor or reseller level of trade and its purchasers are not consumers. They are not produced, marketed or sold as 'consumer products'.

The PUI are not such commodity products. They are consumer products. This is the case in every country in which there is a wine industry and in each country in which wines are sold including Australia and China.

Further, consumers in both Australia and China perceive Australian wine as of higher quality and safer (i.e. less likely to be contaminated) due to the strong product quality control regulatory system in Australia for alcoholic beverages. Australian wines are regarded in China as more interesting than domestically produced Chinese wines. Hence, as a high quality 'consumer product' Australian wines command significantly higher prices as premium wines including in China.

In the Preliminary Determination, MOFCOM has ignored this essential and fundamental nature and characteristics of the PUI. Instead, it has treated the PUI as if it were a commodity product. This is apparent from its dumping margin calculations and from its material injury and causation analysis, as well as its determination of the 'domestic industry' in China as set out in the Preliminary Determination.

For example, at Section IV (II) 1 of the Preliminary Determination the following statement was made:

“For comparison of prices, a comparison shall be made between the dumped import price and the price of the like product in the domestic industry at the same level of trade, in order to ensure the comparability between the two. The investigating authorities determined that the domestic import customs clearance price of the dumped imports and the factory price of the like product in the domestic industry basically belong to the same trade level, and the two prices exclude the expenses such as value-added tax, inland transportation fee, insurance fee and secondary sales channel fee.” (underlining added) (at p.66)

This ignores that the PUI is a consumer product and competition is at the retail level of trade and not at the factory level or the point of importation. The price to consumers is largely determined by the retailer margin, which varies according to the brand attributes, stock levels and other similar commercial factors and, importantly, it is set by the retailer. Consumers do not purchase the PUI at these levels of trade and the PUI are not marketed and sold to consumers at such levels of trade. Even if competition existed at this level of trade, it would be dictated to by consumer preferences and purchases at the retail level of trade that, no doubt, flowed up through the supply chain. This has been omitted from the analysis in the Preliminary Determination.

Nevertheless, using the above methodology the following comparison was made:

“The dumping import prices in 2015, 2016, 2017, 2018 and 2019 were RMB 55390 per thousand litre, RMB 49500 per thousand litre, RMB 46352 per thousand litre, RMB 41780 per thousand litre and RMB 46577 per thousand litre respectively.” (at. p.66)

and:

“In 2015, 2016, 2017, 2018 and 2019, the prices of the same type of products in the domestic industry were RMB 32019 per thousand litre, RMB 33227 per thousand litre, RMB 34560 per thousand litre, RMB 35932 per thousand litre and RMB 38595 per thousand litre respectively.” (at p. 66/67)

Putting aside the obvious observations that the above export prices of the PUI are higher than the prices of the domestic industry and, therefore, could not conceivably have caused injury, this comparison is a comparison based on ‘litres of wine’ as if the PUI was a commodity product and if there are no features that distinguish one wine product from another other than price. Clearly this is misconceived and incorrect. This methodology assumes that ‘wines’ are a commodity product and compete solely on price, in this case a ‘per thousand litre’ price. It fails to recognize that each wine is a unique consumer product separate and distinguishable from every other wine product with which it competes for purchase by a consumer.

Obviously, this analysis by MOFCOM in the Preliminary Determination is not correct. It evidences that MOFCOM has failed to investigate the PUI. That is, it has fundamentally misconceived the nature of the wine industry, wine products and competition within the wine industry. The preliminary findings, if they relate to anything, do not relate to the PUI but to something else that is not the subject matter of this investigation.

Not only is this methodology incorrect but it also reveals that the preliminary findings are all incorrect. That is, the preliminary dumping margin calculations and the preliminary material injury and causation analysis, as well as the determination of the domestic industry, are all incorrect because they are all based on this fundamentally flawed methodology and misconception of the PUI.

Indeed, in adopting this flawed methodology, MOFCOM appears to have ignored its own Product Code Number (PCN) as set out in the Exporter Questionnaire that recognized that ‘wines in containers of 2 litres or less’ are consumer products.

Having adopted a methodology that treats ‘wines’ as a commodity product, the preliminary findings in the Preliminary Determination are incorrect and lack any credibility. They are compromised and must be disregarded.

In other words, the Preliminary Determination makes no preliminary finding that the PUI were exported from Australia to China during the period of investigation at dumped prices supported by objective, probative evidence. Consequently, there can be no preliminary finding that such exports could have caused any injury to the domestic wine industry in China, let alone material injury, because of dumping. As such, the investigation must be terminated.

3. Questionnaires

Section (II) 4 of Appendix 1 of the Preliminary Determination states that MOFCOM issued on 9 October 2020 Questionnaires, being the Questionnaire for Foreign Exporters/Producers (**Exporter Questionnaire**), the Questionnaire for Domestic Producers and the Questionnaire for Domestic Importers.

MOFCOM did not issue a Questionnaire to Australian Grape and Wine, the industry association of the Australian wine industry, who had been registered as an ‘interested party’ in this investigation.

Consequently, MOFCOM failed to request the industry association representing the Australian wine industry for information relevant to this investigation despite being aware of its existence and its interest as an ‘interested party’.

No explanation was provided in the Preliminary Determination for this omission. Nor was Australian Grape and Wine’s offer to MOFCOM to co-operate and assist MOFCOM in the conduct of this investigations, including the provision of relevant information, accepted by MOFCOM.

Consequently, the Preliminary Determination has been made by MOFCOM without it seeking information from the Australian wine industry through Australian Grape and Wine, an entity that was well placed to provide information to MOFCOM relevant to this investigation. It is a requirement under WTO rules for information and evidence to be sought from industry associations, but this has not occurred in this investigation.

This decision by MOFCOM not to enlist the assistance of Australian Grape and Wine has contributed to the stated deficiencies in the Preliminary Determination. Nevertheless, Australian Grape and Wine remains committed to working with MOFCOM to ensure the outcomes of this investigation consist of findings of fact supported by evidence in the interests of all interested parties.

4. ‘Non-market situation’

Section III (I) of Appendix 1 of the Preliminary Determination addresses CADA’s request that MOFCOM investigate its claim that a ‘non-market situation’ exists in relation to the Australian wine market for the reasons set out in its application, thereby apparently rendering domestic sales in that market unsuitable for the determination of normal values.

Despite discussing this issue at length in the Preliminary Determination, MOFCOM concluded that “*no affirmation will be made on such special market situation for the time being, and the investigating authority will conduct further investigation after the preliminary determination*”. (at p.41, English translation)

Despite MOFCOM making no determination, preliminary or otherwise, concerning CADA’s claim of a so-called ‘non-market situation’ in the Australian wine market, it nevertheless is worth commenting briefly on MOFCOM’s observations on this issue in the Preliminary Determination.

At the outset, it must be noted that neither China’s Anti-Dumping Regulation nor the WTO Anti-Dumping Agreement refer to ‘non-market conditions’ in relation to the determination of a normal value. It is unclear,

therefore, why CADA referred to a ‘non-market conditions’ in its application, including what are ‘non-market conditions’ that are alleged to exist in the Australian wine market or how this is or could be relevant to a dumping investigation. The relevance of this claim to this investigation has not been made out by the applicant.

The usual reference to the suitability of sales in markets for the purposes of determining normal values is, consistent with WTO rules, to a ‘particular market situation’. This is the term used in the WTO Anti-Dumping Agreement, but that term is not defined in that Agreement as has been recognised by WTO jurisprudence.

CADA’s reasons for alleging ‘non-market conditions’ apparently consisted of the following:

“As shown by the preliminary evidence, the development of the Australian wine industry is closely related to the vigorous support of the government. Through legislation, industrial planning and various supportive measures, the Federal Government of Australia and state governments have conducted extensive intervention, control and management of the Australian wine industry, causing market distortion. These non-market conditions have made wines’ production costs and prices incomparable.” (page 30)

To support this claim, CADA listed some 40 programmes in Australia undertaken either by the Australian Federal Government or by a State or Territory governments. These claims are addressed in the **attached** submission, which AGW will not repeat here. However, that submission is incorporated in and forms part of this response to the Preliminary Determination.

Unfortunately, CADA failed in its application to explain how all or any of these ‘government programmes’, assuming that they in fact existed and had not expired, resulted in Australian governments ‘intervening in, controlling and managing’ the Australian wine industry or to what extent, if any. The CADA’s application is silent on these matters and provides no evidence in support of these contentions. Merely listing a number of government programmes, assuming they exist and were current during the relevant period, is not evidence of anything and certainly not the claimed ‘non-market situation’. It is simply a list of items and nothing more with no evidentiary value and no apparent relevance to this investigation.

MOFCOM’s consideration of this issue in the Preliminary Determination possesses the same deficiencies. Presumably, these deficiencies will be rectified when MOFCOM completes its investigation of this issue and it is determine, as it must, that as a question of fact that a particular market situation does not exist in the Australian wine market and that there is no evidence to support any such finding of fact.

Nevertheless, AGW makes the following observations regarding the Australia wine market, which is undoubtedly an open, competitive market as is evident from all publicly and readily available information, including the ‘best available information’:

- there are no restrictions on acquiring land in Australia either by way of purchase or lease, to establish a vineyard as is evidenced by the thousands of vineyards throughout Australia. Indeed, foreign investors also can acquire land in Australia for this purpose, subject to meet foreign investment requirements under the *Foreign Acquisitions and Takeovers Act 1975* and regulations, as many foreign entities have done so, including from China;
- there are no restrictions on establishing a winery to produce wines other than satisfying the usual requirements to produce an alcoholic beverage and ensuring that the wines produced meet domestic

standards. The ease with which it is possible to establish and operate wineries in Australia is evidenced by the large number of wineries that have been established and operate in Australia, a number of which are owned and operated by Chinese entities;

- there are licensing requirements for entities to produce and/or sell wine in Australia .This is a common requirement in all countries;
- there are no restrictions or requirements governing the quantity of wines or which wines that must be sold domestically and/or for export – these are commercial decisions solely for the wine producer;
- there are no restrictions or legislation by an Australian government regulating the pricing of wines in the Australian market – again this is a commercial decision solely for the wine producer;
- there are laws in Australia prohibiting anti-competitive conduct, such as, misleading and deceptive advertising, price fixing, cartel arrangements and the like, such as, for example, the *Australian Competition and Consumer Act 2010*, which is vigorously and independently administered by the Australian Competition and Consumer Commission (ACCC) as is evident from its website;
- there are no barriers to imported wines entering into the Australian wine market wines of all varieties imported into Australia from around the world including China. Australia complies with its international legal obligations in this regard under the World Trade Organisation Agreements and the various preferential trade agreements (i.e. free trade agreements) that it has entered into including with China; and
- competition is open and transparent throughout Australia at all levels of trade, including to consumers who may purchase wines from a variety of retail outlets as well as online as any search of the Internet will demonstrate.

In short, it is evident that the Australian wine market is an open, competitive market, including open to imports from around the world that compete equally with Australian wines as required by the *General Agreement on Tariffs and Trade 1994* and free trade agreements that Australia has entered into including the one with China, ChAFTA.

Nothing in the application filed by CADA nor in the Preliminary Determination demonstrates otherwise. There is no ‘particular market situation’ in the Australian wine market, assuming that such a ‘situation’ would have any relevance to this investigation.

Australian Grape and Wine considers that this issue does not require any further consideration in the investigation as it is apparent that on any analysis and on all available evidence that a particular market situation of any description does not exist in the Australian wine market and has no relevance to this investigation. The applicant has failed to make out any claims in this regard warranting any further investigation of this issue.

5. Preliminary dumping margin calculations

In calculating the preliminary dumping margins for the purposes of the Preliminary Determination, In calculating the preliminary dumping margins for the purposes of the Preliminary Determination, MOFCOM rejected information provided by the selected Australian wine exporters in their responses to the Exporter Questionnaire and, instead, calculated ‘constructed normal values’ using the ‘best available information’.

The reason why MOFCOM rejected the information contained in the responses to the Exporter Questionnaire apparently was because not all information required by the Questionnaire had been provided by respondents. AGW is not in a position to form a view on whether any of the responses to the Exporter Questionnaire were deficient and, if so, in what respect and to what extent. However, it would be surprised if such responses were not complete, accurate and verifiable and that the sampled exporters

had not used their respective best efforts in responding to the Exporter Questionnaire.

Nevertheless, because the information provided in responses to the Exporter Questionnaire were disregarded, preliminary dumping margins for the selected exporters were based on the 'best available information' with normal values being calculated using 'constructed normal values'. The resulting preliminary dumping margins for the selected exporters were then used to calculate a weighted average dumping margin for non-selected exporters. On this basis the preliminary dumping margins for the selected exporters and non-selected exporters ranged from 107.1% to 169.3%.

The preliminary finding, therefore, was that the PUI was being exported to China at export prices of between 107.1% to 169.3% by selected exporters and non-selected exporters. In other words, the prices at which comparable wines to the PUI should be being sold by the selected exporters and non-selected exporters for domestic consumption in Australia were between 107.1% to 169.3% higher than the export prices of the PUI. This is obviously and verifiably incorrect, including from the best available information provided to MOFCOM by selected exporters and non-selected exporters and readily available from publicly available sources including online.

Because:

- (i) a constructed normal value was used to calculate normal values, that is, cost of production plus general selling and administrative expenses plus an amount for profit; and
- (ii) prices of comparable wines sold in the Australian wine market to the PUI are consistent with export prices of the PUI,

it follows that all such sales, namely both domestic and export sales, have been sold at below cost unless the profit margins in the constructed normal values were between 107.1% to 169.3%, which obviously was not the case. This would indicate that the selected exporters and non-selected exporters would be insolvent because they would be selling their products both for export and for domestic consumption below cost. Further, this would indicate that they have been trading while insolvent contrary to Australian law. This is commercially, financially, logically and legally patently absurd and incorrect.

It demonstrates serious error with the calculation of the constructed normal values, which normal values are verifiably incorrect and should have been verified as being incorrect prior to making the Preliminary Determination and imposing provisional measures by the investigating authority.

Finally, the so-called 'all others' preliminary dumping margin of 212.1% obviously is contrary to WTO rules. The Panel in *Canada – Welded Pipe* found that Article 7.1(ii) of the WTO Anti-Dumping Agreement requires that a preliminary determination of dumping be made with respect to individual exporters, rather than country-wide:

"Regarding the nature of the 'preliminary affirmative determination' to be made, we have already explained in the context of Chinese Taipei's Article 5.8 claim that determinations of dumping are generally made in respect of individual exporters.⁴ The fact that a single investigation is undertaken is not inconsistent with this approach, since, as we have concluded above, such an investigation may be terminated in respect of a given exporter. Similarly, a 'preliminary affirmative determination' may be made in respect of multiple exporters. In addition, Article 7.2 provides that provisional measures should take the form of a cash deposit or bond equal to 'the amount of anti-dumping duty provisionally estimated'. Article 7.5 states that the relevant provisions of Article 9 should be followed in the application of provisional measures. This includes the requirement in Article 9.2 to collect anti-dumping duties from 'all sources found to be dumped'. The Appellate Body has confirmed that the term 'sources' relates to individual exporters, rather than exporting countries. Read together, these considerations indicate that the 'preliminary affirmative determination' should be made in respect of

individual exporters. It is difficult to conceive of the utility of Article 7.1(ii) providing for a country-wide preliminary affirmative determination of dumping, if provisional duties are to be applied on the basis of exporter-specific margins of dumping.” (at para. 7.58)

The preliminary determination regarding ‘all other’ Australian exporters is in breach of WTO rules and must also be withdrawn.

6. Preliminary analysis of material injury and causation

China’s Anti-Dumping Regulation defines ‘injury’ as being material injury caused by dumping to an established domestic industry, being a domestic industry producing ‘like goods’.

This requires consideration of several matters, namely:

- (a) what constitutes ‘injury’ and when is any such ‘injury’ incurred ‘material’;
- (b) how is the causal link between the allegedly dumped prices of the PUI and the injury incurred by a domestic industry to be established?

These questions are addressed later below.

In the Preliminary Determination, the following preliminary findings were made concerning injury incurred by the domestic industry during the injury period (i.e. 2015 to 2019):

- the consumption of the domestic wines fluctuated during the injury period with no explanation as to the reason for such fluctuation, including how such fluctuations conceivably could have been caused by the PUI or to the extent of such fluctuations when imports of the PUI increased over this period;
- the production of domestic wines fell during the injury period with no explanation as to the reason for the decline in production or the extent of the decline in production, including how it conceivably could have been caused by the PUI or to the extent of that decline;
- domestic sales of the domestic wines fell during the injury period, but such decline presumably was measured as ex-factory sales and no explanation provided how retail sales affected such ex-factory sales or to what extent;
- the domestic selling prices of domestic wines increased throughout the period of investigation, again presumably measured at the ex-factory level of trade, with no explanation or analysis how this translated into prices at the retail level of trade and how such prices affected purchases of wines in containers of 2 litres or less by consumers;
- sales revenues from domestic sales of domestic wines fell during the period of investigation notwithstanding the increase in prices, again, presumably, measured at the ex-factory level of sales with no analysis of how sales at the retail level of trade and consumer preferences affected sales at the ex-factory level or to what extent; and
- profits from domestic sales of domestic wines, again presumably at the ex-factory level of trade, declined throughout the period of investigation, again with no assessment of how sales at the retail level of trade and prices at that level of trade flowed through to and affected profits at the ex-factory level.

In light of the foregoing, the preliminary finding was that the domestic industry had incurred material injury during the period of investigation, notwithstanding the absence of information or evidence of how sales at the retail level of trade and consumer purchases and preferences at that level of trade had

affected ex-factory sales.

In relation to what had caused such material injury, the following preliminary findings were made:

- during the injury period, the volume of PUI imported into China increased;
- during the injury period, the market share of the PUI increased whereas that of the domestic wines decreased;
- during the injury period, the price of the domestic wines increased but the export price of the PUI decreased;
- during the injury period, the costs of the domestic industry increased but prices of domestic wines did not increase by a commensurate amount; and
- because domestic prices did not increase commensurately with cost increases, this led to a decline in profits

Based on this analysis it was concluded that:

“To sum up, the dumped imported product caused severe injury to domestic industrial production and operation.

Based on the above reasons, the Investigating Authority preliminarily determined that there was a causal link between the dumped imported product and the material injury suffered by the relevant domestic wine industry.”

In light of the above analysis, it is submitted that it was not possible to make the above conclusion. Merely noting movements in domestic sales, prices, revenues, etc., as compared with those of the PUI does not mean that one can be causally linked to other. It merely consists of observed occurrences taking place in a market that may or may not be causally linked and may be occurring for a variety of reasons. They need not be causally linked and here, there is not information or evidence that they are causally linked to the PUI or to the PUI being exported to China at dumped prices. This has been omitted from the analysis.

For example, there is no explanation supported by any evidence that the PUI suppressed domestic selling prices or, if they did, to what extent given that the export prices of the PUI were higher than the ex-factory prices of the domestic wines throughout the period of investigation. No explanation was given why the domestic industry could not increase its prices commensurately with increase in its costs. Further, there was no analysis of whether the domestic industry could have raised its retail prices of its products and why it is was precluded from doing so and to what extent it was so precluded by the PUI and by the PUI being exported to China at dumped prices. Hence, no causal link was established.

Further, as any point of competition between the PUI and domestic wines is at the retail level, it is unclear how the export prices of the PUI competed with the ex-factory prices of the domestic wines. No explanation or analysis was provided in this regard. Consequently, it is unknown how, if at all, the export prices of the PUI affected the ex-factory prices of the domestic wines and whether and to what extent this ‘caused’ any injury claimed by the domestic industry..

In addition, the fact that the PUI and the domestic products have wine as a constituent component does not mean that they compete directly with one another or to what extent simply because they contain the same constituent component. Based on the available information and evidence, it is not reasonable to preliminary find that the PUI and the domestic product directly compete with one another simply because one of their constituent products is wine or that they directly compete with one another at the import/ex-factory level of trade when the available and information and evidence demonstrates that they do not.

Again, there is no analysis of whether and to what extent the PUI compete with the domestic product at the retail level of trade and how this flows through and affects prices, sales volumes, sales revenues, etc.,

at the ex-factory level of trade, if at all.

Absent such analysis, no conclusions can possibly be reached that the PUI, because of dumping, has caused material injury to the domestic industry. It is not reasonable to make any such preliminary findings as set out in the Preliminary Determination based on all available information and evidence.

IWSR ([Home - IWSR \(theiwsr.com\)](http://theiwsr.com)) is an international, independent organization that, amongst other things, conducts research into, and publishes reports on, the global wine industry. It is clear from IWSR data on the still wine market in China between 2015 and 2019 by price segment, volume, value and average value per case of still wine sales for the total market, Chinese wine, Australian wine and other imported wine that Chinese wine and imported wine do not compete directly with one another. They are not directly competitive.

Key findings of IWSR publicly available are:

- Chinese wine and Australian wine have very different price segment profiles – in 2019, 95% of the value of Chinese wines are sold at the standard/value/low-price segments and 1% in the premium price segments, whereas 41% of Australian wines are sold at the standard/value/low-price segments and 59% in the premium price segments;
- the average price of Chinese wines over the injury period of 2015 to 2019 has been relatively stable; and
- Australian wines record the highest average price of sales in the market – for example, in the Chinese wine market in 2019, Chinese wines average prices were USD60 per case, whereas Australian wines were USD180 per case and other imported wines were USD152 per case. This does not support the assertion that Australia is dumping cheap wine in China during the injury period or the investigation period. Clearly, as a question of fact supported by evidence the opposite is the case.

From a retail perspective, Australian wine prices in sales in China are centered around:

- (i) RMB90 to RMB175 per bottle, which consist of 52% of Australian sales in China with an 18% market share in China, and
- (ii) RMB175 to RMB325 per bottle, which consist of 45% of Australian sales with a 31% market share in China.

Dumping duty at a rate of 107% would double the retail price of a bottle of Australian wine and a 212% rate of dumping duty would treble the retail price of a bottle of Australian wine. For example, an Australian wine that is currently exported to China at an FOB price of US\$10 per litre (US\$90 per case), would retail in China for approximately RMB150 per bottle. This would rise to RMB310 per bottle with a 107% dumping duty and RMB465 per bottle with a 212% dumping duty. Table A below demonstrates the impact of these rates of dumping duty on the retail price in China of a number of key Australian brands at their current prices in China:

Table A: Impact of tariffs on illustrative Australian brands

Brand	Current (RMB per bottle)	With tariff (RMB/bottle)
YellowTail Shiraz	59	151
Jacob’s Creek Shiraz	76	195
Wolf Blass Yellow Label	89	236
Torbreck Wood Cutters Shiraz	188	576
Penfolds Bin 369	678	1356

Source: (Current prices are taken from JD.com)

The impact of provisional measures and/or dumping duty at the lowest and highest rates set out in the Preliminary Determination will significantly impact upon and raise the retail prices of Australian wines imported into China. Importantly, prices for Australian wines are already the highest in the Chinese wine market and the imposition of provisional measures and/or dumping duty will increase such prices well above retail prices in the Chinese market and well above prices that could conceivably be causing injury to the Chinese wine industry, assuming that Australian wines at current price were causing any injury, which is unlikely.

Further, any provisional measures will simply enable other imported wines to fill the gap in the market caused by the resulting artificially high retail prices for Australian wines. This is demonstrated in Table B below:

Table B: Retail still wine sales in China – Standard Price Segment

	Volume share	Value share	2019 US\$ per bottle	Post-tariff US\$ per bottle
Chinese	25%	21%	8.60	8.60
French	21%	21%	10.53	10.53
Australian	18%	21%	11.82	35.47
Chilean	14%	14%	10.10	10.10
Spanish	5%	5%	10.69	10.69
Italian	6%	6%	10.91	10.91

Source: IWSR

The foregoing, including the findings of IWSR, reinforce the fact that Australian wines do not compete directly with Chinese wines in the Chinese wine market and, consequently, cannot have caused injury to the domestic Chinese wine industry.

Over time Chinese consumers will substitute Australian wine with wines imported from France, Italy, Spain and, most notably, Chile. Chilean brands such Concha Y Toro, namely, Casillero del Diablo, which retails in China for RMB69 per bottle, and Marques de Casa Concha, which retails for RMB220 per bottle, are already well-establish in China and the imposition of provisional measures on Australian wine provides will simply serve to create an opportunity for such imported wines to gain more market share without improving the financial performance of the Chinese wine industry.

In short, the imposition of provisional measures will not and cannot prevent injury while the investigation continues because, given the present dynamics of the Chinese market, the prices of Australian wines at their current level cannot and do not cause injury to the Chinese wine industry. They do not compete directly with Chinese wines. Instead, the imposition of provisional measures will cause the retail prices of Australian wines to be increased to uncommercial artificially inflated levels well beyond any level necessary to prevent any injury.

7. Material injury and causation – further considerations

Dumping, of course, is concerned with export prices and their effect on the domestic industry if they are ‘dumped prices’. The export prices of the PUI are the prices at which Australian wines enter into the commerce of China. That point is the point of importation.

However, that is not the point of competition between Australian wines and wines produced in China or between the Australian wines and any other wines sold in the domestic wine market in China. Similarly, those export prices are not the prices at which Australian wines compete with Chinese wines, or any other wines, in the domestic wine market in China.

As CADA acknowledged in its application, there are extensive supply chains within China for the supply and distribution of wines before they are sold to Chinese consumers, namely, the retail level of trade. It is at that level of trade that imported wines, including the PUI, compete, if they do compete, with locally produced wines by Chinese wine producers in the domestic market in China.

Accordingly, before the PUI reaches the retail level of trade, it passes through several levels of the supply chain, each of which adds its overheads to the price of the wines, including amounts for profits and for VAT, so that the retail price is quite different from the export price. They are not the same. In other words, the point of competition is not the point of importation and, therefore, the price point of competition is not the export price but a different price at a point further down the supply chain in China.

What this means is that for dumping to be a cause of injury it must be demonstrated that the ‘dumped’ price (i.e. the extent to which the export price is a dumped price) flows through to the point in the supply chain where the PUI competes with the domestically produced wines on price.

If it cannot be demonstrated that the extent to which an export price flows through to the price at which the allegedly dumped PUI competes with the locally produced product (i.e. at the retail level of trade), then it cannot be claimed that ‘dumping’ is causing any injury. That is, any injury that the domestic industry may be incurring cannot be attributed to ‘dumping’ because the causal link between the allegedly ‘dumped’ export price and the price at which the PUI competes with locally produced wines has not been established.

Further, it not only must be demonstrated that the export price (i.e. the ‘dumped’ price) flows through to the point at which the PUI competes with the locally produced wines but also that the PUI competes with the Chinese wines on price and no other factors. As CADA pointed out in the Application, Australian wines do not compete with wines produced by Chinese wine producers on price:

“In the Chinese market, Australian wine manufacturers have a definite competitive advantage by virtue of their existing public praise and brands, as well as the consumption habits formed in consumer groups. Moreover, with the continuous substantial increase in the import volume and the continuous rise of market share, the discourse power of products subject to the investigation request in the Chinese market is also increasing, and their influence is deepening.” (p.55)

In common with other wine markets, wines compete on reputation, that is, on the quality and taste of the wine. If this were not the case, then wines would be a commodity product that compete on price and not on other factors such as quality, grape variety, vintage, region, country and so on, and there would be no role for vignerons to produce unique wines or for vineyard owners to cultivate particular grape varieties.

Finally, if the injury apparently incurred by the domestic industry is measured at the ex-factory level of trade, then it must be demonstrated that the effects of competition flow up through the supply chain to the domestic industry at the ex-factory level. If that analysis is not undertaken, as was the case in the Preliminary Determination, then it is not possible to make any assessment how or to what extent the PUI, because of dumping, caused any injury claimed by the domestic industry.

Accordingly, the conclusions made in the Preliminary Determination regarding whether, because of dumping, the PUI had caused injury to the domestic industry were not made with evidence regarding the operative level of price competition.

Further information and evidence on whether the Chinese domestic wine industry incurred injury during the relevant period and the causes of any such injury are set out in Part 9. That information and evidence further demonstrates that it cannot be objectively concluded, based on the available information and evidence, to find that the Chinese domestic wine industry incurred material injury caused by exports of Australian wines at dumped prices.

8. Relevance of other economic factors

It is evident that other economic factors are more likely than not to have caused the injury claimed to have been incurred by the domestic industry in 2019, being the relevant period for the assessment of whether there has been dumping that has caused material injury, given that:

- the volumes of Australian wines imported into China as compared with the volumes of wines imported from other countries and the volumes produced in China and the volume of wine consumed in China, Australian wines could have no material effect on the Chinese wine industry and there is no evidence in the Preliminary Determination to indicate otherwise;
- the prices at which Australian wines are imported into China as compared with the prices at which wines are imported into China from other countries, with the former exceeding the latter, Australian wines cannot be having any price effect on the prices at which Chinese wines are sold in the Chinese wine market, particularly at the retail level of trade;
- the prices at which Australian wines are imported into China, if and to the extent that those prices flow through to the prices at which Australian wines compete with Chinese wines, exceed the prices at which Chinese wines are sold into the Chinese wine market, Australian wines are not competing with Chinese wines on price, nor undercutting Chinese wine prices; and
- it is publicly acknowledged, including by CADA and in the Preliminary Determination, that Australian wines compete with other wines in the retail market based on reputation and quality and not on price and, consequently, any injury caused by Australian wines would be due to consumer preferences for such wines over other wines and not because of price.

Consequently, any injury being incurred by the Chinese wine industry must be being caused by other economic factors and not by exports of Australian wines in containers of 2 litres or less. This is further evidenced by the following.

In China, growth has been driven by the Chinese wine industry, which has received strong government support in the past few decades as the government has been keen to promote consumption of fruit-based beverages that do not use scarce food grains as a starter in the production of wine, and are also seen as healthier. Consumption of imported wines commenced in China in around 2006, mainly driven by French wines, which are seen by Chinese consumers as superior wines. The years prior to 2013 saw explosive growth in premium imported wines largely driven by government and corporate functions such as banquets. This was widely recognized and wines were marketed to meet this market demand. However, the anti-corruption programme launched in 2013 by the Government of China effectively closed-down this market and led to reduced wine consumption and production in China, including consolidation of the Chinese wine industry. It was only in 2015 that growth to the Chinese wine industry commenced, driven mostly by younger consumers who perceived wine as chic, modern and healthy. Further, the dramatic increase in smartphone use, social media apps and mobile ecommerce in China and globally has dramatically propelled this growth. Nevertheless, the Chinese wine industry and Chinese wines are continuing in a long-term decline, beset by structural problems arising from the rush to increase production during the 1990s and 2000s. These include high costs, unsuitable soils and climates, excessive yields, poor quality and image. Consequently, local wine producers are blending large amounts of imported bulk wine with local wine to improve quality of domestic wines.

It is these 'other economic' factors that are the cause of any injury to the Chinese wine industry and not imports of Australian wines.

Also, economically GDP growth in China has been slowing every year since 2012 and in 2019 reached an all-time low although a still respectable 6.1%. During this time, the Government of China increased efforts to reduce debt, both domestically and internationally, and the trade war with the US took its toll on the domestic economy in China. This slowing economic growth seems to have affected the lower-middle classes in China more, forcing them to cut back on domestic consumption and investment. However, the upper-middle classes and the elite in China have larger accumulated wealth and sources of wealth and have been less affected by the decline in the domestic economy in China and have been able to continue consume and invest at then prevailing levels.

These changes in the domestic economy and its adverse effects explains why the middle price segments of the alcoholic beverages market has been adversely affected more than the premium market segment. Further, the growth of a strong services sector in China has created sufficient jobs to prevent unemployment from rising, although most at lower wage levels, resulting in an expanding but price-conscious middle class. Capital controls have been tightened to prevent outflows of cash and protect the yuan, prompting investors to look for alternative asset classes, including collectible alcoholic beverages such as premium wines. Several macro-economic risks remain, among them high levels of provincial government and corporate debt, a heated property market, an under-developed financial system, including a lack of adequate insolvency laws especially in relation to infrastructure and other investments, and excess capacity in many manufacturing industries.

These 'other economic factors' obviously adversely affect the domestic wine industry in China, commencing with the decline in consumption of wines, particularly in the non-premium wine segments, followed by the decline in production and the decline in domestic investment in the Chinese wine industry. Wine consumption in China continues to decline in 2020, with both local and imported still wines seeing sharp falls. In addition to the foregoing, a combination of other 'economic factors' was responsible, including excessive stocks built up after years of growth, more price-conscious consumers and an on-trade slowdown in sales.

It is evident, therefore, based on available information and evidence the injury claimed by the Chinese wine industry is due to other factors and not by wines imported into China including from Australia.

9. Injury was not suffered by the domestic industry in 2019

The investigation period for the determination of dumping is the 2019 calendar year. The determination that wines imported from Australia were at dumped levels ranging from 107.1% to 212.1% relates to and is confined to 2019.¹ These subject imports are the “dumped imports”, as referred to by Article 3.1.

Separately, MOFCOM has considered a five-year investigation period for the purpose of assessing the financial condition of the domestic industry (1 January 2015 to 30 December 2019). It is these financial conditions identified throughout this injury investigation period that are relied upon for the purposes of making the Preliminary Determination. They were the basis for the finding that material injury was suffered by the domestic industry by reason of dumped imports.

AGW considers that this approach is not correct. A correct appreciation of the applicable law and the factual circumstances presented in the Preliminary Determination provides the opposite outcome, which is that there was no material injury caused by dumping.

It is clear from the text of Article 3.1 of the ADA that the determination of injury is tied directly to the dumped imports that are the subject of the investigation. As explained, in this case the finding of dumping relates, and can only relate, to imports in 2019. No finding of dumping was made with respect to any other year or period. The industry information with respect to earlier periods – in this case from 2015 to 2018 - is gathered in investigations like this for a contextual purpose. Findings of injury in that period are not and cannot be findings of injury caused by dumping. The financial performance of the industry in the period before the dumping investigation period cannot be used in and of itself as evidence of injury by dumped imports in that period. This is because, in investigations of this type, there is no investigation as to whether the goods are dumped in any period other than the dumping investigation period.

AGW submits that this is self-evident. The opening sentence of Article 3.5 of the ADA provides as follows:

It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement.

A consideration of the effects of dumping requires a finding of dumping. Given that the injury analysis is tied directly to the “dumped imports”, it is the change in the condition of the domestic industry in the period in which dumping is found to have taken place, as compared to the condition of the domestic industry before the dumping took place, that is the relevant inquiry.

In the present investigation the ruling injury considerations are these:

- was there any injury at all, in 2019, and was it material; and
- did the financial condition of the domestic industry change in 2019 – ie worsen – such that dumped imports could be said to have caused that worsening.

A proper consideration of the information accepted by MOFCOM and set out in the Preliminary Determination points inevitably to the conclusion that the domestic industry did not suffer material injury in the change in its

¹ For the record, and as will be plain from our other submission AGW does not agree with the finding that imports of the subject goods were dumped.

condition from 2018 to 2019. Such a consideration also illuminates the obvious conclusion that the downward trending market volume in 2019 was singularly relevant to the market conditions observed in 2019. Further, it is absolutely apparent that the price of Australian wines, even on the weighted average basis adopted by MOFCOM, was higher than the prices of Chinese wines and of wines from each other import source.

Contraction in market size in 2019

It is important to accurately present and understand the circumstances of the market. The truth is that there was a very significant contraction in the Chinese market for the subject goods in 2019 as compared to 2018. This is evident from the apparent consumption level of the goods, which MOFCOM found decreased by 13.2% from 2018 to 2019:

	2018	2019
Apparent consumption (10,000 kl)	85.39	74.12

A reduction in market size cannot be caused by dumping. According to normal concepts of causation, and as amplified by Article 3.5 of the ADA, any change in the financial condition of a domestic industry caused by an “other factor” such as this must not be attributed to dumped imports.

Price of Australian wine imports increased in 2019

MOFCOM calculated that the landed weighted average price for the subject goods had increased by 10.4% from 2018 to 2019:

	2018	2019
Landed price of the subject goods (USD/kl)	6,090	6,723

Evidently, in a market of reduced size, an increase in prices of the allegedly dumped goods suggests that those goods are not injurious. A reduction of the size of the market naturally should cause prices to decrease. The fact that the Australian wine price increased so significantly demonstrates that the subject goods are not purchased because they are cheaper than domestically produced wines. First, MOFCOM did not find those prices to be cheaper. Secondly, the volume of wine imported from Australia was unchanged between 2018 and 2019:

	2018	2019
Import volume of the subject goods (10,000 kl)	11.8	12.0

What can be read into this is that Australian wine is not a readily substitutable commodity product, and that purchases of Australian wine are maintained even when their price increases.

Price of Chinese wine increased in 2019

It was found by MOFCOM in the Preliminary Determination that the price of Chinese-produced wine increased by 7.41% in 2019 as compared to 2018:

	2018	2019
Price of the Chinese goods (RMB/kl)	35,932	38,595

This speaks for itself. Overall, the domestic industry enjoyed higher prices at the same time as the prices of Australian wine also increased, and did so at a higher percentage.

Chinese wine industry performance unaffected in 2019

It was found by MOFCOM that the production capacity of the Chinese wine industry was steady (slightly increased) between 2018 and 2019. MOFCOM also found that the return on investment of the Chinese industry was unchanged in 2019 compared to 2018. This last statistic is incredibly important. This speaks to the proposition that there was no injury caused to the domestic industry, because at a time when there is alleged to have been dumping of the subject goods there is no evidence that investors received a lower return. The domestic industry did not perform more poorly than before.

In line with these observations, MOFCOM also found that the wages of Chinese wine industry workers increased significantly, at all relevant times, and that there was no evidence (in MOFCOM's words) of any impact on investment in the Chinese industry or the financing capacity of the Chinese industry.

AGW respectfully submits that the prevailing information illustrates that in 2019 – the period of alleged dumping - the domestic industry performed well, in a contracting market, and that its financial performance was not adversely affected by the prices of Australian wines.

Therefore, the Preliminary Determination does not demonstrate injury was suffered in 2019, being the period that correlates with the allegedly dumped imports that are the subject of this investigation.

The positive evidence is to the effect that the Chinese wine industry did not suffer injury, and certainly not material injury, and no causal connection with the participation of Australian wines in the Chinese market is suggested by that evidence.

The Preliminary Determination is therefore not in accordance with the standards and requirements of Article 3.1 of the ADA.

10. No causal relationship between Australian imports and injury

As explained, the evidence referenced in the Preliminary Determination does not support a finding that material injury has been suffered by the domestic industry. We have also touched upon questions of causation at the level of the information assembled by MOFCOM in the Preliminary Determination.

In the following part of this submission we consider the position of Australian wines in the Chinese market in a more nuanced way, using more detailed information available to AGW. It makes the proposition that Australian wines have not caused injury to the Chinese industry even clearer.

- **Chinese domestic wine industry and market is vibrant and dynamic**

The Chinese domestic wine market is vibrant and dynamic. Chinese wine producers have established themselves and participated in that market strongly and competitively. The development of the market has been assisted by the increasingly open competition between market participants. Australian wine producers are dedicated to the

development of the market in the interests of all market participants. Australian wine producers have been able to increase the acceptance and desirability of wine amongst Chinese consumers.

It is AGW's firm belief that Australian wine has been entirely positive in shaping the Chinese domestic market. The presence of Australian wine in the market has helped domestic producers by increasing the appreciation, consumption and prices of wine in China.

The vibrancy of the market is best seen through the differing classes of wine products that have established themselves in the Chinese market. This broad selection of wine products is necessary to meet the increasingly sophisticated and varied preferences of Chinese consumers. The variety of the subject goods is evident in the MCC parameters established for this investigation.

In contrast to this, the Preliminary Determination takes the view that the subject goods are:

... basically the same as domestic like products in terms of physical nature, raw materials, production techniques, product uses, sales channels and customer groups, they can be replaced by each other and actually compete with each other, and consequently price has become the primary factor for consideration when downstream customers choose products.²

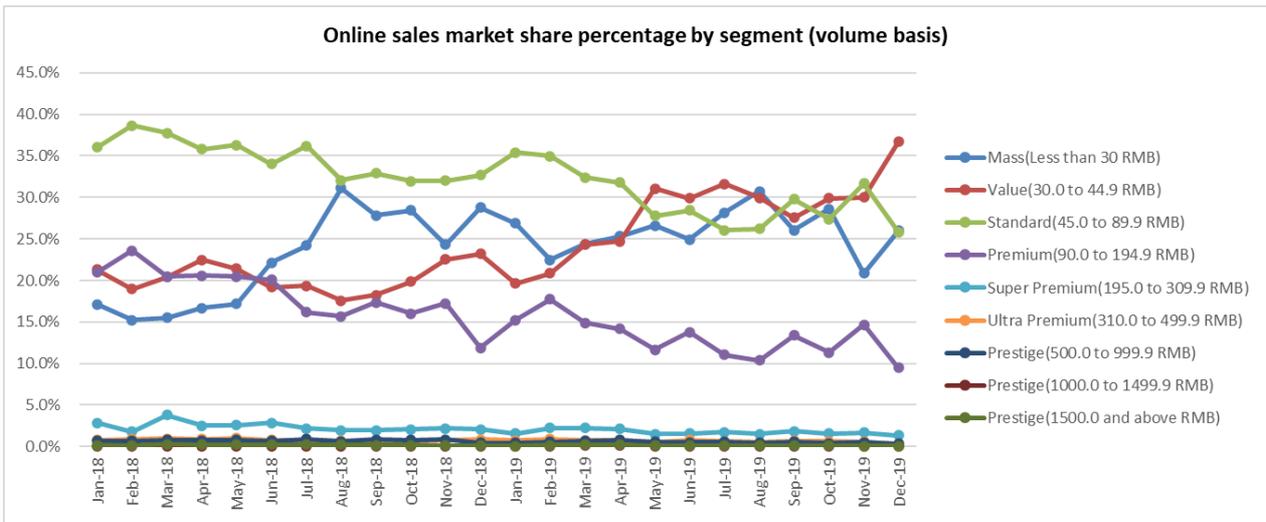
AGW disagrees with this proposition, because it fails to recognise the relationship between price and perceived quality of wines. As explored above, the price of Australian imports cannot be the primary factor for consideration, because in the contracting Chinese market in 2019 Australian wine substantially increased in price.

Wine products are segregated and sold in price "bands". The price bands reflect their perceived quality and desirability. Lower priced segments are generally price sensitive, however that sensitivity falls away in higher priced wine segments. Australian wine is predominantly sold within these higher priced segments. Chinese wine, and wines from some other source countries, are predominantly sold in the lower priced segments. Due to these differing segments there is limited cross competition between domestic and Australian products.

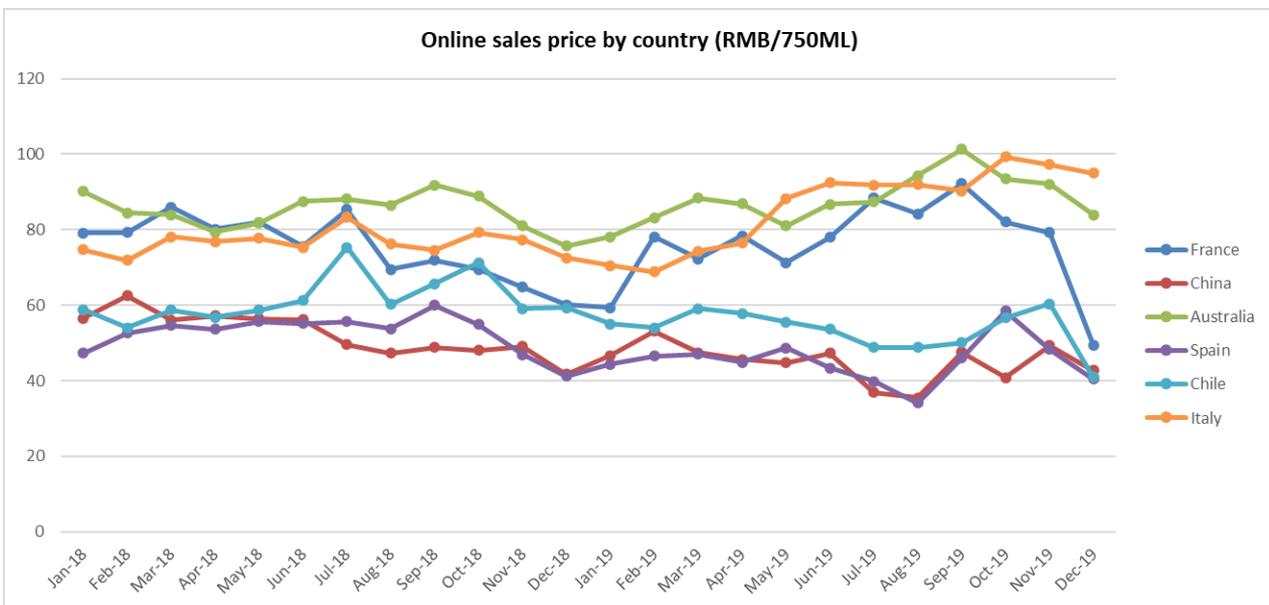
The following chart shows the relative market percentages of sales of wines in the Chinese market according to these price segments, using data related to online sales as a valid proxy. Wines that are perceived to have higher quality and prestige hold smaller market shares in the overall market than cheaper wines.³

² CN version of PD

³ Sourced from Smart Path Digital Retail Audit.



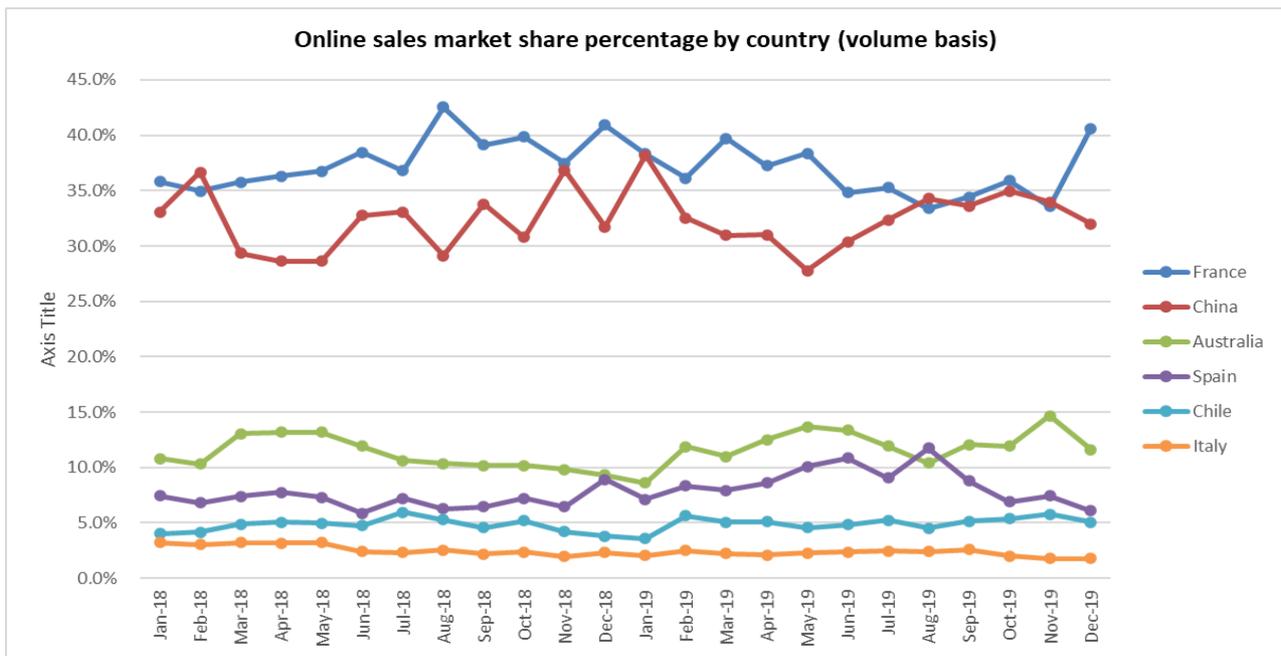
In 2019, when the Chinese market contracted, there was greater fluctuation in the mid to lower price band segments, than in the higher price band segments in which Australian wines are more naturally sold. This better insulated Australian wine against the effects of the contracting market. Domestic and other imported wines more directly faced the effects of the market contraction. This difference in segmentation can be illustrated by the average sales price by country. As shown below, using the same data source, Australian sales are shown to be very much higher priced than Chinese wines and almost all other imported wines:⁴



As revealed and as reminded by the previous chart, Australian and domestic wines are not the only participants in the market:⁵

⁴ Sourced from Smart Path Digital Retail Audit.

⁵ Sourced from Smart Path Digital Retail Audit.



In particular, it is noted that French wines have a higher market share than Australian wines and are generally cheaper than Australian wines. Other participants in the Chinese market 2019, such as those from France, Spain and Chile, cumulatively had a market share about five times higher than the market share of Australian wines, and all with lower prices than Australian wine. In the last four months of 2019 a very significant drop in the price of French wines caused a rapid increase in the market share of French wines.

Overall, this data provides a more nuanced understanding of the domestic market in 2019. Wine is a complex product, and the market dynamics are not straightforward. The causation assessment undertaken by the Preliminary Determination does not adequately appreciate and reflect these dynamics. Australian wine imports occupy higher price points in the Chinese market, meaning that they do not have a downward effect on Chinese wine prices. In fact, Australian wine serves to increase the price at which wine can be sold in China by all market participants.

- **Causation assessment is inconsistent with the Anti-Dumping Agreement**

The causation assessment provided in the Preliminary Determination is limited and ultimately flawed. In establishing a causal relationship, the Preliminary Determination has used a *general finding of coincidence* and not a *detailed analysis of causation* as is required by Articles 3.1 and 3.5 of the ADA. And, as we have said in A above, not even the finding of coincidence has validity for the purpose of “blaming” Australian wine imports for injury.

With this in mind, AGW respectfully notes the finding of the WTO Panel in *China – X-Ray Equipment*, which explains:

The Panel acknowledges that an overall correlation between dumped imports and injury to the domestic industry may support a finding of causation. However, such a coincidence analysis is not dispositive of the causation question; causation and correlation are two distinct concepts. In the circumstances of this case, even accepting China's position that the domestic industry experienced injury as the dumped imports entered the market at large volumes and low (albeit increasing) prices, in the Panel's view, the causation question is not resolved by such a general finding of coincidence. Rather, we consider that MOFCOM was required to conduct a more detailed analysis. In our view, MOFCOM's analysis was not adequate, due to its failure to explain why the prices of the domestic scanners could not rise at least to the level of the dumped imports in 2008, in circumstances where MOFCOM found no other causes of injury apart from the dumped imports.

Consequently, the Panel concludes that MOFCOM did not provide a reasoned and adequate explanation regarding how the dumped imports caused price suppression in the domestic industry, particularly in 2008 when the prices of the dumped imports were above those of the domestic industry. For this reason, the Panel is of the view that the MOFCOM did not conduct an objective examination of the evidence and concludes that China acted inconsistently with Articles 3.1 and 3.5 of the Anti-Dumping Agreement.⁶

Mere correlation is repeatedly highlighted throughout the Preliminary Determination, in lieu of a proper justification for causation. Noting that this is only the preliminary stage of the investigation, AGW welcomes MOFCOM's continued review and assessment of the causal relationship.

Article 3.5 of the ADA also requires MOFCOM to consider other factors which may cause any injury said to be suffered by the domestic industry. Article 3.5 itself lists a number of other factors which may be considered. The Preliminary Determination addresses these factors directly by stating:

According to the results of the preliminary investigation, there was no evidence showing that a causal link existed between the factors (e.g., the impact of imported products from other countries (regions), trade restriction practices of foreign and domestic producers and competition between them, impact of consumption patterns and substitute products, technological development, export status of domestic like products, and force majeure) and the material injury suffered by the relevant domestic wine industry.⁷

Only where these factors have been directly raised by parties does the Preliminary Determination present its reasoning for consideration, and reasoning does not appear to be sufficient. As an example, as already outlined above, the Chinese domestic industry is much more likely to be affected by import sources which compete within the same level of segmentation. Market segmentation, price competition and consumer preference must be better considered to allow for an adequate and reasoned assessment.

11. Conclusion

It is difficult to understand how MOFCOM has come to the preliminary conclusion that Australian wines (i.e. the PUI) are being 'dumped' on the Chinese market or that injury has occurred to the Chinese domestic industry. No evidence has been provided in the Preliminary Determination to support either of these matters. Indeed, it is disappointing that MOFCOM has not sought further information before making a preliminary determination and implementing provisional duties. Australian Grape and Wine remains ready to provide any additional information MOFCOM requests and otherwise to assist in the investigation.

AGW also notes the requirements of Article 3.1 of the WTO *Anti-Dumping Agreement* ("the ADA"), which states:

A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.

⁶ Panel Report, *China – Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union* (WT/DS425/R, 26 February 2013), at paras 7.247-7.248.

⁷ CN version of PD

The evidence presented in the Preliminary Determination does not lead to a finding that the domestic industry has suffered material injury. Further, it does not lead to a finding of a causal relationship between anything that could be termed as “injury” and Australian imports.

Accordingly, we submit that the Preliminary Determination cannot be considered to be consistent with the requirements and standards set out in Article 3.1 of the ADA.

In sum, it is Australian Grape and Wine’s view, based on all available information and evidence and for the reasons set out above that:

- Australian wines in containers in 2 litres or less exported to China have not been at dumped prices;
- the preliminary dumping margins ranging from 107.1% to 212.1% are commercially unrealistic and based on fundamentally flawed constructed normal values for such Australian wines exported to China, which constructed normal values are readily verifiable as being erroneously calculated and incorrect as not reflecting the ‘normal values’ of Australian wines sold for consumption in Australia;
- any injury incurred by the Chinese domestic wine industry was not caused by exports of Australian wines to China but is directly attributable to ‘other economic factors’; and
- the imposition of provisional measures at their current levels cannot and will not achieve their intended purpose because they cannot have their intended effect of preventing injury to the Chinese domestic wine industry from occurring while the investigation continues.
- and consumer preference must be better considered to allow for an adequate and reasoned assessment.

AGW notes that the Preliminary Determination is, by its nature, preliminary, and does not necessarily represent a likely final determination. With this in mind, AGW asks MOFCOM to undertake a further analysis of the matters raised in this submission so as to ensure the final determination more accurately reflects the dynamics of the Chinese wine market and is made in compliance with the requirements of the ADA.

We submit that this will lead to the conclusion that that the investigation be terminated in accordance with China’s Anti-Dumping Regulation due to the insufficiency of evidence of dumping and material injury caused by dumping of exports of Australian wines.

