



Australian Government
Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

ANTI-DUMPING COMMISSION

REPORT NUMBER 235

**ACCELERATED REVIEW OF ANTI-DUMPING
MEASURES**

SODIUM BICARBONATE

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VANDERARK INTERNATIONAL LIMITED

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PUBLIC RECORD

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ABBREVIATIONS

| Abbreviation | Full title |
|-----------------------------|--|
| ACBPS | Australian Customs and Border Protection Service |
| ADN | Anti-Dumping Notice |
| China | People's Republic of China |
| CON 235 | Consideration Report No. 235 |
| Dumping Duty Act | <i>Customs Tariff (Anti-Dumping) Act 1975</i> |
| FOB | Free on board |
| NIP | Non-injurious price |
| Penrice | Penrice Soda Products Pty Ltd |
| REP 161 | Trade Measures Branch Report to the Minister No. 161 |
| Review period | 1 October 2012 to 30 September 2013 |
| the Act | <i>Customs Act 1901</i> |
| the Commission | the Anti-Dumping Commission |
| the Commissioner | the Commissioner of the Anti-Dumping Commission |
| the goods | the kind of goods to which the anti-dumping measures apply |
| the Minister | the Minister for Industry |
| the Parliamentary Secretary | the Parliamentary Secretary to the Minister for Industry |
| USP | unsuppressed selling price |
| VanderArk | VanderArk International Limited |

1 SUMMARY AND RECOMMENDATIONS

1.1 Background

This *Accelerated Review No. 235* is in response to an application¹ from VanderArk International Limited (VanderArk) seeking an accelerated review of the dumping duty notice applying to sodium bicarbonate² exported to Australia from the People's Republic of China (China).

This report sets out the Commissioner of the Anti-Dumping Commission's (the Commissioner's) recommendations to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) in relation to the accelerated review.

The current accelerated review inquired into whether the original dumping duty notice should be altered in so far as it relates to VanderArk.

1.2 Recommendation

The Commissioner recommends that under s.269ZG(3)(b)(ii) the Parliamentary Secretary declare that, from 21 November 2013³, the *Customs Act 1901* (the Act) and the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) have effect as if the original dumping duty notice had applied to VanderArk but specified different variable factors had been fixed relevant to the determination of duty payable by the applicant.

If the Parliamentary Secretary accepts this recommendation, to give effect to the decision, the Parliamentary Secretary must sign the relevant notice at **Confidential Attachment 1**.

The Commissioner recommends that the Parliamentary Secretary determine:

- in relation to VanderArk's exports of specialty packs⁴ of sodium bicarbonate, that the dumping duty amount be worked out in accordance with the floor price duty method pursuant to subregulation 5(4) of the *Customs Tariff (Anti-Dumping) Regulation 2013* (Anti-Dumping Regulations). The result of this recommendation is that VanderArk's exports of specialty packs will not attract interim dumping duty as long as its export prices are at or above the floor price established by reference to the non-injurious price during the review period; and
- in relation to any exports of sodium bicarbonate by VanderArk other than specialty packs, the dumping duty amount be worked out in accordance with the fixed and variable duty method pursuant to subregulation 5(2) of the Anti-Dumping Regulations. The fixed rate of

¹ This application was lodged in accordance with section 269ZF of the *Customs Act 1901*.

² Refer to Section 2.5 for a full description of the goods.

³ The date of lodgement of the application seeking an accelerated review.

⁴ Refer to section 2.2 of this report for description

duty should be set at the same rate that currently applies to all other exporters of regular packs.

1.3 Findings and conclusions

Based on all relevant and available information the Anti-Dumping Commission's (the Commission) findings and conclusions in respect of VanderArk are as follows:

- the export price for specialty packs has been determined having regard to the price paid by the importer to the exporter (Section 3 of this report refers)⁵;
- the normal value for specialty packs has been determined having regard to all relevant information (Section 4 of this report refers)⁶;
- the non-injurious price (NIP) for sodium bicarbonate specialty packs be established by reference to the weighted average export price of specialty packs during the review period; and
- the variable factors for regular packs be the same as the variable factors established in the previous review of anti-dumping measures applicable to sodium bicarbonate in 2010⁷.

Based on these findings and conclusions, the Commissioner recommends that the Parliamentary Secretary alter the anti-dumping measures in so far as they relate to exports of sodium bicarbonate by VanderArk in accordance with s.269ZG(3)(b)(ii).

1.4 Application of law to facts

Division 6 of Part XVB of the Act enables eligible parties to apply for an accelerated review of anti-dumping measures. The Division, among other matters:

- sets out the procedures to be followed and the matters to be considered by the Commissioner in conducting accelerated reviews in respect of the exporter and the goods covered by the application for the purpose of making a report to the Minister; and
- empowers the Minister, after consideration of such reports, to leave the measures unaltered or to modify them as appropriate.

In December 2013, the Minister for Industry (the Minister) delegated responsibility for decision making on operational matters under Parts XVB and XVC of the Act and other anti-dumping legislation to the Parliamentary Secretary.

⁵ s.269TAB(3) refers.

⁶ s.269TAC(6) refers.

⁷ Trade Measures Branch Report 161 refers

2 INTRODUCTION

2.1 Accelerated review process

If anti-dumping measures have been taken in respect of certain goods, a new exporter, who has not exported the goods to Australia during the period specified in s.269T of the Act, may request an accelerated review of those measures as they affect that particular exporter, if they consider the measures are not appropriate to that exporter.

If an application for an accelerated review of anti-dumping measures is received and not rejected, the Commission has up to 100 days to inquire and report to the Parliamentary Secretary on the accelerated review of the measures.

In making recommendations in its final report to the Parliamentary Secretary, the Commissioner must consider the application for an accelerated review and make such inquiries as considered appropriate.

In respect of a dumping duty notice, the Commissioner must recommend to the Parliamentary Secretary that the dumping duty notice:

- remain unaltered; or
- be altered:
 - so as not to apply to the particular exporter; or
 - to have effect in relation to the particular exporter as if different variable factors had been fixed.

Following the Parliamentary Secretary's decision, a notice is published advising interested parties of the decision.

2.2 History of anti-dumping measures

Measures were imposed on imports of sodium bicarbonate from China on 3 November 2005.

On 8 November 2010 the then Minister signed a notice regarding the review of anti-dumping measures applying to sodium bicarbonate in Trade Measures Branch Report to the Minister No. 161 (REP 161). As a result of that review, anti-dumping measures applying to the goods were revised.

In reviewing the anti-dumping measures, Australian Customs and Border Protection Service (ACBPS) identified that there were 'regular' pack exports and 'specialty' pack exports.

Regular pack exports were bulk shipments that competed with the Australian industry and generally packaged in 25kg bags or bags containing one tonne or more.

Specialty packs are usually less than 10kg and include features such as high quality packaging materials, end users' brand graphics, tamper evident caps and zip locks which the Australian industry was unable to supply. These packs are generally destined for use in swimming pools.

During the review ACBPS recommended, and the Minister accepted, that separate anti-dumping measures should be set for one specific exporter, Inner Mongolia Ihjuchem Industrial Co., Ltd, other regular pack exporters and specialty pack exporters.

As imports of specialty packs were found not to be injurious to the Australian industry, it was decided that the non-injurious price be set at the export price during the review period. As a result, the measures on specialty pack exporters operated like a floor price, i.e. importers only need to pay duty if the price of these imports drops below the NIP. The measures on sodium bicarbonate for regular packs required the importer to pay interim dumping duty regardless of export price.

In order to ascertain revised variable factors and new anti-dumping measures, ACBPS identified known exporters of specialty pack sodium bicarbonate and set individual rates for these companies based on their export price during the review period.

The current anti-dumping measures on imports from China are due to expire on 3 November 2015.

2.3 Notification and participation

On 21 November 2013, VanderArk lodged an application for an accelerated review.

The Commission considered the application to determine if it was valid as required by s.269ZE and s.269ZF and the definitions provided in s.269T of the Act. The Commission was satisfied that:

- VanderArk was a new exporter as defined by s.269T of the Act;
- the application satisfied the requirements of s.269ZF of the Act;
- the conditions for rejection under s.269ZE(2) of the Act were not met; and
- therefore, the circumstances in which an accelerated review can be sought were satisfied.

As the circumstances in which an accelerated review can be sought were satisfied the Commissioner did not reject the application and commenced the accelerated review. Consideration Report No. 235 (CON 235) provides further details in relation to the Commission's consideration of the application and the decision of the Commissioner. CON 235 should be read in conjunction with

this report. CON 235 is available on the Commission's website at www.adcommission.gov.au.

The commencement of the accelerated review was publicly notified in Anti-Dumping Notice (ADN) No. 2013/107, which was published on 8 January 2014. ADNs are available on the Commission's website at www.adcommission.gov.au.

ADN 2013/07 highlighted that interested parties had until 20 January 2014 to lodge submissions in relation to the accelerated review.

For the purposes of the accelerated review the period examined is 1 October 2012 to 30 September 2013 (herein referred to as the review period).

2.4 Public record

There is no legislative requirement for the Commission to maintain a public file for accelerated reviews. However, in the interests of ensuring this process is conducted in an open and transparent manner, a public file for this accelerated review has been maintained and is accessible on the Commission's website at www.adcommission.gov.au.

2.5 The goods

2.5.1 Goods description

The goods the subject of the anti-dumping measures (the goods) are:

“sodium hydrogen carbonate, also referred to as sodium bicarbonate or baking soda, which can be manufactured via the natural alkali method or the Solvay method. For the natural alkali method, alkali is mined, purified, filtered, carbonised and dried before packing. The Solvay method is a synthetic process that includes crude bicarbonate formation, filtration, light ash finishing and refining.”⁸

2.5.2 Tariff classification

The goods may be classified to the following subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

| Tariff classification and statistical code | Description |
|--|--|
| 2836.30.00/27 | sodium hydrogen carbonate (sodium bicarbonate) |

Figure 1: Tariff classification, statistical code and description for the goods

The goods are duty free.

⁸ REP 161

2.6 Approach to the current review

In its application VanderArk stated that it only exports specialty packs to Australia. The Commission contacted the sole Australian manufacturer of sodium bicarbonate, Penrice Soda Products Pty Ltd (Penrice) and informed it that the Commission intended to alter the anti-dumping measures as they apply to VanderArk so that VanderArk is treated in the same way as other specialty pack exporters for the purpose of anti-dumping measures. In particular, the Commission stated that the NIP for VanderArk's exports of specialty packs should be its export price over the review period.

The Commission further outlined that this approach was based on the findings in REP 161 that specialty packs did not directly compete with the Australian industry's product.

Penrice indicated in a submission to the Commission on 20 January 2014 that it:

- would be satisfied for VanderArk to be treated in the same way as other specialty pack exporters;
- would assume that the export price from VanderArk would be monitored;
- would assume that the applicable anti-dumping measures would apply; and
- would like to be updated in relation to the application made by VanderArk.

3 EXPORT PRICE

3.1 Findings

The export price for specialty packs of sodium bicarbonate exported by VanderArk from China has been determined under s.269TAB(1)(a) of the Act.

The export price for all other packs of sodium bicarbonate exported by VanderArk from China has been determined under s.269TAB(3) of the Act.

3.2 Exporter questionnaire response and verification

Upon the commencement of the accelerated review, the Commission sent an exporter questionnaire to VanderArk to complete. On 18 February 2014, the Commission received a response to the exporter questionnaire. The non-confidential version of this response was placed on the public record.

This response contained information and data in relation to VanderArk's:

- company structure and operations;
- export sales of sodium bicarbonate; and
- packaging and export costs for sodium bicarbonate.

As VanderArk provided an adequately documented exporter questionnaire response and adequately addressed that it exported specialty packs to Australia, the Commission did not consider that a verification visit was warranted.

3.3 Determination of export price

Specialty packs

During the review period of 1 October 2012 to 30 September 2013, three shipments of sodium bicarbonate were exported from VanderArk to its Australian customer.

The exporter questionnaire response identifies that the goods were exported to Australia by VanderArk and purchased by its Australian customers. The documentation supplied in relation to the shipments supports a finding that the goods were sold by VanderArk to its Australian customer in arms' length transactions.

The Commission considers that the export price for specialty packs can be established by reference to s.269TAB(1)(a) of the Act, being the price paid for the goods by the importer other than any part of the price that represents a charge in respect of matters arising after exportation.

Regular packs

A rate of duty for regular packs of sodium bicarbonate exported by VanderArk needs to be established in the event that VanderArk exports such products in

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the future. Sufficient information is not available to establish an export price for regular packs of sodium bicarbonate under s.269TAB(1). Therefore for exports of regular packs by VanderArk, the Commission considers the export price can be established by reference to s.269TAB(3) having regard to all relevant information. The Commission considers the most relevant information is the export price for all other exporters (which was based on regular packs) established in the last review (refer REP161).

4 NORMAL VALUE AND DUMPING MARGIN

4.1 Findings

The normal value for specialty packs of sodium bicarbonate sold on the domestic market in China can be determined under s.269TAC(6) of the Act, having regard to all relevant information. Specifically the normal value can be established by reference to the normal value for exporters of regular packs.

The normal value for regular packs of sodium bicarbonate sold on the domestic market in China can be determined under s.269TAC(6) of the Act, having regard to all relevant information. Specifically the normal value can be established as the normal value for all other exporters established in the previous review of the anti-dumping measures.

4.2 The Commission's assessment - normal value

Specialty packs

VanderArk had no domestic sales during the review period. Therefore, normal value cannot be established under s.269TAC(1) of the Act. In addition VanderArk is a re-packer rather than a manufacturer of the goods so appropriate and complete costs for normal value purposes were not available to enable normal value to be calculated under s.269TAC(2)(c) of the Act.

As sufficient information is not available to enable the normal value of specialty packs of sodium bicarbonate exported to Australia from China by VanderArk to be determined under any other section of the Act, normal value was determined under s.269TAC(6) of the Act, having regard to all relevant information.

The Commission has adopted the same methodology used in REP 161 for exporters of specialty packs. In that review the ascertained export price of 'specialty pack' exporters was uplifted by the dumping margin calculated for 'regular' pack exporters. Given there are no other exporters associated with this accelerated review, to determine a normal value the Commission has uplifted VanderArk's export price by the dumping margin calculated for 'regular' pack exporters in REP 161.

Regular packs

A rate of duty for regular packs of sodium bicarbonate exported by VanderArk needs to be established in the event that VanderArk exports such products in the future. Sufficient information is not available to establish a normal value for regular packs of sodium bicarbonate under s.269TAC(1) or s.269TAC(2) of the Act. The normal value for regular packs must be established under s.269TAC(6) of the Act having regard to all relevant information.

The Commission considers the most relevant information is the normal value for all other exporters (which was based on regular packs) established in the last review (refer REP161).

4.3 Dumping margin

Measurement of a dumping margin is not required for the purposes of an accelerated review. It is not relevant in any case for exports of specialty packs due to the methodology for determining the NIP (refer Chapter 5) and the form of measure being a floor price.

The dumping margin established in the previous review for all other exporters of regular packs will remain unchanged and apply to any exports of regular packs by VanderArk.

5 NON-INJURIOUS PRICE

5.1 Findings

In the 2010 review of anti-dumping measures applying to sodium bicarbonate, (REP161 refers), imports of specialty packs were found not to be injurious to the Australian industry and the NIP was set at the export price during the review period. The Australian industry submitted to the current review that this is still the case. The same approach has therefore been adopted for the purpose of this accelerated review in relation to specialty packs.

The NIP for exports of regular packs has been determined as the NIP that was established during the previous review of anti-dumping measures.

5.2 Introduction

Anti-dumping measures may be applied where it is established that dumped and/or subsidised imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of duty cannot exceed the margin of dumping and subsidisation, but a lesser duty may be applied if it is sufficient to remove the injury.

The calculation of the NIP provides the mechanism whereby this lesser duty provision is given effect. The NIP is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping and subsidisation⁹.

Dumping duties are usually based on free on board (FOB) prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export.

5.3 Unsuppressed selling price

The Commission normally applies one of the following approaches to establish the unsuppressed selling price (USP):

1. *Market approach* – industry selling prices at a time when the Australian market was unaffected by dumping;
2. *Construction approach* – the Australian industry's cost to make and sell plus a reasonable rate of profit; or
3. *Other approach* – selling prices of un-dumped imports in the Australian market.

Having calculated the USP, the Commission then calculates a NIP by deducting the importation costs incurred in getting the goods from the FOB point at export (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, duty, insurance, into-store costs and amounts for importer expenses and profit.

Where the circumstances of a particular case dictate that none of the approaches above is suitable the reasons for this will be outlined in the relevant report.

⁹ The NIP is defined in s.269TACA.

5.4 The Commission's assessment – the USP and the NIP

When establishing a USP / NIP for accelerated reviews, the Commission will not depart from the approach taken in the original investigation or in subsequent reviews, unless there has been a change in circumstances that makes the approach unreasonable and/or less preferable.

In the 2010 review of measures, ACBPS noted that specialty packs had significantly different packaging and export prices relative to regular packs, and that the Australian industry did not sell specialty packs. For those reasons, separate NIPs for exporters of specialty packs were calculated. The NIPs were set at the same level as the weighted average export prices of the specialty pack exporters as those prices were considered non-injurious. A consistent approach has been adopted for this accelerated review.

In a submission to the review, Penrice supported this approach.

The NIP for exports of regular packs by VanderArk has been set at the same rate as the previous review of anti-dumping measures.

6 EFFECT OF THE REVIEW

As a result of recent changes to the legislation the amount of interim dumping duty payable can be worked out in accordance with a number of methods¹⁰. The Commission recommends that:

- the interim dumping duty payable on VanderArk's exports of specialty packs be worked out in accordance with the floor price duty method¹¹. This means that interim dumping duty for specialty packs will be payable only when the export price is below the NIP established during the review period (reflecting the imposition of a floor price duty mechanism); and
- the interim dumping duty for exports of pack sizes other than specialty packs be worked out in accordance with the fixed and variable method¹². This is consistent with the method currently in place for all other exporters of sodium bicarbonate from China. This means that the fixed rate of interim dumping duty that was established in the previous review (refer REP 161) will be payable on exports of regular packs by VanderArk, plus a variable component if the actual export price is below the export price established in REP 161.

These changes will take effect retrospectively from 21 November 2013, the date of application for the review.

¹⁰ s.8(5) of the Dumping Duty Act.

¹¹ Subregulation 5(4) of the Anti-Dumping Regulations.

¹² Subregulation 5(2) of the Anti-Dumping Regulations.

7 RECOMMENDATIONS

The Commissioner recommends that the Parliamentary Secretary considers this report, and if agreed, sign the attached notice (**Confidential Attachment 1**) to **declare**:

- under s.269ZG(4) of the Act, that the Act and the Dumping Duty Act have effect as if the original dumping duty notice had applied to VanderArk but specified different variable factors had been fixed relevant to the determination of duty payable by VanderArk.

The Commissioner recommends that the Parliamentary Secretary **be satisfied** that:

- in accordance with s.269TAC(6) of the Act, sufficient information is not available to enable normal values for sodium bicarbonate exported to Australia from China by VanderArk to be ascertained under the preceding subsections of s.269TAC of the Act.

The Commissioner recommends that the Parliamentary Secretary **determine**:

- in accordance with s.269TAC(6) of the Act, the normal value for sodium bicarbonate exported to Australia from China by VanderArk is the amount having regard to all relevant information;
- in accordance with s.8(5) of the Dumping Duty Act, that the amount of interim dumping duty payable on specialty packs be worked out in accordance with the method prescribed in subregulation 5(4) of the Anti-Dumping Regulations; and
- in accordance with s.8(5) of the Dumping Duty Act, that the amount of interim dumping duty payable on regular packs be worked out in accordance with the method prescribed in subregulation 5(2) of the Anti-Dumping Regulations.

8 ATTACHMENTS AND APPENDICES

| Attachments | |
|---------------------------|--------------------------------|
| Confidential Attachment 1 | Section 269ZG(3) public notice |
| Appendices | |
| Confidential Appendix 1 | Export price calculations |
| Confidential Appendix 2 | Normal value calculations |