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Public Text

**Applicant's Comments on Relevant  
Interested Parties' Comments After  
Preliminary Determination of Related  
Countervailing Case on Wines**

**(No confidential copies)**

**Applicant's full agent.**

Beijing B&H Associates

**3 March 2021**

**Trade Remedies Investigation Bureau of the Ministry of  
Commerce:**

Regarding the countervailing case of relevant wines, entrusted by the applicant of this case, China Alcoholic Drinks Association, our firm hereby submits to your Bureau the “Applicant’s Comments on Relevant Interested Parties Comments After Preliminary Determination of Related Anti-Dumping Case on Wines” for your review.

If you have any questions, please contact our firm.

Your sincerely

Best regard!

Beijing B&H Associates

3 March 2021

## **Applicant's Comments on Relevant Interested Parties' Comments After Preliminary Determination of Related Countervailing Case on Wines**

With respect to the relevant wine countervailing case, upon application by the applicant, China Wine Industry Association, MOFCOM issued a notice on 31 August 2020, deciding to open a countervailing investigation into imports of wine originating in Australia in containers of 2 liters or less.

On 10 December 2020, MOFCOM issued its annual Notice No 58, making an affirmative preliminary ruling on the countervailing case, which preliminarily found that the relevant wine products originating from Australia were subsidized, that the domestic industry was materially harmed, and that there was a causal relationship between the subsidies and the harm, and therefore decided to impose provisional countervailing measures on the relevant wine products from Australia at a rate of 6.3%-6.4%. Therefore, it was decided to impose provisional countervailing measures on the relevant Australian wine products at a duty rate of 6.3%-6.4%.

After the preliminary ruling, the applicant was informed from the trade remedy investigation information platform that the relevant stakeholders submitted comments to the investigating authority, including.

1. the Australian Government submitted the Comments on the Face of the Preliminary Determination in the Countervailing Investigation on Imports of Relevant Wines originating in Australia on 21 December 2020.

2. the Australian Grape & Wine ("AGW") submitted its Comments on the Preliminary Determination in the Wine Countervailing Case on December 18, 2020

3. Treasury Wine Estates Vintners Limited ("TWEV") submitted its Comments on the Preliminary Determination in the Countervailing Investigation of Australian Imports of Wine Products on 21 December 2020 4.

4. Casella Private Wines Limited ("Casella") submitted its Comments on the Preliminary Determination in the Wine Countervailing Case on 17 December 2020.

5. Australia Swan Vintage Pty Ltd ("Auswan") submitted its "Comments on the Disclosure of the Basic Facts Underlying the Subsidy Part of the Preliminary Determination of Countervailing on the Relevant Wines" on 16 December 2020.

6. On 16 December 2020, Pernod Ricard submitted its Comments on the Preliminary Decision on the Countervailing Measures for the Relevant Wines.

Below, in response to the issues raised by the above-mentioned interested parties in their post-preliminary ruling comments regarding the investigation procedures, products, damages and causation, the applicant makes the following comments for your consideration.

## **I. Comments on the investigation procedures**

The Australian Government argues in its post-implementation comments that one of the key factors that must be considered in the implementation of

provisional measures under WTO rules is that stakeholders have sufficient opportunity to submit relevant information and make comments. An affirmative preliminary ruling cannot be based solely on an application by the domestic industry.

The Australian government also argued in its post-implementation comments that MOFCOM's failure to properly consider the extension requests of the relevant Australian wine producers violated the relevant countervailing provisions of China and the WTO.

The Australian Wine Association argued in its initial post-determination comments that MOFCOM's failure to distribute questionnaires to it and to provide associations representing the Australian wine industry with the opportunity to provide MOFCOM with information about the Australian wine industry resulted in a deficient initial determination.

In their post-determination comments, Casella and Pernod Ricard argued that, as a matter of practice, MOFCOM usually issues its preliminary determinations 6-8 months after the initiation of a countervailing investigation, and usually grants a 1-2 week extension of time to submit responses in countervailing investigations. However, MOFCOM denied its application for an extension of time to file its response in this case, depriving it of the opportunity to fully defend its interests.

In response to the above comments of the Australian Respondent, the Applicant argues that

First, according to Article 31 of China's Countervailing Regulation, "..... shall not take interim countervailing measures within 60 days from the date of announcement of the decision to open a countervailing investigation". In other words, after 60 days from the date of the announcement of the filing of the case, the investigating authority may take provisional countervailing measures based on the investigation results. For this case, the preliminary ruling has been made more than three months after the filing of the case, so the preliminary ruling made by the Ministry of Commerce did not violate the relevant legal provisions in terms of procedure.

Secondly, the applicant believes that the claim of the Australian interested parties that the investigating authority's rejection of the application for extension of the questionnaire of the responding enterprises violates the legal provisions cannot be established. On the one hand, China's Interim Rules for Countervailing Investigation Questionnaires stipulate that the time for filling the questionnaire is 37 days, which is in line with the 30-day minimum period stipulated in Article 12.1.1 of the WTO Agreement on Subsidies and Countervailing Measures. For this case, the 37-day statutory response time for all stakeholders, whether foreign producers/exporters, domestic producers, importers and the Australian government, has been fully guaranteed without any deprivation or derogation. On the other hand, the investigating authority has considered the application for extension of time for the relevant sample of Australian respondent enterprises and explained to them the reasons for rejection. Moreover, the applicant believes that among the four sampled respondent enterprises, Swan did not apply for an extension to the investigating authority,

indicating that the investigating authority did not impose an unreasonable burden of proof on the respondent enterprises, and the respondent enterprises are capable of submitting the corresponding answer within the specified period.

Again, the applicant believes that the opportunity for all interested parties to defend their interests has been fully guaranteed during the investigation of this case. According to the preliminary ruling, in addition to the questionnaire, the investigating authority also carried out a large number of investigations through case filing, registration of responses, sample surveys, comments, and presentation sessions. After the filing of the case, more than 20 Australian wine producers, domestic wine industry and importers, including the Australian government, Wine Australia and Regal, have also presented their opinions and claims to the investigation authority in different forms (such as registration forms, comments, meetings, questionnaires, etc.), and Wine Australia has not been deprived of its right to be heard because the investigation opportunity did not issue questionnaires to it. Wine Australia was not deprived of its right to be heard or derogated from because it was not sent a questionnaire. In the preliminary ruling, the investigation authority has also fully considered the comments and claims made by the stakeholders. Therefore, the claim of the Australian stakeholders that they were deprived of the opportunity to defend themselves is not valid and does not correspond to the facts.

Finally, the applicant's argument that MOFCOM made its preliminary determination on the basis that "the necessary information was not yet available" is also inconsistent with the facts. As mentioned above, in this case, the investigating authority has carried out a lot of investigation work through case filing, registration, sample survey, questionnaire, comments and presentation, and has collected a lot of evidences and materials according to the law. The preliminary ruling was based on all the evidence obtained from the investigation after the filing of the case, not on the so-called "not yet obtained" by the Australian government. Even if the relevant information and data are not available due to the reasons of the Australian stakeholders, the investigating authority has used other available facts, which are in full compliance with the relevant provisions of countervailing laws.

Therefore, as stated in the comments on the preliminary ruling submitted by the applicant, the investigation and ruling of the investigating authority on the subsidies, material damages and the causal relationship between subsidies and material damages in this case are in compliance with the provisions of Chinese law and the relevant principles and spirit of WTO, with full objectivity, fairness and transparency. The challenge of the relevant Australian stakeholders on the investigation procedure in this case cannot be established and has no factual and legal basis.

Comments on the investigated products and similar domestic products

In its comments after the preliminary ruling, Wine Australia argued that the product under investigation in this case is defined by "packaging (i.e., in containers of 2 litres or less)" rather than "wine" itself, and that the investigating authority did not consider the nature and characteristics of wine, i.e., grape variety, blending, and wine. The investigating authority did not consider the nature and characteristics of the wine, i.e. grape variety, blending, grape region, grape harvesting year, quality, brand, etc. Therefore, it is wrong and not objective to consider all products under investigation as "one type of product".

In this regard, the applicant believes that

First of all, according to the product description in this case, the product under investigation is wine made from fresh grapes or grape juice, which is fermented in whole or in part and packed into containers of 2 liters or less. According to the grape variety, blending, grape region, grape harvesting year, quality, brand, etc., the different specifications (models) of the relevant wine products and into 2 liters or less containers, are in line with the product description of the notice of the case, belong to the scope of the product under investigation.

Secondly, according to the grape variety, blending, grape region, grape harvesting year, quality, brand and other factors, wine can be divided into different specifications (models) of products. However, the fact that the products fall under different classification methods does not mean that it can be used as a criterion to independently determine whether the products belong to the same category of products.

On the contrary, the applicant believes that the key to determining the same category of products should focus on whether there are substantial differences in the basic physical and chemical characteristics between the products. The products under investigation of different specifications (models) are wines made from fresh grapes or grape juice, which are fermented in whole or in part, and the relevant product standards have minimum (or maximum) requirements for the main physical and chemical indicators such as alcohol, total sugar, citric acid and dry extract, and even some sensory requirements. Wine products can also be classified according to the main physicochemical indicators concerned (e.g. color, sugar content, carbon dioxide content, etc.). These facts show that there are no substantial differences in the basic intrinsic characteristics of the different wine product sizes (types). The Australian respondent, Chateau Tanunda, also supported the investigating authority's preliminary determination in its post-anti-dumping comments, arguing that the basic physical characteristics of the investigated products and domestic wines are similar. Wine Australia also did not provide specific rebuttal comments on whether there are substantial differences in the basic physical and chemical characteristics of the wines under investigation.

Again, there is no clear line of demarcation between the different sizes (types) of the investigated products, which are identical or similar in terms of raw materials and production processes. The direct raw materials are "grapes" or "fresh grape juice", and the production processes are grape sorting, pressing, fermentation, stabilization, clarification, blending, freezing or filtering,

packaging, etc. There are also cases of cross-use of production equipment. Although there are differences in the varieties of grapes and production processes among the different product segments, these differences do not affect the scope of the final product as "wine", and there is no clear line of demarcation for the impact on the investigated products. This does not negate the fact that there are no substantial differences in the basic intrinsic characteristics of the various wine product segments (models). For example, there are high, medium and low quality products produced from the same grape variety, and there are high, medium and low quality products produced from different vintages and different wine regions. Therefore, it is obvious that it is not objective for Wine Australia to use factors such as "grape variety, blending, grape region, grape harvesting year" to define whether the investigated products are "the same product" or not, and these factors cannot be used independently to determine whether the different sizes ( These factors cannot be used independently as criteria to determine whether the investigated products of different specifications (models) belong to the same category of products.

Fourth, even if there are differences in grape varieties, blends, grape regions, grape harvesting years, quality, brands, etc. between the investigated products of different specifications (models), these differences reflect the different specifications or models of the investigated products, or the distinction in quality, but in any case, the investigated products of different specifications (models) are ultimately competing in the market through different pricing. As Wine Australia stated in its post-preliminary comments, "the price range reflects quality and demand"

and "premium wines are much more expensive than average wines". The existence of price differentiation between different sizes (models) of the investigated products is itself a reflection of the competitive relationship that exists between the products. In addition, it should be further noted that due to factors such as harvesting year, grape variety, production process, quality, and brand, each producer has different pricing strategies for the surveyed products, even for the same size (model). In other words, these factors can lead to different specifications (models) of the surveyed products in the price range there is a crossover situation, there is no clear dividing line. Thus, the price differences of different wine products are due to various reasons, and are reasonable and normal differences between different product segments within the same product category.

Therefore, based on the above analysis and explanation, the applicant believes that there is no substantial difference in the basic physical and chemical characteristics of the investigated products of different specifications (models) that meet the product description of the case announcement, and the raw materials and production processes are the same or similar, and there are differences in product prices but they are reasonable and normal differences between products of different specifications (models), and there is no clear dividing line, and they belong to the same category of products. The claim of Wine Australia that the products of different sizes (models) do not belong to the same category of products cannot be established.

### **III. Comments on damage and causality**

According to the preliminary ruling, during the damage investigation period, the absolute import quantity and relative import quantity of the investigated products are on a continuous growth trend, and the overall import price is on a decreasing trend. The subsidized imports have caused serious damage to the production and operation of the domestic industry, resulting in a decline in the pre-tax profits of similar products in the domestic industry, a continuous decline in the output, sales volume, pre-tax profits, return on investment, start-up rate and employment of similar products in the domestic industry year by year, and a general downward trend in the market share, sales revenue, labor productivity and net cash flow from operating activities of similar products in the domestic industry. Therefore, there is a causal relationship between the subsidized imported products and the substantial damage suffered by the relevant domestic wine industry.

In response to the above damage and causal relationship, the relevant Australian stakeholders made the following claims in their post-preliminary judgment comments.

First, there is no competitive relationship between the investigated product and the domestic similar product, and even if there is competition, the investigating authority did not consider the competition between the two products at the retail level.

Second, based only on the changes in economic

indicators such as production, sales, prices and revenues of similar domestic products, and the relevant changes in the investigated products, it cannot be proved that there is a causal relationship between the imports of the investigated products and the damage suffered by the domestic industry. Moreover, the domestic industry did not suffer damage in 2019 during the subsidy investigation period, which has nothing to do with the subsidized imported products.

Third, if the domestic industry suffered damage, it was also due to other economic factors, such as the impact of imports from other countries, the impact of policies, and the impact of structural problems in the domestic industry.

In response to the above comments, the applicant believes that.

**(a) Wine Australia's claim that there is no competitive relationship between the product under investigation and similar domestic products cannot be established**

In its comments after the preliminary ruling, Wine Australia devoted a lot of space to introduce some characteristics of wine, such as "grape variety, blending, grape region, grape harvesting year, grape region, quality, brand, etc.", defining the investigated product as premium wine, while the Chinese wine product is ordinary wine, and the price of premium wine is higher than the price of ordinary wine, so there is no competitive relationship between the two products.

In this regard, the applicant believes that.

First, as stated in the applicant's application, there is no substantial difference between the domestic wine and the product under investigation in terms of basic physical and chemical characteristics, raw materials and production processes, downstream uses, sales channels and sales customers, and they are similar products. The investigating authority also made an affirmative finding in the preliminary ruling, and the Australian producer Chateau Tanunda also expressed the similarity of the basic physical and chemical characteristics of the two products in its post-preliminary ruling comments. Therefore, there are objective conditions for competition between the two products in the Chinese market.

Second, Wine Australia's definition of the product under investigation as fine wine is clearly misleading. There is ample evidence that, in addition to fine wines, there are many ordinary wines in the product under investigation. For example, the IWSR study cited by Wine Australia in its post-preliminary comments showed that 41% of Australian wines were sold in the standard/value/low price segment and 59% were sold in the high price segment. For example, in the same comments, Wine Australia also cited wines from Yellowtail Kangaroo, Jacques, Stamford, Toblerone, and Penfolds in different price segments. For example, in its post-judgment comments, the Australian company Chateau Tanunda clearly pointed out that the three sampled companies in this case had a "high proportion of products in the lower product price range". In other words, the products under investigation in Australia do not only include the so-called high-quality products, but also many

ordinary products. The evidence shows that both Australian fine wines and ordinary wines are sold in the Chinese market and are in competition with similar products in China.

Again, Wine Australia's description of similar products in China as ordinary wine products is clearly inconsistent with the facts. According to the questionnaire submitted by 21 domestic producers to the investigation authority, domestic similar products also include fine wines and ordinary wines, and each producer has its own product quality breakdown. Both domestic fine wines and ordinary wines are sold in the Chinese market and have a competitive relationship with the investigated products.

Fourth, the applicant also mentioned in the analysis of the investigated products above that there are differences in grape varieties, blends, grape regions, grape harvesting years, quality, brands, etc., reflecting the differences in specifications or models, or distinctions in quality between the products. However, in any case, products with different specifications (models) ultimately compete in the market through different pricing. In its post-judgment comments, Wine Australia acknowledged that "price ranges reflect quality and demand" and that the provisional countervailing measures it advocated would only raise the price of the Australian product under investigation and allow other wines to fill the gap, further confirming the competitive price relationship between the product under investigation and other wine products. Therefore, the existence of differences in the above-mentioned factors between different sizes (models) of wine products does not affect the price competition between the investigated products and similar domestic

products.

Finally, the applicant believes that even if there is a price difference between high-quality wines and ordinary wines, there is a competitive relationship between the two products. On the one hand, a decrease in the price of high-quality wines will have an impact on consumers' choice between high-quality and ordinary wines and may lead to a corresponding price adjustment of ordinary wines. On the other hand, in addition to quality factors, wine products of different companies are also affected by corporate, branding and marketing factors, which may lead to the crossover and competitive substitution between the prices of certain specifications (models) of fine wine products and certain specifications (models) of ordinary wine in the market, which are closer in quality.

Therefore, the applicant believes that there are objective conditions for competition between the Australian product under investigation and similar domestic products in the Chinese market, and that there is a competitive relationship between them. The relevant claims of the Wine Institute of Australia are not objective and do not correspond to the facts and cannot be established.

**(b) On the basis of available facts, the investigating authority's overall price comparison between the investigated products and similar products in China is objective and reasonable**

In its post-judgment comments, Wine Australia argued that the investigating authority should consider the comparability of prices between the investigated

products and similar domestic products, and should not consider all products as one type of product for overall price comparison.

At the same time, Wine Australia tried to use the concept of "retail" to argue that the products under investigation and similar products in China only compete at the retail level, but not at the ex-factory level.

In response, the applicant argued that

First of all, according to the relevant provisions of the countervailing law, the investigating authority should determine and judge the comparability of prices in the price impact analysis. In fact, in this case, the investigating authority also conducted an investigation in accordance with the law. In the questionnaires issued to the three sampled respondent companies as well as the domestic producers, the investigating authority classified the product control codes and explicitly requested each stakeholder to fill in the report according to the quality, consumption grade or brand tier of the wine in the company's daily sales process. Wine Australia ignored these investigative facts and its claim that the investigating authority did not conduct an investigation is clearly inconsistent with the facts.

The reason why the preliminary ruling did not analyse the overall price by model, as explained by the investigating authority in the preliminary ruling, is that the relevant Australian respondent enterprises did not provide relevant data as required by the questionnaire, and in the absence of reasonable access to relevant price data by model, the investigating authority decided to use the

Australian investigated price without distinguishing the product control code in the Chinese customs statistics. The weighted average price of imported products as the basis for determining the subsidized import price, and the overall comparison with the sales price filled in by the 21 domestic respondent enterprises. The applicant supported the practice of the investigating authority, and Wine Australia's challenge to the investigating authority's preliminary determination of price comparison without differentiating between specifications and models did not take into account the fact that the relevant Australian respondent enterprises did not fully cooperate.

Secondly, Wine Australia's claim that there is no competition or comparability between the investigated products and similar domestic products in terms of ex-factory price level on the ground of "retail" is obviously misleading and not objective.

On the one hand, according to the applicant's understanding, for wine producers, whether it is the product under investigation or similar domestic products, most of the products are sold in the form of distribution, and part of the products are sold in the form of direct sales to end consumers, and the two products are the same or similar in terms of sales channels. The investigating authorities in the preliminary ruling on the existence of the same and similarity between the two products in the sales channel also made a positive determination.

In the sales channel, there is direct competition between the two products. In many occasions in the Chinese market, such as wine fairs, famous wine shows,

exhibitions, etc., both the producers of the products under investigation and the domestic producers of similar products are mainly for the supply chain distributors to promote. For both product producers, distributors are the main sales customers, as further evidenced by the questionnaire responses submitted by various stakeholders. The 21 domestic producers also clearly stated in the questionnaire that the change in customs import of the investigated products is a consideration for the pricing of similar products in China. Therefore, there is direct competition between the investigated products and domestic similar products in the distribution channels, and their price competition is also reflected by the ex-factory price level of the investigated products and domestic similar products.

On the other hand, at the level of retailing by distributors, although there is competition between the investigated products and similar products in China, this competition is more the competition of distributors, because "retailing" is the independent business behaviour of distributors, not the business behaviour of wine producers. This is because "retail" is an independent business practice of the distributor, not the wine producer. "Retail prices are also influenced by many other factors, including distributors' purchasing channels, sales channels, sales strategies, profitability models, and sales platforms. Moreover, many dealers sell both the investigated products and similar products in China, and they will assess the overall break-even problem through the low price strategy of different products.

Therefore, although the dealer's "retail" price is the price for the final consumer, but not the actual sales price

of the investigated product manufacturers and domestic manufacturers of similar products, cannot truly reflect the actual production and operation of the investigated product manufacturers and domestic similar products, but also cannot objectively reflect the direct competition between the investigated product and domestic similar products in the factory sales channel, cannot accurately reflect the impact of subsidized imports on the price of similar products in the domestic market.

Based on the above analysis and explanation, the applicant believes that on the basis that the relevant Australian respondent enterprises did not provide sales data of different specifications (models) as required by the questionnaire, the investigating authority used the available information to compare the overall prices of the investigated products and similar domestic products is objective and reasonable, and the price levels are comparable. The Australian Wine Association's challenge cannot be established.

### **(C) The investigated products have caused price suppression to domestic similar products**

In its post-preliminary comments, the Australian government argued that the investigating authority did not analyse the increase in cost and why the increase in cost did not cause damage to the Chinese domestic industry. It also failed to demonstrate how Australian wine could cause harm to the Chinese domestic wine industry if the Australian product under investigation was sold in China at a higher price.

In its post-preliminary comments, Wine Australia

asserted that the import prices of the investigated products were higher than the sales prices of similar products in China, and that there was no evidence that the investigated products suppressed the prices of similar products in China.

In this regard, the applicant believes that the import price of the investigated products is higher than the selling price of similar domestic products, which does not mean that the price of the investigated products will not cause damage to similar domestic products. Relevant evidence shows that the investigated products have caused price suppression of similar domestic products.

First, the Australian stakeholders evaded the fact that the overall price of the investigated products had a "downward" trend during the investigation period. According to the preliminary ruling, in 2015, 2016, 2017, 2018 and 2019, the import prices of the investigated products were 55,390 yuan/kilolitre, 49,500 yuan/kilolitre, 46,352 yuan/kilolitre, 41,780 yuan/kilolitre and 46,577 yuan/kilolitre respectively, and continued to decline from 2015 to 2018. Although it rose in 2019, it was still a significant drop of 15.91% from 2015. The level of price reduction of the investigated products greatly limits the price increase of similar domestic products.

Second, the impact of the price of imported products under investigation on the price of similar domestic products should also take into account the significant growth in the number of imports, the decline in the price of imports of the products under investigation and the growth in the number of imports are correlated. According to the preliminary ruling, the import quantity of

the product under investigation in this case increased continuously from 56,700/kilolitre in 2015 to 120,800 kilolitres in 2019, with a cumulative significant increase of 113.05%, and the market share in China also increased from 7.40% to 16.30%, with a cumulative significant increase of 8.90 percentage points, and the proportion of the total output of similar products in China increased from 15.01% to 41.93%, with a cumulative significant increase. The proportion of the total output of similar products in China increased from 15.01% to 41.93%, a cumulative increase of 26.91 percentage points. Therefore, with the significant growth or increase in the number of imports of the investigated products, their market share in China, and their proportion in China's total output, the influence of the investigated products in the Chinese market is expanding, and their significant price reductions are sufficient to cause substantial negative impact on the prices of similar products in China.

Again, it is because of the overall trend of a significant decline in the import price of the investigated products, which led to its price difference with similar domestic products in a significant reduction, from 23,371 yuan/kiloliter in 2015 to 7,982 yuan/kiloliter in 2019. The significant narrowing of the price difference has inhibited the price upside of the domestic counterparts, resulting in the domestic counterparts not getting the price increase they deserve in the face of rising costs and expenses. Data show that from 2015 to 2019, the cost of similar domestic products rose by 25.19% cumulatively. While the sales price only accumulated an increase of 20.54%, lower than the rate of increase in cost costs, unit profits also fell from 3296 yuan / kiloliter to 2638 yuan / kiloliter in 2019, a substantial cumulative decline of 20%. In the context of

the overall significant decline in the import prices of the surveyed products, it is clear that the rising costs of similar domestic products are not fully reflected by a reasonable increase in product prices.

Therefore, based on the above analysis and explanation, the applicant believes that the damage caused to the domestic industry by the "increase in volume and decrease in price" of the investigated products has explanatory power, and the price reduction of the investigated products has caused serious price suppression to the domestic similar products, as described below, which in turn has caused serious damage to the operating efficiency of the domestic similar products.

**(D) Wine Australia's claim that there is no causal relationship between the damage suffered by the domestic industry and the import of the investigated products cannot be established**

In its comments after the preliminary ruling, the Wine Institute of Australia claimed that based only on the changes in economic indicators such as production, sales, prices and revenues of similar domestic products and the changes in the products under investigation, it could not prove the existence of a causal relationship between the import of the products under investigation and the damage suffered by the domestic industry.

In this regard, the applicant argues that.

First, in the preliminary ruling, the investigating authority has compared and analyzed the market share of

the product under investigation and the market share of similar domestic products. During the damage investigation period, the market share of the investigated products continued to grow rapidly, while the market share of similar domestic products was generally declining, the market share of the investigated products increased by 8.90 percentage points, while the market share of similar domestic products decreased by 7.01 percentage points, and the market share of both products showed an inverse change, and the investigated products obviously crowded out the market share of similar domestic products.

Secondly, the applicant also noted that, in addition to the inverse relationship between the market share, the continuous growth of the number of imports of the investigated products and the continuous decline in the rate of production, output and sales of similar products in the domestic industry also showed a distinct inverse relationship. During the period of damage investigation, the number of imports of the investigated products increased significantly by 113.14%, or 64,100 tons, while the start-up rate of similar products in the domestic industry decreased by 12.47%, production decreased by 30.81%, or 77,900 tons, and sales decreased by 24.67%, or 59,700 tons. The relationship between the changes in these economic indicators further proves that the continued significant increase in the number of imports of the investigated products has caused damage to the production and sales of similar products in the domestic industry, and there is a causal relationship between the two.

Again, the damage investigation period, the domestic

industry sales revenue of similar products in a significant reduction, which is related to the significant reduction in sales volume. Sales revenue decreased from \$7.753 billion in 2015 to \$7.040 billion in 2019, a cumulative decrease of 9.20%. Therefore, the large number of low-priced imports of the investigated products has not only caused damage to the domestic industry's start-up rate, production, and sales volume, but also to the growth of sales revenue of similar products in the domestic industry.

Fourth, the start-up rate, production, sales decline on the domestic industry more operational indicators have a negative impact. The inability to dilute production costs and expenses has led to a cumulative increase of 29% in unit labour costs, 15% in unit fuel power, 68% in unit manufacturing costs, and 20.58% in unit expense taxes during the damage investigation period. Although some of the cost increases have been passed on through the increase in sales prices, as mentioned above, the price increases of similar domestic products were significantly smaller than the cost increases under the price suppression of the investigated products, which in turn cut the profit margin of similar domestic products, resulting in a significant decrease of 19.98% in unit profits during the damage investigation period. Correspondingly, the domestic industry similar products before tax profits decreased by 39.82% in aggregate, the return on investment fell by 1.29 percentage points in aggregate, and the net cash flow decreased by 80.26% in aggregate. These operating indicators suffered the same damage and there is a causal relationship with the large number of low-priced imports of the investigated products.

Finally, the domestic industry's ability to create jobs

has also been severely weakened by the continued decline in operating efficiency. The cumulative decrease in employment during the damage investigation period was 19.07%. As a result of the decline in starts and output, labor productivity also fell by a corresponding 14.50%. These other production indicators are also correlated with the product under investigation.

Based on the above analysis and description, the applicant believes that several economic indicators of similar products in the domestic industry have shown different degrees of deterioration during the damage investigation period, indicating that the domestic industry is suffering serious damage. Moreover, by analysing the changes in the imports of the investigated products and the changes in the relevant economic indicators of the domestic similar products, it is not difficult to find that there is an obvious correlation between the two, and the large number of low-priced imports of the investigated products has caused damage to the domestic industry, and there is a causal relationship between the two. The relevant claims of the Australian Wine Association cannot be established.

In addition, the applicant noted that Wine Australia also asserted in its post-preliminary judgment comments that the subsidy investigation period in this case is 2019, and the damage status of the domestic industry during the period from 2015 to 2018 is not a basis for subsidizing the damage caused by the investigated products. At the same time, it also asserted that the domestic industry was not harmed in 2019 because the prices of similar domestic products were on an upward trend, the capacity performance was stable, the wage level increased

significantly, the rate of return on investment did not decline, and there was no evidence that the investment or financing capacity of the domestic industry was affected.

In this regard, the applicant argues that

First of all, the WTO countervailing law does not clearly stipulate the "injury investigation period". However, the damage investigation period is consistent with the principles and spirit of the WTO Committee on Anti-Dumping Measures and the Dispute Settlement Body, as well as with the trade remedy practice of various countries. China's Regulations on Countervailing Industrial Injury Investigation also stipulates that "the industrial injury investigation period for countervailing cases is usually three to five years before the commencement of the filed investigation". Therefore, Wine Australia's defence that the damage analysis from 2015 to 2018 cannot be used as the basis for the decision has no legal basis and cannot be established.

Secondly, the applicant argues that when analysing the relevant economic indicators, one cannot mechanically and isolated measure whether the domestic industry has been harmed according to the number of so-called positive and negative indicators, but should combine the various economic indicators with the specific market conditions and characteristics of the domestic industry, and examine them in terms of their overall changes and interrelationships. For the present case.

First, the demand in the domestic market has always remained at a high level during the damage investigation period, and despite the decrease in total demand, the

Chinese wine market still has good prospects for development according to the relevant materials submitted by the parties. In a relatively good market environment, the domestic industry should have maintained stable production and operation, but as mentioned above, several production and operation indicators of the domestic industry are suffering damage, with declining trends in start-up rate, production, sales volume, sales revenue, pre-tax profit, return on investment, cash flow, employment, labor productivity, etc. to varying degrees, and sales price increases have been severely curbed. The continued deterioration of these production and operating indicators is the most direct manifestation of the damage suffered by the domestic industry and, as noted above, is the result of the massive low-cost import practices of the products under investigation.

Second, in 2019, despite the rise in sales prices and per capita wage indicators, this does not mean that these indicators did not suffer damage. On the contrary, as mentioned above, sales prices have been suppressed by the prices of the investigated products and have had a serious negative impact on operating efficiency. The rise in per capita wages, in turn, is backed by a significant reduction in employment and an increase in the costs and expenses shared by similar products.

Third, in 2019, several economic indicators of the domestic industry, including starts, production, sales, market share, sales revenue, profit before taxes, return on investment, cash flow, employment, and labor productivity, have fallen to the lowest levels in the damage survey period. On the contrary, the number of imports and market share of the investigated products in the same

period are at the highest level in the damage investigation period, and the import price is also in a downward trend overall. This further indicates that the sustained damage suffered by the domestic industry and the volume increase behavior of the investigated products keep a synchronous correspondence in terms of time and the degree of damage.

Therefore, after taking into account the actual characteristics and conditions of the domestic market, and after comprehensively analyzing the overall trend of the damage indicators throughout the investigation period, as well as the overall linkage between the damage indicators, the applicant concluded that the domestic industry was suffering substantial damage during the investigation period. Wine Australia's approach of selecting only individual indicators and using the data performance of individual periods during the investigation period to analyze industrial damage in isolation is obviously mechanical and not objective, and it is naturally wrong to conclude that the so-called domestic industry is not suffering from damage.

### **(E) Comments on whether other factors caused injury to the domestic industry**

In its post-preliminary comments, the Australian government argued that MOFCOM, in analyzing whether imports from other countries and regions caused injury to the domestic industry, only referred to the total amount of imports, without considering the prices of these imports. Commerce should have conducted a more detailed analysis of the import data to understand the increase in lower-value wine imports from other countries and

regions, particularly given that Australia was the second most expensive source of wine imports among China's major wine suppliers during the period under investigation (2019).

In its post-preliminary comments, Wine Australia asserted that if the domestic industry suffered harm, it was also due to other economic factors, such as the impact of imports from other countries, the impact of policies, and the impact of structural problems in the domestic industry.

The applicant notes that in the previously submitted comments on the filing of the case, the Australian government and the Australian Wine Association have commented on the above-mentioned influencing factors, and the applicant has defended accordingly and submitted to the investigating authority the "Comments of the Applicant in the Wine Countervailing Case on the Comments on the Filing of the Case by Relevant Stakeholders". Therefore, in response to these repeated claims, the applicant further makes the following comments on the basis of insisting on the previously submitted comments.

## 1. Comments on the import of similar products from other countries (regions)

Changes in the import quantity of similar products from other countries (regions)

unit: thousand litres

Period	Australia		Other countries (regions)	
	Imports quantity	Range of change	Imports quantity	Range of change

2015	56,681	-	339,460	-
2016	79,385	40.05%	402,394	18.54%
2017	105,826	33.31%	446,493	10.96%
2018	117,845	11.36%	390,894	-12.45%
2019	120,812	2.52%	335,206	-14.25%

Firstly, although the number of imports from other countries (regions) was significantly higher than the number of imports of Australian investigated products, the overall number of imports of Australian investigated products showed a significant growth trend, with a significant increase of 113% in 2019 compared with 2015, while the overall number of imports from other countries (regions) showed a decreasing trend, with a decrease of 1.25% in 2019 compared with 2015. During the same period, the proportion of the number of imports of the investigated products in Australia to the total number of imports in China has shown a significant upward trend, from 14.14% in 2015 has increased significantly to 26.49% in 2019, while on the contrary, the proportion of imports from other countries (regions) decreased from 85.86% in 2015 to 73.51% in 2019. Moreover, the proportion of Australia's investigated products to the number of imports from other countries (regions) is increasing significantly, from 16.70% in 2015 to 36.04% in 2019. In particular, imports from other countries (regions) involve dozens of countries (regions), and if we look at one country alone, Australia is the second largest importer in China, and its impact on the Chinese market is increasing year by year.

**Changes in import prices of similar products from other countries (regions)**

Unit: USD/kilolitre

Period	Australia	Other countries (regions)
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	Imports price	Range of change	Imports price	Range of Change
2015	7,759	-	4,238	-
2016	6,834	-11.92%	4,107	-3.09%
2017	6,447	-5.67%	4,189	2.01%
2018	6,090	-5.54%	4,751	13.40%
2019	6,723	10.39%	4,116	-13.35%

Secondly, in terms of price, although the import prices of the investigated products are higher than the import prices of similar products in other countries (regions), which may be caused by different product structures, the fact that the import prices of the investigated products are higher than the import prices of similar products in other countries (regions) does not mean that the investigated products will not cause damage to the domestic industry.

The trend of import prices shows that both the import prices of the investigated products and the import prices of other countries (regions) are generally on a decreasing trend. However, the price reduction of the investigated products in Australia is significantly higher than the price reduction of similar products in other countries (regions). 2019 than 2015, the cumulative reduction of the investigated products by 13.36%, while the cumulative reduction of similar products in other countries (regions) is only 2.86%, which is relatively stable.

Although it cannot be ruled out that the decline in import prices in other countries (regions) will have a negative impact on the domestic market and domestic industry. However, in the case of relatively stable import prices, the number of imports of similar products from other countries (regions) is on a downward trend.

In contrast, the applicant believes that the purpose of Australian manufacturers to expand their exports to China through price reduction strategy is very obvious. In the application, the applicant has also provided a lot of evidential information, including the size of the Australian industry and subsidy programs, which can prove that Australia is working to increase its exports to China.

Therefore, the applicant believes that if the import of similar products from other countries (regions) will cause damage to similar domestic products, the import of a large number of low-priced products under investigation will cause more damage to the domestic industry in the case of obvious growth in the number of imports and greater price reduction, and the import of similar products from other countries (regions) cannot negate the fact that the products under investigation have caused damage to the domestic industry.

## **2. Comments on the reduction in demand for wine due to the introduction of relevant consumption restriction policies by the Chinese government.**

The applicant believes that the introduction of the relevant consumption restriction policies by the Chinese government, as mentioned by the Australian government, may have a certain impact on market demand. However, there is no evidence that the consumption restriction policy will only adversely affect similar domestic products and other similar products, but not the product under investigation, and will only adversely affect ordinary wines, but not fine wines.

Moreover, as mentioned above, both the investigated

products, domestic similar products and other similar products each have the same specifications (models) and compete with each other for substitution in the Chinese market. In the case of domestic similar products, products under investigation and similar products in other countries are in the same market and compete with each other, these policy implications do not actively apply to which products, the domestic similar products, products under investigation and similar products in other countries will have an impact. However, the investigated products are significantly different from domestic similar products and foreign similar products in terms of volume changes.

The data show that during the investigation period, the number of imports of the investigated products increased significantly by 113% in 2019 compared with 2015, while the sales of similar products in the domestic industry decreased significantly by 24.67% and imports from other countries decreased by 1.25%. This shows that the investigated products not only grabbed the market share of the domestic industry, but also squeezed the market share of other countries. In the unfavourable situation that domestic demand may be affected by the policy, the investigated products instead continue to grow significantly, which is obviously abnormal.

Therefore, the applicant believes that if the government introduces policies that will adversely affect the market demand side and will adversely affect the domestic industry, then the large number of low-priced imports of the investigated products will intensify market competition and aggravate the damage suffered by the domestic industry.

### **3. Comments on the structural problems of the domestic industry.**

The applicant once again emphasized that although the Australian Wine Association suggested that the domestic industry had structural problems, it did not provide any evidence to support it, and the period it mentioned was the 1990s and 2000s, which far exceeded the damage investigation period of this case. This should not be supported by the investigating authority.

Step back, even if the domestic industry is considered to have structural problems, or the existence of their own disadvantages, but the domestic industry in the investigation period in terms of production levels, management levels, etc. is constantly improving. In particular, companies like Changyu, Great Wall, Weilong etc., have been developed on a large scale and have been working to improve the technical level of enterprises and improve the management norms of enterprises. At the same time, enterprises also attach great importance to the construction of raw material bases to make up for the shortage of high-quality raw material wine, and to transform the advantages of origin into product and brand advantages. At the same time, enterprises also generally attach importance to comprehensive utilization of resources and energy conservation and emission reduction and have made significant progress in the comprehensive utilization of by-products such as wine grape skins and pomace, as well as wastewater treatment and recycling. All these initiatives or efforts are improving the competitiveness of similar products in the domestic industry and weakening the adverse effects generated by

the so-called structural problems of Wine Australia.

As a result, the domestic industry is well positioned to compete in the market in terms of production scale, product quality, and business management. However, the entire Chinese wine industry, including the leading companies such as Changyu, Great Wall, and Weilong mentioned above, as well as other producers, are being impacted by the imports of the investigated products. The so-called structural problem of Wine Australia is not the root cause of the damage suffered by the domestic industry, and it cannot be denied that the investigated products have caused substantial damage to the domestic industry.

In summary, the applicant believes that there is a causal relationship between the increase in the volume and price of the investigated products and the damage suffered by the domestic industry. Other factors cannot negate the fact that the investigated products have caused damage to the domestic industry. The relevant claims of the Australian Wine Association Government and the Australian Wine Association are not consistent with the facts and cannot be established, and their purpose is only to find excuses, confuse the facts and shirk the responsibility of the substantial damage caused to the domestic industry by the import of the investigated products in large quantities and at low prices.

#### **IV. Conclusion and request**

In summary, the applicant believes that

First, the investigation and ruling of the investigating

authority on the subsidy, substantial damage and the causal relationship between the subsidy and substantial damage in this case are in accordance with the provisions of Chinese law and the relevant principles and spirit of the WTO, with full objectivity, impartiality and transparency. The challenge of the relevant Australian stakeholders on the investigation procedure in this case cannot be established and has no factual and legal basis.

Secondly, there is no substantial difference in the basic physical and chemical characteristics of the investigated products of different specifications (models) that meet the product description of the case announcement, the raw materials and production processes are the same or similar, and the differences in product prices are reasonable and normal differences between products of different specifications (models), and there is no clear dividing line, and they belong to the same category of products. The claim of Wine Australia that the products of different sizes (models) do not belong to the same category of products cannot be established.

Third, there is a causal relationship between the large number of low-priced imports of the investigated products and the damage suffered by the domestic industry. Other factors cannot negate the fact that the investigated products have caused damage to the domestic industry. The relevant claims of the Australian government and the Australian Wine Association are not consistent with the facts and cannot be established.

Finally, the applicant requests the investigating authority to make an affirmative final decision on this case as soon as possible and impose the corresponding

countervailing duty on the investigated products in Australia, so as to fully safeguard the legitimate rights and interests of the domestic industry and protect the healthy development of the domestic industry.

Please consider and adopt our comments above.