9 September 2020

Supplementary Submission to Australian Grape & Wine Submission of 7 September 2020 ('Submission') Dumping Investigation into Exports of Australian Wines to the People's Republic of China

1. Introduction

This submission is a supplementary submission to the Submission made by Australian Grape & Wine dated 7 September 2020. It supplements and adds to the submissions that Australian Grape & Wine hopes will be of assistance to the Ministry of Commerce (MOFCOM) in this investigation.

Accordingly, Australian Grape & Wine makes the following further submissions: -

2. Goods under consideration (GUC)

China Alcoholic Drinks Association's (CADA) application and the notice announcing this investigation described the goods under consideration as being:

> "*wine in containers in 2 litres or less*"

This description assumes that wine is a commodity product, which clearly it is not. It fails to recognize differences in grape varieties, differences where the vineyards are located and, consequently, differences in growing conditions, differences in harvesting conditions, differences in the production and blending of wines and hence the differences in quality of wines, with the aim of each wine maker to produce its own unique wines.

This failure to recognize these unique features of wines, which is also driven by consumer preferences, and of wine industries whether in Australia or elsewhere in the description of the GUC is misconceived. It means that the investigation will be fundamentally flawed by treating wines as a commodity when it is not and disregarding the unique characteristics of each wine and the fact that wine industries and producers in that industry seek to produce individual wines each with unique characteristics that meet and satisfy individual consumer preferences.

This failure to recognize that wines are not commodity products in the description of the GUC will render any so-called 'findings of fact' in relation to dumping margins, injury and causation in this investigation wrong, misconceived and inconsistent with WTO rules. We assume this was not intended by MOFCOM.

Further, it is presumed that CADA is not seeking the imposition of a protective dumping duty on "*wine in containers holding 2 litres or less*". This is the description of the GUC in Section II (1) of CADA's application (page 5), that is, the 'product to be investigated'. That description does not identify from which country or countries that product is exported from or by whom.

Australian Grape and Wine notes that subsequent sections in the application do seek to clarify this description of the 'product to be investigated'.
However, based on the description of the 'product to be investigated' in the application, CADA is requesting antidumping measures be imposed on 'wine in containers holding 2 liters or less' from any country by any exporter. If not, then the description is deficient or, at least, incomplete. This, in Australian Grape and Wine's opinion reinforces the absence of precision of the GUC and the treatment of wine in the application as a 'commodity product', which clearly it is not.

The mere description of a physical product without, in that description, identifying the countries from which that product has been exported by which exporters at allegedly dumped prices and because of that caused material injury to the Chinese domestic wine industry producing 'like goods' to those exports is an inadequate description of the good under consideration.

Such a description must include the country or countries from which the product in question is being exported and by whom, that is, who are the actual exporters. This is and must be the complete description of the GUC. It is only such complete description of the GUC that are actually being exported to China at allegedly dumped prices and because of that, it is claimed, causing material injury to the domestic Chinese wine industry producing 'like goods' and in respect of which GUC antidumping measures are being sought.

Australian Grape and Wine understands that this is the requirement of the WTO Anti-Dumping Agreement in a description of goods the subject of a dumping investigation. Australian Grape and Wine also understands that MOFCOM complies with WTO rules in dumping investigations. If so, and Australian Grape and Wine has no reason to doubt this, the description of the GUC needs to be rectified to reflect WTO rules.

3. Implications of Foreign Exchange

It is common knowledge that Australian wine exports to China are denominated in US dollars. This has had a significant effect on wine export transactions to China during the period of investigation.

During the period of investigation, the Australian dollar has depreciated against the US dollar from US$0.8179 on 1 January 2015 to US$0.6887 on 31 December 2019. A significant depreciation of the Australian dollar against the US dollar during this period.

This needs to be taken into account, especially in the injury and causation analysis.

In the application, CADA asserts that the import price of Australian wine into China decreased from an average of US$7,759 (approx. AU$9.4865) per kiloliter in 2015 to an average of US$6,723 (approx. $9.7619) per kiloliter in 2019[1]. This amounts to a 13.35% decrease in the average price per kiloliter in US$ terms for Australian wine during the period of investigation.

It is important to note that during this same period, the Australian dollar depreciated against the US dollar. On 1 January 2015, 1 AUD was worth US$0.8179; and on 31 December 2019 1 AUD was worth US$0.6887. This devaluation of the AU$ against the US$ amounts to a decrease in the value of the AU$ of 15.8%.[2]

As Australian wine producers typically invoice in AU$, this shows that the dominant cause of the decrease in the average price of Australian wines during the period of investigation in the application was the devaluation of the AU$ during that period and, thus, cannot be due to Australian exporters reducing their export prices in order to maintain a relatively stable AU$ export price. When the exchange rate is taken into account the import price actually increased 2.9% in AU$ term during the period of investigation. The decrease in the import price in US$ terms was simply a function of the devaluation of the Australian dollar and has the same effect on wine exports as it does for exports of other products in international trade.

4. Calculation 'normal value'

[1]Application page 8.

[2]Working calculation: [(0.8179 - 0.6887)/ 0.8179] x 100.

By definition, under the WTO Anti-Dumping Agreement, 'dumping' exists where the 'export price' of a product exported from one country to another is less than its 'normal value'. A product's 'normal value' is, pursuant to Article 2.1 of the WTO Anti-Dumping Agreement, the "*comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country*".

Pursuant to Article 16 of the Initiation Regulation "*the petitioner shall provide the comparable price in the ordinary course of trade of the like product for consumption in the exporting countries (regions) or countries (regions) of origin*". It is only "*where there is no comparable price or such price cannot be obtained*" that a 'constructed normal value' may be calculated and be provided by a petitioner.

If a 'constructed normal value' may validly be calculated for a 'normal value' under WTO rules, then that calculation obviously must be undertaken in accordance with Article 2.2 of the WTO Anti-Dumping Agreement. That is, it is the cost of production plus general selling and administrative expenses plus an amount for profit. These costs must be based on the costs of the producer if the producer's records comply with generally accepted accounting standards in the country of production and reasonably reflect the producer's cost of production on the country of origin, adjusted to effect a fair comparison between the export price and the normal value.

No reason was given by CADA in the application why the 'normal value' of Australian wine exported to China should not be calculated by these methods in accordance with WTO rules. Clearly, the 'normal value' of Australian wine must be calculated in this way unless there is a valid reason not to do so supported by evidence, and no such evidence was provided by CADA in the application.

This, of course, needs to be addressed and be properly addressed in the investigation in accordance with WTO rules. Australian Grape and Wine is confident, given the excellent and cooperative relationship between the Chinese and Australian wine industries, that this will be the case in this investigation.

5. 'Particular market situation' and 'proper comparison'

In the application, CADA has claimed that, because of government programmes and policies, the Australian wine market has been affected to the extent that wine prices for Australian produced wine in that market are, in effect, 'non-market prices' and are 'distorted' and, consequently, low. Because of this, CADA's argument goes, such prices are unsuitable for use in the determination of 'normal values' and, also, preclude a 'proper comparison' between export prices and normal values.

As MOFCOM would be aware, the existence of government programmes and policies, if they exist, does not of itself preclude a 'proper comparison' between export prices and normal values. Rather, a 'proper comparison' is not precluded by a 'particular market situation' unless there is something in the nature of the circumstances that gives rise to the finding of a 'particular market situation' that precludes a 'proper comparison' (see '*Australia – Anti-Dumping Measures on A4 Copy Paper*'[3]). No evidence was provided by CADA in the application as to what precluded a 'proper comparison'.

It is not incumbent on Australian wine producers and exporters to prove that a 'proper comparison' is not precluded. The onus is on the applicant, CADA, to make good its claim, that is, to prove that a 'proper comparison' is precluded under WTO rules given the circumstances of Australia's wine market as established by positive, objective evidence.

[3] '*Australia – Anti-Dumping Measures on A4 Copy Paper', Panel Report (WT/DS529/R) (4 December 2019)*

6. Volumes of exports of Australian wines to China and exports from other countries

In assessing whether exports of Australian wines to China have caused injury to the Chinese industry producing 'like goods', the volume of such exports when compared with the quantity of wines produced in China and the size of the wine market will be a significant consideration. As also will the volume and value of wines exported from other countries, such as from North and South America and from Europe be important in this analysis.

Having regard to these matters, it is evident that the volume and value of Australian wines could not have caused injury, let alone material injury, to the domestic industry in China producing 'like goods'.

Wines imported into China from third countries constituted the majority of wines imported into China, as demonstrated in the Table below:

Table 1: Proportion of Imports from Certain Countries to Total Imports[4]

Country	**2015**	**2016**	**2017**	**2018**	**2019**
Wine imported from Australia	**14.31%**	**16.48%**	**19.16%**	**23.16%**	**26.49%**
Wine imported from third countries	**85.69%**	**83.52%**	**80.84%**	**76.84%**	**73.51%**

In addition, prices of wines imported into China from third countries have been consistently below the price of wines imported from Australia. For example, as shown in Table 2 below, the weighted average price for wines imported from Australia into China were in excess of US$6,000 per kiloliter, whereas the weighted average price for wines imported into China from third countries was well below US$5,000 per kiloliter.

Table 2: Import Price Changes from Australia and third Countries, unit: USD/kiloliter[5]

Country	**Weight average import price in 2015 (US$/kiloliter)**	**Weight average import price in 2016 (US$/kiloliter)**	Weight average import price in 2017 (US$/kiloliter)	Weight average import price in 2018 (US$/kiloliter)	Weight average import price in 2019 (US$/kiloliter)
Australia	7759	6834	6447	6090	6723
Third countries	4238	4107	4189	4751	4116

Given the volumes and prices of wines imported from third countries, it is evident that any injury incurred by the wine industry in China cannot be attributed to wines imported from Australia. In fact, the prices of

[4] The data are from the Table of Import Volume Changes of the products under investigation, in the page 19 of the Application.

[5] The data are from the Table of Import Price Changes of Third Country like products, in the page 70 of the Application.

Australian wines are clearly being undercut by those from third countries, which are also being imported in significantly greater quantities.

7. Role of Government

In its application, CADA claims that Australian governments have through their policies and programmes (some of which are identified in the application) intervened in and influenced the Australian wine industry, apparently at all levels in the production and marketing of wines and that this has led to 'distorted' low prices in the Australian wine market.

There are several issues here, namely:

(a) what is the role and function of governments at any level in the establishment and development of domestic industries;
(b) what is the incentive and/or purpose of a government to intervene and influence the activities of a domestic industry; and
(c) what makes a low-priced product a 'distorted' low priced product, that is, what is the criteria that determines a 'price' to be 'distorted' as opposed to simply being a 'low price'?

In other words, in performing the traditional, legitimate roles and functions of a government in the establishment, development and guidance of domestic industries for the economic and community well-being of a country or region, how does that render sales of a product by a domestic industry unsuitable for use in determining normal values for a 'proper comparison' with export prices? What are the criteria that render the prices of such products in domestic sales unsuitable for this purpose? What makes the pursuit of these legitimate and traditional governmental objectives by Australian governments somehow different from the pursuit of these same legitimate governmental objectives by governments in other countries?

These issues have not been addressed in application and should have been. They must be in the dumping investigation in Australian Grape & Wine's opinion.

8. National interest

While the WTO Anti-Dumping Agreement does not contain a provision requiring investigating authorities to investigate and make findings of fact as to whether the imposition of a dumping duty would be in the national interest, Australian Grape and Wine understands that Article 37 of the Antidumping Regulations provides that and imposition of a dumping duty must be in the national 'public interest', that is, in China's national 'public interest'.

This was not addressed in any substance in CADA's application. Nevertheless, it is a legitimate and proper matter for MOFCOM to take into account in this investigation.

This is because the data in CADA's application indicates that the imposition of a dumping duty would actually harm and operate to the detriment of the Chinese wine industry and consumers. In its application CADA has argued that:

> "*China's wine consumption market is still on the rise. According to the analysis of OIV data quoted by relevant media reports, China's wine consumption ranks the fifth in the world, and is one of the countries with the fastest growth in the world in terms of wine consumption. Based on the global consumption of 24.4 million kiloliters in 2019, the global per capita consumption is about 3.2 liters. The*

top four countries in terms of yearly per capita consumption, the United States, France, Italy and Germany, have reached 10.1, 39.5, 37.5 and 24.5 liters, respectively. In contrast, China's annual per capita consumption is only about 0.6 liters, which is not only lower than the global per capita number, but also far lower than the number of the aforementioned countries. In light of the above, China's wine consumption market has significant growth potential. In the future, with a new generation of mainstream consumers and consumption upgrading, China's wine market will continue to expand".[6]

The production of wines in Australia traces back some 200 years ago when grapes and wine making facilities were first introduced from Europe. Since then, the focus on science and technology in the production of diverse grape varieties and in the production of wines has enabled Australia to play a leading role in the global wine industry including working cooperatively with the Chinese wine industry.

Australian wines are popular worldwide, including in China, and Australian wines rank in the top five countries as the country of origin in wine exports. Australian wines are recognized worldwide as being of high quality and are marketed and sold as such in global markets, including in China.

Further, similar as for wine regions from European and other countries, Australian wine regions and wine brands have registered their names as 'geographical indicators'; or, as is more commonly known, as 'GIs', such as Barossa Valley, Mudgee, Margaret River and Rutherglen, as well as trademarks. This not only affords protection for the high quality of Australian wines but also promotes Australian wines through this identification and recognition globally as high-quality wines.

This unique position of Australian wines in global export markets must be recognized factually in this investigations as it is supported by objective evidence and, further, it means that Australian wines do not compete with wines in export markets as a 'commodity product' but only as high quality wines recognized as such by consumers.

As the demand by consumers in China for wines and for high quality wines is growing, the wines produced by the Chinese wine industry does not currently have the production capacity to meet the demand for high quality wines. The imposition of a protective tariff in the form of a dumping duty will not assist the Chinese wine industry to develop and meet this demand. There is ample objective, impartial evidence that the imposition of a protective tariff in the form of a dumping duty does nothing to assist a domestic industry to develop and improve its competitive advantage. Rather, it does the reverse.

That is not in the Chinese domestic industry's interest nor in China's national interest.

[6] Application page 58.

9. Conclusion

Australian Grape and Wine makes these supplementary submissions to raise matters that it expects will be addressed in the investigation, as well as those identified in its Submission, and is confident that they will be in accordance with WTO rules.

Australian Grape and Wine in participating in this investigation, of course, will provide such assistance and information that the Bureau requires, including the cooperation of its members, to facilitate the conduct of this investigation in accordance with the Antidumping Regulations and WTO rules.

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